

KEKER, VAN NEST & PETERS LLP
 ERIN E. MEYER - # 274244
 emeyer@keker.com
 JULIA L. ALLEN - # 286097
 jallen@keker.com
 CLAIRE C. BONELLI - # 317735
 cbonelli@keker.com
 ELLEN WATLINGTON - # 336422
 ewatlington@keker.com
 JACQUIE P. ANDREANO - # 338354
 jandreano@keker.com
 KAYLA CROWELL - # 349061
 kcrowell@keker.com
 633 Battery Street
 San Francisco, CA 94111-1809
 Telephone: 415 391 5400
 Facsimile: 415 397 7188

Attorneys for Plaintiffs-Petitioners

[ADDITIONAL COUNSEL ON NEXT PAGE]

BREE BERNWANGER - # 331731
 bbernwanger@aclunc.org
 MICHELLE (MINJU) Y. CHO - # 321939
 mcho@aclunc.org
 NEIL K. SAWHNEY - # 300130
 nsawhney@aclunc.org
 LAUREN M. DAVIS - # 357292
 ldavis@aclunc.org
 AMERICAN CIVIL LIBERTIES UNION
 FOUNDATION OF NORTHERN
 CALIFORNIA
 39 Drumm Street
 San Francisco, CA 94111
 Telephone: (415) 621-2493
 ABBY SULLIVAN ENGEN - # 270698
 asullivanengen@centrolegal.org
 JESSE NEWMARK - # 247488
 jessenewmark@centrolegal.org
 NIKOLAS DE BREMAEKER (Pro Hac Vice
 Forthcoming)
 ndebremaeker@centrolegal.org
 CENTRO LEGAL DE LA RAZA
 3400 E. 12th Street
 Oakland, CA 94601
 Telephone: (510) 437-1863

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION

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

Plaintiffs-Petitioners,

v.

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

Defendants-Respondents.

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

**NOTICE OF MOTION AND MOTION TO
 STAY EFFECTIVE DATE OF AGENCY
 ACTION OR PRESERVE STATUS OR
 RIGHTS**

Date: November 20, 2025
 Time: 10:00 am

Date Filed: July 3, 2025

NOTICE OF MOTION AND MOTION TO STAY EFFECTIVE DATE OF AGENCY ACTION OR PRESERVE
 STATUS OR RIGHTS

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

3168323

1 JUDY RABINOVITZ (pro hac vice forthcoming)
jrabinovitz@aclu.org
2 AMERICAN CIVIL LIBERTIES UNION FOUNDATION
125 Broad Street, 18th Floor
3 New York, NY 10004
Telephone: (212) 549-2660

4 Attorneys for Plaintiffs-Petitioners
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on November 20, 2025, at 10:00 a.m., or as soon as this matter may be heard, in the Courtroom of the Honorable P. Casey Pitts at the Robert F. Peckham Federal Building & United States Courthouse, 280 South 1st Street, San Jose, California 95113, Plaintiffs Frescia Garro Pinchi, Juany Galo Santos, and Jose Waldemar Teletor Sente (collectively, “Plaintiffs”) hereby move this Court for an Order granting Plaintiffs’ motion to stay or postpone, pursuant to the Administrative Procedure Act, 5 U.S.C. § 705, the Department of Homeland Security’s policy of re-arresting and re-detaining certain noncitizens in removal proceedings in the absence of any individualized determination that they had become a flight risk or a danger to the public.

This motion is based upon this Notice of Motion and Motion, the incorporated Memorandum of Points and Authorities, the supporting Declarations of Frescia Garro Pinchi, Juany Galo Santos, Jose Teletor Sente, Jordan Weiner, Shira Levine, Lisa Knox, Natalia Santanna, Bill Ong Hing, Jacqueline Marie Brown, Martha Ruch, Salam Maklad, Gabriela Vargas Plasencia, David Colon Solano, Maidel Arostegui Castellon, Carolina Ortiz Calderon, Keymaris Alvarez-Miranda, and Erin E. Meyer, and the Exhibits attached thereto, the Proposed Order filed herewith, the papers, evidence, and records on file in this action, and any other written or oral evidence or argument as may be presented at or before the time this motion is heard by the Court. This motion is also supported by the Amended Complaint and Amended Petition for Writ of Habeas Corpus, Dkt. No. 45, as well as Plaintiffs’ Motion for Provisional Class Certification and the supporting papers filed contemporaneously herewith.

Dated: October 16, 2025

KEKER, VAN NEST & PETERS LLP

By: /s/ Erin E. Meyer

ERIN E. MEYER JULIA L. ALLEN
CLAIRE C. BONELLI
ELLEN WATLINGTON
JACQUIE P. ANDREANO
KAYLA CROWELL

Attorneys for Plaintiffs-Petitioners

1
2 Dated: October 16, 2025

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF NORTHERN

3
4 By: /s/ Bree Bernwanger

BREE BERNWANGER
MICHELLE (MINJU) Y. CHO
NEIL K. SAWHNEY
LAUREN M. DAVIS

7 Attorneys for Plaintiffs-Petitioners

8 Dated: October 16, 2025

CENTRO LEGAL DE LA RAZA

10 By: /s/ Abby Sullivan Engen

11 ABBY SULLIVAN ENGEN
12 JESSE NEWMARK
13 NIKOLAS DE BREMAEKER

Attorneys for Plaintiffs-Petitioners

14 Dated: October 16, 2025

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

16 By: /s/ Judy Rabinovitz

17 JUDY RABINOVITZ

18 Attorneys for Plaintiffs-Petitioners

TABLE OF CONTENTS

	<u>Page</u>
NOTICE OF MOTION AND MOTION	I
MEMORANDUM OF POINTS AND AUTHORITIES	1
I. INTRODUCTION	1
II. FACTUAL BACKGROUND.....	2
A. DHS had a long-standing policy of not re-detaining previously released noncitizens absent an individualized determination of changed circumstances.	2
B. DHS has instituted a new policy of arbitrarily re-detaining previously released noncitizens without any individualized consideration of flight risk or danger.	4
C. DHS has not provided a reasoned basis for this drastic change in policy.	6
III. LEGAL STANDARD.....	7
IV. ARGUMENT	8
A. Plaintiffs are likely to succeed on the merits.	8
1. The Re-Detention Policy is a reviewable final agency action.	8
2. DHS’s Re-Detention Policy violates the APA because it is arbitrary and capricious.	12
3. The Re-Detention Policy violates the APA because it contravenes the Fourth Amendment.	18
4. The Re-Detention Policy violates the APA because it exceeds DHS’s statutory authority and is contrary to law.....	19
B. Absent a stay, Plaintiffs are likely to experience irreparable harm.	21
C. The balance of the equities and the public interest strongly favors a stay.....	23
V. CONCLUSION.....	24

TABLE OF AUTHORITIES**Page(s)****Federal Cases**

<i>Al Otro Lado, Inc. v. McAleenan</i> , 394 F. Supp. 3d 1168 (S.D. Cal. 2019).....	9, 10
<i>Alejandro v. Olson</i> , No. 1:25-CV-02027-JPH-MKK, 2025 WL 2896348 (S.D. Ind. Oct. 11, 2025)	13
<i>All. For the Wild Rockies v. Pena</i> , 865 F.3d 1211 (9th Cir. 2017)	8
<i>Almendarez-Torres v. United States</i> , 523 U.S. 224 (1998).....	20
<i>Amadei v. Nielsen</i> , 348 F. Supp. 3d 145 (E.D.N.Y. 2018)	9, 10
<i>Aracely v. Nielsen</i> , 319 F. Supp. 3d 110 (D.D.C. 2018)	9
<i>Bennet v. Spear</i> , 520 U.S. 154 (1997).....	9, 10, 11
<i>Bermeo Sicha v. Bernal</i> , No. 1:25-CV-00418-SDN, 2025 WL 2494530 (D. Me. Aug. 29, 2025)	3
<i>Camara v. Mun. Ct.</i> , 387 U.S. 523 (1967).....	19
<i>Carlson v. Landon</i> , 342 U.S. 524 (1952).....	20
<i>Centro Legal de la Raza v. Exec. Off. for Immigr. Rev.</i> , 524 F. Supp. 3d 919 (N.D. Cal. 2021)	16
<i>Chalk v. U.S. Dist. Ct.</i> , 840 F.2d 701 (9th Cir. 1988)	22
<i>Clark v. Martinez</i> , 543 U.S. 371 (2005).....	20
<i>Cnty. Legal Servs. in East Palo Alto v. U.S. Dep’t of Health and Human Servs.</i> , 780 F. Supp. 3d 897 (N.D. Cal. 2025)	8
<i>Cordero Pelico v. Kaiser</i> , No. 25-cv-07286-EMC, 2025 WL 2822876 (N.D. Cal. Oct. 3, 2025)	<i>passim</i>

1	<i>Ctr. for Biological Diversity v. Haaland,</i>	
2	58 F.4th 412 (9th Cir. 2023)	9
3	<i>Davis v. Michigan Dep't of Treasury,</i>	
4	489 U.S. 803 (1989).....	21
5	<i>Demore v. Kim,</i>	
6	2002 WL 34705774 (U.S. Aug. 29, 2002).....	3
7	<i>Demore v. Kim,</i>	
8	538 U.S. 510 (2003).....	17
9	<i>Dep't of Homeland Sec. v. Regents of the Univ. of Cal.,</i>	
10	591 U.S. 1 (2020).....	<i>passim</i>
11	<i>Doe #1 v. Trump,</i>	
12	957 F.3d 1050 (9th Cir. 2020)	23
13	<i>Doe v. Trump,</i>	
14	784 F. Supp. 3d 1297 (N.D. Cal. 2025)	23, 24
15	<i>Dos Santos v. Noem,</i>	
16	No. 1:25-CV-12052-JEK, 2025 WL 2370988 (D. Mass. Aug. 14, 2025)	3
17	<i>E. Bay Sanctuary Covenant v. Biden,</i>	
18	993 F.3d 640 (9th Cir. 2021)	8
19	<i>Encino Motorcars, LLC v. Navarro,</i>	
20	579 U.S. 211 (2016).....	12, 13
21	<i>F.C.C. v. Fox Television Stations, Inc.,</i>	
22	556 U.S. 502 (2009).....	13, 14
23	<i>Franklin v. Mass.,</i>	
24	505 U.S. 788 (1992).....	8
25	<i>Garro Pinchi v. Noem,</i>	
26	No. 5:25-CV-05632-PCP, 2025 WL 2084921 (N.D. Cal. July 24, 2025)	17
27	<i>Grand Canyon Tr. v. Pub. Serv. Co. of N.M.,</i>	
28	283 F. Supp. 2d 1249 (D.N.M. 2003)	9
	<i>Matter of Guerra,</i>	
	24 I. & N. Dec. 37 (BIA 2006)	2
	<i>Hernandez v. Sessions,</i>	
	872 F.3d 976 (9th Cir. 2017)	16, 17, 22
	<i>Hyppolite v. Noem,</i>	
	No. 25-CV-4304 (NRM), 2025 WL 2829511 (E.D.N.Y. Oct. 6, 2025).....	14

1	<i>I.N.S. v. Nat'l Ctr. for Immigrants' Rts. Inc.,</i>	
2	502 U.S. 183,194 (1991).....	20
3	<i>Immigrant Defs. Law Ctr. v. Noem,</i>	
4	145 F.4th 972 (9th Cir. 2025)	7, 23
5	<i>J.L. v. Cissna,</i>	
6	341 F. Supp. 3d 1048 (N.D. Cal. 2018)	10
7	<i>Jennings v. Rodriguez,</i>	
8	583 U.S. 281 (2018).....	2, 13
9	<i>Leiva-Perez v. Holder,</i>	
10	640 F.3d 962 (9th Cir. 2011)	22
11	<i>Lopez Benitez v. Francis,</i>	
12	No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025)	7, 13
13	<i>Lopez v. Sessions,</i>	
14	No. 18 Civ. 4189 (RWS), 2018 WL 2932726 (S.D.N.Y. June 12, 2018)	10, 18
15	<i>Lujan v. Nat'l Wildlife Fed'n,</i>	
16	497 U.S. 871 (1990).....	11
17	<i>Maklad v. Murray,</i>	
18	No. 1:25-CV-00946 JLT SAB, 2025 WL 2299376 (E.D. Cal. Aug. 8, 2025)	11
19	<i>Martinez v. Hyde,</i>	
20	No. 25-11613-BEM, 2025 WL 2084238 (D. Mass. July 24, 2025)	7
21	<i>Melendres v. Arpaio,</i>	
22	695 F.3d 990 (9th Cir. 2012)	21, 24
23	<i>Motor Vehicle Mfrs. Ass'n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co.,</i>	
24	463 U.S. 29 (1983).....	12, 14
25	<i>Munoz Materano v. Arteta,</i>	
26	No. 25-cv-6137, 2025 WL 2630826 (S.D.N.Y. Sept. 12, 2025)	19
27	<i>Nat'l Urb. League v. Ross,</i>	
28	489 F. Supp. 3d 939 (N.D. Cal. 2020), <i>order clarified</i> , 491 F. Supp. 3d 572 (N.D. Cal. 2020).....	16, 18
	<i>Norsworthy v. Beard,</i>	
	87 F. Supp. 3d 1164 (N.D. Cal. 2015)	22
	<i>Ortega v. Bonnar,</i>	
	415 F. Supp. 3d 963 (N.D. Cal. 2019)	3

1	<i>Pablo Sequen v. Kaiser</i> ,	
2	No. 25-cv-06487-PCP, 2025 WL 2650637 (N.D. Cal. Sept. 16, 2025)	7
3	<i>R.I.L-R v. Johnson</i> ,	
4	80 F. Supp. 3d 164 (D.D.C. 2015).....	11
5	<i>Ramirez v. U.S. Immigr. & Customs Enf't</i> ,	
6	310 F. Supp. 3d 7 (D.D.C. 2018).....	9
7	<i>Riley v. California</i> ,	
8	573 U.S. 373 (2014).....	18
9	<i>Romero v. Hyde</i> ,	
10	No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025)	14, 19
11	<i>Rubenstein v. Brownell</i> ,	
12	206 F.2d 449 (D.C. Cir. 1953), <i>aff'd</i> , 346 U.S. 929 (1954).....	21
13	<i>San Francisco Herring Ass'n v. Dep't of the Interior</i> ,	
14	946 F.3d 564 (9th Cir. 2019)	10
15	<i>Saravia v. Sessions</i> ,	
16	280 F. Supp. 3d 1168 (N.D. Cal. 2017), <i>aff'd sub nom. Saravia for A.H. v.</i>	
17	<i>Sessions</i> , 905 F. 3d 1137 (9th Cir. 2018).....	2, 18
18	<i>Singh v. Andrews</i> ,	
19	No. 1:25-cv-00801-KIS-SKO (HC), 2025 WL 1918679 (E.D. Cal. July 11,	
20	2025)	7
21	<i>Matter of Sugay</i> ,	
22	17 I. & N. Dec. 637 (BIA 1981)	2, 3, 9, 23
23	<i>Thakur v. Trump</i> ,	
24	787 F. Supp. 3d 955 (N.D. Cal. 2025)	12, 16
25	<i>U.S. v. Cisneros</i> ,	
26	No. 19-CR-00280-RS-5, 2021 WL 5908407 (N.D. Cal. Dec. 14, 2021)	3
27	<i>U.S. v. Kordosky</i> ,	
28	No. 88-CR-52-C, 1988 WL 238041 (W.D. Wis. Sep. 12, 1988).....	21
	<i>United States v. Holmes</i> ,	
	452 F.2d 249 (7th Cir. 1971) (Stevens, J.).....	18, 21
	<i>United States v. Witkovich</i> ,	
	353 U.S. 194 (1957).....	20
	<i>Valdez v. Joyce</i> ,	
	No. 25 Civ. 4627 (GBD), 2025 WL 1707737 (S.D.N.Y. June 18, 2025).....	7

1	<i>Valencia Zapata v. Kaiser,</i>	
2	No. 25-CV-07492-RFL, 2025 WL 2741654 (N.D. Cal. Sept. 26, 2025)	14, 17
3	<i>Vasquez Perdomo v. Noem,</i>	
4	148 F.4th 656 (9th Cir. 2025)	23
5	<i>Velesaca v. Decker,</i>	
6	458 F. Supp. 3d 224 (S.D.N.Y. 2020).....	22
7	<i>Warsoldier v. Woodford,</i>	
8	418 F. 3d 989 (9th Cir. 2005)	21
9	<i>Wash. v. Trump,</i>	
10	847 F.3d 1151 (9th Cir. 2017)	22
11	<i>Williams v. Dart,</i>	
12	967 F.3d 625 (7th Cir. 2020)	18
13	<i>Zadvydas v. Davis,</i>	
14	533 U.S. 678 (2001).....	16, 17, 20, 21
15	<i>Zepeda v. I.N.S.,</i>	
16	753 F.2d 719 (9th Cir. 1983)	23
17	Federal Statutes	
18	5 U.S.C. § 704.....	8
19	5 U.S.C. § 705.....	1, 7
20	5 U.S.C. § 706.....	8, 18, 19
21	8 U.S.C. § 1182.....	1
22	8 U.S.C. § 1225.....	<i>passim</i>
23	8 U.S.C. § 1226.....	<i>passim</i>
24	8 U.S.C. § 1229a.....	1
25	8 U.S.C. § 1252.....	20, 21
26	Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025)	13
27	Regulations	
28	8 C.F.R. § 212.5	2
	8 C.F.R. § 235.3	2

1	8 C.F.R. § 236.1	1, 2, 3, 19, 20,
2	8 C.F.R. § 1003.19	2
3	8 C.F.R. § 1236.1	2
4	62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).....	13
5	Constitutional Provisions	
6	Fourth Amendment	<i>passim</i>
7	Fifth Amendment	9, 14, 16, 20
8	Other Authorities	
9	H.R. Rep. No. 104-469, 1996 WL 168955 (Leg. Hist.) (1996).....	20
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

For decades, the Department of Homeland Security (“DHS”) had a settled policy, grounded in relevant statutes, constitutional principles, and a basic sense of fairness: once the government determines that a noncitizen is not a flight risk or a danger to the community and chooses to release them from custody, that release will not be revoked absent a material change in circumstances. This rule ensured consistency, transparency, and the rule of law in the government’s exercise of its civil immigration detention authority.

Around May 2025, the Defendants in this case abruptly discarded this decades-old policy. Without notice, explanation, or any claim of changed circumstances, the agency began re-arresting and re-detaining individuals in the proposed Class¹ who had already been deemed safe to release. People who had complied with every condition of supervision were suddenly seized without warning at their hearings or ICE check-ins.

This “Re-Detention Policy” violates the most basic tenets of the Administrative Procedure Act (“APA”). Agencies must offer reasoned explanations for policy changes, acknowledge departures from past practice, and account for reliance interests and legal constraints on their authority. Defendants did none of these things. They acted arbitrarily and capriciously, and in so doing also exceeded their statutory authority and violated bedrock constitutional principles. DHS’s unexplained reversal cannot stand, and immediate relief is necessary to preserve Plaintiffs’ rights and prevent further irreparable harm.

The Court should stay the policy’s implementation under 5 U.S.C. § 705 to preserve the status and rights of Plaintiffs and the proposed Class.

¹ The proposed Class includes all noncitizens in the jurisdiction of the San Francisco ICE Field Office who (1) entered or will enter the United States without inspection; (2) have been or will be charged with inadmissibility under 8 U.S.C. § 1182 and have been or will be released from DHS custody; and who (3) are in removal proceedings under 8 U.S.C. § 1229a, including any § 1229a proceedings that have been dismissed where the dismissal is not administratively final; and (4) are not subject to detention under 8 U.S.C. § 1226(c) (the “Class”). The proposed Class also includes one subclass, which includes all members of the Class whose release from DHS custody was or will be on bond, conditional parole, or on their own recognizance under 8 U.S.C. § 1226(a) and/or 8 C.F.R. § 236.1 (the “Bond/RoR Subclass”). Plaintiffs’ Motion for Provisional Class Certification is filed concurrently herewith.

II. FACTUAL BACKGROUND

A. DHS had a long-standing policy of not re-detaining previously released noncitizens absent an individualized determination of changed circumstances.

The statutory scheme that authorizes U.S. Immigration and Customs Enforcement (“ICE”) to detain noncitizens in removal proceedings also governs their release from custody. 8 U.S.C. § 1226 governs the detention of noncitizens “already in the country pending the outcome of removal proceedings[.]” *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018), and authorizes DHS or an immigration judge to release noncitizens on bond or conditional parole. 8 U.S.C. § 1226(a)(1)-(2); 8 C.F.R. § 236.1(c)(8). 8 U.S.C. § 1225(b)(1) applies to noncitizens referred to removal proceedings from expedited removal; § 1225(b)(2) applies to other noncitizens placed in removal proceedings while actively “seeking admission” to the United States. Both subsections of § 1225 permit release only on humanitarian parole. 8 C.F.R. §§ 235.3(c), 212.5.

In deciding to release a noncitizen under any of these authorities, an immigration officer or immigration judge must determine that the individual does not pose a danger to the community and is likely to appear at future proceedings. *See* 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8), 1003.19(h)(3), 212.5(b); *Matter of Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006). Thus, “[r]elease” of a noncitizen “reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk.” *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff’d sub nom. Saravia for A.H. v. Sessions*, 905 F. 3d 1137 (9th Cir. 2018).

For more than 40 years, immigration officials have adhered to a policy of not re-detaining noncitizens who have been released pending removal proceedings, absent an individualized determination that there has been a material change as to whether the person poses a flight risk or danger to the community. Am. Compl. ¶ 41.² Indeed, in 1981, the Board of Immigration Appeals made clear that the government was prohibited from re-arresting and re-detaining a noncitizen released by an immigration judge on bond “absent a change of circumstance” warranting detention. *Matter of Sugay*, 17 I. & N. Dec. 637, 640 (BIA 1981). Federal immigration officials

² “Am. Compl.” refers to the Amended Complaint and Amended Petition for Writ of Habeas Corpus, at Dkt. No. 45.

1 reiterated this policy on numerous occasions. For example, the head of the Immigration and
 2 Naturalization Service (ICE’s predecessor) stated in a 1995 memorandum that: “[w]hen a []
 3 [noncitizen] has been released from INS custody under bond, such bond can be revoked by the
 4 district director . . . but only based upon ‘a change of circumstances.’ . . . As such, INS must be
 5 able to justify any revocation decision, future detention or release condition.” *Demore v. Kim*,
 6 2002 WL 34705774 (U.S. Aug. 29, 2002), (No. 01-1491), Joint Appendix at 57.

7 DHS and its predecessor agencies applied this rule not only to noncitizens released on
 8 bond, but also to those released with supervisory conditions, or released on their own
 9 recognizance (“RoR”). Am. Compl. ¶ 44. Indeed, DHS previously represented to a court in this
 10 District that “DHS follows *Matter of Sugay* in situations where a bond determination has been
 11 made by an immigration judge, and also where a previous release determination was made by
 12 DHS” and thus “only re-arrests” a noncitizen “after a material change in circumstances.” Meyer
 13 Decl.³, Ex. A at 1. Since then, courts have repeatedly acknowledged DHS’s prior practice. *See*,
 14 e.g., *U.S. v. Cisneros*, No. 19-CR-00280-RS-5, 2021 WL 5908407, at *3-4 (N.D. Cal. Dec. 14,
 15 2021); *Bermeo Sicha v. Bernal*, No. 1:25-CV-00418-SDN, 2025 WL 2494530, at *4 (D. Me.
 16 Aug. 29, 2025); *Dos Santos v. Noem*, No. 1:25-CV-12052-JEK, 2025 WL 2370988, at *9 (D.
 17 Mass. Aug. 14, 2025); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 968 (N.D. Cal. 2019).

18 DHS also communicated its prior policy to members of the proposed Bond/RoR Subclass
 19 who were released on their own recognizance. *See, e.g.*, Meyer Decl., Ex. B (Order of RoR). For
 20 example, in the case of Ms. Galo Santos, her RoR order sets forth specific conditions for her
 21 release, such as attending “any hearing or interview” required by ICE or EOIR, complying with
 22 state and federal laws, and reporting to supervision appointments. *Id.* at 1. The document states
 23 that “[f]ailure to comply with the conditions of this order *may* result in revocation of your release
 24 and your arrest and detention by [DHS].” *Id.* (emphasis added). The RoR order also provides ICE
 25 officers only two options for cancelling the order: the noncitizen “failed to comply with the
 26 conditions of release” or the noncitizen “was taken into custody for removal.” *Id.*

27 Immigration practitioners, including a former immigration judge, likewise confirm that for

28 ³ All declarations shall be referred to as “[Last Name] Decl.” throughout.

decades, DHS has had a policy of not re-arresting and re-detaining noncitizens who were previously released pending removal proceedings, absent a material change in their circumstances. Hing Decl. ¶¶ 3, 5, 7 (no client re-detained without intervening change in circumstances over a 51-year career); Levine Decl. ¶¶ 7, 20 (same over 10-year career as practitioner and then immigration judge); Knox Decl. ¶¶ 5, 8-12 (same over 14-year career); Santanna Decl. ¶ 4 (same over 13-year career); Brown Decl. ¶¶ 3-5 (same over 20-year career); Ruch Decl. ¶ 4 (same over 10-year career).

Countless noncitizens released pending removal proceedings have relied on the government's policy against indiscriminate re-arrest and re-detention to plan their lives. Noncitizens who are released establish a life and community in the United States, often for years, while their immigration proceedings are pending. *See* Garro Pinchi Decl. ¶¶ 5-8, 11; Galo Santos Decl. ¶¶ 9-13; Teletor Sente Decl. ¶¶ 5-6, 9; Maklad Decl. ¶¶ 7-9; Arostegui Castellon Decl. ¶¶ 4, 5-7, 14; Alvarez-Miranda Decl. ¶¶ 3-5; Colon Solano Decl. ¶ 4; Vargas Plasencia Decl. ¶¶ 6-8; Valencia Zapata Decl. ¶¶ 5-9; Ortiz Calderon Decl. ¶¶ 7-13; Ruch Decl. ¶¶ 5, 8 (discussing clients); Knox Decl. ¶¶ 14-16 (same); Santanna Decl. ¶¶ 6-7, 12 (same). So long as they complied with their legal obligations to attend immigration proceedings and avoid criminal activity, noncitizens could confidently litigate their right to remain in the United States, access and consult with legal representatives, seek work authorization and employment, enter into leases, invest in their education, develop community ties, participate in religious life, and grow and take care of their families—all while free of the fear of being re-detained. Am. Compl. ¶ 47; Knox Decl. ¶¶ 14-16; Brown Decl. ¶¶ 5-7.

B. DHS has instituted a new policy of arbitrarily re-detaining previously released noncitizens without any individualized consideration of flight risk or danger.

In or around mid-May 2025, DHS abruptly reversed its decades-long policy of not re-detaining previously released non-citizens absent a material change in their individualized circumstances. DHS instead adopted a policy that authorizes and encourages re-arrest and re-detention of previously released noncitizens without any individualized assessment of a person's circumstances *at all*, including whether they are a flight risk or danger to the community (the

“Re-Detention Policy”). Am. Compl. ¶ 48. Pursuant to this new policy, ICE has undertaken an unprecedented campaign of re-detaining individuals in removal proceedings with no lawful basis for doing so. Am. Compl. ¶ 50; Hing Decl. ¶ 5; Weiner Decl. ¶¶ 7-8, 13, 18; Levine Decl. ¶¶ 12-13; Knox Decl. ¶ 5, 8.

In particular, ICE has engaged in a “coordinated operation” of re-arresting people while they attend immigration court for their regular removal proceedings or attend scheduled check-ins with ICE or ISAP, its private contractor. Am. Compl. ¶ 52; Weiner Decl. ¶¶ 11, 25.⁴ ICE re-arrests and re-detains these persons without providing any notice and without conducting any individualized analysis of whether their circumstances have changed such that re-arrest and re-detention would be warranted. *See* Am. Compl. ¶ 51; Levine Decl. ¶¶ 12-15, Weiner Decl. ¶¶ 13, 18; Hing Decl. ¶ 7; Maklad Decl. ¶ 14; Arostegui Castellon Decl. ¶¶ 4-9. Since May 2025, dozens of people, including Plaintiff Garro Pinchi, have been re-detained at the San Francisco Immigration Court following their routine immigration hearings or at their regular ICE and ISAP check-ins. *See, e.g.*, Garro Pinchi Decl. ¶¶ 12-20; Maklad Decl. ¶¶ 12-22; Arostegui Castellon Decl. ¶¶ 8-12; Alvarez-Miranda Decl. ¶¶ 8-14; Colon Solano Decl. ¶¶ 6-9; Vargas Plasencia Decl. ¶¶ 12-28; Valencia Zapata Decl. ¶¶ 12-22; Ortiz Calderon Decl. ¶¶ 14-24; Weiner Decl. ¶¶ 10-17.⁵ Non-citizens re-arrested under DHS’s new policy, including the named Plaintiffs, overwhelmingly lack criminal history and have a proven compliance record with immigration check-ins and court appearances. Am. Compl. ¶ 65; Weiner Decl. ¶ 18; Garro Pinchi Decl. ¶¶ 3, 8; Galo Santos Decl. ¶ 14; Teletor Sente Decl. ¶¶ 7-8; Ortiz Calderon Decl. ¶¶ 8, 30. Nonetheless, under DHS’s new policy, they face arbitrary re-arrest and re-detention without any consideration or determination regarding their individualized circumstances.

⁴ *See also, e.g.*, Arelis R. Hernández & Maria Sacchetti, *Immigrant Arrests at Courthouses Signal New Tactic in Trump’s Deportation Push*, Wash. Post (May 23, 2025), <https://www.washingtonpost.com/immigration/2025/05/23/immigration-court-arrests-ice-trump/>; Hamed Aleaziz, Luis Ferré-Sadurní, & Miriam Jordan, *How ICE is Seeking to Ramp Up Deportations Through Courthouse Arrests*, N.Y. Times (May 30, 2025), <https://www.nytimes.com/2025/05/30/us/politics/ice-courthouse-arrests.html>.

⁵ Sarah Ravani, *ICE Arrests Two More at S.F. Immigration Court, Advocates Say*, S.F. Chron. (June 12, 2025), <https://www.sfchronicle.com/bayarea/article/sf-immigration-court-arrests-20374755.php>.

1 The Re-Detention Policy has significant consequences for Plaintiffs and the proposed
 2 Class. Plaintiffs and proposed Class members face immediate risk of being re-arrested and re-
 3 detained indefinitely the next time they are summoned for a scheduled immigration court hearing
 4 or check-in. Am. Compl. ¶ 97; Levine Decl. ¶ 12. Plaintiffs and the proposed Class may be
 5 detained for weeks, months, or even years on end and are often taken far away from their
 6 communities, leaving behind homes, jobs, and families who need them. *See, e.g.*, Ruch Decl. ¶ 8
 7 (client lost job and apartment due to detention); Ortiz Calderon Decl. ¶ 22 (transferred to a
 8 detention center in Hawaii). The no-notice nature of these re-detentions also means that Plaintiffs
 9 and the proposed Class have: lost access to vital medication, *see, e.g.*, Weiner Decl. ¶ 21; Garro
 10 Pinchi Decl. ¶ 15; suffered adverse consequences at work, *see, e.g.*, Ruch Decl. ¶ 8; Weiner Decl.
 11 ¶¶ 22-24; lost significant wages, *see, e.g.*, Valencia Zapata Decl. ¶ 28, Vargas Plasencia Decl. ¶
 12 32; and had their cars towed, *see* Vargas Plasencia Decl. ¶ 33. Those Plaintiffs and proposed
 13 Class members who have not yet been unlawfully re-detained now suffer extreme anxiety and
 14 fear about attending their scheduled immigration hearings and appointments, knowing that they
 15 risk being re-arrested and ripped away from their families and communities. Am. Compl. ¶¶ 99-
 16 103; Garro Pinchi Decl. ¶¶ 22-23; Teletor Sente Decl. ¶¶ 11-15; Galo Santos Decl. ¶¶ 14-15.

17 **C. DHS has not provided a reasoned basis for this drastic change in policy.**

18 DHS never provided any reasoning for its abrupt change prior to instituting the Re-
 19 Detention Policy. Instead, ICE simply began re-detaining noncitizens with no explanation. Only
 20 after individuals who were re-detained under the new policy began to file habeas petitions did
 21 Defendants put forth any purported explanation. But the Defendants' claimed reasoning is both
 22 deficient and inconsistent. At first, in responding to habeas petitions, Defendants claimed a
 23 myriad of bases for re-detention, including the administration's general policy preferences, the
 24 increased availability of bedspace in detention facilities, or simply that they had categorical
 25 authority to detain noncitizens under the INA. Am. Compl. ¶¶ 88-89; Meyer Decl., Ex. C at
 26 14:10-13 ("[O]ur position is that . . . the Government's interest is simply because, under the
 27 statute, it has authority to detain her."); *id.*, Ex. D at 29:14-18 ("They identified the changed
 28 circumstance of now the availability of bed space and the change with respect to guidelines

issued. . .”). But in numerous cases over the last several months, this Court and others have found these rationales legally insufficient. *See, e.g.*, Order, Dkt. No. 33; *Valdez v. Joyce*, No. 25 Civ. 4627 (GBD), 2025 WL 1707737, at *3 n.6 (S.D.N.Y. June 18, 2025); *Singh v. Andrews*, No. 1:25-cv-00801-KIS-SKO (HC), 2025 WL 1918679, at *7 (E.D. Cal. July 11, 2025); *Martinez v. Hyde*, No. 25-11613-BEM, 2025 WL 2084238, at *1 (D. Mass. July 24, 2025) (describing government’s inability to identify documents substantiating detention where authority was “plainly uncertain”).

In light of these court decisions, Defendants have now advanced a new post-hoc legal position in response to individual habeas cases: They have re-interpreted the INA’s detention statutes and now claim—for the first time—that 8 U.S.C. § 1225(b)(2) mandates detention of all noncitizens in removal proceedings who entered the United States without inspection, regardless of how long they have resided in the country, their individual flight risk or danger, or whether DHS previously deemed them subject to 8 U.S.C. § 1226(a) and released them accordingly. Am. Compl. ¶ 90. Courts, including this one, have overwhelmingly held that Defendants’ new position is without merit. *See, e.g.*, *Cordero Pelico v. Kaiser*, No. 25-cv-07286-EMC, 2025 WL 2822876 (N.D. Cal. Oct. 3, 2025); *Pablo Sequen v. Kaiser*, No. 25-cv-06487-PCP, 2025 WL 2650637 (N.D. Cal. Sept. 16, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588, at *5 (S.D.N.Y. Aug. 13, 2025). In any event, these shifting post-hoc rationales are not evidence of reasoned decision making, much less consideration of the important reliance and constitutional interests at stake.

III. LEGAL STANDARD

The APA authorizes district courts to issue a stay of agency action “to preserve status or rights pending conclusion of the review proceedings.” 5 U.S.C. § 705. A request to stay agency action in order to preserve the movants’ status or rights under Section 705 is governed by the preliminary injunction factors. *Immigrant Defs. Law Ctr. v. Noem*, 145 F.4th 972, 983-84 (9th Cir. 2025). Under that framework, “[a] plaintiff seeking a preliminary injunction must establish that (1) he is likely to succeed on the merits, (2) he is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in his favor, and (4) an injunction is

1 in the public interest.” *E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 668 (9th Cir. 2021)
 2 (citation omitted). Alternatively, under the “sliding scale” variant of the preliminary injunction
 3 standard, “if a plaintiff can only show that there are ‘serious questions going to the merits’—a
 4 lesser showing than likelihood of success on the merits—then a preliminary injunction may still
 5 issue if the ‘balance of hardships tips *sharply* in the plaintiff’s favor,’ and the other two *Winter*
 6 factors are satisfied.” *All. For the Wild Rockies v. Pena*, 865 F.3d 1211, 1217 (9th Cir. 2017)
 7 (cleaned up).

8 Plaintiffs need only show a likelihood of success on one claim to demonstrate likelihood
 9 of success in support of preliminary relief. *See, e.g., Cmty. Legal Servs. in East Palo Alto v. U.S.*
 10 *Dep’t of Health and Human Servs.*, 780 F. Supp. 3d 897, 918 (N.D. Cal. 2025).

11 **IV. ARGUMENT**

12 **A. Plaintiffs are likely to succeed on the merits.**

13 The APA “sets forth the procedures by which federal agencies are accountable to the
 14 public and their actions subject to review by the courts.” *Franklin v. Mass.*, 505 U.S. 788, 796
 15 (1992). Under the APA, an agency’s action is subject to judicial review if it is “final agency
 16 action for which there is no other adequate remedy in a court[.]” 5 U.S.C. § 704. A court “shall”
 17 set aside final agency action if, among other reasons, it is “arbitrary, capricious, an abuse of
 18 discretion, or otherwise not in accordance with law,” “contrary to constitutional right,” or “in
 19 excess of statutory . . . authority[.]” 5 U.S.C. § 706(2)(A)–(C).

20 Plaintiffs are likely to succeed on the merits of their claims. As a threshold matter, the Re-
 21 Detention Policy is a reviewable final agency action. Additionally, it violates the APA for three
 22 independent reasons. **First**, the policy is arbitrary and capricious both because the agency has
 23 offered no reasoned explanation for its change, and because it has failed to consider important
 24 aspects of the problem. **Second**, the policy is contrary to constitutional rights under the Fourth
 25 Amendment’s prohibition on unreasonable seizures. **Finally**, the Re-Detention Policy exceeds
 26 Defendants’ statutory authority under 8 U.S.C. § 1226 and is not in accordance with law.

27 **1. The Re-Detention Policy is a reviewable final agency action.**

28 The Re-Detention Policy is a “final agency action.” 5 U.S.C. § 704. Agency action is final

under two conditions: (1) “the action must mark the consummation of the agency’s decisionmaking process—it must not be of a merely tentative or interlocutory nature”; and (2) “the action must be one by which rights or obligations have been determined, or from which legal consequences will flow[.]” *Bennet v. Spear*, 520 U.S. 154, 177–78 (1997) (citations omitted). Importantly, “agency action . . . need not be in writing to be final and judicially reviewable[.]” *Al Otro Lado, Inc. v. McAleenan*, 394 F. Supp. 3d 1168, 1206 (S.D. Cal. 2019) (quoting *R.I.L.-R v. Johnson*, 80 F. Supp. 3d 164, 184 (D.D.C. 2015)); see also *Amadei v. Nielsen*, 348 F. Supp. 3d 145, 165 (E.D.N.Y. 2018); *Aracely v. Nielsen*, 319 F. Supp. 3d 110, 139 (D.D.C. 2018); *Ramirez v. U.S. Immigr. & Customs Enf’t*, 310 F. Supp. 3d 7, 20-21 (D.D.C. 2018). A contrary rule “would allow an agency to shield its decisions from judicial review simply by refusing to put those decisions in writing.” *Grand Canyon Tr. v. Pub. Serv. Co. of N.M.*, 283 F. Supp. 2d 1249, 1252 (D.N.M. 2003). Instead, courts “look to whether the action amounts to a definitive statement of the agency’s position or has a direct and immediate effect on the day-to-day operations of the subject party[.]” *Ctr. for Biological Diversity v. Haaland*, 58 F.4th 412, 417 (9th Cir. 2023).

Prior to May 2025, federal immigration authorities adhered to a policy of not re-arresting and re-detaining noncitizens in the proposed Class absent an individualized determination of a material change in their circumstances, such that they had become a flight risk or a danger to the community. See, e.g., *Matter of Sugay*, 17 I. & N. Dec. 637, 640 (BIA 1981) (“[W]here a previous bond determination has been made by an immigration judge, no change should be made by a District Director absent a change of circumstance[.]”); Meyer Decl., Ex. A at 1 (explaining that the federal government followed *Matter of Sugay* with respect to bond determinations made by an immigration judge and “also where a previous release determination was made by DHS”); Hing Decl. ¶¶ 5, 7; Brown Decl. ¶¶ 5, 6; Knox Decl. ¶ 5; Levine Decl. ¶ 16; Weiner Decl. ¶ 27. This approach complied with foundational Fourth and Fifth Amendment constitutional principles. See *infra* Sections IV.A.2.b., IV.A.3.

Although DHS has never issued an official statement on its policy change, DHS’s behavior proves that it has been operating under the Re-Detention Policy since at least May 2025, when it abruptly broke from its prior practice and began to summarily re-arrest individuals

without any basis in or individualized analysis of their circumstances. *See Amadei*, 348 F. Supp. 3d at 166 (“[A] defendant agency’s behavior [is] relevant to inferring the existence of a policy.”). Since then, ICE has arrested over 100⁶ noncitizens within the jurisdiction of the San Francisco ICE Field Office, at least 40⁷ of whom Plaintiffs have confirmed were deemed not to be a flight risk or danger upon their initial release and whose circumstances had not changed in the interim.

For example, immigration agents released Ms. Garro Pinchi in 2023 on her own recognizance. Garro Pinchi Decl. ¶ 3. Thereafter, she attended immigration court, filed an application for asylum, and had no criminal record. *Id.* at ¶¶ 8, 21; Am. Compl. ¶ 68. DHS issued her a release order suggesting that she would remain at liberty unless she violated its conditions—which she did not. Am. Compl. ¶ 67. Yet ICE re-detained her outside of her July 3, 2025 immigration hearing without any individualized basis for doing so. Am. Compl. ¶ 71; Garro Pinchi Decl. ¶¶ 12-13.

The fact that DHS has executed this policy against Ms. Garro Pinchi and countless others “plausibly point[s] to the existence of an unwritten policy.” *Al Otro Lado*, 394 F. Supp. 3d at 1208. That fact also demonstrates that the policy is neither “tentative [n]or interlocutory.” *Bennet*, 520 U.S. at 177–78. Because DHS has “execute[d] on the directive . . . its decisionmaking processes are clearly consummated.” *San Francisco Herring Ass’n v. Dep’t of the Interior*, 946 F.3d 564, 579 (9th Cir. 2019); *see also J.L. v. Cissna*, 341 F. Supp. 3d 1048, 1067 (N.D. Cal. 2018) (executing new guidance regarding the Special Immigration Juvenile (SIJ) statute against pending SIJ applications showed consummation of agency’s decisionmaking); *Lopez v. Sessions*, No. 18 Civ. 4189 (RWS), 2018 WL 2932726, at *7-8 (S.D.N.Y. June 12, 2018) (detaining noncitizen in violation of required procedure marked the consummation of the agency’s decisionmaking).

⁶ *See, e.g., JunYao Yang, Tracking Where and When ICE Arrests Happen in San Francisco, Mission Local* (June 9, 2025), <https://missionlocal.org/2025/06/sf-ice-arrests-tracker/> (“Since late May, U.S. Immigration and Customs Enforcement officers have arrested over 100 people in San Francisco.”); *see also* Notice of Motion and Motion for Provisional Class Certification, Section IV.A.1, at 9-10 (explaining why this number is likely an undercount).

⁷ This number includes the 33 habeas clients represented by Jordan Weiner, *see* Weiner Decl. ¶ 11, Plaintiff Garro Pinchi, and the relevant individuals and clients of the practitioners who have filed declarations in support of this motion.

Defendants have also repeatedly conceded, in connection with habeas cases challenging these re-detentions, that DHS has not been conducting individualized analyses prior to re-detention. *See* Weiner Decl. ¶¶ 18-19; *see also, e.g., Maklad v. Murray*, No. 1:25-CV-00946 JLT SAB, 2025 WL 2299376, at *3 (E.D. Cal. Aug. 8, 2025) (“[T]he government conceded that [prior to her re-detention] there were no changes in circumstances since the original determination that Ms. Maklad does not pose a flight risk or a danger to the community.”). Instead, DHS has justified these re-detentions with a grab bag of unrelated rationales, including increased “bed space,” its “categorical authority under the INA,” and when those failed, a novel interpretation of 8 U.S.C. § 1225(b)(2), which have all been rejected by courts around the country. *See* Am. Compl. ¶¶ 88-90. Indeed, in this case, the government’s position was “not . . . that there is a change in circumstances” but that “under the statute, it has [] authority to detain [Ms. Garro Pinchi].” *See* Meyer Decl., Ex. C at 11:7-13, 14:10-13. The fact that the government admits these re-detentions were not warranted by a finding of changed circumstances confirms that it is operating under a different policy than in decades prior. *See R.I.L-R*, 80 F. Supp. 3d at 175 (determining that an unwritten policy existed where Defendants had “essentially conceded” its existence on the record).

Finally, the Re-Detention Policy clearly constitutes final agency action because significant “legal consequences” for Plaintiffs and proposed Class members “flow” directly from the Re-Detention Policy. *Bennet*, 520 U.S. at 177–78. These individuals have had their lives upended after being re-detained, despite having done everything required of them under the law and their conditions of release. *See, e.g., R.I.L-R*, 80 F. Supp. 3d at 184 (impermissible detention pursuant to DHS’s policy caused “profound and immediate consequences” for affected asylum seekers under the second *Bennet* factor). And those that haven’t yet been re-detained live in fear that their re-detention is imminent, knowing that even appearing at their immigration proceedings is likely to result in their re-detention. *See Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 894 (1990) (agency action is reviewable “to the extent that, a specific ‘final agency action’ has an actual or immediately threatened effect.”). DHS’s months-long implementation of its sweeping new campaign proves that this policy is final and ripe for review.

1 **2. DHS’s Re-Detention Policy violates the APA because it is arbitrary**
 2 **and capricious.**

3 “[The APA] requires agencies to engage in ‘reasoned decisionmaking, and directs that
 4 agency actions be set aside if they are arbitrary [and] capricious.’ *Dep’t of Homeland Sec. v.*
 5 *Regents of the Univ. of Cal.*, 591 U.S. 1, 16 (2020) (cleaned up). “[A]n agency rule would be
 6 arbitrary and capricious if the agency has relied on factors which Congress has not intended it to
 7 consider, [or] entirely failed to consider an important aspect of the problem[.]” *Motor Vehicle*
 8 *Mfrs. Ass’n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). Here, the
 9 Re-Detention Policy is arbitrary and capricious for two reasons: First, DHS never provided any
 10 contemporaneous explanation for its shift in policy. Second, there is no evidence that DHS ever
 11 considered the many important factors related to its change in policy, including noncitizens’
 12 reliance interests in DHS’s prior course of action and the agency’s duty to avoid infringing on
 13 their constitutionally protected liberty interests.

14 **a. The Re-Detention Policy is arbitrary and capricious because DHS**
 15 **did not provide a reasoned basis for its drastic change in policy.**

16 When an agency changes course, it is required to provide a “reasoned explanation for the
 17 change.” *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016); *see also State Farm*, 463
 18 U.S. at 42. (“[A]n agency changing its course . . . is obligated to supply a reasoned analysis for
 19 the change beyond that which may be required when an agency does not act in the first
 20 instance.”). At a minimum, “the agency must at least display awareness that it is changing
 21 position and show that there are good reasons for the new policy.” *See Encino Motorcars*, 579
 22 U.S. at 221 (cleaned up). Additionally, the court’s review of agency action is limited to “the
 23 grounds that the agency invoked when it took the action.” *Regents*, 591 U.S. at 20. Courts may
 24 not consider “post hoc rationalizations” and “convenient litigating positions” offered after the
 25 policy was implemented. *Id.* at 23–24; *see also Thakur v. Trump*, 787 F. Supp. 3d 955, 982 (N.D.
 26 Cal. 2025) (rejecting post hoc rationalizations).

27 When DHS began operating under the Re-Detention Policy around May 2025, it provided
 28 no reasoned basis for having abandoned the agency’s long-standing practice to only re-detain in
 the event of changed circumstances. In fact, it provided no analysis whatsoever. Instead, without

warning or explanation, the agency “simply disregard[ed the prior] rules . . . on the books.” *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009). For noncitizens released on conditional parole under 8 U.S.C. § 1226(b), like Ms. Garro Pinchi, this meant DHS disregarded prior representations in their RoR orders suggesting they would remain at liberty if they complied with their conditions of release. Am. Compl. ¶ 67. This fact alone is sufficient to find the Re-Detention Policy arbitrary and capricious. *See Encino Motorcars*, 579 U.S. at 221 (“[W]here the agency has failed to provide [a] minimal level of analysis, its action is arbitrary and capricious and so cannot carry the force of law.” (cleaned up)); *see also Regents*, 591 U.S. at 29 (finding the government’s decision to terminate the deferred action portion of DACA arbitrary and capricious where it did so “without any consideration whatsoever” (quoting *State Farm*, 463 U.S. at 51)).

Since its implementation, Defendants have continued to provide no reasoned explanation for the change in policy. Their most recent purported statutory justification—that 8 U.S.C. § 1225(b)(2) now mandates detention for *everyone* who entered the country without inspection—is a post hoc rationale with no basis in the law. It is difficult to overstate how dramatically DHS’s new interpretation of § 1225(b)(2) departs from the statute’s text, the agency’s own regulations, and the agency’s prior practice. The statute’s text is clear: § 1225(b)(2) applies to, and mandates detention of, only arriving aliens at the border who are actively “seeking admission.” *See, e.g., Alejandro v. Olson*, No. 1:25-CV-02027-JPH-MKK, 2025 WL 2896348, at *7 (S.D. Ind. Oct. 11, 2025) (“seeking admission” means “seeking lawful entry”); *Cordero Pelico*, 2025 WL 2822876, at *10; *Lopez Benitez*, 2025 WL 2371588, at *5.

Regulations have been in place since Congress enacted § 1226(a) that make clear it is this section that applies to noncitizens present in the country after an entry without inspection. *See* 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (interim regulation explaining application); *see also Jennings*, 583 U.S. at 289, 303 (“§ 1226 applies to aliens already present in the United States.”). Congress confirmed this longstanding interpretation earlier this year, when it amended subsection (c) of § 1226, which mandates detention for noncitizens with certain criminal histories or who raise certain terrorism concerns. *See* Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025). In the amendment, Congress extended § 1226(c) to cover noncitizens who are present without

admission or parole *and* who were arrested for certain property crimes. *See* § 1226(c)(1)(E). These amendments would have been wholly superfluous if § 1225(b)(2) already mandated detention for such noncitizens solely because of their presence without admission or parole. *See, e.g., Cordero Pelico*, 2025 WL 2822876, at *9; *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827, at *11-12 (D. Mass. Aug. 19, 2025); *Valencia Zapata v. Kaiser*, No. 25-CV-07492-RFL, 2025 WL 2741654, at *10 (N.D. Cal. Sept. 26, 2025). In the nearly 30 years that § 1225(b)(2) and § 1226 have been on the books, DHS—following Congress’s lead—has never interpreted § 1225(b)(2) to mandate detention of noncitizens who entered without inspection, like the proposed Class members. DHS’s new interpretation of § 1225(b)(2) thus neither explains nor offers legal cover to the Re-Detention Policy. *See Hyppolite v. Noem*, No. 25-CV-4304 (NRM), 2025 WL 2829511, at *12 (E.D.N.Y. Oct. 6, 2025) (collecting cases rejecting new interpretation). Even if this were a legitimate reading of the statute—and it is not—Defendants failed to consider both the profound reliance interests of people released under their prior, longstanding, interpretation of the detention statutes, as well as the Fourth and Fifth Amendment guardrails against arbitrary detention.

b. *The Re-Detention Policy is also arbitrary and capricious because DHS failed to consider at least two key aspects of the problem.*

The Re-Detention Policy is also arbitrary and capricious for the independent reason that the agency did not consider “important aspect[s] of the problem” before it. *State Farm*, 463 U.S. at 43. Specifically, in adopting the Re-Detention Policy, DHS failed to consider both: (1) the reliance interests that the prior policy had engendered; and (2) the agency’s obligations to comport with constitutional due process.

First, when an agency changes or rescinds a prior policy, it is “required to assess whether there were reliance interests, determine whether they were significant, and weigh any such interests against [any] competing policy concerns.” *Regents*, 591 U.S. at 33; *see also Fox Television Stations*, 566 U.S. at 516 (an agency is required to provide reasons “for disregarding facts and circumstances that underlay or were engendered by the prior policy”). As already explained, for decades, DHS had a policy of not re-detaining members of the proposed Class after

1 their release unless they did something, such as commit a crime or miss an immigration hearing,
 2 that could warrant their re-detention on the basis of flight risk or danger. Plaintiffs and proposed
 3 Class members have structured their lives in reliance on this policy. *See, e.g., Cordero Pelico*,
 4 2025 WL 2822876, at *8 (acknowledging that release on conditional parole created reliance
 5 interests in petitioners' continued freedom); Knox Decl. ¶¶ 14-16. For example, they have
 6 obtained jobs,⁸ signed leases,⁹ started relationships or married,¹⁰ purchased cars,¹¹ enrolled in
 7 school,¹² established medical care,¹³ and built faith communities¹⁴—investments in their lives that
 8 they understood could not be taken away absent a change in circumstances. The reliance interests
 9 extend to others in the community as well. Plaintiffs and proposed Class members care for their
 10 own children,¹⁵ help family and neighbors with childcare,¹⁶ contribute to bills and rent of shared
 11 homes,¹⁷ and financially support loved ones in their home countries.¹⁸

12 Defendants' total failure to consider these significant reliance interests created by their
 13 prior policy is fatal to the Re-Detention Policy. The Supreme Court recently addressed a similar
 14 situation in *Regents*. There, plaintiffs challenged the government's attempted termination of
 15 Deferred Action for Childhood Arrivals ("DACA") under the APA, claiming it was invalid in part
 16 because the government ignored the significant reliance interests involved: "DACA recipients
 17 have enrolled in degree programs, embarked on careers, started businesses, purchased homes, and
 18 even married and had children, all in reliance on the DACA program." *Regents*, 591 U.S. at 31.
 19 The Supreme Court agreed, finding the government's action was arbitrary and capricious because

20 ⁸ *E.g.*, Maklad Decl. ¶ 8, Arostegui Castellon Decl. ¶ 5, Teletor Sente Decl. ¶ 5, Solano Decl. ¶ 4,
 21 Vargas Plasencia Decl. ¶ 7, Valencia Zapata Decl. ¶ 8, Ortiz Calderon Decl. ¶ 11.

⁹ *E.g.*, Arostegui Castellon Decl. ¶ 5, Teletor Sente Decl. ¶ 9, Solano Decl. ¶ 4, Valencia Zapata
 22 Decl. ¶ 6, Ortiz Calderon Decl. ¶ 7.

¹⁰ *E.g.*, Maklad Decl. ¶¶ 7, 9, Arostegui Castellon Decl. ¶ 6, Ortiz Calderon Decl. ¶ 10.

¹¹ *E.g.*, Teletor Sente Decl. ¶ 5, Vargas Plasencia Decl. ¶ 33, Valencia Zapata Decl. ¶ 9.

¹² *E.g.*, Maklad Decl. ¶ 8, Arostegui Castellon Decl. ¶ 5, Vargas Plasencia Decl. ¶ 36.

¹³ *E.g.*, Maklad Decl. ¶ 21, Arostegui Castellon Decl. ¶ 11, Garro Pinchi Decl. ¶ 11, Ortiz
 24 Calderon Decl. ¶¶ 12-13.

¹⁴ *E.g.*, Maklad Decl. ¶ 8, Arostegui Castellon Decl. ¶ 5, Solano Decl. ¶ 4, Garro Pinchi Decl. ¶ 7,
 25 Ortiz Calderon Decl. ¶ 8.

¹⁵ *E.g.*, Teletor Sente Decl. ¶¶ 5, 9, Galo Santos Decl. ¶¶ 2-3, 9-13.

¹⁶ *E.g.*, Alvarado-Miranda Decl. ¶ 5.

¹⁷ *E.g.*, Alvarado-Miranda Decl. ¶ 5, Garro Pinchi Decl. ¶ 7, Valencia Zapata Decl. ¶ 6, Ortiz
 27 Calderon Decl. ¶ 7.

¹⁸ *E.g.*, Teletor Sente Decl. ¶¶ 5, 9, Solano Decl. ¶ 4, Garro Pinchi Decl. ¶ 6, Valencia Zapata
 28 Decl. ¶ 17, Ortiz Calderon Decl. ¶ 11.

nowhere in its sparsely explained memoranda revoking DACA did it address those reliance interests or any “policy alternatives” that could have accommodated them. *Id.* at 33. The same is true here. Plaintiffs and proposed Class members have similar reliance interests in DHS’s prior policy—including in their education, careers, homes, and relationships—which they also reasonably believed could last years as they completed their immigration proceedings absent any material change in circumstances. As in *Regents*, when DHS broke from its prior practice, it entirely “failed to address” those legitimate reliance interests or consider any policy alternatives that could have mitigated the resulting harm. *Id.* at 32-33; *see also Thakur*, 787 F. Supp. 3d at 983 (government’s complete failure to consider reliance interests held by grant recipients and the public before terminating grant funding was likely arbitrary and capricious); *Centro Legal de la Raza v. Exec. Off. for Immigr. Rev.*, 524 F. Supp. 3d 919, 971 (N.D. Cal. 2021) (government’s complete failure to consider reliance interests of noncitizens when it dispensed with long-standing pathway for relief was arbitrary and capricious).

Second, the Re-Detention Policy is arbitrary and capricious because, in adopting it, DHS failed to acknowledge or consider Plaintiffs’ and proposed Class members’ constitutionally protected liberty interests under the Due Process clause of the Fifth Amendment.¹⁹ As courts have recognized, an agency’s “constitutional and statutory obligations are ‘important aspects’ of the problem before them.” *Nat’l Urb. League v. Ross*, 489 F. Supp. 3d 939, 982 (N.D. Cal. 2020), *order clarified*, 491 F. Supp. 3d 572 (N.D. Cal. 2020) (citing *Oregon Nat. Resources Council v. Thomas*, 92 F.3d 792, 798 (9th Cir. 1996)).

The Due Process Clause of the Fifth Amendment prohibits the government from depriving individuals of their life, liberty, or property, without due process of law. U.S. Const. amend. V. In particular, “[f]reedom from imprisonment . . . lies at the heart of the liberty that Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). “These protections apply to all ‘persons’ within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent[.]” *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (cleaned up). For this

¹⁹ As discussed below, Defendants also failed to consider the limitations on unreasonable search and seizures under the Fourth Amendment. *See infra* Section IV.A.3.

1 reason, courts have long held that “the government’s discretion to incarcerate non-citizens is
2 always constrained by the requirements of due process.” *Id.* at 981.

3 Specifically, individuals who have been released from immigration custody have a liberty
4 interest in their continued freedom. *See Cordero Pelico*, 2025 WL 2822876, at *7. Under the Due
5 Process clause, the release itself creates an “‘an implicit promise,’ upon which that individual
6 may rely, that their liberty ‘will be revoked only if [they] fail[] to live up to the . . . conditions [of
7 release].’” *Garro Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *3 (N.D. Cal.
8 July 24, 2025) (quoting *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972)). Additionally, due
9 process requires that civil, non-punitive detention bear a reasonable relation to a permissible
10 purpose. *Zadvydas*, 533 U.S. at 691. In the context of immigration detention, the Supreme Court
11 has only recognized two permissible purposes: preventing danger to the community and ensuring
12 the appearance of noncitizens at immigration proceedings. *Zadvydas*, 533 at 690–692 (2001);
13 *Demore v. Kim*, 538 U.S. 510, 519–20, 527–28 (2003).

14 Immigration officials in the United States are well-aware of these due process constraints.
15 Indeed, DHS’s prior policy incorporated these constraints with respect to re-arrests and re-
16 detentions: the agency “only re-arrest[ed]” a noncitizen “after a material change in
17 circumstances” warranting a finding that the person is a flight risk or a danger to society. Meyer
18 Decl., Ex. A at 1; *see also* Hing Decl. ¶¶ 5, 7; Knox Decl. ¶¶ 5, 8, 10-12; Levine Decl. ¶ 7.

19 Here, DHS provided no reasoned basis for its change in policy, and thus there is no
20 evidence that DHS ever accounted for these constitutional constraints when crafting the Re-
21 Detention Policy or considered policy alternatives that might avoid constitutional conflict. Quite
22 the opposite, DHS has admitted in individual habeas cases challenging re-detentions under this
23 new policy that it has *not* been considering whether an individual is a flight risk or danger, or
24 whether they otherwise violated their conditions of release. *See, e.g., Garro Pinchi*, 2025 WL
25 2084291, at *5 (“The government does not claim that any material circumstances have changed
26 that would warrant reassessment of Ms. Garro Pinchi’s risk of flight or dangerousness. . . .”);
27 *Valencia Zapata v. Kaiser*, No. 25-CV-07492-RFL, 2025 WL 2741654, at *8 (N.D. Cal. Sept. 26,
28 2025) (noting that “the government admitted that it was unaware of any evidence that Petitioners

1 currently are flight risks or pose a danger to the community”).

2 Because DHS does not explain how its policy can be squared with or account for these
3 bedrock due process principles, the Re-Detention Policy is arbitrary and capricious. *See, e.g.,*
4 *Nat’l Urban League*, 489 F.Supp.3d at 981–89 (failure by the agency to consider its constitutional
5 obligations in an accurate census was likely arbitrary and capricious).

6 **3. The Re-Detention Policy violates the APA because it contravenes the** 7 **Fourth Amendment.**

8 Plaintiffs are likely to succeed on their claim that the Re-Detention Policy is “contrary to
9 constitutional right” because it authorizes ICE to re-arrest noncitizens based on pre-existing civil
10 immigration charges without any change in circumstances. 5 U.S.C. § 706(2)(B). Such arrests
11 constitute unreasonable seizures under the Fourth Amendment.

12 “[T]he ultimate touchstone of the Fourth Amendment is reasonableness.” *Riley v.*
13 *California*, 573 U.S. 373, 381 (2014). And because “[i]t is axiomatic that seizures have
14 purposes[,] [w]hen those purposes are spent, further seizure is unreasonable.” *Williams v. Dart*,
15 967 F.3d 625, 634 (7th Cir. 2020). Applied in the immigration context, these principles mean that
16 “[o]nce a noncitizen has been released, the law prohibits federal agents from rearresting him
17 merely because he is subject to removal proceedings.” *Saravia*, 280 F. Supp. 3d at 1177. And “to
18 be lawful,” such a “[re]-arrest must be based on evidence that the circumstances relevant to th[e]
19 original release decision have changed.” *Saravia* 280 F. Supp. 3d at 1196; *see also Lopez v.*
20 *Sessions*, No. 18-cv-4189 (RWS), 2018 WL 2932726, at *11 (S.D.N.Y. June 12, 2018) (“[the]
21 finding [that the petitioner] was neither dangerous nor a flight risk is irreconcilable with the
22 decision to re-arrest him, absent changed circumstances”); *United States v. Holmes*, 452 F.2d 249,
23 261 (7th Cir. 1971) (Stevens, J.) (in criminal context, “continuing knowledge of . . . possible guilt
24 of the offense charged in the indictment is not itself sufficient” under the Fourth Amendment to
25 justify re-arrest). Any other rule would subject people already deemed to pose no risk of flight or
26 danger to the community to “harassment by continual re-arrests” with no new justification.
27 *Holmes*, 452 F.2d at 261.

28 The Re-Detention Policy plainly fosters such “harassment” by authorizing the surprise re-

1 arrest of noncitizens whom DHS agents previously determined did not pose a flight risk or danger
 2 to the community and who have fully complied with the requirements of their release. *See* Garro
 3 Pinchi Decl. ¶¶ 8, 21; Maklad Decl. ¶¶ 11-14; Arostegui Castellon Decl. ¶¶ 3-9; Ortiz Calderon
 4 Decl. ¶¶ 14-17; Weiner Decl. ¶¶ 9, 13. Defendants do not contend that any individual changed
 5 circumstances justify the re-arrests effected under the policy. *See supra* Section IV.A.2.b; *see also*
 6 Weiner Decl. ¶ 18. Nor do Defendants invoke any new charges of inadmissibility to justify the
 7 new arrests. *Id.* By allowing DHS agents to re-arrest anyone for any reason, regardless of their
 8 circumstances, the Re-Detention Policy invites the very “arbitrary invasions by government
 9 officials” that the Fourth Amendment was designed to “safeguard” against. *Camara v. Mun. Ct.*,
 10 387 U.S. 523, 528 (1967). Plaintiffs are therefore likely to succeed in their claim that the policy is
 11 “contrary to constitutional right” in violation of the APA. 5 U.S.C. § 706(2)(B). *See Munoz*
 12 *Materano v. Arteta*, No. 25-cv-6137, 2025 WL 2630826, at *17 (S.D.N.Y. Sept. 12, 2025) (re-
 13 arrest violated Fourth Amendment).

14 **4. The Re-Detention Policy violates the APA because it exceeds DHS’s**
 15 **statutory authority and is contrary to law.**

16 The Re-Detention Policy also violates the APA because it is contrary to law and “in
 17 excess of [Defendants’] statutory . . . authority” to re-detain the Bond/RoR subclass under 8
 18 U.S.C. § 1226(b). 5 U.S.C. § 706(2)(A), (C). As an initial matter, it is § 1226, and no other
 19 detention statute, that governs Defendants’ authority to re-detain the subclass here. DHS already
 20 determined that members of the Bond/RoR subclass were subject to § 1226(a)—as noncitizens
 21 present in the country but who have not been admitted or paroled—and they were released from
 22 custody on bond or conditional parole, which are mechanisms exclusive to that statute. *See*
 23 *Cordero Pelico*, 2025 WL 2822876, at *8; *Romero*, 2025 WL 2403827, at *8. And as explained
 24 *supra*, DHS’s new re-interpretation of 8 U.S.C. § 1225(b)(2) is inapplicable to the subclass, who
 25 have entered and resided in the United States and are not “seeking admission” within the ambit of
 26 the statute. *See supra* Section I.V.A.2.b.

27 Section 1226(b), construed to avoid serious constitutional concerns, does not authorize
 28 Defendants to re-arrest or re-detain noncitizens without an individualized determination that

1 circumstances related to a noncitizen’s flight risk or danger to the community have materially
 2 changed. “A statute must be construed . . . to avoid . . . grave doubts [that it is unconstitutional].”
 3 *Almendarez-Torres v. United States*, 523 U.S. 224, 237 (1998). Accordingly, when a statute is
 4 “susceptible of more than one construction,” courts apply the canon of constitutional avoidance to
 5 “choos[e] between them.” *Clark v. Martinez*, 543 U.S. 371, 385 (2005) (italics removed). In
 6 applying this rule, the Supreme Court “ha[s] read significant limitations into . . . immigration
 7 statutes in order to avoid their constitutional invalidation.” *Zadvydas*, 533 U.S. at 689; *see also*
 8 *United States v. Witkovich*, 353 U.S. 194, 199 (1957) (holding that “a restrictive meaning must be
 9 given if a broader meaning would generate constitutional doubts”).

10 As has been explained, individuals released from initial custody have well-established
 11 rights under the Fourth and Fifth Amendments. *See Supra* Sections IV.A.2.b., IV.A.3. Construing
 12 § 1226(b) to permit re-detention without regard to an individual’s flight risk, danger to the
 13 community, or compliance with conditions of release would fly in the face of these well-
 14 established constitutional protections. Here, § 1226(b) is plainly susceptible to a construction that
 15 would avoid these constitutional concerns. The statute states: “The Attorney General at any time
 16 **may** revoke a bond or parole authorized under subsection (a), rearrest the [noncitizen] under the
 17 original warrant, and detain the [noncitizen].” 8 U.S.C. § 1226(b) (emphasis added). As the
 18 Supreme Court held in *Zadvydas*, “‘may’” “does not suggest . . . unlimited discretion.” *Zadvydas*,
 19 533 U.S. at 697. The language allowing revocation of bond or parole “at any time” indicates *when*
 20 DHS may revoke bond or parole, not that it may do so for any reason (or no reason at all). *See* 8
 21 C.F.R. § 236.1(b) (clarifying that “at any time” refers to relevant period of time).

22 Jurisprudence and legislative history support this conclusion. The Supreme Court and
 23 D.C. Circuit both interpreted former 8 U.S.C. § 1252(a)(1)—which § 1226(a) and (b) “restates,”
 24 (*see* H.R. Rep. No. 104-469, 1996 WL 168955 (Leg. Hist.) at *229 (1996))—to authorize re-
 25 detention only after an individual determination and change in circumstances. *See I.N.S. v. Nat’l*
 26 *Ctr. for Immigrants’ Rts. Inc.*, 502 U.S. 183, 194 (1991) (interpreting use of “may” in § 1252 to
 27 require “some level of individualized determination”); *Carlson v. Landon*, 342 U.S. 524, 543-47
 28 (1952) (holding that “the Attorney General is not left with untrammelled discretion as to bail”);

1 *Rubenstein v. Brownell*, 206 F.2d 449, 455 (D.C. Cir. 1953), *aff'd*, 346 U.S. 929 (1954) (§
 2 1252(a)(1) did not authorize re-arrest absent flight risk or danger to the community). Congress
 3 retained the language from former § 1252(a)(1) that re-detention could occur “at any time,” but,
 4 despite the jurisprudence limiting the agency’s authority, did not amend the statute to permit re-
 5 detention *for any reason*. “When Congress codifies a judicially defined concept, it is presumed,
 6 absent an express statement to the contrary, that Congress intended to adopt the interpretation
 7 placed on that concept by the courts.” *Davis v. Michigan Dep’t of Treasury*, 489 U.S. 803, 813
 8 (1989). Because Congress did not attempt to broaden DHS’s re-detention authority beyond the
 9 limitations courts had recognized, “nothing in the statute’s legislative history clearly demonstrates
 10 a congressional intent” to do so. *Zadvydas*, 533 U.S. at 680.

11 To avoid serious constitutional concerns, § 1226(b) must be construed the same way the
 12 Supreme Court construed its previous version: to authorize re-detention only upon an
 13 individualized change in circumstances related to flight risk or danger to the community. The Re-
 14 Detention Policy thus exceeds the scope of DHS’s authority under the statute.

15 **B. Absent a stay, Plaintiffs are likely to experience irreparable harm.**

16 The Re-Detention Policy is causing and will continue to cause irreparable harm to
 17 Plaintiffs and the proposed Class due to the ongoing deprivation of their constitutional rights.
 18 “[T]he deprivation of constitutional rights ‘unquestionably constitutes irreparable injury.’”
 19 *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347,
 20 373 (1976)). Indeed, “[w]hen an alleged deprivation of a constitutional right is involved, most
 21 courts hold that no further showing of irreparable injury is necessary.” *Warsoldier v. Woodford*,
 22 418 F. 3d 989, 1001-02 (9th Cir. 2005) (cleaned up). Here, Plaintiffs and the proposed class are
 23 unquestionably being deprived of their Fourth Amendment right to avoid “the repeated seizure of
 24 a person on the same probable cause” without a change in individual circumstances, which
 25 “cannot, by any standard, be regarded as reasonable.” *U.S. v. Kordosky*, No. 88-CR-52-C, 1988
 26 WL 238041, at *7 n.14 (W.D. Wis. Sep. 12, 1988); *see also Holmes*, 452 F.2d at 261.

27 The Ninth Circuit has likewise recognized the “irreparable harms imposed on anyone
 28 subject to immigration detention,” not only because all persons have a paramount interest in their

1 “physical liberty,” but because immigration detention also inflicts collateral harms including
 2 “subpar medical and psychiatric care[,]” and especially “the economic burdens imposed on
 3 detainees and their families as a result of detention, and the collateral harms to children of
 4 detainees whose parents are detained.” *Hernandez*, 872 F.3d at 995. Courts in other districts
 5 likewise recognize that “deprivation of [a noncitizen’s] liberty is, in and of itself, irreparable
 6 harm.” *Velesaca v. Decker*, 458 F. Supp. 3d 224, 240-41 (S.D.N.Y. 2020) (cleaned up).

7 As a result of the Re-Detention Policy, Plaintiffs and members of the proposed Class have
 8 experienced or will experience immigration detention and the significant harms attendant to it.
 9 See e.g., Garro Pinchi Decl. ¶¶ 13-23; Weiner Decl. ¶¶ 11-17, 20-24; Arostegui Castellan Decl. ¶¶
 10 12-16. Many members of the proposed Class also have spouses, young children, and other
 11 dependents who they fear being separated from. See, e.g., Galo Santos Decl. ¶ 15; Teletor Sente
 12 Decl. ¶¶ 9,14; Vargas Plasencia Decl. ¶¶ 15-17, 30; see also, e.g., *Wash. v. Trump*, 847 F.3d
 13 1151, 1169 (9th Cir. 2017) (identifying “separated families” as irreparable harm); *Leiva-Perez v.*
 14 *Holder*, 640 F.3d 962, 969-70 (9th Cir. 2011) (similar). Others face the loss of their homes,
 15 livelihoods, and communities where they have lived for many years. See, e.g., Weiner Decl. ¶¶
 16 11-24.

17 As a result of the Re-Detention Policy, Plaintiffs and proposed Class members are also
 18 terrified to attend their regular immigration hearings and scheduled check-ins. See e.g., Garro
 19 Pinchi Decl. ¶¶ 22-23; Maklad Decl. ¶ 31; Arostegui Castellon Decl. ¶ 3; Teletor Sente Decl. ¶
 20 12. DHS’s new policy actively discourages noncitizens from appearing at their scheduled
 21 immigration appointments for fear of being disappeared without notice. Knox Decl. ¶¶ 7-8.
 22 Courts regularly hold that such emotional distress constitutes irreparable injury. See, e.g., *Chalk v.*
 23 *U.S. Dist. Ct.*, 840 F.2d 701, 709-10 (9th Cir. 1988); *Norsworthy v. Beard*, 87 F. Supp. 3d 1164,
 24 1192 (N.D. Cal. 2015).

25 Absent court intervention, DHS will continue to enforce the Re-Detention Policy to re-
 26
 27
 28

1 arrest and re-detain Plaintiffs and proposed Class members without justification.²⁰ Thus Plaintiffs
2 and proposed Class members will continue to suffer irreparable harm.

3 **C. The balance of the equities and the public interest strongly favors a stay.**

4 When, as here, the government is a party, consideration of the balance of the equities and
5 the public interest merge, and the court balances the public's interest asserted by the federal
6 government in the particular case and the hardships to the plaintiffs. *See Immigrant Defs. Law*
7 *Ctr. v. Noem*, 145 F.4th 972, 994 (9th Cir. 2025). The hardship to Plaintiffs and the proposed
8 Class absent a stay of the Re-Detention Policy is grave, as discussed above. *See* Section IV(B).
9 Moreover, Plaintiffs are not asking that the Court prevent DHS from enforcing federal
10 immigration laws. Plaintiffs merely ask the Court to temporarily stay the Re-Detention Policy:
11 DHS could follow the policy it applied for more than forty years—that of re-detaining noncitizens
12 if an individualized determination found a material change in circumstances related to flight risk
13 or danger to the community. *See, e.g., Matter of Sugay*, 17 I. & N. Dec. 637, 640 (BIA 1981).

14 Unlike Plaintiffs, Defendants will suffer no material harm should this Court grant
15 Plaintiffs' requested stay. Although Defendants have inexplicably altered their previous policy,
16 "the mere existence of the Executive Branch's desire to enact a policy is not sufficient to satisfy
17 the irreparable harm prong." *Immigrant Defs. Law Ctr.*, 145 F. 4th at 985; *see also Doe #1 v.*
18 *Trump*, 957 F.3d 1050, 1059 (9th Cir. 2020) ("[I]f we were to adopt the government's assertion
19 that the irreparable harm standard is satisfied by the fact of executive action alone, no act of the
20 executive branch asserted to be inconsistent with a legislative enactment could be the subject of a
21 preliminary injunction. That cannot be so."). And the government has no legitimate interest in
22 carrying out a policy that violates the APA and the Constitution, as the Re-Detention Policy does.
23 *See Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983) (explaining that an agency "cannot
24 reasonably assert that it is harmed in any legal cognizable sense by being enjoined from
25 constitutional violations"); *see also Doe v. Trump*, 784 F. Supp. 3d 1297, 1313 (N.D. Cal. 2025)

26 ²⁰ *See, e.g.,* Am. Compl. ¶¶ 54-64; *Vasquez Perdomo v. Noem*, 148 F.4th 656, 665 n. 2 (9th Cir.
27 2025); David J. Bier, *ICE Is Arresting 1,100 Percent More Noncriminals on the Streets Than in*
28 *2017*, Cato at Liberty Blog (June 24, 2025), [https://www.cato.org/blog/ice-arresting-1100-](https://www.cato.org/blog/ice-arresting-1100-percent-more-noncriminals-streets-2017)
[percent-more-noncriminals-streets-2017](https://www.cato.org/blog/ice-arresting-1100-percent-more-noncriminals-streets-2017).

1 (“[T]here is no harm to the Government when a court prevents the Government from engaging in
2 unlawful practices.”).

3 Because “it is always in the public interest to prevent the violation of a party’s
4 constitutional rights,” *Melendres*, 695 F.3d at 1002, and the “public interest is served by
5 compliance with the APA[,]” *Doe v. Trump*, 784 F. Supp. 3d at 1313, the balance of the equities
6 and the public interest support a preliminary stay of agency action in this case.

7 **V. CONCLUSION**

8 For the foregoing reasons, Plaintiffs respectfully request that the Court grant their motion
9 and issue the requested stay of agency action.

10 Dated: October 16, 2025

KEKER, VAN NEST & PETERS LLP

12 By: /s/ Erin E. Meyer

13 ERIN E. MEYER
14 JULIA L. ALLEN
15 CLAIRE C. BONELLI
16 ELLEN WATLINGTON
17 JACQUIE P. ANDREANO
18 KAYLA CROWELL

Attorneys for Plaintiffs-Petitioners

18 Dated: October 16, 2025

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF NORTHERN

20 By: /s/ Bree Bernwanger

21 BREE BERNWANGER
22 MICHELLE (MINJU) Y. CHO
23 NEIL K. SAWHNEY
24 LAUREN M. DAVIS

Attorneys for Plaintiffs-Petitioners

1 Dated: October 16, 2025

CENTRO LEGAL DE LA RAZA

2
3 By: /s/ Abby Sullivan Engen
ABBY SULLIVAN ENGEN
4 JESSE NEWMARK
5 NIKOLAS DE BREMAEKER

6 Attorneys for Plaintiffs-Petitioners

7 Dated: October 16, 2025

AMERICAN CIVIL LIBERTIES UNION
8 FOUNDATION

9 By: /s/ Judy Rabinovitz
JUDY RABINOVITZ

10 Attorneys for Plaintiffs-Petitioners
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28