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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

FRESCIA GARRO PINCHI; *et al.*,

Plaintiffs,

v.

KRISTI NOEM, in her official capacity as
Secretary of Homeland Security; *et al.*,

Defendants.

CASE NO. 5:25-cv-5632-PCP

**RESPONDENTS' OPPOSITION TO MOTION
TO STAY EFFECTIVE DATE OF AGENCY
ACTION OR PRESERVE STATUS OR RIGHTS
[ECF NO. 48]**

Date: December 9, 2025
Time: 10:00 a.m.
Courtroom: Courtroom 8
4th Floor

Honorable P. Casey Pitts
United States District Judge

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INTRODUCTION

Throughout their motion, Plaintiffs ignore the plain text of the Immigration and Nationality Act (“INA”) in order to claim the existence of what they have termed a novel “Re-Detention Policy” and seek far-reaching declaratory and injunctive relief, as well as a stay of the supposed “policy.” *See* Pls.’ Mot. To Stay Effective Date of Agency Action and Preserve Status or Rights (“Mot.”), ECF No. 48. Essentially, Plaintiffs use their motion to stay a statutory mandate and instead advance their preferred immigration policies. But differences of opinion about policy, much less statutory interpretation, do not equate to a violation of the Administrative Procedure Act (“APA”) or Constitution, nor do they satisfy the requirements of obtaining the “extraordinary” remedy of staying Respondents’ implementation of a statutory mandate.

The Court should deny Plaintiffs’ motion because they cannot satisfy the requirements to stay the purported “policy” or the agency’s implementation of the detention provisions found in INA §§ 235 and 236, 8 U.S.C. § 1225 and 1226. First, and as a threshold matter, Plaintiffs’ claims are not justiciable where Plaintiffs lack standing, their claims are not ripe, and their claims are moot. Second, Congress has foreclosed the judicial intervention Petitioners seek. *See* 8 U.S.C. §§ 1252(f)(1), (b)(9), (g). Third, even if the Court could reach the merits, Plaintiffs identify no final agency action reviewable under the APA, no statutory violation, and no constitutional infirmity. Plaintiffs are unlikely to succeed on the merits of their claims challenging the purported “policy” where the INA’s text and structure demonstrate continuity for nearly thirty years. Congress has directed that any noncitizen “present in the United States who has not been admitted” be deemed an “applicant for admission” and subjected to mandatory detention. 8 U.S.C. §§ 1225(a)(1), (b)(2). Plaintiffs, in other words, are challenging not a discrete DHS policy under § 1226, but the ordinary statutory operation of § 1225(b)(2) as applied to aliens who remain applicants for admission. Fourth, Plaintiffs Fourth and Fifth Amendment claims are unsupported by the facts pled and in light of the statutory structure. Fifth, Plaintiffs cannot demonstrate that they are likely to suffer irreparable harm in the absence of a stay where none are subject to imminent re-detention. Finally, the balance of equities tips sharply in favor of Respondents enforcing the immigration laws of the United States consistent with statutory mandate.

OBJECTIONS TO EVIDENTIARY SUBMISSIONS

Petitioners submit declarations from named Plaintiffs, other aliens, and attorneys to support their motion to stay. *See* Declarations of Erin E. Meyer, Frescia Anthuane Garro Pinchi, Juany Galo Santos, Jose Waldemar Teletor Sente, Jordan Weiner, Shira Levine, Natalia Santanna, Bill Ong Hing, Jacqueline Marie Brown, Martha Ruch, Salam Maklad, Gabriela Alondra Vargas Plasencia, Maidel Arostegui Castellon, Carolina Ortiz Calderon, Gerardo Roman Valencia Zapata, Keymaris Alvarado-Miranda, ECF Nos. 48-1-48.18. Respondents object to these declarations on the following grounds: (1) relevance, Fed. R. Evid. 401; (2) lack of foundation and speculation, Fed. R. Evid. 602; and (3) hearsay, Fed. R. Evid. 801(c).

First, several of the declarations are irrelevant because the factual information they seek to introduce do not speak to or otherwise establish the existence of an alleged “Re-Detention Policy” under § 1226, nor do they provide any information regarding detention authority. *See* Decs. of Frescia Anthuane Garro Pinchi, Juan Galo Santos, Jose Waldemar Teletor Sente, Salam Maklad, Gabriela Alondra Vargas Plasencia, Maidel Arostegui Castellon, Carolina Ortiz Calderon, Gerardo Roman Valencia Zapata, Keymaris Alvarado-Miranda. Additionally, Ms. Weiner’s declaration is irrelevant to the extent that it provides limited personal experience regarding courthouse arrests that supposedly do not comport with actual historical practice; moreover, the location of detentions is not at issue in this case. *Compare* Dec. of Jordan Weiner at 9-10, *with, e.g.*, Philip T. Miller, Assistant Director for Field Operations, *ICE Enforcement and Removal Operations, Enforcement Actions at or Near Courthouses* (Mar. 19, 2014) (authorizing “[e]nforcement actions at or near courthouses” against “Priority 1 aliens”), U.S. Immigration & Customs Enforcement, Directive Number 11072.1, *Civil Enforcement Actions Inside Courthouses* (Jan. 10, 2018) (permitting civil immigration enforcement actions inside federal, state, and local courthouses, and explaining that “civil immigration enforcement actions taken inside courthouses can reduce safety risks to the public, targeted alien(s), and ICE officers and agents”); *see also* Amended Complaint, ECF 45. Ms. Weiner’s and Ms. Knox’s declarations are further irrelevant to the extent they express personal policy preferences. *See* Dec. of Jordan Weiner at 10-11; Dec. of Lisa Knox at 2.

1 Second, the declarations include statements that lack any foundation and are speculative. For
2 example, Ms. Weiner's declaration concludes, relying on hearsay, that the alleged "Re-Detention Policy"
3 has caused harm to her clients' wellbeing. *See* Dec. of Jordan Weiner at 4-11. Ms. Knox asserts that "[a]ll
4 of her clients," which she estimated to be in the "hundreds, if not thousands," set up their lives with the
5 assumption that once they were released after their initial detention near the border, barring some sort of
6 conviction or serious police contact, they would not be re-detained." *See* Dec. of Lisa Knox at 1-3. Ms.
7 Santanna's declaration relies on hearsay and otherwise lacks foundation for the similar assertions that her
8 "clients have made long-term decisions based on their understanding that they will not be re-detained
9 during their proceedings if they follow all of the government's requirements" and have experienced harm
10 resulting from the purported "Re-Detention Policy." *See* Dec. of Natalia Santanna at 1-3. Ms. Levine's
11 declaration concludes without foundation that "it is often more difficult for immigrants in detained
12 proceedings to access counsel and be able to pursue the asylum claims that they had previously filed," that
13 "the lack of predictability in immigration enforcement impacted the sense of order in immigration
14 proceedings," and "ICE's seemingly arbitrary detention decisions deprived the immigration court process
15 of the transparency, consistency, and predictability that the legal system is supposed to have." *See* Dec. of
16 Shira Levine at 3-4. Mr. Hing's declaration simply asserts that the advice he provides to clients changed in
17 May 2025, speculating that ICE has a "new policy of re-arresting and re-detaining people without changed
18 circumstances." *See* Dec. of Bill Ong Hing at 2. Ms. Brown's declaration speculates the same. *See* Dec. of
19 Jacqueline Marie Brown at 1-2.

20 Third, the declarations rely on hearsay. In particular, Ms. Weiner's declaration is almost entirely
21 hearsay as it presents summarized factual statements and emotional impressions of others for their truth in
22 an attempt to establish a pattern to support a factual inference in this case. *See* Dec. of Jordan Weiner,
23 ECF No. 48-5. Ms. Knox's, Ms. Santanna's, and Ms. Ruch's declarations all similarly rely on hearsay—
24 that they were told of events that allegedly occurred to unnamed clients that they did not personally
25 witness—to establish a pattern to support a factual inference in this case. *See* Dec. of Lisa Knox at 2-4;
26 Dec. of Natalia Santanna at 1-3; Dec. of Martha Ruch at 2-3. Additionally, several declarations include
27 hearsay of alleged statements by immigration judges, ICE agents, and other unnamed aliens. *See* Decs. of
28

1 Frescia Anthuane Garro Pinchi, Juan Galo Santos, Jose Waldemar Teletor Sente, Salam Maklad, Gabriela
 2 Alondra Vargas Plasencia, Maidel Arostegui Castellon, Carolina Ortiz Calderon, Gerardo Roman
 3 Valencia Zapata, Keymaris Alvarado-Miranda. The Court should not consider these inadmissible
 4 submissions that are based on hearsay from unnamed and unspecified third parties.

5 **FACTUAL AND PROCEDURAL BACKGROUND**

6 Plaintiffs Frescia Garro Pinchi, Juany Galo Santos, and Jose Teletor Sente are nationals of Peru,
 7 Honduras, and Guatemala, respectively. Ex. 1 (Declaration of Deportation Officer Michael Silva
 8 Regarding Frescia Garro Pinchi and Juany Galo Santos) ¶¶ 7, 17; Ex. 2 (Declaration of Deportation
 9 Officer Michael Silva Regarding Jose Waldemar Teletor Sente), ¶ 7. Each alien entered the United
 10 States without inspection or admission and was charged as inadmissible under 8 U.S.C.
 11 § 1182(a)(6)(A)(i). Ex. 1 ¶¶ 7, 9, 17, 19; Ex. 2 ¶ 7, 8. DHS served each with a Notice to Appear and
 12 placed them in removal proceedings under 8 U.S.C. § 1229a before the San Francisco Immigration
 13 Court. Ex. 1 ¶¶ 9, 11, 19, 21; Ex. 2 ¶¶ 8, 10. Those proceedings remain pending. Ex. 1 ¶¶ 12, 14, 21; Ex.
 14 2 ¶ 10.

15 On July 3, 2025, after a scheduled master-calendar hearing, U.S. Immigration and Customs
 16 Enforcement (“ICE”) executed a previously issued arrest warrant for Ms. Garro Pinchi and transferred
 17 her to the Mesa Verde ICE Processing Center. Ex. 1 ¶¶ 8, 12, 13. She was released two days later
 18 pursuant to a temporary restraining order. *Id.* ¶ 15. Neither Ms. Galo Santos nor Mr. Teletor Sente have
 19 been taken into custody since their initial encounters with immigration officials. *Id.* ¶ 20; Ex. 2 ¶ 9.
 20 None of the named Plaintiffs has a criminal record alleged in the pleadings.

21 This case arrives with a complex procedural history. On July 3, 2025, Ms. Pinchi filed this case as
 22 an individual petition for writ of habeas corpus. ECF 1. Following the Court’s entry of a preliminary
 23 injunction, on October 16, 2025, Plaintiffs filed an amended complaint and amended petition for writ of
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habeas corpus. ECF 1, 33, 38, 45. Plaintiffs also filed their motion seeking a stay of the purported “Re-Detention Policy” as well as a motion for provisional class certification.¹ *See* Mot.; ECF 49.

Named Plaintiffs assert that Ms. Pinchi’s detention precipitating this case reflects a broad novel “Re-Detention Policy.” *See* Mot.; Amended Complaint, ECF 45. Plaintiffs allege that DHS and ICE have begun re-detaining aliens under § 1226 without consideration of their individualized circumstances and whether they are a flight risk or danger to the community. *See* Mot. They attribute this asserted shift to internal DHS guidance and the Board of Immigration Appeals’ decision in *Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 2025). Plaintiffs contend that these sources represent a new agency interpretation requiring “re-detention” of previously released individuals. Yet, the plain language of 8 U.S.C. § 1225(b)(2) requires the detention of all applicants for admission as defined in 8 U.S.C. § 1225(a)(1)—including aliens who are present in the United States without admission and have been placed in removal proceedings under 8 U.S.C. § 1229a—as reflected in longstanding statutes and regulations, and predates the alleged guidance. Plaintiffs seek declaratory and injunctive relief under the INA, the APA, and the Fifth Amendment, including a stay of the purported “Re-Detention Policy.”

LEGAL BACKGROUND

Federal immigration law distinguishes between two basic categories of noncitizens: those who have been “admitted” to the United States and those who have not. Under 8 U.S.C. § 1225(a)(1), “an alien present in the United States who has not been admitted” is deemed an “applicant for admission.” That term includes individuals encountered at a port of entry and those present in the interior without lawful admission. *See* 8 C.F.R. § 235.1(f); *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020); *Matter of Lemus*, 25 I. & N. Dec. 734, 743 (BIA 2012).

Since Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”), detention of applicants for admission has been governed by 8 U.S.C. § 1225(b). That statute, in relevant part, directs that when an immigration officer determines an alien seeking admission

¹ Concurrently with the instant opposition, Respondents have filed a motion to dismiss Plaintiffs’ claims. The Court should defer ruling on Plaintiffs’ motion to stay until after it rules on Respondents’ motion to dismiss, as adjudication of Respondents’ motion to dismiss may eliminate the need for the Court to rule on Plaintiffs’ motion to stay. The Court has not made any factual findings in this case and the parties have not engaged in any discovery.

is not “clearly and beyond a doubt entitled to be admitted,” the individual “shall be detained” for removal proceedings under 8 U.S.C. § 1229a, unless paroled under 8 U.S.C. § 1182(d)(5). *See* 8 U.S.C. § 1225(b)(2)(A); 8 C.F.R. § 235.3(b)(3), (c). The Supreme Court has described 8 U.S.C. § 1225(b)(2) as a “catchall provision” for applicants for admission not processed through expedited removal and has recognized that it mandates detention during § 1229a removal proceedings. *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). The Board of Immigration Appeals has recently applied that understanding, including in *Matter of Q. Li*, 29 I. & N. Dec. at 68, and *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), which held that aliens present without admission or parole and placed into § 1229a removal proceedings must be detained under § 1225(b)(2)(A), such that immigration judges lack authority to redetermine the custody of such aliens.

Within this statutory framework, DHS may place an alien who entered without inspection into either expedited removal proceedings under 8 U.S.C. § 1225(b)(1) or removal proceedings under 8 U.S.C. § 1229a. *Matter of E-R-M- & L-R-M-*, 25 I. & N. Dec. 520 (BIA 2011). In both contexts, detention authority arises under 8 U.S.C. § 1225(b). That statutory framework—unchanged since 1996—does not depend on separate policy directives or memoranda.

LEGAL STANDARD

The APA provides that “[o]n such conditions as may be required and to the extent necessary to prevent irreparable injury, the reviewing court . . . may issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings.” 5 U.S.C. § 705. The postponement or staying of agency action under the APA is governed by the preliminary injunction factors. *See Nat’l TPS Alliance v. Noem*, 150 F.4th 1000, 1015 (9th Cir. 2025); *see also Immigrant Legal Res. Ctr. v. Wolf*, 491 F.Supp.3d 520, 529 (N.D. Cal. 2020) (“the factors considered when issuing such a stay substantially overlap with the *Winter* factors for a preliminary injunction”).

“A preliminary injunction is an ‘extraordinary remedy’ that is never awarded as of right.” *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). “A plaintiff seeking a preliminary injunction must show that: (1) she is likely to succeed on the merits, (2) she is likely to suffer irreparable harm in the

1 absence of preliminary relief, (3) the balance of equities tips in her favor, and (4) an injunction is in the
 2 public interest.” *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (citing *Farris v. Seabrook*,
 3 677 F.3d 858, 864 (9th Cir. 2012), and *Winter*, 555 U.S. at 20). Such an injunction is “an extraordinary
 4 and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the
 5 burden of persuasion.” *Lopez v. Brewer*, 680 F.3d 1068, 1072 (9th Cir. 2012); *see Mazurek v. Armstrong*,
 6 520 U.S. 968, 972 (1997) (an injunction “should not be granted unless the movant, *by a clear showing*,
 7 carries the burden of persuasion”) (quotation marks omitted).

8 **ARGUMENT**

9 **I. Plaintiffs’ Claims Are Not Justiciable Under Article III.**

10 “Article III confines the federal judicial power to the resolution of ‘Cases’ and ‘Controversies.’”
 11 *TransUnion LLC v. Ramirez*, 594 U.S. 413, 423 (2021). And “[n]o principle is more fundamental to the
 12 judiciary’s proper role in our system of government than the constitutional limitation of federal-court
 13 jurisdiction to actual cases or controversies.” *Spokeo, Inc. v. Robins*, 578 U.S. 330, 337 (2016) (quoting
 14 *Raines v. Byrd*, 521 U.S. 811, 818 (1997)). Federal courts may only act in the context of a justiciable case
 15 or controversy. *See Benton v. Maryland*, 395 U.S. 784, 788 (1969). Courts must consider the threshold
 16 issue of jurisdiction before addressing the merits of a case. *Steel Co. v. Citizens for a Better Env’t*, 523
 17 U.S. 83, 94-95 (1998). Plaintiffs’ claims fail in this respect where they identify no concrete injury, seek to
 18 litigate hypothetical future enforcement actions, and challenge an alleged policy that has already been
 19 enjoined and whose asserted effects no longer present a live dispute.

20 **a. Plaintiffs Lack Standing and Lack Standing to Pursue Injunctive Relief.**

21 “Standing to sue is a doctrine rooted in the traditional understanding of a case or controversy” that
 22 “limits the category of litigants empowered to maintain a lawsuit in federal court to seek redress for a
 23 legal wrong.” *Spokeo, Inc.*, 578 U.S. at 338. Standing exists only where the plaintiff demonstrates that
 24 (1) he has suffered an “injury in fact” that is concrete, particularized, and actual or imminent, (2) the
 25 injury is “fairly traceable” to the defendant’s conduct, and (3) the injury can be “redressed by a favorable
 26 decision.” *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992); *see also Massachusetts v.*
 27 *EPA*, 549 U.S. 497, 517 (2007) (same). “[A] plaintiff must demonstrate standing separately for each form
 28

of relief sought.” *See Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC)*, 528 U.S. 167, 185 (2000). To have standing, a party “must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties.” *Warth v. Seldin*, 422 U.S. 490, 500 (1975).

Plaintiffs here lack standing. All three named Plaintiffs are presently at liberty. Their asserted injury is purely a prospective fear that DHS may re-detain them at some future time pursuant to an alleged “Re-Detention Policy.” Plaintiffs speculative, attenuated risk is not a concrete, imminent injury-in-fact. *See Lujan*, 504 U.S. at 560–61; *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 409–14 (2013) (threatened injury must be “certainly impending” or at least present a substantial risk). Nor does this Court’s grant of Ms. Pinchi’s request for a preliminary injunction ensure the Court’s jurisdiction to entertain the allegations in the amended complaint, as preliminary findings are not binding at final judgment. *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981). Put simply, on the record before the Court, Plaintiffs have not identified any non-hypothetical plan to re-detain any named Plaintiff, and thus fail to show the requisite imminence to establish standing. And because Plaintiffs must have standing for each form of relief sought, and for these same reasons, they are unable to pursue injunctive relief, which is the very relief sought in their motion to stay. *See generally* Mot.; *see Friends of the Earth*, 528 U.S. at 185 (“a plaintiff must demonstrate standing separately for each form of relief sought”).

b. Plaintiffs’ Claims Are Not Ripe.

The doctrine of ripeness “is a means by which federal courts may dispose of matters that are premature for review because the plaintiff’s purported injury is too speculative and may never occur.” *Chandler v. State Farm Mut. Auto. Ins. Co.*, 598 F.3d 1115, 1122 (9th Cir. 2010). For a claim to be ripe, the plaintiff must be subject to a “genuine threat of imminent prosecution.” *See Clark v. City of Seattle*, 899 F.3d 802, 813 (9th Cir. 2018). The central concern of the ripeness inquiry is “whether the case involves uncertain or contingent future events that may not occur as anticipated, or indeed may not occur at all.” *Richardson v. City and County of Honolulu*, 124 F.3d 1150, 1160 (9th Cir. 1997).

For the same reasons Plaintiffs lack standing, their claims are not ripe. Even accepting Plaintiffs’ allegations as true, their asserted injuries are speculative. Plaintiffs claim that DHS has adopted a new “Re-Detention Policy” under which certain aliens previously released from custody may again be

1 detained. Yet all three named Plaintiffs are at liberty and allege only a fear of future re-detention. In fact,
 2 this Court has preliminarily enjoined the DHS from re-detaining Ms. Pinchi without first establishing at a
 3 pre-detention bond hearing that she is a flight risk or danger to the community. Put simply, Ms. Pinchi
 4 *cannot* be re-detained absent those conditions. Regarding Mr. Santos and Mr. Sente, whether possible
 5 future detention occurs depends on a series of contingent, individualized events: if and when DHS initiates
 6 any future enforcement action against them, the posture of their removal proceedings at that time, and the
 7 outcome of any ensuing custody determinations. Courts consistently decline to adjudicate such abstract,
 8 policy-level disputes divorced from any concrete application. *See Ohio Forestry Ass’n v. Sierra Club*,
 9 523 U.S. 726, 733-37 (1998); *Nat’l Park Hospitality Ass’n v. Dep’t of the Interior*, 538 U.S. 803, 807-12
 10 (2003). Because Plaintiffs have not shown any concrete, imminent injury traceable to current agency
 11 action, their claims reflect only a disagreement over potential enforcement decisions. Importantly, and for
 12 these same reasons, Plaintiffs’ claims for injunctive relief, which is the subject of their motion to stay, are
 13 not ripe.

14 **c. Plaintiffs’ Claims Are Moot.**

15 Mootness is “the doctrine of standing set in a time frame: the requisite personal interest that must
 16 exist at the commencement of litigation (standing) must continue throughout its existence (mootness).”
 17 *United States Parole Comm’n v. Geraghty*, 445 U.S. 388, 397 (1980). A case becomes moot “when the
 18 issues presented are no longer ‘live’ or the parties lack a legally cognizable interest in the outcome.” *See*
 19 *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013). To avoid mootness, “an actual controversy must be
 20 extant at all stages of review, not merely at the time the complaint is filed.” *Arizonans for Official English*
 21 *v. Arizona*, 520 U.S. 43, 67 (1997) (quoting *Preiser v. Newkirk*, 422 U.S. 395, 401 (1975)).

22 For similar reasons, and especially in the context of this motion, Plaintiffs’ claims are moot. IN
 23 particular, the preliminary injunction has already provided the only forward-looking relief the lead
 24 Plaintiff, Ms. Pinchi, seeks, eliminating any ongoing controversy as to her individual claims. *See*
 25 *Campbell-Ewald Co. v. Gomez*, 577 U.S. 153, 160-66 (2016). Nor do the usual exceptions apply. The
 26 government has not “ceased” a challenged policy to avoid review—it denies that such a policy exists—
 27 and there is no reasonable expectation that the same Plaintiffs will again face re-detention. *See Friends of*

1 *the Earth, Inc.*, 528 U.S. at 189-92. And because no class has been certified, class allegations cannot
 2 preserve jurisdiction. *Sosna v. Iowa*, 419 U.S. 393, 399-402 (1975).

3 **II. The Court Lacks Jurisdiction to Review—and Thus to Stay—Certain Removal Actions,**
 4 **Including Mandatory Detention of Aliens Present in the United States Without Admission.**

5 Whether the Court has jurisdiction is a threshold matter. *See Steel Co.*, 523 U.S. at 94-95. As
 6 discussed at length in Respondents’ concurrently-filed motion to dismiss, Congress has sharply limited
 7 judicial interference in the Executive’s administration of immigration laws, particularly those governing
 8 the removal scheme. Multiple statutory provisions—8 U.S.C. § 1252 (b)(9), (g), and (e)(3)—
 9 independently foreclose this Court’s jurisdiction over Plaintiffs’ claims. Each bar alone would warrant
 10 dismissal; taken together, they close every potential avenue of review, as well as the Court’s authority to
 11 grant interim relief. *See Ex Parte McCardle*, 74 U.S. (7 Wall.) 506, 514, 19 L.Ed. 264 (1868) (“Without
 12 jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and
 13 when it ceases to exist, the only function remaining to the court is that of announcing the fact and
 14 dismissing the cause.”).

15 **III. Plaintiffs Are Unlikely to Succeed on the Merits of Their Challenge to the Purported “Re-**
 16 **Detention Policy.”**

17 Assuming that Plaintiffs’ claims are justiciable and that the Court has jurisdiction, to stay the
 18 alleged “Re-Detention Policy,” Plaintiffs must not only demonstrate that such a policy exists but also that
 19 they are likely to succeed on the merits of their claims challenging it under the APA. *See Winter*, 555 U.S.
 20 at 20. Plaintiffs are unlikely to succeed. First, Plaintiffs fail to identify any reviewable agency action under
 21 the APA. Second, the agency has not “acted” within the meaning of the APA. Third, the INA provides a
 22 lawful basis for mandatory detention of non-admitted aliens. Finally, Plaintiffs constitutional claims are
 23 unsupported by the statutory scheme and established precedent.

24 **a. The Purported “Re-Detention Policy” is Not Subject to APA Review.**

25 Plaintiffs APA theories fail at the threshold. APA review is limited to “final agency action.”
 26 *Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 61-62 (2004) (quoting 5 U.S.C. § 704). But not all agency
 27 conduct qualifies as “final agency action” under the APA. *See Ctr. for Biological Diversity v. Haaland*,
 28 58 F.4th 412, 417 (9th Cir. 2023). An agency action is “final” only if it both (1) “mark[s] the

consummation of the agency’s decisionmaking process—it must not be of a merely tentative or interlocutory nature,” and (2) is “one by which rights or obligations have been determined, or from which legal consequences will flow.” *Id.* (quoting *Bennett v. Spear*, 520 U.S. 154, 177-78 (1997)). Day-to-day operations of federal agencies are generally not considered final agency action, and thus not subject to APA review. *See Lujan*, 497 U.S. 871, 899 (1990) (plaintiffs “cannot demand a general judicial review of the [agency]’s day-to-day operations” under the APA).

The APA does not permit “judicial review over everything done by an administrative agency.” *See Wild Fish Conservancy v. Jewell*, 730 F.3d 791, 800-01 (9th Cir. 2013) (quoting *Fund for Animals, Inc. v. U.S. Bureau of Land Mgmt.*, 460 F.3d 13, 19 (D.C. Cir. 2006)) (quotation omitted). Rather, review is permitted only as expressly provided by statute. In particular, the APA precludes judicial review where the “agency action is committed to agency discretion by law.” 5 U.S.C. § 701(a)(2); *see Dep’t of Homeland Sec. v. Regents of the Univ. of California*, 140 S. Ct. 1891, 1905 (2020); *Lincoln v. Vigil*, 508 U.S. 182, 190-91 (1993). Thus, “even where Congress has not affirmatively precluded review, review is not to be had if the statute is drawn so that a court would have no meaningful standard against which to judge the agency’s exercise of discretion.” *Heckler v. Chaney*, 470 U.S. 821, 830 (1985). In addition, the APA bars judicial review to the extent that “statutes preclude judicial review.” *See* 5 U.S.C. § 701(a)(1); *see supra* Parts I.a-c, II. Finally, the APA does not apply where there is “[an]other adequate remedy in a court.” 5 U.S.C. § 704; *see Brem-Air Disposal v. Cohen*, 156 F.3d 1002, 1004 (9th Cir. 1998) (federal courts lack jurisdiction over APA challenges when Congress has provided another adequate remedy).

Plaintiffs’ APA theories fail to identify any actual final agency action. Indeed, Plaintiffs identify no rule, order, guidance, or directive that would be subject to judicial review. They do not include any final agency action that consummates the agency’s decision-making process or any action that has determined rights or obligations resulting in legal consequences. *See Bennett*, 520 U.S. at 177-78. What Plaintiffs describe as a “policy” is neither formally promulgated nor concretely applied. At most, Plaintiffs’ purported “Re-Detention Policy” is (put generously, considering that only Ms. Pinchi has been subject to any attempt at re-detention) an aggregation of individual enforcement actions and resource judgments, each of which is independently based on a self-executing statutory mandate. As the

1 Supreme Court has made clear, “it is at least entirely certain that the flaws in [an] entire ‘program’—
2 consisting principally of the many individual actions referenced in [a] complaint, and presumably
3 actions yet to be taken as well—cannot be laid before the courts for wholesale correction under the
4 APA, simply because one of them that is ripe for review adversely affects” a plaintiff. *Lujan*, 497 U.S.
5 at 893–94. This programmatic oversight that the Supreme Court has rejected is precisely what Plaintiffs
6 ask the Court to do: vacate an unwritten, unestablished practice and direct ICE’s future enforcement
7 operations consistent with Plaintiffs’ policy preferences. Plaintiffs’ mere disagreement with the
8 operation of 8 U.S.C. § 1225 does not transform statutory implementation into agency policymaking.
9 Indeed, “[i]f courts were empowered to enter general orders compelling compliance with broad statutory
10 mandates, they would necessarily be empowered, as well, to determine whether compliance was
11 achieved—which would mean that it would ultimately become the task of the supervising court, rather
12 than the agency, to work out compliance with the broad statutory mandate, injecting the judge into day-
13 to-day agency management.” *Norton*, 542 U.S. at 66-67. However carefully a court might try to avoid
14 intrusion, reading “final agency action” as loosely as Plaintiffs propose would thrust the court into
15 managing “the manner and pace of agency compliance with [] congressional directives.” *Id.* at 67.

16 Furthermore, the enforcement decisions Plaintiffs challenge are committed to agency discretion
17 by law and the INA provides no “meaningful standard” by which a court can second-guess the agency’s
18 timing or prioritization of detentions under 8 U.S.C. § 1225(b)(2). Enforcement and detention
19 judgments are inherently discretionary where they are dependent on considerations of timing, priority,
20 and resource allocation. *See Heckler*, 470 U.S. at 831-32. Decisions regarding the construction of a
21 statute the agency is charged with implementing and the procedures it adopts for implementation are
22 generally unsuited to judicial review because they rest on a complex balancing of factors that the
23 agency—not the courts—is best positioned to evaluate. *Id.* Further, Congress left no judicially
24 manageable standard to evaluate the appropriateness of DHS’s discretionary determinations. *Accord*
25 *Arizona v. United States*, 567 U.S. 387, 396-97 (2012) (“A principal feature of the removal system is the
26 broad discretion exercised by immigration officials.”); *Clark v. Smith*, 967 F.2d 1329, 1331 (9th Cir.

1992) (“An alien’s freedom from detention is only a variation on the alien’s claim of an interest in entering the country.”).

Finally, Plaintiffs have another remedy available in the form of individual habeas actions or potential claim for damages. Indeed, Ms. Pinchi has already received relief on her habeas claim preventing her re-detention subject to the conditions set by the Court. *See* Order Granting Preliminary Injunction, ECF 33.

In short, Plaintiffs have failed to identify any final agency action under the APA, there is no “meaningful standard” against which the Court may second-guess the agency’s timing and prioritization of detentions under 8 U.S.C. § 1225, and Plaintiffs have another remedy available to them. As such, Plaintiffs have not shown that they are likely to succeed on the merits of their claims.

b. The Agency Has Not “Acted” Within the Meaning of the APA, Nor Are the Agency’s Individual Enforcement Decisions Arbitrary and Capricious.

Even assuming some review under the APA, Plaintiffs’ narrative—that the DHS abruptly adopted a new “Re-Detention Policy” without reasoned explanation—has a flawed foundation in a purported change in position. *See* Mot. at 9-14. The APA’s reasoned decision-making requirement for a change in position applies only when an agency has, in fact, acted and there is thus a record disclosing the grounds upon which the agency acted. *See Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983); *SEC v. Chenery Corp.*, 318 U.S. 80, 87 (1943). Traditionally for the change-in-position doctrine to apply, the courts look to “when an agency abandons a position it first articulated in a nonbinding guidance document.” *See FCC v. Fox Television Stations, Inc.*, 556 U.S. 502 (2009). When an agency changes its position, it obliges the agency to “examine the relevant data and articulate a satisfactory explanation for its action including a ‘rational connection between the facts found and the choice made.’” *State Farm*, 463 U.S. at 43. Judicial review, in turn, is confined to the grounds “upon which the record discloses that [the agency’s] action was based.” *Chenery*, 318 U.S. at 87.

Here, there is no such agency “action” or record. Instead, to craft their claims of novel agency “policy,” Plaintiffs ignore the plain text of the INA. Indeed, the individual, field-level enforcement actions described by Plaintiffs—the only evidence of the purported “Re-Detention Policy”—flow directly from the statutory text and framework enacted in § 1225. Further, Plaintiffs entirely fail to identify any policy

1 decision, contemporaneous explanation, or policy reversal. *See generally* Mot. The Executive’s
 2 application of statutory command in an individual enforcement context is execution of statutory direction
 3 and authority, not making or changing policy judgments. Without a discrete, record-supported policy
 4 decision, *FCC*, *State Farm* and *Chenery* provide no foothold for APA review.

5 Moreover, even if individual enforcement decisions were reviewable, Plaintiffs have failed to
 6 show that the individual custody determinations here were arbitrary and capricious. Ordinary enforcement
 7 under § 1225 is rationally grounded in ensuring a non-admitted, inadmissible alien’s appearance at
 8 proceedings, preventing absconding, and protecting the public—purposes Congress expressly incorporated
 9 into the INA. *See Jennings*, 583 U.S. at 285-86; *accord Demore v. Kim*, 538 U.S. 510, 512 (2003).

10 Agencies are permitted to exercise their enforcement discretion, as is the case here. *See Food & Drug*
 11 *Admin. v. Wages & White Lion Invs., L.L.C.*, 604 U.S. 542, 585 (2025). Allegations that ICE acted or
 12 (more appropriately, as all three named Plaintiffs are at liberty) would act abruptly or without deliberation
 13 in individual custody determinations amount only to disagreement with outcomes, not legal deficiency.
 14 *See Heckler*, 470 U.S. at 831-32.

15 In short, Plaintiffs have not identified a reviewable agency action under the APA, including any
 16 change in policy that would require a rational basis. The conduct they challenge is the statute’s ordinary
 17 operation, which the APA does not convert into an administrative law controversy. As such, Plaintiffs
 18 have not shown that they are likely to succeed on the merits of their claims.

19 **c. Section 1225(b)(2) Provides a Lawful Basis for Detention of Non-Admitted Aliens**
 20 **and Its Implementation is Not a Change in Policy.**

21 The INA draws a clear statutory distinction: noncitizens who have not been admitted—i.e.,
 22 arriving aliens and aliens present in the United States without admission or parole—are treated as
 23 “applicants for admission,” and their detention is governed by 8 U.S.C. § 1225. By contrast, 8 U.S.C.
 24 § 1226 governs the detention of aliens who have been admitted to, and are removable from, the United
 25 States. This framework is not new, as it was codified by Congress in IIRIRA nearly three decades ago.
 26 Under § 1225(a)(1), an “applicant for admission” includes aliens “present in the United States who ha[ve]
 27 not been admitted” and aliens “who arrive[] in the United States.” By its plain terms, that definition
 28 encompasses both arriving aliens and those who entered without inspection and remain in the United

States despite not having been admitted. *See Thuraissigiam*, 591 U.S. at 108-09, 140; *Matter of Lemus*, 25 I. & N. Dec. at 743; *see also* 8 C.F.R. §§ 1.2, 1001.1 (defining “arriving alien” as “an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international or United States waters and brought into the United States by any means, whether or not a designated port-of-entry, and regardless of the means of transport”). Federal regulations direct that a person present without admission be processed for removal under § 1225(b) (expedited removal) or § 1229a (removal proceedings before immigration judge). 8 C.F.R. § 235.1(f)(2). Thus, anyone physically present in the United States who has never been admitted is, by statute, an applicant for admission governed by § 1225. *Accord Matter of Lemus*, 25 I. & N. Dec. at 743 & n.6 (“many people who are not actually requesting permission to enter the United States in the ordinary sense are nevertheless deemed to be ‘seeking admission’ under the immigration laws”).

Under § 1225(b)(2)(A), when an immigration officer determines that an applicant for admission—as defined in § 1225(a)(1)—is not “clearly and beyond a doubt entitled to be admitted,” the alien “shall be detained” for removal proceedings under § 1229a. As the Supreme Court explained in *Jennings*, § 1225(b)(2) operates as the catchall detention authority for applicants not processed under § 1225(b)(1). 583 U.S. at 287. The implementing regulations mirror that design: noncitizens placed in § 1229a proceedings “shall be detained” under § 1225(b), unless paroled pursuant to § 1182(d)(5)(A). 8 C.F.R. § 235.3(b)(3), (c). When DHS exercises its prosecutorial discretion to place an applicant for admission into § 1229a removal proceedings, rather than expedited removal proceedings under § 1225(b)(1), § 1225(b)(2)(A) governs detention. *Jennings*, 583 U.S. at 287. This processing decision does not change the alien’s statutory classification: aliens who have not been admitted remain “applicants for admission,” and their detention continues to fall under § 1225. The Attorney General has confirmed that §§ 1225 and 1226 govern distinct classes of aliens, not overlapping ones. *Matter of M-S-*, 27 I. & N. Dec. 509, 516 (A.G. 2019). Subsequent Board decisions have applied the distinction consistently. *See Matter of Q. Li*, 29 I. & N. Dec. at 68-71; *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 220-21 (BIA 2025).

1 Plaintiffs seek to limit § 1225(b)(2)(A) to “only arriving aliens at the border who are actively
 2 ‘seeking admission.’” Mot. at 13. But the statutory text and structure refute their assertion. *See Riley v.*
 3 *Bondi*, 606 U.S. 259, 274 (2025) (“We start with the text of the statute.”); *Lamie v. U.S. Trustee*, 540 U.S.
 4 526, 534 (2004) (“It is well established that ‘when the statute’s language is plain, the sole function of the
 5 courts—at least where the disposition required by the text is not absurd—is to enforce it according to its
 6 terms.” (quoting *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 6 (2000))).
 7 Nothing in § 1225(b)(2) restricts its reach to arriving aliens, much less “only arriving aliens at the border
 8 who are actively ‘seeking admission.’” *Compare id.*, with 8 U.S.C. § 1225(b)(2)(A). Instead, when
 9 Congress intended for a provision to apply only to “arriving aliens,” it has taken care to use that specific
 10 term or similar phrasing. *See, e.g.*, 8 U.S.C. §§ 1182(a)(9)(A)(i), 1225(c)(1).

11 Further, Congress used the present participle “seeking,” denoting an ongoing status rather than a
 12 momentary event. *See United States v. Wilson*, 503 U.S. 329, 333 (1992) (verb tense is significant to
 13 meaning). Courts interpret that usage to mark continuing action. *See, e.g., Westchester Gen. Hosp., Inc. v.*
 14 *Evanston Ins. Co.*, 48 F.4th 1298, 1307 (11th Cir. 2022); *Shell v. Burlington N. Santa Fe Ry. Co.*, 941 F.3d
 15 331, 336 (7th Cir. 2019). Moreover, in immigration law, an application for admission is “a continuing
 16 one.” *Matter of Valenzuela-Feliz*, 26 I. & N. Dec. 53, 56 (BIA 2012). Indeed, the Supreme Court has used
 17 “applicants for admission” and “aliens seeking admission” interchangeably when discussing § 1225(b).
 18 *Jennings*, 583 U.S. at 287-89. And in *Matter of Yajure Hurtado*, the Board rejected the notion that
 19 extended residence within the United States somehow removes one from that status, reasoning that
 20 unlawfully remaining in the United States without admission cannot erase the continuing legal
 21 consequence of entry without inspection or admission. 29 I. & N. Dec. at 220-21, 28 (observing the “legal
 22 conundrum” created by Plaintiffs’ reading of 8 U.S.C. § 1225(b)(2)(A): “If he is not admitted to the
 23 United States (as he admits) but he is not ‘seeking admission’ (as he contends), then what is his legal
 24 status?”). Thus, Plaintiffs’ assertion limiting § 1225(b)(2)(A) to “only arriving aliens at the border who are
 25 actively ‘seeking admission’” is inconsistent with the statute’s text, grammar, structure, and interpretive
 26 history.

Plaintiffs’ interpretation also conflicts with the broader statutory design Congress enacted in IIRIRA in 1996. Prior to IIRIRA, the statutory scheme afforded greater protection to aliens who physically entered the United States without inspection, as they were placed into deportation proceedings where the government bore the burden of proof, than to those who sought lawful entry at the border, who were placed in exclusion proceedings where the alien bore the burden of proof. *See Ortega-Lopez v. Barr*, 978 F.3d 680, 682 (9th Cir. 2020); H.R. Rep. No. 104-469 pt.1, at 225-29 (1996). IIRIRA changed this framework to eliminate this disparity, in part by replacing “entry” with “admission” and defining all non-admitted individuals as applicants for admission. IIRIRA § 302; *see Ortega-Lopez*, 978 F.3d at 682 (“Under this new framework, a person who physically entered the United States but was not admitted is subject to grounds of inadmissibility” but “[d]espite this procedural unification” of channeling all aliens into removal proceedings, “the substantive bases for excluding and deporting aliens remained distinct and addressed in different statutory sections.”). Reading § 1225(b)(2), as Plaintiffs do, to exclude noncitizens present in the United States without admission would restore the very anomaly that Congress abolished and create an incentive to circumvent inspection. Indeed, Congress set the scope and eliminated the anomaly with IIRIRA: applicants for admission not processed under § 1225(b)(1) are detained under § 1225(b)(2)(A) for § 1229a removal proceedings; aliens subject to detention pursuant to § 1225(b) may only be released from custody by parole pursuant to § 1182(d)(5)(A). *See* 8 C.F.R. § 235.3(b)(2), (c); *Jennings*, 583 U.S. at 287-89.

Moreover, read within that broader scheme, the role of § 1226(a) is clear: that provision governs the discretionary detention of aliens who have been admitted to the United States and are removable under § 1227 pending the outcome of their § 1229a removal proceedings. *Jennings*, 583 U.S. at 289, 303; *Matter of M-S-*, 27 I. & N. Dec. at 516; *Matter of Q. Li*, 29 I. & N. Dec. at 70. Section 1226(a) “creates a default rule for those aliens by permitting—but not requiring—the [Secretary] to issue warrants for their arrest and detention pending removal proceedings.” *Jennings*, 583 U.S. at 303. By contrast, § 1225(b)(2)(A) imposes a specific, mandatory detention directive for applicants for admission—all aliens who have not been admitted—when an immigration officer determines they are “not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A). The two provisions thus describe distinct detention authorities

operating in parallel: § 1225(b) applies specifically to applicants for admission, while § 1226(a) serves as a more general, permissive framework for aliens who have been admitted to and are removable from the United States. Furthermore, nothing in 8 U.S.C. § 1226 purports to overrule the statutory mandate in § 1225 for non-admitted aliens. *Accord Jennings*, 583 U.S. at 288 (observing that “[s]ection 1226 generally governs the process of arresting and detaining *that* [removable aliens under § 1227] group of aliens pending their removal”); *compare* 8 U.S.C. § 1182 (inadmissible aliens), *with* 8 U.S.C. § 1227 (removable aliens). To the contrary, interpreting §§ 1226(a) and (c) as the operative provisions for non-admitted aliens would impermissibly render § 1225(b)(2)(A) null and void. *See TRW Inc v. Andrews*, 534 U.S. 19, 31 (2001) (“It is ‘a cardinal principle of statutory construction’ that ‘a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.’”) (quoting *Duncan v. Walker*, 533 U.S. 167, 174 (2001))).

Plaintiffs are wrong to argue that § 1226(a) applies to noncitizens who entered the United States without inspection because the amendments made in the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025), “would have been wholly superfluous if § 1225(b)(2) already mandated detention for” covered aliens. Mot. at 13-14. The Laken Riley Act amended, *inter alia*, § 1226(c)—the mandatory detention provision certain criminal aliens—to reflect a “congressional effort to be doubly sure” that certain aliens are detained in light of a tragedy that made international news. *See Barton v. Barr*, 590 U.S. 222, 239 (2020) (because “redundancies are common in statutory drafting—sometimes in a congressional effort to be doubly sure, sometimes because of congressional inadvertence or lack of foresight, or sometimes simply because of the shortcomings of human communication”—but—“[r]edundancy in one portion of a statute is not a license to rewrite or eviscerate another portion of the statute contrary to its text.”) (emphasis added); *see also* 171 CONG. REC. 4, S45-45 (daily ed. Jan. 8, 2025) (statement of Senator Thune). Further, the Laken Riley Act’s amendments did not purport to alter or undermine the provisions of § 1225(b)(2)(A). *See* Pub. L. No. 119-1, 139 Stat. 3. As such, the statutory scheme remains coherent and unchanged: § 1225(b)(2)(A) governs detention of applicants for admission, while § 1226(a) continues to regulate discretionary custody decisions for aliens in § 1229a removal proceedings who have been

1 admitted and are removable, excepting those aliens subject to mandatory detention under § 1226(c),
 2 including the additions made by the Laken Riley Act.

3 Thus, Plaintiffs grounds for asserting that the purported new “Re-Detention Policy” under § 1226
 4 violates the APA and Constitution rests on misapprehension of the text of the relevant statutes, the
 5 statutory structure and interplay, and the legislative history preceding the current statutory scheme.
 6 Plaintiffs’ only remaining argument appears to be that the Government has not previously interpreted
 7 § 1225(b)(2)(A) as applicable to all aliens who entered without inspection and has not considered the
 8 reliance interests of aliens on the Government’s prior implementation of the detention provisions, and
 9 therefore the legal interpretation of § 1225(b)(2) tracking the statutory language violates the APA and
 10 cannot withstand constitutional scrutiny. Mot. at 14. But prior practice is, “like any other interpretive aid”
 11 in statutory construction, not conclusive of meaning. *Loper Bright v. Raimondo*, 603 U.S. 369, 386 (2024).
 12 The Supreme Court has made clear that such “interpretive aids” are useful when faced with a “doubtful
 13 and ambiguous law.” *Id.* at 385-86. But § 1225(b)(2) is not “doubtful and ambiguous,” but rather
 14 explicitly mandates the detention of all applicants for admission as defined by statute. *See id.* At bottom,
 15 Plaintiff’s assertion that the prior practice of the Government can somehow preempt a straightforward
 16 application of the explicit text of a statute lacks any legal foundation. *See also Niz-Chavez v. Garland*,
 17 593 U.S. 155, 171 (2021) (“no amount of policy-talk can overcome a plain statutory command); *accord*
 18 *Biden v. Texas*, 597 U.S. 785, 791-97, 801-07 (2022) (holding that “the contiguous-territory return
 19 authority in [§] 1225(b)(2)(C) is discretionary—and remains discretionary notwithstanding any violation
 20 of [§] 1225(b)(2)(A)” by the DHS’s inability to “maintain in custody every single person described in
 21 [§] 1225”).

22 Accordingly, § 1225(b)(2)(A) provides a lawful basis for detention of non-admitted aliens and
 23 Plaintiffs’ claims regarding a “Re-Detention Policy” under § 1226 are unfounded. As such, Plaintiffs have
 24 not shown that they are likely to succeed on the merits of their claims.

25 **d. Plaintiffs Constitutional Claims Are Unsupported.**

26 Plaintiffs also assert that the alleged “Re-Detention Policy” violates the APA because DHS did
 27 not consider liberty interests protected by the Fifth Amendment and the purported policy contravenes the
 28

Fourth Amendment. But none of Plaintiffs’ assertions state a claim on the facts alleged or in the light of the statutory scheme. Civil immigration detention is a constitutionally permissible component of the removal process; there is no fundamental liberty interest in immunity from detention during removal proceedings and a prior discretionary release does not create a constitutional entitlement to continued release. *See Demore*, 538 U.S. at 523-31 (upholding mandatory detention during § 1229a proceedings and rejecting due-process challenge premised on absence of individualized bond hearings under § 1226(c)); *Jennings*, 583 U.S. at 299-303, 311-12 (recognizing statutory authorization for detention under § 1225(b) and declining to impose extra-statutory bond procedures). The Due Process Clause protects only rights that are “deeply rooted in this Nation’s history and tradition,” and the asserted interests here—immunity from detention under generally applicable detention provisions or a right to continued release once paroled or released— simply do not qualify. *See Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) (recognizing immigration detention as a permissible means of effectuating removal).

Procedurally, Plaintiffs do not plausibly allege the deprivation of a protected interest without constitutionally adequate process. Where no protected liberty interest is established, no additional process is due. *See Board of Regents v. Roth*, 408 U.S. 564, 569 (1972) (“The requirements of procedural due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment’s protection of liberty and property.”). And the INA itself provides the relevant mechanisms for custody determinations. *See* 8 U.S.C. §§ 1226(a), 1225(b), 1231(a). Plaintiffs contend that ICE conducts no individualized custody review before “re-detaining” previously released aliens, but no such pre-deprivation process is required under § 1225(b)(2)(A) or § 1182(d)(5)(A). Conclusory characterizations of abrupt or undeliberative detentions cannot substitute for well-pleaded facts showing the denial of constitutionally required procedures. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678-80 (2009).

Nor do Plaintiffs plausibly allege that the decision to effectuate or resume custody under 8 U.S.C. § 1225(b)(2)(A) was undertaken for any impermissible or punitive purpose. Detention of applicants for admission is a statutory consequence of that status, not punishment. *See Demore*, 538 U.S. at 531 (“Detention during removal proceedings is a constitutionally permissible part of that process.”);

1 *Carlson*, 342 U.S. at 533 (“Deportation is not a criminal proceeding and has never been held to be
 2 punishment.”). Plaintiffs’ generalized assertions that ICE re-detains previously released aliens without
 3 notice or individualized justification do not plausibly suggest punitive motive or unconstitutional
 4 treatment, particularly where detention is expressly mandated by statute and carried out for legitimate
 5 enforcement purposes.

6 Plaintiffs Fourth Amendment claim fares no better. Civil immigration detention authority in this
 7 context arises from § 1225(b)(2)(A), which mandates custody of applicants for admission pending
 8 removal proceedings, subject only to the discretionary parole authority in § 1182(d)(5)(A). Plaintiffs’
 9 account—that some re-detentions occurred after hearings or at ICE check-ins—does not negate those
 10 statutory predicates or plausibly allege that custody was unreasonable under the Fourth Amendment. On
 11 these pleadings, Plaintiffs do not state a seizure claim.

12 Accordingly, Plaintiffs constitutional claims are unsupported by the facts alleged and in light of
 13 the statutory scheme. As such, Plaintiffs have not shown that they are likely to succeed on the merits of
 14 their claims.

15 **IV. Plaintiffs Fail to Demonstrate Irreparable Harm.**

16 Demonstrating irreparable harm in the absence of a stay is a dispositive element. *See Winter*,
 17 555 U.S. at 20. The “mere possibility of irreparable harm” is insufficient to justify the drastic remedy of
 18 an injunction. *Borey v. Nat’l Union Fire Ins. Co.*, 934 F.2d 30, 34 (2d Cir. 1991); *see also Winter*, 555
 19 U.S. at 22. “Issuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent
 20 with our characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a
 21 clear showing that the plaintiff is entitled to such relief.” *See Winter*, 555 U.S. at 22. Conclusory or
 22 speculative allegations are not enough to establish a likelihood of irreparable harm. *Herb Reed Enters.,*
 23 *LLC v. Florida Entm’t Mgmt., Inc.*, 736 F.3d 1239, 1250 (9th Cir. 2013); *see also Caribbean Marine*
 24 *Servs. Co. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988) (“Speculative injury does not constitute
 25 irreparable injury sufficient to warrant granting a preliminary injunction.”); *Am. Passage Media Corp. v.*
 26 *Cass Commc’ns, Inc.*, 750 F.2d 1470, 1473 (9th Cir. 1985) (finding irreparable harm not established by
 27 statements that “are conclusory and without sufficient support in facts”).
 28

Here, Plaintiffs cannot demonstrate irreparable harm in the absence of a stay. Based on the Court's orders granting Ms. Pinchi's motion for a preliminary injunction, she cannot be re-detained absent the conditions set by the Court requiring a pre-deprivation hearing at which the DHS establishes, "by clear and convincing evidence, that she is a flight risk or a danger to the community and that no conditions other than her detention would be sufficient to prevent such harms." *See* ECF 33 at 12-13. The DHS has not attempted to re-detain Mr. Santos or Mr. Sente, both of whom remain at liberty. *See generally* Ex. 1; Ex. 2. Plaintiffs have not demonstrated any irreparable harm that any of the three of them will suffer in the absence of a stay. Plaintiffs' failure to demonstrate irreparable harm is fatal to their motion because it is a required element for staying agency action. *See Winter*, 555 U.S. at 20 (requiring a party seeking a preliminary injunction to "establish" that "he is likely to suffer irreparable harm in the absence of preliminary relief").

Instead, Plaintiffs summarily conclude and speculate that they or unspecified members of their alleged "proposed class" will suffer irreparable harm due to the collateral impacts of and "emotional distress" resulting from their hypothetical future detention. *See* Mot. at 21-22. However, no class has been certified. Even if the Court were to certify a class, Plaintiffs' irreparable-harm showing would still fail. Their asserted injuries rest on speculation about whether any putative class member will actually be detained in the future, when, for what statutory reason, and under what individualized circumstances. Such contingent, hypothetical future events cannot satisfy the requirement of imminent, non-speculative injury. Nor does certification resolve Plaintiffs' failure to tie any alleged harm to the challenged "policy": detention decision turn on individualized statutory triggers, not the alleged policy Plaintiffs seek to enjoin. And subjective "emotional distress" or apprehension about how immigration enforcement might apply to unidentified future class members is legally insufficient to constitute irreparable harm. *See Winter*, 555 U.S. at 22 ("Issuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent without characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief."); *O'Shea v. Littleton*, 414 U.S. 488, 496-97 (1974) ("attempting to anticipate whether and when [] respondents will be charged with crime and will be made to appear before [municipal courts] takes us into the area of speculation and

conjecture”). The ordinary and statutorily mandated operation of § 1225(b) cannot itself be reframed as irreparable injury. For these reasons, Plaintiffs’ theory fails even on the assumption that a class were properly certified.

V. The Balance of Equities and Public Interest Tip In Favor of the Government.

The Government has a compelling interest in the steady enforcement of its immigration laws. *See, e.g., Demore*, 538 U.S. at 523; *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1140 (9th Cir. 2009) (holding that the court “should give due weight to the serious consideration of the public interest” in enacted laws); *see also Noem v. Vasquez Perdomo*, 606 U.S. —, 2025 WL 2585637, at *4-5 (2025) (Kavanaugh, J., concurring) (finding that balance of harms and equities tips in favor of the government in immigration enforcement given the “myriad ‘significant economic and social problems’ caused by illegal immigration”). Here, the balance of equities and public interest tip in favor of the Government. The Government has significant and compelling interest in enforcing the United States’ immigration laws, detaining aliens, and removing aliens, particularly after the election of a new President and the declaration of a national emergency at the southern United States border. *See* Proclamation No. 10,866, *Declaring a National Emergency at the South Southern Border of the United States*, 90 Fed. Reg. 8327 (Jan. 20, 2025). Plaintiffs offer no argument or analysis to dispute the authority or justification of the Government to enforce immigration laws as mandated by statute. Respondents are executing a sovereign prerogative in executing the country’s immigration laws. Moreover, Respondents will suffer prejudice if the Court stays the implementation of the plain statutory language requiring detention of non-admitted aliens. By staying the operation of the statute, the Court would interfere with the enforcement of the immigration laws of the United States and the detention and removal of aliens. Plaintiffs’ assertion that “Defendants will suffer no material harm” because they “could follow the policy” Plaintiffs claim DHS previously applied lacks any merit where Plaintiffs argument amounts to a request that the Government ignore and fail to follow the law. On balance, the public interest far from favors granting Plaintiffs’ requested stay.

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CONCLUSION

The Court should deny Plaintiffs' motion to stay effective date of agency action or preserve status or rights.

Dated: November 14, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 14, 2025, I electronically filed the foregoing with the Clerk of the Court for the United States District Court, Northern District of California, by using the CM/ECF system. All participants in the case are registered CM/ECF users and will be served by the CM/ECF system.

Respectfully submitted,

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