Defendants do, however, raise one novel argument. They ask this Court to dismiss proposed class action for lack of jurisdiction on the ground that the claims are moot. As the Court disagrees, it will grant M

Directive Supreme Court and Circuit precedent dictate that such a challenge does not fall

2.

on an issue not tackled by the Damus decision. Defendants contend that even if this Court at one time had jurisdiction to decide Plaintiffs claims, it no longer does so because such claims are now moot. The Constitution that [c]

[c] U.S. Const. art. III, § 2, cl. 1. A

therefore subject to a final order of removal. Id. Largely because of these adverse determinations, the agency concluded during the re-adjudications that the named Plaintiffs currently under the custody of the New Orleans Field Office present flight risks, and it accordingly denied them parole. Id.

Plaintiffs, for their part, contest that the claims have been mooted. They first argue that the denial of all parole requests demonstrates that Defendants are continuing to categorically refuse parole to all asylum-seekers and are thereby flouting the demands of the Parole Directive. See ECF No. 30 (Pl. Response) at 8. They further - offer affidavits in support of their position that the detained Plaintiffs

of ignoring the Parole Directive. See Pl. Reply at 10. They also believe that until final removal, Plaintiffs could be released *e.g.*

oncluded

held that the class action was not moot (and therefore that the Court retained jurisdiction over the claims asserted) because at least one of the named plaintiffs in both cases

Id. Of significance here, even if the plaintiffs had not faced such a threat, the cases still would not have been moot, the plurality reasoned, because the harms

transitory enough to elude review. Id.

of a year, the reality of the immigration-detention process makes identifying those persons in advance largely impossible. See Thorpe v. Dist. of Columbia, 916 F. Supp. 2d 65, 67 (D.D.C. 2013) (holding that claims regarding nursing-

s stay in a nursing facility is impossible to predict, so even though there are certainly individuals whose claims will not expire within the time it would take to litigate their claims, there is no way for plaintiffs to ensure that the Named Plaintiffs will

).

Defendants also assert that the Preap pl the plaintiffs who brought claims that generally remain live for about a year

ECF No. 31 (Def. Reply) at 11. The Court has several responses to this argument. As an initial matter, the idea that the Preap plurality simply failed to notice the longevity of the claims involved strains credulity, especially given that two Justices dissented specifically from this aspect of the opinion. See 139 S. Ct. at 975 (Thomas, J., joined by Gorsuch, J., concurring in part and concurring in the judgment). This precise argument,

In any event, the named Plaintiffs here bring claims that, according to Defendants, were generally extinguished well within a year. This Court therefore need not assume that Preap sets

In sum, given the realities of the claims involved here and the -detention process generally, this Court has n

J.D., 925 F.3d at 1311.

Finally, the Government does not contest that Plaintiffs also satisfy the second factor

namely, that class members will retain a live claim at every stage of litigation. Id. Plaintiffs present substantial evidence that the New Orleans Field Office continues to detain a great number of the members of the proposed class without granting them individualized parole determinations. As of this month, more than 8,000 people were in ICE custody in Louisiana and Mississippi. See Pl. Response at 13. This tide shows no sign of waning. In other words, there will continue to be people seeking parole from the New Orleans Field Office immediately following credible-fear determinations. Plaintiffs have therefore established both requirements of the inherently transitory exception. The Court thus relates back class certification to the date of the pleadings, at which time, as certainly remained live.

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contentions, the Court can make quick work of the class-certification arguments it previously addressed in Damus. To obtain certification, a plaintiff must show that the proposed class satisfies all four requirements of Rule 23(a) and one of the three Rule 23(b) requirements. See Wal-Mart Stores, Inc. v. Dukes, 564

U.S. 338, 345 (2011). According to Rule 23(a), a class may be certified only if: (1) it is so

Defendants have violated both the APA and the Due Process Clause by neglecting to provide individualized parole adjudications to asylum-seekers. Id., ¶¶ 134 42. As in Damus, the Court narrows its focus to , finding that it warrants injunctive relief. The discussion will first consider likelihood of success and next address irreparable harm and the public interest.

1.

As was the case in Damus Accardi doctrine. The d government agencies are bound to follow their own rules, even self-imposed procedural rules that limit otherwise Wilkinson v. Legal Servs. Corp., 27 F. Supp. 2d 32, 34 n.3 (D.D.C. 1998) (citing United States ex rel. Accardi v. Shaughnessy, 347 U.S. 260, 267 69 (1954)). The Supreme Court has also extended the doctrine to a challenge to a benefits determination that did not comply with the procedures set forth See Morton v. Ruiz, 415 U.S. 199, 232, 235 (1974). In applying the Accardi doctrine, the high court has reaffirmed bent upon agencies to follow their own procedures . . . even where [they] are possibly more rigorous than otherwise would be required, particularly where individuals are effected. Id.

enforceability of agency policies depends upon whether they impose binding norms on the agency. Vitarelli v. Seaton, 359 U.S. 535, 539 40 (1959); Service v. Dulles, 354 U.S. 363, 372 (1957). This Circuit has further clarified

and intent of the agency action, as well as whether it confers individual protections or privileges. See Padula v. Webster, 822 F.2d 97, 100 (D.C. Cir. 1987) (citations omitted). In the immigration context, the Second Circuit has explained that the Accardi

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These most recent denial rates are even higher than those of some of the Offices found to be out of compliance with the Directive in Damus. See 313 F. Supp. 3d at 339 (noting that during the period in question two of the challenged Offices (Los Angeles and Detroit) denied 92% and 98% of parole applications, respectively). Indeed, as of 2018, the New Orleans Field Office maintained the highest rate of parole denials of any field office in the United States. See Pl. Response at 5.

DHS generally and the New Orleans Field Office specifically have continued to proclaim, however, that [f the challenged Offices

explanations. See, e.g., Heredia Mons Decl., ¶ 22; Pl. Motion for Class Certification, Exh. 4 (Declaration of J.M.R.), ¶ 23; id., Exh. 6 (Declaration of R.O.P.), ¶ 21.

It should come as no surprise then that, according to the declarants, officials associated with the New Orleans Field Office have made numerous comments that suggest they no longer feel constrained by the Parole Directive.

individualized parole inquiry, for example, a former Warden of one of the detention fac

responded

Decl., ¶ 25; see also ECF No. 15, Exh. 14 (Declaration of Joseph Giardina), ¶ 17 (New

ICE officer told attorney he denies parole because it would be 99% impossible for an individu

to demonstrate he is not a flight risk). In response to the American Immigration Lawyers

inquiry as to whether the Directive remains in effect at the New Orleans Field

[T]echnically no, by Executive

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Dismiss but instead refer the Court to the Damus arguments. The Court consequently reaches the same decision.

Specifically, Motion to Dismiss

As already explained, their class action is not moot,

conclusion that Plaintiffs have demonstrated a likelihood of success on the merits of their APA claim forecloses any argument for dismissing it Motion to D -process count, however, is destined for a brighter future. In Damus, after finding that the plaintiffs had demonstrated a likelihood of success on the merits of their APA claims, this Court dismissed their due-process count, invoking basic principles of judicial restraint. Damus v. Nielsen, No. 18-578, 2019 WL 1003440, at *2 (D.D.C. Feb. 28, 2019). The Court sees no reason to chart a different course in this case. Indeed, Plaintiffs have already expressed their acceptance of this approach. See Pl. Response at 5 6. Here, as in Damus

claim[ ] same relief would obtain for a violation of the APA. See Damus, 2019 WL 1003440, at *2. The Court therefore Motion to Dismiss -process claim, though it does so without prejudice.