

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 25-cv-03183-RBJ

REFUGIO RAMIREZ OVANDO, et al.,

Plaintiffs,

v.

MARKWAYNE MULLIN, in his official capacity as Secretary of Homeland Security, et al.,

Defendants.

**RESPONSE TO PLAINTIFFS' STATUS REPORT AND
NOTICE OF NONCOMPLIANCE (ECF No. 132)**

Defendants respond to Plaintiffs' Status Report and Notice of Noncompliance, ECF No. 132 ("Notice"). Plaintiffs' Notice states that it is informing the Court of "continued noncompliance" with the Court's Preliminary Injunction ("PI") and May 12 Order. ECF No. 132 at 1. But the selective evidence Plaintiffs chose to attach to their Notice does not show that. For example, Plaintiffs cite arrests that predate the May 12 Order—sometimes by six months—as purported evidence of *ongoing* noncompliance. They also cite, as evidence of purported unlawful arrests, encounters where the targeted individuals attempted to flee, including by ramming ICE vehicles. In short, the details of Plaintiffs' evidence do not demonstrate ongoing noncompliance with the Court's Orders.

The evidence—and the problems with Plaintiffs' interpretation of it—also shows that the parties would be better served by conferring on issues of alleged noncompliance to determine whether a motion should be filed, rather than filing notices with the Court. Plaintiffs filed their Notice without conferring with Defendants, which is permissible because the Notice is not a

motion and seeks no relief. But conferral would have enabled the parties to conserve their and the Court's resources and efficiently resolve, or at least narrow, the issues.

I. Plaintiffs' Notice does not demonstrate continued violations of the law or the PI.

First, Plaintiffs identify four individuals' arrests from Defendants' June production that they say demonstrate "continued" violations of the law and the Court's PI. *See* ECF No. 132 at 2. Those arrests, however, do not show that. The four identified individuals were arrested over four months ago, on May 1, 2026, *prior to* the Court's May 12, 2026, Order. *See* ECF No. 132-1; *see also* ECF No. 112 (the "May 12 Order"). Those arrests thus occurred before immigration officers received the Court's required training and thus do not demonstrate ongoing noncompliance following the Court's May 12 Order.

Second, Plaintiffs point to another arrest from Defendants' June production that Plaintiffs allege occurred "without [the immigration officer] knowing that a warrant existed." ECF No. 132 at 2. That arrest, though, also fails to show continued noncompliance. That arrest occurred in *December 2025*. *See* ECF No. 132-2 at 3. An arrest occurring over nine months ago—and six months before the Court's May 12 Order—does not show *ongoing* violations of the law or the Court's PI. Moreover, the evidence of that encounter shows that the individual "*attempt[ed] to flee*" prior to arrest, *id.* (emphasis added), which thus does *not* show that no likelihood of escape existed to permit a warrantless arrest under 8 U.S.C. § 1357. In short, the evidence of this arrest from December 2025 does not show any ongoing violations of law or the Court's PI.

Third, Plaintiffs identify seven arrests where they acknowledge there were pre-existing warrants for the individuals' arrests. *See id.* at 3. Plaintiffs assert that the immigration officers "were not aware" of those warrants, *id.*, but the record does not support that assertion. The

relevant I-213s note that immigration officers performed records checks before arrests, with those checks reflecting “positive result[s]” (*i.e.*, the prior arrest warrant). *See, e.g.*, ECF No. 132-5 at 5, 8. Admittedly, the I-213s also reflect that, despite those pre-existing warrants, immigration officers issued field warrants or documented warrantless arrests. The immigration officers, however, are likely taking those measures because of their awareness of this Court’s Orders. That is, this evidence tends to show that immigration officers are issuing field warrants or documenting warrantless arrests *on top of* prior existing warrants out of an abundance of caution to assure themselves that they are complying with the Court’s Orders. Simply put, the identified seven arrests do not show ongoing violations of law or the Court’s Orders.

Finally, Plaintiffs cite to an arrest from Defendants’ August production, and they argue that Defendants “claimed to arrest a person pursuant to a warrant but did not in fact have a warrant for the person and instead had a warrant for someone else.” ECF No. 132 at 3. But even assuming Plaintiffs’ allegation is correct, that allegation does not show a warrantless arrest.¹ Instead, Plaintiffs’ allegation shows only a mistaken arrest *with a warrant*. According to Plaintiffs’ own account, immigration officers were attempting to execute an arrest warrant on an individual but identified the wrong individual. *See id.* Taking Plaintiffs’ allegation as true, that arrest would not be unlawful. *See Hill v. California*, 401 U.S. 797, 802–05 (1971) (holding that a mistaken identity arrest does not violate the Fourth Amendment so long as the officer’s mistake as to identity was reasonable under the circumstances facing the officer at the time of the arrest). That encounter—where immigration officers made an arrest based on an arrest warrant—is a far cry from the issues addressed in this Court’s PI and May 12 Order.

¹ Defendants are working to obtain the arrest warrant for this arrest.

All told, Plaintiffs' Notice does not show continued violations of the PI. It attempts to make that showing with evidence of arrests occurring *before* this Court's May 12 Order, arrests where there *was* a pre-existing warrant, and arrests with a warrant involving a mistaken identity. None of that evidence shows an ongoing violation of this Court's Orders.

II. Defendants have not "mischaracterized" warrantless arrests as arrests pursuant to field warrants.

Plaintiffs' Notice next contends that Defendants have improperly mischaracterized warrantless arrests as arrests pursuant to a field warrant. Not so. First, Plaintiffs allege that ICE is arresting individuals and then serving them with field warrants after a warrantless arrest. But the encounters highlighted by Plaintiffs do not show warrantless arrests; they show that ICE officers are employing their power to conduct temporary investigative detentions in safe environments and then, upon obtaining probable cause to arrest and field warrants, arresting the individuals. Second, Plaintiffs argue that a warrant issued by ICE before a Notice to Appear (NTA) is issued should be viewed as invalid, and that an arrest pursuant to such a warrant should therefore be viewed as warrantless. But, as the Court has determined, that issue is not part of this case.

A. Investigative detentions are not arrests.

Plaintiffs suggest that ICE is violating the PI by arresting people first and getting warrants second. ECF No. 132 at 4–9. But as explained below, Plaintiffs' analysis of the arrests ignores the law regarding arrests and regarding immigration officers' powers to temporarily detain a person and then arrest.

First, not every temporary detention is an arrest. In effectuating their duties, immigration officers, like other law enforcement personnel, may "temporarily detain an individual suspected of criminal activity if the officer can point to 'specific and articulable facts which, taken together

with rational inferences from those facts, reasonably warrant that intrusion.” *United States v. Perdue*, 8 F.3d 1455, 1461 (10th Cir. 1993) (quoting *Terry v. Ohio*, 392 U.S. 1, 88 (1968)); *see also United States v. Lopez-Cervantes*, 918 F.2d 111, 114 (10th Cir. 1990) (finding “no violation of rights” in an immigration officer’s *Terry* stop). And immigration officers are not “required to take unnecessary risks in performing their duties, [and thus] are ‘authorized to take such steps as are reasonably necessary to protect their personal safety and to maintain the status quo during the course of a *Terry* stop.’” *Perdue*, 8 F.3d at 1462. “[T]he use of firearms, handcuffs, and other forceful techniques does not necessarily transform a *Terry* detention into a full custodial arrest—for which probable cause is required—when the circumstances reasonably warrant such measures.” *United States v. Melendez–Garcia*, 28 F.3d 1046, 1052 (10th Cir. 1994). For this reason, even when an individual is taken from an unsecure scene to a safe location to be interviewed, such detention does not necessarily become an arrest. *See Bay v. Keller*, No. 21-cv-0885-KWR-SCY, 2022 WL 16572452, at *18 (D.N.M. Nov. 1, 2022) (finding it “reasonable that the Plaintiffs were moved into police vehicles and transferred to the police station” and that such investigative detention only became an arrest because “the officer did not diligently conduct the Plaintiffs’ interviews.”).

Second, while immigration officers have authority to arrest individuals without a warrant “where the officer ‘has reason to believe’ that the individual ‘is in the United States in violation of [the immigration laws]’ and ‘is likely to escape before a warrant can be obtained for his arrest,’” *Ramirez Ovando v. Noem*, 810 F. Supp. 3d 1209, 1216 (D. Colo. 2025) (quoting 8 U.S.C. § 1357(a)(2)), that is not their only arrest authority. They are also empowered to warrantlessly arrest individuals who commit other crimes. Specifically, they have the power to

arrest individuals “for any offense against the United States, if the offense is committed in the officer’s ... presence.” 8 U.S.C. § 1357(a)(5). They also have the power to arrests individuals “for any felony cognizable under the laws of the United States, if the officer has reasonable grounds to believe that the person to be arrested has committed ... such a felony,” if the officer is performing immigration enforcement duties and “there is a likelihood of the person escaping before a warrant can be obtained for his arrest.” *Id.*

That legal background undermines Plaintiffs’ accusations of conducting warrantless arrests in violation of this Court’s PI. *First*, Plaintiffs cite the arrest of E.C.S, but that arrest was properly based on a field warrant issued prior to his arrest. *See* ECF No. 132 at 4–5 (citing ECF No. 133-6). The I-213 for E.C.S. indicates that immigration officers suspected a vehicle to be driven by a specific target. ECF No. 133-6 at 2. When they attempted to pull over the vehicle, it initially “unsuccessfully yielded” and officers “boxed the vehicle in[,] which successfully forced the vehicle to yield.” *Id.* At this point, officers approached the vehicle and “began to conduct biographical questioning to confirm the driver’s identity.” *Id.* Upon E.C.S. confirming his identity and stating that he did not possess any documentation to allow him to remain in the United States legally, officers advised him “that he was being detained on suspicion of being in the United States unlawfully, while Immigration Officers could verify his claim that he did not possess any documents to be in the United States lawfully.” *Id.* Upon determining through immigration database queries that there was no record of lawful entry for E.C.S., officers obtained an I-200 arrest warrant issued and signed by a supervisor prior to taking [E.C.S.] into custody.” *Id.*

In this sequence of events, Plaintiffs appear to contest the immigration officers’ “detention” of E.C.S. while they investigated their suspicion that he was in the United States unlawfully. But such investigative detention is permissible because they had reasonable suspicion that he was the target of their enforcement action and in the United States unlawfully. *Valdez v. United States*, 58 F. Supp. 3d 795, 814 (W.D. Mich. 2014) (“An investigative detention conducted by an immigration officer with reasonable suspicion of illegal status is permissible under *Terry*.”). Therefore, detention and subsequent arrest of E.C.S. was proper.

Second, Plaintiffs cite the arrest of S.N., but that arrest occurred following a lawful investigative detention. ECF No. 132 at 5. He was arrested during the execution of a search warrant by the Aurora Police Department’s SWAT team as part of an ATF investigation of individuals involved with gun trafficking. *See* ECF No. 133-3 at 5; ECF No. 132-9 at ¶¶ 6-8. The I-213 explains that S.N. was found in an apartment along with known Tren de Aragua gang members. ECF No. 133-3 at 5. Plaintiffs appear to take issue with S.N. being placed in handcuffs and secured in a vehicle prior to being interviewed and then arrested pursuant to a warrant. ECF No. 132 at 5.. But officers are permitted to conduct brief investigative detentions in safe locations. *See Bay*, 2022 WL 16572452, at *18. Officers are not expected or required to conduct such an interview in an unsecure location home to suspected gang members accused of gun trafficking. *See id.*

Third, Plaintiffs discuss the arrest of D.R.M., but again Defendants arrested that individual pursuant to a field warrant issued prior to his arrest after a brief, lawful investigative detention. ECF No. 132 at 5–6. On June 29, 2026, D.R.M. was in a truck with four other individuals, which was pulled over by ICE because it belonged to an individual with a final order

of removal. ECF No. 133-3 at 9. The I-213 indicates that officers obtained a warrant for arrest prior to arresting D.R.M., and the warrant is dated June 29, 2026, and indicates it was served on and read to D.R.M. on that same date. *Id.* at 14.²

Finally, Plaintiffs suggest that two arrests made after an individual attempted to flee an encounter by ramming an ICE vehicle were improper. They argue, again, that these arrests were unlawful because they occurred before ICE officers obtained warrants. But, as with the arrests above, here the arrests were effectuated pursuant to field warrants obtained prior to arrest and after valid investigative detentions.

The evidence of the encounter does not show a violation of the PI. *See* ECF No. 132 at 6–9. ICE officers were conducting a targeted enforcement action to locate and apprehend an individual, F.B.B. *See* ECF No. 133-7 at 3. Another individual, J.D.B., was driving a truck with F.B.B. sitting in the front passenger seat and a third individual, D.B.D.J., in the backseat. *See id.*; ECF No. 132-13 at 2. The truck parked at a 7-Eleven, and all three individuals entered the store. *See id.* J.D.B. and D.B.D.J. returned to the truck and got back in. When F.B.B. (the target) exited the 7-Eleven, ICE officers approached him and took him into custody before he got back to the truck. *Id.*

Upon seeing the ICE officers apprehend F.B.B., J.D.B. “put his truck in reverse and drove directly into the front end of the officer’s vehicle positioned behind the truck.” *Id.* At that point, officers approached the truck and instructed J.D.B. and D.B.D.J. to get out. *Id.* They did not immediately comply, and officers were forced to extract them from the vehicle, which

² To the extent that Plaintiffs contend this arrest was improper because the warrant was invalid given the timing of D.R.M.’s NTA, that issue is not before the Court in this case. *See supra* at 10-11.

included breaking the window closest to D.B.D.J. *Id.* Once the three individuals were placed in handcuffs, they were taken to a secure area, “which was very close.” ECF No. 132-13 ¶ 8. At that point, officers interviewed J.D.B. and D.B.D.J., determined that there was probable cause to believe they were unlawfully present in the United States, obtained warrants for their arrest, and arrested them. *See* ECF No. 133-7.

J.D.B. and D.B.D.J. submitted declarations where they appear to contest some of the statements in the I-213. They claim that J.D.B. began to back up his truck before F.B.B. had even gotten back in. *See* ECF No. 132-12 ¶ 6; ECF No. 132-13 ¶ 5. They do not explain why they were apparently going to leave F.B.B. behind or force him to chase them down to get back in the truck. Even if this assertion were true, ICE officers on scene, who experienced the truck ramming the ICE vehicle, could reasonably have concluded that J.D.B. and D.B.D.J. were attempting to flee. Moreover, the ramming of the ICE vehicle also gave the officers “reasonable grounds to believe that the person[s] to be arrested ha[d] committed . . . a felony.” 8 U.S.C. § 1357(a)(5); *see also* ECF No. 133-7 at 4 (noting that the Englewood Police Department “issued a criminal summons for [J.D.B.] charging him with criminal mischief.”).

Given the circumstances surrounding the ICE officers’ initial interaction with J.D.B. and D.B.D.J., it was reasonable to move them to a safe location in order to question them and determine whether there was probable cause to arrest. And, even if the Court were to conclude that the three individuals were arrested at 7-Eleven, ICE officers were empowered to make such arrests given that they attempted to flee and, in doing so, rammed an ICE vehicle and likely committed a felony.

In sum, for all of the encounters cited by Plaintiffs, ICE officers acted reasonably and according to their statutory powers. Contrary to Plaintiffs' assertions, these encounters do not show that ICE arrests first and issues warrants later. They show that officers conducted brief investigatory detentions when they had articulable reasonable suspicion to determine whether there was probable cause to arrest, and, when safety concerns required, officers placed an individual in handcuffs or took them to a secure location in order to safely conduct the investigation.

Plaintiffs' challenges to these arrests highlight also highlight their attempts to raise issues beyond compliance with the PI. The PI addresses Plaintiff's challenge under the Administrative Procedure Act (APA) to Defendants' purported final agency action in its overall warrantless arrest policy and practice in Colorado. The Court has not assumed jurisdiction to review the evidence of every individual immigration encounter that occurs in Colorado going forward. Reviewing the evidence of every individual immigration encounter—absent evidence that those encounters are connected in some way that reflects the execution of an ongoing unlawful policy—will mire the Court in individual inquiries into each encounter to determine the precise circumstance-specific details of when probable cause to arrest arose, the circumstances of the investigative detentions, when the facts of the arrest turned the detention into an arrest, and more. This Court's inquiry is properly limited to Plaintiff's challenge to a singular alleged practice as to a class, not each individual unique encounter.

B. The Court has determined that the validity of warrants issued before NTAs is not before the Court in this case.

Plaintiffs argue that ICE is improperly warrantlessly arresting individuals by arresting them with warrants that are issued before NTAs have been issued for the same individuals. ECF

No. 132 at 9-11. But that issue is not a part of this case. The Court has determined that it “has no occasion to decide that issue here.” ECF No. 112 at 48. None of the named Plaintiffs was arrested pursuant to a warrant issued before an NTA was issued and the complaint does not challenge (or even reference) such conduct. Accordingly, neither the Preliminary Injunction nor the Court’s May 12 Order Enforcing [the] Preliminary Injunction are based on or contemplate the validity of warrants issued before NTAs. *Id.* at 49.

In short, this case concerns ICE’s alleged practice of not complying with § 1357’s requirements for effectuating *warrantless* arrests, not the validity of a warrant based on the timing of an NTA’s issuance.

B. Defendants continue to work to comply with the Court’s production requirements, and Plaintiffs’ Notice overstates missing documentation.

A. Defendants have diligently worked to comply with the Court’s requirements regarding document productions.

Since the Court’s May 12 Order, Defendants have made four monthly productions. *See* ECF No. 112 at 59 (Item No. 10 requiring productions “[o]n the 10th day of each month”). Through those monthly productions, Defendants have produced documents relating to 37 individuals. Defendants have also responded to Plaintiffs’ numerous individual requests for documentation. *See id.* (Item No. 10 requiring productions upon request “within four (4) business days of the request”). As a result of Plaintiffs’ individual requests, Defendants have further produced documents relating to 34 individuals. In addition, Defendants have produced four monthly certifications, identifying immigration officers trained, training materials, warrantless arrests, and arrests performed pursuant to a field warrant. *See id.* at 58–60 (Item Nos. 6-8, 10). In short, Defendants have in fact worked extensively to comply with the Court’s production

requirements and, to that end, have produced a significant volume of documents and certifications.

B. Plaintiffs overstate the missing documentation.

Plaintiffs contend that Defendants' productions are "significantly flawed," ECF No. 132 at 11, but that contention exaggerates the extent of missing documentation.

For example, while Plaintiffs' Notice asserts that "Defendants have yet to produce any documentation for nine individuals," ECF No. 132 at 11, Plaintiffs *withdrew* their request for that documentation. *See* Exhibit 1 (May 2026 Email Chain). On May 15, 2026, Plaintiffs originally requested documentation for 23 individuals. *See id.* at 4–6. On May 29, 2026, however, Plaintiffs stated that they "revised the list of individuals whose documents we are requesting" and, in doing so, removed nine individuals from their request. *Id.* at 1–3. Because Plaintiffs removed those nine individuals from their documentation request, Defendants did not produce documents for them. Defendants should not be blamed for not producing documents that Plaintiffs expressly stated they were no longer requesting.

Plaintiffs also *already have* several documents that they say are missing. *Cf.* ECF No. 132-14, ¶¶ 8–9 (stating Plaintiffs lack I-200s for E.E.P.C. and C.R.S.), *with* Exhibit 2 (I-200 for E.E.P.C. produced on June 12, 2026) and Exhibit 3 (I-200 produced for C.R.S. on July 10, 2026).

Simply put, Plaintiffs have overstated the missing documentation.

C. Defendants will make supplemental productions.

Defendants continue to work to supplement those documentation gaps that exist. As Defendants previously explained, they have not yet been able to produce all warrants and NTAs

for relevant arrests because immigration records are often stored only in a paper file that is frequently not accessible in Colorado. *See* ECF No. 120. Nonetheless, Defendants are working to identify and produce remaining missing documentation when it is located.

The current status of Defendants' document productions is this: (1) Defendants have worked with dedicated effort to produce, and have produced, substantial numbers of documents and certifications; (2) Defendants are working to supplement their document productions; and (3) Plaintiffs' suggestion of "flawed" productions is both incorrect and exaggerated.

CONCLUSION

Contrary to Plaintiffs' claim in the Notice, the evidence does not show ongoing noncompliance with this Court's Orders. Going forward, Defendants submit that conferral—rather than notices—would benefit the parties, better address the Court's requirements, and resolve or at least narrow the issues without the need for the Court's intervention.

Dated: September 17, 2026.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that, on September 17, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will cause notice to be delivered electronically to all counsel of record.

s/ Logan Brown
Logan Brown
Assistant U.S. Attorney