

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF COLORADO

3 Civil Action No. 25-cv-3183-RBJ

4 REFUGIO RAMIREZ OVANDO, et al,

5 Plaintiffs,

6 vs.

7 KRISTI NOEM, et al,

8 Defendants.

9 -----
REPORTER'S TRANSCRIPT

10 Preliminary Injunction, Vol. 2

11 Proceedings before the HONORABLE R. BROOKE JACKSON,
12 Judge, United States District Court for the District of
13 Colorado, commencing on the 31st day of October, 2025, in
Courtroom C204, United States Courthouse, Denver, Colorado.

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P R O C E E D I N G S

(Proceedings commenced at 9:05 a.m.)

THE COURT: How is everybody today? Doing well? Haven't settled your case yet? Okay, then. I think we're ready for another plaintiff witness.

MR. KAWANABE: We are, Your Honor. We have a couple of housekeeping matters, and then also motions to move in certain declarations first, and then we have two more live witnesses this morning. First, Your Honor, the five exhibits that were handed to you, I have three-hole-punched copies for your exhibit book, and a new amended exhibit list if you want it. May I update your binder?

THE COURT: Sure.

MR. KAWANABE: And then I'm going to switch.

MS. KURTZ: Good morning, Your Honor. My name is Annie Kurtz, for the court reporter.

THE COURT: Good morning.

MS. KURTZ: So, Your Honor heard from one immigration attorney witness yesterday, and will hear from another this morning. Plaintiffs' preliminary injunction motion was supported by six immigration attorney witness declarants altogether describing this increased pattern of warrantless arrests around the state. And so just for the sake of efficiency, as Your Honor urged yesterday, we would move to admit the remaining four attorney declarations for the Court's

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1 consideration in lieu of live testimony.

2 THE COURT: Are they listed as exhibits?

3 MS. KURTZ: Yes. Plaintiffs' Exhibits 7, 8, 9, and
4 11.

5 THE COURT: Is there an objection?

6 MR. LENEIS: There is, Your Honor.

7 THE COURT: Okay. Go ahead.

8 MR. LENEIS: So, the witnesses are not going to be
9 here to be cross examined. The declarations consist of
10 anonymized hearsay about the arrests in question that the
11 attorneys are synthesizing together to create the narrative
12 that's provided in the declaration. Synthesizing together
13 hearsay is the kind of thing that an expert does, and the
14 anonymization makes it impossible for the Government to test any
15 of the assertions about what happened in those arrests.

16 So, we think that these declarations are all
17 unreliable, and even under the sort of loose application of the
18 rules of evidence that is happening -- or that can happen at a
19 preliminary injunction hearing, we think that admitting these
20 declarations is particularly inappropriate. If Your Honor looks
21 at the case law that the plaintiffs cited in their bench brief,
22 you will see that the cases don't stand for the proposition that
23 the rules of evidence are simply turned off and that any kind of
24 submission that violates the rules of evidence should be
25 accepted by the Court.

1 What the cases say is that the Court should look at
2 what's being proposed, offered, and weigh all the attendant
3 factors in terms of the need for expedition of the proceeding
4 and whether it's appropriate to admit that kind of thing given
5 the character of the proceeding.

6 Here, whether these arrests were unlawful, warrantless
7 arrests, is the key question, and to assess whether any
8 particular arrest was unlawful requires specific facts about
9 that arrest. What these declarations purport to do is state
10 that five, ten, twenty arrests, all were unlawful based on no
11 specific facts that are provided about any of them.

12 And so these declarations -- I mean, the attorney
13 testimony as well, but at least the attorney testimony we can
14 cross examine. The declarations are aimed at the key question,
15 but don't provide any factual information about the key
16 question. So, we don't think the Court should admit them.

17 THE COURT: Okay. Objection sustained. The Court
18 finds that they're marginally admissible against the hearsay
19 rule, but also they're cumulative. It appears to the Court that
20 there is already substantial evidence in the record that what
21 the plaintiffs call unlawful arrests have been occurring in
22 Colorado.

23 In addition, the Court is mindful of the statements of
24 Mr. Guadian to the media and Mr. Miller to the media that they
25 will pick up all undocumented aliens, and I think between the

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1 testimony we've heard, the testimony of the immigration lawyer,
2 and the statements of Mr. Guadian and Mr. Miller, it is
3 reasonable to infer that these are not isolated cases, but
4 rather are part of a practice and policy that has been followed
5 in Colorado by ICE.

6 So, I don't need to test the limits of the hearsay
7 rule, even though the rules of evidence don't necessarily apply
8 in this hearing. All right. Onward.

9 MS. KURTZ: Understood, Your Honor.

10 MS. McLEAN-RIGGS: Good morning, Your Honor. We're
11 ready to call Professor Jordan. If I could just stand out to
12 grab her?

13 THE COURT: Okay. Professor whom?

14 MS. McLEAN-RIGGS: Elizabeth Jordan, Your Honor.

15 THE COURT: She's not on your list?

16 MR. KAWANABE: She is.

17 MS. McLEAN-RIGGS: She is, Judge. She might be listed
18 as Liz Jordan.

19 THE COURT: Oh, yes. Since my wife, Elizabeth, goes
20 by Liz, I should have seen that. Good morning.

21 (The Witness is Sworn)

22 **DIRECT EXAMINATION**

23 BY MS. McLEAN-RIGGS

24 Q Good morning, Professor. Could you state your name for the
25 record.

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1 A Yes. Good morning. My name is Elizabeth Jordan. I do go
2 by Liz.

3 Q And what do you do for work?

4 A I direct the immigration clinic at the University of Denver
5 law school. And I'm an assistant professor there.

6 Q What does directing immigration clinic mean?

7 A It means that I supervise eight students in a yearlong
8 clinic where we represent people in ICE custody at the Aurora
9 immigration detention center, and we appear before the Aurora
10 immigration court, and then occasionally the various appellate
11 bodies that hear immigration matters, and the federal courts.

12 Q How long have you been practicing as an immigration
13 attorney?

14 A I've been an immigration attorney since 2015.

15 Q Do you monitor current immigration enforcement practices in
16 Colorado?

17 A Very much. Both as a matter of my academic interests and
18 research, and also consistent with our duty of competence to our
19 clients.

20 Q And what kinds of ways do you do that through?

21 A Sure. I monitor the news. I am involved in kind of
22 practitioner information sharing, both locally and nationally.
23 So, listservs, calls, things like that to kind of keep each
24 other apprised. I also receive various updates on the shifting
25 state of the law from national bodies like the American

1 Immigration Lawyers Association.

2 Q Okay. And when you are representing someone or helping a
3 student represent someone in immigration proceedings, what kinds
4 of documentation do you have access to about that matter?

5 A Yeah. Good question. That depends a lot on the nature of
6 the representation. So, there's no right to discovery in
7 immigration court. We generally get a copy of whatever the
8 client has been served with as part of our investigation
9 practices. Plus, whatever has been filed into their court
10 record or that we ask to be filed into the court record.

11 Q Okay. And when you are interviewing clients, is it your
12 practice to discuss the importance of being honest with your
13 attorney?

14 A Absolutely. We also -- you know, I also teach my students
15 interviewing skills and counseling, along those lines. We do
16 also remind the clients that there are penalties involved for
17 not being truthful with the adjudicative bodies as well.

18 Q Okay. And as an officer of the court, do you take your
19 legal and ethical duties seriously?

20 A Very. And I teach my students to do the same.

21 Q Professor, what is an SB251 license?

22 A So, that's a Colorado driver's license. That specific law
23 made those licenses available to people in Colorado who are
24 residents of Colorado, kind of regardless of their immigration
25 status.

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1 Q Could somebody with a lawful immigration status have that
2 kind of license?

3 A Yes. I believe that the Colorado law requires that folks
4 who are in temporary status, for example temporary protected
5 status, gets an SB251 license as opposed to the kind of driver's
6 license that I might get as a U.S. citizen, Colorado resident.

7 Q Okay. So, it's very possible that someone who is actually
8 not removable could have this kind of license?

9 MR. LENEIS: Objection. Leading.

10 THE COURT: Sustained.

11 Q. (By Ms. McLean-Riggs) Is it possible that someone who is
12 actually not removable could have this kind of license?

13 MR. LENEIS: Objection. Leading.

14 THE COURT: Sustained.

15 Q. (By Ms. McLean-Riggs) What kinds of folks could have this
16 kind of license, Professor?

17 A I think that somebody who has a variety of legal statuses
18 in the United States -- immigration legal statuses, excuse me,
19 could have this license, including legal statuses that indicate
20 that they are not out of status.

21 Q Okay. Did you represent a client with the initials OMR?

22 A Yes, I did. In his bond matter, along with a student.
23 This late spring and summer.

24 Q Okay. And as part of representing him, did you interview
25 him about the circumstances of his arrest?

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1 A Yes. Several times. We also got documentation of it.

2 Q So, as part of representing him, did you review his
3 immigration file?

4 A Yes.

5 Q Okay. Did that include something called an I-213?

6 A Yes. When we asked the immigration court to set him for a
7 bond hearing, DHS filed the I-213 into his court files, which we
8 were able to access.

9 Q And what is an I-213?

10 A Sure. We like to think of the I-213 as the police report
11 for immigration court. So, it's prepared by a DHS officer. It
12 contains usually basic kind of biographical information of the
13 noncitizen, any immigration history that ICE is able to gather,
14 any criminal history that they are able to gather, and then
15 frequently the circumstances of their encounter with ICE.

16 Q Where was OMR living before you represented him?

17 A He was living kind of right at the edge of Aurora and
18 Denver, I think around kind of Colfax and like the Lowry area,
19 between Denver and Aurora.

20 Q And who was he living with?

21 A He was living with his partner and her children.

22 Q And what happened to OMR on March 28th, 2025?

23 A That is the date that he got arrested by ICE. So, this
24 client had a valid work authorization at the time, because he
25 had applied for temporary protected status. And when you make

1 that application, while the application is pending, you are
2 authorized to work. He was working at the CU medical complex in
3 that part of town. And early on the morning of March 28th, he
4 and a friend got into his car so that the friend could drive him
5 to his job at the hospital. And that car was stopped by ICE,
6 leading to the client's arrest.

7 Q Did you have any indication of why the car was stopped?

8 A From the I-213, I could see that ICE was interested in the
9 driver, who was not my client.

10 Q Okay. Did you have any indication that ICE had gathered
11 information about OMR before the stop?

12 A No. Just the opposite. The 213 indicates that they had no
13 idea who was in the car with the person that they were
14 targeting, and they only learned about the client's -- they
15 learned who he was after they stopped him.

16 Q Okay. And what did you gather about that stop?

17 A It was a traffic stop. So, ICE, the officer who wrote the
18 I-213 wrote that they drove a vehicle with lights that they then
19 turned on, you know, flashing police lights to stop the car.
20 And in fact the client told me he thought it was the police
21 stopping them for some sort of traffic violation.

22 Q Okay. So, they stopped the car, and then what did the
23 officers do?

24 A So, the -- there were two ICE officers involved. They
25 approached the car. So, again, somebody else was driving, and

1 my client was in the passenger seat. My understanding from the
2 report is that the officers approached kind of both sides, one
3 to speak to the driver, one to speak to the passenger. They
4 ended up arresting the driver, and then the narrative primarily
5 focuses on the conversation that the ICE officer had with my
6 client while he was in the passenger seat.

7 Q Okay. And during that conversation, did OMR provide his
8 identification?

9 A Yes, he did. He provided his work permit.

10 Q Okay. And what kinds of questions did they ask?

11 A It seems like they asked very few questions before placing
12 him under arrest. Name, biographical info, you know, do you
13 have any documents that show that you're allowed to be in the
14 United States?

15 Q So, no questions about his family?

16 A No. Not before they placed him under arrest.

17 Q No questions about his employment?

18 A No.

19 Q Or his length of residency at the place he was living?

20 A No. Nothing like that is mentioned in the report.

21 Q Okay. And no questions about drugs?

22 A No.

23 Q Gangs?

24 A No.

25 Q Guns?

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1 A No.

2 Q Okay. Did OMR resist or struggle with the officers at all?

3 A No. It's pretty clear from the report he was scared, but
4 no resistance.

5 Q Okay. And did they ask OMR any questions after he was
6 arrested?

7 A Yes. After they placed him under arrest for an immigration
8 violation, that is when they asked him about his family, and
9 then any medical conditions. And then I believe they asked him
10 again about documentation.

11 Q Okay. Did any of the paperwork you reviewed indicate that
12 ICE had a warrant for OMR's arrest?

13 A No. And I don't think a warrant would have been possible
14 under these circumstances where they didn't know who he was
15 until shortly before they arrested him.

16 Q And what did that lead you to conclude about whether there
17 was a warrant?

18 A I believe there was no warrant for his arrest by ICE.

19 Q Okay. And can you describe when you met OMR, where did you
20 meet him?

21 A We met him at the detention center in Aurora. It's the
22 detention center run by the GEO Group under a contract with ICE.
23 So, he was in ICE custody.

24 Q Okay. And can you describe how he appeared to you in
25 detention?

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1 A Yes. He was stressed out. He reported that he wasn't
2 sleeping very well. That was actually quite visible. He looked
3 quite tired. And I would describe him generally as distressed.

4 Q Okay. Did you represent another client with the initials
5 JPP?

6 A Yes, I did.

7 Q In what kind of proceeding?

8 A We represented him in his immigration matter. When I met
9 him, he had actually already taken a removal order, so I was
10 attempting to get that reopened before the immigration court.

11 Q Okay. And where was he living before you represented him?

12 A He lived at an apartment complex called Cedar Run, I think
13 pretty close probably to where the other client was living, that
14 kind of Denver-Aurora border in the Lowry area.

15 Q Okay. And who was he living with?

16 A He was living with his wife and her two children.

17 Q How old were the children?

18 A The older one was 16. I believe the younger one was around
19 12.

20 Q Okay. And as part of representing him, did you interview
21 him?

22 A Yes. Several times.

23 Q And did you review his immigration paperwork?

24 A Yes. In that case, because his immigration case was
25 technically closed, I was only able to access whatever he had a

1 copy of.

2 Q Okay. And that did not include a copy of the 213; is that
3 right?

4 A That's right. I don't have a 213 for this client.

5 Q Okay. What happened to JPP on February 5th, 2025?

6 A He was arrested in a raid at his apartment complex that
7 was -- I've never seen a raid like that before in ICE, at the
8 time.

9 Q When you say you've never seen a raid like that before, can
10 you tell me about what you learned.

11 A Sure. I think the thing that sticks out the most to me is
12 that ICE, or the federal agents conducting the raid, I think
13 there were maybe ICE and other agency partners, used flash-bang
14 explosive devices to get into the client's apartment. And
15 that's a thing that I had not seen before.

16 Q Okay. So, you learned that JPP was in his apartment, and
17 then had an interaction with the agents. How did that go?

18 A Yeah. So --

19 MR. LENEIS: Objection. Sorry. I withdraw.

20 THE WITNESS: So, he -- the story as I understood it
21 is early in the morning of February 5th, the date of the raid, a
22 friend called JPP's wife and said -- who I believe was a
23 neighbor, and said, look outside. There's a bunch of federal
24 agents out there. And they did look outside and saw a mass of
25 federal agents -- uniformed federal agents gathering in the

1 parking lot.

2 Shortly after that, the client heard a commotion
3 outside of their apartment door in the hallway, and he kind of
4 peeped through the peephole, and he could see agents, again,
5 uniformed, with long guns, so rifles, interacting with the
6 residents of the apartment across the hall, yelling at them.
7 The client and his family got very scared, and they hid in their
8 apartment.

9 Q. (By Ms. McLean-Riggs) Where did they hide in their
10 apartment?

11 A They hid under the bed in the children's room.

12 Q And did you learn whether there were any exits in that room
13 other than one entry door?

14 A I believe there's one entry to that apartment.

15 Q Okay. And what happened after they hid in that room?

16 A Yes. He described hearing one kind of clicking noise, and
17 then the explosions of the flash-bang grenades in the apartment,
18 followed by the sound of people entering the apartment and
19 yelling.

20 Q Professor, what is a flash-bang?

21 A It's an explosive device. I am not a munitions expert, but
22 it's -- the way the client described it, it sounded like a bomb.

23 Q Okay. So, after they heard the officers, what happened
24 next?

25 A So, all of the family was under the bed. The young girls

1 were quite scared, and the client felt like as the head of the
2 household, he needed to step forward, so he came out. He
3 expressed a fear that he was going to be shot. He mentioned to
4 me that when he came out of the bed and went in the front room,
5 he could see burn marks on the floor from the explosive devices,
6 and he encountered, I would say probably half a dozen federal
7 agents in his apartment yelling in English.

8 Q In English. And what happened after that?

9 A The agents -- so, after that, the client's wife also came
10 out. She was yelling the word "baby" in an attempt to convey to
11 them that there were children in the apartment. The agents
12 brought all of the family members out, and the client, his wife,
13 and the older girl, the 16-year-old were all placed in
14 handcuffs.

15 Q Okay. And at that point, did they have any further
16 interaction with the officers?

17 A Yes. After they were cuffed, they were then interviewed.
18 The client says that he was asked for his name and his birth
19 date. So, they didn't know who he was. And then they ran his
20 information through a computer of some sort, and he heard them
21 say the word "clean."

22 Q Okay. Just to back up for a second, were the children
23 searched?

24 A I believe the older one was patted down while she was
25 cuffed.

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1 Q And what was the gender of the searching officer?

2 A Male.

3 Q Thank you. The officer said the word "clean," and then
4 what happened?

5 A And then there was a choice made by the officers to take my
6 client into custody and leave his wife and the girls out of
7 custody.

8 Q So, before that arrest, they hadn't asked anything about
9 his employment?

10 A No.

11 MR. LENEIS: Leading.

12 THE COURT: Sustained.

13 Q. (By Ms. McLean-Riggs) Before that arrest, did they ask
14 anything about his employment?

15 MR. LENEIS: Objection. Leading.

16 THE COURT: It's borderline. Try again.

17 Q. (By Ms. McLean-Riggs) Do you have any indication that
18 they asked any questions other than the ones you have previously
19 mentioned, before he was arrested?

20 MR. LENEIS: Objection. Leading.

21 THE COURT: Try, what did they ask him?

22 Q. (By Ms. McLean-Riggs) What did they ask him before his
23 arrest?

24 A So, as I mentioned, they asked him his name and his birth
25 date, and that was it.

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1 Q Okay. Thank you. And ultimately, was he taken to the
2 detention center in Aurora after that?

3 A Correct.

4 Q Did you later learn what authority officers entered the
5 apartment under?

6 A Yes. I saw a search warrant, not with the client's name on
7 it, for that apartment complex.

8 Q What was that warrant seeking?

9 A It was seeking evidence, documents related to a violation
10 of the 1325 illegal entry statute.

11 Q That 1325 illegal entry, does that have any elements of
12 violence?

13 A No. It's a strict liability crime.

14 Q Was that warrant seeking any guns?

15 A No.

16 Q Any drugs?

17 A No.

18 Q Did anything you heard or viewed make you think the
19 Government had a warrant for JPP's arrest?

20 MR. LENEIS: Objection. Leading.

21 THE COURT: Overruled.

22 THE WITNESS: No. It seemed clear that they didn't
23 know who was in the apartment prior to breaching it.

24 Q. (By Ms. McLean-Riggs) Have you ever seen this level of
25 force used for this kind of warrant before?

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1 MR. LENEIS: Objection. Calling for expert testimony.

2 THE WITNESS: She's an expert.

3 MR. LENEIS: Okay. I don't think she's been qualified
4 as an expert. I don't think she was offered as an expert.
5 She's been offered as a witness who is testifying from personal
6 knowledge. So, to the extent that the witness is being asked to
7 testify in a capacity as an expert to provide expert testimony
8 to assist the Court, objection.

9 THE COURT: Well, she can't help being an expert,
10 because she's a professor of immigration law. She by definition
11 is an expert. But she is talking about the facts of this
12 particular matter; right? The expertise has to be there. She
13 can't eliminate it.

14 MR. LENEIS: The record that I will make, Your Honor,
15 is that the witness was not disclosed to us in advance as an
16 expert. No summary of the testimony that was going to be given
17 in an expert capacity was given to us. I understand that this
18 is a preliminary injunction proceeding. It's happening on two
19 weeks' notice, and the plaintiffs could have given us that kind
20 of disclosure if they were intending to use lay witnesses in an
21 expert capacity.

22 THE COURT: They disclosed she was a professor; right?

23 MR. LENEIS: They did disclose that she was a
24 professor.

25 THE COURT: Overruled.

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1 Q. (By Ms. McLean-Riggs) Have you ever seen this level of
2 force used for this kind of warrant before?

3 A No.

4 Q What was JPP's immigration status on the day of his arrest?

5 A He had applied for asylum. So, he had a pending asylum
6 application.

7 Q Had he recently gone to a check-in of any kind?

8 A Yes. So, when you apply for asylum, USCIS, which is the
9 agency that adjudicates an asylum application of the kind that
10 he had filed, requires biometrics. So, they call you in to an
11 office, it's a little office, kind of looks like the DMV in
12 Aurora. And you go in, and they take your picture and run your
13 fingerprints. It's called a biometrics appointment.

14 Q And how recently had he done that?

15 A He had done that in December 2024, so less than three
16 months before this raid.

17 Q Okay. Where did you meet JPP?

18 A At the detention center.

19 Q And can you describe his condition at that time?

20 A Yes. He was also observably distressed. I also -- in
21 order to try to explain to the immigration judge what had
22 happened in his case and get his removal order rescinded and his
23 case reopened, I retained a mental health expert who met and
24 evaluated with him. And so in addition to what I could observe
25 as obvious distress, we also had expert documentation of severe

1 trauma, which the expert indicated was from the raid.

2 Q Okay. In your time practicing and monitoring immigration
3 enforcement in Colorado, have you ever known ICE to send out a
4 policy via email to all of its agents?

5 A Yes. In 2020, I litigated ICE's response in the detention
6 centers to the COVID pandemic, where a broadcast message was an
7 issue in that litigation.

8 Q In your experience, did that change the behavior in the
9 detention center?

10 MR. LENEIS: Objection. Leading.

11 THE COURT: Overruled.

12 THE WITNESS: No. And in fact, we had to seek
13 enforcement from the federal judge in that matter. That case
14 was brought in the Central District of California, where Judge
15 Jesus Bernal found the Government to be noncompliant even after
16 the broadcast message had been issued, and ordered a special
17 master in that case.

18 Q. (By Ms. McLean-Riggs) Thank you, Professor. I am going
19 to go back to two questions about those specific people. For
20 OMR, where is he now?

21 A I'm not sure. I did not represent him in his removal
22 proceedings. I would presume that he has been deported.

23 Q What about JPP?

24 A He has been deported.

25 Q Okay. Did you see this kind of arrest without questioning

1 about community ties often in 2024?

2 A I would say that there was less of this kind of ICE
3 encounter on the street happening in 2024. So, the primary way
4 that ICE was taking people into custody where I would then meet
5 them or my students and I would meet them at the detention
6 center was picking them up coming out of criminal custody.

7 So, when they paid a bond at the Arapahoe County Jail
8 or they were released from Colorado Department of Corrections
9 after serving a sentence, for example, and in those encounters,
10 ICE often prepared a warrant as part of their interaction with
11 the criminal custodian.

12 Q Are these kinds of arrests unusual in your current
13 practice?

14 A Not since 2025.

15 MS. McLEAN-RIGGS: Thank you very much, Professor.
16 Those are all of my questions.

17 THE WITNESS: Thank you.

18 THE COURT: Cross examination?

19 **CROSS EXAMINATION**

20 BY MR. LENEIS

21 Q Good morning, Professor Jordan.

22 A Good morning.

23 Q Your client OMR, he was arrested for trespass in Texas when
24 he came across the border; right?

25 A That's correct.

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1 Q What year was that?

2 A That was right when he crossed, which I believe would have
3 been 2023.

4 Q But OMR is not, as far as you know, going to testify here
5 in court in this proceeding?

6 A Not that I am aware of, no.

7 Q He's not going to be cross examined?

8 A Right.

9 Q Is it the case that every statement that you made today
10 about OMR's arrest was based on your review of the form 213, the
11 I-213?

12 A Primarily, and then corroborated with a conversation with
13 the client.

14 Q Now, for the form 213 itself, you didn't bring that with
15 you?

16 A I actually do have a copy in my bag.

17 Q Oh. Could we get that and introduce it as an exhibit,
18 please?

19 A I think so.

20 MR. LENEIS: Your Honor, may the witness go to her bag
21 and get the form 213?

22 MS. McLEAN-RIGGS: Judge, at this point, OMR is an
23 asylum seeker. There is information on that 213 that is highly
24 sensitive, and I would certainly object to admitting it in an
25 unredacted form. I am happy to discuss with the Government

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1 during a recess in what way that might be acceptable, but I
2 would certainly object, especially given that we believe it's
3 possible he may have been deported to the country he was seeking
4 safety from, to unredacted 213 admission.

5 THE COURT: Right. Well, first of all, the 213 hasn't
6 been offered into evidence, so there's no problem yet. But I
7 agree. If it were offered into evidence, we could easily make a
8 redacted copy instead of the original. She probably wants to
9 take the original with her anyway. So, why don't we get the
10 original so that examining counsel can look at it, and then we
11 will see what he wants to do with it.

12 MR. LENEIS: Very good. May the witness step down
13 to --

14 THE COURT: Do you mind counsel's looking at it?

15 MS. McLEAN-RIGGS: I do not, Your Honor. I would ask
16 for a brief recess so that we could discuss to see if there's an
17 agreement we can come to about what needs to be redacted.

18 THE COURT: That's fine. Five minutes?

19 MS. McLEAN-RIGGS: Yes. Thank you.

20 THE COURT: Done.

21 (Recess at 9:37 a.m., until 9:49 a.m.)

22 THE COURT: Okay. Ready to proceed?

23 MR. LENEIS: Very good, Your Honor. Thank you for the
24 indulgence. The Government is going to move to admit the I-213
25 for OMR. So, it would be Exhibit L. Procedurally, what we

1 think makes sense is for us to show this to the witness and the
2 Court for the purposes of testimony via the Elmo overhead, but
3 block it out from the rest of the courtroom. Afterwards,
4 because this belonged to the witness, we will make a copy of it,
5 add an exhibit sticker, add the redactions that are necessary
6 for the protection of OMR's privacy, and provide it to the
7 Court.

8 THE COURT: Is that okay with you, Professor?

9 THE WITNESS: Yes, Your Honor. Thank you.

10 THE COURT: Okay. It's okay with me.

11 MR. LENEIS: And, Counsel, I just do need to be able
12 to look at this monitor so I can see what's happening.

13 THE COURT: You could ask all the people in the back
14 just to cover their eyes.

15 Q. (By Mr. Leneis) All right. So, Professor Jordan, I'm
16 showing you now the first page of the I-213 for your client OMR.
17 Do you recognize it?

18 A Yes, I do.

19 Q And then I'm going to turn to the second page. And I will
20 direct your attention to the top there. Do you see where it
21 says, on 7/29/2023, the subject was arrested for the crime of
22 trespassing, which is still pending?

23 A Yes, I do.

24 Q All right. In the middle of the page, there's a record of
25 deportable slash excludable alien. Do you see that?

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1 A Yes, I do.

2 MR. LENEIS: Ms. Smotts, is it possible to mark on the
3 screen with highlighting for the Elmo?

4 THE COURTROOM DEPUTY: Let me turn on annotation. And
5 then you should be able to use that pen stuck to the screen
6 there. You will have to use it on the screen, on the
7 touchscreen.

8 Q. (By Mr. Leneis) All right. And so towards the bottom of
9 the record of deportable alien, there's a sentence that starts,
10 both were asked about family. Do you see that?

11 A I do.

12 Q And it says, both were asked about family, and they refused
13 to answer, fearing that ICE would return to the apartment and
14 arrest the family. And they wanted an attorney present. Do you
15 see that?

16 A I do see that.

17 Q And then at the bottom of page two of the I-213, there's
18 entry data slash immigration history; right?

19 A Correct.

20 Q And the second sentence there says, on September 2nd, 2023,
21 the United States Border Patrol arrested M -- I'm not going to
22 give the full name.

23 A Thank you.

24 Q OMR while entering the United States at or near Del Rio,
25 Texas. Do you see that?

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1 A I do.

2 Q And then it continues, OMR was issued a notice to appear
3 and released on OREC due to lack of space?

4 A Yes.

5 Q Do you know what the acronym OREC stands for?

6 A Yes. It's basically released on his own recognizance.

7 Q Now, do you know if a warrant was issued for OMR along with
8 a notice to appear?

9 A So, what I can tell you is that this 213 was actually the
10 subject of conversation in our bond hearing on this case, and we
11 cleared up the date discrepancy there. The client was
12 arrested -- his entrance in the United States was in July, that
13 July date at the top of page two, at which time he was taken
14 into Texas state criminal custody under an operation that Texas
15 was running, I believe it's still running, called Operation Lone
16 Star where they were charging people with a state criminal law
17 violation for trespass when they crossed the border.

18 So, OMR was charged under that trespassing Texas state
19 criminal law, served about 40 days in Texas criminal custody,
20 and then Border Patrol came to pick him up out of the Texas jail
21 where he was serving that time. There's some confusion about
22 when the criminal case was actually concluded, but he was doing
23 time in criminal custody when Border Patrol came to get him, at
24 which time they presumably issued a warrant to the Texas jail to
25 get him.

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1 Q So, you believe that along with the notice to appear, there
2 was a warrant for DHS to take OMR into custody; is that correct?

3 A I think that's probably true. I haven't seen it.

4 Q And then just turning to page three of the I-213, towards
5 the top, you see where it says, family information?

6 A I'm sorry. Yes. I do see that.

7 Q And there it says [OMR] refused to answer questions about
8 his family; right?

9 A Correct. I believe you mean OMR.

10 Q Very good. Ms. Smotts, we can turn this off.

11 MS. McLEAN-RIGGS: Judge, if we could move to strike
12 the name that was said.

13 THE COURT: What name?

14 MR. LENEIS: Sorry if I said the name one time. I
15 apologize. I meant to say OMR.

16 THE COURT: Did he say the name?

17 MS. McLEAN-RIGGS: Yes, Judge. If we could strike.

18 THE COURT: Okay.

19 MR. LENEIS: That's correct, Your Honor. I did when I
20 was reading from the family information. In my final question
21 there, I inadvertently failed to use the initials.

22 THE COURT: I don't think that's the end of the world.
23 I don't think that's going to identify him. It's a common name.
24 But let's substitute OMR for that.

25 MS. McLEAN-RIGGS: Thank you, Your Honor.

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1 Q. (By Mr. Leneis) Was there other information about OMR's
2 arrest that you know that you didn't testify to today?

3 A No.

4 Q You were not there when OMR was arrested; right?

5 A No. I didn't know him at the time.

6 Q So, you didn't hear anything that the officer said during
7 the encounter?

8 A No.

9 Q You've never spoken to those officers?

10 A No.

11 Q You don't know what they knew about OMR when they arrested
12 him?

13 A Only what they wrote in their report.

14 Q So, your answer to my question is that's correct, you don't
15 know what they knew about him besides what's in your report?

16 A Besides what's in the report, correct.

17 Q Besides what's in the 213?

18 A Correct.

19 Q You don't know what kind of -- you didn't observe how much
20 time passed between when the officers began to speak to OMR's
21 companion and when they came back to arrest OMR; right?

22 A That's right. I don't know that.

23 Q You didn't hear anything that OMR's companion said to the
24 officers; correct?

25 A No.

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1 Q It's possible that OMR's companion told the officers who
2 OMR is?

3 A I don't know.

4 Q You don't know whether it's possible?

5 A I suppose it's possible.

6 Q It's possible there was a warrant for OMR's arrest and it's
7 just not mentioned in the I-213; right?

8 A The I-213 indicates that they didn't know who OMR was until
9 they found out his name in that moment.

10 Q Okay. But my question to you is it's possible that there
11 was a warrant for OMR's arrest. There was a warrant at the
12 time, and you just don't know that; right?

13 THE COURT: How could there be a warrant if they don't
14 know his name, didn't know who he was?

15 MR. LENEIS: All right. I will rephrase.

16 Q. (By Mr. Leneis) You don't know at what point during the
17 encounter officers learned OMR's name; right?

18 A It's not clear at exactly what moment in the encounter they
19 learned his name. Correct.

20 Q You don't know if they learned his name before they came
21 back to the car and arrested him; right?

22 A It's unclear, so I don't know.

23 Q So, you do not know?

24 A I don't know.

25 Q You don't know whether officers learned his name and ran

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1 checks in a database before they came back and arrested him;
2 right?

3 A I don't know.

4 Q You don't claim that OMR presently has legal authorization
5 to be in this country?

6 A No. At the last I heard his TPS had never been
7 adjudicated.

8 Q Does it -- it's fair to say that ICE would have been able
9 to arrest and detain him for violating the immigration laws
10 under a warrant for his arrest; right?

11 A Do you mean in that moment?

12 Q Just in general.

13 THE COURT: I thought you didn't want her to testify
14 as an expert?

15 MR. LENEIS: What's good for the goose is good for the
16 gander, Your Honor.

17 THE COURT: Ah. Okay.

18 THE WITNESS: I will just note that a warrant does
19 require a supervisory ICE officer to sign off on it. I don't
20 know how much time it takes for them to run that process
21 internally.

22 Q. (By Mr. Leneis) I guess my question is a little
23 different. So, I will phrase it this way: If at any point when
24 OMR was in the country there was a warrant for his arrest,
25 you're not saying that it would have been unlawful for DHS to

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1 take him into custody on the basis of that warrant; right?

2 A If they had properly prepared a warrant, I think that they
3 can execute that warrant, yes.

4 Q And you don't claim that it's -- I will strike that one.
5 Now, your other client who you talked about is JPP?

6 A Correct.

7 Q As far as you know, JPP is also not going to be here in
8 court today?

9 A That's correct.

10 Q So, JPP is also not going to be cross examined?

11 A Correct.

12 Q You didn't provide JPP's actual name in your declaration or
13 testimony; right?

14 A No. He was also an asylum seeker.

15 Q An effect of anonymizing your former client like that is
16 that the Government doesn't know who he is; right?

17 A I believe the Government can access his information.

18 Q Could the Government in your view access his information on
19 the basis of the information you've provided about JPP today?

20 A Well, I have attempted to keep his anonymity for purposes
21 of his privacy. What happened at Cedar Run has been widely
22 documented.

23 Q Okay. But you're not saying that what happened to JPP at
24 Cedar Run has been widely documented?

25 A I believe the use of flash-bangs was covered in the Denver

1 Post.

2 Q My question is just specific to your client, JPP, you're
3 not saying that what happened to JPP specifically has been
4 widely documented, are you?

5 A Not beyond what was told about what happened at that
6 apartment complex generally.

7 Q And you were not there when that arrest happened; correct?

8 A Correct.

9 Q You didn't personally witness any of the events that you
10 described when it comes to JPP's arrest; right?

11 A That's correct. I met him later.

12 Q So, your knowledge about the events and the arrest, it's
13 not based on your own perceptions made during those events?

14 A Correct.

15 Q The source of your information about what happened to JPP
16 is things that people have told you; right?

17 A Correct.

18 Q And documents that you have reviewed; correct?

19 A Correct.

20 Q Now, when the officers went into JPP's apartment, you did
21 not see where they encountered him?

22 A No.

23 Q You did not see whether they witnessed him come out from
24 under the bed?

25 A No. I wasn't there.

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1 Q You did not hear anything they said to him?

2 A No.

3 THE COURT: She wasn't there.

4 Q. (By Mr. Leneis) And you don't know what the officers who
5 arrested JPP knew about JPP when they arrested him; right?

6 Besides what you've seen in documents?

7 A That's correct.

8 Q Do you know what agency the officers who were in JPP's
9 apartment were working for?

10 A Not the exact array, no. I believe it was ICE -- what I
11 have seen from the reporting is that it was ICE and other
12 federal law enforcement there that day.

13 Q So, when you say that, you're talking about there at the
14 apartments for the entire operation; right?

15 A Correct.

16 Q But you don't know for the officers who were inside of
17 JPP's apartment, what agency those officers were with?

18 A I don't.

19 Q Before you came in to testify today, you provided a
20 declaration to opposing counsel here in this case; right?

21 A That's correct.

22 Q How did you come to do that?

23 A I was asked to prepare a declaration.

24 Q Who asked you to do that?

25 A The attorneys working on this case.

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1 Q Which attorney specifically?

2 A I believe it was Tim.

3 Q That's Mr. MacDonald?

4 A Correct.

5 Q How well do you know Mr. MacDonald?

6 A I would say we are professional colleagues.

7 Q Have you provided declarations for Mr. MacDonald for use in
8 other cases?

9 A I have not.

10 Q When did he contact you about providing a declaration for
11 use in this case?

12 A I believe it was a few months ago.

13 Q And when he contacted you, he was asking you to help them
14 in their case against ICE; right?

15 A He asked me if I had any clients who had experienced a
16 warrantless arrest.

17 Q But the purpose of your declaration and your testimony here
18 today is to help Mr. MacDonald and his colleagues in their case
19 against ICE; right?

20 A The purpose of my declaration is to explain what happened
21 to my clients as I understand it.

22 Q You agree that you're here today testifying in support of
23 their case?

24 A I'm here because they have called me.

25 MR. LENEIS: Nothing further.

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1 THE COURT: Redirect?

2 MS. McLEAN-RIGGS: Just briefly, Your Honor.

3 **REDIRECT EXAMINATION**

4 BY MS. McLEAN-RIGGS

5 Q Professor Jordan, opposing counsel asked you if OMR was
6 asked about his family. Is it your understanding that that
7 question was asked before or after he was arrested?

8 A After he was already in cuffs in the ICE car.

9 Q Do you have any evidence that he was served a warrant?

10 A No.

11 Q You spoke with opposing counsel about a arrest in Texas for
12 trespassing. Could you give us any further context you have
13 about that arrest?

14 A Just beyond what I've explained that Texas was pursuant to
15 this Operation Lone Star charging noncitizens coming across the
16 border in Texas with this state criminal charge of trespass.

17 Q So, would it be fair to say that that trespass charge was
18 related to immigration?

19 A Yes.

20 MS. McLEAN-RIGGS: Thank you. No further questions.

21 THE COURT: Okay. Thank you, Professor. You're
22 excused, free to go.

23 THE WITNESS: Thank you, Your Honor.

24 THE COURT: I think you said you have another witness,
25 plaintiff?

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1 MR. KAWANABE: Yes, Your Honor. We have a witness
2 that is not on your current witness list. We have an updated
3 witness list, and have conferred with opposing counsel. Her
4 name is Carly Hamilton. May I approach, Your Honor?

5 THE COURT: Carly Hamilton?

6 MR. KAWANABE: Yes, Your Honor. Carly is C-A-R-L-Y,
7 Hamilton.

8 THE COURT: You wanted to approach?

9 MR. DEUSCHLE: If I may, Your Honor? The Government
10 objects. We would like to make our objection on the record to
11 this witness being introduced.

12 THE COURT: Usually you approach when there's a jury.
13 You don't want to have the people in the back hear what you're
14 going to say?

15 MR. DEUSCHLE: Can I approach, Your Honor?

16 THE COURT: What?

17 MR. DEUSCHLE: May I approach the podium?

18 THE COURT: Oh. The podium. It's not a podium. It's
19 a lectern.

20 MR. DEUSCHLE: The lectern. My apologies.

21 THE COURT: Podium is what the conductor stands on
22 when he directs the orchestra.

23 MR. DEUSCHLE: I promise not to do that.

24 THE COURT: Okay.

25 MR. DEUSCHLE: Your Honor, just very briefly, the

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1 Government objects to the introduction of Ms. Hamilton on two
2 grounds. The first is timing. The witness was disclosed to us
3 last night in an email about 8:00 p.m., and the Government is
4 prejudiced by this late introduction. We have not had time to
5 adequately prepare for this witness to be introduced.

6 THE COURT: Were you watching the baseball game, and
7 that's why you couldn't prepare?

8 MR. DEUSCHLE: I was not watching the baseball game,
9 unfortunately.

10 THE COURT: Maybe there wasn't one last night. It's
11 tonight.

12 MR. DEUSCHLE: That answers your question.

13 THE COURT: Thursday Night Football.

14 MR. DEUSCHLE: Yes. I did not get to watch that
15 either, unfortunately. But I would just point out for the
16 Court, two weeks ago the plaintiffs said they were ready to take
17 this case to this hearing, and even last Friday, after the
18 Government gave notice to the Court and plaintiffs' counsel
19 about the recent broadcast from ICE, plaintiffs said they were
20 still ready to proceed. We don't think now that they can
21 produce this witness at this late stage. Assuming that it's
22 going to be to address this broadcast that just came out ten
23 days ago, we have not had time to prepare. And so --

24 THE COURT: The broadcast being the October 22nd?

25 MR. DEUSCHLE: Yes. I'm sorry, Your Honor. I think

1 this witness, our understanding, is to address the October 22nd
2 broadcast. And as we told the Court on about a week ago Friday,
3 we didn't think this case was ripe, because that broadcast had
4 just came out, and I believe that's the bases to introduce this
5 witness at this late stage, and we think we are prejudiced by
6 it. We raised to the plaintiffs, and we shouldn't now have to
7 try to scramble at the last minute for this late introduced
8 witness.

9 THE COURT: Okay. Who is going to respond to that?

10 MS. McLEAN-RIGGS: Me, Your Honor. The first thing I
11 would say is that we disclosed Ms. Hamilton as a rebuttal
12 witness, and the Government informed us that they believe she is
13 properly called in our case in chief. I am not particularly
14 picky about when we call Ms. Hamilton. We intend to introduce
15 Ms. Hamilton's testimony about events that occurred in Durango
16 on Monday. And the relationship to the broadcast is that these
17 events occurred after the broadcast.

18 And the Government has made the argument repeatedly
19 that the broadcast has in some way cured or can be expected to
20 cure any wrongful practice that was occurring. So, we are
21 intending to rebut that argument.

22 The other thing I would say, Your Honor, is that I will
23 elicit testimony from Ms. Hamilton that she was interviewing
24 people this week. She completed her last interview last night.
25 We disclosed to the Government as soon as we were able to.

1 THE COURT: Well, the objection is sustained, but
2 depending on what they put on in their case, maybe you can call
3 her as a rebuttal witness.

4 MS. McLEAN-RIGGS: Thank you, Your Honor.

5 THE COURT: So, you're resting at this point?

6 MR. KAWANABE: We have a few more declarations for
7 Your Honor's consideration.

8 THE COURT: A few more declarations?

9 MR. KAWANABE: We do.

10 MS. MIYATA: Briefly, Your Honor. Bianca Miyata for
11 plaintiffs. At this time, we would like to move to admit
12 portions of plaintiffs' declarations that are relevant to class
13 certification. We understand that this is not a hearing
14 regarding class certification, so we did not --

15 THE COURT: Well, it might be.

16 MS. MIYATA: For efficiency sake, we did not elicit
17 testimony on those topics.

18 THE COURT: Like I said yesterday, I think it's
19 possible that their standing objection has -- and their argument
20 that the Court cannot make a statewide injunction might bring
21 the class action issue back into play.

22 MS. MIYATA: This is our understanding as well, Your
23 Honor. And in order to conserve the Court's time, and out of
24 efficiency, we would like to admit the paragraphs of the
25 plaintiffs' declarations that speak to class certification.

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1 We've conferred about various declarations this morning
2 with the Government, and our understanding is that the
3 Government has no objection to the admission of declarations
4 from any witness who is testifying in this hearing. I'm happy
5 to go through each declaration and provide the relevant
6 paragraph numbers so we know exactly what we're talking about
7 here.

8 THE COURT: You don't want the whole declaration?
9 Just a --

10 MS. MIYATA: I will take the whole declaration if you
11 will allow, sir.

12 THE COURT: I mean, I've read the declarations.

13 MS. MIYATA: If there's no objection, we would seek to
14 admit the whole declaration.

15 MR. LENEIS: So, I'm not sure which declarations we're
16 talking about here. But to the extent we're talking about
17 declarations from witnesses who have already testified and been
18 subject to cross examination, the Government doesn't object to
19 the introduction of those declarations into the record for this
20 proceeding.

21 THE COURT: I appreciate that. So, that's number one?

22 MS. MIYATA: This is correct. Number one, for
23 Mr. Ramirez Ovando.

24 THE COURT: Number two?

25 MS. MIYATA: For Ms. Dias Goncalves.

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1 THE COURT: Number six?

2 MS. MIYATA: So, on my list I have number three for
3 GRR. Looking to my colleagues.

4 THE COURT: All right. GRR. And number four is JST.

5 MS. MIYATA: And number four for JST.

6 THE COURT: But you don't want number six? And who is
7 JCC?

8 MS. MIYATA: JCC is one of the declarants that my
9 colleague had previously spoken about.

10 THE COURT: Okay.

11 MS. MIYATA: No. I'm sorry. Excuse me. Not one of
12 the declarants my colleague previously spoke about, but for this
13 purpose for class certification, I am merely referring to those
14 four declarations that Your Honor has previously referenced, the
15 four named plaintiffs in this case.

16 THE COURT: All right. Those are admitted. Thank
17 you.

18 MS. MIYATA: That I believe are not objected to.

19 THE COURT: Right. Admitted.

20 MR. KAWANABE: Your Honor, we have two other
21 declarations. Ms. Kurtz?

22 THE COURT: Two more?

23 MR. KAWANABE: Two more, Your Honor.

24 THE COURT: Which ones?

25 MS. MIYATA: I apologize. Just for clarification, 1

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1 through 4 are now admitted; correct?

2 THE COURT: Correct.

3 MS. MIYATA: All right. Thank you.

4 THE COURT: But you've got some more?

5 MS. KURTZ: Yes, Your Honor. Just for the record, we
6 would also move to admit Plaintiffs' Exhibits 5 and 10. These
7 are JCC, you just asked about, and then Eida Altman. These are
8 witnesses we were unable to call today, and just anticipating
9 the objections we have heard from defendants about their being
10 hearsay, not sworn under oath, and not subject to cross
11 examination, first, I'd say all those objections go to their
12 weight, not their admissibility. And for purposes of this
13 preliminary relief, Your Honor can certainly consider them and
14 decide what weight they're due.

15 But responding substantively, while they're not sworn
16 under oath, they are sworn under penalty of perjury, which
17 Federal Statute 28 USC 1746 provides makes a declaration so
18 sworn have like force and effect as declarations sworn under
19 oath.

20 And second, for Mr. JCC, as defendants have
21 acknowledged, that declaration is made based on his personal
22 knowledge. And for Eida Altman, she's the executive director of
23 the Denver Metro Tenants Union, and describes conversations and
24 observations very close in time to an ICE raid in early
25 February. And so given the closeness in time, the intensity of

1 what has sort of just transpired, we think there is indicia of
2 reliability there as well.

3 And finally, defendants raised the general question of
4 whether under all the circumstances, it's appropriate for the
5 Court to consider this evidence. And here, I will just point
6 out that as a result of the challenged practice, it is
7 enormously difficult to get witnesses who have been personally
8 impacted by these warrantless arrests to appear before the
9 Court, not only because it's incredibly difficult for folks in
10 detention to speak to attorneys at all, but the ones that we can
11 speak to are absolutely terrified. And reasonably so, for
12 reasons cited in our bench brief focus matter.

13 So, this is frankly just some of the best evidence
14 available to inform Your Honor about what's happening throughout
15 Colorado. So, we simply ask that it be admitted so Your Honor
16 has the opportunity to consider it.

17 THE COURT: Let me take a look at them first.

18 (Pause in the proceedings.)

19 THE COURT: Okay.

20 MR. LENEIS: A couple things, Your Honor. First of
21 all, there's been no assertion prior to this morning that these
22 witnesses are unavailable to testify. That was never sort of
23 described to the Government in those terms, and I don't believe
24 they've made a showing in court that they're unavailable to
25 testify. Perhaps it's inconvenient for them to be here, but

1 unavailability is a different -- has a different meaning within
2 the law, and so that showing has not been made.

3 Second, in terms of the protection of privacy, I think
4 the Government has shown that we've been willing to cooperate
5 with the plaintiffs in terms of keeping information private
6 about the people that they would like to have testify, and so I
7 think that the argument about privacy being the reason why these
8 witnesses can't testify today is incomplete.

9 They can't testify today because of privacy and time.
10 Given time, I'm certain that the parties could have worked out
11 ways for privacy protections to have been put in place that
12 would have been sufficient to satisfy the concerns of the
13 plaintiffs in the same way that we did for the named plaintiffs.

14 So, this gets back to what my colleague, Mr. Deuschle,
15 was talking about in terms of the plaintiffs' desire to have
16 this hearing happen as quickly as possible. The fact that these
17 people cannot be present at the hearing and testify in a way
18 that protects their privacy is more a function of time than it
19 is of unwillingness on the Government's part to allow their
20 identities to be protected in such a way that the Government
21 would still have the opportunity to identify the circumstances
22 of the arrests that are being discussed, and cross examine to
23 bring out the specific facts about the arrests that would
24 indicate or not indicate whether the arrest was in fact an
25 unlawful warrantless arrest.

1 Finally, in terms of the declaration for Ms. Altman,
2 this one suffers from the problems that I described earlier of
3 being an anonymized and synthesized product of hearsay. There's
4 no assertion for Ms. Altman that she is an immigration attorney
5 with some kind of specialized knowledge about immigration law,
6 or that she has had substantial interaction with immigration
7 authorities. In fact, the declaration states quite the
8 opposite, that she's not particularly familiar with immigration
9 law. What she does is she provides assistance to low income
10 tenants, some of whom are from noncitizen families, but many of
11 whom are not.

12 And she happened to be working with families at the
13 apartment complex that was the subject of an ICE operation, so
14 she happened to get phone calls from people who lived there.
15 Her declaration is based on her synthesization -- synthesizing
16 the information that she received from people that she knows at
17 that apartment complex. Those people could be here to testify.
18 Those people could have submitted declarations in their own
19 right rather than having those -- rather than having the
20 information that they know processed through a third party, and
21 then put in front of the Court.

22 THE COURT: So, why aren't these people able to be
23 here?

24 MS. KURTZ: The declarants?

25 THE COURT: Yes.

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1 MS. KURTZ: I didn't mean to suggest unavailability in
2 the legal sense. Just as a practical matter, we can't call them
3 today.

4 THE COURT: Why?

5 MS. KURTZ: I think one is on the West Coast, and one
6 is in detention.

7 THE COURT: Hopefully not Ms. Altman?

8 MS. KURTZ: No. JCC, Your Honor.

9 THE COURT: Well, could they testify by telephone?

10 MS. KURTZ: I'm honestly not sure of the answer to
11 that question, Your Honor.

12 THE COURT: What is the reason that it's too
13 inconvenient for Ms. Altman to be here? She's local; right?
14 Mr. Kawanabe, if you have the answer, just go ahead and give it.
15 You don't have to whisper. Just tell me.

16 MR. KAWANABE: My understanding is she's unavailable,
17 and she's out of town. And so I think, if I may confer with my
18 colleague?

19 MS. KURTZ: I suppose we will withdraw those
20 declarations, Your Honor.

21 THE COURT: Withdraw both of them?

22 MS. KURTZ: I suppose so.

23 THE COURT: Okay. All right. So, the plaintiff
24 rests, and are you going to present any evidence, defendants?

25 MR. BROWN: Yes, Your Honor. We have a witness.

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1 THE COURT: A witness?

2 MR. BROWN: A witness, yes. Mr. Gregory Davis --
3 Davies. He's here and ready.

4 THE COURT: Good morning.

5 THE WITNESS: Good morning.

6 (The Witness is Sworn)

7 THE COURT: Thank you. Have a seat.

8 **DIRECT EXAMINATION**

9 BY MR. BROWN

10 Q Good morning. What is your name?

11 A Gregory Davies.

12 Q What is your current position with DHS?

13 A I'm the assistant field office director for the Denver
14 field office.

15 THE COURT: Speak up a little, please. Maybe it's
16 just my old ears, but I have to be able to hear you.

17 THE WITNESS: Yes, Your Honor.

18 Q. (By Mr. Brown) And what are your responsibilities as the
19 assistant field office director?

20 A I am currently overseeing all of the enforcement operations
21 in the Denver local area. I have three at-large teams that
22 enforce immigration laws throughout the Denver metro area,
23 targeting criminal aliens and terrorists, removing criminal
24 aliens from communities, and possibly removing them from the
25 country.

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1 THE COURT: What is your agency again, sir?

2 THE WITNESS: Immigration Customs Enforcement.

3 THE COURT: ICE?

4 THE WITNESS: ICE.

5 THE COURT: But are you on a sub agency of ICE?

6 THE WITNESS: I'm under -- I'm with ERO, Enforcement
7 Removal Operations.

8 THE COURT: Which is the same thing as Mr. Guadian
9 was?

10 THE WITNESS: Yes, Your Honor.

11 THE COURT: Do you report to Mr. Guadian, or did you?

12 THE WITNESS: So, I -- I'm the third in command. So,
13 I report to the deputy, and he is the -- he was the director.

14 THE COURT: Okay. Thank you.

15 THE WITNESS: Yes, Your Honor.

16 Q. (By Mr. Brown) How long have you worked with ICE?

17 A Since June of 2012. Or, I'm sorry. June of 2006.

18 Q Almost 20 years?

19 A Almost 20 years, yes.

20 Q What made you get into law enforcement?

21 A Previously I was enlisted in the Navy. I was a submarine
22 sailor. Upon getting out of the service, I wanted to continue
23 in federal service, and met up with somebody that talked me into
24 coming into ICE.

25 THE COURT: What's it like to be a submarine sailor?

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1 THE WITNESS: It was interesting, Your Honor.

2 THE COURT: Is it scary to be under water all that
3 time?

4 THE WITNESS: Once you get used to it, you're busy.
5 You don't have time to think about it.

6 THE COURT: Interesting.

7 Q. (By Mr. Brown) Can you please briefly describe your
8 positions with ICE over those years.

9 A Yes. So, like I said, I started in June of 2006 as an
10 assistant back when it was Detention and Removal Operations,
11 prior to it being Enforcement Removal Operations. I was
12 promoted to an immigration enforcement agent in 2008, August of
13 2008. At that point I went to the academy, came back as a sworn
14 agent. In May of 2015, I was promoted to a deportation officer.
15 In May of 2019, I was promoted to my first supervisory position
16 as a supervisory detention and deportation officer. And then in
17 December of 2019, I was promoted to the position I'm in now.

18 Q What is the mission of ICE?

19 A To locate, identify, and often remove criminal illegal
20 aliens from the United States.

21 Q And why is that ICE's mission?

22 A To protect local communities from criminal aliens, from
23 terrorists, to ensure the local communities are safe.

24 Q And how does the Denver ERO, your local office -- how does
25 Denver ERO help carry out that mission?

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1 A I have, like I mentioned before, multiple teams out in the
2 communities. We work with federal agencies, federal partners to
3 ensure we are finding illegal aliens, enforcing immigration
4 laws, and possibly, like I said, removing them from the United
5 States.

6 THE COURT: What is a criminal alien? You used the
7 term "criminal alien."

8 THE WITNESS: A criminal alien, an alien that has come
9 into the country illegally and also has committed other crimes
10 within the communities.

11 Q. (By Mr. Brown) Do Denver ERO officers receive training on
12 how to carry out their duties?

13 A Yes, they do. We go through an academy down in FLETC,
14 Georgia, and then continue training throughout their career.

15 Q And do they receive training about how to conduct
16 warrantless arrests?

17 A Yes, they do.

18 Q What kinds of training?

19 A There's a multitude of training. We have Fourth Amendment
20 training that we take twice a year from our local attorneys, and
21 then along with the training that you will get down in Georgia.

22 Q Are Denver ERO officers trained on Title 8 and 8 USC 1357?

23 A Yes, they are.

24 Q Is that included in those trainings you described?

25 A Yes, they are.

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1 Q And how often do officers receive these trainings?

2 A Like I said, the Fourth Amendment training we will get
3 twice a year from our attorneys. The main training is once in
4 the beginning of their career. And then there's other trainings
5 that we do throughout the year just to maintain proficiencies.

6 Q And what do these trainings teach regarding the
7 requirements of how to conduct a lawful warrantless arrest?

8 A It ensures that the officer first is aware. There's two --
9 it's a two-pronged approach. You have to ensure that the person
10 that you are talking to is in fact illegally in the country.
11 And you have to ensure that that person -- there's a possibility
12 of that person possibly escaping before a warrant could be
13 obtained.

14 THE COURT: But it's not possibility, is it? It's
15 probability.

16 THE WITNESS: Probability. Yes, Your Honor.

17 THE COURT: Probable cause.

18 THE WITNESS: Yes, Your Honor.

19 Q. (By Mr. Brown) And to be clear, for the first prong of
20 that, do you have to -- do the officers in the field have to in
21 fact be certain that the person is here illegally?

22 A Absolutely.

23 Q They have to be certain that they are here illegally, not
24 just have probable cause to believe that they're here illegally?

25 A Yes.

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1 Q So, do they have -- is probable cause that they are here
2 illegally sufficient to meet the first prong?

3 A So, probable -- can you ask that -- I'm sorry.

4 Q Let me back up. Can you tell me the two prongs again that
5 are the requirements for a warrantless arrest?

6 A To determine that the person is here illegally, and that
7 the person has the probability of possibly escaping prior to a
8 warrant can be released.

9 THE COURT: Probability of possibility? What does the
10 statute say?

11 THE WITNESS: That the -- now I'm getting confused.
12 I'm sorry.

13 MR. BROWN: Let me back up here.

14 THE COURT: Well, what did they say in the training,
15 then?

16 THE WITNESS: I don't have it in front of me.

17 THE COURT: You're looking at your attorney for help.
18 I think it says -- I don't remember the exact words, but it's
19 been interpreted as probable cause. What are the exact words?
20 Mr. Kawanabe, can you remind me?

21 MR. KAWANABE: From the statute, I believe reason to
22 believe from ICE's --

23 THE COURT: Reason to believe.

24 MR. BROWN: Can we pull up Plaintiffs' Exhibit 127,
25 please.

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1 THE COURT: Reason to believe what? That he's likely
2 to escape?

3 MR. KAWANABE: I think so. We're pulling up the
4 statute on your screen.

5 MR. BROWN: Can we look at A2, please. If we
6 highlight -- can you --

7 Q. (By Mr. Brown) Do you see in the third line where it
8 says, if he has reason to believe? Can you read from there,
9 please.

10 A Yes. If he has reason to believe that the alien so
11 arrested is in the United States in violation of any such law or
12 regulation and is likely to escape before a warrant can be
13 obtained for his arrest, but the alien arrested shall be taken
14 with -- without unnecessary delay for examination before an
15 officer of the service having authority to examine aliens as to
16 their right to enter or remain in the United States.

17 Q Okay. Thank you. Does that refresh your recollection
18 about what you're taught in these trainings regarding
19 warrantless arrests?

20 A Yes.

21 Q Is that accurate about what you're --

22 A Yes.

23 Q Do you expect your officers -- your subordinates to comply
24 with that regulation?

25 A Yes.

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1 Q And in your experience, do Denver ERO officers follow that
2 regulation?

3 A Yes, they do.

4 Q Okay. So, I want to shift gears a little bit to talk about
5 how Denver ERO officers execute their mission. How do Denver
6 ERO officers learn about removable aliens?

7 A So, we have multiple avenues of leads that we get. One of
8 the main places we get our leads is called the A Crimes system.
9 When an alien is arrested for a local crime here in the
10 community, and they get booked into a local custody, they will
11 fingerprint them. If that alien has anything to do with us at
12 any point in his life or her life, that record would then be
13 sent to us through this A Crimes system. And when they get
14 released from custody, we will use that lead to go and find
15 them. We will research the individual, research the
16 information, and go and target a specific alien upon release
17 from custody.

18 Q So, once Denver ERO officers have identified a removable
19 alien through those leads, so they identify this target, how do
20 they go about apprehending them?

21 A They will build a case report for this alien, a field
22 office worksheet. They will gather -- we will do all of our
23 systems checks, all of our immigration checks, all of our
24 criminal checks to ensure that this person is in fact removable
25 from the country, is in fact residing illegally in the country.

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1 And then a team will get put together. We will do surveillance
2 on the different locations that we have on record. And when the
3 person is located, then the team will come together, and we will
4 encounter that subject, determine that he or she is the person
5 that we are looking for, and take that person into custody.

6 THE COURT: And you have a warrant at that point?

7 THE WITNESS: Yes, Your Honor.

8 Q. (By Mr. Brown) So, if during this investigation process
9 they learn of a target's address and have a warrant, do they
10 attempt to apprehend that person by knocking on the person's
11 door?

12 A That used to be a practice previously. Recently we do not
13 use that practice any longer. The administrative warrant that
14 we have still has -- we still have to follow the Fourth
15 Amendment. We cannot -- it's not like a criminal warrant where
16 we can just walk into the residence. We would have to have
17 consent to come into the residence. They would of course have
18 to answer the door before we could even talk to them. The
19 communities have been in -- have been taught these procedures.
20 So, at this point knocking on doors really does not afford us
21 the ability to arrest the individual. So, it's -- it no
22 longer -- that technique no longer works.

23 Q So, you mentioned that instead, you use surveillance to try
24 to identify the target. How many officers are involved in that?

25 A Anywhere from three to five officers, or more, depending on

1 public safety and the type of case that we're looking at.

2 Q And how long does that take?

3 A It could take hours. It could take days. It could take --
4 I mean, some of them take weeks. It just depends on the case.

5 Q So, if the surveillance is successful and the officers
6 believe that they have identified that target, they found that
7 target in public, what do they do?

8 A At that point they would go and encounter -- they would
9 pattern the target, determine the safest and most efficient way
10 to encounter the target, safety for the officers, safety for the
11 target, safety for the community. Then encounter the target,
12 determine who that target is, and then take them into custody,
13 ensure that it's the target that we are looking for, and then
14 take that target into custody.

15 Q So, how do they determine that this individual was the
16 target they're looking for?

17 A They would conduct a field -- a consensual field interview
18 with the target, asking them basic name, date of birth, where
19 you're from, do you have paperwork to reside in the United
20 States legally? We would ask for an identification. And at
21 that point, the officers would determine if that is in fact our
22 target, and then take that target into custody.

23 Q What do officers do with the identification information
24 they obtain to confirm that it is or is not their target?

25 A They would -- I mean, if they needed to, they would run

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1 more records checks on it. If the name didn't match, we would
2 determine maybe this isn't our target. We have the ability to
3 call a place called SECTOR, a place -- we have a command center
4 at our field office that we could call where officers are
5 standing by waiting to do database checks if we need to.

6 Q Can you tell me more about SECTOR? What is SECTOR?

7 A SECTOR is a law enforcement center for immigration
8 purposes. It's officers and analysts that are stationed there.
9 It's manned 24 hours a day, and they're just there waiting to
10 help the field. We call in. We could call a name and date of
11 birth, or A numbers or any specifics, and they will give us the
12 information that they find in the immigration system along with
13 criminal systems.

14 Q So, you mentioned that SECTOR folks can look into an
15 individual's criminal history. Can they also identify if a
16 warrant -- if there's an existing warrant for the arrest of this
17 person?

18 A Yes, they can.

19 Q And is that just a criminal warrant, or can that be an
20 administrative warrant as well?

21 A It can be both warrants.

22 Q Can they determine if the individual is in removal
23 proceedings?

24 A Yes, they can.

25 Q Can they determine if the individual is a lawful permanent

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1 resident?

2 A Yes, they can.

3 Q Can officers check these databases without physical --
4 physical identification like a driver's license?

5 A Yes. If they have a name and date of birth, they can.
6 Also, we have the ability to run fingerprints in the field, or
7 run facial recognition in the field.

8 Q Once the officers have positively identified the person as
9 the target of their investigation, what do they do?

10 A They would take that person into custody, bring them back
11 in the field office, and process them, depending on whatever the
12 type of case it is, process them for that type of case, and then
13 bring them -- most oftentimes bring them to the facility for
14 detention.

15 Q Okay. I want to shift gears a little bit more and touch on
16 something you brought up a second ago. You mentioned working
17 with agency partners. Do Denver ERO officers ever assist these
18 agency partners with their operations?

19 A Yes, we do.

20 Q Can you tell me a bit about that, please.

21 A So, we currently -- under my purview, under my teams, I
22 have one officer that's assigned to the strike force DEA team.
23 I have another officer assigned to the strike force FBI team.
24 And then I have another officer assigned to VOTF, the U.S.
25 Marshals violent offenders team.

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1 Q Are there any other agencies that Denver ERO works with in
2 these operations?

3 A We will work with Homeland Security Investigations, our
4 sister agency. We will work with ATF. We will work with IRS.

5 Q And how do these operations look in the field?

6 A There's a vast different ideas of how things work. A lot
7 of them, they will be started -- one that comes to mind is the
8 DEA operation that we did, the nightclub op. There will be a
9 criminal entity to it. The DEA will most likely have search
10 warrants or criminal arrest warrants for the operation. They
11 will come to us, and help for identification of who they're
12 looking at, who is involved.

13 A lot of the aliens that we look at, a lot of our
14 targets don't have a lot of their stuff in our systems and our
15 United States systems. We could find them in foreign systems
16 for the DEA. So, if they don't know who these people are, a lot
17 of times they will come to us asking our help for identification
18 purposes. And then of course when the search warrant is
19 executed, we will be with them, depending on if there is
20 knowledge that there is illegal -- illegal immigration activity
21 going on at that -- at that target location.

22 Q So, you mentioned one of these operations that took place
23 at a nightclub in Colorado Springs of this year; is that right?

24 A Yes.

25 Q Were you involved in that operation?

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1 A I was there at that operation.

2 Q Can you tell me about it, please.

3 A It was a search warrant for an after hours illegal
4 nightclub. The nightclub started after the hours of 2 o'clock
5 in the morning. The targets that ran it, the DEA sent to us,
6 multiple of them were illegal -- illegal immigrant -- illegal
7 aliens in the country. There was known to be guns and drugs
8 there. And it was a known TDA, Tren de Aragua nightclub, after
9 hours nightclub. So, they brought -- the DEA brought us in for
10 assistance and identification, and then in assistance in
11 possibly arresting and detaining people that were in the club
12 illegally in the country.

13 Q What agency led that operation?

14 A The DEA.

15 Q And you mentioned there was a search warrant. What agency
16 obtained the search warrant?

17 A The DEA did.

18 Q You mentioned Tren De Aragua. What is that?

19 A It's a transnational criminal organization that was founded
20 in Venezuela, that came up from Venezuela. I believe it's now
21 considered a terrorist organization.

22 Q And you were part of this operation; is that correct?

23 A That's correct.

24 Q I want to ask you about a different operation. Are you
25 familiar with another joint operation that took place on

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1 February 5th, 2025, at several apartment complexes in Aurora,
2 Colorado?

3 A Yes, I am.

4 Q Can you tell me about that operation, please.

5 A So, that operation was led by HSI, Homeland Security
6 Investigations. I believe there was ten search warrants
7 scattered across three separate apartment complexes. Again,
8 these apartment complexes were known for the same TDA criminal
9 activity in them. One of them I believe actually got shut down
10 because of the TDA activity that was going on in it. I was on
11 scene at three of the different apartment complexes. And
12 multiple agencies were involved in that one as well. HSI led
13 it, but every federal agency, I believe, was involved in it.

14 Q Like which ones?

15 A ATF was involved. FBI was involved. DEA was involved.

16 Q So, we talked a bit about the targeted operations and these
17 joint operations. While Denver ERO officers are involved in
18 these operations and they're in the field, what happens if they
19 encounter an individual who is not the target?

20 A A consensual field interview would be performed. We would
21 again ask them basic information, name, date of birth, place of
22 birth. Do you have permission to reside here? Do you have
23 paperwork to reside here?

24 Q And in that situation, how do officers determine whether
25 there's reason to believe that person may be in the U.S.

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1 unlawfully and whether they pose a flight risk?

2 A So, a lot of times it will be self admittance. They will
3 admit to us that they're not here legally. If not, we would --
4 like I said, we have the ability to do fingerprint scans or
5 facial recognition to determine who they are if we have -- if we
6 have seen them before in the past. And with the officers'
7 experience and the totality of the situation, the officers would
8 determine if the subject is not being honest, if the subject is
9 being evasive with the questions. All of those are indicators
10 that this person could possibly be a flight risk, and at that
11 point would determine whether or not we would take him into
12 custody without a warrant.

13 Q In your experience during these interviews, are these
14 individuals forthcoming with information when asked?

15 A Not often.

16 Q And you mentioned that the officers will run database
17 checks on these individuals. Those are the same ones we talked
18 about earlier?

19 A Yes, it is.

20 Q Can the officers in the field use biometrics to check the
21 databases for information on these individuals?

22 A Yes, they can.

23 Q Can these officers determine if there is an existing arrest
24 warrant for these individuals --

25 A Yes. Yes, they can.

1 Q If these database checks reveal information that is
2 inconsistent with what the individual told officers, what impact
3 would that have on the encounter?

4 A Again, then we would realize the subject is not being
5 forthcoming with us, and at that point, we would take him into
6 custody.

7 Q So, what types of information inform whether officers have
8 a reason to believe that one of these individuals poses a flight
9 risk?

10 A Like I said, we will start with basic information that
11 normally we get answered rather quickly. But we would continue
12 the questioning. We would ask where they resided. Do they have
13 family? Another -- another huge data piece for us is mother and
14 father's name, so we could determine who they are in our
15 systems. And usually when we get to these questions is when the
16 evasiveness would start. And completely understandable, but we
17 would need that information to determine who these people are.

18 Q And so if one of these individuals stops answering the
19 officer's questions, how does that affect the officer's ability
20 to assess other factors that might be relevant to the chance of
21 escape?

22 A I'm sorry. Could you ask that again?

23 Q So, if the individual, this individual, it's not the
24 target, stops answering the officer's questions, how does that
25 affect the officer's ability to assess other factors that might

1 also be relevant to that individual's chance of escape?

2 A Yeah. At that point, we would need that information if we
3 were to come back and find them. If we were -- if we were to go
4 and request the warrant from the supervisor, but we didn't know
5 where the subject lived, we didn't know any of the basic
6 biographical information on the subject, we wouldn't be able to
7 find him, and it would make it difficult for us to take that
8 subject into custody at a later date.

9 Q Are officers expected to keep asking additional questions
10 after an individual stops giving information?

11 A No.

12 Q Why not?

13 A If they're not getting the information they need at the
14 time, the bigger situation that we have, and especially in this
15 day and age, the officer safety becomes an issue. Being on
16 scene too long causes people to show up, bad actors show up,
17 protestors show up. Consensual encounters really need to be
18 quick. And if we're not getting the information we need at a --
19 in a consensual encounter time, we would need to take that
20 subject into custody for officer safety, for the subject safety,
21 and for the community safety.

22 Q If the individual's answers to the questions are
23 inconsistent or contrary with the information that officers find
24 in the databases that they check, what impact does that have on
25 flight risk?

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1 A It's a huge impact. We would definitely -- we would take
2 them into custody if they were lying about encounters with
3 immigration previously.

4 Q So, if officers encounter one of these individuals and
5 determine that there is reason to believe that he or she may be
6 in the U.S. unlawfully, will the officers always arrest that
7 individual?

8 A Not always.

9 Q Why not?

10 A There's different factors that we would take into effect.
11 If the subject is being honest with us, and we have our target,
12 and there's a collateral, and there's no reason to take that
13 other person into custody at that time, and the situation is,
14 you know, getting volatile, we would absolutely just leave the
15 collateral there and just take the subject into -- just take the
16 target into custody.

17 Q If officers determine that the collateral is already
18 actively participating in immigration proceedings, does that
19 impact the arrest decision?

20 A Absolutely. If they're going to court like we have asked
21 them to do and they're out on either bonds or OREC, there would
22 be no reason for us to take them into custody.

23 Q And if the officers determined that this collateral has an
24 ankle monitor as part of immigration proceedings, will the
25 officers arrest that individual?

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1 A Not if they're compliant on the system. They do get a
2 report -- the officers get reports monthly and weekly, and if
3 they're maintaining compliance on the system, there would be no
4 reason for us to take them into custody.

5 Q And if the officers determined that the collateral is a
6 legal permanent resident, will they arrest that individual?

7 A Not at the time. We would start an investigation later on
8 to see if there was any criminal issues for that person's
9 behalf.

10 Q And to be clear, the officers in the field can make those
11 determinations from databases that they can check in the field;
12 is that right?

13 A Absolutely.

14 Q So, if the officers determine that there is a proper basis
15 to arrest an individual, what happens next?

16 A They would take him -- they would take that person into
17 custody, bring them back to our field office, and then the
18 process would start. They would fingerprint them and process
19 them and process the case depending on what type of case it is.

20 Q What does processing the case entail?

21 A On most cases, it's giving them the charging documents,
22 what we call an NTA, a notice to appear. The notice to appear
23 would be issued to them, which spells out what we're charging
24 them with, what section of law we're charging them with. It
25 would also contain the warrant, the administrative warrant of

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1 arrest, and it would contain a custody form.

2 Q Okay. Can I please pull up Exhibit H, please. Do you
3 recognize this document?

4 A Yes, I do.

5 Q What is it?

6 A This is a warrant of arrest.

7 Q And can we scroll down to the second page, please. Do you
8 recognize this as well?

9 A Yes, I do.

10 Q What is it?

11 A This is the notice to appear that I was talking about.

12 Q And if we go back up to the first page, can you take a look
13 and tell me who this warrant of arrest is for.

14 A It's for Refugio Ramirez Ovando.

15 Q And does this indicate what date this document was
16 generated?

17 A Yes, it does.

18 Q What date is that?

19 A Looks like May 19th of '25.

20 MR. BROWN: I would move to admit Exhibit H, please.

21 MR. KAWANABE: No objection.

22 THE COURT: Admitted.

23 Q. (By Mr. Brown) Does this -- does the warrant here have
24 any sort of expiration date?

25 A No, it doesn't.

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1 MR. BROWN: Thank you. I would also like to move to
2 admit Exhibits I, J, and K, which are the other documents for
3 the other plaintiffs in this case.

4 MR. KAWANABE: May I ask a quick question? These are
5 the redacted versions?

6 MR. BROWN: Yes.

7 MR. KAWANABE: If you will give me just a second? No
8 objection to the redacted versions.

9 THE COURT: They're admitted.

10 MR. BROWN: No further questions. Thanks.

11 THE COURT: Cross examination?

12 MR. KAWANABE: Yes, Your Honor.

13 **CROSS EXAMINATION**

14 BY MR. KAWANABE

15 Q Good morning, Mr. Davies.

16 A Good morning.

17 Q My name is Kenzo Kawanabe. I represent the plaintiffs in
18 this lawsuit. We have not met before; is that correct?

19 A That's correct.

20 Q And do you go by -- is it Supervisor Davies, or what's your
21 title?

22 A Assistant field -- assistant field office director.

23 Q Is it okay if I call you Mr. Davies?

24 A Yes. That's fine. Thank you.

25 Q Thank you. And how long have you had that position? When

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1 did you get that position, again?

2 A It was December of 2019.

3 Q And since December 2019, have you been in the field?

4 A Yes, I have.

5 Q Okay. So, can you describe to us how often you're in your
6 office versus in the field?

7 A It depends day to day. If there's an operation, I'm
8 usually in the field. Day to day, normally I'm in my office.

9 Q Okay. Supervising ICE agents that are in the field;
10 correct?

11 A Correct.

12 Q And those ICE agents that normally do these warrantless
13 arrests, what are they called?

14 A Deportation officers.

15 Q And you were a deportation officer; is that right?

16 A That's correct.

17 Q And when were you last a deportation officer?

18 A May of 2019 is when I picked up my first supervisory role.

19 Q And you were first employed with ICE starting in 2006; is
20 that correct?

21 A That's correct.

22 Q And you've also submitted a declaration in this case; is
23 that fair?

24 A That's fair.

25 Q And I believe you -- let me ask it this way: When a Denver

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1 ERO officer encounters a collateral whom the officer has reason
2 to believe is an illegal alien, the officer may attempt to
3 obtain an arrest warrant for that individual; is that correct?

4 A Yeah. That's correct.

5 Q All right. And arrest warrants must be issued and signed
6 by a supervisor based on probable cause that the individual is
7 an illegal alien; is that correct?

8 A That's correct.

9 Q And when an officer declines to detain someone, they may
10 issue that individual a form G-56?

11 A That's correct.

12 Q What is G-56?

13 A It's a call-in letter. It's a request for them to come to
14 our office to discuss their immigration matters.

15 Q But it's not a warrant; is that fair?

16 A That's fair.

17 Q And in your experience, individuals who have been served
18 with a G-56 rarely report or respond to that call-in letter; is
19 that fair?

20 A That is fair.

21 Q And I believe you're aware of two instances where Denver
22 ERO officers declined to arrest a collateral even though the
23 officers had determined the individual was an illegal alien?

24 A That -- on my declaration, it was the week prior. So, yes.
25 That was -- that's what I was talking about on my declaration.

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1 Q Okay. Are you aware of more than two instances where this
2 has happened?

3 A Multiple instances. Every case is different.

4 Q And at least in those instances that you mentioned in your
5 declaration, Denver ERO officers identified and arrested the
6 target of an investigation, but did not arrest a collateral who
7 was found with the target despite determining the individual was
8 present in the United States without authorization; correct?

9 A Correct.

10 Q And that was because the collateral person in those two
11 instances, they were not flight risks; is that right?

12 A Correct.

13 Q And ICE does not, as a matter of policy, seek arrest
14 warrants for collaterals released based on lack of probable
15 cause of flight risk; is that correct?

16 A I'm sorry. Could you say that again?

17 Q Sure. ICE does not, as a matter of policy, seek arrest
18 warrants for collaterals who are released based on the lack of
19 probable cause of flight risk; correct?

20 A I don't know if that's the -- so, the reason why we
21 wouldn't do a warrantless arrest would be because we could come
22 back and acquire the warrant later and go and find that person
23 at a different time.

24 Q And for those two instances you mentioned in your
25 declaration, did ICE do that?

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1 A We did not do that on those two occasions.

2 Q Suppose a newly hired ICE officer showed up with a detained
3 collateral and told you that he arrested her despite having no
4 probable cause of flight risk. What would you do?

5 A Could you -- I'm sorry. Could you state that again?

6 Q Sure. Let me back up. How many deportation officers do
7 you supervise?

8 A Approximately 20.

9 Q So, suppose a newly hired deportation officer showed up in
10 your office with a detained collateral and told you he arrested
11 her despite having no probable cause of flight risk. What would
12 you do?

13 A I mean, that -- so, this is hypothetical, because it hasn't
14 happened, but there would definitely be a disciplinary issue.

15 Q And what would you do?

16 A So, we have something called the office of professional
17 responsibility. That person would be reported to that office,
18 and an investigation would ensue.

19 THE COURT: I think he's asking what would you do with
20 the individual that was brought in?

21 MR. KAWANABE: Correct.

22 THE WITNESS: Oh. I mean, I'd have to -- I'd have to
23 look at the totality of the situation. I would imagine we have
24 discretion. The person most likely would be released.

25 Q. (By Mr. Kawanabe) Has that ever happened?

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1 A No.

2 Q Have you ever instituted this type of reporting against an
3 officer where you found out that's happened?

4 A No.

5 Q Have you ever discovered an officer who actually did not do
6 a flight risk analysis, but still did arrest someone without a
7 warrant?

8 A No.

9 Q Have you ever investigated for that maybe by checking their
10 immigration forms that they filled out?

11 A So, I would review their encounter on how the person was
12 encountered, how the person -- how it was determined that the
13 person was illegally in the country, and then again, assess why
14 that person was taken into custody based on the flight risk.

15 Q And you're talking about the I-213 forms; is that fair?

16 A Yes.

17 Q Okay. And so in the real world, have you ever reviewed an
18 I-213 form to make sure that the officer properly documented
19 that that arrestee without a warrant was not a flight risk?

20 A Yes. I have reviewed them.

21 Q Okay. How often?

22 A When I was -- so, more when I was a supervisor the first
23 time. Now I'm -- I don't review them as often now.

24 Q And why would you review them?

25 A For correct information.

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1 Q And to make sure that the arresting officer had probable
2 cause of status and likelihood of escape; fair?

3 A Fair.

4 Q And does your office have a policy of reviewing the I-213s
5 to make sure that happens?

6 A Yes.

7 Q So, how often -- is everyone reviewed by a supervisor,
8 then?

9 A Yes.

10 Q And do you know who reviewed the 213s in this case for the
11 four plaintiffs?

12 A I do not off the top of my head.

13 Q Did you review the 213s for this case for the four
14 plaintiffs?

15 A Not when they were arrested, no.

16 Q Understood. But you have for this case?

17 A Yes.

18 Q Because you attached those to your declaration; is that
19 right?

20 A Yes.

21 Q And you mentioned Denver, is it -- let me be clear. ERO
22 and HSI, we called them sister agencies. What does that mean?

23 A So, we're both under DHS, under Department of Homeland
24 Security. We are Enforcement and Removal Operations. They're
25 the Homeland Security Investigators.

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1 Q I see. So, they're both under ICE; correct?

2 A Correct.

3 Q And do they both receive these trainings that you discussed
4 in your testimony?

5 A Yes, they do.

6 Q Do they receive them together?

7 A As of recent, they're starting to. Previously they have
8 not.

9 Q When did they start to receive those trainings together?

10 A I believe in the past month or two.

11 Q Do you know why the change?

12 A No. I'm not aware of -- I don't know why they chose to do
13 that.

14 Q Okay. And I believe the Government asked you about how
15 often these trainings happen; correct?

16 A Yes.

17 Q And I think you said twice a year for Fourth Amendment
18 training; correct?

19 A That's correct.

20 Q But what about the trainings relating to 1357(a)(2) and
21 trainings about how to conduct and determine probable cause for
22 flight risk? How often do those happen?

23 A So, originally when you're at the academy down in Georgia,
24 you would get that training. And we received the training again
25 when an email came out in May of 2022, and then another email

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1 came out in June of this year, and then a third email came in in
2 October. So, when those broadcasts come out, we would sit down,
3 and we would discuss it.

4 Q I see. So, in the last -- if someone were to have worked
5 in ICE arresting without warrants for the last ten years, they
6 would have received one training at the beginning; correct?

7 A Correct.

8 Q One training in 2022; correct?

9 A Correct.

10 Q And then two more recent trainings? Is that what you're
11 saying?

12 A Yes.

13 Q All right. And the reason they received the training in
14 2022 is because the Government entered into a settlement in the
15 Nava case in the Northern District of Illinois. Do you know
16 that? Right?

17 A Yes.

18 Q And that was called a broadcast policy; correct?

19 A Correct.

20 Q But as long as you've been with ICE, just focusing in on
21 the need to have probable cause that a suspect is a flight risk
22 in order to do a warrantless arrest -- just focusing on that,
23 okay? Has that standard of determining that probable cause of
24 flight risk changed since you've been at ICE?

25 A Not that I'm aware of.

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1 Q Let's take a look at that standard. Let's pull up
2 Exhibit -- let's pull up Exhibit 5, please. E. Defendant's
3 Exhibit E.

4 THE COURT: So, you want that admitted?

5 MR. KAWANABE: Yes, Your Honor. Move to admit
6 Defendant's Exhibit E.

7 THE COURT: Any objection?

8 MR. BROWN: No objection.

9 THE COURT: It's admitted.

10 Q. (By Mr. Kawanabe) Mr. Davies, can you see Defendant's
11 Exhibit E?

12 A Yes.

13 Q And is this the broadcast statement of policy from 2022
14 which you were referring to?

15 A This looks familiar. The broadcast that I remember was an
16 email.

17 Q Okay. And I apologize. Does the Government have an extra
18 binder of the physical exhibits we could hand the witness? Do
19 you mind handing that to the witness, if it's not too much
20 trouble? Mr. Davies, we're handing you also a binder of the
21 exhibits. So, if you would like to look at the paper copy,
22 apart from the screen, you're welcome to. Okay? One question I
23 forgot to ask, though, as to the recent October 22nd email,
24 there hasn't been a training, a formal training on 1357(a)(2),
25 has there?

1 A No. Like I said, once the email comes out, we would
2 discuss it as a unit.

3 Q You talk about it; right?

4 A Yes.

5 Q And what does that mean, you talk about it? Compare that
6 to a training.

7 A I would sit down with my supervisors, sometimes with the
8 entire teams, and read through the email and ensure everybody
9 understands what the email is requesting.

10 Q And if we can look at Exhibit E, Mr. Truax, that last
11 paragraph, in considering. You understand that ICE in
12 considering like -- ICE's policy, in considering likelihood of
13 escape, an ICE officer must consider the totality of
14 circumstances known to the officer before making an arrest. Did
15 I read that correctly?

16 A Yes.

17 Q And then it lists various factors relevant to the
18 determination; is that fair? Mr. Truax, can you highlight
19 factors relevant to determination? Is that fair, Mr. Davies?

20 A Yes.

21 Q And it lists various factors relevant to that
22 determination, including the ability to determine the
23 individual's identity; correct?

24 A Correct.

25 Q Knowledge of that individual's prior escapes or evasions of

1 immigration authorities; correct?

2 A Correct.

3 Q Attempted flight from an ICE officer; is that correct?

4 A Correct.

5 Q That's when someone tries to run away or escape from an ICE
6 officer; is that right?

7 A Yes.

8 Q Ties to the community, such as family, home, or employment,
9 or lack thereof; is that correct?

10 A Correct.

11 Q Or other specific circumstances that weigh in favor or
12 against a reasonable belief that the subject is likely to
13 abscond; correct?

14 A Correct.

15 Q And those particular circumstances before the ICE officer
16 are not to be viewed singly, but rather they must be considered
17 as a whole; is that right?

18 A Correct.

19 Q But mere presence within the United States in violation of
20 U.S. immigration law is not by itself sufficient to conclude
21 that an alien is likely to escape; correct?

22 A Correct.

23 Q And then in your book, if you will turn the page. You
24 also -- ICE's policy also instructs that second paragraph,
25 Mr. Truax, when conducting enforcement actions, ICE

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1 officers shall identify themselves as immigration officers; is
2 that correct?

3 A Correct.

4 Q And that's because 8 CFR, that's a regulation,
5 287.8(c)(2)(iii) applies; correct?

6 A Correct.

7 Q There's also a documentation requirement for ICE; correct?

8 A Correct.

9 Q Let's go over that. Next paragraph, Mr. Truax. So, after
10 having made an arrest, a warrantless arrest, an ICE officer must
11 document the facts and circumstances surrounding that
12 warrantless arrest in the narrative section of the I-213 form as
13 soon as practicable; correct?

14 A Correct.

15 Q What does that mean, as soon as practicable?

16 A As soon as possible, or whenever possible.

17 Q And why should an ICE officer do that as soon as possible?

18 A I would imagine because it's still fresh in their mind.

19 Q And the documentation the ICE officer is supposed to
20 include on the I-213 is, one, that the alien was arrested
21 without a warrant; correct?

22 A Correct.

23 Q The location; correct?

24 A Correct.

25 Q Whether the alien was an employee of the business, if

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1 arrested at a place of business; correct?

2 A Correct.

3 Q Whether the alien was a resident, if the place was a
4 residence; correct?

5 A Correct.

6 Q The ICE officer is supposed to document in the I-213 the
7 alien's ties to the community; is that right?

8 A Correct.

9 Q What does that mean, ties to the community?

10 A If they have ties to the -- if they have ties to the
11 community.

12 Q Sure. Like family?

13 A Correct.

14 Q Home?

15 A Correct.

16 Q How long they've lived there?

17 A Yes.

18 Q A job?

19 A Yes.

20 Q How long they've worked that job?

21 A Yes.

22 Q Church?

23 A Yes.

24 Q And they're supposed to document all of this in the 213;
25 right?

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1 A Correct.

2 Q And there's a note, as part of ICE policy that information
3 learned post-arrest relevant to custody determinations should be
4 documented separately from the information relevant to
5 likelihood of escape known at the time of the warrantless
6 arrest; is that correct?

7 A Correct.

8 Q So, how does an ICE officer document in the 213 what was
9 known at the time of arrest versus what was discovered
10 post-arrest?

11 A I would imagine they would just put it in the 213 stating
12 that.

13 Q I see. But you know the 213, it has an encounter section.
14 You're familiar with that?

15 A Yes.

16 Q Is that the narrative of the encounter before the arrest?
17 Is that fair?

18 A That's fair.

19 Q And then the 213 after the encounter section has a bunch of
20 other categories. Is that information pre-arrest or
21 post-arrest?

22 A It could be either.

23 Q So, how do you know? You as a supervisor, how do you know
24 what information that officer had before the arrest versus
25 post-arrest so you know whether the officer did it correctly?

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1 A I would have to look at the 213.

2 Q Okay. Can you think of -- is there a section -- what do
3 you mean by that? How would you know what was post-arrest
4 information?

5 A I would need to see it to --

6 Q Okay. We will show you a few in just a few minutes.
7 Number five, an ICE officer is also supposed to document in the
8 I-213 the specific particular -- particularized facts supporting
9 the conclusion that the alien was likely to escape before a
10 warrant could be obtained. Did I read that correctly?

11 A Yes.

12 Q Why is that important?

13 A Just for documentation purposes, I would imagine.

14 Q Also to make sure the ICE officer was complying with the
15 law. Would you agree with that?

16 A Yes.

17 Q We can take that down. And you understand this broadcast
18 policy was part of a Nava settlement in 2022; correct?

19 A Correct.

20 Q And, Mr. Davies, you also are aware that that Nava
21 settlement also required ICE to provide the plaintiffs' lawyers
22 copies of I-213s related to warrantless arrests every month?
23 Were you aware of that?

24 A I'm sorry. Could you state that again?

25 Q Sure. As part of the Nava settlement, that included the

1 broadcast policy that we just reviewed; correct?

2 A Yes.

3 Q And are you also aware that as part of that Nava
4 settlement, the Government was supposed to provide plaintiffs'
5 lawyers I-213s of warrantless arrests periodically? Were you
6 aware of that?

7 A I believe they were provided at the hearings. I do know.

8 Q And you're also aware as part of that Nava settlement, the
9 Government was supposed to train its officers as to the
10 requirements of 1357(a)(2)? Were you aware of that?

11 A Yes.

12 Q And were you aware that as part of the Nava settlement,
13 there were certain remedies for class members, including those
14 arrested contrary to the terms of the agreement, they were
15 supposed to be let go out of detention? Did you know that?

16 A I don't know if I was aware of that.

17 Q Okay. Did you know any of the remedies for certain class
18 members who were arrested illegally without a warrant under the
19 Nava settlement?

20 A I'm not -- if I did, I'm not aware of that right now.

21 MR. KAWANABE: That's okay. If you don't know, that's
22 fine. You also mentioned that there was a follow-up email on
23 June 11th, 2025; correct? And I will show it to you. Exhibit
24 F, Your Honor. Move to admit. Defendant's Exhibit F.

25 MR. BROWN: No objection.

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1 THE COURT: Admitted.

2 Q. (By Mr. Kawanabe) And, Mr. Davies, was this the email you
3 were referring to, the June 11th, 2025, email?

4 A This looks like it, yes.

5 Q Okay. And if you will confirm, this was an email sent by
6 Charles Wall of ICE. He's one of the top legal advisers for
7 ICE; correct?

8 A I believe so.

9 Q And if you will go to the -- thank you very much -- his
10 actual title is principal legal adviser for U.S. Immigration and
11 Customs Enforcement; correct?

12 A Correct.

13 Q And this email purported to terminate the Nava settlement;
14 is that right?

15 A Yes.

16 Q But even though the email purported to terminate the Nava
17 settlement -- let's go to the second page -- it still set
18 forward the requirements for ICE to arrest without a warrant;
19 correct?

20 A Correct.

21 Q And those requirements, in considering likelihood of
22 escape, they were the same requirements that we went over back
23 in 2022 of the broadcast statement; correct?

24 A Correct.

25 Q And even though Mr. Wall from ICE tried to terminate the

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1 Nava settlement, Mr. Wall also acknowledged the requirements,
2 and did he also acknowledge the duty to report those correctly
3 in the 213 forms?

4 A Correct.

5 Q All right. So, that policy stayed the same; correct?

6 A Yes.

7 Q And then Mr. Wall recently sent a correction email; is that
8 fair?

9 A Are you talking about the October email?

10 Q I am.

11 A Yes.

12 MR. KAWANABE: And let's go to Exhibit G, that October
13 email. Move to admit, Your Honor.

14 MR. BROWN: No objection. I think this one is already
15 in with plaintiffs' -- I forget the number.

16 MR. KAWANABE: I forgot the number too. We can switch
17 to 126. My apologies, Your Honor. Exhibit 126 for the
18 plaintiffs is the same email.

19 Q. (By Mr. Kawanabe) So, this is the October 22nd email from
20 Mr. Wall; correct?

21 A Correct.

22 Q And in this October 22nd email, Mr. Wall says, actually,
23 the Nava settlement is still in effect; correct?

24 A Correct.

25 Q But in this email, if you will go to the second page,

1 Mr. Wall instructs all ICE agents that those same requirements
2 were the same in considering likelihood of escape. Did you
3 understand my question?

4 A Could you say it again? I'm sorry.

5 Q Yeah. That was a bad question. Mr. Wall's October email
6 from this month said that the Nava settlement agreement was
7 still in effect, and emphasized the same requirements, second
8 page, in considering likelihood of escape; is that right?

9 A That's right.

10 Q And again, those requirements were the same requirements
11 when considering likelihood of escape for warrantless arrests
12 that were set forth in the broadcast statement back in 2022;
13 correct?

14 A Correct.

15 Q So, is it fair to say that the requirements for an ICE
16 officer in considering totality of circumstances, they've been
17 the same for as many years as you've been at ICE? Right?

18 A Since the May of 2022.

19 Q That -- well, yes. Since May of 2022?

20 A That's correct.

21 Q Have they changed prior to May of 2022?

22 A No.

23 Q They've always been the same; right?

24 A Yes.

25 Q And the documentation requirement, Mr. Wall sets those

1 forth -- sets those -- again, they're the same documentation
2 requirements for the 213, including bottom paragraph, Mr. Truax,
3 the specific particularized facts supporting the conclusion that
4 the alien was likely to escape. Those are the same requirements
5 back in 2022; is that right?

6 A Correct.

7 Q And in fact, as long as you've been at ICE, since 2006,
8 those documentation requirements have been the same; is that
9 fair?

10 A I do not know. From 2006?

11 Q Yeah. Sorry. Since you've been at ICE?

12 A Okay. Yes.

13 Q Do you know if the documentation requirements have changed
14 at ICE for officers to document these things that you see on the
15 screen in the 213?

16 A No. They have not changed.

17 Q We can take that down. And I think you testified earlier
18 that you quality check or audit the 213 forms; is that right?

19 A When I was a supervisor, I did.

20 Q And how did you do that? How did you audit those forms?

21 A I would review the forms. I would review the charging
22 documents. I would ensure the subject was being charged with
23 the correct charges.

24 Q And do you ever recall one single instance where you were
25 reviewing the forms and found them to be deficient, and then you

1 followed up with the arresting officer?

2 A Multiple times.

3 Q What do you usually tell that arresting officer when you
4 find it to be deficient?

5 A We would just correct it. I mean, red pen it, and they
6 would go back and correct what was needed to be corrected.

7 Q Would you let the person that was arrested without a
8 warrant go?

9 A No. I'm sorry. It wasn't deficient -- the arrest wasn't
10 deficient. The documentation was deficient. So, I would have
11 them correct what was needed. If they had the wrong charge on
12 the form, we would ensure that everything was correctly charged
13 before serving the alien.

14 Q I see. Let's just focus in on flight risk. What happens
15 if an officer doesn't document any of the things required
16 properly in the 213, what have you done?

17 A I have not -- like I said, I have not seen that.

18 MR. KAWANABE: Okay. Your Honor, give me just a
19 second, please. Your Honor, I failed to update the -- our
20 exhibit binder for the witness with the five new articles that
21 we had mentioned yesterday. May I approach with those? They're
22 in your binder. I just didn't put it in their binder.

23 THE COURT: Okay. How much longer are you going to
24 go, just for the reporter's sake?

25 MR. KAWANABE: I do think we're going to go past the

1 lunch hour.

2 THE COURT: Keep going. We will stop at noon, then.

3 MR. KAWANABE: Okay. Thank you, Your Honor.

4 Q. (By Mr. Kawanabe) So, you've been handed a number of new
5 exhibits. Some of them concern an arrest in Durango on Monday.
6 If you'll take a look at P132. I think it's the first one
7 there. Do you see that?

8 A Yes. I see it.

9 MR. KAWANABE: Your Honor, move to admit P132.

10 MR. BROWN: There's been no sort of authentication or
11 anything regarding this. It's just a news article, as we've
12 made previous objections to this, that's full of hearsay. We
13 don't know that the witness has anything to do with it or any
14 knowledge of it.

15 MR. KAWANABE: If I might respond, Your Honor? The
16 reason we agreed to use this witness is because they didn't want
17 to use it with Mr. Guadian. This was the deal that we made was
18 opposing counsel --

19 THE COURT: I can't hear you.

20 MR. KAWANABE: The reason we're using these articles
21 with this witness is because we had agreed to use them with this
22 witness in exchange for not bringing Mr. Guadian back. So, I
23 thought we had a deal.

24 MR. BROWN: My understanding of that arrangement was
25 that you could ask this witness about these new documents, not

1 that we would agree that they could be admitted.

2 MR. KAWANABE: That was my misunderstanding. My
3 response, Your Honor, is due to the hearsay brief that we've
4 already filed, that the Court certainly can consider the weight
5 of the evidence with regard to articles, including media
6 articles.

7 THE COURT: Well, there frankly isn't too much
8 difference between it's okay for you to ask him questions about
9 these and actually admitting them, because I'm going to have to
10 see them as you're questioning. So, if that was the deal, the
11 objection is overruled.

12 Q. (By Mr. Kawanabe) Are you able to see the article on the
13 screen? And you have a paper copy?

14 A Yes.

15 Q All right. And it concerns an arrest this week in Durango,
16 ICE arresting a father and his two children in the Durango area;
17 is that correct?

18 A Yes.

19 Q All right. And were you aware that there were various
20 protests this week surrounding this incident? Is that right?

21 A Yes.

22 Q Were you aware that the father was actually walking his two
23 kids under the ages of 18 to school? Were you aware of that?

24 A I am not. I was not aware of how the encounter happened.

25 Q Were you aware that the father and the two children were

1 arrested without warrants?

2 A It's my understanding that they were -- the father was
3 mistaken for somebody else, yes, when they encountered him.

4 Q Right. In other words, ICE thought that the father was
5 somebody else, found out that the father was not that person,
6 but still arrested him. You understand that; right?

7 A Yes.

8 Q And then ICE, in arresting the father, also arrested his
9 two children that he was -- that he was with? Were you aware of
10 that?

11 A Yes.

12 Q And certainly ICE did not have warrants for the two
13 children; correct?

14 A Correct.

15 Q And then ICE detained the father and the two children and
16 shipped them out of state. Were you aware of that?

17 A Yes.

18 Q Okay. And do you know what questions if at all were asked
19 of the father with regard to his likelihood of escape?

20 A I was not there. I don't know what they asked him.

21 Q Okay. Do you know ICE's involvement in this, since you're
22 a supervisor in the Denver office?

23 A I am -- it's my understanding there is two ERO officers in
24 that office along with two CBP officers in that office. I am
25 not aware of who actually encountered the subject or arrested

1 the subject.

2 Q Okay. And you also are aware that these arrests happened
3 after Mr. Wall's broadcast Nava settlement email last week;
4 correct?

5 A Correct.

6 Q And are you aware of other warrantless arrests that have
7 occurred since that email was sent last week?

8 A Yes.

9 Q What are you aware of?

10 A That at times, collaterals are taken into custody.

11 Q Okay. And to the best of your knowledge, what if any
12 questions were asked about any of those collaterals' likelihood
13 of escape before that arrest?

14 A I was not at any of those, so I do not know exactly what
15 was asked.

16 Q And so you don't know if any questions with regard to
17 flight risk was asked for those warrantless arrests that
18 happened this week; correct?

19 A With the officers' training, I would imagine proper
20 questions were asked. I do not know which questions were asked.

21 Q Just to be clear, you do not know if any flight risk
22 questions were asked of any of those collateral arrests that
23 happened this week; correct?

24 A I do not know.

25 Q And how many of these collateral arrests have happened this

1 week in Colorado?

2 A I do not know.

3 Q Do you have an estimate?

4 A No.

5 Q Ten? Twenty?

6 A I do not know.

7 Q How many collateral arrests without a warrant happen every
8 day? What's the goal? Three? Six?

9 A There's no goal.

10 Q Are you sure?

11 A For collateral arrests.

12 Q Are you aware Mr. Guadian said that there was a certain
13 goal of arrests?

14 A Of arrests, yes.

15 Q Okay. What's that?

16 A Of warrantless arrests, I mean, we have goals of
17 maintaining a -- we -- to be efficient and fiscally responsible,
18 we do have goals on arresting criminal aliens out of the
19 communities, yes.

20 Q How is arresting goals efficient? How is that related to
21 efficiency? You said it. I'm just curious what you meant.

22 A If we have a team of six, and our mission is to go out and
23 take criminal aliens out of the communities while being paid by
24 the taxpayer, I feel like, yes, there should be a goal in order
25 to ensure that we are getting these criminal aliens out of the

1 communities.

2 Q Understood. And previously you testified criminal aliens
3 were those people that were here without status and had some
4 sort of crime or purported crime; correct?

5 A Correct.

6 Q Those -- the plaintiffs here, like the college student at
7 University of Utah, was she a criminal alien?

8 A I need to review her case. I do not know.

9 Q Okay. I see. Do you know JST, who works at a grocery
10 store, was he a criminal alien?

11 A I do not know. I know multiple of those were found in
12 criminal areas when criminal activities were occurring on a
13 regular basis.

14 Q Would you agree with me that to arrest someone with a
15 warrant, that takes a lot of work from your office? Correct?

16 A Yes.

17 Q You have to have a warrant. You have to put up a team,
18 investigate, and find out the person, and then arrest the
19 person; correct?

20 A Correct.

21 Q It is a lot less work if you arrest somebody collaterally,
22 ask them a few questions, no warrant, and take them into
23 detention. Would you agree with that?

24 A I would say the work is still there, because we're looking
25 for that targeted alien first.

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1 Q That's not my question. Is it easier for your team to
2 arrest collaterally someone versus arresting someone with a
3 warrant? Is it easier?

4 A I wouldn't say it's easier.

5 Q Why not?

6 A It's still the same. It's still the same process when we
7 get them back. We're still doing the work on the front end.
8 We're not doing an investigation the entire time, because --

9 Q That's -- I'm sorry to cut you off. Go ahead.

10 A Because we find the person with the target or without the
11 target -- I mean, there's still plenty of work involved for that
12 team, and then that team still has to go up and do the encounter
13 and make the arrest.

14 Q But, Mr. Davies, there is zero work on the front end when
15 it's a collateral arrest. You didn't even know that person
16 existed; correct?

17 A We're still working on the front end, I believe.

18 Q For somebody else. The collateral arrestee, there's no
19 front end work. You didn't know that person existed. Do you
20 agree with me?

21 A Yes. I agree with you.

22 MR. KAWANABE: Let's take a look at Exhibit P134.
23 Your Honor, move to admit P134.

24 THE COURT: Admitted.

25 Q. (By Mr. Kawanabe) This also concerns that Durango arrest.

1 Hundreds protest outside ICE building in Durango after two
2 children and father detained; correct?

3 A Correct.

4 Q Okay. And I believe you testified earlier that if someone
5 is already in the immigration process, ICE is less likely or
6 will not arrest that particular person. Did I hear that
7 correctly?

8 A Correct.

9 Q For example, if someone is seeking asylum, they have an
10 immigration proceeding, then ICE is less likely or will not
11 arrest that particular person. Do you agree with me?

12 A That depends on the case.

13 Q Give me just a second. You agree that if officers are able
14 to determine through field checks or otherwise that the
15 individual is a lawful permanent resident or already actively
16 participating in immigration proceedings, the officers generally
17 will not detain that individual, because they have shown that
18 they will voluntarily participate? Would you agree with me?

19 A Yes.

20 Q That includes asylum applications; correct?

21 A No. That's not a proceeding.

22 Q I'm sorry. The asylum application is not a proceeding?

23 A When they're -- when they're going to court proceedings.
24 When they're going through the immigration judge.

25 Q So, let me be clear. If someone applies for asylum,

1 actually says, I'm not here with status, but I would like the
2 United States to grant me asylum, you do not believe that is an
3 immigration proceeding?

4 A It's -- I'm sorry. Let me back up. We will not arrest
5 somebody that is going through immigration proceedings through
6 the immigration judge when they're showing that they're doing
7 everything they've been asked to do. That's what I testified
8 to, yes.

9 Q And so I was focusing on asylum. Asylum, applying for
10 asylum, telling the Government, please grant me asylum, I'm not
11 here legally, that is an immigration proceeding; correct?

12 A But they're still not going -- so -- so, we would still --
13 that's a case-by-case basis on whether we would take them into
14 custody to start their immigration proceedings.

15 Q I understand. But what if that person who applied for
16 asylum also did a check-in with the Government and the Court as
17 part of the asylum proceeding? They are showing that they are
18 willing to participate; correct?

19 A Like I said, case-by-case. I would have to see the case.

20 Q I just gave you a case. Do you agree with me or not?

21 A Yes.

22 Q I can repeat it. You agree with me, or repeat it?

23 A Repeat it, please.

24 Q So, if someone has applied for asylum, checked in with the
25 Government or the Court, they have shown that they are willing

1 to participate; correct?

2 A Correct.

3 Q And so ICE would be less likely or won't arrest that
4 particular asylum seeker; is that fair?

5 MR. BROWN: Objection. Compound.

6 THE COURT: Overruled.

7 THE WITNESS: Like I said, it would be a case-by-case
8 basis.

9 Q. (By Mr. Kawanabe) In this particular father -- if you go
10 first page on the article -- and I'm back to 134, Mr. Truax.
11 Are you able to blow up that section right there? Yeah. It
12 talks about hundreds of protestors out in Durango this week;
13 correct?

14 A Yes.

15 Q And the children involved were ages 12 and 15; is that
16 right?

17 A That's what it says.

18 Q Taken Monday morning by ICE agents; is that right?

19 A Yes.

20 Q And it also says in the third paragraph that the father,
21 his 12-year-old daughter, looks like the mother, and 15-year-old
22 son are asylum seekers in Colorado who have lived in Colorado
23 for more than 18 months. Did I read that correctly?

24 A Yes. That's what it says.

25 Q And the next page, bottom paragraph, that quote, they were

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1 detaining the gentleman who kept screaming in Spanish that his
2 kids are in the back of the car. When a volunteer started
3 asking about the kids, they were able to find out that their
4 mother lived near there, and that because of the mother's
5 status, she was too afraid to go over there. Did I read that
6 correctly?

7 A Yes.

8 Q But ICE refused to let the children go with the
9 representatives from the resource center, and instead handcuffed
10 them and placed them inside the back of the car with their
11 father. Did I read that correctly?

12 A That's what it says, yes.

13 Q And then ICE shipped those kids to Texas. Do you
14 understand that?

15 A Yeah. We transferred them to the Texas facility.

16 Q Okay. The father and the two kids. What about the mom?

17 A I don't believe the mom went.

18 MR. KAWANABE: You can take that down. Exhibit 136,
19 Your Honor, move to admit.

20 MR. BROWN: No objection, I guess.

21 THE COURT: It's admitted.

22 Q. (By Mr. Kawanabe) Mr. Davies, are you aware that ICE
23 agents detained a Colorado teacher this week after a routine
24 immigration appointment?

25 A Yes.

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1 Q And that was here in the Denver metro area. It was Douglas
2 County. Does that sound right?

3 A Yes.

4 Q Let's blow up that first paragraph, please. A fifth grade
5 teacher from a metro Denver charter school was detained by U.S.
6 Immigration and Customs Enforcement last week. Did I read that
7 correctly?

8 A Yes.

9 Q The teacher was arrested with her family on Friday during a
10 routine immigration appointment at the Centennial ICE office,
11 the letter said; is that correct?

12 A Yes.

13 Q And so even though she was checking in with the ICE office
14 in Centennial, participating in the process, as you said, ICE
15 still arrested her; correct?

16 A Correct.

17 Q And that happened this week, after Mr. Wall's email last
18 week; correct?

19 A I'm not sure when she was arrested.

20 Q It says the fifth grade teacher -- I appreciate that
21 correction -- was arrested sometime last week; is that correct?

22 A Correct.

23 Q Do you know if it was -- when it was last week?

24 A I do not know.

25 Q All right. I will try and come back to you on that. You

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1 testified quite a bit about the process of arresting someone
2 with a warrant. Do you recall that?

3 A Yes.

4 MR. KAWANABE: Okay. Let's -- then let's talk about
5 the process of arresting someone with a warrant, and then
6 compare that to arresting someone without a warrant. I'm going
7 to show you a video of an arrest where ICE said that they
8 actually had a warrant. And, Counsel, that's Exhibit P119.
9 Your Honor, move to admit and play P119. It's a video, so it's
10 not in your book.

11 MR. BROWN: We object for the same reasons of the
12 previous video. There's no authentication for it. The
13 witness -- there's no reason that he would know anything about
14 it. This is out-of-court hearsay, so we object.

15 THE COURT: Well, I guess I will have to look at it to
16 decide.

17 MR. KAWANABE: Mr. Davies, we're going to show you
18 this. I will represent to you this is an arrest by ICE in
19 Alamosa, Colorado.

20 (A video was played.)

21 MR. KAWANABE: Can you pause it for a second. Is
22 there a way to turn up the volume, or is that us?

23 THE COURTROOM DEPUTY: I have it all the way up.

24 MR. KAWANABE: Okay. Let's play it.

25 (A video was played.)

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1 MR. BROWN: Your Honor, I would like to make a second
2 objection here. This video is clearly inflammatory, and the
3 officers in the video state that they have a warrant. There is
4 no indication that this is a warrantless arrest, so it is not
5 relevant to the case that was about a warrantless arrest.

6 THE COURT: He didn't say it was a warrantless arrest.
7 He said it was a warrant arrest.

8 MR. BROWN: Exactly. That's my point. So, if they
9 have a warrant, this is -- this case is about warrantless
10 arrests and whether they are lawful, and the only indication
11 that we have from this video is that they did have a warrant.
12 We don't have any other background information about it. And so
13 if this is a warranted arrest, an arrest with a warrant, it
14 doesn't have relevance to this case, and it's clearly
15 inflammatory.

16 THE COURT: Okay. I don't feel too inflamed. I feel
17 a little ashamed of what they did, but not inflamed. But what's
18 the relevance of it?

19 MR. KAWANABE: Your Honor, it's relevant to go to the
20 questioning elicited by Government's counsel. He asked a number
21 of questions about the process to get an arrest warrant, and
22 they have compared that to the warrantless arrest. And so this
23 relates directly to the questions he elicited from Mr. Davies
24 earlier this morning.

25 THE COURT: How? I don't get it.

1 MR. KAWANABE: Because he had asked the process of
2 what you need to do to get a warrant and how you execute it, and
3 I was following up on that line of questioning to which I didn't
4 object.

5 THE COURT: This doesn't say anything about what they
6 did to get a warrant; right?

7 MR. KAWANABE: That's true, Your Honor.

8 THE COURT: This shows that people who you say had a
9 warrant made an arrest of a dad and a couple -- I don't know if
10 he arrested anybody else in the vehicle or not, but we all saw
11 what it was. I don't get it.

12 MR. KAWANABE: My follow-up question is simply were
13 they supposed to actually serve the warrant? And then I wanted
14 to compare that to the warrantless arrest and the I-200s that
15 they say they have.

16 THE COURT: Okay. Objection sustained, but you can
17 ask the question.

18 MR. KAWANABE: All right. Let's take down that video.

19 Q. (By Mr. Kawanabe) So, Mr. Davies, when your team has a
20 warrant -- okay? So, this is a warrant -- arrest with a
21 warrant. You said there was a lot of investigative work that
22 goes ahead of time; correct?

23 A Correct.

24 Q Okay. And you are supposed to serve that warrant; correct?

25 A Correct.

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1 Q Okay. And so when you saw officers that wouldn't provide
2 that warrant when asked, was that appropriate?

3 A We would just keep the warrant in our pocket if we had it.
4 We wouldn't -- a situation like that, we certainly wouldn't want
5 to stay on scene.

6 Q But why wouldn't you serve the warrant to the person you're
7 arresting?

8 A When we get back to the office, we absolutely would.

9 Q So, you would wait until you get back to the office; is
10 that correct?

11 A On most occasions.

12 Q Now, let's compare that to the situation of, let's say JST.
13 So, one of the plaintiffs was in detention. You understand
14 that?

15 A Yes.

16 Q For weeks. You understand that?

17 A Yes.

18 Q He was able to bond out; correct?

19 A I don't know. I don't know the whole case.

20 Q Okay. Let's put JST to the side. Say someone is in
21 detention, and they were able to bond out. Are you familiar
22 with that process?

23 A Absolutely.

24 Q Okay. And yet there's still an I-200 warrant out; is that
25 correct?

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1 A Correct.

2 Q All right. What is an I-200 warrant?

3 A That's our warrant of arrest.

4 Q And that's issued to every person that ICE arrests without
5 a warrant, they provide a notice to appear along with an I-200;
6 is that correct?

7 A Not all. There's different cases, different scenarios
8 where you wouldn't get an I-200. You would get an I-205.

9 Q What's the difference?

10 A A warrant of deportation, warrant of arrest.

11 Q So, you would get a notice of arrest and some type of
12 warrant; correct?

13 A If we were serving an I-205 we would not be serving the
14 I-200.

15 Q No. I understand. Every person that is -- that you arrest
16 without a warrant then gets a notice to appear and either a
17 warrant to arrest, an I-200, or an I-205?

18 A I see what you're saying. No. Everybody that we arrest
19 warrantless would get an I-200.

20 Q Why is that?

21 A Because if they had an I-205 in the system, it wouldn't be
22 a warrantless arrest.

23 Q Okay. Understood. So, say someone that was a warrantless
24 arrest got the I-200. Is that just an open warrant to arrest?

25 A For that person, yes.

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1 Q Okay. And that's after the fact, because that person is
2 already arrested; correct?

3 A Correct.

4 Q All right. And are you aware that the Government has
5 represented to plaintiffs that ICE would not arrest the
6 plaintiffs based on this open warrant unless there is a material
7 change in circumstances? Were you aware of that?

8 A Yes.

9 Q Okay. And what does that mean? That if ICE will not
10 arrest somebody with an I-200 unless there is a material change
11 in circumstances?

12 A If something changed in their case, if they were ordered
13 removed at that point.

14 Q Or if they committed a crime?

15 A If they committed another crime, they were in violation --
16 if they were on ATD and they violated the ATD contract.

17 Q Sure. So, ICE's policy is that even though there is an
18 open warrant, an I-200, they're not going to arrest a person out
19 on bond unless there's a change in circumstance; correct?

20 A Correct.

21 Q And if there was a change in circumstance, then they would
22 use that I-200 warrant to arrest that person; correct?

23 A Correct.

24 Q Would they issue another warrant? Has that happened?

25 A It happens. It's not necessary, but they will issue

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1 some -- some -- some areas will issue an I-200, an I-286 for a
2 custody determination.

3 Q I was just going to ask, why would they do that? If
4 there's already an open warrant, why would they issue another
5 warrant?

6 A I don't know.

7 Q You're a supervisor. Why don't you know?

8 A I'm saying it's not necessary. I've seen it. It's not
9 necessary to do it.

10 Q I understand. So, I'm asking you as a supervisor, why
11 would they do it?

12 A I don't know. I don't know. I haven't done it, so I don't
13 know.

14 Q Is it possible that at least those officers, since you've
15 seen it, thought that they actually needed another warrant to
16 arrest that person?

17 A I don't know.

18 MR. KAWANABE: Your Honor, I'm about to switch
19 subjects into the four plaintiffs. Now is a good breaking time,
20 or I can continue.

21 THE COURT: Let's break now. That's a good idea. All
22 right. How much time does everybody need for lunch break?

23 MR. LENEIS: We would appreciate an hour.

24 THE COURT: Okay. We will reconvene, then, at 12:52.

25 MR. LENEIS: Can we make it 12:55, just so it's a

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1 little easier to get here on time?

2 THE COURT: How about 12:53? I'm kidding. I'm
3 kidding. 12:55 is fine.

4 (Recess at 11:52 a.m., until 12:58 p.m.)

5 Q. (By Mr. Kawanabe) Mr. Davies, are you okay to proceed?

6 A Yes.

7 MR. KAWANABE: Okay. Your Honor, I have another news
8 article that I'd like to hand up to the witness and to the
9 Court. It just identifies the date, I believe, of arrest of
10 that teacher.

11 MR. BROWN: We object on the same grounds as before,
12 but I understand that Your Honor has already ruled on that
13 objection.

14 THE COURT: Well, how about stipulating to the date?

15 MR. BROWN: We would be happy to stipulate to the
16 date.

17 THE COURT: Is that acceptable?

18 MR. KAWANABE: That is acceptable. If I might read it
19 into the record?

20 THE COURT: Okay.

21 MR. KAWANABE: For the record, the date of the arrest
22 of the Douglas County schoolteacher was on October 24th of this
23 year. No need to take a look at that article, Mr. Davies. You
24 can put that to the side.

25 Q. (By Mr. Kawanabe) But that email from Mr. Wall to all ICE

1 agents, that was October 22nd; is that correct?

2 A I believe.

3 Q Is that a yes?

4 A Yes.

5 Q Thank you. All right. Mr. Davies, you had talked in your
6 direct examination about the lag time in the USCIS system. Do
7 you recall that?

8 A No.

9 Q Okay. First, what is the USCIS system?

10 A That's the system that we use -- one of our systems that we
11 use to help determine alienage on certain individuals.

12 Q Do you know what it stands for?

13 A United States Citizen -- or Citizenship Immigration
14 Services, something to that nature. I don't know exactly.

15 Q And can you confirm that the reason to believe standard
16 that you read from the statute and the regulations, 1357(a)(2),
17 and the regulation, I believe 287(a)(2), that reason to believe
18 standard requires ICE officers to have probable cause? Do you
19 agree with that?

20 A Yes.

21 Q And that includes probable cause that the individual is
22 likely to escape; correct?

23 A Correct.

24 Q And your declaration included some of the I-213 forms for
25 our plaintiffs in this case; correct?

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1 A I don't remember them.

2 Q That's okay. I will just show them to you. So, I'm going
3 to pull Plaintiffs' Exhibit 17, Your Honor. I believe it's
4 already admitted into evidence. And I will represent to you
5 that this is the I-213 of JST that has been partially redacted.
6 Can you see that on your screen?

7 A Yes, I can.

8 Q Okay. And so this is the 213 form for JST. Now, JST was
9 near some apartments in the Aurora area. You're aware of that;
10 correct?

11 A Yes, I am.

12 Q And you were actually on the scene; is that right?

13 A Yes, I was.

14 Q But you were not involved in the arrest of JST, were you?

15 A No.

16 Q Who from ICE was, if you know?

17 A I don't remember.

18 Q Should it be documented on the form?

19 A I believe so.

20 Q Okay. We will take a look at that. You did transport JST,
21 though, to the Denver field office; correct?

22 A Correct.

23 Q And tell us how you transported him and who was with you.

24 A A fellow officer rode with me. We placed him in the back
25 of my car and drove him to the Denver field office for

1 processing.

2 Q Then why were you the person that drove him to the
3 processing center?

4 A I was available to do it.

5 Q Was it just JST, or others?

6 A It was just him at that instance.

7 Q Fair to say, though, that day, ICE transported several
8 people either to the field office or ultimately to the detention
9 center?

10 A Yes.

11 Q Do you know approximately how many that day?

12 A I don't remember now.

13 Q More than ten; fair?

14 A I believe so.

15 Q Twenty? More than 20?

16 A I think so.

17 Q Probably closer to 50?

18 A I don't know how many it was.

19 Q And that was a single day; correct?

20 A Correct.

21 Q Okay. So, let's go through JST's I-213. So, you see
22 the -- thank you, Mr. Truax. On that first page, let's just
23 blow up the encounter data paragraph before the entry data,
24 immigration history. Great. Okay. And actually, could you --
25 that's perfect. So, you see the encounter data from JST's I-213

1 on your screen?

2 A Yes, I do.

3 Q And encounter data is the ICE officer's part of the
4 narrative as to what happened before the arrest; correct?

5 A Yes.

6 Q All right. So, let's go through this. So, JST, referred
7 to as subject, was encountered by ICE, for short, ERO, on
8 February 5th, 2025, in Aurora, Colorado, as part of, and then
9 that portion is blacked out. Did I read that portion -- did I
10 read that sentence mostly correctly?

11 A Yes.

12 Q Okay. Do you know the name of that operation?

13 A I don't remember it off the top of my head.

14 Q The second sentence, ICE ERO officers positively identified
15 themselves as immigration officers; correct?

16 A Correct.

17 Q The subject, that's JST, was questioned to their name and
18 status in the United States. Subject responded their name was,
19 and then we've put the initials JST, and they were not currently
20 in possession of any documentation that would allow to be in or
21 remain in the United States legally at this time. Did I read
22 that portion correctly?

23 A Yes.

24 Q After that, an administrative -- excuse me. Not after
25 that. An administrative arrest warrant was unable to be

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1 obtained at the time of arrest, so officers conducted a
2 warrantless arrest. Did I read that correctly?

3 A Yes.

4 Q The subject was informed that they were under arrest for
5 immigration violations, and taken into custody without incident;
6 is that correct?

7 A Yes.

8 Q Subject was transported to the Denver field office for
9 further processing at this date; correct?

10 A Correct.

11 Q Do you know who actually arrested JST?

12 A I do not know. It looks like it was processed by a
13 different officer.

14 Q Okay. And that officer's name is not there; correct?

15 A Not in that -- that you have up there, no.

16 Q And we will look at the rest of the form for sure. In this
17 encounter data, though, was there any information with regard to
18 the alien's ties to community, if known at the time of arrest,
19 including family, home, or employment?

20 A No.

21 Q And was there any specific particularized facts supporting
22 the conclusion that the alien was likely to escape before a
23 warrant could be obtained? Any of that in there?

24 A Not in this section, no.

25 Q Okay. We can take that down. No. Keep that up. Sorry.

1 Let's go back to the first page, Mr. Truax. Let's blow up the
2 rest of the first page. Entry data immigration history is the
3 next section; correct?

4 A Correct.

5 Q Family information is the following section; correct?

6 A Correct.

7 Q Then it talks about whether he was married or single or had
8 children; correct?

9 A Correct.

10 Q He had -- JST had no criminal history; is that right?

11 A Yes.

12 Q Claimed to have no affiliations with any sort of gang in
13 the past or present?

14 A Correct.

15 Q Do you know whether or not at the scene, before the arrest,
16 the officer asked JST whether he had any affiliations with a
17 gang?

18 A I do not know if they asked him.

19 Q Do you know whether the officer asked whether JST was
20 involved with drugs or any type of crime?

21 A I do not know.

22 Q And the signature was by Mr. Jones, but -- or it could be
23 Ms. Jones, excuse me. Officer Jones was not the arresting
24 officer?

25 A That's correct.

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1 Q That was the processing officer; is that right?

2 A Yes.

3 Q So, let's go back to the first page. We've covered
4 everything on the first page; is that fair?

5 A Not everything, no.

6 Q I'm sorry. You're right. There is -- first, this is the
7 second page of this exhibit. My mistake. So, on the second
8 page, we haven't covered at the very top, under previous
9 criminal history and records check; is that correct?

10 A Correct.

11 Q Now have we covered everything on the first page?

12 A Yes.

13 Q Second page. Let's go to the third page of this exhibit.
14 And it says, subject claimed to have HIV; correct?

15 A Yes.

16 Q And you understand the subject claimed to have HIV happened
17 after his arrest? Do you know that?

18 A I am not aware.

19 Q Okay. Do you know one way or the other?

20 A I do not know.

21 Q And the subject had a number of claims listed on the third
22 page of this exhibit. Do you know whether that information was
23 transferred prior to arrest or after the arrest?

24 A I do not know.

25 THE COURT: Number of claims?

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1 MR. KAWANABE: What's that, Your Honor?

2 THE COURT: What do you mean, a number of claims?

3 MR. KAWANABE: I'm sorry. The -- let me clarify.

4 Q. (By Mr. Kawanabe) On this third page of the exhibit
5 concerning JST, the information listed on the third page, was
6 that information delivered to ICE prior to the arrest, or
7 post-arrest?

8 A I am unaware.

9 Q You don't know either way; is that fair?

10 A Either way.

11 THE COURT: Was this page also done by Officer Jones?

12 THE WITNESS: Yes, it was.

13 THE COURT: Is Officer Jones bilingual?

14 THE WITNESS: I am unaware. I don't -- we have
15 multiple Joneses. I don't know which Jones this is.

16 THE COURT: A Jones?

17 THE WITNESS: A Jones. I don't know who was
18 processing this case at the time. I don't remember.

19 Q. (By Mr. Kawanabe) So, fair to say we reviewed JST's
20 I-213?

21 A Yes.

22 Q Do you know which ICE officer actually arrested JST?

23 A I do not know.

24 Q Have you tried to find out?

25 A No.

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1 Q You understand that JST spent more -- several weeks in the
2 detention center? Were you aware of that?

3 A No.

4 Q But you are aware in your declaration that JST wears an
5 ankle monitor?

6 A Yes.

7 Q If ICE had not arrested JST, he would not have to wear the
8 ankle monitor today. Do you agree with that?

9 A If we didn't arrest him that day? I don't understand the
10 question.

11 Q Yeah. If ICE didn't arrest JST, he wouldn't have to wear
12 that ankle monitor. It's connected; correct?

13 A I suppose, yes.

14 MR. KAWANABE: Let's move to GRR. Exhibit P18, Your
15 Honor. I believe it's in evidence.

16 THE COURT: Yes.

17 Q. (By Mr. Kawanabe) GRR -- this is GRR's I-213. You've
18 seen this before; correct?

19 A Yes.

20 Q And so let's go through GRR's I-213. So, this first page,
21 parts are redacted, but it includes information concerning GRR;
22 correct?

23 A Correct.

24 Q Okay. And if you will scroll down to show him the entire
25 first page. And can you tell which officer actually arrested

1 GRR from this first page?

2 A Again, no.

3 Q Okay. And you understand GRR was involved with the
4 Colorado Springs nightclub raid; correct?

5 A Correct.

6 Q Were you there as well?

7 A Yes, I was.

8 Q Okay. And in your declaration, you referenced that he was
9 hiding under his car. Do you recall that?

10 A Yes.

11 Q You have no idea as to why he was hiding under the car, do
12 you?

13 A I just saw that in his statement.

14 Q So, is the answer to my question yes or no? Do you have an
15 idea as to why he was hiding under his car?

16 A No.

17 Q And if there are flash-bangs and smoke, and you don't know
18 where they're coming from, who wouldn't hide under their car?

19 A I don't understand the question.

20 Q And that first encounter, do you know whether it was an ICE
21 agent or DEA or some other officer with GRR?

22 A I do not know.

23 Q Let's go to the next page. So, then under GRR, it's got at
24 the beginning, are there certain -- do you know what those
25 acronyms are?

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1 A Yeah. Those are the different systems that we use to check
2 our databases to see who the person is.

3 Q And what does that mean, N-E-G, next to each of them?

4 A Negative.

5 Q Which means what?

6 A That he didn't come up in either of those systems.

7 Q In any of them; correct?

8 A Correct.

9 Q And this is dated April 27th, 2025; correct?

10 A Correct.

11 Q Let's scroll down this page. First we will start with the
12 encounter data. So, GRR, herein referenced as to as subject,
13 was encountered on 4/27/2025 at 296 South Academy Boulevard,
14 Unit H, Colorado Springs, Colorado 80910, by ICE ERO Denver
15 during, and then it's blacked out. Do you see that?

16 A Yes.

17 Q Do you know the name of that operation?

18 MR. BROWN: Objection, Your Honor. This calls for
19 information that we had agreed to redact with plaintiff -- with
20 plaintiffs' counsel, and they did not object to it when we
21 produced this to them. It calls for law enforcement's
22 privileged information about ongoing operations.

23 THE COURT: I assume that he's correct in that?

24 MR. KAWANABE: They redacted it. We did not object,
25 is what he's correct to. I did not agree to the redaction.

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1 THE COURT: Why do you need to know the name of the
2 officer, anyway?

3 MR. KAWANABE: Not the officer. The operation, to
4 know whether it is continuing as we speak.

5 THE COURT: Oh.

6 MR. BROWN: That is the basis for the redaction.

7 MR. KAWANABE: I can ask the question, then,
8 generally.

9 THE COURT: I thought your concern was the identity of
10 the officer.

11 MR. BROWN: The identity of the operation, the name of
12 the operation.

13 THE COURT: Why do you need to know the name of the
14 operation?

15 MR. KAWANABE: I don't. I will withdraw that
16 question. My question -- I will withdraw the question.

17 Q. (By Mr. Kawanabe) This operation that happened on
18 April 27th, 2025, that continues today; correct?

19 A I'm not aware. It's a DEA operation, not an ERO operation.

20 Q Understood. But ERO was involved in this operation;
21 correct?

22 A On this -- yes. On this day.

23 Q And do you know the reason for the redaction is because
24 this operation continues today? Do you know that?

25 A I do not know that.

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1 Q Okay. Let's continue with the encounter data. On
2 April 27th, 2025, ICE ERO officers positively identified the
3 subject, and identified themselves as immigration officers. Did
4 I read that correctly?

5 A Yes.

6 Q The subject was questioned to his name and status in the
7 United States. Subject responded his name was GRR, we redacted
8 that, and he was not currently in possession of any
9 documentation that would allow to be in or remain the United
10 States legally at this time. The subject was informed that he
11 was under arrest for immigration violations, taken into custody
12 without incident, and then transported to the Denver contract
13 detention facility for further processing; is that correct?

14 A Yes.

15 Q Okay. And in this narrative of his I-213, was there any
16 mention of the -- of GRR's ties to the community?

17 A No.

18 Q Including family, home, how long he'd -- he's lived in that
19 area, job, anything like that?

20 A No.

21 Q Was there any specific particularized facts supporting the
22 conclusion that GRR was likely to escape?

23 A No.

24 Q And just so we're clear, the prior JST I-213, was there
25 anything in that I-213 that we reviewed that discussed his ties

1 to the community, if known at the time of arrest, including
2 family, home, or employment?

3 A In the encounter part of it?

4 Q Yes.

5 A No.

6 Q Okay. Outside the encounter, just in the narrative section
7 at all, was there specific reference prior to the time of the
8 arrest with regard to his family, how long he's lived in the
9 community, and whether he goes to church, his job?

10 A So, that stuff is documented in the 213 on the front page.

11 Q On the front page?

12 A Yes.

13 Q Okay. Let's go back to JST, then. On GRR you would agree
14 that those types -- that type of information is not listed in
15 his I-213; correct?

16 A So, on the biographical page up here is where we would list
17 that stuff, some of those items you're asking for.

18 Q I see. What items in particular are you talking about?

19 A His family, spouse, address, employer.

20 Q And that information --

21 THE COURT: Which one of these two guys are you
22 talking about now? You've kind of went back and forth.

23 MR. KAWANABE: It's kind of convoluted. You're right.
24 On GRR. Let's focus on GRR on the screen. Okay?

25 Q. (By Mr. Kawanabe) So, that first part of the page, what

1 were you referring to?

2 A Down at the bottom, it shows name, address, employer. If
3 he had given us one, we would have placed it in there.

4 Q Do you know if he was asked?

5 A All these questions are asked at that time. These are the
6 questions that we ask during our consensual encounters.

7 Q Do you know for certain whether these questions were
8 asked --

9 A I was not there, so I do not know.

10 Q Okay. So, you don't know whether or not these questions
11 were asked prior to the arrest, do you?

12 A Correct.

13 Q So, let's scroll down. We went over the encounter data.
14 That portion does concern the time period prior to the arrest;
15 correct?

16 A I'm sorry? Say that again?

17 Q Sure. We went over the encounter data on your screen. At
18 least those sentences that I read to you, that was the
19 information that occurred, and it was transferred prior to the
20 arrest; correct?

21 A Correct.

22 Q Okay. And then the rest of the form below entry data, that
23 information was taken and discovered post-arrest; correct?

24 A Not necessarily.

25 Q Do you know one way or the other?

1 A No.

2 Q Okay. Because you don't know which officer actually
3 arrested GRR, do you?

4 A Correct.

5 Q And in fact, ICE's policy is to make sure it documents what
6 information was collected prior to arrest and keep it separate
7 from the information that was collected post-arrest; correct?

8 A Correct.

9 Q But ICE doesn't -- didn't do that on this form, did it?

10 A So, again, going back to the front page, those questions
11 are the questions that would have been asked during the
12 consensual encounter. I was not there, so I don't know if they
13 were asked, but that's -- as per training and as per our
14 experience, those are the questions we ask. If we didn't have
15 an answer for them, they wouldn't be documented on that form.

16 Q Mr. Davies, that wasn't my question. You weren't there?

17 A I wasn't there, no.

18 Q And I just asked you if you knew whether this information
19 was collected pre-arrest or post-arrest, and you said, I don't
20 know, because I wasn't there?

21 A Correct.

22 Q Correct?

23 A Correct.

24 Q Okay. And so again, my question was, according to this
25 form, you don't know according to the form whether a question

1 was asked pre-arrest or post-arrest; correct?

2 A Correct.

3 Q Now, you keep saying consensual encounter. This was not a
4 consensual encounter, was it? He was in a nightclub?

5 A Yes. This was a nightclub. This was an illegal nightclub,
6 correct.

7 Q So, this was not a consensual encounter?

8 A So, when we talk to them, when they came up, and we did a
9 field interview, that was all consensual. When the DEA was
10 doing their search warrant, at that point it wasn't.

11 Q Time out. So, just to be clear, you think that when an
12 officer slams GRR to the ground, and if he asks him questions,
13 that's consensual?

14 A That's -- so, I don't know what happened with that. When
15 we -- when immigration officers would come up and talk to him,
16 these are the questions that we would ask.

17 Q I see. So, if a different officer slammed GRR to the
18 ground, cut his hand where he bled over himself, and then was
19 talking to an immigration officer, that portion was consensual?
20 Is that your testimony?

21 A Yes.

22 Q Let's go to the next page, please. And the information on
23 the next page, do you know if that was obtained post-arrest or
24 pre-arrest?

25 A I do not know.

1 Q Let's blow that back up. And since you've reviewed these
2 before, fair to say that that was the entire I-213 for GRR;
3 correct?

4 A Correct.

5 Q And just so we're clear, let's go back to JST. This is
6 Exhibit P17. And I want to be clear. JST, the information at
7 the top of this page that you see on your screen, which is page
8 two of the exhibit, was that information collected post-arrest?

9 A I'm unaware.

10 Q Because you don't know either way; correct?

11 A I wasn't there, no.

12 Q So, that's correct?

13 A Correct.

14 Q Let's scroll down to the bottom of that page. Certainly
15 the fingerprints, those were taken post-arrest; correct?

16 A Correct.

17 Q Next page. The encounter data, that was collected pre --
18 pre-arrest; correct?

19 A Correct.

20 Q But everything starting with entry data, immigration
21 history, you do not know one way or the other whether that
22 information was collected post-arrest or not; is that fair?

23 A Can you scroll up, please.

24 Q Sure. And it's -- well, go ahead.

25 A Scroll just a little more to the --

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1 Q You bet.

2 A So, yes. It's not listed on here, no. I do not know if
3 it's pre-arrest or post-arrest.

4 Q Starting with other than encounter data, you don't know one
5 way or the other whether it's pre-arrest or post-arrest;
6 correct?

7 A Because I wasn't there.

8 Q Is that correct?

9 A That's correct, yes.

10 Q Okay. Even though -- we can take that down. Sorry. Let's
11 show him the rest. Let's just be sure. And then the final page
12 of this exhibit, was that information collected post-arrest?

13 A I do not know.

14 Q Because you were not there; correct?

15 A Correct.

16 Q Okay. Let's take that down. And to be clear, the
17 broadcast policy -- ICE policy is that ICE officers are supposed
18 to on the I-213 say which information was collected pre-arrest,
19 like the encounter data, versus what information was collected
20 post-arrest; correct?

21 A Correct.

22 Q I believe we went over Ms. Dias Goncalves' I-213 yesterday
23 with a different witness, so I won't redo that portion of the
24 exam. Let me just ask you your own personal knowledge, because
25 you did describe her, at least a little bit in your declaration;

1 correct?

2 A Correct.

3 Q You remember she was the college student out of Brazil; is
4 that right?

5 A Correct.

6 Q Fair to say, she was not a worst of the worst, a terrorist
7 or a criminal alien, was she?

8 A Correct.

9 Q Correct? I'm sorry?

10 A She was not.

11 Q She was not. And Ms. Goncalves, she was initially pulled
12 over by the Mesa County Sheriff's Department. Did you know
13 that?

14 A I believe so.

15 Q And the Mesa County Sheriff's Department then contacted
16 ICE, who then arrested her without a warrant. Did you know
17 that?

18 A I read that in the report, yes.

19 Q Okay. And are you -- not you -- is ICE working with other
20 municipalities or sheriff's offices across the state to collect
21 information so they can make warrantless arrests?

22 A I'm sorry. Could you repeat that again?

23 Q Sure. I will be more specific. Is ICE working with Aurora
24 Police Department right now to collect information about
25 possible people without legal status to arrest?

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1 MR. BROWN: Objection, Your Honor. That calls for law
2 enforcement privileged information.

3 THE COURT: Calls for what?

4 MR. BROWN: Law enforcement privileged information.
5 He's asking about how law enforcement is currently operating and
6 conducting their investigations.

7 MR. KAWANABE: Your Honor, it's directly relevant to
8 what's happening today and likelihood of arrest. If they are
9 continuing to work with police and sheriff's departments across
10 this state, it is relevant.

11 THE COURT: I agree. Overruled.

12 Q. (By Mr. Kawanabe) Would you like me to repeat the
13 question?

14 A Please.

15 Q Is ICE working with Aurora Police Department today to
16 collect information about immigrants who they might arrest?

17 A No.

18 Q Okay. Is ICE working -- continuing to work with Mesa
19 County Sheriff's Department?

20 A Not that I'm aware of.

21 Q But they did; correct?

22 A So, that was with HSI. That wasn't with ERO.

23 Q I see. Are you aware, then, of HSI working with sheriff's
24 departments or police forces around Colorado?

25 A I do not know what HSI does.

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1 Q Okay. And ERO? Do they?

2 A No.

3 Q So, these joint task forces never involve local police or
4 sheriff's offices?

5 A Yes, they do.

6 Q Well, then you share information; right?

7 A So, you're asking for specific information on immigrants.
8 That's not what -- they're on a task force with us to conduct
9 the arrest. We're not sharing information.

10 Q Okay. Let me ask a more general question. Is ICE
11 specifically collecting information with regard to driver's
12 licenses or records?

13 MR. BROWN: Objection. Again, this calls for law
14 enforcement privileged information, and how they conduct their
15 investigations has no bearing on how an arrest is conducted,
16 whether it has a warrant or doesn't have a warrant, and
17 whether -- that and whether a hypothetical warrantless arrest is
18 lawful or unlawful.

19 MR. KAWANABE: Relates to likelihood of rearrest, Your
20 Honor.

21 THE COURT: Pardon me?

22 MR. KAWANABE: Likelihood of rearrest. It is
23 relevant, Your Honor, if they continue to coordinate with law
24 enforcement.

25 MR. BROWN: With respect, I don't know how

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1 coordination impacts likelihood of rearrest. Like, if they're
2 better at their job or worse at their job?

3 THE COURT: It's clear in the record that anybody that
4 has one of those designations on their license could be
5 arrested; right?

6 MR. BROWN: Sure.

7 THE COURT: Sustained.

8 MR. KAWANABE: Okay. I will move on.

9 Q. (By Mr. Kawanabe) Mr. Davies, let's talk about Mr. Ovando
10 Ramirez, Exhibit P15. You wrote about him in your declaration;
11 correct?

12 A Correct.

13 Q Okay. You understand that he had been in this country for
14 nearly, or over -- approximately 20 years; correct?

15 A Correct.

16 Q Okay. Fair to say that if someone has been here for 20
17 years with a family, that leans against Mr. Ramirez Ovando from
18 being a flight risk. You would agree with that; right?

19 A It could be, yes.

20 Q Sure. Him having four children, going to school in the
21 United States, that leans against him being a flight risk. Do
22 you agree with that?

23 A Yes.

24 Q And this information that you see on the I-213 about
25 Mr. Ramirez Ovando that you can see -- it's the top half of the

1 I-213 -- was that information collected post-arrest or
2 pre-arrest?

3 A I don't know.

4 Q Because you weren't there; correct?

5 A Correct.

6 Q Let's scroll to the bottom of that page. This information
7 on the bottom part of the page, which is the second page of the
8 exhibit, P15, was that collected post-arrest?

9 A The fingerprints were collected post-arrest.

10 Q The rest of it? Do you know?

11 A Yes.

12 Q Oh. I'm sorry. The rest of it you do know?

13 A No. I'm sorry. The fingerprints would have been taken at
14 the facility.

15 Q Okay. And do you know the information that you see on the
16 screen, the bottom half of the second page of this exhibit, was
17 that all collected post-arrest or pre-arrest?

18 A I do not know.

19 Q Because you were not there?

20 A Yes.

21 Q Let's go to the next page. Yeah. Right there. So, the
22 encounter information, that was collected pre-arrest. Do you
23 agree with me on that?

24 A Yes.

25 Q And you know this is near Clifton, Colorado; correct?

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1 A Yes.

2 Q And so this is the fourth plaintiff we've talked about.

3 So, to summarize, we talked about JST. That was -- he was in
4 Aurora; correct?

5 A Correct.

6 Q GRR, he was in Colorado Springs; correct?

7 A Correct.

8 Q Ms. Goncalves, she was near Grand Junction; is that right?

9 A Correct.

10 Q And now we have Mr. Ovando in Clifton, Colorado; correct?

11 A Correct.

12 Q And let's go through the encounter lead, because this
13 information was pre-arrest. Do you agree with me on that?

14 A Yes.

15 Q On 5/19/2025, the subject, Ramirez Ovando, Refugio, exited
16 trailer 269, appearing to be another subject with a final order
17 that J -- GJC ERO was looking for, and the name is blacked out.
18 Did I read that correctly?

19 A Yes.

20 Q So, ICE wasn't even looking for this person on that day;
21 correct?

22 A Correct.

23 Q It was a mistake; correct? It was ICE's mistake; correct?

24 A I don't understand a mistake.

25 Q Well, ICE was looking for one person, and they mistakenly

1 confronted Mr. Ramirez Ovando.

2 A Yes.

3 Q Do you agree with that?

4 A Yes.

5 Q ICE's mistake. So, Officers Elder and Senior Agent
6 Selfridge. Do you know them?

7 A No.

8 Q Initiated a vehicle stop on 32 Road and D Road by engaging
9 the emergency lights of their vehicles. So, did I read that
10 correctly?

11 A Yes.

12 Q Do you understand that to be ICE just pulling him over
13 because they mistakenly identified him for someone else? Do you
14 agree with me?

15 A At the time, no.

16 Q I'm sorry. What?

17 A They pulled him over because they thought he was somebody
18 else.

19 Q That's really my question, so thank you for clarifying.
20 Officers Elder and Special Agent Selfridge approached the
21 vehicle while visibly marked with an ICE badge and vest with
22 Police ICE displayed. Did I read that correctly?

23 A Yes.

24 Q Officer Elder identified himself as an ICE officer and
25 verified identity of subject by reviewing the driver's license

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1 and called SECTOR for immigration checks. Did I read that
2 correctly?

3 A Yes, you did.

4 Q Subject, Ramirez Ovando, Refugio, admitted to being from
5 Mexico and illegally present in the United States. Did I read
6 that correctly?

7 A Yes, you did.

8 Q Subject was taken into custody without incident at
9 approximately 6:25 hours. Subject was transported to Grand
10 Junction sub office, and arrived at approximately 6:45 hours.
11 Did I read that correctly?

12 A Yes, you did.

13 Q All right. And this information was pre-arrest; correct?

14 A Correct.

15 Q Were you there?

16 A No.

17 Q Was there any documentation about the alien's ties to the
18 community if known at the time prior to the arrest?

19 A Not in here, no.

20 Q Okay. Any information regarding his family, his home, how
21 long he's lived there, his job, how long he's worked there?

22 A Not in here, no.

23 Q Okay. Any specific particularized facts supporting the
24 conclusion that the subject was likely to escape before --
25 before the arrest happened?

1 A No.

2 Q Let's go to the rest of the page. And then the rest of the
3 information, entry data through the end, so we will take it one
4 by one. So, the rest of this on the third page of this exhibit,
5 this information, was it post-arrest?

6 A I do not know.

7 Q Because you were not there?

8 A Correct.

9 Q Let's go to the next page. Let's blow up that. Was any of
10 this information prior to his arrest known to ICE?

11 A I do not know.

12 Q And even taking a look at that information, even if ICE had
13 known that he was married, had four children, had lived in the
14 area for a long time, that weighs against finding a flight risk.
15 Do you agree with that?

16 A It could, yes.

17 Q Okay. Okay. Let me ask you a few more questions about
18 some other people we've heard about in this trial. Okay?

19 A Okay.

20 Q All right. So, let me ask you about if we heard -- I will
21 represent to you we heard about a client OMR prior to today.
22 Let me just describe the circumstances and ask if you have an
23 opinion. Okay?

24 A Okay.

25 Q All right. So, if a person is a passenger in a car and

1 gets pulled over -- following me so far?

2 A Yes.

3 Q And the passenger in the car is asked just about his
4 status, that's it -- do you understand that?

5 A Yes.

6 Q Okay. And the officer arrests that passenger only asking
7 and inquiring about status, is that a proper warrantless arrest?

8 A I mean, with what you said, I don't believe so, no.

9 Q Right. Because there were no questions about flight risk.
10 You agree with that; right?

11 A Correct.

12 Q All right. Let me give you another example. So, if a
13 father is in his own apartment with his wife and two
14 daughters -- following me so far?

15 A Yes.

16 Q And ICE and other agents break down his door with
17 flash-bangs, go into the apartment, and only ask questions about
18 immigration status, and arrest him, is that a proper warrantless
19 arrest?

20 A I'm confused on the situation, I guess.

21 Q Why?

22 A I don't know how -- I don't understand how -- I mean, if
23 that happened, no. That's not a valid warrantless arrest, I
24 guess.

25 Q Right. Because they didn't ask any questions about flight

1 risk; right?

2 A Correct.

3 Q Right. And if a person is just driving from the supply
4 store on his way to a job, and gets pulled over by ICE, and only
5 asked questions about his immigration status, no flight risk
6 questions at all, and was arrested without a warrant, was that
7 proper?

8 A With the information you gave me, no.

9 Q All right. And you reviewed the materials that were filed
10 in this case, including the declarations to the complaint or the
11 motion for preliminary injunction; right?

12 A I'm sorry. Can you say that again?

13 Q Sure. Sure. Let me break that down. That was a big
14 question. So, in your declaration, you said you received
15 certain information from the -- from the other declarations you
16 read. For example, GRR was hiding under his car. Do you recall
17 that?

18 A Yes.

19 Q So, you've reviewed the declarations that were submitted by
20 plaintiffs in some of their paperwork; correct?

21 A Correct.

22 Q Okay. Let me show you one of those declarations. Do you
23 have that big binder in front of you?

24 A Yes, I do.

25 MR. KAWANABE: Okay. I'm going to show you Exhibit 5.

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1 Oh. I'm sorry. Your Honor, move to admit P5, declaration of
2 JCC, before we publish.

3 MR. BROWN: I think this was moved to admit and was
4 already decided that it was not going to be admitted.

5 MR. KAWANABE: Correction. We moved to admit, and we
6 withdrew it. And now I've confirmed that the witness has
7 reviewed declarations, Your Honor.

8 MR. BROWN: I think we -- I think there needs to be
9 specific foundation for this declaration that he's reviewed this
10 declaration, and I don't think that is on the record.

11 THE COURT: Overruled. Admitted.

12 Q. (By Mr. Kawanabe) So, Officer Davies, let me show you
13 declaration of JCC. Is that on your screen?

14 A It looks like it, yes.

15 Q Okay. And I won't go through all of it, but let me just
16 hit some of the highlights and ask your opinion as to based on
17 just what's in this declaration whether it was an appropriate
18 warrantless arrest. He talks about, number two, his wife and
19 four children; correct?

20 A Correct.

21 Q Okay. He talks about being in the United States since 1996
22 in paragraph one; correct?

23 A Yes.

24 Q Paragraph five, he talks about on July 18th, 2025, he's
25 been hired for a job off of South Parker; correct?

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1 A Yes.

2 Q And he swung by a Home Depot. Do you see that?

3 A Yes.

4 Q Okay. And then the next page discusses the initial
5 confrontation with ICE. If you will scroll down, and one of the
6 first questions in paragraph nine, do you know why I stopped
7 you? I said no. Do you see that?

8 A Yes.

9 Q Number ten, ICE says that they're immigration, according to
10 this declaration. Do you see that?

11 A Yes.

12 Q Number 11, ICE asked if he had documentation to prove that
13 he had legal status, yes or no. Do you see that?

14 A Yes.

15 Q JCC said he wanted to speak with his attorney. ICE asked
16 for his driver's license; correct?

17 A Yes.

18 Q ICE looked at his driver's license; correct? Is that
19 correct?

20 A Yes.

21 Q Number 12, without further explanation, he placed me under
22 arrest. Do you see that?

23 A Yes.

24 Q Based on those facts in this declaration, was that a proper
25 warrantless arrest?

25-cv-3183-RBJ GREGORY DAVIES - Cross 10-31-2025

1 A I'm trying to -- I don't know if it was a warrantless or a
2 warranted arrest.

3 Q I will say just assume it was a warrantless arrest. So,
4 just based on what I read you?

5 A Based on this information, probably not.

6 Q Yes or no?

7 A No.

8 Q Because he didn't ask about flight risk; correct?

9 A Correct.

10 Q We will take that down. Mr. Davies, you understand that
11 there are over 160,000 immigrants without legal status in
12 Colorado? Did you know that?

13 A I know there's a lot. I don't know the exact number, no.

14 Q Fair to say it's over 100,000?

15 A It's a lot. Certainly.

16 Q Would you dispute that there is over 100,000 immigrants in
17 Colorado without legal status?

18 A No.

19 Q And you agree ICE has increased its arrests by over
20 300 percent this year in Colorado; correct?

21 A I don't know.

22 MR. KAWANABE: That's fine. Let me show you one more
23 exhibit, then. P130. Let's not publish this, if that's okay.
24 I don't think this is admitted. Move to admit P130.

25 MR. BROWN: Your Honor, we object to the entry of

25-cv-3183-RBJ GREGORY DAVIES - Cross 10-31-2025

1 this, as we've done before. This is out-of-court hearsay.
2 There's no evidence that -- nothing to authenticate this
3 document, no evidence that the witness has seen it before or has
4 anything to do with it.

5 THE COURT: You're objecting to Fox News?

6 MR. BROWN: Yes. This article.

7 THE COURT: Mr. Kawanabe?

8 MR. KAWANABE: Yes, Your Honor. For the same reasons
9 in our bench brief, this is admissible at a PI hearing. The
10 Court can decide what weight to give. It is relevant, because
11 it's talking about today, the massive shake-up, and how ICE,
12 including Colorado's ICE, and we heard this from Mr. Guadian, is
13 getting shaken up and leadership replaced.

14 THE COURT: All right. Objection overruled. It's
15 admitted for this purpose only.

16 Q. (By Mr. Kawanabe) Mr. Davies, this article talks about an
17 ICE leadership shake-up that exposes growing friction -- growing
18 DHS friction over deportation tactics and priorities. Do you
19 see that?

20 A Yes.

21 Q It talks about a massive shake-up of U.S. Immigration and
22 Customs Enforcement, ICE leadership is under way amid growing
23 friction inside the Department of Homeland Security over
24 deportation tactics and priorities, according to four senior DHS
25 officials. Do you see that?

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1 A Yes.

2 Q Do you see that this article was dated October 27th, 2025?

3 A Yes.

4 Q And it talks about the overhaul, and references the changes
5 are being driven by competing camps inside DHS. Do you see
6 that?

7 A Yes.

8 Q And you know who Mr. Guadian is; correct?

9 A I do.

10 Q And has he been part of this leadership shake-up, if you
11 know?

12 A I don't know if he's part of the shake-up, but he was --
13 he's being moved.

14 Q He's being moved from where to where?

15 A From here to Washington. The Washington AOR. The
16 Washington, D.C., AOR.

17 Q So, he was in charge of the Denver ICE field office;
18 correct?

19 A Correct.

20 Q But now he's being moved out of state; correct?

21 A Correct.

22 Q And according to this article, on one side of these
23 competing camps are Border Czar Tom Homan and ICE Director Todd
24 Lyons, who have advocated focusing on criminal aliens and those
25 with final deportation orders; correct?

25-cv-3183-RBJ GREGORY DAVIES - Cross 10-31-2025

1 A Correct.

2 Q And those are the terrorists, criminal aliens that you were
3 referring to when you first started to testify; correct?

4 A Correct.

5 Q Those are not the college student Ms. Goncalves or the
6 grocery store worker JST; correct?

7 A Correct.

8 Q Scroll down on the first page. But the other side of the
9 camp are DHS Secretary Kristi Noem, Senior Adviser Corey
10 Lewandowski, and Border Patrol Commander Greg Bovino, who have
11 pushed for a broader and more aggressive approach, targeting
12 anyone in the U.S. illegally to boost deportation numbers;
13 correct?

14 A Yes. That's what it says.

15 Q And the paragraph at the bottom of the blow-up, ICE started
16 off with the worst of the worst, knowing every target they are
17 hitting, but since Border Patrol came to LA in June, we have
18 lost our focus, going too hard, too fast, with limited
19 prioritization, one senior DHS official told Fox. It's getting
20 numbers, but at what cost? Did I read that correctly?

21 A Yes, you did.

22 Q Let's go to the next page at the top. Another senior
23 official put it bluntly, ICE is arresting criminal aliens.
24 They, Border Patrol, are hitting Home Depots and car washes.
25 Did I read that correctly?

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1 A Yes, you did.

2 Q Scroll below the picture, please, Mr. Truax. The internal
3 friction comes as deportation totals remain below targets set by
4 administration earlier this year. Did I read that correctly?

5 A Yes.

6 Q You understand those targets are 3,000 arrests per day from
7 the White House; correct?

8 A I do not know about the 3,000 per the White House, no.

9 Q You do understand the White House is setting targets for
10 numbers of arrests; correct?

11 A We set goals locally.

12 Q That's not my question. You understand the White House is
13 setting targets for arrests; correct?

14 A I've heard about targets for arrest. We don't do it
15 locally.

16 Q And, Mr. Davies, the two camps that are described, which
17 one are you in?

18 A I'm sorry?

19 Q Sure. The two camps that the article just described, which
20 one are you in?

21 A I don't think I'm in any of these camps. I'm here in the
22 Denver field office.

23 MR. KAWANABE: No further questions.

24 MR. BROWN: Redirect?

25 THE COURT: Redirect.

1 **REDIRECT EXAMINATION**

2 BY MR. BROWN

3 Q Hello again, Mr. Davies. Can we please pull up P126. Can
4 you see that, Mr. Davies?

5 A Yes.

6 Q Mr. Kawanabe asked a bit about that. Can we look at the
7 second page, I believe. Okay. So, this is a policy broadcast
8 that discusses the two-pronged standard in 8 USC 1357. We've
9 talked about that; right?

10 A Yes.

11 Q So, first, briefly, are Denver ERO officers trained on this
12 standard?

13 A Yes.

14 Q And when are they trained on this standard?

15 A When they first go to the academy in the beginning of their
16 career. And then whenever a broadcast would come out, we talk
17 about it.

18 Q You also mentioned Fourth Amendment training; is that
19 right?

20 A Yes. That's correct.

21 Q And Fourth Amendment training, do they include Title 8
22 training?

23 A Yes, they do.

24 Q And is -- and included in the Title 8 training is that
25 1357?

25-cv-3183-RBJ GREGORY DAVIES - Redirect 10-31-2025

1 A Yes, it is.

2 Q And how often do those Fourth Amendment trainings occur?

3 A Twice a year.

4 Q So, am I understanding correctly that Denver ERO officers
5 receive Fourth Amendment training that includes Section 1357
6 twice a year?

7 A Yes.

8 Q Okay. So, you recall now that the -- you know the
9 two-prong standard that we've been talking about; right?

10 A Yes.

11 Q Okay. So, I have a hypothetical for you. If someone is
12 lawfully warrantlessly arrested, and then when they are taken
13 back to the field office it is determined that in actuality,
14 they are here legally, will they still receive a notice to
15 appear warrant for arrest?

16 A No, they will not.

17 Q Why not?

18 A Because they're not statutorily removable from the United
19 States.

20 Q So, let's look at -- let's keep looking at 126, please.

21 Okay. So, down in the paragraph that begins with, in
22 considering, I think you and Mr. Kawanabe talked about this
23 paragraph before. About halfway down, there's a -- it says, it
24 starts with ties to the community -- excuse me. It starts with
25 factors relevant. Do you see that, right after the statute

1 cites? There it is. Can you read the rest of that sentence,
2 please.

3 A Factors relevant to the determination may include the ICE
4 officer's ability to determine the individual's identity;
5 knowledge of that individual's prior escapes or evasions of
6 immigration authorities; attempted flight from an ICE officer;
7 ties to the community such as family, home, or employment, or
8 lack thereof; or other specific circumstances that weigh in
9 favor or against the reasonable belief that the subject is
10 likely to abscond.

11 Q So, earlier today you testified that making this
12 determination of flight risk is a totality of the circumstances
13 determination; is that right?

14 A That's correct.

15 Q And at the beginning of this sentence that you just read,
16 it says that officers may include those factors; right?

17 A That's correct.

18 Q Are there circumstances where an officer can determine
19 flight risk without considering ties to the community?

20 A Yes.

21 Q Can you describe that, please.

22 A Being evasive, not answering our questions, being
23 dishonest.

24 Q Okay. Very briefly, Mr. Kawanabe asked you about an
25 incident that occurred in Durango. Do you remember that?

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1 A Yes.

2 Q Can you tell me why they -- why the three individuals who
3 were detained were taken out of Colorado and to Texas?

4 A That's the only place that we have family housing.

5 Q So, those three are housed together in Texas?

6 A Yes.

7 Q And that's the only place in the country that's possible?

8 A Yes.

9 Q All right. I want -- you can take that down now. I want
10 to talk a little bit about asylum applications. Which agency is
11 responsible for reviewing asylum applications?

12 A CIS.

13 Q Is that USCIS?

14 A Yes.

15 Q It's not ICE?

16 A It's not ICE.

17 Q Does filing an asylum application with USCIS initiate
18 removal proceedings?

19 A It does not.

20 Q And if someone has filed an asylum application, does that
21 mean they have participated in removal proceedings?

22 A No, they have not.

23 Q Okay. Mr. Kawanabe also asked you about a series of
24 hypotheticals about arrests. Do you remember that?

25 A Yes, I do.

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1 Q And he also asked you some that were based on a
2 declaration, one person's recount -- account of an arrest. Do
3 you remember that too?

4 A Yes, I do.

5 Q Is it possible that information that was not relayed to you
6 in those hypotheticals would have justified a warrantless
7 arrest?

8 A Yes.

9 Q And for Mr. JCC, have you reviewed his form 213?

10 A Which one is JCC? I'm sorry.

11 Q JCC is not one of the plaintiffs in this case.

12 A No, I have not.

13 Q When -- during a targeted investigation where Denver ERO
14 officers have done an investigation and they've identified a
15 target, how is it possible that they can stop someone who they
16 think is the target but it turns out not to be?

17 A Mistaken identity. The person looks like the subject. We
18 thought or believed it to be the subject. We went to encounter
19 them to determine who he was.

20 Q If officers encounter someone for, you know, a consensual
21 encounter, and that person provides their ID and the officers
22 take the ID, what do the officers do with that information?

23 A We will run our checks on it, our database checks to ensure
24 we know who that subject is.

25 Q That's the reason they take the ID and walk away?

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1 A Absolutely.

2 Q Can we please pull up P17, and go to the third page, I
3 believe. Okay. Up at the top there where it says records
4 checked, do you see that?

5 A Yes.

6 Q Mr. Kawanabe briefly showed that to you. What is EARM?

7 A That's our database system where we enter everybody that we
8 encounter into, along with their information that we get.

9 Q What does EARM pos mean?

10 A It means that EARM was positive, so we had encountered this
11 person before.

12 Q Can you please close that, and then can we go to the entry
13 data. The entry data section, please. Can you read the last
14 line of that, please.

15 A Subject was voluntarily returned to Mexico on
16 September 13th of 2006 and on September 19th of 2006, through
17 Sasabe, Arizona.

18 Q And is that information available in EARM?

19 A It is.

20 MR. BROWN: No further questions. Thank you.

21 MR. KAWANABE: Just to be clear on that last exhibit,
22 let's pull that up. P17. I'm sorry. Did you have an
23 objection?

24 MR. BROWN: I didn't know that we were --

25 MR. KAWANABE: I'm sorry. I should -- I had a

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1 follow-up question. May I ask that, or no?

2 THE COURT: Pardon me?

3 MR. KAWANABE: May I ask a follow-up question, or no?

4 THE COURT: Yes.

5 **RECROSS EXAMINATION**

6 BY MR. KAWANABE

7 Q P17, you were just shown the entry data, and I just want to
8 read that for the record. The last sentence, subject was
9 voluntarily returned to Mexico on September 13th, 2006,
10 September 19th, 2006; correct?

11 A Correct.

12 Q Okay. And that was nearly 20 years ago; correct?

13 A Yeah.

14 Q And that was a voluntary action?

15 A Yes, it was.

16 MR. KAWANABE: Okay. No further questions.

17 THE COURT: Now, do you have any further reredirect?

18 MR. BROWN: No, Your Honor.

19 THE COURT: Okay. Thank you, sir. You're excused,
20 free to go.

21 THE WITNESS: Thank you.

22 THE COURT: Or stay and watch if you want. Do you
23 have any other witnesses?

24 MR. LENEIS: We do not, Your Honor.

25 THE COURT: Okay. The defense rests. Do you have any

1 rebuttal?

2 MS. McLEAN-RIGGS: We do, Your Honor. We'd like to
3 call Ms. Carly Hamilton.

4 MR. DEUSCHLE: Your Honor, if I may, can I approach
5 the lectern?

6 THE COURT: Yeah.

7 MR. DEUSCHLE: Thank you. Your Honor, I will be
8 brief. We have roughly the same objection from before about
9 this witness. I won't repeat everything, but the timing, we
10 were again told about this witness last night. We've been
11 prejudiced by it, and since our last discussion about this
12 witness, there's been no evidence that has come in that the
13 plaintiffs need to rebut. And if there is, the only evidence I
14 think this witness will talk to is evidence that the plaintiffs'
15 counsel introduced in the cross of our witness. So, for those
16 reasons, we don't believe this witness should be allowed.

17 THE COURT: Okay. I disagree. It's a rebuttal
18 witness.

19 MS. McLEAN-RIGGS: Thank you, Your Honor.

20 THE COURT: But look at it this way, Mr. Deuschle?

21 MR. DEUSCHLE: Deuschle. Yes, Your Honor.

22 THE COURT: One of the glories of trial practice is
23 cross examining the witness where you aren't totally prepared.

24 MR. DEUSCHLE: Looking forward to the opportunity,
25 Your Honor.

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1 THE COURT: Hello.

2 THE WITNESS: Hello.

3 (The Witness is Sworn)

4 THE COURT: Thank you.

5 **DIRECT EXAMINATION**

6 BY MS. McLEAN-RIGGS

7 Q Good afternoon. Would you please state your name for the
8 court reporter.

9 A Carly Hamilton. C-A-R-L-Y, H-A-M-I-L-T-O-N.

10 Q And what do you do for work?

11 A I'm a criminal defense attorney.

12 Q Are you an immigration attorney?

13 A No.

14 Q How long have you been practicing?

15 A About four years.

16 Q As an officer of the court, do you take your legal and
17 ethical responsibilities seriously?

18 A Yes.

19 Q Are you a volunteer for the ACLU of Colorado?

20 A I am.

21 Q Do you speak any other languages?

22 A I speak Spanish.

23 Q Were you asked to investigate a detention in Durango this
24 week?

25 A Yes.

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1 Q By who?

2 A By you.

3 Q As part of that investigation, did you interview an
4 impacted person?

5 A I did.

6 Q What were that person's initials?

7 A EJ -- EPB.

8 Q And did you do that interview in Spanish?

9 A Yes.

10 Q Who is that person, in general terms?

11 A That is a person whose husband and two children were
12 detained by ICE in Durango.

13 Q Did you give any legal advice as part of this
14 investigation?

15 A No.

16 Q Did you evaluate any claims as part of this investigation?

17 A No.

18 Q When did you speak with EPB?

19 A I first spoke with her on Wednesday evening, and then again
20 last night.

21 Q Is EPB married?

22 A Yes. As far as I understand, yes.

23 Q What are the initials of EPB's husband?

24 A FJ.

25 Q Does EPB have children?

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- 1 A She does.
- 2 Q What are their first initials?
- 3 A J and K.
- 4 Q And how old are they?
- 5 A J is 12, and K is 15 years old.
- 6 Q Boys or girls?
- 7 A J, the 12-year-old, is a girl. And K, the 15-year-old, is
- 8 a boy.
- 9 Q Is EPB an asylum seeker?
- 10 A Yes.
- 11 Q What if anything did she tell you about why she is seeking
- 12 asylum?
- 13 A She stated that she was tortured and beaten in her home
- 14 country, and that her first husband was assassinated there.
- 15 Q What if anything did she tell you about her criminal
- 16 record?
- 17 A She said that she does not have a criminal record.
- 18 Q What if anything did you -- did she tell you about FJ's
- 19 criminal record?
- 20 A That he had never been arrested or criminally charged. No
- 21 record.
- 22 Q What if anything did she tell you about her 15-year-old son
- 23 K's criminal record?
- 24 A That K does not have a criminal record.
- 25 Q What if anything did she tell you about her 12-year-old

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1 daughter J's criminal record?

2 A That she does not have a criminal record either.

3 Q Did she tell you something about Monday, October 27th?

4 A Yes.

5 MR. DEUSCHLE: Objection, Your Honor. Hearsay.

6 THE COURT: Overruled.

7 THE WITNESS: Yes.

8 Q. (By Ms. McLean-Riggs) What did she tell you?

9 A She said that she received a call around 8 o'clock in the
10 morning, a video call from her son, K.

11 Q And how long was that call?

12 A She said about a minute long.

13 Q What could she see?

14 A She, on the video could see her son, K. And standing
15 behind her son, presumably an ICE agent, somebody who was
16 baldheaded and was wearing a mask.

17 Q Later did she learn anything about where K was during this
18 encounter?

19 A Yes. She stated that on that call, K said, mommy, ICE is
20 here. They're taking us. And the ICE agent is -- the ICE agent
21 was speaking in English, and K was translating in Spanish and
22 said, he says you need to come get us.

23 Q Okay. And did she later learn anything about where K was
24 during that call, physically?

25 A Yes. K and J were both in their father's truck on their

1 way to J's school that morning.

2 Q Okay. And does J go to elementary, middle, or high school?

3 A Middle school.

4 Q Okay. And did she say anything about what she said to her
5 son?

6 A She said, I will be there in 30 minutes. I have our asylum
7 papers at the house. I will bring them.

8 Q And then what happened?

9 A And then the call ended. She said she was hung up on.

10 Q When did EPB next hear from her husband and children?

11 A She heard from them again later that evening, which was
12 Monday.

13 Q Okay. What if anything did her husband report to her about
14 what had happened?

15 A He reported to her that ICE agents had beaten them in the
16 streets, treating them poorly, and that they were at the
17 detention facility.

18 Q And when you say, the detention facility, do you mean the
19 ICE office in Durango?

20 A Yes.

21 Q Did FJ report anything to her about why they were stopped?

22 A He was confused about why they were stopped, and thought
23 that they were looking for somebody else. He said that -- he
24 stated that they were looking for somebody else, so he thought
25 they were confused.

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1 Q Did he say anything about seeing any paperwork?

2 A No.

3 Q What if anything did he say about being asked any
4 questions?

5 A He stated that once he was at the detention center, he was
6 asked a lot of questions about his work, where he lives,
7 demographic information.

8 Q But not before they were at the detention center?

9 A Correct.

10 Q So, you had said that K -- that EPB had heard from K again
11 at around 10:00 p.m.; is that right?

12 A Yes.

13 Q And what did K say about the encounter that morning?

14 A K said that -- again, that they were being beaten, that
15 they were handcuffed. They meaning K and his father were
16 handcuffed around their wrists. They had chains around their
17 waist and shackles around their ankles. K was talking about
18 being treated poorly at the detention center, and said that he
19 was afraid.

20 Q How did she describe his demeanor?

21 A She said he was crying and seemed really afraid.

22 Q What did EPB learn about the treatment of her family in
23 detention at the ICE field office?

24 A In Durango?

25 Q Yes.

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1 A She learned that the three of them were in what they
2 described on the phone as a dungeon with no natural light, that
3 they were shackled in there, that they had a urinal to share.
4 That was the only toilet that the three of them had to use,
5 including the 12-year-old little girl. And that they were not
6 given any food, except potatoes.

7 Q Did that urinal have any privacy?

8 A No. They also said there were no beds.

9 Q No beds, as in no beds to sleep in?

10 A Correct. I think they said something like the beds are
11 cement.

12 Q Okay. Did EPB talk to her 12-year-old?

13 A Yes.

14 Q What did she say?

15 A Her 12-year-old said, hi, mommy. I love you. I miss you.
16 How is Lulu?

17 Q Who is Lulu?

18 A It's the family dog.

19 Q Okay. Did FJ report being asked any questions about guns
20 in detention?

21 A He did not.

22 Q Did he report being asked any questions about drugs in
23 detention?

24 A No.

25 Q Any questions about gangs?

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1 A No.

2 Q Did she say where FJ and the children are now?

3 A She believes that they are at the South Texas Family
4 Residential Center.

5 Q Okay. As part of your investigation, did you talk to
6 another person?

7 A I did.

8 Q Who was that person?

9 A Catalina Villa is her name.

10 Q And who is that?

11 A She is a -- I'm not sure if she's a volunteer or staff
12 person, but she works with Compañeros, which is an immigrant
13 services organization in the four corners area. And she's been
14 helping the family.

15 Q What if anything did she tell you about going to the
16 Durango ICE office on Monday?

17 A She said that as soon as she learned the family had been
18 detained there, she went to the detention facility around
19 10:00 a.m. and demanded that the children be released, and told
20 them, this is a mistake. You have the wrong people.

21 Q Did Catalina ask if there were arrest warrants for --

22 A She did.

23 Q For FJ?

24 A Yes. For FJ and the children.

25 Q Okay. What did the agent say?

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1 A We don't need one.

2 Q Did they release FJ and the children at that time?

3 A They did not.

4 Q Did Catalina return to the facility later in the day?

5 A She did. She believed that the children might be released,
6 so she left. And after the day had passed and the children were
7 not released, she went back to the detention center that
8 evening.

9 Q And who did she go with?

10 A She went with a retired immigration attorney. Her last
11 name, I believe, is Maloney.

12 Q Okay. What if anything did Ms. Maloney say to the agent
13 about their detention of this family?

14 A Well, they went to demand again that the children be
15 released, and to tell them that they had the wrong family,
16 because this family has no criminal history or anything. They
17 also told these officers that the family has an asylum claim.
18 The retired immigration attorney told the ICE officers or
19 whoever was there working that what they were doing is illegal.

20 Q What did the agent say in response?

21 A "We are the law."

22 Q Could you describe EPB's demeanor when you spoke to her
23 last night.

24 A She was very emotional, crying, and could barely speak.

25 Q One last question. These arrests that we've been talking

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1 about, they occurred on Monday of this week; right?

2 A Correct.

3 MS. McLEAN-RIGGS: No further questions. Thank you.

4 THE COURT: Cross?

5 MR. DEUSCHLE: Thank you, Your Honor.

6 **CROSS EXAMINATION**

7 BY MR. DEUSCHLE

8 Q Good afternoon, Ms. Hamilton.

9 A Hi.

10 Q I believe you testified that you do not currently practice
11 or have ever practiced probation law?

12 A That's correct.

13 Q And you're a part of the Del Pueblo Law Firm; is that
14 right?

15 A Yes.

16 Q On your website you advertise that you specialize in
17 responding to ICE raids; is that right?

18 A Yes. Well, I wouldn't say specialize, but it's something
19 I've volunteered for in the past, yes.

20 Q Fair to say that your clients' interests are generally
21 opposed to ICE; is that right?

22 A I'm not sure I would say that.

23 Q You're regularly adverse to ICE in your practice?

24 A I'm adverse to illegal detentions of my clients.

25 Q If you have a prospective client who needs immigration

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1 advice, do you refer those clients to someone else?

2 A Typically, yes.

3 Q Have you ever referred a prospective client to any of the
4 plaintiffs' lawyers?

5 A Not that I know of.

6 Q Have any of the plaintiffs' lawyers ever referred you any
7 immigration clients?

8 A Not that I know of.

9 Q Have -- do you know any of the witnesses who testified in
10 this case?

11 A I don't know who all testified. I don't think so.

12 Q Do you know who Liz Jordan is, Professor Jordan?

13 A I don't know her personally, no.

14 Q Has Ms. Jordan ever referred you clients?

15 A No.

16 Q I believe you testified that opposing counsel asked you to
17 participate in this lawsuit; is that right?

18 A Yes.

19 Q And she told you she -- I'm sorry. I already asked you
20 that. Did you take any notes in this interview that you did
21 of -- let me actually take a step back so I get the letters
22 right. It was confusing to me, at least. EPP is the wife in
23 this situation?

24 A EPB.

25 Q EPB?

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- 1 A Yes.
- 2 Q And then FJ was the husband?
- 3 A Correct.
- 4 Q Okay. And you interviewed EPB; is that right?
- 5 A Yes.
- 6 Q Did you take any notes of that interview?
- 7 A Yes.
- 8 Q Do you have them with you?
- 9 A I do not have them with me.
- 10 Q Even though you were going to participate in this lawsuit?
- 11 A Yes.
- 12 Q Did you record that interview?
- 13 A I did not.
- 14 Q Even though you knew you were going to participate in this
- 15 lawsuit and testify?
- 16 A Correct.
- 17 Q I'd like to turn to your -- actually, one more question.
- 18 Did you give -- get consent from EPB to talk about your
- 19 interview?
- 20 A Absolutely.
- 21 Q Okay. Did you get consent from FJ to talk about their
- 22 circumstances?
- 23 A I have no way of reaching him.
- 24 Q And so I believe you testified about what happened during
- 25 the arrest in Durango; is that right?

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1 A Yes.

2 Q You weren't present during the arrest; right?

3 A Correct.

4 Q So, you don't know what was said to the officers; right?

5 A Correct.

6 Q You don't know what the officers said to the individuals;
7 right?

8 A Correct.

9 Q Because you weren't there?

10 A Correct.

11 Q So, you don't know?

12 A Correct.

13 MR. DEUSCHLE: No further questions.

14 THE COURT: Redirect?

15 MS. McLEAN-RIGGS: No redirect. Thank you.

16 THE COURT: Okay. Thank you. You're excused, free to
17 go. Any other rebuttal?

18 MR. KAWANABE: No rebuttal witnesses, Your Honor. One
19 correction that I believe is stipulated to. I inadvertently
20 said the names in the record of the family in Durango that was
21 just testified to. We would ask, and I think this is agreed to
22 by the Government, that the court reporter be instructed to use
23 initials instead of the full names that I mistakenly said on the
24 record.

25 THE COURT: I don't usually instruct the court

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1 reporter to do anything, except do a good job. Maybe I should
2 ask him what he recommends.

3 MS. McLEAN-RIGGS: Judge, if I may, I think this one
4 is my fault. It's not that the three names were said on the
5 record. It's that we admitted an exhibit that was a media
6 article with those three names in it. We had talked to the
7 Government about being able to resubmit that exhibit with
8 redacted names, and my understanding is that that was agreed to.

9 MR. DEUSCHLE: That's fine.

10 THE COURT: That's fine.

11 MS. McLEAN-RIGGS: Thank you.

12 MR. KAWANABE: I fumbled that issue. Thank you for
13 that clarification. Finally, Your Honor, we do have the flash
14 drive of the videos that should have gone with your exhibit
15 book. If I might hand that over, and then we rest.

16 THE COURT: Okay. Is there any surrebuttal?

17 MR. LENEIS: No, Your Honor.

18 THE COURT: All right, then. The evidence is closed.
19 Would either side like to make a closing argument?

20 MR. KAWANABE: If Your Honor would like that,
21 absolutely.

22 THE COURT: It's up to you. It's your case. I'm
23 here.

24 MR. KAWANABE: Okay. May it please the Court and
25 Counsel, Kenzo Kawanabe on behalf of plaintiffs. Immigration

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1 agents should be stopped from continuing to terrorize Coloradans
2 in violation of the laws they purport to enforce.

3 THE COURT: Okay. Just speak to what I have to
4 decide.

5 MR. KAWANABE: That's fair. Plaintiffs have standing,
6 Your Honor. First, two different ways. Both likelihood to
7 reoccur, we heard testimony about that, including the SB
8 driver's licenses, and second, continuing injury that would be
9 cured by an injunction. First, the likelihood of rearrest,
10 you've heard from Mr. Ramirez Ovando. There is no arrest
11 warrant, yet he does not have a Green Card. Same ID as he had
12 when he originally was arrested and detained.

13 Mr. Guadian admitted that CIS and ICE systems take time
14 to update with current immigration status info, and there is a
15 significant ramp-up in enforcement activities and detention post
16 Big Beautiful Bill that Your Honor has heard about, including
17 doubling up the staff in Colorado, and doubling or tripling of
18 the detention centers. It's only going to get worse.

19 Second standing, continuing injury. Ms. Dias
20 Goncalves, JST, and GRR are all wearing ankle monitors and
21 subject to supervised release and accompanying restrictions.
22 That would not have happened but for the warrantless arrest.
23 Mr. Davies admitted that in two cases where collaterals were let
24 go because there was no probable cause of flight risk, ICE did
25 not then get arrest warrants.

1 He testified that the person would be released if found
2 out if no probable cause of flight risk would occur. That's the
3 *McLaughlin* case, Your Honor, about continuing injury. And I
4 will provide that cite, which I should have put in my notes,
5 now, but I will provide that cite when I get there in a second.
6 So, two forms of standing. Any questions regarding that? I'm
7 going to distinguish *Lyons*. The Government has relied upon --

8 THE COURT: Yeah. I will ask on your last form, the
9 continuing injury, do you suggest that that applies to
10 Mr. Ovando?

11 MR. KAWANABE: No. I don't believe so, Your Honor.

12 THE COURT: But it applies to the other three?

13 MR. KAWANABE: Absolutely, Your Honor. And when you
14 look at the *McLaughlin* case, and the cite I will get you, you
15 will see that the Government in that case made a similar
16 argument regarding the request for immediate probable cause
17 hearing, I believe, and the Government said, well, it's too late
18 now, time has dissipated that injury. And the Court
19 specifically addressed, no. It's a continuing injury. These
20 plaintiffs have standing, and importantly, there was a class
21 action case that was certified, Your Honor.

22 THE COURT: Well, your point is simply that had they
23 followed the law, they wouldn't have been arrested, and they
24 wouldn't be in this fix now.

25 MR. KAWANABE: You said it much better than me, but

1 yes. That is my point.

2 THE COURT: I don't know about that, but I guess I'm
3 the judge.

4 MR. KAWANABE: The Government relies upon *Lyons* quite
5 a bit, Your Honor. *Lyons* is not this case. *Lyons* was not a
6 class action. *Lyons* was a single choke-hold, and the trial
7 Court in that matter made no factual findings. This Court can
8 make factual findings, unlike --

9 THE COURT: Right. But you've just gotten to a point
10 that's of great interest to me, and that is whether we -- if the
11 Court were inclined to rule in your favor, whether that requires
12 more than just an injunction. Or, put another way, is a
13 statewide injunction beyond my authority after the Supreme Court
14 case in *CASA*?

15 MR. KAWANABE: I am not making the Government's
16 argument for it. That certainly is the Government's argument.
17 I will acknowledge there is a tension between *CASA* and *AARP*.
18 And that tension is outlined in the *Newberg* treatise on class
19 actions, where the tension that exists are whether or not the
20 Court has that authority without certifying a class action.

21 THE COURT: So, I thought, perhaps mistakenly, that
22 the point before the Supreme Court was nationwide injunction.

23 MR. KAWANABE: That was part of the case, Your Honor.
24 The Supreme Court also focused, though, on the people affected.
25 And so the Government has argued that *Lyons* is not just --

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1 excuse me -- CASA is not just nationwide injunction. The
2 Government is arguing that it is actually any injunction for
3 nonparties. And that is why the safest course, according to
4 *Newberg*, which we agree with -- the safest course would be to
5 provisionally certify a class action and grant that preliminary
6 injunction.

7 THE COURT: And I take it you claim I have all I need
8 to do that?

9 MR. KAWANABE: Correct.

10 THE COURT: Of course that assumes that I agree with
11 your side of the case, but --

12 MR. KAWANABE: Not assuming anything. You're right,
13 Your Honor.

14 THE COURT: All right.

15 MR. KAWANABE: The *McLaughlin* case cite, Your Honor,
16 is 500 U.S. 44, 1991. Again, just to finish up on *Lyons* and why
17 it is inapplicable in this case, the Court in *Lyons* specifically
18 noted the district court made no factual findings, including
19 with regard to likelihood of injury in the future, standing
20 issues. That's why they said that plaintiff, single plaintiff,
21 not a class, didn't have standing. That is not the case here.

22 The case here is not moot. It is ready for
23 determination. The Government will argue that somehow an email
24 that was talked about in the Denver office means everything is
25 going to change. The mountain of evidence is nothing has

1 changed. The evidence is that it will only get worse.

2 The warrantless arrests have occurred not just prior to
3 this October 22nd correction of a mistaken termination, it's
4 occurred before and after, as this Court has heard. Certainly,
5 it is not moot. Nothing has changed. They've known about this
6 standard, which is probable cause to determine flight risk,
7 since 2022. In fact, we heard testimony that for their careers
8 in ICE, the standard has been the same, Your Honor, and yet they
9 continually violate that standard across the state.

10 I will briefly touch on the four factors for
11 preliminary injunction. Likelihood to succeed on the merits,
12 certainly Your Honor can look at the I-213s. Their policy is
13 they must document flight risk. They didn't document flight
14 risk. And they have to document the flight risk before the
15 arrest. That's the encounter section. And so anything that is
16 outside the encounter section doesn't matter, because the
17 warrant -- the arrest without the warrant has to be based on
18 those factors that they failed to even investigate. And
19 frankly, Your Honor, even if you consider the other factors that
20 they collected post-arrest, that leans towards not arresting,
21 because these -- I'm sorry.

22 THE COURT: No. Go ahead. I wasn't going to
23 interrupt. I was just moving toward the microphone in case I
24 wanted to ask something.

25 MR. KAWANABE: Okay. I thought you might. I think I

1 made my point on the I-213s.

2 THE COURT: Okay. Now I do want to ask something.

3 MR. KAWANABE: Yes.

4 THE COURT: I've forgotten what I wanted to ask, but
5 it had to do with Mr. Ovando. It will come to me.

6 MR. KAWANABE: Okay. I will remind the Court that
7 Mr. Guadian, and this is in the rough transcript --

8 THE COURT: Oh. I know what it is. Mr. Ovando
9 testified that basically he refused to answer their questions.
10 They have said that if a person refuses to answer our questions,
11 you can't expect us to do a particularized description of flight
12 risk. He won't answer where he lives, where he works, what his
13 job is, blah blah blah. What do you say to that?

14 MR. KAWANABE: The evidence is he refused to answer
15 that question that was asked, but the reality is ICE didn't ask
16 him flight risk questions, Your Honor. That is on ICE. And I
17 remind the Court, Mr. Guadian's testimony yesterday, including
18 the rough transcript on page 109, page -- line 17 to 24, it's
19 the officers that have the burden of establishing probable
20 cause, not the burden of the arrested individual to show no
21 probable cause. So, yes, Mr. Ovando didn't answer one question.

22 THE COURT: What was the question that he didn't
23 answer?

24 MR. KAWANABE: Legal presence, Your Honor. Nothing to
25 do with flight risk. Legal presence.

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1 THE COURT: Okay. I didn't remember that, but I
2 accept your word on it.

3 MR. KAWANABE: The standard itself is not in dispute,
4 and they set it forth in their own policies, including the
5 broadcast policy from 2022. I don't think I need to recap the
6 testimony of the plaintiffs, but essentially, it is similar that
7 no flight risk questions were asked. So, I believe we've
8 carried our burden on that.

9 If Your Honor wants to look at example cases within
10 this district, *U.S. versus Khan*, 324 F. Supp. 2d 1177. The
11 Court found that the arrest was in violation of 8 USC 1357,
12 noting that the immigrant in that case, Mr. Khan, worked two
13 jobs accounting for approximately 16 hours per day. He owned a
14 vehicle, contributed to payments. These are all things that
15 show that Mr. Khan was not a flight risk, just like our
16 plaintiffs.

17 THE COURT: And what did that Court say about the
18 remedy?

19 MR. KAWANABE: I will have to get back to you on that
20 one, Your Honor. I think in Mr. Khan's case, there were two
21 different interviews, and the Court said that the initial 1357
22 violation was wrong. But if I recall correctly, the second set
23 of interviews that led to ultimately his injuries, either
24 detention or deportation, the Court upheld. So, there were --
25 it was two different injuries, if I remember -- or two different

1 interviews, if I remember correctly.

2 Factor two, irreparable harm from continued unlawful
3 warrantless arrest. Again, that irreparable harm continues,
4 including the ankle monitors, including that they never gave
5 identification back. So, Ms., for example, Dias Goncalves, lost
6 her job, one of her two jobs, had to move home, is taking one
7 class instead of her normal five classes. And Your Honor
8 certainly can make factual findings based on the mountain of
9 evidence of dozens and dozens of warrantless arrests across this
10 state.

11 And the Government says, well --

12 THE COURT: Well, where do you get dozens and dozens?

13 MR. KAWANABE: Well, Mr. Vazquez, the attorney for
14 example.

15 THE COURT: He talked about 20.

16 MR. KAWANABE: Yeah. Plus the plaintiffs, plus the
17 additional declarants, Your Honor.

18 We've talked about the Government will I'm sure raise
19 the fact that it knows its standards and it's trained, but when
20 asked several times, they won't stipulate to those standards
21 that they know apply. And they're just not applying them in the
22 real world. It is a pattern and practice case, Your Honor.

23 As to the I-200 warrants that they rely upon, the
24 evidence is -- I mean, they say that the I-200 warrants are just
25 open, and they could use those to arrest folks, including the

1 plaintiffs, at any time. But they also have admitted on the
2 stand, we're not going to do that, because unless there's a
3 change in circumstance, a material change in circumstance,
4 they're not going to use that warrant to make those arrests.

5 And so if Mr. JST is arrested based on his driver's
6 license, it's not based on this open -- open -- what they call
7 an open warrant. And they said that. Nothing has changed. So,
8 if he gets arrested, it's not pursuant to the warrant, Your
9 Honor.

10 And then I also would like to mention that Mr. Ovando
11 doesn't have a warrant anymore. The problem is he doesn't have
12 his Green Card. And so the I-200 argument doesn't work as to
13 plaintiff Ovando.

14 Factor number three of a preliminary injunction, the
15 balance of harms and equities strongly favor plaintiffs. And
16 you weigh those. Mr. Guadian admitted there's no harm to ICE or
17 the defendants or the Government if required to comply with the
18 law. That was yesterday in rough transcript page 117, 13, 24
19 comparing to the harm that certainly the plaintiffs and the
20 putative class members have and will experience if a preliminary
21 injunction is not issued.

22 And as to class certification, Your Honor -- oh. Also,
23 we would request no bond. No bond is necessary in this case.
24 We've cited in our brief that district courts may dispense with
25 bonds where an injunction poses no realistic harm to the

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1 defendants, and Mr. Guadian admitted as such when asked on the
2 stand.

3 The proposed order for the preliminary injunction, I
4 will go through all of it, but we have submitted the proposed
5 order that is substantially similar to what is -- the Government
6 agreed to in the *Nava* case. That includes actually applying the
7 factors it's supposed to -- the Government is supposed to apply
8 in conducting a warrantless arrest, documenting how they applied
9 those factors that they know in the I-213 form. Also, a
10 compliance requirement as in *Nava* that they provide I-213s to
11 plaintiffs' counsel periodically, to ensure that officers are
12 actually following the law.

13 THE COURT: Now, after you folks walk out of this
14 courtroom today, what are you going to do? Assuming I don't
15 just -- well, whether I grant or deny the injunction, you're
16 going to then launch into some discovery?

17 MR. KAWANABE: I think so, Your Honor.

18 THE COURT: So, you will get the 213s whether I order
19 them or not.

20 MR. KAWANABE: On a retrospective basis, but I think
21 the compliance is for future warrantless arrests to make sure
22 they're complying with the preliminary injunction.

23 And then briefly, I would like to touch upon
24 provisional class certification. We proposed a class of, quote,
25 all persons since January 20th, 2025, who have been arrested or

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1 will be arrested in this district by immigration officers
2 without a warrant and without a pre-arrest individualized
3 assessment of probable cause that the person poses a flight
4 risk. That is our proposed class. The four factors, as you
5 know, apply, Your Honor --

6 THE COURT: Say that again. What's the proposed
7 class?

8 MR. KAWANABE: You bet, Your Honor. The proposed
9 class is all persons since January 20th, 2025, who have been
10 arrested or will be arrested in this district by immigration
11 officers without a warrant and without a pre-arrest
12 individualized assessment of probable cause that the person
13 poses a flight risk.

14 THE COURT: Okay.

15 MR. KAWANABE: The four factors that apply are
16 numerosity. We have heard beyond the four plaintiffs in this
17 case, the hundred and -- plus hundred thousand people that are
18 subject to potential arrest -- potential warrantless arrest.

19 Second, the class members have or will suffer the same
20 injury. That's warrantless arrest in violation of 8 USC Section
21 1357(a)(2) and 8 CFR Section 287.8, subsection (c)(2), Roman
22 numeral II. And the class raises common questions that generate
23 common answers, including whether defendants have a policy or
24 practice of effecting warrantless arrests without making a
25 determination of flight risk, and whether that practice violates

1 federal law.

2 Number three, plaintiffs' legal claims are typical of
3 those whom they seek to represent, as each was arrested without
4 flight risk assessment and without a warrant.

5 And finally, plaintiffs are represented by qualified
6 counsel with experience litigating class actions in cases
7 involving the rights of noncitizens.

8 Certification is also appropriate under Rule 23(b)(2)
9 because defendants, quote, have acted or refused to act on
10 grounds that apply generally to the class, so that the final
11 injunctive relief or corresponding declaratory relief is
12 appropriate -- appropriate respecting the class as a whole, and
13 a single injunction or declaratory judgment would provide relief
14 to each member of the class. And as Courts in the Tenth Circuit
15 have recognized, the (b)(2) class action was invented -- was
16 created for the purposes of facilitating civil rights suits just
17 like this one.

18 Thank you, Your Honor.

19 THE COURT: Thank you. Mr. Brown?

20 MR. LENEIS: Because Mr. Kawanabe gave one, I guess I
21 will too. The claim that the plaintiffs are bringing here is
22 for a broad, forward-looking injunction under the APA for all
23 ICE arrests in Colorado that happened without a warrant. And
24 there's a couple of key facts that have come out from the
25 hearing that show why the preliminary injunction is not

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1 warranted under the law.

2 First, the hearing has shown that the chances of
3 rearrest for any of these plaintiffs are vanishingly small,
4 especially unlawful warrantless rearrest based on failure to
5 assess risk of flight. The second is that --

6 THE COURT: Why do you say that?

7 MR. LENEIS: So, for the three plaintiffs who have
8 been issued notices to appear, there are outstanding warrants
9 for their arrest. Were they to be rearrested, their arrest
10 would not be warrantless, because the violation of law, which is
11 being present in the country without authorization, unchanged --

12 THE COURT: Well, there was an old warrant. That
13 doesn't mean they'd be served with a new warrant.

14 MR. LENEIS: The warrant is something that is in ICE's
15 possession in the event that it is needed to arrest one of these
16 individuals.

17 THE COURT: Ah. So, these three individuals, the
18 grocer, the home remodeler, and the student are out driving
19 around, and for whatever reason, they're stopped. They don't
20 have to be asked anything about their likelihood of escape
21 anymore, because there's an old warrant sitting in the file, and
22 therefore, they can be subject to the same exact treatment that
23 they were before, but this time it would be okay?

24 MR. LENEIS: I think the way that Your Honor has
25 phrased it is correct, but I would put it this way: The factual

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1 scenario that we're talking about would be most likely if one of
2 these people was encountered as a collateral. That was the main
3 factual scenario that Your Honor heard about during the hearing.

4 THE COURT: Correct.

5 MR. LENEIS: And the testimony that Your Honor heard
6 from Mr. Davies was that the existence of this warrant actually
7 wouldn't even come into play in that circumstance, because also,
8 each of these individuals has -- a condition of their bond is
9 wearing an ankle monitor, and so they also are not likely to be
10 a risk of flight. And so they are unlikely to be rearrested
11 during any such encounter, because there's no risk of flight.
12 ICE knows where they are all the time. ICE has no reason to
13 rearrest them; right?

14 THE COURT: Well, if you think an ankle monitor
15 removes the risk of flight, you haven't been around criminal law
16 very long. They can cut those things off in five seconds.

17 MR. LENEIS: Right. I think that that's --

18 THE COURT: The reason they're not a risk for flight
19 is because they're all embedded in their respective communities.

20 MR. LENEIS: But play your hypothetical out to its
21 logical conclusion. If one of the plaintiffs were to cut their
22 ankle monitor, that would be a material change in the conditions
23 of their bond. That's where the warrant for rearrest comes into
24 play.

25 Now the plaintiff has -- or whoever it is that's

1 wearing an ankle monitor has cut the monitor and is actively
2 avoiding contact with ICE; right? And so there is a warrant
3 outstanding for that person's arrest. If they are then
4 encountered, they can be rearrested, brought into detention, but
5 it's not because ICE is looking to rearrest them. It's because
6 now they've done something wrong. They've cut their ankle
7 monitor off; right?

8 But the question in the case is a narrow one: unlawful,
9 warrantless rearrest based on a failure to evaluate these risk
10 of flight situations. None of the plaintiffs in this case are
11 likely to be in that scenario. And that's just leaving aside
12 the fact that any actual reencounter as a collateral situation
13 like this is extremely unlikely based on the plaintiffs' own
14 numbers; right? The plaintiffs have asserted that there are
15 about 170,000 people in the state without authorization. None
16 of the plaintiffs have said that in the months since they were
17 first encountered they've ever encountered ICE again.

18 So, there really is -- you could leave aside the ankle
19 monitor. You could leave aside the arrest warrants. You can
20 leave everything aside. The chance that they're going to be
21 reencountered at all has not been shown to be very high. First,
22 you need the reencounter. Then you need a failure to determine
23 that Mr. Refugio is now a permanent resident. That would be
24 required for him to be unlawfully warrantlessly arrested, and
25 they would have to determine that he is a risk of flight.

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1 THE COURT: As a matter of mathematics, you're
2 probably right. They won't hit the lottery again, probably.

3 MR. LENEIS: Yes. And that does really matter here,
4 Your Honor, and you haven't heard any kind of expert testimony
5 to put those mathematics in front of you in a factual way. A
6 good case to look at about this is the Supreme Court's decision
7 in *Walmart v. Dukes*. That's a case about allegations of a
8 pattern of practice of discrimination within a very large
9 company.

10 And this came up in the context of class certification,
11 but the same concept is equally applicable within the realm of
12 standing, and it's also equally applicable to the way the
13 plaintiffs have framed their APA claim; right? Because their
14 APA claim is not about the past arrests. They are not
15 challenging the past arrests under the APA. What they are
16 challenging under the APA is a purported policy, pattern, or
17 practice of unlawfully warrantlessly arresting people. They are
18 using their experiences as data points for saying that this
19 pattern and practice exists. Okay?

20 But if you look at *Walmart*, the situation there was a
21 class of about 12,000 people, and what the Court was faced
22 with -- or what the Court was given was 120 affidavits for
23 12,000 people. 120 actual affidavits. Not hearsay affidavits
24 that were synthesizing together a bunch of experiences that
25 people said that they had had to someone else, but actual

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1 affidavits from actual potential class members. Not only
2 that --

3 THE COURT: Saying what?

4 MR. LENEIS: Saying that they had experienced that
5 discrimination at the company; right? Saying that they had
6 experienced the unlawful conduct. And that's the point of the
7 affidavits in this case is to say the conduct that happened to
8 me was unlawful; right? I was unlawfully arrested based on the
9 particular circumstances of my arrest. You've only seen about
10 four or five like that: plaintiffs and JCC.

11 All of the others don't give you any specific factors
12 about what happened in those arrests, because the people who
13 provided those declarations to you don't know what happened;
14 right? They don't know specifically what happened. They
15 weren't there. All they know is what they were told; right?
16 So, they're amalgamating.

17 But going back to *Walmart* for a second, not only were
18 there the 120 affidavits for the class of 12,000, there is also
19 an expert statistician, and the expert statistician was there to
20 bridge the gap and say, these 120 are enough that you can draw
21 the conclusion that this pattern and practice is being
22 experienced by the class members as a whole.

23 THE COURT: What do you suppose would have been the
24 fact if Mr. Miller or Mr. Guadian had publicly stated, we're
25 going to arrest anybody who is here illegally? Now, do you

1 think that changes from *Walmart*?

2 MR. LENEIS: This is a slightly different part of the
3 analysis, whether or not the public statement to the press is
4 establishing a policy. There are no APA cases, certainly none
5 that the plaintiffs have cited, where statements to the press
6 are considered to be final agency action for purposes of the
7 APA.

8 THE COURT: But you're talking about very high people
9 in the United States Government. Miller in particular is all
10 over the news all the time. He is -- I don't know his exact
11 title, but he is close to the top of the pyramid, and he said,
12 without reservation, we're going to pick up anybody that we find
13 that's here illegally. And then he went on to say, so we can
14 save Americans from rape and murder and stuff like that.

15 MR. LENEIS: I agree that that's the statement that
16 Your Honor saw that Mr. Miller made to the press. But Your
17 Honor also heard from Mr. Davies, who said that just within the
18 last week, he could think of two instances in which people who
19 they have reason to believe were in the country unlawfully were
20 not arrested. That was just in the last week. Okay?

21 THE COURT: Well, I think that Mr. Davies won't go too
22 far in his career if he doesn't follow the directions of a
23 Mr. Miller and a Mr. Guadian.

24 MR. LENEIS: Even if that's true, it certainly doesn't
25 demonstrate that there exists a hundred percent policy of

1 arresting everyone who is encountered regardless of whether
2 they're a flight risk, regardless of whether -- so, the
3 statements to the press aren't what suffices to create an
4 evidentiary basis for saying that there really is a pattern and
5 practice like this. And they certainly don't create --

6 THE COURT: How about the fact that we've got these
7 four people that are plaintiffs that at least I think the
8 evidence indicates that they weren't asked anything about
9 probability of escape? Their circumstances show that in my
10 judgment, they weren't likely to escape. They were all well
11 established in the community and so forth. What does that tell
12 us about what's going on out there, that these are two -- these
13 four are just exceptional cases?

14 MR. LENEIS: Well, Your Honor --

15 THE COURT: And then you listen to Mr. Vazquez over
16 here, and he says, no, they're not exceptional. I've seen it
17 time and again. And you listen to what the defense lawyer says
18 about what happened in Durango, and you listen to what the
19 Professor said, and it's all the same. And then you look at
20 what's going on in Illinois, and it's the same. I mean, how can
21 you stand there and say, well, we don't know that this is going
22 on out there?

23 MR. LENEIS: So, I think that I'd answer that question
24 in two ways; right? Because there's the question of standing,
25 and then there's the question of the merits of the APA claim;

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1 right? And for the purposes of standing, which really is the
2 most important thing for Your Honor to address first, because
3 it's a jurisdictional question --

4 THE COURT: Yes. And you haven't addressed
5 Mr. Kawanabe's standing argument yet.

6 MR. LENEIS: I will get there. But for the purposes
7 of standing, the past experiences are not the crucial factor.
8 For purposes of standing, it's the chance of encountering the
9 harm in the future; right? And then for the APA claim itself, I
10 just want to emphasize, the claim that the plaintiffs are
11 bringing is not about the arrests that already happened. The
12 claim that they're bringing is that a policy or pattern and
13 practice exists and creates this scenario, and that that policy
14 and practice is final agency action. So, I will turn to that --

15 THE COURT: See, Mr. Brown [sic], I think I disagree
16 with you there. They are claiming that what has already
17 happened to them is relevant to standing. That's their
18 continuing injury argument.

19 MR. LENEIS: So, yes. The continuing injury argument,
20 I think, Your Honor, is a strawman, because the appropriate
21 alternate world, say, is not a world in which these plaintiffs
22 were never arrested. That's not the claim they're making. You
23 heard them ask their plaintiffs the question, if you had just a
24 couple of days to get yourself ready to be arrested, what would
25 you have done -- okay? There's no question that for all four of

1 these plaintiffs, ICE could have obtained a warrant for their
2 arrest and come back later and arrested them the next day, later
3 the same day if it had chosen to.

4 THE COURT: They could have if they knew they were out
5 there, but ICE didn't know these people were out there, number
6 one. Number two, according to Mr. Guadian and Mr. Davies, what
7 ICE's mission is is to find criminal aliens and protect the
8 country from terrorists and people like that. Even if they knew
9 who these people -- even if they knew who Ms. Goncalves was, for
10 some weird reason, they wouldn't have any reason to target her,
11 but they had never heard of Ms. Goncalves.

12 Some Mesa County cop said, hey, I was following a car
13 that had dents on the side and dents in the back, and it looked
14 to me like she was driving too close to a semi, so I thought,
15 I'll pull her over. And they pulled her over and gave her a
16 warning and then called ICE. That's the only reason ICE even
17 knows about her.

18 MR. LENEIS: Well, I don't think it's quite a fair
19 characterization to say that ICE would not have known about
20 these people or encountered them; right? If you think about the
21 story for Mr. Ramirez Ovando, he would have been encountered
22 kind of no matter what, because ICE was looking for a target.
23 They believed that he was the target. They were mistaken;
24 right? Then the question is what is ICE going to do with a
25 person that they've identified who is likely in the country in

1 violation of the immigration laws?

2 THE COURT: And you know exactly what the answer is,
3 don't you?

4 MR. LENEIS: No. I don't believe that the answer is
5 completely clear at that moment.

6 THE COURT: I think it's very clear. What were they
7 supposed to do at that point? They were supposed to find out by
8 questioning whether he was probably going to try to escape.
9 That's what they were supposed to do.

10 MR. LENEIS: Yes. And let me read to you from his
11 declaration about the questioning. First, he was asked for his
12 passport, and he told the agent that he did not have it with
13 him. Now, he's not a United States citizen. So, that's a lie;
14 right? He doesn't have a passport. Or maybe he's being asked
15 for his passport from another country; right? I guess there is
16 some wiggle room there. The agent leaves the car. The agent
17 runs the checks that you heard about from Mr. Davies. The agent
18 returns.

19 This is paragraph 15 of the declaration. The
20 Spanish-speaking agent then began to question me about my
21 immigration status. He asked me where I was from, whether I had
22 permission to be in the United States, and if I had any papers
23 to show my legal status. The questions were direct and
24 repeated, clearly focused only on my immigration status. I
25 chose not to answer these questions. So, he stopped answering

1 their questions.

2 THE COURT: On immigration status.

3 MR. LENEIS: That's right. He chose not to answer the
4 questions that the agent was asking him, and the agent also knew
5 at that point that at least he did not have a United States
6 passport. Okay?

7 THE COURT: Well, they knew more than that. I think
8 his identification was a work authorization card or something
9 like that. His driver's license had that special label on it.
10 They were --

11 MR. LENEIS: Based on what you heard from Mr. Davies,
12 that's sufficient to satisfy the test on the chance of escape.

13 THE COURT: The first prong, yes.

14 MR. LENEIS: And the second prong; right? He stopped
15 answering their questions.

16 THE COURT: They didn't ask him the questions about do
17 you have a family, do you have a job, how long have you been
18 here, do you have kids, are they citizens. They didn't ask any
19 of those questions.

20 MR. LENEIS: That's right. He had already stopped
21 answering their questions.

22 THE COURT: About status.

23 MR. LENEIS: Yes. In any case, one last point on this
24 is that from the point of view of the legal test, the question
25 is not a subjective one. It's an objective inquiry. And also,

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1 the probable cause standard is not a preponderance standard.
2 The probable cause standard is a fair possibility standard.
3 That's the *Denson* case in the Tenth Circuit that we cite in our
4 brief.

5 THE COURT: Reasonable belief.

6 MR. LENEIS: Fair enough, Your Honor.

7 THE COURT: That's what the statute says. Reasonable
8 belief.

9 MR. LENEIS: Well, I think our position would be that
10 what the statute says doesn't -- the statute doesn't use the
11 term "probable cause."

12 THE COURT: No, it doesn't. It says he has a
13 reasonable belief that he's likely to escape.

14 MR. LENEIS: Your Honor, I think that's incorrect. I
15 believe the statute says reason to believe.

16 THE COURT: Reason to believe that he's likely to
17 escape, yes.

18 MR. LENEIS: In any case, returning to the standing
19 issue, though, the -- the hypothetical alternate world that the
20 Court should be considering is one where the plaintiffs were in
21 fact arrested pursuant to the warrants that ICE could have
22 issued for their arrest.

23 In other words, the fact of their detention, the fact
24 that they are now in removal proceedings, the fact that they
25 have an ankle monitor, none of those things are really a direct

1 consequence of the unlawful -- or the supposedly unlawful
2 warrantless arrest, because a lawful warrant -- a lawful arrest
3 with a warrant could have been carried out the next day. So, I
4 don't think that that --

5 THE COURT: It could have been, but the fact is they
6 should never have been picked up in the first place, because
7 there was no inquiry about their reason to believe that they
8 would try to escape. If they hadn't been picked up, then we
9 have no reason to speculate that somebody would have gone and
10 gotten a warrant for them and then arrested them.

11 They're not the type of people that your own witnesses
12 were saying we're targeting. We're targeting criminal aliens.
13 We're targeting terrorists. We're not targeting a young lady
14 who is going to school at the University of Utah and has an
15 asylum request. We're targeting the bad guys. There's no
16 reason for me to believe that had they done their job and not
17 arrested without a warrant that they would have then gotten a
18 warrant and called down to their Utah colleagues and said, hey,
19 pick up this college student. And if they hadn't done any of
20 that, they wouldn't be in the fix that they're in now; right?

21 MR. LENEIS: Well, I don't think that the way that
22 Mr. Kawanabe framed the continuing injury -- the way that a
23 continuing injury can satisfy the standing standard is
24 applicable here, because the injury that we're talking about
25 really is being encountered and arrested without a warrant.

1 And then in terms of *Lyons*, the point that I wanted to
2 make about that is that this case and *Lyons* are almost directly
3 connected. *Lyons* is right on point. One thing that the Supreme
4 Court stated in *Lyons* was that the plaintiff could not show
5 standing unless he made an assertion that all police officers
6 always choke any citizen whom they happen to have an encounter
7 with; right? And I think that that's the position that the
8 plaintiffs are taking, that that's the policy. But you heard
9 that that is not the policy.

10 THE COURT: I wonder if somebody in Mr. Miller's
11 position in that administration had said, anybody that you
12 encounter should be choke-helded, if that would have made a
13 difference to the Supreme Court.

14 MR. LENEIS: I'm not sure that I can comment on that,
15 but I do think it's important that both in terms of
16 understanding whether there is a pattern and practice here, and
17 also meeting this APA final agency action requirement, you know,
18 there's two conditions on that APA final agency action
19 requirement, and one of them is that the policy itself, the
20 alleged policy, has direct legal consequences for the plaintiff.
21 In other words, that it determines rights and obligations right
22 at that moment.

23 THE COURT: But you won't even stipulate to an order
24 that mimics the policy.

25 MR. LENEIS: Well --

1 THE COURT: I've asked you about that several times,
2 and you won't. You could have gotten out of this scot-free if
3 all you wanted to do was say, hey, we will stipulate to what's
4 in the very policy that your client has issued several times
5 over the years. We will stipulate to that, and we all go home.
6 But you won't do that.

7 MR. LENEIS: No. Your Honor, we actually believe that
8 we can't do that, because there's no standing. So, there's no
9 subject matter jurisdiction. Which means that even if we
10 were --

11 THE COURT: You can stipulate to anything. Whether
12 there's standing or not, you can stipulate to anything, but you
13 won't.

14 MR. LENEIS: We cannot stipulate --

15 THE COURT: Because you think you can win this case on
16 standing, and so you don't have to do in Colorado what the law
17 says and what they do in Illinois.

18 MR. LENEIS: Well --

19 THE COURT: Because of standing.

20 MR. LENEIS: We cannot stipulate to an injunction from
21 the Court if the Court lacks power to enter an injunction.
22 Which the Court would lack power to enter an injunction if the
23 plaintiffs don't have standing, which they don't; right? So,
24 that's kind of that part. And also the notion that the
25 Government should stipulate to an injunction, which is basically

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1 a reprobation for doing something wrong, it's unfair to say to
2 the Government that that is evidence that you're violating the
3 law in the first place.

4 THE COURT: Well, we have evidence that they did
5 violate the law.

6 MR. LENEIS: So --

7 THE COURT: Clear evidence; right?

8 MR. LENEIS: The Government certainly doesn't agree
9 that the evidence is clear. We believe that for each of the
10 plaintiffs, there's sufficient evidence in the record to support
11 the idea that those arrests happened in compliance with 1357.

12 THE COURT: Okay. Tell me about that evidence on
13 Ms. Goncalves. What is it?

14 MR. LENEIS: So, Ms. Goncalves was driving in Colorado
15 from out of state. She had Utah plates, and the immigration
16 officers knew that she was a Visa overstay, and she was stopped
17 on the highway. And that's enough. Courts have held --

18 THE COURT: That's what your client thinks is enough.

19 MR. LENEIS: That's right.

20 THE COURT: But that isn't what this Court thinks is
21 enough. This Court thinks that you have to make a determination
22 of reason to believe she's likely to escape, and document it,
23 and they didn't do either one of those things.

24 MR. LENEIS: I believe that all of those facts are
25 documented inside of the I-213.

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1 THE COURT: Well, I don't see that in the 213.

2 MR. LENEIS: Second of all, the statute has no
3 requirement for documentation. There is a policy about
4 documentation, but documentation is not required in order for
5 the arrest to have been lawfully made; right? The arrest can be
6 lawfully made if there's a chance of escape, regardless of what
7 the documentation says. So, that's not a statutory criteria to
8 document.

9 THE COURT: Oh. So, your policy statements that your
10 client issues from the top of their legal team, they don't have
11 to follow those?

12 MR. LENEIS: I'm not saying that at all, Your Honor.

13 THE COURT: Yes, you did. You said it's not in the
14 statute, so we don't have to do that.

15 MR. LENEIS: Because it's not in the statute, it's not
16 a part of the legal test of whether or not the actual arrest was
17 unlawful. The challenge is not whether or not ICE is following
18 their policy about documentation. The challenge is that there's
19 a pattern and practice of making actual unlawful warrantless
20 arrests based on failing to assess the likelihood of escape.
21 And the plaintiffs say --

22 THE COURT: They didn't do that.

23 MR. LENEIS: I'm sorry?

24 THE COURT: They didn't do that with Ms. Goncalves.

25 MR. LENEIS: There we disagree, but even if you're

1 correct, the four anecdotes from the plaintiffs, or all of the
2 anecdotes that the plaintiffs have put together, okay, doesn't
3 create -- it doesn't meet the test for a final agency action
4 under the APA that such a policy exists and can be challenged.

5 That's what congress has determined. Congress has
6 determined that the APA is available for certain kinds of
7 challenges, and not for others. And a pattern and practice
8 challenge like this is not one that the case is implementing the
9 APA support; right? Unless there's a policy that says this must
10 happen every time, every person who is encountered must be
11 arrested regardless of the chance of escape; right? But there's
12 no claim that there is such a policy, like on paper. And I
13 don't think that the Court --

14 THE COURT: That's almost exactly what Guadian said
15 and what Miller said.

16 MR. LENEIS: That's what they said to the press in
17 those clips that you saw, but you haven't seen evidence that
18 that was actually the case.

19 THE COURT: Maybe that was fake news?

20 MR. LENEIS: I wouldn't call it fake news, Your Honor,
21 but as Mr. Guadian explained, like, statements to the press
22 don't necessarily carry every element of the agency's actual
23 policy. What carries the elements of the agency's actual
24 policy, as Mr. Guadian pointed out, are the policy
25 determinations that come down through the chain of command to

1 the field office director and then are distributed to the DOs on
2 which they're trained and expected to comply with. So, that's
3 what --

4 THE COURT: They're trained, but my gosh. Here is
5 Mr. Davies sitting over here -- and by the way, I thought he was
6 a perfectly delightful gentleman, but he's sitting over here,
7 and he's asked by you, maybe, or maybe it was by the plaintiff,
8 what is the policy? What are the two prongs? And do you
9 remember what he said? He said possibility of escape. And I
10 corrected him, and I said, do you mean probability? He said,
11 probably possible.

12 There's a policy. These guys just don't follow it.
13 They might not even know what it is. I think it's at least
14 reasonable that the policy that they really follow is what the
15 supervisors tell them to do. And the supervisors are telling
16 them, go arrest people, as many as you can get.

17 MR. LENEIS: I would submit, Your Honor, that the
18 evidence is not consistent with that view. There's been
19 evidence that, as Mr. Davies said, two in the last week, where
20 people were encountered who were known to be in the country
21 unlawfully, and were not arrested. Okay? So, that's
22 inconsistent with the idea that the policy is that everyone who
23 is encountered who is in the country unlawfully is arrested.

24 THE COURT: Yeah. I don't think their case requires
25 that everybody is arrested. They also showed that just in the

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1 last week since this latest iteration of the policy, people have
2 been illegally arrested. So, two were released, and others
3 weren't. It keeps going.

4 MR. LENEIS: In terms of that anecdotal evidence from
5 the past week, there was no evidence for the arrest of the
6 teacher that there was or was not a warrant. It's completely
7 possible that there was a warrant for that person's arrest in
8 connection with a notice to appear and participate in the
9 proceedings. And the situation in Durango, you also didn't hear
10 any specific facts about what happened during the actual arrest.

11 THE COURT: Why would there have been a warrant to
12 arrest a schoolteacher who has got an outstanding asylum
13 application? Why would there be a warrant for that? She's not
14 a targeted person.

15 MR. LENEIS: So, I don't know the specifics of that --
16 the specific facts of that case, Your Honor, so I can't answer
17 the question. You also don't know the specific facts of that
18 case, and so you can't say --

19 THE COURT: True.

20 MR. LENEIS: -- that this case is a case of unlawful
21 warrantless arrest, which is all that the plaintiffs' case is
22 about; right? The plaintiffs have presented a lot of vague
23 evidence about arrests that have happened, but they have not
24 drilled down and provided to you very many examples at all of
25 specific unlawful warrantless arrests, especially considering

1 the number of arrests that happened in total in Colorado.

2 They have a few anecdotes and a lot of general sense
3 that there's a lot of arresting going on. That's not enough.
4 That's -- gets me back to what I was saying about the *Walmart*
5 *versus Dukes* case. *Walmart* kind of explains if you want to
6 bring this kind of claim about a pattern and practice of
7 unlawful behavior, and you want to establish that that pattern
8 and practice is happening regularly across a group on the basis
9 of a number of anecdotes, then you have to have good anecdotes
10 that actually are about the unlawful behavior, and you need to
11 have a statistician who can bridge the gap. And what the
12 Supreme Court said in that case was 120 anecdotes, 12,000
13 people, good affidavits, good statistician, not enough.

14 Now, what do you have here? Four or five anecdotes,
15 170,000 people, no statistician. Okay? There is just no way
16 that the plaintiffs on the basis of the showing they've made
17 here today can establish factually that there is a pattern and
18 practice of unlawful warrantless arrests affecting this group of
19 people in Colorado.

20 So, as a factual matter, it's not there. As a legal
21 matter, under the APA, all of that is not even particularly
22 relevant. The plaintiffs haven't even gotten there, because
23 they haven't cleared the hurdle in the middle of demonstrating a
24 final agency action. They haven't demonstrated that there's a
25 universally applicable policy.

1 What they have done is take several instances of
2 supposedly unlawful behavior, asserted that there's a policy
3 underneath all of them, and said that they're challenging that
4 policy. If you look at the end of their complaint, paragraph
5 202 and 209, I believe, that's what they say they're doing.
6 They say that that pattern, policy, and practice is final agency
7 action. That's what they're challenging under the APA.

8 The Supreme Court in *Lujan* rejected that approach,
9 because that approach enables the judiciary to essentially reach
10 in and take control of executive function on the basis of
11 nonfinal agency action. There is no final policy. There is no
12 written document, and in this recent case from the DC Circuit
13 called *NTU versus Vought*, what the DC Circuit said is that cases
14 of final agency action that are not in writing are -- I'm not
15 sure if this is an exact quote. It's something like vanishingly
16 rare. We have it in our brief.

17 Final agency action typically is a thing that happens
18 in writing. It's like the policies that you saw. It's like
19 that. Okay?

20 THE COURT: It's writing.

21 MR. LENEIS: That's in writing. The plaintiffs are
22 not challenging that. The plaintiffs have no problem with that.

23 THE COURT: No. The plaintiff just wants you to do
24 that.

25 MR. LENEIS: The plaintiffs put that in front of you

1 multiple times. They're not challenging the actual policy.
2 What they're challenging is something else that they say is
3 happening.

4 THE COURT: They like the policy. They want you to
5 follow your own policy, and you won't agree to do that.

6 MR. LENEIS: The APA would allow them to challenge the
7 policy, but the APA does not allow them to challenge the pattern
8 and practice in this way by asserting that there are a number of
9 specific instances of unlawful behavior, saying there's a
10 policy, and challenging the policy.

11 If they want to use the APA to challenge the actual
12 instances of unlawful behavior, that is available, or there are
13 other remedies that they could potentially pursue. If the
14 arrest carried a tortious element with it, that's available. If
15 the plaintiff wanted to potentially challenge their immigration
16 proceedings in front of the immigration court, the Tenth Circuit
17 has said that's a possibility, depending on the circumstances of
18 the arrest.

19 So, it's not like there's no remedy at all for the
20 allegedly wrong -- excuse me -- the allegedly wrongful things
21 that happened to the plaintiffs themselves. That's not what
22 plaintiffs want to challenge. What the plaintiffs want to
23 challenge is what they say is the policy that generated those
24 outcomes. And the Supreme Court in *Lujan* and numerous other
25 Courts applying *Lujan* have said that that's not how the APA

1 works. The APA is limited just to final agency action, and this
2 is not final agency action when you amalgamate several wrongful
3 acts, say there's a policy, and challenge the policy.

4 Let's see. So, I think that that brings us through
5 standing, the APA's final action -- final agency action
6 requirement, and then whether or not there's actually violations
7 of 1357(a)(2). So, just a couple of more minor points.

8 In their reply brief, the plaintiffs attempt to say
9 that they're not actually trying to bring a case under the APA.
10 What they're doing is bringing a case for an equitable remedy
11 for ultra vires actions by ICE, actions that are outside of what
12 ICE is allowed to do in the statute.

13 There's plenty of Supreme Court case law that states
14 that that's not an available option, because the APA exists.
15 One of those cases is one that the plaintiffs actually cite,
16 which is called *Armstrong*. And then just on this question of
17 provisional class certification, the plaintiffs are suggesting
18 that the Court should provisionally certify a class to enter
19 this injunction. The Court already informed the Government that
20 we didn't need to respond to that point.

21 THE COURT: That's before I heard your argument that
22 the Court doesn't have the authority to issue a statewide
23 injunction. If that is the case, or if it's ambiguous in the
24 law after *CASA*, then the Court does have to and will consider
25 the possibility of a class action.

1 MR. LENEIS: Yeah. And if the Court does so, it
2 should apply the factors from Rule 23 to the evidence that the
3 Court has in front of it, and the Court should look at Supreme
4 Court's decision in *Walmart*, which explains why this kind of
5 class, where it's defined by the legal violation -- okay? So,
6 they're saying that the class is all the people who are
7 unlawfully warrantlessly arrested. They're not defining it by
8 reference to any other characteristic. The characteristic is
9 defined by being acted unlawfully upon.

10 In that circumstance, to meet the commonality
11 requirement, you have to do the kind of math, evidentiary math,
12 with a statistician, with experts, to satisfy the commonality
13 requirement. That was one of the reasons the Supreme Court
14 found that there was no certifiable class in that case, but all
15 the Court has heard here is a handful of anecdotes.

16 Finally, the cases focused on ICE. If you look at the
17 plaintiffs' proposed injunction, it's against DHS as a whole.
18 So, the injunction is not well fit to the evidence that the
19 plaintiffs have presented, or indeed the way that they have
20 defined the proposed class in their complaint.

21 I guess I will conclude this way: Right now, at the
22 preliminary injunction stage, where the plaintiffs are seeking a
23 disfavored preliminary injunction, which they are, they need to
24 make a strong showing of chance of success on the merits. They
25 need to show irreparable harm, and they need a strong showing

1 that the equities favor them. They haven't made a strong
2 showing on their chance of success, not a strong showing that
3 they have standing, not a strong showing that they can challenge
4 the policy they wish to challenge under the APA, because it's
5 not final agency action, not even a strong showing, in our view,
6 that the plaintiffs themselves have experienced a violation of
7 law.

8 We also believe that there's not a sufficient showing
9 of irreparable harm, for many of the same reasons in terms of
10 the chance of rearrest, and the equities don't strongly favor
11 them. The Court should deny the preliminary injunction motion.

12 THE COURT: Thank you.

13 MR. KAWANABE: May I have ten minutes for rebuttal?

14 THE COURT: Briefly.

15 MR. KAWANABE: Briefly, Your Honor. The evidence in
16 this case, Todd Lyons, head of ICE, we will take them into
17 custody, referring to people without status. White House Senior
18 Adviser Miller, 3,000 arrests of people without status per day.
19 Mr. Guadian shown his own video. If they're here illegally,
20 they're going to be arrested. Mathematics, 300 percent increase
21 in arrests in Colorado over the past year with a doubling of the
22 staff. Billions of dollars in budget and double or tripling the
23 detention centers that they hope to build.

24 Government cites *Dukes*. Please do read that. It is a
25 different case. It had to do with employment discrimination,

1 and the reasons for the discrimination were too varied, the
2 Court said, because of the various supervisors. There is one
3 policy in reality that is going on in Colorado. That is the
4 failure to conduct a flight risk as mandated by internal law.
5 So, please do read *Dukes*. It is inapplicable to this case.

6 The APA, that is not our only claim. Even if it were,
7 the Northern District of Illinois did the analysis of the APA,
8 and it was final agency action. Again, the same action that's
9 happening in Colorado that is happening in Illinois, the failure
10 to do a flight risk. But our claims are also based on the Writs
11 Act as well as declaratory judgment, and as Judge Thurston said
12 in the Eastern District of California opinion also concerning
13 this same type of violation, that it is in the inherent ability
14 of the Court to make this relief possible. And that's cited in
15 our reply brief, Your Honor.

16 Mr. Davies was cited, and he gave two examples where
17 they let the people go, the collateral people go. And I asked
18 him, did you issue arrest warrants? They did not. And so it is
19 a continuing injury. They would not have been arrested. They
20 would not have to wear ankle monitors for those three
21 plaintiffs. And importantly, our plaintiff Mr. Ovando, again,
22 is now a legal permanent resident with no Green Card, and the
23 same license with the same no REAL ID, with the same risk of
24 rearrest. They did mention --

25 THE COURT: Say what you just said again about the two

1 people that were let go?

2 MR. KAWANABE: Sure. Mr. Davies, his only testimony
3 was that sometimes we actually do conduct a flight risk, and
4 then we let -- at least in those two examples of letting
5 collaterals go. He couldn't remember names or details, but he
6 didn't actually issue arrest warrants; right? And so the
7 Government's point is, well, we might issue an arrest warrant.
8 That's not what they do in reality. That's not what their
9 person said. That's why this is a continuing injury under
10 *McLaughlin*.

11 They mentioned these I-200 arrest warrants, Your Honor.
12 The Northern District of Illinois just addressed this on
13 October 7th in its opinion. It's not right on point, but the
14 Government in Illinois was basically trying to say, we could
15 issue these I-200 warrants. When we're out in the field, we run
16 into a collateral, we arrest that person, and we just print out
17 a I-200 warrant, and that's good enough. And the Northern
18 District of Illinois said, no, you can't do that.

19 And it's not exactly the same, but the result the
20 Government is seeking is the same. They are trying to use
21 I-200, what they call open arrests, which we disagree with, to
22 basically wipe out standing for anybody that could bring this
23 action. Their argument is essentially, gosh, if they have an
24 open arrest warrant, no one, no one who was actually subject to
25 warrantless arrest could ever try and stop this. No one has

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1 jurisdiction. That cannot be --

2 THE COURT: Well, I think Mr. Brown almost admitted
3 that in his opening statement, one of those wrongs that doesn't
4 have a remedy.

5 MR. KAWANABE: I'm not sure if it was Mr. Brown, but I
6 do think the Government said something similar.

7 THE COURT: Maybe it was Mr. Leneis or Mr. Deuschle.
8 I don't remember.

9 MR. KAWANABE: Yes, Your Honor.

10 THE COURT: I'm just picking on Mr. Brown at the
11 moment.

12 MR. KAWANABE: Finally, Your Honor, we would just ask,
13 ICE has the power to arrest. ICE has the power to enforce the
14 law. It should follow it. Thank you.

15 THE COURT: I do want to hear your answer to the very
16 last thing he said, just almost as if it were a footnote. He
17 said basically all this evidence and the policy statement are
18 all ICE, and yet you're wanting to enjoin the whole Department
19 of Homeland Security. How do you justify that?

20 MR. KAWANABE: Well, we heard testimony, Your Honor,
21 that -- so, Department of Human Services has ICE --

22 THE COURT: Homeland Security.

23 MR. KAWANABE: I'm sorry. Department of Homeland
24 Security. I'm not sure what I said. I need more sleep. DHS.
25 Underneath DHS, they have various immigration agents, including

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1 ICE, including Border Patrol, and so we want basically any
2 immigration agent in Colorado to follow the same law that they
3 are all required to follow, and we heard -- we presented
4 evidence today that there are these two camps; right? Where
5 you're going to get less ICE influence in Colorado, more Border
6 Patrol influence in Colorado. They need to follow the same law.

7 THE COURT: So, what evidence did you produce that
8 these other parts of Homeland Security are doing the same things
9 that ICE is doing?

10 MR. KAWANABE: The only evidence, Your Honor, are the
11 case cites from -- well, the evidence is that I do not have a
12 Border Patrol -- hold on just a second, Your Honor.

13 THE COURT: I mean, it's a pretty important point,
14 because if I were to enjoin ICE but not HSI, it's a Pyrrhic
15 victory.

16 MR. KAWANABE: Agreed. And so ICE actually has HSI
17 and ERO under the same roof. So, HSI and ERO are all part of
18 ICE, so you get those. But you also heard of these mass raids
19 that are subject to the arrests, including in Colorado Springs,
20 including in the apartments within Aurora, and that also
21 included Border Patrol agents as well. And so you do have --

22 THE COURT: Well, and the FBI and the local police or
23 whatever.

24 MR. KAWANABE: That's true too.

25 THE COURT: We can't enjoin people that aren't parties

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1 to the case.

2 MR. KAWANABE: And I'm not asking to. But the
3 question related to DHS, which houses ICE and all other
4 immigration agents, including Border Patrol, which do have a
5 presence in Colorado, which did participate in some of these
6 mass raids, and which are going to gain influence here, as the
7 news story said. And DHS obviously is a party, as we named
8 Kristi Noem.

9 THE COURT: Right.

10 MR. KAWANABE: Thank you.

11 THE COURT: All right. Thank you. I know you want a
12 decision soon. We will try to get to it as soon as we can.
13 Thank you. Good day.

14 (Proceedings concluded at 3:24 p.m.)

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REPORTER'S CERTIFICATE

I, KEVIN P. CARLIN, Official Court Reporter for the United States District Court for the District of Colorado, a Registered Merit Reporter and Certified Realtime Reporter, do hereby certify that I reported by machine shorthand the proceedings contained herein at the time and place aforementioned and that the foregoing pages constitute a full, true, and correct transcript.

Dated this 17th day of November, 2025.



Kevin P. Carlin, RMR, CRR
Official Court Reporter