

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 -----
10 REPORTER'S TRANSCRIPT
Motions Hearing, Vol. 2
11 -----

12 Proceedings before the HONORABLE R. BROOKE JACKSON,
Judge, United States District Court for the District of
13 Colorado, commencing on the 11th day of March, 2026, in
Courtroom C204, United States Courthouse, Denver, Colorado.

14 APPEARANCES

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P R O C E E D I N G S

(Proceedings commenced at 9:02 a.m.)

THE COURT: We will continue with the examination of Mr. Davies.

DIRECT EXAMINATION

BY MR. MACDONALD

Q Good morning, Mr. Davies.

A Good morning.

Q I think yesterday you indicated that you were able to identify by the I-213s all the people that ICE had arrested in a particular month; is that right?

A On a -- on a separate report, I can identify who we arrested, yes.

Q Okay. Describe what that report is, please.

A A daily arrest log.

Q Okay. So, there's a daily arrest log that tells you we arrested the following nine people or ten people or something like that?

A Correct.

Q Okay. And at the last hearing, I think either you or Mr. Guadian testified that you all had been averaging about nine arrests per day, at least as of that October hearing. Has that number gone up, or --

A Yes.

Q Okay. What's the number today, approximately?

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1 A I don't --

2 Q Last month, excuse me. Unfair question. Not today. Over
3 the last month?

4 A So, we would normally average, I believe, between 15 to 25
5 a day.

6 Q And that's over maybe since the Court entered the
7 injunction?

8 A Possibly, yes.

9 Q And so that number has increased, fair to say, since the
10 time period in 2025?

11 A I don't know if it's increased since switching back to a
12 targeted approach. It's probably gone down, but still probably
13 averaging between 15 to 25 a day.

14 Q And that's in part because you have a lot more deportation
15 officers; right?

16 A Yes.

17 Q Okay. Are you familiar with an incident that happened up
18 in Vail in which ICE officers left ace of spades cards in
19 people's cars, cards that have been referred to as the death
20 card with ICE -- the ICE Denver field office address and name
21 and phone number in those cars that were left abandoned on the
22 side of the road?

23 A So, I'm aware of one instance. It didn't have the field
24 office address on it, though, I don't believe.

25 MR. MACDONALD: All right. Let's take a look at

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1 Exhibit 243, if we could. And, Mr. Davies, this is an article
2 from the Colorado Sun that says, racist ace of spades cards left
3 behind following ICE arrests in Eagle County, Colorado,
4 nonprofit says. It's dated January -- apologies, Your Honor.
5 If I might grab my reading glasses, which I have left in my bag?

6 THE COURT: Are you getting a little old,
7 Mr. Macdonald?

8 MR. MACDONALD: I am, Your Honor. Age is catching up
9 with me, and probably this line of work. The combination is not
10 healthy for the eyes, and maybe some other things.

11 THE COURT: Well, I can feel your pain on that issue.

12 Q. (By Mr. Macdonald) So, now I can see the date was
13 January 23rd, 2026. And you see there's a picture of a -- it's
14 the bottom of page one. If you want to look at your hard copy,
15 which is the way this printed, there's an ace of spades card
16 with some writing on it. And if you carry over to the second
17 page, you can see that. And before we go any further, just do
18 you see that's an ace of spades card that says ICE Denver field
19 office, and then it has your -- I believe that's your
20 headquarters address, isn't it, sir?

21 A That's the address to the detention facility.

22 Q Okay. That's the GEO detention facility?

23 A Yes, sir.

24 Q Okay. So, were you -- this card that we're looking at in
25 Exhibit 243, were you aware that these -- these types of cards

1 were left in people's vehicles after arrests?

2 A I am aware of one instance of that happening, yes.

3 Q Okay. And this particular type of card with -- thanks for
4 correcting me -- with the detention facility address, and is
5 that the detention facility phone number on it also?

6 A Yes, it is.

7 Q Okay.

8 MR. MACDONALD: Your Honor, I move admission of 243.

9 MR. BROWN: We object, Your Honor, because 243 is not
10 just the picture of the card. It's also an entire article full
11 of hearsay without authentication or foundation for what's in
12 it.

13 THE COURT: All right. I'm still applying the
14 preliminary injunction rules, notwithstanding your effort to go
15 otherwise. Your objection is overruled. It's admitted.

16 Q. (By Mr. Macdonald) Mr. Davies, were you one of the ICE
17 supervisors that was notified of this ace of spades card that
18 was left in the vehicles up in Eagle-Vail, Colorado?

19 A I don't know if I was notified of it. I was -- I found an
20 article on it.

21 Q Is this the article you found, or did you find another one?

22 A I don't know if this is the exact article.

23 Q Okay. If we look at page one, and go down to the third
24 full paragraph, it says, ace of spades cards, which have been
25 used by white supremacist groups as a racist symbol and were

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1 called death cards by some during the Vietnam War, were found in
2 at least two vehicles after those vehicles were pulled over by
3 ICE agents. Do you see where I'm reading there?

4 MR. BROWN: Objection, Your Honor. Relevance, and
5 it's more -- there's no probative effect. The prejudice greatly
6 outweighs any sort of probative evidence.

7 THE COURT: How does this relate to what we're dealing
8 with here?

9 MR. MACDONALD: One of the individuals -- actually
10 four of the individuals who were arrested with field warrants
11 were the people that received -- were involved in this arrest,
12 Your Honor, and there was an investigation of the cards, and I'm
13 trying to inquire -- I would like to inquire, Your Honor, as to
14 what sort of discipline was imposed for these actions that
15 included people that were subjected to warrantless arrests.

16 THE COURT: Okay. Let's ask that question, then.

17 MR. BROWN: May I respond briefly? He said that there
18 were field warrants for the arrest there. So, therefore they
19 were not warrantless arrests, is my understanding.

20 THE COURT: I don't know what they were, but I've
21 sustained your objection, and he's now going to ask the question
22 that I wanted to know too, and that is what was done about this,
23 if anything?

24 Q. (By Mr. Macdonald) Mr. Davies, what was done about this
25 incident, if anything?

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1 A So, as of right now, the officers involved in this incident
2 are no longer in the field. They are in the office. And it's
3 an ongoing investigation with our office of personnel
4 responsibility.

5 Q Thank you, sir. And you understand that at least the
6 arrests happened in -- between Vail and Eagle-Vail in Minturn,
7 Colorado, that exit at Minturn, Colorado?

8 A I do know it was in that area, yes.

9 Q Okay. Thank you. Can we put up Exhibit 248, please.
10 Mr. Davies, Exhibit 248 is a declaration of Keegan Hayes. I
11 will represent to you that Mr. Hayes is an investigator working
12 with our team who went and interviewed people at the GEO
13 detention facility. I will just make that representation.
14 That's what it says in Exhibit 248. Okay?

15 A Okay.

16 MR. MACDONALD: Your Honor, we attached this exhibit
17 to our motion to enforce. It addresses, on page five, six,
18 seven, and eight, the arrest that happened up in Eagle-Vail that
19 we believe is a warrantless arrest, that counsel has represented
20 was a field warrant. I would like to inquire of the witness
21 about this, and I would like to move admission of Exhibit 248
22 now.

23 MR. BROWN: We object. This exhibit is entirely
24 hearsay, and they have -- Mr. Hayes is on their may call list,
25 but Mr. Davies has previously said he's never even reviewed

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1 these. There's no foundation for him to comment on it.

2 THE COURT: The objection is sustained, but you can
3 continue to inquire about the facts. It's already part of the
4 court record anyway.

5 MR. MACDONALD: Yes, Your Honor. Understood.

6 Q. (By Mr. Macdonald) Mr. Davies, are you aware -- so,
7 you're aware this incident happened up in Eagle-Vail; fair?

8 A Yes.

9 Q You're aware that officers -- ICE agents arrested a number
10 of people after pulling them over in their vehicles; fair?

11 A Yes.

12 Q You're aware that at least for many of those individuals,
13 they did not know the individual's identity when they pulled
14 them over; fair?

15 A I am not aware of what happened during the arrest.

16 Q Okay. Have you made any inquiry about that?

17 A No, I have not.

18 Q So, you don't know that there were collaterals in those
19 vehicles that were arrested on the side of the road in
20 Eagle-Vail at the Minturn exit when the officers left the ace of
21 spades cards?

22 A I am aware that there was a targeted enforcement action up
23 there. And yes, collaterals were found in -- during the
24 enforcement operation, yes.

25 Q Okay. And are you aware that for those collaterals that

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1 were found during that enforcement operation, that ICE agents
2 after detaining the humans on the side of the road, sought to
3 obtain field warrants?

4 A Yes. There was a supervisor on scene.

5 Q Okay. And do you know that when those field warrants were
6 issued, ICE was in fact -- had those people under mandatory
7 detention? The people couldn't leave?

8 A I was not there, so I do not know what happened.

9 Q But you would agree with me, once ICE has pulled those
10 folks over, they're not -- it's not a consensual encounter; is
11 that fair?

12 A In the beginning, I believe it would be considered --
13 they're looking for a specific target. They -- my thought would
14 be that they thought the target would have been in that car.

15 Q Okay. But as to the collaterals, those people are not
16 engaged in a consensual encounter with the ICE agents; is that
17 right?

18 A I believe they would be if they're questioning them about
19 the person that they're looking for.

20 Q And you think that's maybe what they did? They were being
21 questioned?

22 A I was not there. I cannot --

23 Q Let's go back -- let's put up Exhibit 205, if we could,
24 Jason. This is already admitted, Your Honor. And this is one
25 of the emails -- I think we finished with this yesterday,

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1 Mr. Davies. So -- but it was a long day, and I know that was my
2 fault, at least in part my fault. So, let's look at Exhibit --
3 this is -- so, Exhibit 205, first page is email from DOJ to us,
4 January 30, 2026. And on page two of this email, it reflects
5 four people that the Government is representing had warrants
6 issued after the encounter began. And their initials are -- the
7 first one is EGM. Second is CLP. Do you see where I'm reading
8 there?

9 A Yes.

10 Q Okay. Do you know whether these are the four individuals
11 that were arrested up in Eagle-Vail in the encounter that we
12 were just discussing? Are you aware of that?

13 A I do not know.

14 Q But you could figure that out; right? In your files?

15 A Yes.

16 Q The I-213s would show that?

17 A Yes.

18 Q Are you aware that I don't have -- we don't have the I-213s
19 for any of those four people?

20 A I'm not aware of that.

21 MR. MACDONALD: Okay. Let's take a look at 206,
22 please. Your Honor, this is another one of the emails
23 describing requests for the I-213s. I move its admission.

24 MR. BROWN: Same qualification as yesterday.

25 THE COURT: Okay. It's admitted.

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1 Q. (By Mr. Macdonald) Mr. Davies, this is a February 12th
2 email from government lawyers that reflects additional requests
3 for I-213s. I'd like to direct your attention to the second
4 bullet that indicates from the Government that there were -- a
5 warrant issued after the encounter began for someone with the
6 initials NGJ. Do you see where I'm reading there, sir?

7 A Yes, I do.

8 Q Okay. Do you know anything about this arrest for which we
9 requested the I-213?

10 A No, I don't.

11 Q Okay. Are you aware that we as class counsel do not have
12 and were not provided by the Government lawyers the I-213, a
13 warrant, or any other information about the arrest of NGJ that
14 was a field warrant, at least according to Exhibit 206?

15 A No. I'm not aware of that.

16 MR. MACDONALD: Let's take a look at -- let's put up
17 Exhibit 210, please. Your Honor, move admission of Exhibit 210.

18 MR. BROWN: Same qualification.

19 THE COURT: Same answer. Admitted.

20 Q. (By Mr. Macdonald) Mr. Davies, this is another email from
21 Government counsel. This one is dated March 5th, 2026. So,
22 just six days ago. And it's responding to requests for more
23 specific I-213s. Do you see that?

24 A Yes, I do.

25 Q All right. And I will direct your attention down to the, I

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1 guess the fifth bullet for an individual with the initials PSS,
2 in which the Government represents that there was a field
3 warrant issued after the encounter began for Mr. PSS. Do you
4 follow where I've directed you there?

5 A I'm sorry. Do you mean PSR?

6 Q I do mean PSR. Thank you. Apologies.

7 A Yes. I see that.

8 Q So, this is another -- at least the representation is this
9 is another field warrant. Have you investigated the arrest of
10 Mr. PSR with the A number here reflected on Exhibit 210?

11 A Not that I recall.

12 Q Are you aware that we have not -- class counsel has not
13 received any I-213, any warrant, or the notice to appear for
14 Mr. PSR, at least according to Exhibit 210, arrested with a
15 field warrant?

16 A No. I'm not aware of that.

17 Q And apologies if we talked about this yesterday. You could
18 run -- you could look in your files to see what happened to
19 these people, whether they have warrants, and get the
20 information about it; true?

21 A That's correct, yes.

22 Q Okay. And you can determine of all the people that have
23 been talked about in this hearing, all the I-213s in the
24 exhibit, you could determine whether or not they're still in GEO
25 custody or whether they've been sent back to their country of

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1 birth or another country. You could figure that out too?

2 A Yeah. Within our immigration systems, I could.

3 Q Say that again?

4 A Within our immigration systems, I can.

5 Q Okay. And members of the public, members of my team, the
6 Court, could also figure out where -- whether or not any of the
7 people we've discussed are in ICE custody by using what's called
8 the ICE locator; is that right?

9 A Yeah. The ICE detainee locator.

10 Q Yeah. Freely available on the website for anyone?

11 A That's correct.

12 Q All right. And in order to use the ICE detainee locator,
13 you need -- there are two ways to look folks up: a number and
14 country of birth. That's one way?

15 A It's been a while since I've been on that system. I do
16 know that -- I believe the A number is needed.

17 Q Okay. And when the ICE locator yields -- it can yield
18 different results when you put in an A number and the country of
19 birth. One of the things that the ICE locator on the website
20 would say is zero matching records. That's one of the things it
21 can say; is that right?

22 A Again, I haven't been on that system in a while. I don't
23 know exactly what information you would get.

24 Q Okay. Do you know that when the ICE locator says zero
25 matching records, that is an indication to us as members of the

1 public or the loved ones that the person is not in ICE
2 detention, according to the records?

3 A Again, I do not know. I mean, I believe the system is --
4 yes, the system is there to find where the person could be. I
5 don't know how the search happens and what information is needed
6 to get it.

7 MR. MACDONALD: Let's look up -- let's put up
8 Exhibit 247. Your Honor, this is another exhibit that was in
9 the court file. It's attached to our motion to enforce. We
10 would ask the Court to consider it. I don't think it's
11 worthwhile me asking the witness any questions about it given
12 the answers he just gave. So, I can formally move its
13 admission, but in any event, we ask the Court to take into
14 account in considering the issues in this case.

15 THE COURT: All right. I will. Objection sustained.

16 MR. MACDONALD: No further questions, Your Honor.

17 THE COURT: Cross examination?

18 MR. BROWN: Yes.

19 **CROSS EXAMINATION**

20 BY MR. BROWN

21 Q Good morning, Mr. Davies.

22 A Good morning.

23 Q AFOD Davies, I should say. I am going to try to be brief
24 based on everything that you've already covered. I may move
25 around a little bit. You mentioned just this morning that the

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1 Denver ERO has switched to a targeted approach recently. Can
2 you expand on that, please.

3 A So, ICE ERO has always used a targeted approach. We find
4 leads, find targets, investigate the case, ensure the person is
5 in fact illegal in the country and removable from the country,
6 and then we send a team out to go and find them. With the
7 beginning of this administration, they started pushing more
8 towards a consensual encounter approach, which ERO Denver still
9 maintains the targeted approach effect, but it -- it took -- it
10 took a toll on the targeted -- the way we targeted previously.
11 And recently, headquarters has come out and said ERO should go
12 back to that targeted approach in full swing, and continue to
13 know exactly who you're looking for going forward.

14 Q And so for targeted arrests, are warrants generated?

15 A Absolutely.

16 Q When?

17 A Prior to the arrest.

18 Q Are they generated in the field?

19 A No.

20 Q Are they generated in the office?

21 A Yes.

22 Q Before the officers go out to make the arrest?

23 A Yes.

24 Q During targeted enforcements, is there always a warrant?

25 A Yes.

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1 Q Okay. Yesterday you also mentioned a few different units
2 that Denver ERO officers might be in, and I wanted to ask a few
3 questions about that. So, you mentioned yesterday the fugitive
4 operations unit; is that right?

5 A That's correct.

6 Q What does the fugitive operations unit do?

7 A Their responsibilities is to go after fugitives, final
8 order removable aliens, along with other aliens that could be
9 targeted due to criminality.

10 Q Do they do targeted arrests?

11 A Absolutely.

12 Q Does the fugitive operations unit do collateral arrests?

13 A Yes, they do.

14 Q Okay. You also mentioned a training unit. What is the
15 training unit?

16 A That's a smaller unit training the newer officers that are
17 being hired today.

18 Q Do they make arrests?

19 A They have full authority to, but they're more focused on
20 the training.

21 Q So, while -- when someone is performing the duties of a
22 training unit officer, do they make arrests?

23 A No, they don't.

24 Q Okay. And you mentioned a criminal apprehension program?

25 A Yes.

1 Q CAP team? What is that?

2 A So, that team is specifically designed to make arrests at
3 local jails, releases out of local jails.

4 Q So, do they -- that's -- can you describe how that happens.

5 A So, we have a system called the ACRIME system. Whenever
6 somebody is arrested locally, they are -- they're fingerprinted,
7 and if they have any nexus to us, the hit will be sent to us.
8 At that point, the CAP team would take that hit off of the
9 ACRIME system and fully investigate who was arrested, what they
10 mean to us, why did we get it.

11 If they are removable, if they are illegal, a detainer
12 I-247 would be prepared along with an I-200 or an I-205, and
13 those would be sent to the jail, requesting for them to hold.
14 In the state of Colorado, jails do not hold for us, but
15 sometimes we will get notified if they're getting released. The
16 CAP team is then responsible for going to the jail with the --
17 with the documents and taking that person into custody when they
18 get released.

19 Q So, when the CAP team goes into the field to make an
20 arrest, do they have a warrant?

21 A Yes, they do.

22 Q Every time?

23 A Every time.

24 Q You also mentioned a processing team; right?

25 A Yes.

1 Q What does the processing team do?

2 A So, again, I believe I mentioned it's a newer team that we
3 started this past year or the previous year. That team is
4 specifically in the processing area. When arrests come in, the
5 arrest will get dropped off at the field office, and that
6 processing team would then take possession of them and process
7 them.

8 Q Does the processing team make arrests?

9 A They again have full authority to, but no.

10 Q You mentioned a non-detained unit. What is the
11 non-detained unit?

12 A The non-detained unit is a unit that works at the field
13 office. They're responsible for any check-ins that would happen
14 at the field office. We have numerous people that check in for
15 various reasons. And their job is to check them in, verify who
16 they are, and if they are amenable to apprehension and custody,
17 removable, they would then effectuate that.

18 Q So, you also mentioned an ATD unit?

19 A Yes.

20 Q Is that within the non-detained unit?

21 A It is. It's the alternatives to detention unit.

22 Q And what is that?

23 A So, that's the unit where if people -- not everybody needs
24 to be in detention. They could be on an ankle bracelet. They
25 could be on something we call a VeriWatch. They could be on

1 SmartLINK where you just have to check in on your phone while
2 you're going through your immigration proceedings.

3 Q Okay. And so is the ATD unit in the non-detained unit?

4 A They work hand in hand with the non-detained unit, yes.

5 Q So, does the non-detained unit make arrests in the field?

6 A Not in the field, no.

7 Q Does the ATD unit make arrests in the field?

8 A Sometimes they do, depending on the violations that the
9 absconder, that the ATD -- so, if somebody were to cut their GPS
10 bracelet, then the ATD would go out and try to find them.

11 Q If they go out in the field to try to find them, do they
12 have a warrant first?

13 A Absolutely.

14 Q And when the non-detained unit makes arrests in the office,
15 do they have a warrant before making the arrest?

16 A Absolutely.

17 Q Every time?

18 A Every time.

19 Q You also mentioned an FCC unit. What is that?

20 A That is -- I don't know what it stands for. It changes,
21 but it's more or less our targeting unit. It's the people that
22 will go through the ACRIME hits and send them to the criminal
23 apprehension unit. They will go through the ACRIME hits of
24 people that have been released and we weren't able to apprehend
25 them, and build target folders for them with the warrants, with

1 everything needed, and then hand them off to the fugitive
2 operations unit.

3 Q So, they hand it off to the fugitive operations unit. So,
4 they don't make the arrests?

5 A No, they don't.

6 Q So, the FCC unit does not make arrests?

7 A They do not make arrests.

8 Q And then you also mentioned a detained unit; right?

9 A Yes.

10 Q Do they make arrests?

11 A No. They have full authority, again, but they do not make
12 arrests.

13 Q So, you talked a little bit yesterday about information in
14 I-213 narratives. Do you remember that?

15 A Yes.

16 Q So, if an I-213 narrative mentions an arrest related to a
17 detainer, what does that tell you about whether that arrest was
18 pursuant to a warrant or not?

19 A It would tell me that it was pursuant to a warrant. If a
20 detainer was created, a warrant was created alongside.

21 Q What if the narrative described an arrest that happened at
22 a call-in?

23 A Yes. It would have a warrant. The subject would have been
24 sitting in the lobby. We would have talked with the subject and
25 then determined on whether or not we wanted to take that person

1 into custody.

2 Q And same question for any narrative that describes a
3 targeted arrest. Can you -- does that tell you whether or not
4 there was a warrant for that arrest?

5 A If it says -- if the encounter says subject -- the -- the
6 officers were out on a targeted arrest, absolutely, there was a
7 warrant created prior to them leaving for that enforcement
8 action.

9 Q Okay. There's also been some discussion on field I-200s.
10 So, warrants generated in the field. Do you remember that?

11 A Yes.

12 Q Can you please, like, walk me through how that happens, how
13 officers obtain a warrant in the field.

14 A Most of the time there's a supervisor in the field with the
15 team. The team, again, would be out on a targeted enforcement
16 operation. Just an example, they're looking for a specific
17 person. They know the person's routine. They see the person
18 get in the car that they know that person drives. They would
19 then pull that car over.

20 If there are collaterals in the car, depending on that
21 person's -- that targeted person's criminality, then they would
22 definitely start questioning the other occupants in the car.
23 Once probable cause is obtained that those persons are illegal,
24 the supervisor on scene would then fill out the arrest warrant,
25 and then those people would be taken into custody.

1 Q So, the filling out of the arrest warrant is an extra step
2 once probable cause has been determined; right?

3 A Yes.

4 Q And how is it possible to obtain a warrant in the field if
5 the supervisor is not on scene?

6 A Yes. So, again, the FCC can be called at any time. Their
7 job is also to run checks for officers that are in the field.
8 The officers will then call the FCC with the name, the date of
9 birth. They would look up in the systems, find out who that
10 person is, and if there's enough probable cause to take that
11 person into custody, they would -- they would draft the warrant
12 there, and a supervisor would sign it at the office.

13 Q And so again, in that circumstance, obtaining a warrant is
14 an extra step; right?

15 A Yes.

16 Q So, in that instance, when the remote is -- or when the
17 warrant is digitally signed, does it have a timestamp?

18 A Yes, it does.

19 Q Notwithstanding the focus on targeted arrests, are Denver
20 ERO officers still empowered to make warrantless arrests?

21 A Yes, they are.

22 Q If officers make a warrantless arrest and the person is
23 brought back to the headquarters for processing, and during
24 processing an I-200 is issued, does that warrant cover the
25 warrantless arrest?

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1 A It would still be considered a warrantless arrest, but that
2 warrant is still needed for the court proceedings.

3 Q Is that warrant forward-looking?

4 A I'm sorry?

5 Q Is that warrant forward-looking for future possible
6 arrests?

7 A Absolutely.

8 MR. BROWN: No further questions.

9 THE COURT: Redirect?

10 **REDIRECT EXAMINATION**

11 BY MR. MACDONALD

12 Q Mr. Davies, I think you said that there were some recent
13 instruction from ICE headquarters that Denver ERO should go back
14 to targeted arrests? Is that a fair characterization of what
15 you just testified to?

16 A I would say it wasn't specifically Denver. It was
17 agency-wide.

18 Q Okay. Who did that come from?

19 A I received that information from my deputy at the time. I
20 was not in the room when the call was made.

21 Q Okay. It was a phone call?

22 A Yes.

23 Q And it was made to the deputy -- to your deputy, or to the
24 person above you?

25 A At that point, I don't -- I can't remember if it was the

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1 acting field office director or if she was a deputy at the time,
2 but it was -- it was upper management that received the phone
3 call.

4 Q Your upper management; right?

5 A Yes.

6 Q So, which -- which upper management received this phone
7 call to the -- that you're referring to from ICE headquarters?

8 A DFOD Katie Reisner.

9 Q When was that?

10 A I don't remember the time or the day.

11 Q Was anything written down?

12 A No.

13 Q Was it in the last three weeks?

14 A I think it was earlier than that. I believe over a month,
15 I believe.

16 Q But you're not sure when?

17 A I'm not sure when.

18 Q Were there any instructions given out in writing?

19 A No.

20 Q Did anyone in upper management at the Denver field office,
21 yourself, DFOD Reisner, or the acting Denver field office
22 director communicate those instructions to the field?

23 A I communicated them to my supervisors.

24 Q In writing?

25 A No.

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1 Q Just a conversation?

2 A Conversation.

3 Q Okay. And who at ICE headquarters, if you know, gave those
4 instructions?

5 A I do not know.

6 Q Do you know if Mr. Lyons, the head of ICE, was on that
7 call?

8 A I don't know who was on the call, no.

9 Q Do you know if those instructions to go back to targeted --
10 targeted arrests came from Mr. Lyons, the head of ICE?

11 A I do not know if they did.

12 Q In that phone call or any other, did Mr. Lyons or anyone
13 acting on his behalf retract the January 28th, 2026, memo that
14 you and I discussed yesterday?

15 A I was not on the call. I do not know what was talked
16 about.

17 Q I know you weren't on the call, but you got some
18 information about it; right? You know something what was talked
19 about?

20 A The target -- yes, to go back to targeted enforcement.

21 Q Okay. And I guess you -- you didn't hear from DFOD Reisner
22 or anyone else that Mr. Lyons or anyone at ICE was saying ignore
23 my January 28th, 2026, memo?

24 A That was never spoken about.

25 Q Okay. You said that the approach that had begun at the

1 beginning of the administration to push for arrests in
2 consensual -- what you said was consensual encounters; right?
3 That's what you said?

4 A Yes. That's the terminology they used.

5 Q Okay. Consensual encounters like pulling over people in a
6 vehicle?

7 A They didn't come with tactics, or they didn't explain how
8 to do it, no.

9 Q Okay. And I think the words you said in your testimony
10 with Government counsel was that the approach that the
11 administration was pushing took a toll? Was that what I heard
12 you say?

13 A Maybe that wasn't the right word. It was -- it's not the
14 way we were trained to do it. It's not the way that we have
15 been working. So, it was a different type of approach that we
16 were trying to pivot to. Again, the Denver field office
17 continued its targeted actions throughout this time, but again,
18 was not -- we didn't -- we weren't able to focus on certain
19 targets that we would have in the past due to them wanting us to
20 focus on other stuff.

21 Q Okay. But I just want to make sure I understand. You said
22 in your testimony that it took a toll.

23 A Yes. I did say that. I don't know -- I don't know if
24 that's the correct word. It did -- it didn't work as well as I
25 think they wanted it to.

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1 Q Okay. And the only thing that you can point to to any
2 change that might happen was a phone call maybe sometime a month
3 ago from headquarters from people that you can't identify?

4 A Yes.

5 Q You're, I assume, familiar with the surges of ICE agents
6 that happened in Minneapolis; right?

7 A Yes.

8 Q Some of your agents went there, including JB, who testified
9 here?

10 A Yes.

11 Q How many of your agents from the Denver field office went
12 there?

13 MR. BROWN: Outside the scope of what I asked about,
14 Your Honor.

15 THE COURT: Overruled.

16 THE WITNESS: I don't know the number.

17 Q. (By Mr. Macdonald) Approximately. More than ten?

18 A More than ten. More than 20.

19 Q Okay. There were surges in Chicago recently, too; right?
20 A little bit before Minneapolis?

21 A I think before.

22 Q Yes. A little bit before Minneapolis?

23 A Yes.

24 Q You're familiar with that?

25 A Yes.

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1 Q Did any of your agents go to Minneapolis?

2 A I can't remember.

3 Q Do you think it's likely?

4 A I believe maybe a couple. I believe that one was more
5 Border Patrol. It wasn't ERO led.

6 Q I do remember the pictures of Mr. Bovino, so that he was --
7 is still Border Patrol?

8 A He is Border Patrol, yes.

9 Q There were surges in Los Angeles, surges in Washington,
10 D.C.; right?

11 A Yes.

12 Q Okay. There could be surges here; true?

13 A There could be, yes.

14 Q And when that happens -- strike that. If that happens, I
15 apologize. If that happens, you would not be in control of
16 whether -- the decision as to whether other agents come here,
17 would you? That would be a decision at ICE headquarters?

18 A Yes. It wouldn't be a decision for me.

19 Q Okay. And you couldn't stop it, as the third in command of
20 the Denver field office, if Todd Lyons or someone else said
21 we're going to send ICE officers from other parts of the country
22 to Colorado? That's not within your authority to stop that;
23 true?

24 MR. BROWN: Speculation. Outside the scope.
25 Relevance.

1 THE COURT: Sustained.

2 Q. (By Mr. Macdonald) You talked about the differing units,
3 and I think you said -- you identified some of the units can --
4 some of the units do conduct arrests out in the field, and some
5 usually do not; right?

6 A That's correct.

7 Q All right. And people move between those units; right?
8 Officers do?

9 A That's correct.

10 Q All right. I think you talked about call-in arrests in
11 your testimony you just gave? Do you recall that?

12 A Call-in?

13 Q So, I think counsel asked you about call-ins?

14 A Check-ins?

15 Q Check-ins?

16 A Check-ins, yes.

17 Q I thought he said call-in, but undoubtedly I wrote it down
18 wrong. But yes. Check-ins. You're familiar with check-ins;
19 right?

20 A Yes.

21 Q Okay. And that's when ICE gives someone an instruction to
22 come to the office and check in?

23 A That's correct.

24 Q All right. And I think you said -- and sometimes people
25 are arrested at those check-ins; right?

1 A That's correct.

2 Q All right. And I think you testified in your -- just a
3 moment ago that when that happens, the person, quote, would have
4 had a warrant?

5 A Yes.

6 Q All right. But you haven't gone back in the files to check
7 whether or not that is always the case. You just -- it's your
8 testimony that that should be the case; right, sir?

9 A Absolutely.

10 Q Okay. But you haven't checked whether in fact it is true
11 that they -- all the people arrested at check-ins have had a
12 warrant issued before that arrest? You haven't checked that?

13 A Yeah. I haven't reviewed officers' arrests in the lobby.

14 Q Sometimes people are out in the field conducting
15 surveillance; right?

16 A Correct.

17 Q And they have a target in mind, and they might even have
18 baseball cards. You've heard of that reference?

19 A I have heard of that, yes.

20 Q And a target list? You've heard of that?

21 A I've heard of that, yes.

22 Q So, sometimes agents are in the field conducting
23 surveillance and have a list of targets, and I just want to make
24 sure I understand your testimony. You're not saying that they
25 always have warrants for all those potential targets on the

1 target list or the baseball cards; is that true?

2 A If they have a target list and there's a specific target
3 that they're looking for, they better have that warrant with
4 them.

5 Q Okay. You haven't gone to check in fact whether or not
6 when someone goes out in the field with a list of, let's say,
7 five, six, eight names, that they always have a warrant. You
8 haven't gone back and checked that?

9 A I haven't checked that.

10 Q Can you describe for the Court what a baseball card is.

11 A It's a new term they came out with for the new elite
12 system. What we used to use, it's similar to that, was a
13 fugitive operational worksheet. And it would just have a
14 picture of the person we're looking for, biographical
15 information, crimes that they've been convicted or pending. All
16 the information that we would need from that person.

17 Q Let's say ICE is out conducting a targeted arrest, and they
18 arrest a collateral, multiple collaterals, either at a
19 construction site, for example, or in a vehicle. In that
20 situation, you're not saying that ICE has warrants for those
21 people; true?

22 A Are they not targeted individuals?

23 Q That's right. They're collaterals.

24 A Yes. They wouldn't have a warrant for them.

25 MR. MACDONALD: No further questions, Your Honor.

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1 THE COURT: Recross?

2 MR. BROWN: Could I have one question?

3 **RECROSS EXAMINATION**

4 BY MR. BROWN

5 Q When you just were talking about the collateral encounter,
6 could they get a warrant for those collaterals before the arrest
7 but after they encounter them?

8 A Absolutely.

9 THE COURT: Reredirect? Can you resist,
10 Mr. Macdonald?

11 MR. MACDONALD: I'm trying, Your Honor. No questions,
12 Your Honor.

13 THE COURT: All right. Thank you, Mr. Davies. You're
14 excused and free to leave, or welcome to stay if you want.

15 THE WITNESS: Thank you, Your Honor.

16 THE COURT: Does the defense have any witnesses?

17 MR. LENEIS: We do not, Your Honor.

18 THE COURT: Does the plaintiff have any rebuttal
19 witnesses?

20 MR. MACDONALD: I don't think so, with one caveat.
21 I'm just going to move some admission, or ask the Court to take
22 into consideration the --

23 THE COURT: The Court will consider all the
24 declarations that you have filed.

25 MR. MACDONALD: All right.

1 THE COURT: The Court has already reviewed the
2 declarations that you have filed.

3 MR. MACDONALD: All right. The only other one that I
4 would move admission, Your Honor, is Exhibit 260. That is a
5 declaration that we obtained after we filed our motion. It is
6 of another impacted person, and I would move its admission.

7 THE COURT: 260. Is there an objection to 260?

8 MR. LENEIS: We don't think it should be admitted,
9 Your Honor, but you've already said you're going to consider the
10 declarations, so we will leave it there.

11 THE COURT: I think that wasn't an objection. It's
12 admitted, 260.

13 MR. MACDONALD: Thank you, Your Honor.

14 THE COURT: All right. That concludes the evidence.
15 Now, Mr. Macdonald or Mr. Macdonald's team, do you wish to make
16 a closing argument?

17 MR. MACDONALD: Yes, Your Honor. Would you like that
18 now?

19 THE COURT: Go ahead. And Ms. Kurtz can come back up
20 and sit with you if she'd like to.

21 MR. MACDONALD: That would be great, Your Honor.

22 THE COURT: Moral support, if nothing else.

23 MR. MACDONALD: It's usually more than that, Your
24 Honor.

25 THE COURT: Oh, yes. I know.

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1 MR. MACDONALD: I need all the help I can get.

2 MS. KURTZ: Thank you, Your Honor.

3 MR. MACDONALD: Your Honor, we asked for this hearing
4 because it was our considered view that defendants were not
5 complying with Your Honor's order. And I think the evidence of
6 that after this hearing is abundantly clear.

7 And so if we look at the I-213s that we've -- we've
8 submitted, we have four primary exhibits that have now been
9 admitted into evidence. That's Exhibit 202, 204, 207, 208.
10 Those are the I-213s that were provided to us pursuant to your
11 Court's -- to Your Honor's order. And so you ordered them to
12 produce I-213s for warrantless arrests so that we could evaluate
13 the compliance. Those are the exhibits. They show the I-213s
14 for warrantless arrests. And when read, maybe with a couple of
15 exceptions, they show these are arrests of collaterals, people
16 who are not a targeted arrest. They look just like the I-213s
17 for our four named plaintiffs that you heard from in October,
18 and the other declarants.

19 None of them contain the specific articulable facts of
20 flight risk, of likelihood of escape. And I think Mr. Davies
21 candidly answered your question yesterday about whether he's
22 ever seen an I-213 that contains the specific articulable facts
23 of flight risk, and he said no. So, I think the -- the evidence
24 of their noncompliance is extensive.

25 And one of the things that Government counsel said

1 yesterday was, you know, it's not a policy and practice of
2 continuing to violate your order. And I think that's a red
3 herring. That's not the standard. That's not the question
4 before the Court. We don't have to show that. We think we have
5 shown it, but that's not the question. The question is are they
6 complying with Your Honor's order?

7 THE COURT: I think the sequestration order might have
8 been unfortunate in this hearing, because I think it would have
9 been educational for Mr. Davies had he heard the testimony of
10 the three DOs.

11 MR. MACDONALD: I agree with you, Your Honor, because
12 I think something is getting lost in translation. And so I take
13 Mr. Davies at his word that he had a meeting with 15 of the
14 individuals in that office and told them to comply with your
15 order. I take him at his word on that. But what we heard from
16 the officers, and if we had more time, I think we could have put
17 up officer after officer after officer that would have said the
18 same thing as these three, that we didn't get trained. We
19 got -- at best, we got an email.

20 THE COURT: There's been a lot of reference to that
21 email. Has that ever been produced?

22 MR. MACDONALD: No, Your Honor. We have asked for it.
23 We have asked for it. We have asked for the training. That was
24 one of the first things we did a month ago when we said none of
25 these I-213s comply. They don't say -- they don't even say

1 they're warrantless arrests. And now we've sort of been put in
2 a trap of Your Honor said produce I-213s of warrantless arrests.
3 That's the only thing you ordered them to produce to us. And
4 then they did that, and we said, hold on a second. None of
5 these even comply with the first part of Judge Jackson's order,
6 that they're to say they're warrantless arrests, let alone
7 articulate the specific articulable facts that support probable
8 cause of likelihood of escape.

9 And so now I feel like, you know, Lucy and the
10 football, where we say, you don't comply. These are warrantless
11 arrests. That's why you're producing them. And it's like,
12 well, maybe they have warrants.

13 THE COURT: I understand. I think I made that point
14 yesterday.

15 MR. MACDONALD: You did. Thank you, Your Honor. So,
16 we think it's -- one of the reasons we think that it is
17 important -- critically important that we get the training
18 materials such as it is, whether it's just an email, whether
19 it's more than an email, and communications back and forth.

20 THE COURT: Do you know who sent this December 2nd
21 email out?

22 MR. MACDONALD: No idea.

23 THE COURT: So, you don't know whether it was counsel,
24 and it contained legal advice or not?

25 MR. MACDONALD: That is correct, Your Honor. I have

1 no idea.

2 THE COURT: And these gentlemen, you say, you've asked
3 again and again for it. Have they indicated that they think
4 it's privileged or not?

5 MR. MACDONALD: Well, so to be clear, I haven't --
6 until this hearing, I didn't even know there was a December 2nd
7 email. So, I didn't ask for the December 2nd email. We asked
8 for the training. We asked for the communications about Your
9 Honor's order so we could understand why is there such
10 widespread failure to comply? They did say -- in their defense,
11 they said, well, you're asking for attorney-client
12 communication. I'm not. I mean, Your Honor, I've been
13 litigating for 30 years. If there's privileged material, they
14 can redact it. Give us a privilege log. I'm not saying we get
15 their privileged communications.

16 And if it's all wrapped up, maybe that's something we
17 will have to negotiate with them, but I would assume that the
18 instructions from AFOD Davies to his team, that's not
19 privileged. That's, here is what you need to do in the field.
20 Here is how you have to carry out to make sure you're complying
21 with the law.

22 We have the Lyons memo. Again, I think Mr. Davies was
23 super candid in saying that memo is inconsistent with Your
24 Honor's order. It's inconsistent with the way in which he had
25 been trained as a sworn officer for 20 years. But the problem

1 is that memo is from the chief, the head of ICE. And it went to
2 all his members, all 200 of these new folks.

3 THE COURT: Well, the guys in the field don't seem to
4 even understand it or know that it exists. That Lyons memo says
5 flight risk or likely to escape means will they be at that exact
6 space, or another particularly identifiable location, something
7 like that. I don't have the exact words in my mind.

8 MR. MACDONALD: You're right, Your Honor. That is --
9 what you just described is the essence of that memo, and I agree
10 that the officers who testified likely couldn't recount the
11 memo. Or, I mean, it doesn't seem like they pay attention to
12 the emails they get, but what they -- what they articulated, I
13 think, to this Court, was that they followed the principle of
14 it. I mean, JB testified in essence if the person is here in
15 his view illegally, that's it.

16 THE COURT: Yes. I get it. I heard the testimony.

17 MR. MACDONALD: Okay.

18 THE COURT: Talk to me about field warrants and what
19 your position is, both are you objecting to that process, and if
20 so, do you think it's even in the case yet?

21 MR. MACDONALD: Yes and yes, Your Honor. We do think
22 they're a problem, and we think they're a problem in a couple of
23 ways. So, we know from the -- Mr. DCC who testified, our
24 impacted person, that he was arrested pursuant to what they say
25 is a field warrant. You heard his testimony. There's no world

1 in which they got a field warrant before they arrested him. You
2 heard those facts.

3 THE COURT: They have their own definition of arrest.

4 MR. MACDONALD: That's true.

5 THE COURT: And who was it who said -- was it the
6 woman whose credibility I questioned, the Supreme Court has
7 vindicated us in this? No. The Supreme Court hasn't. But take
8 a scenario, they do what Mr. Davies would like for them to do,
9 and that is they encounter a collateral. They don't arrest the
10 person. The person is free to leave, but they conduct what in
11 other contexts might be called a *Terry* stop. And as a result,
12 they get a field warrant, and then they arrest. I'm not saying
13 that's what happened with the gentleman who testified or anyone
14 else subject to a field warrant, but if those were the facts,
15 would the plaintiffs be objecting to that?

16 MR. MACDONALD: So, I think the answer is it depends,
17 Your Honor. And I think it gets -- I accept that it gets
18 complicated. It could get complicated in certain factual
19 scenarios. It's one of the reasons what we've asked for in
20 terms of relief for now is the information about the field
21 warrant arrests.

22 As you saw with Mr. Davies, I'm in this battle on field
23 warrants with both hands tied behind my back, because the
24 Government is taking the position, as you say, they may have a
25 very different definition of arrest than what we think should be

1 the definition of arrest. And so they right now, because of the
2 way the order is structured, we say -- we get lucky because
3 someone in the community comes to us and says, I have a person
4 that was subjected to a warrantless arrest. Here is their A
5 number and their name.

6 And that doesn't -- it does happen some. That's how
7 we've been able to make some of the specific requests that are
8 in the record before you. But obviously, you know, we're not
9 out canvassing. We can't go out and -- so, we get a few of
10 those. We make a request for the I-213s, say this was a
11 warrantless arrest. And the response we get back, if in fact
12 they believe it was a field warrant, is you don't get it. You
13 don't get to see any.

14 THE COURT: Well, the order of the Court was to
15 produce a sampling of 213s for warrantless arrests.

16 MR. MACDONALD: That's right.

17 THE COURT: The Court's assumption and conclusion is
18 that every one they produced was in fact a warrantless arrest.
19 Since none of them have the particularized facts about
20 likelihood of escape, by definition, they're not in compliance.
21 That much I can agree with.

22 When we get into these field warrants, that's a whole
23 different kind of situation. And obviously Mr. Davies, who by
24 the way I found to be credible, Mr. Davies is a believer in
25 warrants, including field warrants, as opposed to warrantless

1 arrests. And they've grappled with that in Chicago, and it's an
2 issue here, and it's probably an issue in other places.

3 MR. MACDONALD: And one of the things the judge has
4 done in Chicago, Your Honor, is order them to produce the
5 I-213s, the actual field warrant itself, which Mr. Davies
6 testified, the first time I heard this, has a date stamp of when
7 it was issued. And what the judge in the Nava case in Chicago
8 has ordered is you have to produce those for field warrants so
9 that we have an opportunity to come before Your Honor or do --
10 to say we think this is a warrantless arrest.

11 THE COURT: Well, I think the judge in Chicago took
12 that next step and said he thinks it was a warrantless arrest.

13 MR. MACDONALD: He did.

14 THE COURT: And the Seventh Circuit said, hold your
15 horses. That expands beyond the consent decree. They didn't
16 say they agree. They didn't say they disagree. They said
17 that's outside the scope of what the consent decree was talking
18 about. I think that's what happened.

19 MR. MACDONALD: So, what -- and I encourage -- Your
20 Honor, we can give you the cites. I think they're in our
21 motion. In the last two and a half weeks, the District Court in
22 Nava has issued three different additional orders about
23 noncompliance that include field warrants that don't comply.
24 And what the Seventh Circuit said was hold your horses on
25 ordering mass release of all the people subjected to the field

1 warrant arrests. So, that part is true. They did say hold your
2 horses, but that was on his order of mass release for people who
3 were arrested pursuant to field warrant.

4 So, he is -- the judge in Nava is absolutely continuing
5 to order production of the field warrant I-213s and the field
6 warrants, because on a one-off basis, they need the opportunity
7 to say these are in fact warrantless arrests. So, we absolutely
8 think it's in the case, Your Honor.

9 And I'm told ECF -- one of them is 301, and the others,
10 please? They're in our exhibits.

11 THE COURT: One thing that you raised in your papers,
12 but you didn't ask Mr. Davies about, and maybe he wouldn't know
13 the answer, is why your original plaintiff, Ovando Ramirez,
14 doesn't have his papers yet. Is there any update on that that
15 you know of?

16 MR. MACDONALD: Mr. Meyer, who is not here, Your
17 Honor, because he's dealing with his criminal docket this
18 morning, would know the answer to that. I don't know the answer
19 to that.

20 THE COURT: I probably should have asked Mr. Davies
21 about that. That doesn't make sense to me. Maybe defense
22 counsel can update us on that.

23 MR. MACDONALD: On the field warrants, Your Honor, it
24 is -- and we heard from the officers this, I would say, new zeal
25 of Mr. AL said in 11 years, I have never conducted a warrantless

1 arrest. I always have a warrant. That's what Mr. AL testified
2 to. And I think both JB and JL made clear, you know, we get a
3 warrant every time. That's what they claimed. But it's -- in
4 many respects, it's just like the four plaintiffs who got
5 warrants when they were already sitting at the detention office.

6 THE COURT: Right. I understand that. And that, the
7 Court has determined, is a warrantless arrest. So, from the
8 plaintiffs' point of view, what is the difference between that,
9 namely they find the collateral, he says he's undocumented, they
10 arrest him, they take him to headquarters, and in headquarters,
11 they issue a warrant? That was what the four plaintiffs were
12 talking about.

13 MR. MACDONALD: That's right.

14 THE COURT: What's the difference between that and
15 they find the collateral, he admits that he's undocumented, they
16 get the local supervisor or go on the phone and get the FCC to
17 issue a quickie warrant, and then they arrest? What difference
18 does that make to the collateral? It means that he can't go
19 home from his place of employment and see his family and tell
20 them what happened. He's already at the detention center. And
21 I know that makes a difference. On the other hand, if he's not
22 likely to escape, they can just go to his house or wherever and
23 pick him up if they want him. In the end, what's the
24 difference?

25 MR. MACDONALD: Well, so here is the difference, Your

1 Honor. It is Congress gave ICE limited authority to engage in
2 warrantless arrests. You know that. You have to have both
3 prongs in order to engage in a warrantless arrest.

4 THE COURT: Correct.

5 MR. MACDONALD: And so what the -- if they're -- if
6 they're detaining someone in the field, making a determination
7 that the person is here in violation of the immigration laws,
8 and they can go get a -- they're still holding the person, so
9 now they're exceeding the scope of that -- that detention.
10 They've determined that they're here in their view unlawfully.
11 They -- at that moment, they're continuing to hold the person
12 while they get a, quote, quickie warrant, or a field warrant.
13 That is exactly -- that will evade the limited authority that
14 Congress gave them.

15 THE COURT: Well, it won't evade it. It will
16 eviscerate it.

17 MR. MACDONALD: Yes. That's right. And so that's why
18 I think --

19 THE COURT: But are you representing the plaintiff to
20 vindicate the statute of Congress, or are you doing that to help
21 your clients be in a better spot?

22 MR. MACDONALD: The latter, Your Honor.

23 THE COURT: Right. So, what is the difference, then?

24 MR. MACDONALD: Well, if someone knows --

25 THE COURT: There's a difference in that if they do it

1 the statutory way, if they do it the right way, it makes an
2 extra step for the ICE agent to have to let him go and then go
3 to his house and pick him up. And maybe as a practical matter
4 they don't go to the house and pick him up, or maybe at least
5 your client has a chance to sort of let his family know what's
6 happening, and it's a little more genteel.

7 MR. MACDONALD: That's right.

8 THE COURT: And maybe that's the important difference.

9 MR. MACDONALD: That's exactly right, Your Honor. And
10 that person can go home, can make immediate steps to get a, for
11 example, some type of custody arrangement. All right? They
12 might be a single parent. They may -- they can say, I just had
13 my ICE encounter. Things don't look good.

14 I don't do family law. I know there's lots of people
15 out in the community who have been given trainings about all the
16 steps one could take to protect one's children, one's home,
17 one's assets, one's debts, and all of those things someone can
18 make arrangements for. And it's true, they may not be able to.
19 I accept that.

20 THE COURT: Okay. So, we're on the same page now. At
21 some point in some court, this court or some other court, the
22 whole concept of field warrants is going to have to be examined
23 by a Court and decided, is that a warrantless arrest or not?
24 But I'm not sure that decision is on the table for me yet.

25 MR. MACDONALD: I agree with that.

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1 THE COURT: Okay. You're not asking for that. What
2 you're asking for is some evidence that tells you more about
3 these warrantless arrests --

4 MR. MACDONALD: Exactly.

5 THE COURT: -- that have the field warrant.

6 MR. MACDONALD: Exactly, Your Honor.

7 THE COURT: They're not warrantless arrests. The
8 field warrant arrests.

9 MR. MACDONALD: That is the ask. We acknowledge that
10 we need -- I mean, we have some information. And the
11 information we presented, Your Honor, by witnesses and through
12 the exhibits in our view demonstrates that they are warrantless
13 arrests. I understand that's -- that's a disputed issue with
14 the Government. But we -- we don't have -- we don't have the
15 information to be able to contest at least some of the things
16 that they're saying, which is we get them quickly. It's five
17 minutes. It's -- everything is consensual until we wet the
18 warrant. All these things.

19 THE COURT: Well, ultimately, I think the way this is
20 playing out with ICE, that is the critical issue. And that is
21 can they do these field warrants and avoid the statute that way?

22 MR. MACDONALD: I think that's exactly right, Your
23 Honor. I do think --

24 THE COURT: But at this point, at least the agents we
25 heard from here and some of the documents you've submitted show

1 that they're making warrantless arrests without the field
2 warrant.

3 MR. MACDONALD: I think that's also exactly right.
4 It's one of the reasons why I think Your Honor's random sampling
5 order in the -- in the November 25th order was a smart thing to
6 do. I'm married to a mathematician. It seems to me to make
7 perfect sense. We get a random sample. I don't need every
8 single one of them, I thought, and then we negotiated with them
9 over getting a third, and what they showed is what you just
10 described.

11 And so that's one of the other reasons we've asked for
12 all the I-213s for warrantless arrests, because we need that
13 full picture. We need to know these are warrantless arrests.
14 Obviously some are still happening. Again, I take Mr. Davies at
15 his word that he hopes he will go back to targeted enforcement
16 like has happened for most of the last 20 years in this country,
17 when what -- and the data absolutely bears that out.

18 And in the exhibit I showed yesterday and that was
19 showed at the last hearing, which is historically, ICE ERO,
20 Mr. Davies and his colleagues were going after people who were
21 convicted of crimes. That's what they were doing historically.
22 And the numbers have flipped, and now they're not doing that.
23 He says there was a phone call recently that hopefully will take
24 it back the way it was.

25 THE COURT: Yeah. I don't really follow that. I

1 mean, they've been doing targeted arrests all along. That
2 hasn't changed. I don't know if they've been arresting
3 collaterals historically or not before the current year, but it
4 sounded to me as if what Davies believes should be happening is
5 what has been happening, except that the deportation officers
6 haven't gotten the message yet. I don't see that going back to
7 targeted arrests really changes what should have been happening
8 all along.

9 MR. MACDONALD: In our view, that's right, Your Honor.

10 THE COURT: It doesn't mean that henceforth, you only
11 pick up people that you target, and you don't pick up
12 collaterals. If it meant that, maybe the plaintiff team here
13 would be rejoicing, but I don't think that's what even the phone
14 call meant.

15 MR. MACDONALD: I think that's exactly right, Your
16 Honor. And we're certainly -- we're not hearing from ICE
17 leadership or the top of the administration, let's slow down the
18 effort to remove people from the country that are not here in
19 their view legally. So, I think the ICE agents are -- at least
20 so far have continued to engage in the same type of arrests of
21 collaterals that Your Honor has heard the evidence of.

22 So, getting all the I-213s is critical in that regard
23 as well as the field warrant information, communications that we
24 heard that they -- when they get the quickie field warrant, Your
25 Honor, that they are sometimes texting back and forth. So, we

1 can get information about the timing. That exists. We know the
2 date, or at least Mr. Davies talked about the date stamp of
3 that -- of the I-200s that we don't have.

4 We also heard from them that they're, you know,
5 communicating -- I assume like police officers, like FBI, they
6 have some kind of CAD report that indicates the timing for the
7 field warrants. We think those would be important. And let me
8 see if there's other -- a couple other things that I want to
9 identify, Your Honor.

10 I think if Your Honor has no further questions, let me
11 just check with my smarter colleague. Mr. Davies did -- he
12 testified about the data log he receives of the arrests. So,
13 they certainly have information in a way that would facilitate I
14 think Your Honor and us understanding what is happening with
15 these arrests, Your Honor, and seeing -- trying to ensure that
16 there's compliance with Your Honor's order going forward.

17 Unless you have any other questions, I will stop
18 talking.

19 THE COURT: No. Thank you, Mr. Macdonald.

20 MR. DEUSCHLE: Your Honor, I have prepared words. I
21 can start there. If the Court has specific issues, I'm happy to
22 start there as well. I will start with my words, then.

23 Your Honor, plaintiffs' motion to enforce should be
24 denied. Their motion claims that there has been a widespread
25 willful noncompliance with the Court's PI order. In essence,

1 plaintiffs have accused defendants of intentionally refusing to
2 comply. Plaintiffs' showing yesterday and today falls far short
3 of that. What you've heard is the defendants are making serious
4 efforts to comply, and are correcting issues with the I-213
5 documentation. The Court heard what defendants have been doing
6 to comply. You heard that immigration officers have been
7 instructed to obtain warrants before arrests, either before an
8 encounter or during an encounter but before arrest.

9 THE COURT: I've heard from three deportation
10 officers. You sat there and listened to them.

11 MR. DEUSCHLE: Yes, Your Honor.

12 THE COURT: They didn't have a clue. They didn't know
13 about the policy pronouncements that have been issued by ICE.
14 They hadn't received any serious training. They didn't really
15 have the ability to even answer Mr. Macdonald's questions.
16 There was a stark contrast between what we were hearing or not
17 hearing from those three guys and Davies. Don't you agree?

18 MR. DEUSCHLE: I partly agree, partly don't. Lawyer
19 answer. I would say the third witness, AL, essentially said
20 what I just said, which is he always tries to obtain a warrant,
21 even if it's in the field, before an arrest. The other two
22 officers, I agree, were not the best on enunciating the policy.
23 I will point the Court to the record. Neither of those officers
24 are currently making arrests in the field, partly for that
25 reason.

1 THE COURT: Also, Davies said never, never has he seen
2 an I-213 that was properly filled out for a warrantless arrest.
3 It hasn't happened. How can you say there's been compliance?

4 MR. DEUSCHLE: Your Honor, I agree with you. The
5 documentation of the I-213s needs correcting. I think we
6 flagged that in our response. I think there's no disputing
7 that. Your Honor has seen copious I-213s. It's really a
8 documentation issue, which also led to this issue with the
9 production of I-213s.

10 Just to explain that for the Court, what happens is as
11 Mr. Davies testified, we got all the I-213s to our office. We
12 reviewed them. Based on the face of those I-213s Your Honor has
13 seen, they don't specify, was there a warrant or was there not a
14 warrant? So, based on that review, we produced what we believed
15 were warrantless arrests because they did not identify the --
16 whether there was a warrant.

17 Upon further review in preparation for this hearing, we
18 realized there was a missing step in that process. That step is
19 even if on the face of the I-213 it's not showing that there's a
20 warrant, I think Mr. Davies talked about this, ICE internally
21 understands that there was a warrant. It might say targeted
22 arrest, or it's one of these check-ins, but it's not on the face
23 of the warrant. So, part of our process going forward, we're
24 not just going to review the I-213 on its face. We're going to
25 go back to the agency and make sure that there is in fact a

1 warrant in place. And the --

2 THE COURT: That's not enough that there's a warrant
3 in place, because we've already ruled on the situation with the
4 first four that you can't take them into headquarters and then
5 paper it with a warrant. One of them said we have to have a
6 warrant there before we go before the immigration judge. That's
7 not compliance.

8 MR. DEUSCHLE: No, Your Honor. And I am sorry. I
9 misspoke. It wasn't just is there a warrant somewhere in the
10 file. When we're doing that check, and when ICE should be
11 noting in the I-213s moving forward, it's was there a warrant
12 pre-arrest, and --

13 THE COURT: What about this guy that testified, the
14 guy that needed the interpreter that had the two U.S. citizen
15 daughters sitting in the back? Mr. Cabral, I think his name
16 was. I'm not sure. What about his situation? Isn't that a
17 perfect example of a warrantless arrest?

18 MR. DEUSCHLE: I'm not sure what -- I understood from
19 his depiction of what happened, it sounds like a warrantless
20 arrest. I don't know -- the officers weren't asked, I believe,
21 and I think they testified they thought there was a field issue
22 warrant, but if obviously the plain situation if somebody is
23 encountered, they're just arrested without any sort of field
24 issue warrants --

25 THE COURT: I think there couldn't have been a field

1 issued warrant for him, because he said as soon as he said he
2 didn't have documents, they arrested me. Put him in handcuffs
3 or whatever, and away he goes.

4 MR. DEUSCHLE: I'm not disputing if what he said is
5 true, there are no questions, no warrant, then that was a
6 warrantless arrest. I think we dispute his characterization of
7 the event, but his characterization certainly depicts a
8 warrantless arrest.

9 THE COURT: Well, you don't know, because you don't
10 have a field warrant for him. I don't know how they could have
11 gotten a field warrant for him. He certainly wasn't targeted.
12 That's -- that's the case that we're trying to prevent here.

13 MR. DEUSCHLE: I agree, Your Honor.

14 THE COURT: And you guys should be on our team on
15 that. There shouldn't be a team on that: the Court, the
16 plaintiffs, or you, DOJ lawyers. We should all be in agreement
17 that that isn't proper.

18 MR. DEUSCHLE: I think we are on the same team. I
19 think a lot of this is, again, documentation. I don't think
20 that I-213 was clear. I think it mentioned there was a field
21 issue warrant after the fact, if I'm remembering the right
22 I-213, but it -- I think -- I do think, again, though, we're on
23 the same page.

24 We're not trying to -- I think the biggest thing,
25 though, is the documentation there is -- if it can be clear to

1 us and the Court and the plaintiffs, the ones we're producing,
2 is there a warrant? If there isn't a warrant before the arrest,
3 was a warrant obtained in the field prior to arrest? We believe
4 those things should be noted so that, A, we're complying with
5 the Court's order, we're not producing false positives to the
6 Court or to the plaintiffs.

7 THE COURT: No. I'm not accusing you guys of
8 anything. On the contrary, I've -- I've been 27 years on the
9 bench now. Fourteen on this bench. I trust and have always
10 trusted my district attorneys and my AUSAs to be honest, to be
11 truthful, to be interpreting their job as one of doing justice.
12 And I've seen many examples of that over the years. And I trust
13 you three guys in the same way.

14 The issue of whether the warrantless arrest -- the
15 field warrant makes it legal is a very difficult, not yet fully
16 decided issue. And you guys are arguing that that's proper. I
17 don't blame you. I would if I were in your shoes. Macdonald's
18 team says, no, that is not proper. At some point a Court, this
19 Court or some Court has to decide that. Some higher Court
20 probably will decide that.

21 What we're really focused on here is this whole
22 practice of these guys going out there, and as soon as they come
23 across a person that says, yeah, I'm not here legally, you're
24 done. You're arrested. You're going in. That's what we're
25 trying to get rid of before we next focus on this field warrant

1 business, I think.

2 MR. DEUSCHLE: I agree, Your Honor. And I think
3 Mr. Davies' testimony should give the Court reassurance on that.
4 He talked about the training that is given to the intake
5 processing officers, so when an officer comes in, right, they're
6 given the information the processing officer --

7 THE COURT: Well, they're not getting it. At least
8 the three guys that were testifying here aren't getting it.

9 MR. DEUSCHLE: Your Honor, this process was in place
10 after two of those officers were taken out of the field, and so
11 they're not getting this counseling because they're not making
12 field arrests right now. They're not doing the things that
13 they're testifying about.

14 But this process is supposed to kind of on an
15 individualized level address the documentation issues, and if
16 they're not noting to the processing officer; right? Is there a
17 warrant for arrest? If not, what did you ask in that field
18 interview? You can't just say, field interview conducted.
19 They're going to go back to those people and ask those
20 questions.

21 If they didn't, the supervisors are reviewing the
22 I-213s going forward on a weekly basis, and giving individual
23 one-on-one counseling with those individual officers if there's
24 a deficiency in the I-213 itself or in the underlying arrest
25 based on their view of the I-213. So, I think that's how the

1 Government believes this should be addressed. If there is an
2 issue beyond just the documentation, they're just not noting
3 something, or there's actually something going on in the field
4 that the supervisors need to be aware of -- Mr. Davies needs to
5 be aware of.

6 Your Honor heard additional efforts to comply beyond
7 the instruction to obtain a warrant before arrest. You heard
8 about the email to all immigration officers in December
9 regarding compliance with the Court's order.

10 THE COURT: Tell me about that email. Why haven't you
11 produced it to Mr. Macdonald and to the Court? Do you even have
12 it?

13 MR. DEUSCHLE: We do not, no, Your Honor. And I also
14 say, it was not asked for until the plaintiffs asked for this
15 hearing. It wasn't like there was an ongoing months-long
16 discussion about this. So, that's part of this. But also, we
17 don't have that email as well.

18 THE COURT: Well, unless it was issued by a lawyer
19 giving legal advice, it ought to be turned over. And if you
20 don't have it yet and they hadn't asked for it until this
21 hearing, okay. But let's get that in their hands and our hands
22 here.

23 MR. DEUSCHLE: We can certainly discuss with our
24 clients about that.

25 THE COURT: Thank you.

1 MR. DEUSCHLE: On the I-213s, Your Honor, I do want to
2 flag, we flagged in our response the evidence of a positive
3 trend since the PI was issued with significantly less alleged
4 noncompliance over time.

5 THE COURT: Positive trend doesn't mean that there was
6 compliance. It means that there wasn't compliance, and now
7 there is noncompliance fewer times than there were before. When
8 the Court issues an order, it's to be followed, not just we will
9 try to do a little better, and our trend will be good.

10 MR. DEUSCHLE: I understand, Your Honor. But I think
11 that the -- the point I'm trying to make is ICE is making
12 significant efforts to comply with the Court's order. The
13 motion, again, from the plaintiffs is that there's widespread
14 willful noncompliance. We're obviously trying to make efforts.
15 That's all the point I'm trying to make here is the positive
16 trend. It's not as if you're seeing month over month, week over
17 week, the same warrantless arrests with multiple I-213s just
18 stacking up as the months go by.

19 We're pointing out in -- plaintiffs' motion is that
20 it's really declining over time. Most of their I-213s that the
21 Court has seen are focused on the first two weeks after the
22 Court's PI order. And then the rest are over about two months
23 since the Court's PI order. But again, we fully acknowledge the
24 Court's order. We're supposed to comply to it. We're really
25 working hard to comply with that.

1 Given the defendants' efforts to comply, we point out
2 plaintiffs' evidence does not show a continuing unlawful policy
3 or widespread noncompliance. What plaintiffs have shown is
4 extremely limited. As we said in opening, there's no evidence
5 of noncompliance all across Colorado. Instead, the Court heard
6 about just six encounters, seven arrests over the course of
7 three months where it was not clear whether there was a warrant
8 before the arrest occurred.

9 The evidence the Court heard was largely focused on one
10 unit, two officers. We talked about those two officers already.
11 They're no longer in the field making arrests at this time. The
12 Court heard in plaintiffs' own questioning, there are no arrest
13 quotas in Colorado. The Court heard in plaintiffs' own
14 questioning that ICE did not change its arrest practices in
15 Colorado with the Lyons memo.

16 You heard from Mr. Davies, his goal is to continue to
17 comply with the Court's order. He hasn't issued different
18 instructions based on the Lyons memo. In sum, the evidence
19 you've heard does not demonstrate willful, widespread
20 noncompliance with the Court's order. It just hasn't shown
21 that.

22 Your Honor, as a last point, just to talk about the
23 relief, some of the measures they seek, like training, aren't
24 necessary, aren't warranted. But some of the measures are far
25 more problematic. Some are really not designed to ensure

1 compliance with the Court's PI order. For example, adding
2 additional documentation requirements, some measures would also
3 impermissibly modify the Court's PI order. For example, the
4 production of all I-213s for all types of arrests and the
5 production of additional categories of documents like NTAs.

6 And finally, some of the relief would enmesh the Court
7 and plaintiff's counsel with immigration enforcement. For
8 example, the requested relief, I think it's item number two,
9 prohibited immigration officers from doing any arrests at all
10 without training. The Court should not impose those
11 additional --

12 THE COURT: Seems like a pretty good idea to me. Why
13 would we want these guys to go out and make arrests if they
14 haven't been trained properly?

15 MR. DEUSCHLE: Your Honor, we believe they have been
16 trained properly. And we don't think that having the
17 plaintiffs --

18 THE COURT: Well, they haven't been. The three guys
19 that testified didn't know much of anything about training or
20 what these policies or practices were. You can take them out of
21 the field or not take them out of the field. They were supposed
22 to be trained. Those guys were not examples of what we hope ICE
23 officers would know and do in the field.

24 MR. DEUSCHLE: I would agree they're not the shining
25 examples of what people should do out in the field, and that's,

1 again, why ICE has taken them out of the field, because they
2 weren't doing what they were supposed to be doing.

3 THE COURT: And that's good, but my point is whether
4 they were in the field or not in the field, they didn't get the
5 training. Either they didn't get training, period, or they
6 didn't get it when they were trained.

7 MR. DEUSCHLE: Your Honor, I do want to point the
8 Court, again, to that final third officer. He got the
9 instructions that Mr. Davies has told the Court, which was --

10 THE COURT: There was a positive trend in the witness
11 testimonies.

12 MR. DEUSCHLE: There was a positive trend in that as
13 well. The third officer reiterated what Mr. Davies said, which
14 is his instructions were targeted arrests, get a warrant, and
15 then also in the field, obtain an I-200 if at all possible
16 before you arrest someone. So, I do think that third officer
17 was hearing the instructions and was following the instructions
18 that Mr. Davies was passing down after the Court's PI order.

19 THE COURT: It's kind of like the random sampling.
20 One-third.

21 MR. DEUSCHLE: Yes, Your Honor. One-third. I would
22 say the other two-thirds, again, though, are -- it's really the
23 one officer who is still making field arrests; right? Is saying
24 what needs to be said, and the other two that aren't in the
25 field, so it's really 100 percent.

1 THE COURT: You know, you can't generalize from those
2 three guys one way or the other, but we've got, what? Sixty or
3 120 new officers that are flooding in that are making up to 25
4 arrests of people a day. It's an extraordinary thing that's
5 happening in this country, and including in this state. It's an
6 unprecedented thing. I can't just assume that all these guys
7 are getting trained or understanding or getting it when we have
8 yet to see even one 213 that was filled out properly for a
9 warrantless arrest.

10 MR. DEUSCHLE: We're not asking the Court to assume.
11 I think what we're asking for is to give defendants more time to
12 correct what we really do think is mainly a documentation issue
13 so the Court can see the I-213s.

14 THE COURT: Well, you're saying defendants more time,
15 not plaintiffs more time. I think you misspoke.

16 MR. DEUSCHLE: I'm sorry. The defendants are asking
17 for more time. That's really what we're asking for, I guess.
18 I'm sorry. Your Honor, if the Court has no further questions,
19 we would ask the Court to deny plaintiffs' motion to enforce.

20 THE COURT: Oh, just the one kind of rabbit trail I
21 went down with Mr. Macdonald, what about Mr. Ovando? Why
22 doesn't he have his stuff yet?

23 MR. DEUSCHLE: I don't know. I was asking my
24 colleagues. We don't know. He might at this point. I think
25 the last time we checked was after the PI order, but that is

1 something we will certainly track down. It sounds like he
2 should. He might already. I also don't know the standard
3 process or how long it usually takes. I would hope it would be
4 within the same timeframe, but we will certainly check on that.

5 THE COURT: Okay. Thank you. Anything further,
6 Mr. Macdonald?

7 MR. MACDONALD: I know you have a flight, Your Honor.

8 THE COURT: Pardon me?

9 MR. MACDONALD: I know you have a flight, so I will --
10 I will --

11 THE COURT: I have a different flight than I thought I
12 was going to have. And I'm not even going to blame Mr. Leneis
13 for that.

14 MR. MACDONALD: I will take the heat for that one,
15 Your Honor. I think Mr. Cabral, who testified yesterday, needed
16 the interpreter, is the sort of exact example of why we need the
17 information on the field warrants. And so what his field -- in
18 his I-213, that is the only one that we have from someone who
19 was arrested pursuant to field warrant. And we didn't get it
20 from defendants. We got it from his immigration counsel.

21 And what he testified is consistent with the I-213,
22 which is his arrest was a warrantless arrest, as you indicated.
23 He testified he told them who he was, told them he was from
24 Mexico. They asked him if he was here with papers, and he said
25 no. And they put him under arrest. That's consistent with what

1 has happened in all the I-213s that we put before Your Honor in
2 the stories and the PI hearing. And so that's a warrantless
3 arrest.

4 His I-213 says they then got a field warrant. So,
5 exactly what we've been describing. So, that's -- that's a
6 warrantless arrest. So, that's why we need the information on
7 field warrants. That's why they're in this case, Your Honor.
8 What they're doing is getting that information and then getting
9 a field warrant, getting information that they believe that
10 someone is in the country unlawfully, and then holding that
11 person. That is an unlawful warrantless arrest at that time.
12 That's why we need that.

13 There's a suggestion that the three officers -- you
14 know, we had no idea who those three officers were other than
15 that they were at least people in the I-213s who committed
16 warrantless arrests. We obviously had five more, or three or
17 four more people on our witness list. They could have called
18 any officer to say, actually, I was really well trained, and
19 here are my I-213s that comply with the Court's order. They
20 didn't do it. And I think the reason is because the defendants
21 are not complying with Your Honor's order.

22 They referenced that we couldn't ask for all the
23 I-213s. They suggested, I think Your Honor couldn't order them
24 to produce all the I-213s. Of course you can. Federal Rule of
25 Civil Procedure 62 specifically says you can do that on an

1 injunction. We would ask that you do it so that we ensure that
2 there's compliance in our state going forward.

3 Thank you, Your Honor.

4 THE COURT: All right. Thank you. It will stand
5 submitted. Thank you all for your presentations. Good day.

6 (Proceedings concluded at 10:41 a.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 19th day of March, 2026.



Kevin P. Carlin, RMR, CRR
Official Court Reporter