

No. 26-1027

**IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

REFUGIO RAMIREZ OVANDO, et al.

Plaintiffs-Appellees,

v.

MARKWAYNE MULLIN, in his official capacity, et al.

Defendants-Appellants.

On appeal from the United States District Court
for the District of Colorado
The Honorable R. Brooke Jackson
No. 1:25-cv-03183-RBJ

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ORAL ARGUMENT IS REQUESTED

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STATEMENT OF RELATED CASES

In accordance with 10th Cir. R. 28.2(C)(3), the government states that it is unaware of any prior or related appeals in this Court.

The government is aware of the following appeals in other Circuits that raise similar issues:

Cruz-Gomez v. Lyons, No. 26-2090 (9th Cir.).

Molina v. DHS, No. 26-5045 (D.C. Cir.).

INTRODUCTION

This case presents a stark departure from traditional equitable principles and settled limits on judicial power. It arises from the district court's issuance of a statewide preliminary injunction that places routine immigration enforcement under the continuous supervision of federal courts. To do so, the district court provisionally certified an amorphous warrantless-arrest class and granted a sweeping follow-the-law injunction governing how Immigration and Customs Enforcement (ICE) officers conduct warrantless arrests throughout Colorado—all based on ICE's supposed unwritten policy to conduct warrantless arrests without probable cause. That nonexistent policy—inferred from a cherry-picked patchwork of isolated arrests of four aliens (Plaintiffs), hearsay, and conjecture—clashes with ICE's actual *written* policy for warrantless arrests, which prescribes the correct legal framework. Indeed, by the district court's logic, that court itself has an unwritten policy of committing legal error since it is surely possible to find more than four instances of this Court reversing it. These errors warrant reversal.

Plaintiffs have satisfied *none* of the requirements for a preliminary injunction. Most fundamentally, Plaintiffs have not established a likelihood of success on the merits. Plaintiffs lack standing to seek prospective relief

superintending all immigration arrests in Colorado. *City of Los Angeles v. Lyons*, 461 U.S. 95, 101, 103 (1983). Moreover, the Immigration and Nationality Act (INA) prohibits district-court interference with ICE’s discretionary decisions about how to initiate removal proceedings. 8 U.S.C. § 1252(g). Plaintiffs also fail to assert a cause of action under the Administrative Procedure Act (APA). They have introduced no credible evidence that the alleged unwritten policy to conduct warrantless arrests without probable cause exists, and they cannot manufacture a reviewable agency action by aggregating a handful of allegedly unlawful arrests.

Embedded within the district court’s flawed merits analysis was another error: provisional certification of a boundless warrantless-arrest class. Despite initially saying there was “no need for the government to respond on the class action, because I can almost tell you now that that’s unlikely to happen,” IV:967,¹ the district court granted Plaintiffs’ class-certification motion. But the lawfulness of a warrantless arrest turns on individualized circumstances and materially distinct factual settings—determinations not amenable to classwide resolution. *See* Fed. R. Civ. P.

¹ Appendix citations appear in the format “Volume:Page.” For example, “IX:956” refers to p. 956 of Appendix Volume 9.

23(a), (b)(2). Indeed, even the arrests of the named plaintiffs all involved different situations.

Beyond the merits, Plaintiffs also have not shown that they will suffer irreparable harm. As this Court has explained, irreparable harm “must be certain, great, actual ‘and not theoretical.’” *Heideman v. S. Salt Lake City*, 348 F.3d 1182, 1189 (10th Cir. 2003) (citation omitted). Plaintiffs face no such injury supporting injunctive relief and offered no evidence that they would be subject to other warrantless arrests. Even the district court said as much, concluding that Plaintiffs’ injuries stemmed from economic and emotional losses from *past* detentions. IV:857-62. But those alleged losses can “be compensated after the fact by monetary damages.” *RoDa Drilling Co. v. Siegal*, 552 F.3d 1203, 1210 (10th Cir. 2009).

The balance of equities and public interest likewise tip decisively in the government’s favor. The preliminary injunction, which intrudes deeply into ICE’s enforcement decisions, undermines the strong public interest in rigorous and uniform enforcement of federal immigration law.

Finally, the preliminary injunction is impermissibly overbroad. The district court not only issued a sweeping follow-the-law injunction. When later enforcing the injunction, the district court went further still, claiming that ICE’s written policy somehow conflicted with the broad injunction.

IX:1863. By dictating what officers can and cannot consider in assessing likelihood of escape, the district court defied foundational law on probable cause. Courts cannot prospectively micromanage such on-the-ground factual determinations.

This Court should accordingly vacate the preliminary injunction and reverse the grant of provisional class certification.

STATEMENT OF JURISDICTION

The district court had jurisdiction under 28 U.S.C. § 1331. This Court has jurisdiction under 28 U.S.C. § 1292(a)(1) to review the district court’s grant of the preliminary injunction. Because the provisional certification of a warrantless-arrest class and the enforcement order are “inextricably intertwined” with that decision, this Court may also review those orders. *See Moore v. City of Wynnewood*, 57 F.3d 924, 930 (10th Cir. 1995) (citing *Swint v. Chambers Cnty. Comm’n*, 514 U.S. 35, 51 (1995)).

STATEMENT OF THE ISSUES

1. Whether the district court erred in granting a preliminary injunction that prospectively micromanaged how federal immigration officers conduct warrantless arrests in the District of Colorado.
2. Whether the district court erred in provisionally certifying a warrantless-arrest class.

STATEMENT OF THE CASE

A. Legal Background

Title 8, Section 1357 authorizes immigration officers to “arrest any alien in the United States” without a warrant when there is “reason to believe that the alien so arrested is in the United States in violation of” federal immigration law “and is likely to escape before a warrant can be obtained for his arrest.” 8 U.S.C. § 1357(a)(2). The regulations of the Department of Homeland Security (Department) mirror this requirement. 8 C.F.R. § 287.8(c)(2)(i)-(ii). This Court has equated the “reason to believe” standard with probable cause. *Roa-Rodriguez v. United States*, 410 F.2d 1206, 1209 (10th Cir. 1969). After a warrantless arrest, an immigration officer must “document in the narrative section of Form I-213 ... all factors considered in determining that the alien was likely to escape before a warrant could be obtained.” IV:926.

When the statutory requirements for a warrantless arrest are not present, immigration officers must obtain an administrative warrant. Under Department regulations, designated immigration officers may issue a Form I-200 administrative warrant to arrest and detain an alien pending removal proceedings. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(b)(1), 287.5(e)(2).

B. Factual Background

1. ICE's policies have consistently required officers to develop probable cause before conducting a warrantless arrest

The formal written policies of ICE, a division of the Department, similarly incorporate the requirements of 8 U.S.C. § 1357(a)(2) and its implementing regulations. Up until mid-2025, ICE's formal policy on warrantless arrests was contained in a Broadcast Statement of Policy that was issued in conjunction with a class-action settlement in *Castañon Nava v. Department of Homeland Security*, N.D. Ill. No. 18-cv-03757. See VII:1408.² The Broadcast Statement of Policy gave officers examples of factors that can bear on the “likelihood of escape” analysis when conducting warrantless arrests, including an immigration officer’s “ability to determine the individual’s identity, knowledge of that individual’s prior escapes or evasions of immigration authorities, attempted flight from an ICE Officer, ties to the community,” and “other specific circumstances that weigh in favor or against a reasonable belief that the subject is likely to abscond.” VII:1408-09.

² Plaintiffs and the district court (ECF 112 at 37 n.11) treated the *Castañon-Nava* Broadcast Statement of Policy as binding nationally. But the court there recently limited its scope to the class in that case. See *Castañon Nava*, No. 18-cv-03757 ECF 342 at 3.

On June 11, 2025, ICE issued a notice to all employees terminating the *Castañon Nava* settlement. VII:1411. But the notice reiterated that warrantless arrests must be based on probable cause and comply with § 1357(a)(2). VII:1412. The notice also included a list of permissible factors to consider in the “reason to believe” inquiry that closely tracked the prior policy. See VII:1412 (referencing, among other relevant factors, “the ability to determine the individual’s identity,” and “knowledge of that individual’s prior escapes or evasions of immigration authorities”). On October 22, 2025, in response to an order from the *Castañon Nava* court, ICE issued another statement re-adopting the prior Broadcast Statement of Policy. IX:1801.

After the preliminary injunction hearing in this case, ICE issued a memorandum titled “Civil Immigration Arrest Authority: Administrative Arrest Warrants and Warrantless Arrests” on January 28, 2026. IV:921 (“Lyons Memo”). The Lyons Memo emphasizes that, to conduct a warrantless arrest, officers must have probable cause to believe that both prongs of § 1357(a)(2) are met, and that the probable cause determination “must be made before a warrantless arrest is effectuated.” IV:923-24. Though § 1357 does not define “likely to escape,” the memo distinguishes that phrase from a post-arrest determination of flight risk, explaining that “likely to escape” in the context of a warrantless arrest means the alien “is

unlikely to be located at the scene of the encounter or another clearly identifiable location once an administrative warrant is obtained,” rather than the individual absconding from removal proceedings. IV:924-26.

The Lyons Memo similarly instructs that an alien’s likelihood of escape depends on the totality of the circumstances and provides several non-exhaustive but relevant factors to consider. IV:924-25. Consistent with prior guidance, the memo confirms that “[n]o single factor is determinative,” but that “[t]he circumstances of an alien’s failure to comply with the immigration laws of the United States or unwillingness to cooperate with an immigration officer’s lawful authority to enforce those laws” may support a determination that the alien is likely to escape before a warrant is obtained. IV:925. Violation of immigration law by itself, however, is insufficient to satisfy the requirement. *See* IV:924-25.

2. ICE trains its officers on the applicable policies at least twice annually

ICE trains its officers to follow § 1357(a)(2) and the division’s policies when performing warrantless arrests. Officers in the Denver Field Office area of operations receive training on warrantless arrests in their initial basic training to become immigration officers. VI:1270. ICE also provides them with Fourth Amendment training—which includes discussion of the requirements of § 1357(a)(2)—twice a year. VI:1343. ICE supervisors and

officers have also discussed warrantless arrests and § 1357(a)(2) upon each issuance of the division's policies on that subject—at a minimum, once in 2022 and twice in 2025. VI:1270-71.

That training directs ICE officers to document the circumstances of a warrantless arrest in a Form I-213 as soon as practicable. VI:1275; see IV:921, 926. The I-213 should document the information known to the officer at the time of the arrest that, in the officer's view, established probable cause under § 1357(a)(2). VI:1275; IV:921.

3. ICE conducts warrantless arrests of the four named plaintiffs based on probable cause

Attempting to establish that ICE has adopted an *unwritten* policy—contrary to its express policy—to conduct warrantless arrests without probable cause, Plaintiffs presented the testimony of the four named plaintiffs who were arrested without warrants.

G.R.R. is a native of Mexico and lives in Colorado Springs. V:1146. He was admitted to the United States ten years ago, V:1146, but remained after his visa expired, V:1161. In 2019, he was convicted of class 3 assault and was given a two-year deferred sentence. V:1161, 1164.

On April 27, 2025, a friend called G.R.R. in the middle of the night asking to be picked up at a nightclub. V:1147. G.R.R. arrived around 3 a.m. and started looking for his friend, when a large law enforcement presence

converged on the nightclub. V:1147. G.R.R. fled and hid under a car in the parking lot. V:1149. After a few minutes, a law enforcement officer found him hiding and told him to come out. V:1150-51. G.R.R. was restrained, his wallet (containing his Mexican consular ID) and phone were taken, and he was transported with 60 other nightclub patrons to the ICE detention facility in Aurora, Colorado. I:51-52.

An immigration judge granted a bond, on the condition that G.R.R. wear an ankle monitor. V:1156. G.R.R. plans to marry his U.S.-citizen fiancée and seek lawful permanent residence in the United States. V:1164.

J.S.T., a native of Mexico, first attempted to come to the United States in 2006. V:1053-54. Law enforcement encountered him, detained him upon entry, and sent him back to Mexico. V:1053-54, 1072-73. He unlawfully entered the United States again without authorization in 2010, and lives in Aurora, Colorado. V:1052, 1054.

On February 5, 2025, J.S.T. was leaving his apartment building when he encountered a significant law enforcement presence outside. V:1056-57. Two trucks blocked the exit from the parking lot, and uniformed officers stopped him and sought identification. V:1057-59. The officers asked him whether he had “any other previous problems with any crime or legal problems, or if [he] had ever had contact with Border Patrol.” V:1059. J.S.T.

falsely answered “no.” V:1059. The officers arrested him and transported him to detention. V:1060-64.

J.S.T. was ultimately granted bond by an immigration judge, and ICE required an ankle monitor and regular check-ins as conditions of release. V:1066. J.S.T. has requested asylum in the United States. V:1066.

Refugio Ramirez Ovando is a native of Mexico and has lived in Grand Junction, Colorado for 20 years. V:1023-24.

On May 19, 2025, Ramirez Ovando saw cars he did not recognize near his house as he prepared to go to work. V:1026. After he departed, one of these cars followed him and eventually initiated a traffic stop. V:1027-28. Two officers approached his car, one speaking Spanish to him. V:1028. They asked for his identification, and he produced a Colorado driver’s license for undocumented individuals. V:1029. The officers asked whether he had a passport, and he offered to have his daughter bring it to him. V:1029-30. Ramirez Ovando “tried not to answer [the officer’s] questions” during this exchange and repeatedly asked whether he was under arrest or free to leave. V:1027-28. The officer inquired whether he had a work permit or legal residency in the United States, and when Ramirez Ovando again sought clarification about whether he was under arrest, the officer said he was.

V:1031. Ramirez Ovando was taken to the ICE field office in Grand Junction, and from there to the Aurora detention facility. V:1034-35.

On August 18, 2025, an immigration judge granted his petition for lawful permanent resident status. V:1024, 1039.

Caroline Dias Goncalves is a native of Brazil, and her family came to Salt Lake City, Utah, when she was seven. V:1001-02. The family initially entered on a tourist visa but did not depart when that visa expired. V:1018. Dias Goncalves is a prenursing student at the University of Utah and also works at a restaurant in Salt Lake City. V:1001, 1003. She filed an application for asylum a year or two before her arrest. V:1003.

On June 5, 2025, Dias Goncalves was traveling east on Interstate 70 to visit a friend in Colorado when she was pulled over by a Mesa County Sheriff's deputy. V:1004. The deputy reviewed her driver's license and asked her questions about where she was from and what she was studying. V:1004-05. The deputy told her that he had pulled her over for following a semi-truck too closely but let her go with a warning. V:1006-22.

Roughly fifteen minutes later, Dias Goncalves was pulled over again. V:1006. The officers told her that she was under arrest for violating immigration law. V:1007. They took her to the Grand Junction ICE field office. V:1008.

Dias Goncalves was ultimately released from detention on bond, conditioned on wearing an ankle monitor. V:1011. She returned to Utah and now lives with her parents. V:1015. She has no ties to Colorado and no intent to visit Colorado other than to meet with her lawyer and participate in legal proceedings. V:1016.

* * *

After the arrest of each named plaintiff, ICE served a Notice to Appear—the document that initiates removal proceedings—and prepared a Form I-200 (administrative arrest warrant). *See* VI:1301. The I-200 ensures that if the alien’s circumstances materially change—for example, a final order of removal is entered, or the alien commits a crime—ICE has a warrant authorizing a future arrest. VI:1301-02.

C. Procedural Background

1. Plaintiffs initiate this lawsuit

On October 9, 2025, Plaintiffs filed a complaint on behalf of themselves and a putative class. Asserting claims under the APA, Plaintiffs alleged that ICE maintained an unwritten “policy, pattern, and/or practice of making warrantless arrests without the required individualized status determination and flight risk analysis.” I:65. According to Plaintiffs, that unwritten policy violated both § 1357(a)(2) and the implementing regulations. I:64-65.

The same day, Plaintiffs moved for a preliminary injunction. I:75. In that motion, Plaintiffs contended that the arrests of the named plaintiffs established ICE's unwritten warrantless-arrest policy and that they were likely to suffer irreparable harm if the policy continued. I:92-104.

Plaintiffs also asked the district court to certify a class under Federal Rule of Civil Procedure 23. They proposed a warrantless-arrest class with the following definition:

All persons since January 20, 2025, who have been arrested or will be arrested in this District by immigration officers without a warrant and without a pre-arrest, individualized assessment of probable cause that the person poses a flight risk.

III:663. At a status conference the following week, the district court stated that it “could issue an injunction that has statewide effect or district-wide effect” without granting class certification. IV:956. Thus, the district court explained, there was “no need for the government to respond on the class action, because I can almost tell you now that that’s unlikely to happen.” IV:967. Relying on the district court’s explicit “no need” direction, the government did not respond to the motion for class certification.

2. *Plaintiffs present hearsay evidence of an alleged unwritten ICE policy to conduct warrantless arrests without probable cause*

During the preliminary-injunction hearing a couple of weeks later, in addition to the testimony of the named plaintiffs, Plaintiffs presented

uncorroborated hearsay evidence that they allege demonstrates ICE's unwritten policy of disregarding the likelihood of escape requirement of § 1357(a)(2). They cited various news articles purporting to show ICE and other administration officials touting policies to arrest more aliens. *See, e.g.*, IX:1672; VII:1561, 1541. Other articles referenced plans for funding increases for ICE enforcement and detention. *See, e.g.*, IX:1694, 1700. Still others recounted particular encounters between ICE and aliens. *See, e.g.*, IX:1723. None of that purported evidence references a policy not to follow the statute, regulations, or ICE's own written policies.

Plaintiffs likewise introduced testimony from two immigration attorneys with no personal knowledge of the arrests at issue in this case. One attorney stated that he had observed a trend of warrantless arrests of potential clients—none of whom had retained him—without, in his view, probable cause to believe they were likely to escape. V:1167. The second attorney and law professor described the experiences of other clients who were—she claimed—arrested under similar circumstances. *See* VI:1204-16.

3. *The district court grants a preliminary injunction and certifies a provisional class*

The district court then granted Plaintiffs' request for a preliminary injunction and provisional certification of a warrantless-arrest class. IV:806.

Though the district court did not find that Dias Goncalves, G.R.R., and J.S.T. were likely to face another warrantless arrest, the district court concluded that the ongoing consequences of their initial arrests—for instance, the need to wear ankle monitors and report for check-ins—conferred standing. IV:834. The court concluded that Ramirez Ovando lacked standing because—as a lawful permanent resident—“it is unlikely that he will be subject to the same injury.” IV:832 n.19.

The district court then determined that Plaintiffs had satisfied the requirements for a preliminary injunction. To start, the district court concluded that Plaintiffs had shown a likelihood of success on their claim that ICE had conducted warrantless arrests of the four named plaintiffs without probable cause to believe that they were likely to escape. IV:846-50. According to the district court, the named plaintiffs’ arrests—combined with uncorroborated hearsay and assorted public statements—confirmed ICE’s “policy, pattern, and/or practice,” reviewable under the APA, “of disregarding flight risk” in conducting warrantless arrests. IV:852-57.

Beyond likelihood of success on the merits, the district court also decided that the other preliminary-injunction factors weighed in Plaintiffs’ favor. The irreparable harm “stemming from [the named plaintiffs’] warrantless arrests,” the district court found, further extended to subsequent

financial hardship and ongoing reporting obligations. IV:859. On the equities, the district court concluded that “[n]either the government nor the public can claim any legitimate interest in the systematic violation of § 1357(a)(2)[.]” IV:863.

Subsumed in that decision was the district court’s provisional certification of a warrantless-arrest class under Federal Rule of Civil Procedure 23. The district court concluded that the putative class satisfied Rule 23(a)’s certification requirements and qualified for injunctive relief under Rule 23(b)(2). IV:836-41.

The district court thus fashioned a classwide preliminary injunction with several requirements. At the outset, the government needed to “refund the costs incurred by Ms. Dias Goncalves, J.S.T., and G.R.R. to obtain and post their bonds,” in addition to “remov[ing] their ankle monitors and terminat[ing] ... other conditions of release.” IV:865. The government also could not rearrest the named plaintiffs “except upon a properly obtained administrative or judicial warrant.” IV:865.

The preliminary injunction likewise barred the government from “effect[ing] warrantless arrests in” Colorado without “probable cause to believe that the individual is in the United States in violation of United States immigration laws and probable cause that the person being arrested is likely

to escape before a warrant can be obtained.” IV:867; *see id.* (reiterating relevant factors from Broadcast Statement of Policy). And the preliminary injunction required ICE to document all warrantless arrests in Form I-213 reports and to provide a sample of those reports to Plaintiffs’ counsel at regular intervals. IV:867-68.

4. *The district court grants a motion to enforce and adds new requirements*

A few months after the district court issued the preliminary injunction, Plaintiffs moved to enforce it, arguing that ICE was not abiding by its terms. *See* IV:874. Relying primarily on the testimony of—and the I-213 forms prepared by—two deportation officers recently reassigned to a unit that does not conduct street arrests, the district court concluded that ICE had inadequately trained its officers on the preliminary injunction’s requirements. *See, e.g.*, IX:1859-63.

In granting the motion, the district court imposed new training, reporting, and documentation obligations on ICE. IX:1863. The district court also prohibited any officer not appropriately instructed within forty-five days of the enforcement order “from making warrantless arrests in this District” until training occurs. IX:1871. Significantly, the district court concluded that the preliminary injunction incorporated the Broadcast Statement of Policy and is inconsistent with aspects of the Lyons Memo.

IX:1867-69. “[W]here they can’t be reconciled,” the district court explained, ICE must train its officers on the “analysis reflected in the” Broadcast Statement of Policy, “not the Lyon’s [sic] Memo.” IX:1867-69. The district court also required more extensive reporting and documentation. *See, e.g.*, IX:1879.

SUMMARY OF ARGUMENT

I. This Court should vacate the preliminary injunction. Plaintiffs have not established a likelihood of success on the merits because they lack standing to seek injunctive relief. Even the district court did not find that any of the named Plaintiffs were likely to face an improper warrantless arrest going forward; it found only that they remained subject to ongoing monitoring. An injunction awarding prospective relief against future warrantless arrests fails to redress those retrospective injuries. In all events, Plaintiffs’ claims are moot.

The INA independently deprived the district court of jurisdiction because it insulates ICE’s discretionary decisions about how to initiate removal proceedings. Nor have Plaintiffs identified a reviewable agency action under the APA. The only policies in the record align with the governing statute, and Plaintiffs have presented no credible evidence that a contrary unwritten policy exists.

II. The district court similarly erred in certifying a warrantless-arrest class. Binding Supreme Court precedent mandates that each class member must independently have Article III standing, and there is no evidence that any particular member of the putative class is likely to be subjected to an unlawful warrantless arrest by ICE in the future. Nor have Plaintiffs offered any “evidence of established, ascertainable numbers constituting the class.” *Colo. Cross Disability Coal. v. Abercrombie & Fitch Co.*, 765 F.3d 1205, 1215 (10th Cir. 2014) (citation omitted). Given the fact-specific nature of the probable-cause inquiry, Plaintiffs also fall short on commonality and typicality. Even the arrests of the four named plaintiffs arose from materially distinct factual settings. Those individualized circumstances likewise foreclose certification under Rule 23(b)(2).

III. The remaining factors also preclude injunctive relief. Lacking even Article III standing, Plaintiffs did not demonstrate irreparable harm, and the district court incorrectly focused on retrospective harms arising from past detention—including economic and emotional injuries—rather than any imminent prospective injury attributable to the challenged alleged policy. Even if the district court considered future harm, none of the named plaintiffs faces a likely rearrest of any sort, much less an unlawful warrantless one.

The balance of the equities and public interest likewise tip decisively in the government’s favor. Because the government has a legitimate and significant stake in enforcing federal immigration laws, the preliminary injunction interferes with important immigration-enforcement functions and disserves the public interest. The district court’s additional administrative requirements only exacerbate the harms to the government.

IV. Finally, the preliminary injunction, the core provision of which simply directs the government to comply with existing law, clashes with the requirement to state an injunction’s terms with particularity. *See* Fed. R. Civ. P. 65(d)(1). At the same time, the preliminary injunction bears little connection to the alleged injuries and sweeps far too broadly. And the district court’s enforcement order impermissibly dictates what factors officers may and must consider in the field.

STANDARD OF REVIEW

This Court reviews “[a] district court’s grant or denial of a preliminary injunction,” including its scope, for abuse of discretion. *Wyandotte Nation v. Sebelius*, 443 F.3d 1247, 1252 (10th Cir. 2006). Abuse of discretion occurs when a district court “commits an error of law or makes clearly erroneous factual findings.” *Id.* Although a district court’s factual findings receive

clear-error review, this Court examines the district court’s “legal determinations de novo.” *Heideman v. S. Salt Lake City*, 348 F.3d at 1188.

This Court also reviews class certification “for abuse of discretion.” *Naylor Farms, Inc. v. Chaparral Energy, LLC*, 923 F.3d 779, 790-91 (10th Cir. 2019). In granting a motion for class certification, a district court abuses its discretion when it “misapplies the Rule 23 factors—either through a clearly erroneous finding of fact or an erroneous conclusion of law.” *CGC Holding Co. v. Broad & Cassel*, 773 F.3d 1076, 1085-86 (10th Cir. 2014).

ARGUMENT

The district court entered a sweeping classwide preliminary injunction, allowing it to micromanage immigration enforcement throughout the entire state. That was error on multiple levels.

To obtain a preliminary injunction, a plaintiff must show: (i) a substantial likelihood of success on the merits; (ii) irreparable harm in the absence of the injunction; (iii) that the balance of equities tips in favor of the injunction; and (iv) that the injunction is in the public interest. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). “[T]he final two factors ‘merge when the Government is the opposing party.’” *Denver Homeless Out Loud v. Denver, Colorado*, 32 F.4th 1259, 1278 (10th Cir. 2022) (quoting *Nken v. Holder*, 556 U.S. 418, 435 (2009)). Plaintiffs satisfy none of those

requirements. The district court also erred in certifying a warrantless-arrest class and granting an injunction that sweeps far beyond Plaintiffs' alleged injuries. This Court should accordingly vacate the preliminary injunction and reverse the class-certification order.

I. PLAINTIFFS ARE NOT LIKELY TO SUCCEED ON THE MERITS

Most fundamentally, the district court erred in granting the preliminary injunction because Plaintiffs have not demonstrated a likelihood of success on the merits, including establishing jurisdiction. Plaintiffs, who have alleged noncognizable past harm and failed to show real and immediate risk of future injury, lack standing to seek injunctive relief. The district court independently lacked jurisdiction over Plaintiffs' claims under the INA, and Plaintiffs have no cause of action under the APA.

A. Plaintiffs Lack Standing

Plaintiffs have not demonstrated “the irreducible constitutional minimum of standing.” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). Article III standing requires a plaintiff to establish: (i) a “concrete, particularized, and actual or imminent” injury in fact; (ii) that the defendant likely caused the injury; and (iii) that the judicial relief sought would likely redress the injury. *TransUnion LLC v. Ramirez*, 594 U.S. 413, 423 (2021). “At the preliminary injunction stage, ... the plaintiff must make a ‘clear

showing’ that she is ‘likely’ to establish each element of standing.” *Murthy v. Missouri*, 603 U.S. 43, 58 (2024) (citation omitted).

1. It is a bedrock principle of standing that abstract harm or “past wrongs” are “not enough” to establish an injury in fact for purposes of seeking prospective relief. *City of Los Angeles v. Lyons*, 461 U.S. at 101, 103. Rather, a plaintiff must be “immediately in danger of sustaining some direct injury’ as the result of the challenged official conduct.” *Id.* at 102 (citation omitted). Thus, speculation about a “possible future injury” will not “constitute [an] injury in fact.” *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 409 (2013) (citation omitted).

The Supreme Court’s decision in *City of Los Angeles v. Lyons* is particularly instructive. *Lyons* involved a traffic stop that escalated into a physical seizure, during which Los Angeles police officers placed the plaintiff in a chokehold and injured his larynx. *Lyons*, 461 U.S. at 97-98. The plaintiff challenged the City’s chokehold policy and sought, among other things, “a preliminary and permanent injunction against the City barring the use of the control holds.” *Id.* at 98.

Although *Lyons* could pursue damages, the Supreme Court concluded that he had not “establish[ed] a real and immediate threat” of a future illegal chokehold. *Id.* at 105. Standing for injunctive relief, the Supreme Court

explained, would require more than an allegation that the plaintiff “would have another encounter with the police.” *Id.* at 105-06. The plaintiff would also need “to make the incredible assertion” that either (i) “*all* police officers in Los Angeles *always* choke any citizen with whom they happen to have an encounter,” or (ii) the City ordered police officers to deploy illegal chokeholds. *Id.* at 106. The Supreme Court therefore held that a federal court could not issue the requested injunction. *Id.* at 107.

Clapper v. Amnesty International USA further reinforces those principles. There, the Supreme Court addressed a federal law that allows the government to conduct surveillance of certain “individuals who are not ‘United States persons’” and are “located outside the United States.” 568 U.S. at 401 (citation and footnote omitted). That “threat of surveillance” required the plaintiffs—attorneys and other advocacy groups—to travel internationally for more secure “in-person conversations” and to “undertake[] ‘costly and burdensome measures’ to protect the confidentiality of sensitive communications.” *Id.* at 407 (citation omitted). In concluding that the plaintiffs lacked Article III standing, the Supreme Court held that the asserted “*future* injury [wa]s too speculative to satisfy the well-established requirement that threatened injury must be ‘certainly impending.’” *Id.* at 401-02 (citation omitted).

The Supreme Court’s recent grant of a stay pending appeal in *Noem v. Perdomo*, 146 S. Ct. 1 (Mem) (2025), is particularly relevant in this context. In *Perdomo*, the district court granted an injunction prohibiting immigration officers from “conducting detentive stops” without “reasonable suspicion that the person to be stopped is within the United States in violation of U.S. immigration law.” *Perdomo v. Noem*, 790 F. Supp. 3d 850, 897(C.D. Cal. 2025). The Supreme Court stayed that order. In his concurrence, Justice Kavanaugh—citing *Lyons* and *Clapper*—explained that the plaintiffs, who alleged only “past harm and fear of its recurrence,” likely could not establish Article III standing. *Perdomo*, 146 S. Ct. at 2 (Kavanaugh, J., concurring). Justice Kavanaugh further recognized that the plaintiffs’ standing theory was “especially deficient” because, even if immigration officers relied on prohibited factors to “ma[ke] stops,” they “might not rely *only* on those factors if and when they stop plaintiffs in the future.” *Id.* at 3.

2. Against that backdrop, Plaintiffs’ standing theory stumbles out of the gate. None of them has made any showing—much less a “clear” one, *see Murthy*, 603 U.S. at 58 (citation omitted)—of likely future injury supporting the injunction that the district court issued.

To start, even the district court conceded that Ramirez Ovando “cannot establish standing.” IV:832 n.19. The district court admitted that “there is

little concern that he,” as a lawful permanent resident, “will be rearrested without either a probable cause determination or arrest warrant.” IV:832 n.19. Dias Goncalves, J.S.T., and G.R.R. have likewise alleged nothing more than past, noncognizable injuries. In their view, they have standing because ICE has allegedly developed a warrantless arrest policy that has subjected them to unlawful treatment—arrest without probable cause—and induced anxiety about “being arrested again.” I:98-99, 107-09. Neither contention withstands scrutiny.

Their principal contention—that ICE’s practice of making warrantless arrests without probable cause has injured them, I:98-105—rests on a faulty premise. The Lyons Memo confirms that no such practice exists. To the contrary, it stresses that an immigration officer may execute a warrantless arrest only if “there is *probable cause* to believe that: (1) the subject is a removable alien; *and* (2) the subject is ‘likely to escape’ before a warrant for his arrest can be obtained.” IV:924 (citing 8 U.S.C. § 1357(a)(2)) (first emphasis added).

Thus, ICE’s policy—consistent with federal law—is to conduct warrantless arrests only upon probable cause, belying Plaintiffs’ unsupported claim of a “coordinated practice to arrest as many noncitizens as possible, regardless of any individual, specific, articulable bases for doing

so without a warrant.” I:102. And even if ICE had implemented an unlawful warrantless-arrest policy, Plaintiffs would have suffered, at most, “past wrongs” unaccompanied by a “real and immediate threat of” future harm. *See Lyons*, 461 U.S. at 103; *id.* at 105 (explaining that, even if Los Angeles police officers had a practice of “routinely apply[ing] chokeholds in situations where they are not threatened by the use of deadly force,” there was still no “real and immediate” injury to the plaintiff).

Plaintiffs’ fallback argument—that they have standing based on mere anxiety about future rearrests—is equally unavailing. The Supreme Court has repeatedly held that a cognizable injury in fact in this context requires “certainly impending” threatened harm. *E.g.*, *Clapper*, 568 U.S. at 401. Thus, Plaintiffs must demonstrate that it is likely: (i) they “would have another encounter with” ICE agents; (ii) they would be subject to a warrantless arrest; and (iii) the warrantless arrest would be without probable cause (iv) because of the alleged unwritten policy. *See Lyons*, 461 U.S. at 105-06.

The district court did not even purport to make those findings, and nothing in the record supports Plaintiffs’ strained thesis. For starters, Plaintiffs identify no basis to conclude that ICE will likely stop—much less arrest—them again. Indeed, they concede that ICE was not targeting them

when the past warrantless arrests occurred. *See* I:124 ¶23; I:132 ¶4; I:144 ¶16; I:150-51 ¶8-13. Nor have any of them alleged subsequent encounters with ICE agents. At root, they invoke the precise speculative chain of standing that the Supreme Court rejected in *Lyons*, despite the asserted policy there. *See Lyons*, 461 U.S. at 105-06. In fact, this case presents an even more attenuated theory of standing because, as the district court acknowledged, probable cause is a context-specific inquiry that involves numerous considerations. *See United States v. Valdes-Vega*, 738 F.3d 1074, 1079 (9th Cir. 2013) (en banc). By contrast, the plaintiff in *Lyons* alleged that the challenged chokehold practice was unlawful in *every* circumstance in which it was employed.

Plaintiffs' individual circumstances further confirm that any fear of future unlawful warrantless rearrest is especially implausible. Arrest warrants have now issued for all the named plaintiffs, so any future rearrest by ICE would occur under a warrant. *See* IV:832; VI:1300-03. Dias Goncalves does not even reside in Colorado and has no intention to return, *see* I:132 ¶1, and is thus particularly unlikely to be arrested in Colorado again. It is no wonder that even the district court did not find standing based on the threat of future unlawful arrests.

3. The district court found standing and distinguished *Lyons*, however, “because the injuries [Plaintiffs] suffered from the illegal arrest and detention are ongoing.” IV:832. Of course, Plaintiffs are not in custody. And although the district court also pointed to certain ongoing injuries, including “bond, ankle monitors, and adherence to strict reporting requirements,” Plaintiffs themselves sought no relief from those purported injuries and prospective relief against future warrantless arrests of others does nothing to remedy those injuries.³ IV:834; *see* I:115-18.

Article III does not recognize an injury in fact for injunctive relief based on residual effects from a completed event unlikely to recur. In *Lyons*, for instance, the plaintiff alleged that the chokehold “caus[ed] damage to his larynx.” *See Lyons*, 461 U.S. at 98. The Supreme Court still held that the plaintiff “failed to demonstrate a case or controversy ... that would justify the equitable relief sought.” *Id.* at 105; *see Perdomo*, 146 S. Ct. at 2 (Kavanaugh, J., concurring). So too here. Even assuming *arguendo* some residual

³ Applying settled Fourth Amendment principles to the immigration context, even an unlawful arrest under Section 1357 does not bar continued detention when probable cause exists. *See, e.g., INS v. Lopez-Mendoza*, 468 U.S. 1032, 1040 (1984) (“[A]n illegal arrest has no bearing on a subsequent deportation proceeding.”); *id.* at 1039 (holding that the “body” of the defendant “in a criminal or civil proceeding is never itself suppressible ..., even if it is conceded that an unlawful arrest ... occurred”).

injuries remained from past conduct, that does not establish standing to obtain *prospective* relief.

4. Even if Plaintiffs could demonstrate an ongoing injury as the district court found, they cannot show that the injury is fairly traceable to the alleged warrantless-arrest policy or redressable by a federal court. *See Lujan*, 504 U.S. at 560-61. Plaintiffs have not established that ICE arrested them without probable cause based on some alleged policy, much less that the alleged policy caused their bond and monitoring conditions. In all events, ICE has since secured warrants. *See* IV:832. So any future arrest would be caused by those warrants, not the alleged policy. Because Plaintiffs can only speculate whether a future warrantless arrest would stem from the alleged policy “or some other authority,” they have not satisfied the traceability requirement. *See Clapper*, 568 U.S. at 413.

Nor is the preliminary injunction “tailored to redress [Plaintiffs’] particular injury.” *See Gill v. Whitford*, 585 U.S. 48, 73 (2018). Even accepting the district court’s theory, the order returning Plaintiffs’ bonds, “remov[ing] their ankle monitors and terminat[ing] their reporting requirements and other conditions of release” fully redressed those injuries, IV:865, and “afford[ed] [Plaintiffs] complete relief,” *see Trump v. CASA, Inc.*, 606 U.S. 831, 861 (2025). There was thus no jurisdictional basis for the

district court to go further and micromanage all warrantless immigration arrests in the entire state, which in no way redresses the injuries that the district court found. Neither enjoining a nonexistent policy nor micromanaging warrantless arrests will redress ongoing harms from past arrests, such as monitoring. Because the district court did not find a threat of future improper arrests of any identifiable persons (nor could it), it awarded relief completely unmoored from Plaintiffs' alleged injuries.

5. Relatedly, Plaintiffs' claims are now moot. "[T]he [mootness] doctrine requires a federal court to refrain from deciding [a case] if events have so transpired that the decision will neither presently affect the parties' rights nor have a more-than-speculative chance of affecting them in the future." *LaRoque v. Holder*, 679 F.3d 905, 907 (D.C. Cir. 2012) (citation omitted). Here, the district court already redressed the only injuries it found: bond and monitoring requirements. Since then, one Plaintiff has received legal status, I:832 n.19, and another has left the state with no concrete intention to return, V:1016. Warrants have also issued for any future arrests of Plaintiffs. *See* IV:832; VI:1300-03. Any ongoing or imminent injury tied to a subsequent arrest would therefore stem from those *warrants*, not from some alleged unwritten policy authorizing *warrantless* arrests. There is thus

no ongoing or threatened injury to Plaintiffs caused by the alleged policy that supports injunctive relief.

B. The District Court Independently Lacked Jurisdiction Under The INA

Federal immigration law—specifically 8 U.S.C. § 1252(g)—independently deprived the district court of jurisdiction over Plaintiffs’ claims. Under that provision, “no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien,” except on a “petition for review ... filed with the court of appeals.” 8 U.S.C. §§ 1252(g), 1252(a)(5). The Supreme Court has explained that Section 1252(g) “seems clearly designed to give some measure of protection” to those “discretionary determinations” and to prevent “separate rounds of judicial intervention outside the streamlined process that Congress has designed.” *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 485 & n.9 (1999) (citation omitted); accord *Van Dinh v. Reno*, 197 F.3d 427, 433 (10th Cir. 1999).

Several courts of appeals have similarly held that Section 1252(g) applies to discretionary decisions to commence removal proceedings or execute removals. See, e.g., *Rauda v. Jennings*, 55 F.4th 773, 777-78 (9th Cir. 2022) (no jurisdiction to review a challenge “to the Attorney

General’s ... discretion to execute [a] removal order”); *E.F.L. v. Prim*, 986 F.3d 959, 964-65 (7th Cir. 2021) (holding that § 1252(g) barred review of the decision to execute a removal order while an individual sought administrative relief); *Camerena v. Director, ICE*, 988 F.3d 1268, 1272, 1274 (11th Cir. 2021) (similar). That principle likewise extends to arrests undertaken in carrying out those discretionary decisions. *See Tazu v. Att’y Gen. of the U.S.*, 975 F.3d 292, 298-99 (3d Cir. 2020) (explaining that detention “simply” reflects “the enforcement mechanism the Attorney General pick[s] to execute [an alien’s] removal” under Section 1252(g); *Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) (recognizing that Section 1252(g) prevents federal courts “from considering whether the agency should have used a different statutory procedure to initiate the removal process”).

That settled understanding of Section 1252(g) confirms the absence of jurisdiction here. Arresting Plaintiffs reflects a paradigmatic discretionary decision both to “commence [removal] proceedings,” 8 U.S.C. § 1252(g), and to select the means of doing so, *see Tazu*, 975 F.3d at 298. To “perform or complete a removal,” ICE needed to “exercise [its] discretionary power to detain” Plaintiffs. *See id.* Indeed, in arresting Plaintiffs ICE issued them Notices to Appear, which is precisely what commences removal proceedings. VI:1301. The agency’s actions therefore fit comfortably within the four

corners of Section 1252(g) and are subject to judicial review only on a challenge to a final order of removal filed in the court of appeals.

C. Plaintiffs Have No Cause Of Action Under The APA

Even if the district court properly exercised its jurisdiction, Plaintiffs lack a valid cause of action under the APA. *See* I:65-66, ¶¶202, 209; I:102-05. Congress generally confined judicial review under the APA to a “final agency action.” 5 U.S.C. § 704. The APA defines “agency action” as “the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent[,] or denial thereof, or failure to act.” 5 U.S.C. § 551(13). To be final, “the action must mark the ‘consummation’ of the agency’s decisionmaking process” and “must be one by which ‘rights or obligations have been determined,’ or from which ‘legal consequences will flow.’” *Bennett v. Spear*, 520 U.S. 154, 177-78 (1997) (citation omitted).

Plaintiffs argued, and the district court accepted, that ICE has an unwritten “pattern and practice of flouting federal law in connection with their mass immigration arrests in Colorado” by engaging in warrantless arrests without probable cause that the person will escape before a warrant can be obtained. I:22 ¶3. Plaintiffs’ and the district court’s evidence for this alleged unwritten agency action consisted of the four named plaintiffs’ anecdotal accounts of their arrests, some hearsay articles on enforcement

generally, and attorney testimony claiming an uptick in warrantless arrests that they believe did not adequately rest on a likelihood of escape. IX:1672; VII:1561, 1541, IX:1694, 1700, IX:1723; V:1167; VI:1204-16. Plaintiffs' alleged policy fails to qualify as reviewable agency action under the APA for several independent reasons.

1. To begin, there is no unwritten agency policy or practice dictating that immigration officers should not follow the law. Indeed, the statute and Department regulations require individualized probable cause of likelihood of escape to conduct a warrantless arrest. 8 U.S.C. § 1357(a)(2); 8 C.F.R. § 287.8. And ICE has had formal written policies requiring the same for years, including a policy issued as recently as October 2025. VII:1408-09; IX:1801. To make this doubly clear to officers, ICE issued a new memorandum on January 28, 2026, emphasizing the legal requirements for and providing guidance on warrantless arrests. IV:922-26. Plaintiffs and the district court thus infer an unwritten policy that is contrary to the statute, the Department's own regulations, and multiple written policies, based on four contested arrests, a handful of inapposite articles, and lawyers' self-serving speculation. Such unfounded inferences invert the "presumption of regularity" required when evaluating agency conduct. *N.M. Health*

Connections v. U.S. Dep't of Health & Hum. Servs., 946 F.3d 1138, 1162 (10th Cir. 2019).

Even a “pattern, practice, or policy” that is contrary to law does “not itself [make] a final agency action within the meaning of the APA.” *Or. Nat. Desert Ass'n v. U.S. Forest Serv.*, 303 F. App'x 517, 519 (9th Cir. 2008). That is especially true where, as here, the alleged unwritten policy is contrary to written policies. *Cf. Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 355-56 (2011) (“In such a company [that forbids sex discrimination], demonstrating the invalidity of one manager’s use of discretion will do nothing to demonstrate the invalidity of another’s.”).

Plaintiffs cannot simply aggregate isolated, anecdotal accounts into a single supposed agency action of their choosing to challenge. *See Widakuswara v. Lake*, 2025 WL 1288817, at *3 (D.C. Cir. May 3, 2025) (“[t]he ‘dismantling’ that plaintiffs allege is a collection of ‘many individual actions’ that cannot be packaged together and ‘laid before the courts for wholesale correction under the APA.’”); *Friends of Animals v. Bernhardt*, 961 F.3d 1197, 1205 (D.C. Cir. 2020) (party could not challenge memo that included multiple agency actions, only discrete actions can be challenged). The Supreme Court has also made clear that an amalgamation of asserted unlawful practices, without more, does not amount to reviewable agency

action. *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 890 (1990) (concluding that an alleged “land withdrawal review program” was not a final agency action because it did “not refer to a single [agency] order or regulation, or even to a completed universe of particular [agency] orders and regulations”); *see Ctr. for Biological Diversity v. U.S. Dep't of the Interior*, 144 F.4th 296, 304, 309 (D.C. Cir. 2025) (cannot aggregate multiple permits into single agency action based on inferred policy). Indeed, if the district court’s reasoning were turned upon itself, one could easily find a “policy” of committing legal error. It surely would not be difficult to identify four or more instances where this Court has reversed the court below, or even particular judges. And if such a “policy” of promulgating legal error did exist, it could easily warrant drastic relief. But cherry-picking a smattering of isolated examples does not a policy make.

That rule is particularly relevant for law enforcement actions such as arrests, which are “necessarily fact-specific” and involve numerous individual actions. *United States v. Reyes*, 963 F.3d 482, 488 (5th Cir. 2020). Thus, aggregating such fact-specific enforcement actions cannot demonstrate an unwritten policy. For example, one Plaintiff fled and hid from officers and had a previous conviction, which surely supports probable cause that the alien might escape before a warrant could be secured. V:1150-

51. Another lied to officers about prior encounters with Border Patrol. *See* IV:1053-54, 1059. And countless other examples involving aliens arrested based on probable cause of escape likely exist. A handful of allegedly unlawful arrests, coupled with speculation, does not constitute final agency action reviewable under the APA. *Cf. Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 161 (1982) (rejecting class because one instance of discrimination could not allow for inference of a policy).

By the district court's own analysis, *four* contested warrantless arrests out of 169,000 illegal aliens in Colorado suffices for wholesale supervision of ICE's warrantless-arrest practices in the state. The district court and Plaintiffs provide no guidance on when a handful of allegedly unlawful arrests suddenly transform into an unwritten unlawful final agency action. The court speculated, for example, that increased enforcement must include warrantless arrests of more aliens who are not an escape risk. If that is sufficient to infer an unwritten policy contrary to a written one, the requirement of a "final agency action" to limit the APA's waiver of sovereign immunity would be eviscerated.

If anything, Plaintiffs' attempt to dictate how officers engage in warrantless arrests prospectively reflects an impermissible "broad programmatic attack," *Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 64

(2004), against programs for which they are seeking “wholesale improvement . . . by court decree,” *Lujan*, 497 U.S. at 891. Because Plaintiffs and the district court failed to establish an unwritten policy departing from ICE’s own written policies, they have not identified a reviewable agency action.

2. For similar reasons, the postulated agency action would not be final. There was no decision-making process to create this unwritten policy, so nothing has been consummated. Indeed, Plaintiffs point to no memorandum or any other document demonstrating a decision-making process for this alleged policy. Nor is there an administrative record to review. Indeed, it is obvious that any such decision is not final because just on October 22, 2025, ICE issued another statement re-adopting the prior Broadcast Statement of Policy. IX:1802-03. And on January 28, 2026, after the initial hearing in this case, ICE issued a memorandum emphasizing the need to follow the law. IV:921. The only agency decision-making, therefore, has consistently been to follow the law. And because enforcement priorities and individual encounters constantly shift, positing some final decision in this context that sharply departs from other written policies is inherently suspect. It is thus impossible to conclude that the agency consummated a decision on a contrary unwritten policy not to follow the law.

The district court's reliance on a handful of cases from the Northern District of Illinois is without substance. *See* IV:853-57. For instance, in *Moreno v. Napolitano*, 213 F. Supp. 3d 999 (N.D. Ill. 2016), the government *conceded* that it maintained a detainer policy, under which “ICE agents d[id] not make any determination at all” about likelihood of escape before issuing detainers to state facilities. *Id.* at 1006 (emphasis and citation omitted); *see* IV:854. In this case, however, ICE forcefully disputes the existence of the alleged warrantless arrest policy that Plaintiffs hypothesize.

Castañon Nava v. Department of Homeland Security, 435 F. Supp. 3d 880 (N.D. Ill. 2020), similarly carries little interpretative weight. *See* IV:854-55. Although the district court treated “amorphous” allegations of agency conduct about warrantless arrests in the Chicago area as a final agency action, that case involved different factual circumstances in another jurisdiction and does not bind this Court. More fundamentally, *Castañon Nava* arose on a motion to dismiss. *See id.* at 900-01 (citation omitted). Thus, the district court “accept[ed] all well-pleaded facts ... as true and view[ed] them in the light most favorable to the plaintiff.” *Id.* at 900. The parties then settled. By contrast, at the preliminary-injunction stage, Plaintiffs must show a likelihood of success on the merits. *See Winter*, 555

U.S. at 374. On this record, their allegations fall well short of that demanding standard. *See* IV:922-26; Sections I.A.2, I.C.1, *supra*.

3. Plaintiffs also fail to show that the alleged warrantless-arrest policy “gives rise to ‘direct and appreciable legal consequences.’” *U.S. Army Corp. of Eng’rs v. Hawkes*, 578 U.S. 590, 598 (2016) (citation omitted). To satisfy that requirement, the challenged action must usually bind either the agency or “the regulated community.” *Indep. Equip. Dealers Ass’n v. EPA*, 372 F.3d 420, 427 (D.C. Cir. 2004). Here, the alleged unwritten policy at most amounts to “recommendations [that] were in no way binding on [officers], who had absolute discretion to accept or reject them.” *Bennett*, 520 U.S. at 178 (distinguishing *Dalton v. Specter*, 511 U.S. 462 (1994)). Even if there were a policy, officers would still be free to find probable cause of an escape risk prior to conducting a warrantless arrest. This happens all the time. The alleged unwritten policy therefore creates no legal consequences for either the agency or the individual officers. *See Hawkes*, 578 U.S. at 598. At best, it would constitute guidance that stands in stark tension with the written directives ICE has promulgated. To hold otherwise would mean that federal immigration officers are bound by an unwritten policy to conduct unlawful warrantless arrests but not by a written policy to conduct lawful ones. That

is incoherent. At bottom, Plaintiffs’ and the district court’s imaginary final agency action has no basis in the record, law, or reality.

II. THE DISTRICT COURT ERRED IN CERTIFYING A PROVISIONAL CLASS

The district court’s provisional class certification and sweeping grant of classwide relief fails at every step. The district court initially recognized that this case was unfit for class relief, telling the parties “there’s no need for the government to respond on the class action, because I can almost tell you now that that’s unlikely to happen.” IV:967. The government relied on that representation. Nevertheless, the district court provisionally certified a warrantless-arrest class. IV:836-41, 864, 870.

That was an abuse of discretion. Proper functioning of the class-certification process requires courts to offer the parties an opportunity to develop their positions and evidence *before* ruling. *See In re Hydrogen Peroxide Antitrust Litig.*, 552 F.3d 305, 324 (3d Cir. 2008) (“Genuine disputes with respect to the Rule 23 requirements must be resolved, after considering all relevant evidence submitted by the parties.”); *Szabo v. Bridgeport Machines, Inc.*, 249 F.3d 672, 677 (7th Cir. 2001) (“Certifying classes on the basis of incontestable allegations in the complaint moves the court’s discretion to the plaintiff’s attorneys—who may use it in ways injurious to other class members, as well as ways injurious to defendants.”).

The district court short-circuited that process. Regardless, the district court’s provisional certification of a broad statewide class fails for several reasons.

A. Class Members Lack Standing

To provide classwide relief, “[e]very class member must have Article III standing” because “Article III does not give federal courts the power to order relief to any uninjured plaintiff, class action or not.” *TransUnion*, 594 at 431. Neither Plaintiffs nor the district court attempted to prove that all class members have ongoing or impending injuries that the district court could redress with its injunction. The class members lack standing for all the reasons the named plaintiffs do. *See* Section I.A, *supra*. In addition, the class members’ injuries are even more speculative and lack any evidence of an ongoing or threatened injury.

To start, the class includes individuals who will be arrested in the future without a probable-cause assessment. But the district court did not even find that the named plaintiffs faced an imminent threat of an unlawful warrantless arrest, much less one caused by the alleged policy. There is even less reason to think that some unknown group of individuals will encounter ICE and be subject to a warrantless arrest without a probable-cause assessment under that same policy.

Next, the class includes those who were already subjected to an unlawful arrest. That is a past injury, insufficient to confer standing for prospective injunctive relief. *See Lyons*, 461 U.S. at 107. And there is no evidence in the record that those arrested in the past have the type of ongoing injuries the district court found for the named plaintiffs—for instance, bond and monitoring requirements. Absent such proof, the district court lacked jurisdiction to issue a statewide proscriptive remedy that benefits innumerable individuals without Article III injuries.

B. The Class Does Not Satisfy Rule 23(a)

“Plaintiffs wishing to proceed through a class action must actually *prove*—not simply plead—that their proposed class satisfies each requirement of Rule 23.” *Halliburton Co. v. Erica P. John Fund, Inc.*, 573 U.S. 258, 275 (2014). Under Rule 23, a district court may certify a class only if the class is (1) “so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class;” (3) the representatives are typical of the class; and (4) the representatives will adequately protect the class’s interest. Fed. R. Civ. P. 23(a). Plaintiffs’ claims do not satisfy Rule 23(a) for multiple independent reasons.

1. For numerosity, “[p]laintiffs must offer some evidence of established, ascertainable numbers constituting the class.” *Colo. Cross*

Disability Coal. v. Abercrombie & Fitch Co., 765 F.3d 1205, 1215 (10th Cir. 2014) (internal quotations omitted). Here, the district court concluded that the class consisted of “a subset” of approximately 169,000 aliens residing in Colorado without lawful status—specifically, those aliens who “have already been arrested without a warrant or probable cause determination” and “others who are likely to be arrested under similar circumstances” IV:837. But Plaintiffs introduced no evidence about what portion of those aliens have been subjected to unlawful warrantless arrests—much less aliens who could encounter ICE and be subjected to a warrantless arrest without probable cause—because of the alleged policy. And given how flexible and fact-specific probable cause is, there are no “objective criteria” to determine when any individual falls within the class. *Mullins v. Direct Digit., LLC*, 795 F.3d 654, 672 (7th Cir. 2015). There is thus no ascertainable number of class members to satisfy the numerosity requirement. *See Feinman v. F.B.I.*, 269 F.R.D. 44, 51 (D.D.C. 2010) (plaintiffs failed to prove numerosity because there was inadequate support for their numerical assumptions). In concluding otherwise, the district court used class certification to circumvent the limits on equitable relief that the Supreme Court recently reaffirmed. *See CASA*, 606 U.S. at 856.

2. To establish commonality, Plaintiffs must demonstrate that “the class members ‘have suffered the same injury.’” *Wal-Mart*, 564 U.S. at 349-50. Class members suffer the same injury only if their claims turn on a common contention “of such a nature that it is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.” *Id.* at 350. Further, where a plaintiff alleges the defendant has engaged in a policy or practice that has “consistently and uniformly injured the putative class members, the plaintiff must provide ‘significant proof’ that such a policy or practice exists.” *Parker v. Bank of Am., N.A.*, 99 F. Supp. 3d 69, 81 (D.D.C. 2015) (citing *Wal-Mart*, 564 U.S. at 354).

Plaintiffs contended—and the district court agreed—that there is a common question about warrantless arrests without probable cause based on an unwritten policy. As previously explained, however, the fact that there are individual, fact-specific violations of law does not establish a policy sufficient to create a common legal question amenable to classwide resolution. *See Falcon*, 457 U.S. at 157 (there is “a wide gap” between (1) an individual claim of discrimination and “(2) the existence of a class of persons who have suffered the same injury as that individual”); Section I.C.1-2, *supra*. In fact, the written policies *require* a finding of probable cause. And

the existence of a written policy prohibiting the alleged violations at issue undercuts commonality for a class challenging conduct that contravenes those written policies. *See Wal-Mart*, 564 U.S. at 354-56. Thus, any alien arrested without a warrant would not necessarily be subject to the alleged policy or present common legal or factual questions.

That is especially true here, where probable cause to effectuate an immigration arrest turns on inherently fact-specific and individualized determinations. *See District of Columbia v. Wesby*, 583 U.S. 48, 57 (2018) (“[B]ecause probable cause ‘deals with probabilities and depends on the totality of the circumstances,’ it is ‘a fluid concept’ that is ‘not readily, or even usefully, reduced to a neat set of legal rules.’” (citations omitted)); *see also Black Lives Matter L.A. v. City of Los Angeles*, 113 F.4th 1249, 1258-62 (9th Cir. 2024) (rejecting Fourth Amendment class action that “appear[ed] to require individual fact-finding”). The proposed warrantless arrest class lacks commonality because class members will no doubt have widely varying fact patterns regarding familial ties, employment status, and other community connections. Courts evaluate these and similar factors in making escape risk determinations. *Compare United States v. Vasquez-Benitez*, 919 F.3d 546, 551 (D.C. Cir. 2019) (noting that, in part because defendant “ha[d] a wife, two children and a job as a dishwasher in the D.C. area” for a long time

period, the third factor likely favored release), *with United States v. Sagastume-Galicia*, 2020 U.S. Dist. LEXIS 70806, at *13 (D.D.C. Apr. 22, 2020) (defendant’s employment status, “[c]ombined with defendant’s history of physical violence and his inability to conform his conduct to court-ordered removal,” favored detention).

Indeed, even the named plaintiffs’ own circumstances illustrate the fact-specific analysis that defeats commonality. One with a conviction hid from law enforcement. Another lied about previous encounters with immigration enforcement. Still another was evasive and refused to answer immigration officers’ questions. Those actions weigh in favor of probable cause for a risk of escape. Given those differences and the multiple subsidiary issues involved in resolving Plaintiffs’ sweeping claims, classwide resolution is inappropriate.

3. Typicality is likewise absent. Again, probable cause turns on the totality of the circumstances and thus “individualized assessments are necessary.” *Romberio v. UnumProvident Corp.*, 385 F. App’x 423, 432 (6th Cir. 2009) (defeating typicality). There is no basis to conclude that the class representatives’ previous arrests or their alleged injuries are typical of such a diverse class involving future and past warrantless arrests. As explained above, the named plaintiffs’ own experiences prove the point. *See* Section

II.B.2, *supra*. Additionally, one class member is now a permanent resident, IV:832 n.19, another does not live in Colorado, V:1016, and all the named plaintiffs who lack legal status are now subject to warrants, *see* IV:832; VI:1300-03. None of those circumstances is likely to be typical of other class members, much less hypothetical future ones.

C. Plaintiffs Cannot Satisfy Rule 23(b)(2)

Plaintiffs have also failed to demonstrate that the class action complies with Rule 23(b)(2), which requires that the government “has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.” Fed. R. Civ. P. 23(b)(2). Each alien presents a unique set of circumstances ill-suited to classwide injunctive relief. And although the district court ordered that Plaintiffs no longer be subjected to bond or monitoring requirements from previous warrantless arrests, that relief may not redress the injuries of other class members. Similarly, an injunction requiring ICE to follow the law and produce records will not necessarily resolve any injuries for future class members. These differing circumstances make a single classwide injunction impossible.

III. THE REMAINING FACTORS DISFAVOR A PRELIMINARY INJUNCTION

A. Plaintiffs Will Not Suffer Irreparable Harm

A plaintiff seeking a preliminary injunction must establish “that irreparable injury is *likely* in the absence of an injunction.” *Winter*, 555 U.S. at 22. The Plaintiffs’ injury “must be certain, great, actual ‘and not theoretical,’” *Heideman v. South Salt Lake City*, 348 F.3d 1182, 1189 (10th Cir. 2003) (citation omitted), such that it “cannot be compensated after the fact by monetary damages,” *RoDa Drilling*, 552 F.3d at 1210. Moreover, the injury must be “of such *imminence* that there is a clear and present need for equitable relief to prevent irreparable harm.” *Heideman*, 348 F.3d at 1189. Plaintiffs fail to meet this high bar.

Most obviously, Plaintiffs lack an injury sufficient for standing; by definition, there is no irreparable harm. In any event, there is no evidence that any unlawful warrantless arrest was imminent and required injunctive relief. That should have been the district court’s focus, alleged prospective harms from the alleged policy. *See RoDa Drilling*, 552 F.3d at 1209 (the court’s focus is on the injury that would occur “but for the court’s intervention”). Yet the district court found no such future injury.

Instead, the district court relied on past harms and residual harms from past arrests. It observed that Plaintiffs, having been “each arrested and

detained without warning,” “ultimately [spent] between approximately two weeks and three months in custody,” which constituted “great harm” on its own. IV:858. But these are completed *past* harms that a preliminary injunction would do nothing to abate. *RoDa Drilling*, 552 F.3d at 1209. Likewise, the district court’s inclusion of the continuing impacts of Plaintiffs’ past detention are not relevant to a possible future arrest and would occur regardless of any injunction. *See* IV:859.

Nor should the district court’s harm inquiry have extended beyond the harm attaching to the warrantless arrest. The district court should have focused on the harm that would occur because no escape-risk analysis was made, not the downstream effects of arrest and detention.

To the extent that the district court considered harms that would be prevented during the pendency of the litigation, IV:860, none of named plaintiffs are likely to be arrested again, and any future arrest would be subject to a warrant. Further, ICE’s policies have consistently required that an immigration officer have probable cause that an alien is likely to escape before conducting a warrantless arrest. VII:1408; VII:1412; IV:922-23; IX:1807; IV:922-23.

Eschewing the Supreme Court’s mandate that *plaintiffs* must establish likely irreparable harm, the district court instead reasoned that ICE had not

met the “heavy burden” of persuading the court that it would not subsequently arrest aliens in violation of § 1357(a)(2), IV:860 (citation omitted). That was precisely backwards. The burden was on Plaintiffs and the district court clearly erred in not holding them to it. *See, e.g., Winter*, 555 U.S. at 22. And even if there were daylight between ICE’s polices and the factors the district court identified as relevant to an assessment of escape risk, these marginal discrepancies would be insufficient to establish harm that is “certain, great, actual ‘and not theoretical.’” *See Heideman*, 348 F.3d at 1189 (citation omitted).

B. The Equities Weigh Against A Preliminary Injunction

The district court compounded its mistaken approach by holding that the balance of equities and public interest weighed in Plaintiffs’ favor. Where the government is a party, the balance of equities and public interest factors merge. *Nken*, 556 U.S. at 435.

The government is suffering substantial harms from the district court’s sweeping injunction. After all, “[a]ny time that the Government is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury.” *CASA*, 606 U.S. at 835 (cleaned up). That is especially true when a district court decides to micromanage every immigration arrest in a state with over 169,000 illegal aliens and to interfere

with the Executive's enforcement authority. *See Perdomo*, 146 S. Ct. at 4 (Kavanaugh, J. concurring) (enforcement of law on substantial number of aliens favors public interest and interference harms the government).

The public interest likewise favors effective enforcement within legal limits. *Nken*, 556 U.S. at 435; *Jennings*, 583 U.S. at 286. The public has a strong interest in the government's rigorous enforcement of our Nation's immigration laws without unnecessary judicial intervention. *See Perdomo*, 146 S. Ct. at 5-6 (Kavanaugh, J., concurring) ("The Judiciary does not set immigration policy or decide enforcement priorities."). By contrast, "[t]he interests of individuals who are illegally in the country in avoiding" arrest "is ultimately an interest in evading the law[.]" which "is not an especially weighty legal interest." *Id.* at *5.

All of these harms are heightened by the district court's recent expansion of the injunction. IX:1859-63. In that order, the district court required ICE to adopt new training, reporting, and documentation procedures for warrantless arrests, and, should ICE fail to conduct such training or do so in a manner the court ultimately finds inadequate, the district court will preemptively bar ICE officers from conducting even lawful warrantless arrests. IX:1863. It also dictated the factors that could be considered and erroneously claimed the Lyons Memo was contrary to its

order. Those judicially imposed operational constraints undoubtedly harm the government.

IV. THE DISTRICT COURT’S INJUNCTION WAS OVERBROAD

The district court’s award of sweeping statewide relief amounted to an impermissible and overbroad follow-the-law injunction. The district court compounded that error by relying on alleged recordkeeping deficiencies to impose still more onerous restrictions. Rule 65 of the Federal Rules of Civil Procedure provides that every injunction must “state its terms specifically” and “describe in reasonable detail ... the act or acts restrained or required.” Fed. R. Civ. P. 65(d)(1). The Supreme Court has explained that Rule 65(d) “was designed to prevent uncertainty and confusion on the part of those faced with injunctive orders, and to avoid the possible founding of a contempt citation on a decree too vague to be understood.” *Schmidt v. Lessard*, 414 U.S. 473, 476 (1974).

The district court issued a preliminary injunction that sharply departed from those parameters. Consistent with Plaintiffs’ requested relief, the district court enjoined the government from “making warrantless arrests in” Colorado “unless, pre-arrest, the arresting agent has probable cause to believe that the person being arrested is likely to escape before a warrant can be obtained, as required by 8 U.S.C. § 1357(a)(2) and 8 C.F.R. § 278.8(c)(2).”

IV:866. The district court also required ICE agents to “consider the totality of the circumstances ... before making” a warrantless arrest. IV:866.

By its own terms, the district court’s order adds nothing to what the law already demands. *See* 8 U.S.C. § 1357(a)(2); IV:924-26. A fact-specific inquiry based on “the totality of the circumstances” inheres in the probable-cause standard. *Contra* IV:866. And because probable cause is “a fluid concept ... not readily, or even usefully, reduced to a neat set of legal rules,” *Wesby*, 583 U.S. at 57 (citation omitted), the preliminary injunction fails to “describe in reasonable detail ... the act or acts restrained or required,” *see* Fed. R. Civ. P. 65(d)(1). There is thus no way for the government to know whether it is complying with the preliminary injunction.

That vagueness precipitated the district court’s recent order to enforce the preliminary injunction. IX:1859-63. Expanding on an already overbroad injunction, the district court assumed ongoing—and indefinite—supervisory authority over ICE’s warrantless-arrest practices by prescribing new compliance measures and restricting which officers may conduct warrantless arrests. *See, e.g.*, IX:1863. The order therefore pushes the preliminary injunction well beyond preserving the status quo and into judicial supervision of day-to-day immigration enforcement operations.

The district court also used the alleged violations of its vague order to impose the Broadcast Policy on the government and claimed the Lyons Memo conflicted with it. IX:1867-69. In doing so, the district court required officers to consider certain factors and discount others. IX:1867-69. Such an approach is antithetical to the totality-of-the-circumstances inquiry. To start, probable cause is “a fluid concept ... not readily, or even usefully, reduced to a neat set of legal rules.” *Wesby*, 583 U.S. at 57 (citation omitted). And even the district court acknowledged that a “hard-and-fast rule is antithetical to probable cause’s ‘flexible, common sense standard.’” IV:848 (quoting *United States v. Biglow*, 562 F.3d 1272, 1282 (10th Cir. 2009)). Still, the district court imposed a non-binding policy from a separate court requiring and delimiting certain factors. In any event, the Lyons Memo obligates officers to follow the statute and make individualized probable-cause determinations and even lists factors similar to those identified in the Broadcast Policy. Compare VII:1408-09 (relevant factors in Broadcast Statement of Policy), with IV:923-24 (similar factors in Lyons Memo).

The district court invented conflicts between those documents to impose its own standard for probable cause in at least three ways. *First*, the district court said the Lyons Memo was unlawful because it limited the likelihood of escape to the location of the stop. IX:1867. That is inaccurate.

The Lyons Memo considers whether the alien can be located at “another clearly identifiable location once an administrative warrant is obtained.” IV:924. The district court does not explain what else is required without vitiating the statute’s focus on “likelihood of escape” before a warrant can be obtained, rather than on post-arrest flight risk.

Second, the district court says that the Lyons Memo impermissibly contemplates that being able to depart in a vehicle is *sufficient* for probable cause of escape risk. IX:1868. But the Lyons Memo only lists it as *one factor to consider*, and not a dispositive one. IV:924. It was the district court that said it can never be sufficient, despite contrary precedent. *See United States v. Quintana*, 623 F.3d 1237, 1241 (8th Cir. 2010) (considering that alien was driving cross-country in finding there was probable cause for a warrantless arrest); *United States v. Cantu*, 519 F.2d 494, 497 (7th Cir. 1975) (similar). Even in the Fourth Amendment context, searches of vehicles are permitted without a warrant precisely because vehicles allow for quick escape. *See Carroll v. United States*, 267 U.S. 132, 153 (1925). Surely, a court cannot say that the ability to depart in a vehicle can never establish probable cause.

Third, the district court faults the Lyons Memo for omitting community ties. IX:1869. But the list of factors in the Lyons Memo is non-exhaustive. Of course, community ties may be relevant in a specific case. But

the district court seems to say officers *must* always consider community ties and even investigate certain community connections. IX:1869. Again, that approach is contrary to the flexible nature of probable cause because officers generally do not have to affirmatively seek out facts negating probable cause before acting. *Cf. Kansas v. Glover*, 589 U.S. 376, 378 (2020) (absent negating evidence, reasonable inferences can allow for stop). For instance, an immigration officer has no need to assess the community ties of an alien actively hiding or attempting to evade custody to conclude a likelihood of escape exists. *See Contreras v. United States*, 672 F.2d 307, 309 (2d Cir. 1982) (“[Alien’s] acknowledgement that she was from Guatemala, the absence of a claim of lawful status, and her attempt to evade custody satisfied the ‘likely to escape’ criterion.”).

Section 1357 does not list a set of mandatory or prohibited factors to assess risk of escape. That is because the probable-cause standard is flexible and fact-specific, making injunctions in this space inherently problematic. *See* Orin S. Kerr, *The Limits of Fourth Amendment Injunctions*, 7 J. on Telecommc’ns & High Tech. L. 127, 129 (2009) (“Fourth Amendment doctrine is tremendously fact-specific... Courts are poorly suited to design broad injunctive relief in this setting.”). The district court’s attempt to graft such requirements on officers in fluid situations in the field thus runs afoul

of the statute, case law, and equitable principles. The injunction must be vacated.

CONCLUSION

For the foregoing reasons, this Court should vacate the preliminary injunction and reverse the district court's class-certification order.

Respectfully submitted,

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Dated: June 1, 2026

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STATEMENT REGARDING ORAL ARGUMENT

Oral argument is respectfully requested in this appeal. This case involves exceptionally important questions about the Department of Homeland Security’s authority and obligations in conducting warrantless immigration arrests—a critical enforcement tool under review in multiple courts of appeals. Counsel believes that oral argument will materially aid the Court in resolving the issues presented by this appeal.

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitations of Fed. R. App. P. 32(a)(7)(B) and 10th Cir. R. 32 because it contains 12,472 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f). This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word for Microsoft 365, Georgia, 14-point type.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Tenth Circuit by using the appellate CM/ECF system on June 1, 2026. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Senior Judge R. Brooke Jackson

Civil Action No. 1:25-cv-03183-RBJ

REFUGIO RAMIREZ OVANDO,
CAROLINE DIAS GONCALVES,
J.S.T, and
G.R.R.,

Plaintiffs,

v.

KRISTI NOEM,
TODD LYONS,
ROBERT G. HAGAN¹
in their official capacities,

Respondents.

ORDER

I. Introduction

Immigration officials are entrusted with enforcing the immigration laws and are authorized to pursue an aggressive deportation agenda. They may arrest and initiate removal proceedings against individuals they believe are present without

¹ Pursuant to Fed. R. Civ. P. 25(d), Robert G. Hagan has automatically been substituted as a party in his official capacity as Director of the Denver Field Office, U.S. Immigration and Customs Enforcement.

lawful status. But in carrying out these responsibilities, they must follow the law. This case arises out of U.S. Immigration and Customs Enforcement’s (“ICE”) alleged practice in Colorado of arresting individuals suspected of being unlawfully present without a warrant and without making the individualized flight-risk determination required by 18 USC § 1357(a)(2) and 8 C.F.R. § 287.8(c)(2)(ii).

Plaintiffs are four individuals who were subjected to this unlawful practice. Although they lacked legal status, each had deep and longstanding ties to their communities—including parents, spouses, children, stable employment histories, and active participation in their local churches. No reasonable officer could have reasonably concluded that these plaintiffs were likely to flee before a warrant could be obtained. Yet ICE nonetheless arrested each one immediately and detained them for significant periods, causing severe hardship and loss. Plaintiffs seek to represent a class of similarly situated individuals who are not targets of ICE’s removal operations but have been arrested without a warrant or remain at risk of warrantless arrest in violation of the statute’s individualized-flight-risk-assessment requirement.

Before the Court are plaintiffs’ motions for a preliminary injunction and provisional class certification (ECF Nos. 13 and 14), and defendants’ motion to restrict electronic access to the case file (ECF No. 46).² For the reasons stated herein,

² For clarity, record citations in this Opinion appear inside the text, i.e. (Pl. Ex. 1); in some cases, for readability, short-form citations are used in the main text with full citations provided in footnotes.

plaintiffs’ motion for provisional class certification is GRANTED to the extent that this Court will provisionally certify a class under the definition provided in Part V of this Opinion; plaintiffs’ motion for a preliminary injunction is GRANTED in part and DENIED in part, as described in Part V; and defendants’ motion to restrict electronic access is GRANTED in part and DENIED in part, without prejudice to renew, as described in Part V.

II. Background

A. ICE’s Warrantless Arrest Power

The federal government has “broad, undoubted power over the subject of immigration and the status of aliens,” and its “power to determine immigration policy is well settled.”³ *Arizona v. United States*, 567 U.S. 387, 394 (2012). To that end, Congress has passed comprehensive legislation regulating the apprehension, arrest, detention, and removal of persons unlawfully present in the United States; and the Executive branch, through its agencies, including the Department of Homeland Security (DHS), and its subcomponent, ICE, is tasked with carrying out the legislature’s design. *See id.* at 396 (“Congress has specified which aliens may be removed from the United States and the procedures for doing so”); 8 U.S.C.

³ Throughout this opinion, the term “alien” is used where it appears in a statute, regulation, judicial opinion, or ICE internal document. Otherwise, unless a more specific term is necessary, this opinion interchangeably refers to individuals or persons “without lawful status,” “unlawfully present,” or “undocumented persons,” or some similar expression, when discussing people in the United States in violation of the immigration laws.

§ 1103(a) (charging DHS “with the enforcement of ... laws relating to the immigration and naturalization of aliens”).

Under the framework established by Congress, removal proceedings typically begin when a suspected removable person is served with a charging document known as a “Notice to Appear” (“NTA”). *See* 8 U.S.C. § 1229(a). At the time an NTA is issued, or anytime thereafter until the conclusion of removal proceedings, immigration officers may issue a “Warrant of Arrest,” known as Form I-200, and under this authority, “arrest[] and take[] into custody” the subject of the proceedings. *See* 8 C.F.R. §§ 236.1, 1236.1. Thus, ICE officers possess extremely broad authority to arrest persons suspected of violating the immigration laws upon the issuance of an NTA *and* a valid arrest warrant.

However, where “no federal warrant has been issued,” Congress has granted immigration officers “more limited authority” to make arrests. *Arizona*, 567 U.S. at 408. This authority is governed by 8 U.S.C. § 1357(a)(2), and its corresponding regulation, 8 C.F.R. § 287.8(c)(2)(ii), which permit arrest only where the officer “has reason to believe” that the individual “is in the United States in violation of [the immigration laws]” and “is likely to escape before a warrant can be obtained for his arrest[.]” § 1357(a)(2); § 287.8(c)(2)(ii). This two-pronged requirement precedes the 1952 passage of the INA and has never been amended. *See* Act of Aug. 7, 1946, ch. 768, 60 stat. 865 (adopting the language of § 1357(a)(2) in a predecessor statute).

The “reason to believe” language in § 1357(a)(2) is the equivalent of the constitutional requirement of probable cause. *See, e.g., Roa-Rodriguez v. United States*, 410 F.2d 1206, 1209 (10th Cir. 1969) (adopting the “probable cause” standard in finding that a warrantless arrest violated § 1357(a)(2)); *Morales v. Chadbourne*, 793 F.3d 208, 216 (1st Cir. 2015) (collecting cases interpreting “reason to believe” in § 1357(a)(2) as the equivalent of probable cause).⁴

This statutory requirement, that an immigration officer must have probable cause of flight risk, “is not mere verbiage.” *United States v. Pacheco-Alvarez*, 227 F.Supp.3d 863, 889 (S.D. Ohio 2016) (citing *Arizona*, 567 U.S. 387); *see also United States v. Cantu*, 519 F.2d 494, 496-97 (7th Cir. 1975) (explaining that the likelihood of escape limitation is “always seriously applied”). Before effecting a warrantless arrest, ICE officers must make a “particularized inquiry” that the subject is likely to abscond. *Moreno v. Napolitano*, 213 F.Supp.3d 999, 1007-08 (N.D. Ill. 2016); *see also United States v. Kahn*, 324 F.Supp.2d 1177, 1186-87 (D. Colo. 2004) (considering defendant’s traditional flight risk factors, including ties to the community, in finding that his warrantless arrest violated § 1357(a)(2)); *Pacheco-*

⁴ Defendants’ suggestion in their response brief that the probable cause standard applies only to the first prong of § 1357(a)(2), that is, the officer’s reason to believe that the subject is unlawfully present in the United States, and not the second, flight-risk prong, rests on an unreasonable reading of *Roa-Rodriguez*, 410 F.2d at 1208-09, is otherwise unsupported, and is rejected (ECF No. 34 at 31 n. 11).

Alvarez, 227 F.Supp.3d at 889-90 (same); *United States v. Bautista-Ramos*, No. 18-cr-4066-LTS, 2018 WL 5726236, at *7 (N.D. Iowa Oct. 15, 2018) (same).

B. The Castañon-Nava Litigation and ICE’s Broadcast Statements of Policy

In May 2018, ICE conducted “large-scale immigration sweeps” in Chicago, Illinois. *See Nava v. DHS*, 435 F.Supp.3d 880, 885 (N.D. Ill. 2020). By ICE’s own account, 106 of the 156 arrests made during this operation, known as “Operation Keep Safe,” were “at-large collateral arrests,” meaning people who were not ICE targets and for whom ICE lacked a warrant. *Id.*

Five of these individuals, all of whom had lived in Chicago for between 4 and 30 years, filed a putative class action under the Administrative Procedure Act (APA), 5 U.S.C. §§ 101-913, alleging that ICE violated § 1357(a)(2) by arresting them “without...individualized determination[s]” of flight risk, and that their arrests reflected ICE’s “widespread policy and practice of violating the INA in this manner.” *Nava*, 435 F.Supp.3d at 885-86.

After the district court denied defendants’ motion to dismiss, the parties settled. *See Castañon Nava v. DHS*, No. 18-cv-3757, 2025 WL 2842146, at *1 (N.D. Ill. Oct. 7, 2025). Under the terms of the settlement, ICE issued a nationwide “Broadcast Statement of Policy” (“Broadcast I”), setting out “how ICE officers are to conduct warrantless arrests in a manner consistent with 8 U.S.C. § 1357(a)(2).”

Id. at *4, *22. In other words, ICE has articulated what the law requires of its officers and established protocols to ensure compliance.

Specifically, Broadcast I provided, in relevant part, that: (1) to make a warrantless arrest, an ICE officer is required “to have probable cause that an individual is in the United States in violation of U.S. immigration laws *and* probable cause that the individual is likely to escape before a warrant can be obtained for the arrest” (emphasis in original); (2) when determining “likelihood of escape,” an officer “must consider” the totality of the circumstances known to them before the arrest; (3) relevant factors include whether the officer can “determine the individual’s identity, knowledge of that individual’s prior escapes or evasions of immigration authorities, attempted flight from an ICE Officer, ties to the community (such as a family, home, or employment) or lack thereof, or other specific circumstances” weighing in favor or against flight risk; and (4) “mere presence within the United States in violation of U.S. immigration law” is not, on its own, evidence of flight risk (Def. Ex. E, Broadcast Statement of Policy, Final Draft, Nov. 23, 2021).

Importantly, Broadcast I also dictated that, “as soon as practicable,” ICE officers are required to “document the facts and circumstances” of a warrantless arrest in the narrative section of the subject’s Form I-213, including, the subject’s “ties to the community, if known at the time of arrest, including family, home, or

employment,” and “the specific, particularized facts supporting the conclusion that the alien was likely to escape before a warrant could be obtained” (*id.*).⁵ Additionally, ICE officers were instructed that information “learned post-arrest relevant to custody determination should be documented separately from the information relevant to likelihood of escape known at the time of the warrantless arrest” (*id.*).

Earlier this year, plaintiffs’ counsel for the *Nava* settlement brought a motion to enforce the agreement, alleging that during largescale immigration operations at the beginning of the second Trump Administration, ICE committed “repeated, material violations” of the agreement by warrantlessly arresting 26 class members without possessing probable cause of flight risk. *Castañon Nava*, 2025 WL 2842146, at *6. On June 11, 2025, while the motion was pending, Charles Wall, ICE’s Principal Legal Advisor (“PLA”), sent out another nationwide “Broadcast” policy statement (“Broadcast II”). *Id.* at *22. This statement declared that the *Nava* had expired, and that ICE was no longer bound by it. Accordingly, it purported to rescind Broadcast I (*see* Def. Ex. F, “Termination of Castañon-Nava Settlement Agreement,” Jun. 11, 2025).

⁵ Form I-213, entitled “Record of Deportable/Inadmissible Alien” is an “official record prepared by immigration officials when initially processing a person suspected of being in the United States without legal permission.” *Castañon Nava*, 2025 WL 2842146, at *4 n. 4 (cleaned up) (citing *Punin v. Garland*, 108 F.4th 114, 119 (2d Cir. 2024)).

Broadcast II reiterated that, to make a warrantless arrest under § 1357(a)(2), ICE officers must have “probable cause” of flight risk under the “totality of the circumstances.” It included the same list of “relevant” factors, but it also made a number of significant amendments to Broadcast I (*id.*). Gone was the unequivocal language that unlawful presence, by itself, is *insufficient* to justify warrantless arrest, replaced by a softer statement that, “[n]otably, courts have found that an alien’s mere presence in violation of U.S. immigration law may not serve as a basis for a warrantless arrest” (*id.*). It dispensed with the documentation requirements from Broadcast I (*id.*). Instead, it merely “encouraged” ICE officers and agents “to document in Form I-213 the basis for determining that an alien was likely to escape before a warrant could be obtained” without elaboration (*id.*).

After plaintiffs filed notice of numerous additional alleged violations during more largescale enforcement operations in late September, the district court found that ICE had, in fact, warrantlessly arrested 22 class members without probable cause of flight risk. *Castañon Nava*, 2025 WL 2842146, at *21. Furthermore, finding that Mr. Wall’s “agency-wide directive” purporting to unilaterally terminate the settlement and rescind Broadcast I violated the agreement, the court extended the duration of the settlement by six months. *Id.* at *23.

Accordingly, “[p]ursuant to the order of the district court,” on October 22, 2025, ICE sent a third nationwide “Broadcast” policy statement (“Broadcast III”),

repeating, word-for-word, the legal standards and documentation protocols for warrantless arrests in Broadcast I, and informing its officers that they remained in effect until the expiration of the settlement on February 2, 2026 (Def. Ex. G, “Effective Immediately: *Castañon-Nava* Broadcast Statement of Policy,” Oct. 22, 2025).

C. Procedural History and the Parties’ Positions

In the instant matter, plaintiffs filed their initial “Class Complaint for Declaratory and Injunctive Relief,” “Motion for Preliminary Injunction,” and “Motion for Class Certification” on October 9, 2025 (ECF Nos. 1, 13, and 14). They contend that, in Colorado, “ICE agents are ignoring the law’s clear requirement to assess flight risk before making a warrantless arrest,” and they seek to “enjoin Defendants’ ongoing pattern and practice of flouting federal law in connection with their mass immigration arrests” (ECF No. 1 at ¶3). They state two causes of action under the APA, asking this Court to “hold unlawful and set aside” this alleged pattern and practice as “final agency action” that is ultra vires and “in excess of statutory jurisdiction, authority, or limitations” under 8 U.S.C. § 1357(a)(2) and 8 C.F.R. § 287.8(c)(2)(ii) (*see id.* at ¶¶202, 209). 5 U.S.C. §§ 704, 706(2)(C). Plaintiffs also seek to represent a class under Federal Rule of Civil Procedure 23(b) consisting of:

All persons since January 20, 2025, who have been arrested or will be arrested in this District by ICE without a warrant and without a pre-arrest, individualized

assessment of probable cause that the person poses a flight risk (ECF No. 1 at ¶188; ECF No. 14 at 2).

In their proposed preliminary-injunction order, plaintiffs request that the Court: (1) enjoin immigration officers from effecting warrantless arrests in this District absent probable cause of both unlawful presence and risk of flight; (2) require that any officer making a warrantless arrest comply with the standards set out for individualized flight-risk determinations in Broadcasts I and III; (3) require officers to document in the arrestee's I-213 the facts and circumstances supporting the arrest, consistent with those Broadcasts; (4) order defendants to provide plaintiffs' counsel with documentation of warrantless arrests in the District every 60 days, and to produce records of specific arrests within seven days upon request; (5) ensure that all officers authorized to execute immigration arrests in this District are trained on these requirements; and (6) provide ongoing documentation of that training until its completion (ECF No. 13-1).⁶

On October 27, 2025, defendants filed their response brief, arguing that: (1) plaintiffs lack standing; (2) the complaint fails to state a claim under the APA; (3) plaintiffs fail to show that their warrantless arrests violated § 1357(a)(2), let alone

⁶ Plaintiffs also request, in their motion for a preliminary injunction, that the Court appoint the named plaintiffs as Class Representatives, appoint plaintiffs' counsel as Class Counsel, and provisionally certify the class, and separately, not require plaintiffs to post a bond (ECF No. 13-1).

that ICE has a pattern or practice of disregarding the statute; (4) the Court lacks authority to issue a “universal” injunction extending beyond the named plaintiffs; and (5) the plaintiffs have not demonstrated a likelihood of irreparable harm or that the equities favor granting a preliminary injunction (ECF No. 34). Plaintiffs replied on October 29, 2025 (ECF No. 40).

On October 30 and 31, 2025, this Court held a hearing on plaintiffs’ motions (ECF No. 43 and 45). The facts below are drawn from the testimony and exhibits admitted at the hearing.⁷

III. Findings of Fact

A. The Warrantless Arrests of the Named Plaintiffs

1. Refugio Ramirez Ovando

Mr. Ramirez Ovando has lived near Grand Junction, Colorado for more than 20 years (ECF No. 47, H. 10/30/25, at 50). He and his wife have four U.S.-citizen children, ages 8 to 18, whom they raise together (*id.* at 51-52). They attend church every Sunday (*id.* at 53). Mr. Ramirez Ovando has worked for the same construction company for 19 years and has no criminal history (*id.* at 52, 68-69).

⁷ Some of the exhibits the Court considered were declarations sworn under the penalty of perjury from non-testifying witnesses and media reports. By and large, defendants objected to the former but not the latter. It is well-established that, at the preliminary injunction stage, courts may consider evidence that may not otherwise be admissible at trial under the Federal Rules of Evidence, including evidence containing hearsay. *See, e.g., DigitalGlobe, Inc. v. Paladino*, 269 F.Supp.3d 1112, 1119 (D. Colo. 2017) (citing *Heideman v. S. Salt Lake City*, 348 F.3d 1182, 1188 (10th Cir. 2003)). “The fact that evidence might be excludable goes to the weight of that evidence, not necessarily its admissibility.” *Id.*

On the morning of May 19, 2025, while driving to work, he was stopped by two armed plainclothes ICE officers (*id.* at 53-55). He later learned that they had stopped him by mistake—the officers believed he was someone else (*id.* at 66-67). He provided his SB-251 Colorado driver’s license when asked for identification (*id.* at 56).⁸ When asked for another form of ID, he offered to have his daughter bring his passport from home (*id.*).

The officer then asked Mr. Ramirez Ovando whether he had any “papers” or permission to be in the country (*id.* at 58). When Mr. Ramirez Ovando repeatedly requested to know if he was under arrest or free to leave, the officer took him into custody (*id.* at 58-59). Only after he was taken into custody—both on the way to and at the ICE field office—did officers ask questions related to his family, community ties, and other flight risk factors (*id.* at 60-62).

His I-213 corroborates his account (*see* Def. Ex. A, I-213 for Mr. Ramirez Ovando). The “Encounter” section contains no information indicating that ICE made any individualized flight-risk determination before arresting him (*id.*). A later section notes that he lives with his wife and four-U.S. born children, a factor that ICE’s assistant director for the Denver field office testified would cut *against* flight

⁸ An SB-251 license is an identification issued by the state of Colorado to individuals who are not citizens of the United States or lawful permanent residents (ECF No. 47 at 207-08). It is easily distinguished from a standard Colorado license because it contains a black horizontal stripe on the top, includes the inscription, “not valid for federal purposes,” and lacks a star in the top right-hand corner denoting a “REAL ID” (*id.* at 185-86, 207-08).

risk, but this information was collected only during processing (ECF No. 48, H. 10/31/25, at 354).

Mr. Ramirez Ovando was in detention for nearly 100 days before an immigration judge granted him lawful permanent resident status and he was released (ECF No. 47 at 64, 66). He testified to atrocious conditions inside the facility, including extreme temperature fluctuations, inappropriate sleeping conditions, and inadequate medical care (*id.* at 63-65). His arrest and detention also caused significant financial hardship for his family and severely impacted his children's mental health, all of whom started attending therapy (*id.* at 67-68).

2. *Caroline Dias Goncalves*

Ms. Dias Goncalves is a 20-year-old scholarship student at the University of Utah and also works as a restaurant hostess (*id.* at 28-30). She has lived in Utah with her family, active members of the Church of Jesus Christ of Latter-day Saints, since she was seven years old (*id.* at 28-29, 45). At the time of her arrest, she had a pending asylum application with United States Customs and Immigration Services (USCIS) and valid work authorization (*id.* at 30, 127).

On June 5, 2025, while driving alone on highway I-70 in western Colorado to visit a friend, she was stopped for an alleged traffic infraction by a sheriff's deputy, who checked her ID, issued a warning, and then contacted Homeland Security Investigations (HSI), a division of ICE (*id.* at 31-33). Minutes later, armed

plainclothes HSI agents pulled her over (*id.* at 33-34). They immediately told her that she was “under arrest for violating the immigration law,” handcuffed her, and transported her to the DHS field office in Grand Junction (*id.* at 34-35).⁹

Her I-213 fully corroborates her account (Def. Ex. B, I-213 for Ms. Dias Goncalves). The “Encounter” section is entirely bereft of any information regarding her community ties or flight risk (*id.*). A later section notes her pending asylum application and work authorization, but the agents appear not to have known, or at least not considered, this information during the arrest decision (*id.*).

Ms. Dias Goncalves was detained for 15 days before she was released on bond, an ankle monitor, and check-ins with a case officer in Utah (ECF No. 47 at 37, 40-41). Her detention caused her to lose one job, move back in with her parents nearly an hour from campus, drop all but one of her courses, and begin therapy for her stress and anxiety (*id.* at 41-43).

3. *J.S.T.*

J.S.T. is a 36-year-old man who has lived in the United States for over 15 years, and at the same Aurora, Colorado apartment for the last seven (*id.* at 80; Pl. Ex. 4, J.S.T. Aff., at ¶ 1). He has worked for a small family-owned grocery store for nine years (ECF No. 47 at 82). He has two brothers and a sister-in-law nearby and

⁹ There, Ms. Dias Goncalves was told by an unknown ICE officer that “under this president and under this presidency, [we’re] arresting anyone that is not a U.S. citizen” (ECF No. 47 at 36).

is extremely close with two of his teenage nieces, whom he helped raise from when they were toddlers (*id.* at 81-82). J.S.T. has no criminal record and is active in his church, participating in weekly prayer group and volunteer activities (*id.* at 82-83, 88; Pl. Ex. 4 at ¶¶4-5).

On February 5, 2025, as J.S.T. was leaving for work, an armed ICE officer in a military-green uniform stopped him as part of a large-scale immigration enforcement operation at his apartment complex (ECF No. 47 at 84-86). J.S.T. provided his SB-251 license (*id.* at 85). Another officer asked him whether he had any prior legal problems, including with immigration (*see id.* at 86; Pl. Ex. 4 at ¶11). Although he had been voluntarily returned to Mexico at the border in 2006, he said “no” (ECF No. 47 at 80-81, 86). He was immediately taken into custody (*id.* at 87).

His I-213 substantially mirrors the others (Def. Ex. C, I-213 for J.S.T.). The “Encounter” section contains no information related to his perceived flight risk. Rather, the narrative suggests that once he admitted that he lacked lawful status, his warrantless arrest was a *fait accompli* (*see id.*) (“An administrative warrant was unable to be obtained at the time of arrest, so Officers conducted a warrantless arrest”). Although a later section references J.S.T.’s voluntary return, it is unclear when ICE learned this information, and viewing the document in totality, it appears to have played no role in the arrest decision (*id.*).

J.S.T. spent nearly a month in detention (ECF No. 47 at 92). He was later released on bond, an ankle monitor, and regular ICE check-ins (*id.* at 92-93). As a result of his arrest and detention, he lost his apartment and possessions and had to move into a small room in a relative’s mobile home (*id.* at 94-95). His relationship with his nieces has suffered, as he no longer has the ability to host them (*id.* at 95-96). He also suffers from anxiety and fears going out in public (*id.* at 96).

4. G.R.R.

G.R.R. is a 32-year-old man who has lived continuously in Colorado Springs for 10 years (*id.* at 173). He owns a remodeling business and lives with his fiancé and their 10-year-old son, both U.S. citizens (*id.* at 173; Pl. Ex. 3, G.R.R. Aff., at ¶¶2-3). He is active in a close-knit church community (ECF No. 47 at 173-74).

On April 27, 2025, G.R.R. went to pick up a friend who had been drinking at a nightclub (*id.* at 174). Within minutes, he heard loud booms and breaking glass, and the club began to fill with smoke from tear gas (*id.* at 175-76). Believing the club was under attack, he ran outside along with others to find “a lot of police officers with long guns pointing them at people” and shouting (*id.* at 176). Unbeknownst to him, ICE and other federal law enforcement agencies were conducting a joint task-force operation at the club (ECF No. 48 at 281-82). Amid the chaos, he hid underneath a car (ECF No. 47 at 176). An officer approached G.R.R., shoved him to the ground, badly cutting his hand, and removed his wallet (*id.* at 176-78). Upon

discovering his SB-251 license and Mexican consular ID, ICE officers immediately zip-tied his hands, placed him on a bus with roughly 60 others, and transported him to detention with no further inquiry (*id.* at 178-79).

His I-213 follows the same pattern (Def. Ex. D, I-213 for G.R.R.). The scant information in the “Encounter” section tends to show that as soon as ICE determined he did not have lawful status, he was arrested as a matter of course. A later section notes that G.R.R. has a prior misdemeanor assault conviction that was dismissed upon successful completion of a two-year suspended sentence, but there is no indication that ICE knew this information at the time or relied upon it in deciding to arrest him.

G.R.R. was detained for nearly two months before being released on bond, an ankle monitor, and regular ICE check-ins (ECF No. 47 at 183-84). His son began struggling in school during the detention and now refuses to leave his father’s side for fear that he will be taken again (*id.* at 184; Pl. Ex. 3 at ¶31). G.R.R. likewise fears being rearrested and avoids going out in public (ECF No. 47 at 184; Pl. Ex. 3 at ¶37).

B. Additional Evidence of Warrantless Arrests without Individualized Flight Risk Assessments

The Court received additional evidence tending to show that ICE has a practice of conducting warrantless arrests in Colorado without considering flight risk on an individual basis.

First, the Court considers relevant numerous public statements by senior immigration officials, nationally and locally, declaring in unequivocal and unqualified terms that ICE *will* arrest anybody it encounters who is unlawfully present. For example, ICE’s acting director, Todd Lyons, has stated that, while the agency prioritizes the “worst of the worst,” “non-criminals living in the U.S. without authorization will also be taken into custody during arrest operations” (Pl. Ex. 35).¹⁰ Tom Homan, former ICE deputy director and “Border Czar,” echoed this, stating that if ICE officers encounter people in the country illegally while pursuing their targets, “they’re going to get arrested too” (Pl. Ex. 42).¹¹ Robert Guadian, Denver’s former ICE field office director, similarly confirmed in a local news interview that

¹⁰ Pl. Ex. 35, Camilo Montoya-Galvez, “ICE head says agents will arrest anyone found in the U.S. illegally, crack down on employers of unauthorized workers,” CBS News (Jul. 20, 2025).

¹¹ Pl. Ex. 42, The Source with Kaitlin Collins, “Trump DOJ Fires Officials Who Prosecuted Him; Homan on Mass Deportation Efforts: ‘There’s No Safe Haven’; Trump Calls DeepSeek A.I. ‘Positive Development’ But Also A ‘Wake-Up Call For U.S. Tech Industry,’” (originally aired Jan. 27, 2025), available at <https://transcripts.cnn.com>.

“if we encounter someone who is illegally present during the course of our operations, we’re going to take those people into custody” (Pl. Ex. 80).¹² These statements and others sing with one voice and do not bespeak of a commitment to scrupulously comply with § 1357(a)(2)’s requirement that warrantless arrests be based on individualized flight-risk determinations supported by probable cause.

These statements are of a piece with the Trump Administration’s publicly confirmed minimum daily quota of 3,000 immigration arrests (*see, e.g.*, Pl. Ex. 116),¹³ and the command from White House deputy chief of staff, Stephen Miller, to “just go out there and arrest illegal aliens,” whoever and wherever they are (Pl. Ex. 25).¹⁴ Meeting or coming anywhere close to this quota necessarily requires the arrest of substantial numbers of undocumented immigrants without pending criminal charges or records, in other words, non-targets (*see id.*). Unsurprisingly, ICE’s own statistics confirm that this category of individuals accounts for, by far, the largest percentage increase in immigration arrests nationally and in Colorado this year (*see,*

¹² Pl. Ex. 80, Denver 7 ABC, “Denver7 Investigates: Embedding with ICE during a ‘high-stakes’ operation,” (originally aired Jul. 29, 2025), *available at* <https://www.denver7.com/news/investigations/denver7-investigates-embedding-with-ice-during-a-high-stakes-operation>.

¹³ Pl. Ex. 116, The Sean Hannity Show, “Stephen Miller reveals Trump admin’s ‘daily goal’ for illegal migrant arrests.” Fox News (originally aired May 29, 2025), *available at:* <https://www.youtube.com/watch?v=MJNXsOqFSZs>.

¹⁴ Pl Ex. 25, Elizabeth Findell, et al., “The White House Marching Orders That Sparked the L.A. Migrant Crackdown,” The Wall Street Journal (Jun. 9, 2025).

e.g., Pl. Exs. 24, 30, 32, 45, 64).¹⁵ Although there will be exceptions, members of this group are far less likely to present a risk of flight where the relevant factors are seriously applied.

The Court also takes note of ICE’s predominant enforcement strategies in Colorado, including vehicle stops of the kind that led to the arrests of Mr. Ramirez Ovando and Ms. Dias Goncalves, and the large-scale, militarized raids of apartment buildings and other locations known to host large Latino populations, such as those that swept up J.S.T. and G.R.R (*see, e.g.*, Pl. Exs. 26, 34, 57).¹⁶ These enforcement methods, especially the latter, are guaranteed to bring many nontargets without lawful status—who nonetheless have strong ties to the community and are not flight risks—face-to-face with ICE. Beyond anecdotal evidence, the manner of these raids, and the volume of resulting arrests, strongly support the conclusion that ICE is not

¹⁵ Pl. Ex. 24, David J. Bier, “65 Percent of People Taken by ICE Had No Convictions, 93 Percent No Violent Convictions,” CATO Institute (Jun. 20, 2025); Pl. Ex. 30, Albert Sun & Allison McCann, “What the Data Shows About Trump’s Immigration Enforcement So Far,” The New York Times (Mar. 4, 2025); Pl. Ex. 32, Sandra Fish, et al., “Most people arrested by ICE in Colorado and Wyoming this year did not have criminal history,” The Colorado Sun (Jul. 21, 2025); Pl. Ex. 45, Seth Klamann, “Immigration arrests in Colorado have surged under the Trump administration. Now we know how much.” The Denver Post (Jul. 9, 2025); Pl. Ex. 64, “Detention FY 2025 YTD,” U.S. Immigration and Customs Enforcement, *available at* <https://www.ice.gov/detain/detention-management>.

¹⁶ Pl. Ex. 26, Janet Oravetz, et al., “ICE raids target at least 7 locations in Denver, Aurora, Thornton, Denver 9 News (Feb. 5, 2020); Pl. Ex. 34, Max Levy, “18 of 104 detained in Colorado Springs nightclub raid already had deportation orders, ICE says,” The Denver Post (May 9, 2025); Pl. Ex. 57, “ICE detains longtime Colorado father after fake traffic stop,” Voces Unidas (Aug. 28, 2025).

conducting individualized flight risk assessments before executing warrantless arrests.

To be sure, ICE could choose to arrest every undocumented person it encounters even where there is no probable cause of flight risk to authorize a warrantless arrest. It could do this by obtaining an administrative warrant after the initial encounter and then finding and arresting them. But again, the record does not suggest that this is what's happening.

In addition to the named plaintiffs, the Court received evidence, albeit through some hearsay, about the arrests of four other individuals, as well as the experience of a local immigration attorney, illustrating a consistent pattern of warrantless arrests under similar circumstances:

1. *J.C.C.*

J.C.C has lived in the United States for nearly 25 years, lives with his wife and their four U.S.-citizen children, owns a home, and operates a concrete and landscaping business (Pl. Ex. 5, J.C.C. Aff., at ¶¶1-4).

On July 18, 2025, he was stopped by ICE while driving to a job site and arrested without a warrant (*id.* at ¶¶5-12). Plainclothes officers demanded his identification, asked about his legal status, and arrested him without inquiring into his community ties (*id.* at ¶¶9-12). Although he was later granted bond, ICE is

appealing that decision, and he remains detained, causing significant financial and emotional hardship for him and his family (*id.* at ¶¶16-18).

2. *O.M.R.*

O.M.R. was arrested during a traffic stop, while getting a ride to his job at the University of Colorado medical complex from a friend who was the target of an enforcement operation (ECF No. 48 at 230-31; Def. Ex. L, I-213 for O.M.R.). At the time, O.M.R. had a pending Temporary Protected Status application and valid work authorization (ECF No. 48 at 230; Def. Ex. L.). He had previously been issued an NTA by Border Patrol and released on recognizance (ECF No. 48 at 247-48). There is no indication that he violated the terms of his release, failed to appear for proceedings, or had been ordered removed.

3. *J.P.P.*

J.P.P. was arrested during the same February 5, 2025, sweep of Denver-area apartment complexes that resulted in J.S.T.'s arrest (*see id.* at 234-35; Pl. Ex. 4 at ¶¶4-20). The veracity of their accounts is generally supported by the wide reporting on the conduct of these operations (*see, e.g.*, Pl. Exs. 26-28).¹⁷

¹⁷ Pl. Ex. 26, *supra*, fn. 15; Pl. Ex. 27, Sam Tabachnik, et al., “ICE raids hit apartment buildings in Aurora and Denver; feds say they targeted Tren de Aragua gang,” *The Denver Post* (Feb. 5, 2025); Pl. Ex. 28, Chase Woodruff, “ICE agents conduct operations in multiple Denver, Aurora locations,” *Colorado Newsline* (Feb. 5, 2025).

He observed heavily armed federal officers moving through his complex and shouting (ECF No. 48 at 235). J.P.P., his wife, and their two daughters (ages 12 and 16) hid under the bed (*id.* at 236). After ICE and other officers burst into the apartment, deploying flash bang grenades to gain entry, J.P.P. went out and tried to speak with them (*id.* at 236-37). After providing his name and date of birth, he was taken into custody without inquiry (*id.* at 237-38). At the time, he had a pending asylum application and had checked in with USCIS three months prior (*id.* at 241). There is no indication that J.P.P. was a target of the raid or was otherwise wanted by or even known to ICE (*id.* at 238).

4. *F.J. and his children*

F.J., his wife, and their two children (ages 12 and 15) are asylum seekers living in Durango, Colorado (*id.* at 378-79). On October 27, 2025, as F.J. was driving the children to school, they were stopped by ICE, apparently by mistake, and arrested without warrants (*id.* at 380-81). ICE did not inquire about F.J.'s residence, employment, or other community ties until after his arrest (*id.* at 381-82). Like J.P.P. and J.S.T., local reporting corroborates the basic circumstances of F.J.'s stop and arrest, as well as his family's status as asylum seekers with no criminal records or prior problems with immigration (*see id.* at 379-80; Pl. Exs. 132 and 134).¹⁸

¹⁸ Pl. Ex. 132, Katie Langford & Seth Klamann, "ICE arrest of father, two children in Durango spark local protests," *The Denver Post* (Oct. 28, 2025); Pl. Ex. 134, Olivia Prentzel, "Hundreds

5. *Testimony of attorney Arturo Vazquez*

Finally, Mr. Vazquez is an immigration attorney with approximately 10 years of experience, who specializes in representing individuals in removal proceedings on the “detained docket” at the Aurora detention center (ECF No. 47 at 192-93).

Mr. Vasquez testified that until this year, virtually all his clients were arrested by ICE pursuant to an administrative warrant and had some type of criminal conviction (*id.* at 194-95). However, between June and the end of October, he has consulted with between 15 and 20 individuals who were arrested by ICE during traffic stops following the same “general pattern” (*id.* at 195-99, 199). He testified that, in each instance, plainclothes officers in unmarked cars stopped the car and demanded to see the occupants’ licenses or other ID (*id.* at 199). If the driver or passenger provided a SB-251 license, the officers would arrest them, temporarily hold them while they continued to make more arrests, and then transport them to the detention center (*id.* at 195-96, 199-201). According to Mr. Vasquez, none of these individuals were provided a warrant, had any criminal history or prior removal order, and they were not asked any questions pertaining to their community ties (*id.* at 201-202, 204-06, 210-11).

protest outside ICE building in Durango after 2 children, father detained, The Colorado Sun (Oct. 28, 2025).

Collectively, the record supports the conclusion that ICE is routinely conducting warrantless arrests in Colorado without making the statutorily required individualized assessment of flight risk.

IV. Discussion

A. Jurisdiction

Article III establishes that federal courts can only hear cases and controversies. U.S. Const. art. III, § 2, cl. 1. Standing is a jurisdictional requirement. To have standing, plaintiffs must show that (1) they suffered an injury in fact; (2) the injury is fairly traceable to the challenged conduct, in other words, causation; and (3) redressability. *See Spokeo Inc. v. Robins*, 578 U.S. 330, 338 (2016).

The injury-in-fact requirement demands that the injury or threat of injury be “concrete and particularized and actual or imminent,” *id.*, as opposed to “conjectural” or “hypothetical.” *O’Shea v. Littleton*, 414 U.S. 488, 495-96 (1974); *see also Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 409 (2013) (“allegations of possible future injury are not sufficient.”) (citations omitted). Furthermore, plaintiffs must show that they have “sustained or [are] immediately in danger of sustaining some direct injury as the result of the challenged official conduct.” *City of Los Angeles v. Lyons*, 461 U.S. 95, 101-102 (1983). If a plaintiff alleges a future harm, that harm must be “certainly impending.” *Clapper*, 568 U.S. at 416. The fact that plaintiffs were injured in the past is not enough, by itself, to satisfy standing. *See*

O’Shea, 414 U.S. at 495-96 (“Past exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief... if unaccompanied by any continuing present adverse effects.”). But courts can consider past wrongs as “evidence bearing on whether there is a real and immediate threat of repeated injury.” *Lyons*, 461 U.S. at 102.

Here, plaintiffs Dias Goncalves, J.S.T., and G.R.R. can establish standing because the injuries they suffered from the illegal arrest and detention are ongoing.¹⁹ Plaintiffs’ arrests and detention were, and *remain*, warrantless. Defendants argue that plaintiffs have not alleged an injury that confers standing because, while the initial detention was accomplished without a warrant, their continued detention was later supported by I-200 warrants ICE issued for all the plaintiffs in the field office during processing (*see* ECF No. 34 at 20; Def. Exs. A-D). Defendants claim those after-the-fact warrants legitimized plaintiffs’ arrests, ending any period of illegal detention. But issuing *post hoc* warrants once plaintiffs had already been unlawfully arrested does nothing to cure the initial statutory violation. Under the defendants’

¹⁹ Plaintiff Ramirez Ovando cannot establish standing. When the complaint was filed, he had already obtained legal permanent residency (*see* ECF No. 47 at 51, 66). Although he has not received physical documentation of his changed status, ICE has access to this update, and it is unlikely that he will be subject to the same injury because he is no longer unlawfully present in the United States (*see id.* at 66; ECF No. 48 at 278-80). Also, there is little concern that he will be rearrested without either a probable cause determination or arrest warrant because ICE agents can and do conduct identity checks for collaterals (*see* ECF No. 48 at 283-84). Mr. Ramirez Ovando is also not subject to the same monitoring protocols as the other three plaintiffs. He does not wear an ankle monitor, and he is not required to report to an immigration officer. His harm is exclusively backward looking, and thus, he lacks standing to seek the relief in this lawsuit.

reasoning, ICE could simply stop any suspected undocumented person, conduct a warrantless arrest with no probable cause of flight risk, and *then* bring the arrest within the color of law by issuing a warrant at the field office. This view effectively vitiates § 1357(a)(2)'s two-pronged probable cause requirement, which is aimed precisely at preventing such unrestrained immigration enforcement actions.

To give Congress's words meaning and force, the Court rejects these *post hoc* warrants as a vehicle for depriving plaintiffs of standing. Rather, the Court finds that the *post hoc* warrants had no legal effect. Plaintiffs' warrantless arrests have not been "fixed." The *Nava* court has twice rejected the notion that an I-200 warrant issued either *after* or *concurrent* with an arrest made without an assessment of individual flight risk transforms an unlawful warrantless arrest into a lawful, warranted one. *See Nava*, 435 F.Supp.3d at 888, 904 (denying defendants' motion to dismiss where ICE "executed arrest warrants for the Individual Plaintiffs after they took them into custody"); *Castañon Nava*, 2025 WL 2842146, at *12-17 (concluding, after thorough analysis, that I-200 warrants issued to collaterals in the field during their arrests were "invalid," and treating these arrests as warrantless). This Court reaches the same conclusion.

This case is not *Lyons*. 461 U.S. 95. In *Lyons*, the Supreme Court held that the plaintiff's past harm and fear of being placed in an illegal chokehold by the police again was insufficient to confer standing for prospective, injunctive relief, absent a

showing of a “real and immediate threat of repeated injury.” *Id.* at 102, 102-13. Here, by contrast, plaintiffs’ injuries are not past—they are present. This case is instead akin to *County of Riverside v. McGlaughlin*, 500 U.S. 44 (1991), where a group of felony arrestees who were held in jail without a judicial determination of probable cause for a constitutionally unreasonable period of time were permitted to sue for injunctive relief on behalf of a class of similarly situated individuals, including future detainees. *Id.* at 44, 49-52. There, the Supreme Court found that, at the time of the complaint, plaintiffs “were suffering a direct and current injury as a result” of their unlawful detention, fairly traceable to the actions of defendants, and redressable by the court. *Id.* at 51.

Even though plaintiffs Dias Goncalves, J.S.T., and G.R.R. are no longer detained, they are still “suffering [] direct and current” injuries as a result of their unlawful arrests and detention, *i.e.*, bond, ankle monitors, and adherence to strict reporting requirements, all on the pain of being returned to immigration jail at ICE’s election. *Id.* Their liberty interests are still impacted due to the initial warrantless arrest. Unlike in *Riverside*, where some of the class representatives eventually received probable cause determinations or were released after the filing of the complaint, obviating their constitutional injury, the invalid administrative warrants issued after-the-fact by ICE in no way affect the status or position of the plaintiffs

here.²⁰ *Id.* They do not blunt or nullify plaintiffs’ ongoing injuries stemming from their arrests in violation of § 1357(a)(2).

Plaintiffs request that this Court issue an injunction to hold ICE to the law and their own procedures: either issue an I-200 warrant before effecting an arrest or follow the flight risk inquiry of § 1357(a)(2)’s second prong. This remedy would directly redress the harm plaintiffs have suffered. Because plaintiffs’ injuries from the warrantless arrest are ongoing, they must be returned to their original pre-detention position: to wit, no ankle monitors, or reporting requirements, or other release conditions, and their bonds refunded. If ICE chooses to pursue these plaintiffs again, this time in compliance with the law, they must obtain a valid administrative or judicial warrant before arrest.²¹ Furthermore, absent a material change in circumstances, ICE may not detain plaintiffs for any period of time or impose conditions that are any more onerous than the present conditions.

²⁰ The Supreme Court found that there was still standing under the well-established principle that “the termination of a class representative’s claim does not moot the claims of the unnamed members of the class.” *Id.* at 51 (internal citation omitted).

²¹ As discussed in Section IV.C.2.a., *infra*, the Court finds that these three individuals did not pose a “substantial probability” of flight at the time of their arrests, and nothing in the intervening period has altered that conclusion. Thus, absent a material change of circumstances, ICE may not rearrest these plaintiffs without a warrant under § 1357(a)(2).

B. Plaintiff's Motion for Class Certification

Plaintiffs seek provisional class certification for purposes of issuing preliminary relief. Plaintiffs' proposed class, under Fed. R. Civ. P. 23(b)(2), consists of:

All persons since January 20, 2025, who have been arrested, or will be arrested in this District by ICE without a warrant and without a pre-arrest, individualized assessment of probable cause that the person poses a flight risk (ECF No. 1, at ¶188; ECF No. 14 at 2).

In order to certify a class, the party seeking the provisional certification bears the burden of showing that the threshold requirements of Rule 23(a) have been met. *Rex v. Owens*, 585 F.2d 432, 435 (10th Cir. 1978). These threshold requirements are numerosity, commonality, typicality, and adequacy of representation, and they “effectively limit the class claims to those fairly encompassed by the named plaintiff’s claims.” *General Telephone Co. v. EEOC*, 446 U.S. 318, 330 (1980). Plaintiffs have satisfied all four requirements within Rule 23(a). The Court addresses each requirement in turn:

1. Numerosity

Numerosity requires that “the class is so numerous that joinder of all members is impractical.” Fed. R. Civ. P. 23(a). To satisfy numerosity, the delineation between class members and non-class members must be identifiable. Plaintiffs must show “some evidence of established, ascertainable numbers constituting the class in order

to satisfy even the most liberal interpretation of the numerosity requirement.” *Rex*, 585 F.2d at 436. The Tenth Circuit considers “ascertainability” as a sub-requirement of numerosity. *Id.* It has not explicitly adopted specific standards for ascertainability. “District courts [may] consider [out-of-circuit standards] as part of their discretion to grant or deny class certification.” *Evans v. Brigham Young Univ.*, No. 22-4050, 2023 WL 3262012, at *8 (10th Cir. 2023) (unpublished).

The Third and Seventh Circuits provide helpful multi-factor tests. Under the Third Circuit’s two-element test, the class must be objectively defined and there must be “a reliable and administratively feasible mechanism for determining whether putative class members fall within the class definition.” *Hayes v. Wal-Mart Stores, Inc.*, 725 F.3d 349, 353 (3rd Cir. 2013) (citations omitted). The Seventh Circuit similarly requires that a plaintiff show ascertainability by “defining classes clearly and with objective criteria.” *Mullins v. Direct Digit., LLC*, 795 F.3d 654, 672 (7th Cir. 2015).

Plaintiffs’ proposed class satisfies the numerosity requirement because it captures an ascertainable, defined class based on objective criteria, with the number of class members being so numerous that joinder becomes impracticable. There are approximately 169,000 persons without lawful status in Colorado, some of whom have already been arrested without a warrant or probable cause determination, and others who are likely to be arrested under similar circumstances based on ICE’s

continued practice of disregarding the § 1357(a)(2) inquiry (ECF No. 1 at ¶¶7, 14). This number has not been contested by defendants. The proposed class defines a subset of the 169,000 undocumented persons, namely, those persons in Colorado without lawful status who are arrested by ICE without the prior issuance of a valid arrest warrant or a finding of probable cause that they are likely to escape if not arrested without a warrant. Thus, this proposed class is numerous and identifiable.

2. *Commonality and Typicality*

The inquiries made into commonality and typicality “tend to merge.” *General Tel. Co. v. Falcon*, 457 US. 147, 157 (1982). Commonality requires the class to share common questions of law or fact. Fed. R. Civ. P. 23(a)(2). The class representatives must “demonstrate that the class members have suffered the same injury.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). Typicality demands that the “claims or defenses of the representative parties are typical of the claims or defenses of the class.” Fed. R. Civ. P. 23(a)(3). The class members “must depend upon a common contention,” and that common contention “must be of such a nature that it is capable of class-wide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.” *Dukes*, 564 U.S. at 350.

Plaintiffs satisfy the commonality and typicality requirements. All class members, by virtue of being in Colorado without lawful status, are subject to ICE’s

continued illegal practices. The harm suffered by the named plaintiffs has been shared by all class members who have similarly been arrested without a valid warrant or a particularized finding of probable cause that they are likely to escape. Once this order is issued the Court would not expect others to be similarly arrested without a valid warrant or a particularized finding of probable cause that they are likely to escape; but if such arrests are made notwithstanding this order, those individuals would likewise share the harm suffered by the plaintiffs.

3. *Adequacy of Representation*

Rule 23(a) demands that “the representative parties will fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). “Resolution of two questions determines legal adequacy: (1) do the named plaintiffs and their counsel have any conflicts of interest with other class members, and (2) will the named plaintiffs and their counsel prosecute the action vigorously on the behalf of the class?” *Rutter v. Wilbanks Corp. v. Shell Oil Co.*, 314 F.3d 1180, 1188 (10th Cir. 2002) (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998)).

Plaintiffs adequately represent the class because they share a strong interest in ensuring ICE’s compliance with the law. Plaintiffs are part of a larger community of undocumented persons living in Colorado or temporarily in the state. The willingness of these three people to publicly hold themselves out as representative of this community, despite the risk of further exposure and potential targeting,

indicates that they are willing to prosecute the case vigorously on behalf of the class. In addition, nothing in the record indicates that plaintiffs or their counsel have any conflicts of interest with other class members. Plaintiffs' counsel are experienced in class action, civil rights, and immigrants' rights litigation and have the requisite level of experience and resources to adequately prosecute this case on plaintiffs' behalf (ECF No. 1 at ¶193).

4. *Rule 23(b) Certification*

Once a proposed class satisfies the prerequisites of Rule 23(a), the court must then determine whether the class is maintainable under the two requirements within Rule 23(b). *Amchem Prods. v. Windsor*, 521 U.S. 591, 614 (1997). Plaintiffs seek to certify the class under 23(b)(2) which provides that a class action is appropriate if “the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.” Rule 23(b)(2). “Put differently, Rule 23(b)(2) demands a certain cohesiveness among class members with respect to their injuries, the absence of which can preclude certification.” *Shook v. Bd. of Cnty. Comm’rs*, 543 F.3d 597, 604 (10th Cir. 2008).

Plaintiffs seek an injunction and declaratory relief from ICE’s practice of arresting so-called “collaterals” without a warrant or probable cause determination. Those practices are generally applicable to the class as a whole, namely,

undocumented Coloradans that are not ICE targets (ECF No. 1 at ¶199). Plaintiffs have adequately shown that ICE has engaged in a practice of disregarding the probable cause determination required under § 1357(a)(2) when conducting warrantless arrests (*see infra* Section IV.C.2). Plaintiffs were not ICE targets. They were not the “worst of the worst.” But when encountered, often by happenstance, they were flagged as persons unlawfully present, minimally questioned (if at all), and arrested (ECF No. 1 at ¶¶55, 75, 100, 124). Their I-213 forms are devoid of evidence that the officer had the requisite probable cause to arrest them without a warrant (*see infra* Section IV.C.2). Despite its own proclaimed policies (Def. Ex. E-G), ICE continues to engage to this day in the practice of arresting collaterals without inquiring into their flight risk or documenting any plausible reason to support their warrantless detention (*see, e.g.*, Pl. Exs. 132, 134).²² Therefore, there is sufficient cohesiveness among class members under Rule 23(b)(2).

The Court finds that the requirements for provisional certification of the class proposed by the plaintiffs have been satisfied.

C. Plaintiff’s Motion for a Preliminary Injunction

1. Standard of Review

A preliminary injunction is “an extraordinary remedy never awarded as of right.” *DTC Energy Group, Inc. v. Hirschfeld*, 912 F.3d 1263, 1269 (10th Cir. 2018)

²² Pl. Ex. 132, *supra*, fn. 18; Pl. Ex. 134, *supra*, fn. 18.

(internal citations omitted). However, a preliminary injunction is necessary where “the right to relief is clear and unequivocal” and “monetary or other traditional legal remedies are inadequate” to protect the positions of the parties “before a trial on the merits can be held.” *Id.* (internal citations and alterations omitted).

“The party seeking a preliminary injunction must prove four factors: (1) the party is likely to succeed on the merits; (2) the party will likely suffer irreparable injury without the injunction; (3) the balance of equities favors the injunction, meaning the moving party’s threatened injury without the injunction outweighs the nonmoving party’s injury with the injunction; and (4) the injunction does not harm the public interest.” *Nat’l Assn. of Industrial Bankers v. Weiser*, ___ F.4th ___, 2025 WL 3140623, at *6 (10th Cir. Nov. 10, 2025). Where “the government opposes the preliminary injunction, the last two factors merge, such that any harm to the public interest affects the balance of the equities.” *Id.* (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)).

As a preliminary matter, defendants contend that, in this case, plaintiffs bear an “even heavier burden on the likelihood-of-success-on-the-merits and the balance-of-harms factors” because they seek a “disfavored injunction,” one that would mandate ICE to adopt a new warrantless arrest policy and grant them all the relief they could obtain at trial (ECF No. 34 at 17) (citing *McDonnell v. City & Cnty. of Denver*, 878 F.3d 1247, 1257 (10th Cir. 2018)).

The Court rejects this view. Plaintiffs primarily ask that defendants be “enjoined from future violations of established ... statutory rights,” a “classic form of prohibitory injunction.” *United Farm Workers v. Noem*, 785 F.Supp.3d 672, 732 (E.D. Ca. 2025) (concluding, in a similar context, that plaintiffs’ request for an injunction directing DHS to comply with § 1357(a)(2) and § 287.8(c)(2)(ii) was “prohibitory” rather than “mandatory”); *see also* 42 Am. Jur. 2d *Injunctions* § 5 (2017) (“An injunction is considered prohibitory when the thing complained of results from present and continuing affirmative acts and the injunction merely orders the defendant to refrain from doing those acts”). The remainder of the plaintiffs’ requested relief is simply designed to ensure compliance with that prohibition.

Furthermore, defendants’ argument that plaintiffs “seek to mandate that ICE adopt a new warrantless arrest policy” is at odds with their position that, under Broadcast III, this policy *is already in place*, obviating the need for any injunction (*compare* ECF No. 34 at 17 *with* ECF No. 26 at 3) (arguing that a “preliminary injunction hearing may not be necessary” as the “prospective relief requested by [p]laintiffs ... is largely coextensive with DHS’ Statement of Policy issued on October 22, 2025”).

Therefore, plaintiffs bear the ordinary (though still significant) burden for obtaining a preliminary injunction. The Court now considers each factor in turn.

2. Success on the Merits

a. Plaintiffs have shown that their warrantless arrests likely violated § 1357(a)(2) and § 287.8(c)(2)(ii).

Initially, the Court finds that each of the named plaintiffs have sufficiently shown that they were arrested without probable cause that they were “likely to escape before a warrant” could be obtained. § 1357(a)(2); § 287.8(c)(2)(ii).

“Probable cause depends upon all of the facts and circumstances known to the arresting officer ... at the time of the arrest,” *Gibson v. Brown*, No. 16-cv-2239-MSK-STV, 2020 WL 1815911, at *4 (D. Colo. Apr. 9, 2020), and is assessed from the “standpoint of an objectively reasonable officer.” *Luethje v. Kyle*, 131 F.4th 1179, 1193 (10th Cir. 2025). Probable cause requires a “substantial probability” based on facts related to the individual. *Storey v. Taylor*, 696 F.3d 987, 992 (10th Cir. 2012). “Mere suspicion” is not enough. *U.S. v. Valenzuela*, 365 F.3d 892, 896 (10th Cir. 2004) (internal citation omitted).

The Court’s conclusion is reinforced by the nearly identical manner in which the plaintiffs’ arrests unfolded. In each instance, the immigration officers took plaintiffs into custody upon confirming their identities and their lack of lawful status. The officers asked no questions—until after their arrests—bearing on flight risk, including about plaintiffs’ families, employment, or other community ties. *See, e.g., Kahn*, 324 F. Supp. at 1187 (finding a warrantless arrest unlawful under § 1357(a)(2)

where immigration agents failed to consider such factors); *UFW*, 785 F.Supp.3d at 684-92, 735 (describing arrests conducted without any inquiry into flight risk and concluding such arrests violated the statute). While neither § 1357(a)(2) nor § 287.8(c)(2)(ii) mandates any particular inquiry before a warrantless arrest, and community ties are just one relevant factor, the total absence of questions on these topics strongly indicates that the officers did not seek what they did not wish to find.

Also, in each case, the Court is unable to discern from the plaintiffs' I-213 forms any evidence that the arresting officers developed probable cause of flight risk prior to their arrests (*see* Def. Exs. A-D). Under defendants' own Broadcast statements, officers must document the "specific, particularized facts" relied upon to determine that the subject was a flight risk (*see* Def. Exs. E, G; *see also* ECF No. 47 at 120-22; ECF. No. 48 at 303-05); however, none of the officers did that here. This omission does not, standing alone, show that the plaintiffs' arrests violated the statutory requirement. But when considered alongside plaintiffs' uncontroverted testimony regarding their encounters, it weighs heavily in favor of that conclusion.

Defendants argue, in essence, that ICE did not need to ask plaintiffs questions about their community ties because, for each of them, there were independent grounds demonstrating flight risk. Defendants are wrong. No objectively reasonable officer could have found that these plaintiffs posed a "substantial

probability” of flight risk based on the limited information they possessed at the time of the arrest. *Storey*, 696 F.3d at 992. The Court considers each of them in turn:

i. Mr. Ramirez Ovando

Defendants contend there was probable cause to arrest Mr. Ramirez Ovando because: (1) he was stopped in a car; (2) he described himself as “very nervous” in his affidavit; and (3) “after initially cooperating,” he stopped answering the officer’s questions about his immigration status (ECF No. 34 at 33; *see also* ECF No. 48 at 412-13).

Under the totality of the circumstances, none of these facts, alone or in combination, support a finding of flight risk. First, according to the I-213, he candidly admitted he was unlawfully present (*see* Def. Ex. A). Thus, when the officer continued to question him about his status, it was reasonable for him to ask whether he was under arrest or free to leave. He was neither evasive nor dishonest, factors which ICE may consider for flight risk (*see* ECF No. 48 at 285-87). *See, e.g., Castañon Nava*, 2025 WL 2842126, at *17 (collecting cases). Second, there is no evidence that the officer *perceived* Mr. Ramirez Ovando as “nervous.” Third, the fact that Mr. Ramirez Ovando was stopped in a car minutes away from his home adds nothing to the calculus. *Cf. United States v. Quintana*, 623 F.3d 1237, 1241 (8th Cir. 2010) (finding flight risk where a noncitizen was stopped while speeding in a car belonging to someone else in a distant state and provided false information

to the arresting officer). Furthermore, the officers *knew* Mr. Ramirez Ovando was near his home because they had observed him leaving *and* he offered to call his daughter to bring his passport to the scene (ECF No. 47 at 53-54, 56).²³

ii. Ms. Dias Goncalves

Defendants justify this plaintiff's warrantless arrest solely on the basis that, as a Utah resident, she was driving a car on a Colorado highway (ECF No. 47 at 45-46; ECF No. 48 at 199).

This argument fails for two reasons. First, Mr. Guadian testified that ICE in Colorado routinely communicates and coordinates with their counterparts in Utah (ECF No. 47 at 135-36). He agreed that ICE can and does share information so that officers in one state can effectuate an arrest in the other, undercutting any argument that Ms. Dias Goncalves had to be taken into custody upon contact with HSI (*id.*). Second, as discussed above, *Quintana*, where the Eighth Circuit upheld a warrantless arrest for an unlawfully present person driving cross-country, presented additional aggravating circumstances absent here. 623 F.3d at 1241. Probable cause for flight

²³ At the close of hearing, defendants also argued that Mr. Ramirez Ovando was dishonest because he did not explicitly state that he had a foreign passport (ECF No. 48 at 412). This argument is meritless. The record shows that the officer only asked Mr. Ramirez Ovando whether he had another form of identification, including a Mexican consular ID (ECF No. 47 at 56). In this context, where the officer affirmatively asked about a foreign identification, there is no legitimate argument that Mr. Ramirez Ovando was being anything less than forthright.

risk is not established anytime a person without status is stopped on the interstate.²⁴ *Cf. Cantu*, 519 F.3d at 495, 497 (finding probable cause of flight risk where officers received and verified a tip concerning driver for a human trafficking operation spanning Mexico and Illinois). Such a hard-and-fast rule is antithetical to probable cause's "flexible, common sense standard." *United States v. Biglow*, 562 F.3d 1272, 1282 (10th Cir. 2009).

Here, officers knew that Ms. Dias Goncalves, a 20-year-old visa overstay with no criminal history, had already cooperated with and provided her information to the deputy sheriff. Furthermore, she was not avoiding the immigration authorities; she had applied for asylum and recently obtained work authorization through USCIS. Under these circumstances, the mere fact that she was driving a car in a neighboring state was insufficient to conclude that she posed a flight risk.

iii. G.R.R.

The only fact that defendants argue supplied probable cause for G.R.R. is that he hid under a car after law enforcement emptied the nightclub with flash bang grenades and teargas (*see* ECF No. 34 at 34).

²⁴ Defendants also rely on a single district court case upholding an arrest under § 1357(a)(2) where the subject was apprehended during a traffic stop, *United States v. Murillo-Gonzalez*, 524 F.Supp.3d 1139, 1151 (D.N.M. 2021), *aff'd* No. 22-2123, 2024 WL 3812480 (10th Cir. Aug. 14, 2024) (*see* ECF No. 34 at 32). However, that case provides minimal analysis and merely cites to *Quintana*. 524 F.Supp.3d at 1151. Moreover, in affirming the judgment on appeal, the 10th Circuit did not reach the question of the warrantless arrest.

Although “attempted flight” from an ICE officer may, in some circumstances, provide probable cause of flight risk (*see* Def. Exs. E-G), those circumstances are not present here. *See, cf., Contreras v. U.S.*, 672 F.2d 307, 309 (2d Cir. 1982). In light of the overwhelming force used to clear the club, and the chaotic and terrifying scene that confronted G.R.R. once outside, no reasonable officer would interpret taking cover under a car as evidence of an intent to flee rather than an effort to secure his physical safety. Nor does his presence at the club bear on flight risk. *See Ybarra v. Illinois*, 444 U.S. 84, 91 (1979) (“mere propinquity to others suspected of criminal activity does not, without more, give rise to probable cause”).²⁵

iv. J.S.T.

For J.S.T.—and J.S.T. alone—defendants have identified a facially plausible theory of probable cause, specifically, that he told the officer that he had no prior issues or contact with immigration despite having been voluntarily removed to Mexico at the border approximately twenty years earlier (*see* ECF No. 34 at 33). Notwithstanding J.S.T.’s testimony that he did not understand being turned away at a port of entry as a “problem,” a reasonable officer, had they known about his attempted entry, might have concluded that he was being deliberately evasive (ECF

²⁵ Defendants do not argue that G.R.R.’s vacated conviction for misdemeanor assault was evidence of flight risk. Nor could they under these circumstances. Not only was there no evidence that the ICE officers who arrested him knew this information beforehand, but even if they had, the fact that he had complied with the court process and successfully completed a form of probation over a two-year period in satisfaction of his suspended sentence would not demonstrate flight risk.

No. 47 at 101-02). *See cf.*, *Castañon Nava*, 2025 WL 2842146, at *9; *Pacheco-Alvarez*, 227 F.Supp.3d at 890; *Bautista-Ramos*, 2018 WL 5726236, at *7.

The trouble for defendants is that there is absolutely no evidence that the arresting officer actually knew of J.S.T.'s previous encounter with Border Patrol or considered it in any way when assessing flight risk. Although ICE officers in the field can access information concerning a subject's immigration history, the Court declines to speculate that they did so here (ECF No. 48 at 283-84). As discussed in Section III. A. 3, *supra*, the content and structure of J.S.T.'s I-213 strongly suggests that this information was obtained after the decision to arrest was made. Considering the totality of the circumstances, the Court finds that there was no probable cause for J.S.T.'s warrantless arrest.

At bottom, defendants' arguments for each of the named plaintiffs are *post hoc* rationalizations and guesswork. Plaintiffs have met their burden to show that ICE arrested them without a warrant and without probable cause of flight risk based on an individualized assessment. Defendants have failed to rebut that showing with any specific evidence to the contrary.

b. Plaintiffs have shown that defendants likely have a pattern or practice of ignoring the individualized flight risk determinations mandated by § 1357(a)(2) and § 287.8(c)(2)(ii).

Furthermore, plaintiffs have successfully shown that their cases are not isolated incidents, but part of a larger policy, pattern, or practice by ICE in this state.

On this question, *UFW* is instructive. 785 F.Supp.3d at 716-25. In that case, the court considered whether plaintiffs demonstrated that Customs and Border Patrol (CBP) had a policy, pattern, and/or practice of warrantlessly arresting suspected noncitizens in California’s Central Valley “without the required individualized flight risk analysis,” mirroring the issue before this Court. *Id.* at 723. The *UFW* court was presented with “evidence regarding 11 arrests,” specifically, affidavits from three named plaintiffs, affidavits from four putative class members, and an affidavit from a labor organizer who provided information told to her by four anonymized individuals. *Id.* at 724-725. The court concluded that this “significant anecdotal evidence” was sufficient to establish a pattern or practice claim, and that plaintiffs were likely to succeed on the merits.²⁶ *Id.* at 724, 735.

The quantum and quality of pattern or practice evidence in this case is similar to that in *UFW*. This Court considered the testimony (and supporting documents) of the four named plaintiffs, the hearsay accounts of four putative class members (J.P.P., J.C.C., O.M.R., and F.J.), and evidence from a veteran immigration attorney regarding 15 to 20 similar warrantless arrests seemingly made without any individualized assessment of flight risk. As in *UFW*, the Court rejects the contention

²⁶ Other courts have found that even less is required to make a successful pattern or practice claim for violation of § 1357(a)(2). In the original *Nava* decision, the court found that the allegations of just five warrantlessly arrested individuals were enough to defeat a motion to dismiss. 435 F.Supp.3d at 900-02.

that individual differences between the plaintiffs or their arrests—such as a vehicle stop or a largescale raid—defeats this pattern or practice claim. *See id.* at 725 (finding that because plaintiffs alleged that CPB failed to perform probable cause determinations “*at all*” ... “[d]efendants’ assertions regarding the differences in circumstances ... are unavailing”) (emphasis in original)).

In concluding that there likely exists a policy, pattern, and/or practice of disregarding flight risk, this Court, as in *UFW*, “harmoniz[es]” the plaintiffs’ “undisputed” anecdotal experience with the many media statements from top immigration officials, the nature of ICE’s ongoing enforcement operations, and the agency’s own statistics regarding the criminal histories of those it has arrested. *Id.* at 716; *see also Nava*, 435 F.Supp.3d at 901-02 (same); *Castañon Nava*, 2025 WL 2842146, at *13 (same). The Court also believes that Broadcast II, sent by ICE’s top legal counsel and purporting to rescind the warrantless arrest policy outlined in Broadcast I, is substantial evidence of a *different* policy. Indeed, consistent with Broadcast II, ICE informed the *Castañon Nava* court that its agents had immediately ceased complying with the probable cause documentation requirement in the settlement agreement. 2025 WL 2842146, at *22.

Finally, the Court’s conclusion is bolstered by the hearing testimony of Greg Davies, third in command at ICE’s Denver field office (*see* ECF No. 48 at 270). Although Mr. Davies testified that he was trained on § 1357(a)(2) and was charged

with ensuring compliance from subordinate officers (*id.* at 272-76, 297-98), he could not seemingly recall the correct standard, stating, at one point, that he believed a warrantless arrest was authorized if “there’s a possibility of that person possibly escaping” (*id.* at 273). His testimony does not imbue the Court with great confidence that ICE rigorously applies the individualized-flight-risk-assessment requirement and instead supports plaintiffs’ contention that ICE has a pattern or practice of failing to make such determinations.

c. Plaintiffs have shown that defendants’ policy, pattern, and/or practice likely violates the APA.

In order to state a claim under the APA, plaintiffs must show that defendants’ alleged unlawful policy, pattern, and/or practice constitutes “final agency action.” *Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 890 (1990). A “final” action has two components: (1) it “must mark the consummation of the agency’s decision making process,” and (2) “must be one...from which legal consequences will flow.” *Bennett v. Spear*, 520 U.S. 154, 177-78 (1997). *See also Lujan*, 497 U.S. at 890 (dismissing APA claim against federal Bureau of Land Management (BLM) because it did not target an “identifiable” final action with “concrete effects”).

Contrary to defendants’ arguments, plaintiffs have satisfied the requirements for stating a judicially reviewable claim under § 706(2)(C) of the APA (*see* ECF No. 34 at 25-30). Under this provision, affected parties may challenge agency actions that exceed “statutory jurisdiction, authority, or limitations, or [are] short of statutory

right.” §706(2)(c); *see also* § 704. Courts have consistently held that an agency policy of effecting warrantless immigration arrests under § 1357(a)(2) without regard for individualized flight risk does precisely that. *See, e.g., Moreno*, 213 F.Supp.3d at 1008-09 (N.D. Ill. 2016); *Roy v. Cnty. of Los Angeles*, Case No. CV 12-09012-AB (FFMx), 2018 WL 914773, at *21 (C.D. Cal. Feb. 7, 2018); *Creedle v. Miami-Dade Cnty.*, 349 F.Supp.3d 1276, 1295 (S.D. Fla. 2018).

Defendants’ attempts to distinguish *Moreno* are unavailing (*see* ECF No. 34 at 29-30). In that case, the court enjoined ICE’s policy of categorically issuing detainees to local jails to prevent the release of suspected removable individuals, finding that it violated the flight risk provision of § 1357(a)(2). 213 F.Supp.3d at 1008-09. Plaintiffs allege that ICE has done something similar here; specifically, it has authorized and implemented a policy, pattern, and/or practice of wholly disregarding individualized flight risk when effecting warrantless arrests under § 1357(a)(2). Assuming there is sufficient evidence of this policy, and as discussed, there is, defendants offer no principled reason why the policy in *Moreno* is subject to judicial review, but the one at issue in this case, is not.

Additionally, the *Nava* court squarely took up the question of whether the policy alleged here constitutes “final agency action” under the APA. 435 F.Supp.3d at 900-04. In that case, the government argued, in its motion to dismiss, that plaintiffs were “asking the court to extrapolate a few individual specific allegations

into a generalized conclusion” that ICE had implemented an unlawful policy of violating § 1357(a)(2) in conducting warrantless arrests. *Id.* at 901. Noting that the finality requirement must be approached “flexibly and pragmatically,” the court rejected this argument, finding that the allegations permitted “an inference that this policy exists—at least in the context of large-scale enforcement actions in the Chicago area” beginning around May 2018. *Id.* at 901-02. The court found that plaintiffs adequately pleaded that ICE “consummated its decision-making process” by making arrests in violation of the statute pursuant to agency policy. *Id.* at 903.

Likewise, in the instant matter, plaintiffs have identified an identical policy, pattern, or practice of ICE’s failing to conduct individualized flight risk assessments during immigration enforcement operations throughout the state of Colorado starting with the beginning of the second Trump administration on January 20, 2025. The fact that this is not committed to writing is not dispositive. *See, e.g., R.I.L.-R v. Johnson*, 80 F.Supp.3d 164, 184 (D. D.C. 2015) (“both law and logic dictate that an unwritten agency policy is reviewable ... a contrary rule would allow an agency to shield its decisions from judicial review simply by refusing to put those decisions in writing”); *Aracely, R. v. Nielsen*, 319 F.Supp.3d 110, 138 (D.D.C. 2018) (internal citations omitted). Additionally, while it is true “that generalized complaints about agency behavior” do not give rise to a claim under the APA, *see Bark v. United States Forest Service*, 37 F.Supp.3d 41, 51 (D.D.C. 2014) (internal citations omitted), to

state a claim, plaintiffs do not need to show that ICE detains each and every person without lawful status that it encounters in the field. *See, e.g., R.I.L.-R*, 80 F.Supp.3d at 173-76 (reviewing the use of general immigration deterrence as a factor in custody determinations for arriving asylum seekers even though not every affected person was detained).

Furthermore, the policy, pattern, or practice plaintiffs challenge is sufficiently “discrete.” *Cf. Lujan*, 497 U.S. at 891 (finding that plaintiffs failed to state a claim under the APA where it challenged a suite of actions or inactions in BLM’s “land withdrawal review program”); *NTEU v. Vought*, 149 F.4th 762, 784 (D.C. Cir. 2025) (rejecting APA challenge to amalgamated agency conduct and decisions as constituting a single policy to shut down the Consumer Financial Protection Bureau). An injunction requiring ICE officers in Colorado to perform individualized flight risk assessments before conducting warrantless arrests—which is already the law—and to document the facts and findings from such assessments in an I-213, a policy ICE subscribed to as recently as last year, would not inject “the judge into day-to-day agency management,” nor task the Court with making wholesale programmatic improvements to ICE’s enforcement operations. *NTEU*, 149 F.4th at 785.

Finally, the policy, pattern, or practice at issue has sufficiently “direct and appreciable legal consequences” for the putative class members subject to it, satisfying the second condition of “final agency action.” *U.S. Army Corps of*

Engineers v. Hawkes Co., Inc., 578 U.S. 590, 598 (2016) (internal citations omitted). Through § 1357(a)(2), Congress has said that noncitizens, even where there is no doubt that they are unlawfully present, may not be subject to arrest and detention without a warrant unless there is “reason to believe” that they will flee before one can be obtained. *Id.* Adopting a policy contrary to that statute—even where such policy is not memorialized and does not result in universal detention—affects the legal rights of the very people that statutory provision is designed to protect (and those of the immigration officers charged with enforcing it). *Cf. Independent Equipment Dealers Ass’n v. E.P.A.*, 372 F.3d 420, 427 (D.C. Cir. 2004) (finding that EPA advice letter had no “concrete impact” on plaintiffs, and thus, could not sustain an APA claim).

For the stated reasons, plaintiffs have shown that: (1) their warrantless arrests likely violated § 1357(a)(2) and § 287.8(c)(2)(ii); (2) defendants likely have a policy, pattern, and/or practice of violating these sections by effecting warrantless arrests without individualized probable cause of flight risk; and (3) their claims are likely reviewable under the APA. Therefore, they are likely to prevail on the merits, and the first preliminary injunction factor weighs in their favor.

3. Likelihood of Irreparable Harm

“The second factor of irreparable harm is the most important prerequisite for the issuance of a preliminary injunction.” *DTC Energy Group, Inc.*, 912 F.3d at 1270

(10th Cir. 2018). Irreparable harm “must be both certain and great, not merely serious or substantial.” *State of Colorado v. U.S. E.P.A.*, 989 F.3d 874, 884 (10th Cir. 2021) (cleaned up). If subjected to this harm, it will be “difficult or impossible” for the plaintiff “to resume their activities or restore the status quo *ex ante* in the event they prevail.” *Heideman v. South Salt Lake City*, 348 F.3d 1182, 1189 (10th Cir. 2003). Once again, plaintiffs have met their burden.

The experiences of the named plaintiffs confirm that the harms wrought by defendants’ unlawful conduct are both “certain and great.” *Colorado*, 989 F.3d at 884. Although none of them presented a flight risk by any reasonable measure, they were each arrested and detained without warning, ultimately spending between approximately two weeks and three months in custody. On its own, this constitutes great harm. *See, e.g.*, No. 25-CV-2720-RMR, *Mendoza Gutierrez v. Baltasar*, 2025 WL 2962908, at *9 (D. Colo. Oct. 10, 2025) (noting that “ICE detention is more akin to incarceration than civil confinement”) (internal citations omitted); *Pinchi v. Noem*, 792 F.Supp.3d 1025, 1037 (N.D. Cal. 2025) (recognizing the “irreparable harms imposed on anyone subject to immigration detention, including subpar medical and psychiatric care in ICE detention facilities, the economic burdens imposed on detainees and their families as a result of detention, and the collateral harms to children of detainees whose parents are detained”) (internal citations omitted).

But even after they were released, the harms stemming from their warrantless arrests have reverberated. Mr. Ramirez Ovando’s family had to sell his truck and take out \$20,000 in debt (*see* Pl. Ex. 1, Ramirez Ovando Aff., at ¶35). Ms. Dias Goncalves lost her apartment, forcing her to move back in with her parents far away from her school (ECF No. 47 at 42). J.S.T. also lost his apartment, lives in small room in a family member’s mobile home, and his relationship with his nieces has suffered as a result (*id.* 94-95). Three of them have ankle monitors and reporting requirements. All the plaintiffs fear rearrest, and they and their families are suffering from emotional distress. Their injuries are real, and they are irreparable in the sense it is “difficult or impossible” for them “to resume their activities or restore the status quo ex ante.” *Heideman*, 348 F.3d at 1189 (10th Cir. 2003).

These and similar harms will certainly befall other members of the putative class without the requested injunction. To be sure, neither the named plaintiffs nor the putative class members have a categorical right to be free from contact with ICE, removal proceedings, or even immigration detention and other forms of monitoring. They are, after all, in the country without lawful status and thus are properly subject to apprehension, arrest, detention, and removal according to Congress’ design. However, the specific harms that attend warrantless arrest without probable cause of flight are not inevitable. They are the direct result of defendants’ ongoing violation of the law. As Mr. Guadian testified:

There's different ways to get people into removal proceedings, right? Not everyone goes to a detention center for removal proceedings. You can be placed in removal proceedings and await those proceedings from home (ECF No. 47 at 147) (cleaned up).

If instead of being arrested immediately by ICE, plaintiffs were allowed to go home until summoned into immigration court or arrested on an administrative warrant, they would have had the opportunity to speak to their families, pay their rent, put their items in storage, and try to obtain representation by an immigration lawyer (*see id.* at 37, 94, 183-84). The deprivation of these opportunities is real, irreparable harm that will befall putative class members if an injunction is not ordered. Moreover, requiring ICE to release Ms. Dias Goncalves, J.S.T., and G.R.R. from their current restrictions, and obtain a proper warrant, will at least abate their ongoing harms from their unlawful arrests.

Finally, the Court rejects defendants' argument that plaintiffs cannot show a likelihood of irreparable harm in light of Broadcast III, which was issued a week before the hearing, and "already require[es] ICE officers to comply with § 1357(a)(2)" (ECF No. 34 at 37). This argument dovetails with the mootness doctrine, which imposes a "heavy burden" on the government "of persuading the court that the challenged conduct cannot be reasonably be expected to start up again." *Adarand Constructors, Inc. v. Slater*, 528 U.S. 216, 222 (2000). *See id.* ("Voluntary cessation of challenged conduct moots a case ... only if it is *absolutely*

clear that the allegedly wrongful behavior could not reasonably be expected to recur”) (emphasis in the original). Defendants have not carried that burden.

The court in *UFW* considered and rejected a similar argument. There, defendants claimed the case was mooted by a recently-issued “Muster” statement of policy, which articulated the standards for “reasonable suspicion, flight risk assessments, and documenting facts and circumstances on warrantless arrests,” arguing that “there is now no reasonable expectation that the alleged wrong will be repeated.” 785 F.Supp.3d at 730, 737. The court concluded that the policy statement was entitled to little weight because: (1) it was “neither broad in scope nor unequivocal in tone”; (2) it was issued just one business day before the defendants were required to respond to the request for a preliminary injunction; (3) defendants could withdraw or revise the Muster statement at any time; and (4) defendants did not “repudiate the alleged wrongful allegations.” *Id.* at 739.

As in *UFW*, the circumstances in the instant matter do not warrant any confidence that ICE intends to change its practices after the most recent policy statement email. Broadcast III is hardly “unequivocal in tone,” as it explicitly states that its issuance was directed by a court (after finding that the agency flagrantly violated and attempted to unilaterally terminate its settlement agreement prohibiting the very same conduct, no less). It sets an expiration date of February 5, 2026. Defendants, as in *UFW*, have not repudiated any of their prior actions and maintain

that they have not violated the law. Most importantly, plaintiffs presented evidence that even after Broadcast III was issued, ICE has continued to conduct warrantless arrests in Colorado without assessing flight risk, specifically in the case of F.J. and his two children in Durango. History and the public statements of top DHS and ICE officials reflect that, in the field, these broadcast statements are honored in the breach.

ICE has almost doubled its headcount in Colorado this year alone, is actively recruiting and hiring many more officers, and plans to open three additional detention centers in Colorado, nearly tripling its current capacity (*see* ECF No. 47 at 164-70; *see also, e.g.*, Pl. Exs. 48, 51, 52).²⁷ On this record, plaintiffs have shown that, without the requested injunction, there is likely to be a substantial *increase* in the number of warrantless arrests made without probable cause of flight risk.

For these reasons, the Court finds that the second preliminary injunction factor, irreparable harm, favors plaintiffs notwithstanding the most recent ICE policy statement.

²⁷ Pl. Ex. 48, Sara Wilson, “Three new ICE detention centers reportedly planned for Colorado,” Colorado Newslines (Aug. 15, 2025); Pl. Ex. 51, Michelle Sandiford, “ICE offers up to \$50,000 signing bonus for retired employees to return to the job,” Federal News Network (Jul. 21, 2025); Pl. Ex. 52, Anna Alejo & Austen Erblat, “ICE recruitment ad made to lure Denver police officers faces pushback from police and city leaders,” CBS Colorado (Sept. 26, 2025).

4. The Balance of the Equities

Lastly, the Court must consider whether “[plaintiffs’] threatened injury without the injunction outweighs [d]efendants’ injury with the injunction,” as well as the harm, if any, to the public interest. *Nat’l Ass’n of Industrial Bankers*, 2025 WL 3140623, at *23.

As should be clear by now, the harms to the plaintiffs, including putative class members, without an injunction, are substantial. At the same time, the government and the public have a strong interest in enforcing the immigration law. *See Noem v. Vasquez Perdomo*, ----S.Ct.----, 2025 WL 2585637 (Sept. 8, 2025) (Mem.) (Kavanaugh, J., concurring); *United States v. Martinez-Fuerte*, 428 U.S. 543, 556-57 (1976). “The Judiciary does not set immigration policy or decide enforcement priorities,” and nothing in this Opinion should be construed to say otherwise. *Perdomo*, 2025 WL 2585367, at *5. However, the relief ordered by this Court does not enjoin the government “from effectuating statutes enacted by representatives of its people.” *Id.* at *3. Rather, it compels the opposite. Neither the government nor the public can claim any legitimate interest in the systematic violation of § 1357(a)(2)’s prohibition against warrantless arrests except upon individualized probable cause of flight risk, and that is all this Court enjoins. *See, e.g., Fish v. Kobach*, 840 F.3d 710, 756 (10th Cir. 2016) (the public interest is served by carrying out Congress’ legislative design); *Andujo-Andujo v. Longshore*, 14-cv-01532-REB,

2014 WL 2781163, at * 6 (D. Colo. Jun. 19, 2024) (ICE’s compliance with the law is in the public interest). Thus, the balance of the equities weighs in favor of the plaintiffs.

As plaintiffs have carried their burden, the Court will issue a preliminary injunction to the extent described in the following section.

V. Remedy

The Court grants the following remedies.

A. Plaintiffs’ Motion for Class Certification (ECF No. 14)

Plaintiffs have met their burden to show by a preponderance of the evidence that the putative class (“Warrantless Arrest Class”), satisfies the requirements of Rule 23(a) and Rule 23(b)(2) of the Federal Rules of Civil Procedure.

Accordingly, for the purposes of entering a preliminary injunction in this case, the Court provisionally certifies the Warrantless Arrest Class, defined as:

All persons since January 20, 2025, who have been arrested or will be arrested in this District by immigration officers without a warrant and without a pre-arrest, individualized assessment of probable cause that the person poses a flight risk.

Ms. Dias Goncalves, J.S.T., and G.R.R. are appointed as Class Representatives. Counsel for plaintiffs are appointed as Class Counsel.

B. Plaintiffs' Motion for a Preliminary Injunction (ECF No. 13)

“It is a well-settled principle that an injunction must be narrowly tailored to remedy the harm shown.” *Davoll v. Webb*, 955 F. Supp. 110, 113 (D. Colo. 1997) (citing *Citizen Band Potawatomi Indian Tribe of Okla. v. Oklahoma Tax Comm'n*, 969 F.2d 943, 948 (10th Cir. 1992)).

Mindful of this principle, the Court grants the motion for a preliminary injunction only to the extent necessary to: (1) restore plaintiffs Dias Goncalves, J.S.T., and G.R.R. to the position they would have occupied but for ICE's unlawful conduct; (2) enjoin further violations of the individualized-assessment-of-flight-risk requirement enshrined in § 1357(a)(2) and § 287.8(c)(2)(ii); and (3) ensure compliance with this Order, as set forth in detail below.²⁸

First, defendants shall refund the costs incurred by Ms. Dias Goncalves, J.S.T., and G.R.R. to obtain and post their bonds and shall remove their ankle monitors and terminate their reporting requirements and other conditions of release. Ms. Dias Goncalves, J.S.T., and G.R.R. shall not be rearrested except upon a properly obtained administrative or judicial warrant. If they are rearrested, absent a material change in circumstances, they shall not be subjected to any period of

²⁸ The standards for determining probable cause of flight risk for a warrantless arrest and documentation in a Form I-213 are substantially the same as those ICE has previously set out for itself in Broadcasts I and III (*see* Def. Exs. E and G) and are described in Part II.B of this Opinion, *supra*.

detention nor any additional or more onerous release conditions than they are presently subject to.

Second, defendants shall not effect warrantless arrests in this District unless, pre-arrest, the arresting officer has probable cause to believe that the individual is in the United States in violation of United States immigration laws and probable cause that the person being arrested is likely to escape before a warrant can be obtained, as required by 8 U.S.C. § 1357(a)(2) and 8 C.F.R. § 287.8(2).

In considering the likelihood of a person's escape before a warrant can be obtained for their arrest, an immigration officer must consider the totality of the circumstances known to the officer before making the arrest. These include circumstances the officer discovers between stopping a person and arresting them without a warrant. Factors relevant to the determination should include the following: the officer's ability to determine the person's identity; attempted flight from the officer; knowledge of the person's prior escapes or evasions of immigration authorities or, on the other hand, prior court attendance or other compliance with authorities; ties to the community (including family circumstances, residence, or employment); and other specific circumstances that weigh in favor of or against a reasonable belief that the person is likely to abscond. The particular circumstances before an officer are not to be viewed singly; they must be considered as a whole.

Mere presence within the United States in violation of United States immigration law is not, by itself, sufficient to conclude that a person is likely to escape before a warrant for arrest can be obtained.

Third, as soon as practicable after a warrantless arrest, the arresting officer shall document in writing the facts and circumstances surrounding that arrest in the narrative section of the detainee's Form I-213.

This documentation must include: (a) that the person was arrested without a warrant, (b) the location of the arrest and whether this location was a place of business, residence, vehicle, or public area, (c) whether the person is an employee of the business, if arrested at a place of business, or whether the person is a resident of the residence, if arrested at a residential location, (d) the person's ties to the community, if known at the time of the arrest, including family, home, or employment, (e) the specific, articulable facts supporting the conclusion that the person was present in violation of United States immigration law, (f) the specific, particularized facts supporting the conclusion that the person was likely to escape before a warrant could be obtained, and, (g) a statement describing how, at the time of the arrest, the officer identified themselves as an immigration officer who is authorized to execute an arrest and informed the person of the arrest and the reason for the arrest.

Information learned post-arrest relevant to a custody determination should be documented separately from the information relevant to the likelihood of escape known at the time of the warrantless arrest.

Fourth, in a manner, method, and at regular intervals to be agreed upon by the parties, or if no such agreement is possible, in a manner, method, and at regular intervals designated by this Court in a future Order, defendants shall provide to plaintiffs' counsel, and if necessary, this Court, a subset of randomly selected Form I-213s for warrantless arrests conducted by immigration officers in this District. Additionally, defendants shall, upon request, provide to plaintiffs' counsel the Form I-213 for a specific individual warrantless arrest no later than ten (10) days after the arrest.

The relief sought by plaintiffs in their proposed order (ECF No. 13-1) regarding training requirements and proof of compliance for the same (items five and six) is denied. Plaintiffs have not made a showing, at least at this point, that this relief is necessary to remedy the established harm. However, should compliance with the Order prove elusive, plaintiffs may renew this request.

Plaintiffs will not be required to post a bond. *See Continental Oil Co. v. Frontier Refining Co.*, 338 F.2d 780, 782 (10th Cir. 1964) (holding that the district court has "wide discretion in the matter of requiring security" for preliminary relief, and where there is no "likelihood of harm" to the adverse party, "no bond is

necessary”). There is no likelihood that ICE will be harmed by an injunction that “directs compliance with ... [its] statutory obligations,” and thus, bond would serve no purpose here. *UFW*, 785 F.Supp.3d at 742 (declining to impose a bond); *see also Arevalo v. Trump*, 785 F.Supp.3d 644, 668 (C.D. Cal. 2025) (noting that “courts routinely impose either no bond or a minimal bond in cases involving public interests”) (internal citation omitted).

C. Defendants’ Partially Unopposed Motion to Restrict Remote Electronic Access (ECF No. 46)

Finally, defendants’ motion to restrict remote electronic access to the case file under Fed. R. Civ. P. 5.2(c) is granted in part and denied in part (ECF No. 46).

“Lawsuits are public events,” and this is a matter of significant public import. *Luo v. Wang*, 71 F.4th 1289, 1296 (10th Cir. 2023) (internal citation omitted). “Accordingly, even if this case is one relating to immigration detention such that access is limited by default under Rule 5.2(c), the Court finds it appropriate for this case to be made ... remotely accessible to class members and the public” with more limited restrictions. *Sorto-Vasquez Kidd v. Noem*, 2:20-cv-03512-ODW (JPRx), 2025 WL 1715514, at *1 (C.D. Cal. May 7, 2025).

On the consent of the parties, the Court will enter a protective order under Fed. R. Civ. P. 5.2(e)(2) restricting public access to the declaration of Mr. Davies (ECF No. 35), submitted by defendants in their response to plaintiffs’ motion for a preliminary injunction (*see* ECF No. 46 at 1-2). The Court will entertain a further

protective order under Rule 5.2(e), to be discussed and agreed upon by the parties, to the extent necessary to protect additional private, personal information that appears in the electronic case file, keeping in mind that the business of the Court is done in the public eye absent good cause for restricted access.

VI. Order

1. Plaintiffs' Motion for Class Certification (ECF No. 14) is GRANTED, as set forth in the Remedy section above.
2. Plaintiffs' Motion for a Preliminary Injunction (ECF No. 13) is GRANTED in part and DENIED in part, as set forth in the Remedy section above.
3. Defendant's Partially Unopposed Motion to Restrict Remote Electronic Access (ECF No. 46) is GRANTED in part and DENIED in part, as set forth in the Remedy section above.
4. Plaintiffs are awarded their reasonable attorneys' fees, costs, and other disbursements permitted under the Equal Access to Justice Act, 28 U.S.C. § 2412, in an amount to be agreed upon by the parties or else determined by the Court.
5. The parties shall meet and confer in order to agree upon a schedule for the case.

SO ORDERED this 25th day of November, 2025.

By the Court:


—

R. Brooke Jackson
Senior United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

CASE NO. 1:25-cv-03183-RBJ

REFUGIO RAMIREZ OVANDO,
CAROLINE DIAS GONCALVES,
J.S.T., and
G.R.R.,

Plaintiffs,

v.

MARKWAYNE MULLIN,
TODD LYONS,
GEORGE VALDEZ,
in their official capacities,¹

Respondents.

ORDER ENFORCING PRELIMINARY INJUNCTION

On November 25, 2025, the Court issued a preliminary injunction (“PI” or “PI Order”) enjoining U.S. Immigration and Customs Enforcement (“ICE”) from effecting warrantless arrests in the District of Colorado unless, consistent with federal law, the arresting officer makes a pre-arrest, probable-cause determination that the individual is likely to escape before a warrant can be obtained. ECF No. 49

¹ Pursuant to Federal Rule of Civil Procedure 25(d), Markwayne Mullin and George Valdez are automatically substituted as defendants in their official capacities as the Secretary for the Department of Homeland Security and the Director of the Denver Field Office for U.S. Immigration and Customs Enforcement, respectively.

at 61 (PI Order). To ensure transparency and compliance, the Court also ordered certain documentation and reporting requirements. *Id.* at 62–63.

Before the Court now is plaintiffs’ Motion to Enforce the Preliminary Injunction (“Motion to Enforce” or “Motion”) and Supplement to Motion to Enforce (“Supplement”). ECF Nos. 82, 100. Plaintiffs allege that in the months following the PI Order, defendants have demonstrated “widespread noncompliance” with both the prohibition against warrantless arrests without the mandatory flight risk analysis and the documentation requirements. ECF No. 82 at 8. To ensure compliance, plaintiffs seek a number of remedial measures, including requiring training for ICE officers, and imposing new documentation and reporting protocols. Defendants contend that the evidence shows that ICE has “worked diligently to comply with the Court’s preliminary injunction” while continuing to engage in its “statutorily-mandated immigration duties.” ECF No. 90 at 1. Therefore, they argue, the “sweeping relief” requested by plaintiffs is “unwarranted and premature.” *Id.*

The matter is fully briefed. ECF Nos. 82, 90, 100, 105. In addition, the Court received testimony and documentary exhibits during a two-day hearing. ECF Nos. 97, 98. Having reviewed the submissions, the evidence, and the law, the Court finds that defendants have demonstrated material noncompliance with the PI Order and relief at this juncture is warranted and necessary. The Motion is GRANTED in part and DENIED in part, and the Supplement is DENIED, as set forth below.

I. Background

A. The Court's PI Order

Section 8 U.S.C. 1357(a)(2) governs warrantless immigration arrests. This statute provides that an immigration officer may conduct a warrantless arrest only where “he has reason to believe,” or probable cause, that an individual is: (i) unlawfully present in the United States and (ii) “likely to escape before a warrant can be obtained for his arrest.” *Id.* This double-pronged probable cause requirement is mirrored by the statute’s implementing regulation, 8 C.F.R. § 287.8(c)(2)(i)–(ii). ICE’s noncompliance with the second “flight risk” prong when conducting warrantless arrests of “collaterals”—noncitizens ICE has not targeted for arrest but encounters in the field—is at the center of this case.²

On October 9, 2025, four noncitizens—Refugio Ramirez Ovando, Caroline Dias Goncalves, J.S.T., and G.R.R.—filed a complaint alleging that they were unlawfully arrested as part of ICE’s pattern-and-practice of making warrantless

² On January 28, 2026, ICE Director and defendant in this case, Todd Lyons, issued a memorandum (“Lyons Memo”) to all ICE personnel in which he distinguished the statutory language “likely to escape” from the concept of “flight risk.” *See* Pl. Hr. Ex. 218.003. He conceded that the agency has long understood these concepts as equivalent for the statutory probable cause analysis but contended that “[t]his unreasoned position was incorrect,” and that the statute is concerned purely with whether a noncitizen is likely to move from the physical location where he is encountered before officers can obtain an administrative warrant. *Id.* Without addressing the ways in which the Lyons Memo conflicts with the PI Order at this juncture, *see* Part.III.C.1.b, *infra*, the Court notes that it will continue to refer to officers’ obligation under § 1357(a)(2) to assess an individual’s “flight risk” or “likelihood of escape” interchangeably.

immigration arrests in Colorado without conducting individualized flight-risk assessments in violation of § 1357(a)(2) and § 287.8(c)(2)(ii). *See* ECF No. 1. In their complaint and subsequently filed Motion for Preliminary Injunction, plaintiffs sought an injunction enjoining defendants from further violations of these provisions on behalf of a class of similarly-situated individuals. *Id.* at 47; ECF No. 13 at 18.

At the end of October, the Court held a two-day preliminary injunction hearing. *See* ECF Nos. 41, 43. During that hearing, the Court heard convincing testimony from the named plaintiffs—each of whom had deep community ties—that, after encountering them in the field, ICE made no effort to assess whether they were likely to escape before arresting them without a warrant. *See* ECF No. 48 at 28–49, 50–79, 80–102, 172–191 (PI Hr. Tr.). Their testimony was corroborated by the narrative portions of the reports documenting their encounters and arrests (Form I-213s), which were uniformly bereft of information pertaining to their perceived flight risk or community ties. Def. PI Hr. Exs. A, B, C, D.³ This pattern was mirrored by the hearsay testimonies, affidavits, and I-213s the Court received regarding 15 to 20 similar warrantless arrests in Colorado. *See* ECF No. 48 at 192–218, 226–257, 377–389; Pl. PI Hr. Exs. 4–5; Def. PI Hr. Ex. L. ICE’s disregard for the statutory mandate was also reflected in the numerous, consistent public

³ In this Order, exhibits from the PI hearing are cited as “[Party] PI Hr. Ex.,” while exhibits from the hearing on the Motion to Enforce are simply cited as “[Party] Hr. Ex.”

statements from national and local senior agency officials emphasizing that ICE officers are being directed to arrest everyone they encounter in the field that they believe to be unlawfully present in the United States. *See* ECF No. 49 at 19–21.

Following the hearing, on November 25, 2025, the Court issued a written order partially granting the PI motion, finding that plaintiffs had successfully shown “defendants likely have a pattern or practice of ignoring the individualized flight risk determinations mandated by § 1357(a)(2) and § 287.8(c)(2)(ii).” *Id.* at 45. The Court fashioned relief narrowly-tailored to remedy this ongoing violation. Specifically, consistent with federal law, the Court ordered that “defendants shall not effect warrantless arrests in this District unless, pre-arrest, the arresting officer has probable cause to believe . . . that the person being arrested is likely to escape before a warrant can be obtained . . .” *Id.* at 61.

The Court also articulated the standards for assessing the likelihood of escape, a determination which is based on “the totality of the circumstances” known to the ICE officer before making an arrest. *Id.* These factors include “the officer’s ability to determine the person’s identity; attempted flight from the officer; knowledge of the person’s prior escapes or evasions of immigration authorities or, on the other hand, prior court attendance or other compliance with authorities; ties to the community (including family circumstances, residence, or employment); and other specific circumstances that weigh in favor of or against a reasonable belief that the

person is likely to abscond.” *Id.* Furthermore, a noncitizen’s unlawful presence in the United States is not, by itself, sufficient to conclude that he “is likely to escape before a warrant for arrest can be obtained.” *Id.*

The Court did not develop these standards on its own; rather, they track ICE’s own official policy statements regarding flight risk assessment. *See* Def. PI Hr. Ex. E, Broadcast Statement of Policy, Final Draft, Nov. 23, 2021 (“Broadcast I”). Just days before the PI hearing in this case, ICE resent these standards to its agents nationwide pursuant to an order from another district court. *See* Def. PI Hr. Ex. G, *Castañon-Nava* Broadcast Statement of Policy, Oct. 22, 2025 (“Broadcast III”).

In addition, the Court ordered documentation and reporting measures to ensure compliance. First, with respect to documentation, the Court directed that “as soon as practicable after a warrantless arrest, the arresting officer shall document in writing the facts and circumstances surrounding that arrest in the narrative section of the detainee’s Form I-213.” ECF No. 49 at 62. Specifically, for a warrantless arrest, the arresting officer was required to document the following:

- a. That the person was arrested without a warrant;
- b. The location of the arrest and whether this location was a place of business, residence, vehicle, or public area;
- c. Whether the person is an employee of the business, if arrested at a place of business, or whether the person is a resident of the residence, if arrested at a residential location;

- d. The person’s ties to the community, if known at the time of the arrest, including family, home, or employment;
- e. The specific, articulable facts supporting the conclusion that the person was present in violation of United States immigration law;
- f. The specific, articulable facts supporting the conclusion that the person was likely to escape before a warrant could be obtained; and
- g. A statement describing how, at the time of the arrest, the officer identified themselves as an immigration officer who is authorized to execute an arrest and informed the person of the arrest and the reason for the arrest.

Id. Additionally, the Court indicated that “information learned post-arrest relevant to a custody determination should be documented separately from the information relevant to the likelihood of escape known at the time of the warrantless arrest.” *Id.*

Once again, the Court adopted the documentation standards that ICE developed and promulgated to its own agents as part of a settlement pertaining to the same issue of warrantless arrests in the Northern District of Illinois. *See Castañon Nava v. Dept. of Homeland Sec.*, 806 F. Supp. 3d 823, 837–38 (N.D. Ill. 2025). These documentation standards were supposed to be followed by ICE agents across the country. Indeed, in the instant matter, the government argued that the reissuance of these standards obviated the need for a PI hearing or order since ICE was purportedly already committed to doing what plaintiffs wanted. *See* ECF No. 26 at 3; ECF No. 30 at 9–10, 13–15.

With respect to reporting, the Court directed defendants to produce “a subset of randomly selected Form I-213s for warrantless arrests conducted by immigration

officers in this District” to plaintiffs’ counsel “in a manner, method, and at regular intervals to be agreed upon by the parties.” ECF No. 49 at 63. Defendants were also ordered to provide, upon request by plaintiffs’ counsel, the I-213s for specific individuals without a warrant within ten days of the arrest. *Id.*

Finally, the Court denied plaintiffs’ requests to require training for all immigration officers conducting arrests in this District on their obligations under the PI, and for defendants to provide documentation confirming such training. *Id.* The Court concluded that plaintiffs had “not made a showing, at least at this point, that this relief is necessary to remedy the established harm.” *Id.* However, the Court expressly left open the door to revisit these requests “should compliance with the Order prove elusive.” *Id.*

B. The Motion to Enforce

Following the entry of the PI Order, the parties agreed that defendants would produce to plaintiffs, monthly, “a randomly selected one-third [] of the Form I-213s for warrantless arrests effected [in the District] in the prior month.” ECF No. 82 at 2. Defendants developed a three-step collection, review, and production process. First, a senior ICE official would send all the I-213s for that month’s arrests to defense counsel. ECF No. 103 at 94: 19-24 (Mot. to Enforce Hr. Tr.).⁴ Second,

⁴ The transcript for the hearing on the Motion to Enforce is found at ECF Nos. 103 and 104. For continuity, this Order cites to these proceedings using the transcript page numbers rather than the page numbers of the respective ECF documents.

defense counsel would screen the I-213s “based on whether they indicated on their face that there was a warrant for the arrest.” ECF No. 90 at 7. Third, based on this screening, defense counsel would provide to plaintiffs a random one-third of the I-213s that did not indicate the existence of a warrant.

Plaintiffs filed the instant Motion on March 4, 2026. ECF No. 82. At that time, defense counsel had produced 27 “warrantless arrest” I-213s for the period between November 25, 2025 and December 31, 2025, and five for the period between January 1, 2026 and January 31, 2026. *See* Pl. Hr. Exs. 201, 207. Defense counsel also produced four additional I-213s—for J.A.A.H., R.H.G., C.H.G., and M.A.C.V.—at plaintiffs’ request. *See* Pl. Hr. Exs. 204, 208. However, defense counsel declined to produce 17 specific individual I-213s requested by plaintiffs. For five of those requests, counsel asserted that they were arrested pursuant to an administrative warrant (Form I-200) issued in the field after the initial encounter but before the arrest was made, and therefore, were not subject to disclosure under the PI. *See* Pl. Hr. Exs. 205.001, 206.001, 210.001.

Based on the I-213s they received, plaintiffs claim that defendants have demonstrated uniform noncompliance with the PI. ECF No. 82 at 2. They assert that none of the I-213s conform to the documentation requirements for warrantless arrests. *Id.* at 3. They also allege that defendants continue to make warrantless immigration arrests without conducting the mandatory pre-arrest, individualized

flight-risk determination. *Id.* at 4–6. They ground this argument on the I-213s themselves, as well as sworn statements from some of the arrested noncitizens, the Lyon’s Memo, and DHS’ social media statements referencing the incorrect standard for warrantless arrests. *See id.*; *see also* ECF Nos. 82-8, 82-9, 82-10, 82-11, 82-12.

Plaintiffs also argue that defendants are reclassifying truly warrantless arrests as arrests pursuant to field warrants, improperly exempting them from the PI Order and disclosure. ECF No. 82 at 8–11. Plaintiffs base this concern, in part, on the I-213 for D.C.C., which they acquired through representing him in another matter. *Id.* at 10; *see also* ECF No. 82-14 (I-213 for D.C.C.). They argue that the narrative portion of D.C.C.’s I-213 shows that his arrest on January 24, 2026 was completed before the issuance of a field warrant. *Id.*

To remedy these violations and enforce compliance with the PI, plaintiffs, through their original Motion and post-hearing Supplement, submit 13 requests for relief (with two subparts). *See* ECF No. 82 at 7–8; ECF No. 100. These requests will be set out and discussed in full in the relief portion of this Order, *see* Part III.C, *infra*, but they may be grouped in four categories: training, reporting, documentation, and miscellaneous.

Defendants, for their part, deny that they have engaged in any “ongoing, widespread, and willful violations” of the PI, although they concede that there have been “issues” with nonconforming arrest documentation. *See* ECF No. 90 at 6. They

argue that relief is not warranted generally considering their diligent efforts to comply, self-initiated corrective measures, and improvement over two months, as seen by the lower number of warrantless arrests overall. *Id.* at 1–7. They also claim that the number of warrantless arrests in the District is actually far fewer than the number of I-213s would make it appear, because many of those arrests were likely pursuant to a preexisting warrant, but were not documented as such. Furthermore, they contend that the relief sought “would not ensure compliance with the PI, but would impermissible modify the PI, unduly burden the agency, and permit Plaintiffs to intrude into lawful immigration enforcement functions.” *Id.* at 1.

II. Findings of Fact

The Court has two primary forms of evidence before it: the I-213s and the testimony of four ICE officers (Deportation Officers (“DOs”) J.B., J.L., A.L., and Assistant Field Office Director (“AFOD”) Gregory Davies) who testified at the hearing on the Motion to Enforce.⁵ Together, this evidence paints a picture of ICE’s conduct since the PI was issued. The Court states its conclusions up front and then details the evidence that supports them.

First, ICE’s efforts to train officers who conduct warrantless arrests on the contents of the PI Order have been insufficient. The DOs have an inadequate

⁵ The Court granted defendants’ motion, ECF No. 89, to allow the three DOs to proceed pseudonymously using their initials. ECF Nos. 93, 103: 5: 13–5: 21.

understanding of their obligations with respect to making lawful warrantless arrests and properly documenting them under the PI.

Second, ICE has attempted to avoid occasions where its officers make warrantless arrests by issuing I-200 administrative warrants in the field. However, it is not clear whether these field warrants are actually being issued before the arrest, and therefore, whether these arrests are truly outside the scope of the PI.

Third, putting aside cases where ICE claims to have obtained a field warrant, officers have continued to effect warrantless arrests without making individualized, pre-arrest determinations that the noncitizen is likely to escape before a warrant can be obtained in violation of § 1357(a)(2) and the PI.

Fourth, and finally, ICE has uniformly failed to observe the documentation requirements for warrantless arrests under the PI. At the same time, ICE has, in many cases, failed to note when an arrest was made pursuant to a warrant. While this latter failure is not a violation of the PI, it has made it very difficult to discern the precise extent of ICE's noncompliance with respect to warrantless arrests.

A. Training and Guidance on the PI Order

The officers testified consistently regarding the training that they received on warrantless arrests prior to and following the PI Order.

Initially, in early November, AFOD Davies had in-person and email “communications” with supervising officers about warrantless arrest practices

before the PI was issued. ECF No. 91-1 at ¶ 5 (Davies Decl.); ECF No. 103 at 218–19. As part of these communications, Davies, whom the Court finds credible, emphasized that whenever possible, officers should obtain a warrant before making an arrest, including by requesting a supervisor to issue a warrant for collaterals encountered in the field. ECF No. 91-1 at ¶¶ 5–6; *see also* ECF No. 103 at 240–41.

Then, sometime after the PI was issued, an email was sent out to officers in the Denver Field Office—perhaps on December 2, 2025—setting out the PI’s requirements. *See* ECF No. 90-1 at ¶ 8; ECF No. 103 at 50, 127, 176, 215. Nothing more definitive can be said about this email because defendants declined to produce it, and the witnesses could not recall its contents with any specificity. The witnesses did not receive any “formal training” in connection with the email or the PI generally. *See* ECF No. 103 at 55, 120, 176, 215–217.

In mid-February, after Davies became aware that many of the I-213s did not comply with the PI Order, he organized a formal training for the “processing team”—officers stationed at the field office who intake new arrests by typing up and completing the I-213 for the arresting officer—to ensure that arrest narratives conform with the PI’s documentation requirements. ECF No. 91-1 at ¶ 12; ECF No. 103 at 215–18. As part of this training, the processing team was instructed that if an arrest narrative does not comply with the PI, they must contact the arresting officer to get more information or make the arresting officer return to the office to correct

or complete the I-213 themselves. ECF No. 91–1 at ¶ 12; ECF No. 103 at 215, 219–20. This training was received by approximately 15 out of 200 ICE officers that currently work in the Denver Field Office’s jurisdiction. ECF No. 103 at 216–17.

These actions—Davies’ pre-PI Order communications with the supervisors, the post-Order email detailing the PI’s requirements, and the February training for the processing team—are the full extent of defendants’ efforts to train officers on their obligations under the PI. This isn’t a problem in itself; after all, the Court declined to mandate training in its original PI Order precisely because the injunction merely required compliance with existing statutory requirements for warrantless arrests and documentation protocols that ICE claimed to already have in place. The problem is, as discussed below, the DOs clearly do not know or understand them.

Officer J.B.

Officer J.B. completed his ICE basic training in March 2021. ECF No. 103 at 19. Since then, he has received biannual Fourth Amendment and warrantless arrest training. *Id.* at 30–31. He has also received the *Castañon Nava* Broadcast Statement emails detailing the law and ICE’s official policies for warrantless arrests—the same that are at issue in this case—but candidly admits that he doesn’t recall receiving or having read them. *Id.* at 29–30, 46–47, 48–50.

He also candidly admits that before the PI, he did not document any information regarding flight risk in I-213s for warrantless arrests because he

believed that he didn't have to. *See id.* at 32–35. He claims that after the December 2nd email, he began to “tailor” his narrative sections to reflect the requirements set out in the PI—but at least three of the I-213s show otherwise. *Id.* at 54: 10–12. Specifically, J.B. prepared the narratives for the apparently warrantless arrests of R.C.P., M.A.C.V., and R.H.G., and the I-213s do not comply with the PI in virtually any respect. *See id.* at 68, 70, 83, 85, 86; Pl. Hr. Exs. 207.016, 208.006, 204.015. They certainly bear no indication that J.B. performed a likelihood-of-escape analysis before effecting any one of these arrests. Pl. Hr. Exs. 207.016, 208.006, 204.015.

At the same time, Officer J.B. expressed his belief that he could conclude, absent individualized evidence of attempted flight, that a noncitizen was likely to escape “if the opportunity presented itself,” and that, notwithstanding the law and ICE’s official policy, unlawful presence in the United States is a crime and sufficient to establish flight risk.⁶ *Id.* at 39: 23–40: 3; 44: 16–45: 8, 72: 17–22. While he recognized that before and after the PI, he was supposed to ask a noncitizen questions about their community ties, he did not display any awareness of whether and when those questions should be asked during the encounter to comply with the law for warrantless arrests.⁷ *Id.* at 32: 4–33: 10, 92: 2–93: 24. Consistent with this

⁶ While improper entry or illegal reentry are, under certain circumstances, criminal offenses, *see* 8 U.S.C. §§ 1325, 1326, unlawful presence itself is a civil violation—not a crime.

⁷ In another federal lawsuit, a judge found that Officer J.B., while deployed as part of a surge operation in Portland, Oregon, conducted an unlawful vehicle stop without reasonable suspicion and effected a warrantless arrest without making a pre-arrest, probable-cause determination of

confusion, he appeared, at times, to endorse the troubling position that an arrest is never warrantless so long as an I-200 is issued *at some point*, even if it is back at the field office. *See* ECF No. 103 at 36: 1–8; 37: 18–22; 38: 5–8; 94: 20–95: 12.

In short, Officer J.B.’s testimony gives the Court no confidence that he understood his legal responsibilities with respect to effecting and documenting warrantless arrests before the PI Order or that he understands them now.

Officer J.L.

Like J.B., Officer J.L. has been a DO since March 2021. *Id.* at 111. He also received the *Castañon Nava* Broadcast Statement emails but does not recall receiving any training on them. *Id.* at 116: 9–117: 2, 120: 10–121: 1.

And like J.B., with whom he often partners for enforcement operations, *see id.* at 112: 23–25, 122: 17–24, Officer J.L. could not convincingly articulate his duties for making and documenting warrantless arrests. While he generally agreed—after very long pauses—with plaintiff counsels’ statements of fact about ICE’s official policies, all he could independently recall about the PI was that “we have to have reasonable articulable facts to arrest individuals without signed 200s.” *Id.* at 125: 19–21; *see generally* 124: 17–127: 7. When pressed on “what specific

flight risk. *See M-J-M-A v. Hermosillo*, ---F.Supp.3d---, 6:25-cv-02011-MTK, 2026 WL 562063, at *4–7, 19 (D. Or. Feb. 27, 2026); *see also* ECF No. 103 at 18: 24–19: 13, 101: 24–106: 13.

things” were required for warrantless arrests under the PI, he answered that he was “drawing a blank” and was “not sure.” *Id.* at 126: 14–15.

J.L.’s shallow understanding of the law and policy, as reiterated by the PI, was reflected in his examination about the I-213s for several warrantless arrests that he was involved in. For three separate arrests, J.L. indicated that he assumed that he or his fellow officers had established likelihood of escape through a field interview, even though the I-213s contained no information that would warrant that conclusion. *See id.* at 138: 15–25 (M.A.C.V.), 142: 21–143: 3 (C.H.G.), and 151: 12–17 (D.C.C.). This reflexive assumption demonstrates either an insufficient understanding of the PI’s requirements or the importance of faithfully complying with them, or both.

Officer A.L.

Finally, defendants contend that even if Officers J.B. and J.L. did not demonstrate a proper understanding of their legal responsibilities under the PI, the third witness, Officer A.L. did. *See id.* at 297: 12–24. The Court disagrees.

Officer A.L. has been a DO for 12 years. *Id.* at 167: 18–25. Like J.B., Officer A.L. struggled to distinguish between a warrantless arrest and an arrest made pursuant to a field warrant, as indicated by the following exchange:

Q: I want to talk about before this injunction. Okay? Have you – do you understand that there are circumstances in which ICE deportation officers can engage in warrantless arrests?

A: Mm-hmm. So, what happens – I guess I'm not understanding. At some point they're going to get a warrant – a 200 issued to them.

Q: I understand there's – at some point an I-200 will be issued. Do you have an understanding that an ICE deportation officer has certain authority to engage in warrantless arrests? Yes or no. If you don't know the answer to that, that's okay.

A: Yeah. I'm not very clear what you're trying to say.

Q: Are you aware of any requirements that you as a sworn law enforcement officer have to do before you engage in a warrantless arrest?

A: Yes.

Q: What is that?

A: Find the evidence that this person is here illegally in the country.

Q: Okay. And once you, in your view, if you find the evidence that someone is in the country illegally, you may arrest them?

A: I will take that information to my supervisor and have them look it over to verify that this person is – that we're able to arrest. And he will issue a 200.

Id. at 172: 19–173: 16.

It is clear from this exchange that A.L. does not believe that he makes warrantless arrests—at least since the PI. But setting aside whether that is true, and whether the field warrants are actually issued before formal arrest, his testimony does not evince any understanding of his distinct warrantless arrest authority.

Whether or not he thinks he exercises that authority, as a DO making arrests in the field, he has an obligation to understand its limits under the law and the PI.

Accordingly, the Court finds, based on the testimonies of J.B., J.L., and A.L., and the I-213s, that defendants have failed to adequately train their deportation officers on the requirements of the PI.

B. Field Warrants

As an alternative to making warrantless arrests, defendants encourage their officers to obtain field warrants for collaterals. This practice predates the PI, but in early November, the Denver Field Office stressed that it was the preferred method for making arrests where no warrant exists at the beginning of the encounter. *See* ECF No. 91-1 at ¶¶ 5–7; *see also* ECF No. 103 at 43: 12–44: 15, 240: 25–241: 19.

By regulation, only supervising officers and above can sign I-200 arrest warrants, although the Denver Field Office interprets this authority to extend to DOs temporarily assigned to serve as a supervisor in an acting capacity for any period of time. *See* C.F.R. § 287.5(2); *see* ECF No. 103 at 21: 12–20, 26: 3–27: 16. When an officer encounters a collateral in the field and determines they are unlawfully present, they will contact a supervisor or acting supervisor—who may be on scene, at the office, or elsewhere—and request a warrant. *See* ECF No. 91-1 at ¶ 6; ECF No. 103 at 78: 1–7, 173: 12–174: 11. If the supervisor agrees that there is probable cause of unlawful presence, they can issue the I-200 within minutes in the field. ECF

No. 91-1 at ¶ 6. If they are not on scene, they may affix an electronic signature to the warrant and send it to the arresting officer by email. ECF No. 103 at 175: 1–15.

There are, of course, legal limits to this practice. Most obviously, as AFOD Davies acknowledged, under the Fourth Amendment, a field warrant must *actually* precede the arrest. *See* ECF No. 103 at 240: 9–10 (explaining, in response to a question about whether an officer may arrest and hold someone while they wait for a warrant, “if he’s already arrested, that would have been a warrantless arrest”); *see generally* *U.S. v. Blasdel*, 153 F.4th 1069, 1075 (10th Cir. 2025) (reaffirming principle that officers may not bring an unconstitutional search or seizure within the color of law by later obtaining a warrant). Davies previously explained that the field warrant must be obtained and issued during the course of a consensual encounter. *See* Pl. Hr. Ex. 212.007, ¶ 11. At the Motion to Enforce hearing, he reiterated that officers “may not detain an alien for the sole purpose of obtaining an arrest warrant.” *Id.* at 240: 20–22.

Without delineating the full parameters of ICE’s field warrant authority, it is clear that its officers have not always abided the fundamental and undisputed rule that the I-200 must precede arrest to be considered an arrest upon a warrant. The starkest evidence of this comes from D.C.C., a 53-year old Mexican national who was arrested by Officers J.B. and J.L. on January 14, 2026. *See* Pl. Hr. Ex. 237.005.

D.C.C. testified at the hearing that he was looking for a tool in his truck outside of a construction site where he was working when he was approached by J.B. and J.L. ECF No. 103 at 158: 14–159: 10. They asked him to identify himself, and he provided his SB-251 Colorado driver’s license.⁸ *Id.* at 160: 20–161: 9. Then they asked him where he was from. *Id.* at 161: 10–13. After he told them he was from Mexico, they immediately arrested him, handcuffing him behind the back and placing him in their truck with another arrestee. *Id.* at 161: 17–162: 8.

Defense counsel agreed that “if what [D.C.C.] said is true ... then that was a warrantless arrest,” and the Court has no trouble concluding that it was. *Id.* at 300: 4–5. The Court found D.C.C.—a married father of three who has lived, worked, and paid taxes in the United States for nearly 30 years with no contact with the criminal legal system—completely credible. *Id.* at 155: 13–158: 13. More importantly, in every important respect his account mirrors the narrative in his I-213. *See* Pl. Hr. Ex. 237.005. The narrative indicates, in relevant part, that upon encountering D.C.C. outside the construction site:

Officers asked the male what his name was and he answered [D.C.C.]. Officers asked for an identification, and he produced a Colorado driver’s license with the name

⁸ As discussed in the PI Order, an SB-251 license is “an identification issued by the state of Colorado to individuals who are not citizens of the United States or lawful permanent residents,” and bears certain markings distinguishing it from a standard Colorado license. ECF No. 49 at 13, n. 8. While defendants recognize that an SB-251 license does not automatically mean the individual is unlawfully present, through two hearings in this case, it is clear that ICE agents regularly use it in the field as a proxy justifying further investigation of immigration status if not immediate arrest. *See, e.g.*, ECF No. 103 at 83: 21–85: 2.

[D.C.C.]. Officers asked him what country he is a citizen of and he answered “Mexico.” [D.C.C.] was asked if he has any immigration documents and he said “no.” Officers identified themselves as Officers with ICE *and informed him that he was under arrest for immigration violations.*

Id. (emphasis added). The narrative indicates that after this interaction, J.B. and J.L. ran an immigration check that “revealed no positive matches,” but they still obtained a signed I-200 “due to [D.C.C.’s] own admission of being in the U.S. illegally.” *Id.*

This record plainly shows that D.C.C. was under arrest before J.B. and J.L. obtained a field warrant. This conclusion does not require nuanced constitutional analysis. *See, e.g., Berkemer v. McCarty*, 468 U.S. 420, 434 (1984) (“There can be no question that respondent was ‘in custody’ at least as of the moment he was *formally placed under arrest* and instructed to get into the police car.”) (emphasis added); *Thermidor v. Miami-Dade Cnty.*, 248 F. Appx. 61, 63 (11th Cir. 2007) (unpublished) (“[A]n arrest made on the basis of an unambiguously invalid warrant is unconstitutional.”) (citation omitted). Even J.L. admitted that, based on the report, the I-200 was “done after” D.C.C. had been contacted, detained, and arrested. ECF No. 103 at 152: 18–22.

Accordingly, the Court concludes that, at least on some occasions, arrests that ICE claims are made pursuant to field warrants are, in fact, warrantless.

C. Warrantless Arrests

Putting aside cases where ICE claims to have obtained a field warrant, the record also reflects that officers have continued to make warrantless arrests without conducting pre-arrest, probable-cause determinations of likelihood of escape.

The strongest evidence comes from two separate car stops resulting in the arrests of five collaterals, J.P.A.A.H., C.H.G., and R.H.G. on December 27, 2025, and R.C.P. and M.A.C.V. on January 20, 2026. *See* Pl. Hr. Ex. 204.007–017, 207.015–017, 208.005–007.

In the first encounter, Officers J.B. and J.L. were searching for a target when they observed “three Hispanic male[s] speaking Spanish” get in a car and start driving. Pl. Hr. Ex. 204.008. J.B. believed one individual “matched the description” of their target. *Id.* After running the car’s plates, he learned it was registered to J.P.A.A.H—who was not the target—and, following “immigration checks,” concluded that J.P.A.A.H lacked lawful status. *Id.* They initiated a traffic stop.

According to the I-213s, J.B. and J.L. approached the car and “asked where they are all from and they all claimed to be from Mexico.” *Id.* J.B. and J.L. then asked whether they were “in the United States illegally,” and “all said, ‘yes, illegal.’” *Id.* The officers then “ordered them out of the vehicle” and “informed that they were under arrest for immigration violations,” and placed them in handcuffs. *Id.*

The second encounter unfolded in almost identical fashion. While searching for a target, Officers J.B. and J.L., as part of a larger team, observed “two Hispanic

males,” M.A.C.V. and R.C.P., enter a car “known to be driven” by the target. Pl. Hr. Ex. 207.016. They pursued and pulled the car over. *Id.* Officers “contacted both occupants simultaneously and requested identifications,” which they provided. *Id.* Following a “field interview” in which “both admitted to being in the U.S. illegally,” the officers ordered them out of the car, “informed them that they are under arrest for immigration violations,” and placed them in handcuffs. *Id.*

None of individuals arrested in these encounters were ICE targets. The I-213s do not indicate that the officers asked about community ties or made any individualized flight-risk determinations, nor do they reference any warrants being obtained after these encounters began.

At the hearing, J.L. did not deny that these were warrantless arrests. ECF No. 103 at 135: 8–23, 137: 18–20; 140: 7–144: 13. He also had no memory of asking any questions to assess flight risk, testifying instead that he “assum[ed]” it was “established” during the field interview. *Id.* at 142: 24–143:1; *see also id.* at 138: 19–25. J.B., for his part, gave conflicting and equivocal testimony. Initially, he agreed that he arrested J.P.A.A.H, C.H.G., and R.H.G. as soon as he had probable cause of unlawful presence. *Id.* at 92: 3–8. Later, he suggested that the arrests “might not have been” warrantless because “it could have been [that] we got I-200s on scene.” *Id.* at 94 at 5–7. Likewise, he claimed that he may have obtained field

warrants for M.A.C.V. and R.C.P. because that was the “common practice” at the time, though he could not recall doing so. *Id.* at 76: 5–14; *id.* at 79: 2–5, 81: 8–11.

The Court is not persuaded. First, AFOD Davies confirmed that I-200s existed for four individuals whose I-213s did not reflect a warrant, but none of those individuals is among the five at issue here, giving rise to a negative inference. Nor did defendants refuse to produce the I-213s for M.A.C.V., C.H.G., J.P.A.A.H., and R.H.G.—as they did for five other individuals requested by plaintiffs—on the grounds that a warrant was obtained after the encounters began but before arrest.

Second, as discussed above, in D.C.C.’s case, J.B. *did* document that he obtained a field warrant. While J.B. explained that he “sometimes” forgets to include that information in the I-213, the more likely explanation is that no warrant was obtained for these arrests.⁹ *Id.* at 77: 2–8. This conclusion is reinforced by the striking similarity between these encounters and those that gave rise to the original PI. Indeed, as plaintiffs argue, the I-213s for these five individuals “look just like the ones that led this Court to issue the PI in the first place.” *Id.* at 253: 8–9; *see* ECF No. 49 at 12–18 (discussing the I-213s for the four original named plaintiffs).

⁹ Even if the officers did obtain warrants after these encounters began, J.B.’s testimony makes clear that, as in D.C.C.’s case, they were issued after the individuals were already under arrest. *See* ECF No. 103 at 92: 3–15 (explaining that he put R.H.G. in handcuffs as soon as he determined that he was not lawfully present without any individualized evidence that he was likely to escape or presented a threat to officer safety).

Accordingly, the Court finds that defendants continue to make warrantless arrests without individualized probable-cause determinations for flight risk.

D. Documentation Practices

The PI could not have been clearer: for every warrantless arrest, the arresting officer *must* document in the I-213 that the arrest was executed without a warrant. ECF No. 49 at 62. Despite this, not one of the 36 I-213s that have been produced pursuant to the PI Order complies with this mandate. Nor do they comply with other documentation requirements; not a single narrative section records the person's community ties or “the specific, particularized facts supporting the conclusion that the person was likely to escape before a warrant could be obtained.” *Id.*

Defendants do not meaningfully deny that they have failed to comply with these mandates. *See* ECF No. 90 at 6 (“As to the PI’s documentation requirements, ICE has identified issues with its officers’ arrest documentation and has taken steps to address those issues”); ECF No. 104 at 298: 4–5 (“The documentation of the I-213s needs correcting . . . It’s really a documentation issue[.]”). AFOD Davies, who, again, the Court credits, acknowledged that he has *never* seen “a 213 for a warrantless arrest that explained that [the arresting officer] had found probable cause to believe the person was an escape risk or a flight risk and set forth the particularized facts that supported that” conclusion. ECF No. 103 at 229: 3–8.

Nevertheless, defendants argue that the problem is overstated because many of the I-213s are likely false positives: arrests where the arresting officer had a warrant although it was not documented. ECF No. 90 at 7; *see also* ECF No. 91-1 at ¶¶ 10–11. ICE officers “are expected to obtain an I-200” before contacting and arresting a target in the field, at a jail, or during a check-in at one of ICE’s field offices. ECF No. 91-1 at ¶ 10; *see also* ECF No. 104 at 16: 3–17: 13, 18: 1–23, 20: 3–18. Additionally, where an officer encounters a collateral in the field who has been arrested by ICE before or has a prior removal order, there is, in many cases, an active warrant on file. *See* ECF No. 91-1 at ¶ 11; ECF No. 103 at 60: 17–25, 202: 13–203: 11. In such cases, by definition, any ensuing arrest is pursuant to a warrant.

This argument has some merit. For instance, Davies found preexisting warrants for four of the individuals that were among the “warrantless arrest” I-213s turned over by defense counsel.¹⁰ *See* ECF No. 91-1 at ¶ 11; ECF No. 103 at 201: 2–14. Moreover, a significant number of the other I-213s contain arrest narratives that suggest the existence of a preexisting arrest warrant—for instance, the individual was the subject of a targeted arrest in the field, in a jail, or in one of ICE’s offices.

¹⁰ Specifically, Davies searched for and found warrants predating the arrests of A.A.G.R., R.J.R.P., F.L.Z., and C.E.P.C. *See* ECF No. 91-1 at ¶ 11; ECF No. 103 at 201: 2–14. Their I-213s can be found at Pl. Hr. Exs. 201.029–031, 202.056–058, 207.006–008, and 207.018–020, respectively. A.A.G.R. and C.E.P.C. were collaterals but had arrest warrants from previous encounters with ICE, R.J.R.P. was “part of a targeted enforcement action” in the field where a warrant had been issued five days before, and F.L.Z. was arrested with a warrant during a check-in at an ICE field office.

The problem, however, is that the I-213s lie along a spectrum. In some, like a jail arrest, the likelihood that the officers had a warrant is near certain. In others, as in the car stops discussed in Part II.C, above, it is clear that they did not. In still others, it is not clear one way or another. For example, as a factual matter, ICE does not issue an I-200 for everyone it arrests, particularly where it asserts that their detention is governed by 8 U.S.C. § 1225(b) as opposed to 8 U.S.C. § 1226(a). *See, e.g., Yanez Chavez v. Baltazar*, 1:26-cv-00556-SKC, 2026 WL 516934, at *2 (D. Colo. Feb. 25, 2026); *Rivero v. Mina*, ---F.Supp.3d---, 6:26-cv-66-RBD-NWH, 2026 WL 199319, at *2 (M.D. Fla. Jan. 26, 2026) (“The Government also argued that Gimenez Rivero is subject to mandatory detention under 8 U.S.C. § 1225, so no warrant or notice was required to detain him”); *see also* ECF No. 91-1 at ¶ 11 (“[I]f an individual was previously encountered and detained by immigration officials, they *may* have an I-200 arrest warrant in their file[.]”) (emphasis added).

The Court cannot therefore conclude that prior contact with ICE guarantees that the individual was arrested pursuant to a preexisting warrant unless the I-213 says so explicitly. Likewise, just because officers are *supposed* to obtain a warrant before arresting a noncitizen at one of the ICE offices or at BI, an agency subcontractor, does not mean that they always do so. The bottom line is that ICE’s consistent failure to distinguish in the I-213s between warrantless arrests and arrests upon a warrant confounds effective oversight.

Accordingly, ICE’s failure to comply with the PI’s documentation requirements for warrantless arrests is largely conceded and, in any event, established. Moreover, its corollary failure to document where an arrest *was* made on a warrant—while not itself a violation of the PI—frustrates plaintiffs’ and the Court’s ability to effectively monitor compliance. Defendants recognize these problems and propose to address them through new review procedures. *See* ECF No. 91-1 at ¶¶ 12–14; ECF No. 103 at 203: 18–204: 20, 205: 3–206: 24. However, these efforts do not erase the manifest noncompliance with the PI to this point.

III. Discussion

A. The Court has jurisdiction to enforce the PI

A federal district court has inherent authority to enforce its orders. *See Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991) (recognizing courts’ “power to impose . . . submission to their lawful mandates”) (quoting *Anderson v. Dunn*, 6 Wheat. 204, 227 (1821)). That authority extends to preliminary injunctions, which courts may enforce and, if necessary, modify to achieve their intended effect. *Hutto v. Finney*, 437 U.S. 678, 690 (1978) (“Once issued, an injunction may be enforced”).

Although the filing of an appeal generally “divests the district court of its control over those aspects of the case involved in the appeal,” it does not prevent a district court from taking steps necessary to ensure compliance with an unstayed preliminary injunction. *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56,

58 (1982). Under Federal Rule of Civil Procedure 62(d), a court “may suspend, modify, restore, or grant an injunction” while an appeal of the underlying injunction is pending. While the court may not “materially alter the status of the case on appeal,” it may act to preserve the status quo as established by the injunction. *U.S. v. Power Engineering Co.*, 10 F. Supp. 2d 1165, 1171 (D. Colo. 1998) (finding jurisdiction to entertain plaintiff’s “motion to enforce or modify the injunction,” and granting additional relief to effectuate the original injunction); *see also Lin v. Chertoff*, 07-cv-01957-LTB, 2007 WL 4459200, at *1 (D. Colo. Dec. 14, 2007) (enjoining the government from removing a noncitizen from the United States while the district court’s habeas order was on appeal because removal would “significantly alter the status quo”). This authority reflects the court’s continuing equitable jurisdiction and ongoing responsibility to enforce the relief it has granted. *See Sys. Fed’n No. 91, Ry. Emp. Dep’t, AFL-CIO v. Wright*, 364 U.S. 642, 647 (1961).

B. Plaintiffs are entitled to relief

As discussed in Part II, above, the evidence at the hearing—especially the I-213s and the testimonies of J.B., J.L., and A.L.—demonstrate defendants’ material noncompliance with the PI Order. The Court finds that ICE officers have continued to effect warrantless arrests without making individualized probable cause determinations of the likelihood of escape in defiance of § 1357(a)(2) and the PI,

and they have entirely failed to document these arrests in the manner prescribed. That is enough to merit relief.

Defendants assert that no relief is necessary because there is a “positive trend” in the data. *See* ECF No. 104 at 304: 1–4; *see also* ECF No. 90 at 3. Specifically, they point to the fact that, for the first month following the PI Order, defense counsel found 71 I-213s that appeared, on their face, to reflect warrantless arrests, but in the second month, found only 15. *See* ECF No. 104 at 304: 10–25; ECF No. 90 at 3; Pl. Hr. Exs. 202.001, 207.001. In their view, this decrease indicates that, after an adjustment period, ICE has begun substantially complying with the PI.

The Court rejects this argument for several reasons. First, as the Court stated at the hearing, a “[p]ositive trend doesn’t mean there was compliance,” it means “that there wasn’t compliance,” and now, perhaps, there is less noncompliance. ECF No. 104 at 304: 5–6. When the Court issues an injunction, “it’s to be followed.” *Id.* Second, although fewer noncompliant I-213s were flagged for the February production, the two most flagrant examples of noncompliance in the data set—the car stops that led to the arrests of J.P.A.A.H., C.H.G., and R.H.G., and M.A.C.V. and R.C.P.—both occurred more than a month after the PI was issued. Additionally, D.C.C.’s arrest in late January raises the specter that the reduction in noncompliant I-213s reflects the reclassification of warrantless arrests as arrests pursuant to field warrants, where, in reality, the warrants were obtained after arrest.

Next, defendants argue that any problem was largely confined to “two officers,” J.B. and J.L., who have since been reassigned to a unit that does not make street arrests. ECF No. 104 at 305: 9–11; *see also* ECF No. 103 at 46: 22–47: 8, 221: 17–222: 6. To be sure, this is a welcome step by the agency, but it does not eliminate the need for broader relief. J.B. and J.L. were working alongside at least three other officers, including a supervisor, during the vehicle stop and warrantless arrests of M.A.C.V. and R.C.P, and none of them ensured that the PI was followed. And as discussed, the Court found that A.L. also lacks an adequate understanding of his responsibilities under the PI.

Additionally, because defendants produced a random third of the “warrantless arrest” I-213s pursuant to the PI Order, the Court can’t conclude that the problem is limited to only a handful of officers. Even with the I-213s that the Court has reviewed, it is clear that J.B. and J.L. are not alone in failing to comply with the PI. In any event, ICE could always reassign J.B. and J.L. to make field arrests again. Without more robust compliance measures in place, they could resume violating the PI with impunity. Perhaps most importantly, the Denver Field Office has hired dozens of new officers since the PI was issued and is likely to hire more. *See* ECF No. 103 at 188: 20–189: 3. The evidence at the hearing did not instill confidence that these officers will be properly trained on the PI and comply with it.

Finally, defendants contend that they have already taken steps to fix the documentation issues, and so the Court should go no further. *See* ECF No. 90 at 6–7, 14; *see also* ECF No. 103 at 12: 12–16. Again, the Court disagrees. Initially, as plaintiffs argue, one of the measures that defendants have devised—requiring arresting officers to fix their warrantless arrest I-213s after-the-fact—is “troubling.” ECF No. 103 at 13. One purpose of the I-213 narrative portion is to provide a near-contemporaneous account of the arresting officer’s encounter with the noncitizen. Under the PI, and the Broadcast Statements it incorporates, officers are required to separately document information relevant to a custody determination learned post-arrest from the information that they knew and relied upon at the time of the arrest. *See* ECF No. 49 at 63; Pl. Hr. Ex. 212.016, 212.024. Defendants’ remedial measure risks muddying the waters by asking officers to rewrite the narrative portions of their I-213s well after the decision to arrest has been made, the noncitizen has been interviewed at the field office, and in some cases, the officer has returned to the field and made additional arrests. While the Court does not prohibit this practice outright, any amendment to an I-213 narrative must “be clearly marked as such” and indicate the time that it was made. *Escobar Molina v. U.S. Dep’t of Homeland Sec.*, No. 25-3417 (BAH), ECF No. 102 at 11 (D.D.C. May 7, 2026) (describing defendants’ plan for correcting noncompliant I-213s in a similar case).

The other reforms that defendants have instituted—specifically, weekly reviews by Davies or another AFOD of warrantless arrests I-213s and counseling for arresting officers deemed not in compliance—are appropriate, but in the Court’s judgment, not enough on their own to ensure fidelity with the PI going forward.

The Court now turns to the specific relief requested by plaintiffs.

C. Relief

As stated in Part I.B, above, plaintiffs seek relief that broadly falls into four categories: training, reporting, documentation, and miscellaneous. The Court discusses each of them in turn.

1. Training

Items one through six in plaintiffs’ Motion concern training on the PI and documentation of that training. *See* ECF No. 82 at 7.

a. Training is appropriate and necessary relief

A court may order mandatory training for law enforcement or other government officials as a form of injunctive relief, including training on the terms of the court’s own orders. *See Shaw v. Smith*, 166 F.4th 61, 73–74 (10th Cir. 2026) (upholding district court order requiring Kansas Highway Patrol, in consultation with plaintiffs, “to create new training and testing material on reasonable suspicion and voluntary consent” for traffic stops, provide troopers with at least ten hours of annual training, and provide supervisors with the new materials and at least eight

hours of annual training); *see also U.S. v. Florida*, 172 F. 4th 1201, 1245 (11th Cir. 2026) (affirming district court’s order mandating state “to create and implement a training curriculum for care coordinators on a number of subjects”); *Daughtry v. Emmons*, 5:15-CV-41 (MTT), 2024 WL 1791717, at *58 (M.D. Ga. Apr. 23, 2024) (ordering prison officials to create and implement a training program to ensure compliance with earlier injunction).

Here, the Court determines that additional training beyond what defendants have done voluntarily is necessary to effectuate the injunction. Whatever their precise content, the December 2nd email regarding the PI and AFOD Davies’ communications with supervisors are not reaching the officers who make arrests on the street. Nor does the February training for the 15 or so officers on the processing team—which focused on evaluating and correcting noncompliant I-213s after-the-fact—address compliance with the PI on the front end: during encounters with suspected undocumented individuals in the field. In the PI Order, the Court expressly contemplated the possibility of ordering training if compliance with the PI should “prove elusive,” and it has. ECF No. 49 at 63. Accordingly, at this point, requiring training to ensure faithful compliance with the PI is entirely appropriate.

Defendants argue that this relief would “violate [] attorney-client privilege” and “hinder[] [their] ability to have ‘full and frank’ communications with their attorneys about compliance with the PI.” ECF No. 90 at 9. The Court rejects these

contentions. Defendants are not directed to disclose their privileged internal communications with counsel—they are directed to develop and provide training for ICE officers on compliance with the PI. *Cf. Upjohn Co. v. U.S.*, 449 U.S. 383, 395 (1981) (protecting communications made by company employees to counsel at the direction of management to obtain legal advice). While counsel may have input in this process, requiring defendants to turn over the final materials that will be shared within the agency does not unduly burden the ability of defendants to speak freely with their attorneys. Otherwise, a court could never compel an agency to train its employees on their legal responsibilities and exercise meaningful oversight of its order, but the Tenth Circuit has specifically approved this form of injunctive relief. *See Shaw*, 166 F. 4th at 81. And, where appropriate, defendants may still assert privilege over individual communications. *See* ECF No. 104 at 284: 2–21.

b. Training must be consistent with the standards in the PI

Defendants also assert that mandating training on the PI would improperly enmesh the Court in the Executive Branch’s administration and enforcement of the immigration laws. *See* ECF No. 90 at 10. The Court agrees that it must be careful not to overstep its constitutional role. *See United States v. Texas*, 599 U.S. 670, 678–59 (2023) (recognizing the Executive Branch’s substantial discretion to determine immigration law enforcement policy and priorities). However, requiring training on

the PI does not raise these concerns, because the PI tracks the standards reflected in federal law and ICE's own Broadcast Statements.

Importantly, the Broadcast Statements already outline the assessment that ICE officers must undertake before conducting a warrantless arrest, including a list of relevant but nonexclusive factors that they are to consider for likelihood of escape. *See* Pl. Hr. Ex. 212.014–017, 212.022–025 (Broadcast Statements I and III). ICE has also developed training materials consistent with these Broadcast Statements, and so need not create something entirely new. *See* Pl. Hr. Ex. 258. Furthermore, defendants do not deny that ICE officers must apply the warrantless-arrest standards as articulated in the Broadcast Statements and incorporated into the PI in this District, at least while the PI remains in effect. *See* ECF No. 103 at 233: 4–12. Nor could they. *See, e.g., Escobar Molina*, ECF 102 at 18 (ICE must comply with the district court's warrantless-arrest standard in the District of Columbia while the preliminary injunction remains in place).¹¹ Therefore, defendants are directed to provide training to ICE officers consistent with the Broadcast Statements.

¹¹ In the *Castañon Nava* case, defendants recently argued that the Broadcast Statement was limited to the states comprising ICE's Chicago Area of Responsibility. *See Castañon Nava*, 1:18-cv-03757, ECF No. 309 at 2–3, ¶ 5 (N.D. Ill. Feb. 23, 2026). The court rejected that position and directed defendants to recirculate the Broadcast Statement nationwide and advise officers that it remains in effect. *Id.* But regardless of whether the court was right that ICE must continue to adhere to the Broadcast Statements nationally, their incorporation in the PI in *this* case certainly renders them binding in the District of Colorado no less than they are in the Northern District of Illinois pursuant to the litigation there.

One area where conflict may arise concerns the Lyons Memo, *see* Part I.A., n. 2, *supra*, which was issued two months after the PI, and, in various ways, waters down the flight risk or “likelihood of escape” analysis reflected in the Broadcast Statements. Although the Lyons Memo states at one point that “likely to escape” means the noncitizen “is unlikely to be located at the scene of the encounter *or another clearly identifiable location* once an administrative warrant is obtained”—a formulation that would likely exclude those with strong community ties, such as fixed residences or places of employment—the memo as a whole disregards the italicized phrase and instead focuses on whether the individual will indefinitely remain in the place they were initially encountered. Pl. Hr. Ex. 218.003 (emphasis added). As another court recently observed, framing the inquiry in this fashion would “swallow[] the whole standard” and “basically give[] *carte blanche*” to make warrantless arrests of anyone “unlikely to stay standing still at the scene of the encounter ... forever.” *Escobar Molina*, ECF No. 88, at 65: 19–22, 64: 10–14 (Mot Hr. Tr. for Mar. 11, 2026). This Court, too, finds that, by considering only whether the noncitizen will remain at the scene of the encounter, the Lyons Memo redefines “likelihood of escape” into a nullity. *See* ECF No. 103 at 10: 17–20.

Accordingly, where they can’t be reconciled, defendants *must* train on the “likelihood of escape” analysis reflected in the Broadcast Statements, not the Lyon’s Memo. *See id.* at 234: 3–12 (AFOD Davies agreeing that the Lyons Memo’s focus

on whether an individual will remain “at the scene however long it takes” to obtain a warrant is “very different” from, and “conflicts with,” the PI). Compliance with the PI requires a broader assessment than whether the individual is likely to remain in the precise location of the encounter until they can be arrested on a warrant.

The Lyons Memo conflicts with the Broadcast Statements in two irreconcilable respects. First, the memo indicates that an officer may find a “likelihood of escape” based solely on a “subject’s ability and means to promptly depart the scene of the encounter (e.g., the subject was encountered in a vehicle and continues to have control over the vehicle).” Pl. Hr. Ex. 218.003 (factor two). That guidance is inconsistent with the PI and may not be included in the training. *See* ECF No. 49 at 42–43 (finding that ICE lacked probable cause for the warrantless arrest of plaintiff Goncalves where the sole factor was that she was diving on the interstate); *see also Escobar Molina*, ECF No. 102 at *25 (explaining that the Lyons’ Memo does not square with the court’s conclusion “that an alien’s presence in a vehicle is not sufficient to find that an alien is likely to escape”) (internal quotation marks omitted). To be sure, this does not mean that a noncitizen’s means and ability to travel is *never* an appropriate factor in assessing likelihood of escape. *See, e.g., U.S. v. Quintana*, 623 F.3d 1237, 1241 (8th Cir. 2010) (considering that noncitizen was driving cross-country among other aggravating circumstances in finding there was probable cause for a warrantless arrest); *U.S. v. Cantu*, 519 F.2d 494, 497 (7th

Cir. 1975) (similar). But this factor may not overwhelm and supplant the probable cause analysis such that it establishes a likelihood of escape in every instance.

Second, and of equal importance, the Lyons Memo entirely omits community ties as a factor that officers should consider in evaluating the likelihood of escape. *See Escobar Molina*, ECF No. 102 at *25. This omission seems to flow directly from the memo’s redefinition of “likelihood of escape” to concern only whether the noncitizen will remain at the scene of the encounter until a warrant can be obtained. *See* Pl. Hr. Ex. 218.004–005. Removing community ties from the relevant analysis—even implicitly by omission—is plainly contrary to the PI. The direct and established relevance of community ties runs through the Court’s decision and the case law. *See* ECF No. 49 at 39–45; *see also La Franca v. I.N.S.*, 413 F.2d 686, 689 (2d Cir. 1969) (noting that being “the owner and operator of a bakery in Jersey City” lowered petitioner’s likelihood of escape before a warrant could be obtained); *U.S. v. Kahn*, 324 F. Supp. 2d 1177, 1186–87 (D. Colo. 2004) (considering defendant’s community ties in finding that his warrantless arrest violated § 1357(a)(2)); *U.S. v. Bautista-Ramos*, No. 18-cr-4066-LTS, 2018 W: 5726236, at *7 (N.D. Iowa Oct. 15, 2018) (same); *U.S. v. Pacheco-Alvarez*, 227 F. Supp. 3d 863, 889 (S.D. Ohio 2016) (same). And, of course, community ties are one of the five nonexclusive factors expressly mentioned in the Broadcast Statements. Therefore, defendants’ training may not omit or diminish a noncitizen’s community ties as a relevant consideration.

Aside from these advisements, the Court does not and will not prescribe the content of defendants’ training. It must provide accurate guidance on the PI and the Broadcast Statements it incorporates. It must not undermine them through the Lyons Memo in the particular ways identified. But otherwise, defendants retain broad discretion to train their officers on making warrantless arrests consistent with federal law, including deciding what factors apart from those specifically enumerated in the Broadcast Statements they may consider among the “totality of the circumstances known to the officer before making the arrest.” ECF No. 49 at 61; *see also Escobar Molina*, ECF No. 102 at 29–37 (finding that remaining factors in the Lyons Memo did not violate the court’s PI “on their face”). Plaintiffs should not view this Order as an invitation to litigate the permissibility of every factor ICE may instruct or permit its officers to consider in assessing the “likelihood of escape” or to otherwise reshape defendants’ warrantless arrest policies according to their preferences.

c. Rulings on the specific training-related relief

Having found that training is necessary to effectuate the original PI, the Court now addresses each of plaintiffs’ specific requests in this category, which are found at items one through six of their Motion. ECF No. 82 at 7.

- i. An order requiring Defendants to ensure all officers authorized to execute immigration arrests in this District are trained on the requirements of the PI and the order. ECF No. 82 at 7, Mot. to Enforce, Request 1.

This request is GRANTED.

- ii. An order that any officer authorized to make warrantless arrests in this District after entry of this order shall not be permitted to make warrantless arrests until being trained on the requirements of the PI and this order. ECF No. 82 at 7, Mot. to Enforce, Request 2.

This request is MODIFIED as follows. Defendants are hereby ORDERED to develop a compliant training within 14 days of this Order. Defendants are further ORDERED to train every immigration officer currently authorized to make warrantless arrests in this District within 45 days of this Order, using the compliant training program. Immigration officers who are not trained within 45 days of this Order are prohibited from making warrantless arrests in this District unless and until they are trained on the requirements of the PI and this Order. Immigration officers who are hired by DHS to serve the responsibility area of the Denver Field Office after the date of this Order may not make warrantless arrests unless and until they have received the compliant training.

Although the evidence at the hearing demonstrated noncompliance with the PI, warranting relief, an order prohibiting *all* immigration officers in this District from exercising their statutory authority to make warrantless arrests until being trained would not strike the appropriate balance between ensuring compliance with the law and the PI, on the one hand, and respecting the Executive Branch's responsibility for immigration enforcement, on the other.

- iii. An order requiring Defendants, within thirty (30) days of the order, and on the 10th of the month thereafter until all immigration officers who are charged with making warrantless arrests in this District have been so

trained, to serve to Plaintiffs' counsel documentation showing that they are completing training of immigration officers who have performed, or will perform, operations in this District, on the requirements of the PI and this order. ECF No. 82 at 7, Mot. to Enforce, Request 3.

This request is MODIFIED as follows. Within 45 days of this Order, and on the 10th day of the month thereafter until such training is complete, defendants are hereby ORDERED to serve Plaintiffs' counsel documentation showing that they are completing training on the requirements of the PI and this Order for immigration officers who have performed, or will perform, operations in this District.

- iv. An order requiring Defendants to provide class counsel, on the 10th day of each month, certification of who has been trained on the warrantless arrests requirements in Colorado, and when. ECF No. 82 at 7, Mot. to Enforce Request 4.

This request is GRANTED. Defendants shall provide the first such certification on June 10, 2026.

- v. An order requiring Defendants to provide class counsel, within three (3) business days of the order, with the training materials and communications ICE has used to ensure compliance with the PI and the law to date. ECF No. 82 at 7, Mot. to Enforce, Request 5.

This request is DENIED. As discussed in Part II.A, above, the hearing demonstrated that defendants' training efforts to date consist of AFOD Davies' communications with supervisors, the December 2nd, Field Office-wide email, and the processing team training or trainings in February. The evidence also demonstrated that these efforts were not sufficient to ensure that officers making

arrests in the field are complying with the PI. Ensuring compliance going forward does not depend on receiving further evidence regarding these efforts.

- vi. An order requiring Defendants to provide class counsel, within thirty (30) days of the order, and on the 10th day of each month thereafter any new training materials and communications that ICE plans to use going forward to ensure compliance with the Court's order and the law or a certification that there is no new training materials that ICE plans to use in the next month. ECF No. 82 at 7, Mot. to Enforce, Request 6.

This request is MODIFIED as follows. Within 14 days of this Order, and on the 10th day of each month thereafter, defendants are hereby ORDERED to provide class counsel with any new training materials and communications that ICE plans to use going forward to ensure compliance with the Court's PI Order and the law or a certification that there is no new training materials that ICE plans to use in the next month.

2. Reporting

Items seven and eight in plaintiffs' Motion and item 7a in their Supplement concern modified reporting requirements to provide greater transparency into ICE's warrantless arrest practices. *See* ECF No. 82 at 7; ECF No. 100 at 2.

a. Additional Reporting Requirements are Appropriate and Necessary

It is axiomatic that, to monitor compliance with the PI, the Court and the parties must have a clear understanding of what is happening on the ground. The evidence at the hearing demonstrated that the current reporting procedures—defendants' monthly production of a random one-third of the “warrantless arrest” I-

213s, together with plaintiffs' counsel's ability to request I-213s for specific individual warrantless arrests—are inadequate to provide a full and accurate accounting of defendants' compliance with the PI.

The principal problem is that ICE does not reliably distinguish in the I-213s between three different types of arrests: (1) arrests pursuant to preexisting warrants; (2) arrests where a warrant was obtained in the field after the encounter began; and (3) genuinely warrantless arrests. Complicating matters further, at least some of the arrests categorized as involving field warrants are, in fact, warrantless arrests within the meaning of the PI. As a result, the universe of arrests potentially subject to the PI has become blurred.

In January and February, apart from individual requests, defendants produced 32 I-213s out of 71 arrests flagged as warrantless. *See* Pl. Hr. Exs. 201, 202. But that figure may substantially overstate or understate the actual number of arrests that were effected without a warrant, and there is presently no reliable way to determine which it is. On the one hand, AFOD Davies determined that at least four of those 32 arrests had preexisting warrants, and a significant number of the other I-213s suggest the same. On the other hand, plaintiffs separately requested and received four I-213s (C.H.G., J.P.A.A.H., R.H.G., and M.A.C.V.) that plainly reflect warrantless arrests implicating the PI. *See supra* Part II.C. The fact that the narratives in those reports differ so markedly from most of the random production

gives the Court substantial pause as to whether plaintiffs are receiving a genuinely representative sample.¹²

At the same time, defense counsel denied plaintiffs' request for at least five specific individuals' I-213s on the grounds that the arrests were made pursuant to warrants issued in the field after the encounter began but before arrest and therefore fall outside the scope of the PI. *See* Pl. Hr. Exs. 205.002 (denying I-213 requests for C.L.P., R.L.V., D.U.V., and N.G.J.), 210.002 (same for P.S.R.).¹³ The trouble is that, if those arrests resembled D.C.C.'s, *see supra* Part II.B, they would have been warrantless within the meaning of the PI—no less than the named plaintiffs' arrests, where I-200s were later issued at the field office. *See* ECF No. 49 at 27. Had plaintiffs requested D.C.C.'s I-213, that request would presumably have been denied because the report references a field warrant, even though his testimony, the I-213 itself, and J.L.'s testimony all establish that the warrant was issued after-the-fact.

Accordingly, the Court finds that more comprehensive reporting is necessary to facilitate meaningful oversight and ensure full compliance with the PI.

¹² One of plaintiffs' specific requests was for an individual, M.A.C.V., who was arrested during the same encounter as another individual, R.C.P., whose I-213 was part of the regular production, so there is at least evidence of alignment there. *See* Pl. Hr. Exs. 207.016, 208.006. And to be clear, to the extent that the randomly sampled I-213s appear to materially diverge with those plaintiffs' counsel has specifically requested, the Court is in no way suggesting that defense counsel has done anything other than comply with the PI's reporting requirements to the very best of their ability.

¹³ It appears that defense counsel never responded to plaintiffs' counsel's February 24th requests for A.M.M.'s and M.A.C.C.'s I-213s, constructively denying them, but the Court has no indication as to why. *See* Pl. Hr. Ex. 210.003.

b. The Court is not ruling on the lawfulness of field warrants

While the Court will require defendants to provide plaintiffs with a more complete picture of their warrantless arrest practices, including by documenting and producing I-213s for arrests allegedly made pursuant to field warrants, the Court makes no ruling on the legal validity of field warrants writ large.

The government’s authority to “issue their own warrants” for immigration arrests is “a rare exception to the traditional practices of American law.” *Garcia Lanza v. Noem*, Civ. Action No. 26-0029 (GRB), ---F. Supp. 3d---, 2026 WL 585130, at *4 (E.D.N.Y. Mar. 3, 2026). The issuance of administrative warrants by ICE officers to arrest collaterals in the field “without the concurrent or prior issuance of a notice to appear” (“NTA”) is a practice that predates this case but is not explicitly provided for by statute or regulation, and no binding judicial authority has approved it. *Ortiz v. Raycraft*, 817 F. Supp. 3d 527, 543 (2025).

In *Castañon Nava*, the district court concluded that ICE officers lack the “statutory and regulatory authority to engage in its policy of issuing I-200 warrants to collaterals in the field without the concurrent or prior issuance of an NTA.” 806 F. Supp. 3d at 853–54. The court therefore treated nine noncitizens arrested pursuant to field warrants as warrantless arrest class members and granted relief to eight of them after finding that ICE had no pre-arrest probable cause of likelihood of escape, violating § 1357(a)(2) and the underlying consent decree. *Id.* at 854–58.

On appeal, the Seventh Circuit initially stayed, and later vacated, that portion of the district court’s order concluding that the arrests pursuant to field warrants were invalid and therefore violated the consent decree. *See Castañon Nava v. U.S. Dep’t of Homeland Sec.*, No. 25-3050, ---F.4th---, 2026 WL 1223250, at *6, 9 (7th Cir. May 5, 2026); *Castañon Nava v. U.S. Dep’t of Homeland Sec.*, 161 F. 4th 1048, 1058–59 (7th Cir. 2025). The Seventh Circuit did not decide whether ICE possesses the authority to issue field warrants without an NTA, but it concluded that the district court was barred from “issuing classwide injunctive relief that would interfere with ICE’s operation of § 1226, even if the court believes the manner in which the government exercised its authority under the provision (here, via the use of deficient I-200 warrants) is unlawful.” 2026 WL 1223250, at *6 (citing 8 U.S.C. § 1252(f)(1) and *Garland v. Aleman Gonzalez*, 596 U.S. 543 (2022)).

Like the district court in *Castañon Nava*, this Court has its doubts about the validity of field warrants unaccompanied by a prior or concurrent NTA. *See* ECF No. 104 at 291: 6–16 (observing that the field warrant policy appears to “eviscerate” Congress’ limited grant of authority). However, the Court has no occasion to decide that issue here, and it does not do so. *See id.* at 292: 20–293: 4. Unlike the *Castañon Nava* district court, the Court does not decide whether ICE’s issuance of I-200 warrants in this fashion exceeds its statutory or regulatory authority, or whether this “application” of ICE’s § 1226(a) arrest authority is otherwise unlawful. *See* 161

F.4th at 1058–59. Nor does it reach ICE’s policy of issuing field warrants to collaterals expressly to avoid situations where its officers must comply with the probable cause determinations demanded by § 1357(a)(2) and the PI.

Rather, the Court grants the requested relief based on the narrower and unremarkable proposition that the issuance of a field warrant must precede formal arrest. *See* ECF No. 300 at 4–6 (defense counsel agreeing that D.C.C’s account, if true, “certainly depicts a warrantless arrest”); *Garcia Lanza*, 2026 WL 585130 at *5 (holding that a noncitizen’s “post-arrest administrative warrant was plainly invalid”); *see id.* at *10 (collecting cases). There is no practical or legal difference between a post-arrest administrative warrant issued “in the field” and one issued a few minutes, or at most, a few hours later in the office.

Requiring defendants to account for and furnish I-213s and related documents for the arrests internally classified by ICE as having been made pursuant to field warrants does not impinge on defendant’s exercise of their § 1226(a) authority or expand the scope of the PI. Instead, considering the evidence at the hearing, this relief is necessary to give effect to the PI. If ICE could shield every arrest of a collateral simply by writing “field warrant,” or the equivalent, on an I-213, regardless of the facts of the encounter or when it was issued, the PI would be rendered toothless.

c. Rulings on the specific reporting-related relief

Turning now to plaintiffs' specific requests for relief in the category of reporting, the Court makes the following rulings.

- i. An order requiring Defendants to provide class counsel, within thirty (30) days of the order, all of the Form I-213s and the associated administrative warrants and notice to appear, if any exist, for the following arrests that have happened in Colorado since the PI, in separately identified productions: (a) arrests that were warrantless, (b) arrests in which the government claims they obtained a warrant after the encounter began; and (c) arrests for which Plaintiffs have requested documentation based on a good-faith basis to believe the arrest was not a targeted arrest. For arrests in categories (a) and (b), Defendants should also produce those documents on the 10th of the following month on a going forward basis; for arrests in category (c), Defendants must produce those documents to Plaintiffs' counsel within 4 business days of a request. ECF No. 82 at 7, Mot. to Enforce, Request 7.

This request is MODIFIED as follows. Within 30 days, defendants are ORDERED to produce to plaintiffs, in separately identified productions, the listed documents for all arrests in categories (a) and (b) that have occurred in this District from *the date of this Order*, and for arrests in category (c) from the date of the initial PI. Thereafter, defendants are ORDERED to produce to plaintiffs the listed documents for arrests in categories (a) and (b) on the 10th of the month on a going-forward basis, and the documents for arrests in category (c) within four (4) business days of the request.¹⁴

¹⁴ Plaintiffs must make any *new* requests for specific individual arrests in category (c) that predate this Order within the first 30 days. Thereafter, they are limited to requesting specific individual arrests that occurred after the entry of this Order.

For the reasons stated above, departing from the method of randomly sampling one-third of the monthly I-213s is necessary to provide plaintiffs and the Court with a clearer window into the state of defendants' compliance with the PI. This limited discovery for all concededly warrantless arrests and arguably warrantless arrests is also consistent with the relief ordered in *Escobar Molina* and the consent decree in *Castañon Nava*. See ECF No. 82 at 8. Nor does the Court find that this relief is particularly burdensome. Davies testified that he is already providing the I-213s for *every* arrest in this District to defense counsel, and ICE maintains these records at the field office where they can be easily accessed. See ECF No. 103 at 193: 16–24, 205: 23–206: 1.

Defendants are correct that, for the most part, backward-looking relief is not an appropriate vehicle for ensuring forward-looking compliance. See ECF No. 90 at 11. The Court makes an exception for category (c), specific individual arrests that plaintiffs have requested, because those I-213s may have been wrongfully withheld (though not purposefully) when the initial requests were made.

- ii. An Order that for each I-213 in category (b) and (c) [from Request 7], Defendants must produce the communications and records reflecting how, when, and why such warrant was obtained, requested, or created, including but not limited to call logs, emails, and text messages. ECF No. 100 at 2, Supplement to Mot. to Enforce, Request 7a.

This request is DENIED. While the production of I-213s, and any accompanying I-200s and NTAs, for arrests in categories (b) and (c) follows

naturally from the relief ordered in the original PI, this supplemental request would require defendants to produce extensive communications and other records for every arrest that the government contends was made pursuant to a field warrant and that plaintiffs have a “good-faith basis” to believe was or may have been warrantless.

The Court is not persuaded that effective monitoring of compliance with the PI requires plaintiffs to be privy to this level of detailed and sensitive information for every such arrest. Nor is the Court persuaded that the existing evidentiary record justifies imposing such a broad and extensive disclosure obligation at this stage.

- iii. An order requiring Defendants to provide class counsel within thirty (30) days of the order, and on the 10th day of the month thereafter on a going forward basis, a master list of all foreign nationals with their A# and country of origin, who were either subject to a warrantless arrest or where the government claims they obtained the warrant after the encounter began, for all arrests that have happened in Colorado since the PI. ECF No. 82 at 8, Mot. to Enforce, Request 8.

This relief is MODIFIED as follows. Within 30 days, defendants are ORDERED to provide a master list for covered arrests that have occurred in this District *from the date of this Order*, and on the 10th of each month thereafter on a going-forward basis. Defendants need not include arrests predating this Order. The master list should include, for each foreign national: (1) name; (2) A-number; (3) country of origin; (4) date of arrest; and (5) whether the government classifies their arrest as warrantless or as pursuant to a warrant obtained after the encounter began.

This directive is consistent with additional relief ordered by the *Castañon Nava* district court following the Seventh Circuit’s partial stay or its order, and it has not been vacated following the full merits appeal. 1:18-cv-03757, ECF No. 301 at 2, ¶ 5 (N.D. Ill. Feb. 17, 2026). More importantly, the Court finds that this measure is the most effective means for plaintiffs and the Court to obtain a clear snapshot of the universe of arrests that are subject or arguably subject to the PI. In light of the current blurriness, a comprehensive master list is necessary to establish a common foundation for any future discussions regarding defendants’ compliance with the PI. Nor does the Court find that this relief will impose a substantial administrative burden on defendants considering the limited information required and the fact that they have already developed a process for collecting and reviewing the I-213s for every arrest in this District.

3. Documentation

Items nine and ten in plaintiffs’ Motion and items 9a and 13 in their Supplement concern modified documentation requirements to provide greater transparency into ICE’s warrantless arrest practices. *See* ECF No. 82 at 7; ECF No. 100 at 2. The Court reviews each request in turn.

- i. An order requiring Defendants to document in Form I-213s regarding when and how administrative warrants have been obtained after an encounter with an individual for whom there was no warrant at the time of the initial encounter. ECF No. 82 at 8, Mot. to Enforce, Request 9.

This request is GRANTED. Where ICE contends that an arrest was made pursuant to a field warrant after the initial encounter, defendants must include a brief summary of when and how the administrative warrant was obtained.

This requirement follows directly from the discussion in Part III.C.2.b, above, that defendants may not insulate arrests from meaningful review merely by writing “‘field warrant,’ or the equivalent, on an I-213.” Furthermore, at the hearing, Officers J.B. and J.L. agreed that the I-213 narrative section is supposed to include the legally important information from the encounter, so this is something that ICE officers should be doing anyway. *See* ECF No. 103 at 27: 17–25, 130: 19–22.

This requirement does not infringe upon ICE’s statutory authority to make arrests pursuant to a warrant or impermissibly broaden the scope of the PI. Again, in contrast to the district court in *Castañon Nava*, the Court finds that the question of whether issuing field warrants without a prior or concurrent NTA violates the PI is not before it and grants no class-wide relief as to such arrests. Rather, the limited documentation required here—while necessarily touching on alleged field warrants—is needed to bring clarity and transparency to the warrantless arrests allegedly made in violation of § 1357(a)(2), which remain the focus of the injunction.

- ii. An order that Defendants document the following information in the narrative section of all Form I-213s for arrests in Colorado: The time the encounter began; the time of the arrest; identification of the officer(s) who authored the narrative section of the I-213; whether the arresting officer obtained a warrant or whether the arrest was warrantless; and if the arresting officer obtained a warrant [additional

specific information sought by plaintiffs]. ECF No. 100, Supplement to Mot. to Enforce at 3, Request 9a.

This request is DENIED. While many of the additional documentary requirements that plaintiffs seek may be prudent as a matter of agency practice, the Court agrees with defendants that ordering changes of this magnitude and specificity to every I-213 prepared in Colorado would go well beyond enforcing the original PI. ECF No. 105 at 6. The relief granted elsewhere in this Order adequately addresses the Court's present concern that plaintiffs and the Court are not being presented with sufficient information to meaningfully monitor and evaluate compliance with the PI.

- iii. An order requiring Defendants to document in Form I-213s, for vehicle stops, the locations where officers encountered the vehicle, the basis for believing that the vehicle stop was lawful, and where they stopped it. ECF No. 82 at 8, Mot. to Enforce, Request 10.

This request is DENIED. Again, while defendants would be well-advised to include this information in the narrative of their I-213s as a matter of good recordkeeping, and should their actions be challenged in court, this relief is beyond the scope of enforcing the original PI. The Court has not been squarely presented with the issue of whether ICE has a pattern or practice of conducting traffic stops in violation of its statutory and regulatory authority or under the Fourth Amendment. Therefore, the Court may not grant the requested relief.

- iv. An order that Form I-200s issued after the date of the Court's order on the Motion to Enforce include the date, time, and place it was signed by the issuing office, and the date, time, and place it was signed by the

service officer. ECF No. 100 at 3, Supplement to Mot. to Enforce, Request 13.

This request is DENIED. There was testimony at the hearing that I-200 administrative warrants are already annotated with the date but not the time when they are issued by a supervising officer. ECF 103 at 108: 9–14. There was no evidence that the arresting officer is presently expected or required, by law or agency policy, to sign the I-200 when it is served on a noncitizen.

The Court recognizes that the additional information plaintiffs seek would likely facilitate the review of arrests classified as having been made pursuant to a field warrant. But it concludes that this concern must give way to its obligation not to modify the scope of the existing PI except to the extent necessary to enforce it. The original PI did not regulate the content or execution of I-200s, and the evidentiary record developed at the recent motion hearing was insufficient to support imposing new documentary requirements with respect to this particular form.

4. Miscellaneous

Finally, items 11 and 12 of in plaintiffs' Motion concern declaratory relief and fees and costs. The Court rules as follows.

- i. A finding that defendants violated the Court's order on a widespread basis across the state since November 25, 2025. ECF No. 82 at 8, Mot. to Enforce, Request 11.

This request is MODIFIED as follows. The Court finds that defendants have materially violated the Court's PI Order. This finding is amply supported by the

Court’s findings of fact in Part II, above. As discussed, ICE has continued to make warrantless arrests without individualized, pre-arrest probable cause determinations of flight risk in violation of 8 U.S.C. § 1357(a)(2), 8 C.F.R. § 278.8(c)(2)(ii), and the PI. *See id.* Part II.C. Furthermore, the evidence showed that ICE has, seemingly without exception, failed to document those warrantless arrests in accordance with the PI and the Broadcast Statement standards it incorporates. *See id.* Part II.D. The Court declines, however, to find that such violations have occurred “on a widespread basis across the state” without a meaningful basis or standard for assessing the geographic reach of the violations—the most blatant violations occurred in the greater Denver metropolitan area.

- ii. Fees/costs associated with enforcing the court’s PI order. ECF No. 82, Mot. to Enforce at 8, Request 12.

In their opposition papers, defendants do not respond to plaintiffs’ request for fees and costs associated with enforcing the Court’s PI Order, thereby waiving objection. *See Crookshanks as next friend of C.C. v. Elizabeth School Dist.*, 1:24-cv-03512-CNS-STV, 2025 WL 1000774, at *5 (D. Colo. Apr. 3, 2025) (citing *Phillips v. Calhoun*, 956 F.2d 949, 953–54 (10th Cir. 1992)).

In any event, plaintiffs’ request for fees and costs is justified in light of the substantial evidence of violations of the PI. Indeed, with respect to the PI’s documentation requirements, defendants do not deny that they have not complied.

Accordingly, plaintiffs will be awarded reasonable attorneys' fees and costs incurred in enforcing the PI, which should be submitted in accordance with the local rules.

IV. Conclusion

For the reasons stated, plaintiffs' Motion to Enforce, ECF No. 82, is GRANTED in part and DENIED in part. The Supplement to the Motion to Enforce, ECF No. 100, is DENIED.

V. Order

It is hereby ORDERED:

1. The Court finds that defendants have materially violated the preliminary injunction, ECF No. 49.
2. Where defendants amend the narrative section of a Form I-213 sometime after the form is originally completed, defendants SHALL clearly mark the amendment as such and indicate the time of the amendment.
3. Defendants SHALL ensure that all officers authorized to execute immigration arrests in this District are trained on the requirements of the preliminary injunction and this Order.
4. Defendants SHALL develop a compliant training within 14 days of this Order, and SHALL train all immigration officers currently authorized to make warrantless arrests in this District within 45 days of this Order.
5. Immigration officers who are not trained within 45 days of this Order SHALL NOT make warrantless arrests in this District unless and until they are trained on the requirements of the preliminary injunction and this Order. Furthermore, immigration officers who are hired after the date of this Order to serve the responsibility area of the Denver Field Office SHALL NOT make warrantless arrests unless and until they have received the compliant training.
6. Defendants SHALL, within 45 days of this Order and on the 10th day of each month thereafter until such training is complete, provide to plaintiffs' counsel

documentation showing they are completing training on the requirements of the preliminary injunction and this Order for immigration officers who have performed, or will perform, operations in this District.

7. Defendants SHALL provide to plaintiffs' counsel, on the 10th day of each month until the preliminary injunction or this Order is dissolved or vacated, certification of which officers have been trained on the preliminary injunction and this Order, and when.
8. Defendants SHALL, within 14 days of this Order and on the 10th day of each month thereafter until the preliminary injunction or this Order is dissolved or vacated, provide to plaintiffs' counsel any new training materials and communications that ICE plans to use going forward with its officers to ensure compliance with the preliminary injunction and the law, or a certification that there are no new training materials that ICE plans to use in the next month.
9. Defendants SHALL provide to plaintiffs' counsel, within 30 days of this Order, in separately identified productions, all of the Form I-213s and the associated administrative warrants and notices to appear, if they exist, for all (a) warrantless arrests and (b) arrests in which the government claims they obtained a warrant after the encounter began, that have occurred in this District from the date of this Order, and for all (c) arrests in this District for which plaintiffs have requested documentation on a good-faith basis to believe the arrested individual was not a "target," from the date of the preliminary injunction.
10. On the 10th day of each month thereafter until the preliminary injunction or this Order is dissolved or vacated, defendants SHALL provide to plaintiffs' counsel, in separately identified productions, all of the Form I-213s and the associated administrative warrants and notices to appear, if they exist, for all arrests in categories (a) and (b) that have occurred in this District on a going-forward basis. Furthermore, defendants SHALL provide to plaintiffs' counsel the identified documents for arrests in category (c) within four (4) business days of the request.
11. Defendants SHALL, within 30 days of this Order, provide to plaintiffs' counsel a master list of all arrests in categories (a) and (b) that have occurred in this District from the date of this Order. The master list SHALL include, for each foreign national arrested, their (1) name, (2) A-number, (3) country of origin, (4) date of arrest, and (5) whether the government classifies their arrest as warrantless or as pursuant to a warrant obtained after the encounter began. Thereafter, defendants SHALL provide a master list with this information on the

10th of every month on a going-forward basis until the preliminary injunction or this Order is dissolved or vacated.

12. On a going-forward basis, for arrests where the government claims that an administrative warrant did not exist prior to the encounter but was obtained after the encounter began, defendants SHALL document in the Form I-213 when and how the administrative warrant was obtained.
13. Plaintiffs are awarded their reasonable fees and costs associated with enforcing the preliminary injunction.

It is SO ORDERED.

Dated: May 12, 2026

BY THE COURT:

A handwritten signature in black ink, appearing to read "R. Brooke Jackson", with a long, sweeping horizontal stroke extending to the right.

R. Brooke Jackson
Senior United States District Court Judge