No. 26-1027

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, CASE NO. 1:25-cv-03183-RBJ
THE HONORABLE RICHARD BROOKE JACKSON, PRESIDING

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ORAL ARGUMENT IS REQUESTED

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INTRODUCTION

To satisfy the Trump Administration's demand for thousands of immigration arrests daily—and consistent with its directive to arrest anyone suspected of being in the country unlawfully—U.S. Immigration and Customs Enforcement ("ICE") has resorted to an unlawful practice: arresting people in Colorado (and elsewhere) without a warrant and without the Congressionally-mandated probable-cause determination of the arrestee's likelihood of escape. *See* 8 U.S.C. § 1357(a)(2); *accord* 8 C.F.R. § 287.8(c)(2)(ii). Like so many others, Plaintiffs were each stopped, questioned briefly about their immigration status, arrested without further inquiry, and detained for lengthy periods in inhumane conditions. Had they bothered to inquire, the arresting agents would have seen the obvious: Plaintiffs posed no flight risk at all—each had jobs, homes, families, and other longstanding ties to their communities. Their sudden, unnecessary, and unlawful arrests and detentions have caused substantial, lasting damage to them and their families, both financially and psychologically. If left unchecked, ICE's unlawful warrantless arrest practices threaten to do the same to innumerable others in Colorado.

The district court confirmed all of this before entering the PI. During the two-day evidentiary hearing, the court heard testimony from nine witnesses and admitted nearly 70 exhibits. As the court observed, that evidence revealed a consistent pattern—arrest first, ask questions later—with a singular source—an intentional, top-down directive to maximize arrests without regard to existing law. The court thus concluded that ICE has a policy of disregarding the statutorily-required flight-risk inquiry when making warrantless arrests in Colorado. That uncontested factual finding—echoed by courts across the country[1] and subsequently confirmed by additional evidence during the enforcement proceedings—forms the backbone of the district court's conclusions on standing, class certification, and the merits of Plaintiffs' claims, and it fully justifies the PI. This Court should affirm.

STATEMENT OF JURISDICTION

Defendants seek review of three orders: (1) the preliminary injunction ("PI") and (2) the class certification order, both entered November 25, 2025; and (3) the enforcement order, entered May 12, 2026. Plaintiffs agree with Defendants' jurisdictional statement regarding the PI.

Defendants have not petitioned for review of the class certification order under F.R.C.P. 23(f). The Court may exercise jurisdiction over that order only if it is inextricably intertwined with or critical to reviewing the preliminary injunction.

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[1] *See M-J-M-A- v. Hermosillo*, 822 F. Supp. 3d 1147, 1174-75, 1177-82 (D. Or. 2026); *Escobar Molina v. U.S. Dep't of Homeland Sec.*, 811 F. Supp. 3d 1, 35-37, 42-51 (D.D.C. 2025); *cf. Nava v. Dep't of Homeland Sec.*, 806 F. Supp. 3d 823, 841-46, 853-57 (N.D. Ill. 2025).

Cox v. Glanz, 800 F.3d 1231, 1255-56 (10th Cir. 2015).

The Court lacks jurisdiction over the enforcement order because Defendants have not noticed any appeal of that order, and exercising pendent jurisdiction would be improper because that order is not inextricably intertwined with or critical to reviewing the preliminary injunction. *Bunn v. Perdue*, 966 F.3d 1094, 1097 (10th Cir. 2020) (filing notice of appeal "is a jurisdictional requirement"); *cf. Cox*, 800 F.3d at 1255-56 (pendent jurisdiction disfavored); *Merrell-Nat'l Labs., Inc. v. Zenith Labs., Inc.*, 579 F.2d 786, 791 (3d Cir. 1978) (refusing to exercise pendent jurisdiction to allow interlocutory appeal of order denying modification of preliminary injunction "to circumvent the time bar to appeal from the underlying preliminary injunction").

STATEMENT OF ISSUES

Defendants' Opening Brief raises two issues, which are reframed as follows:

1. Whether the district court abused its discretion by entering the PI, which enjoins ICE agents from effecting warrantless arrests in Colorado without first making the statutorily-required probable-cause determination of an arrest subject's likelihood of escape.

2. Whether the district court abused its discretion by provisionally certifying a warrantless-arrest class under F.R.C.P. 23(b)(2) after making a factual finding that ICE agents in Colorado "routinely conduct[] warrantless arrests in Colorado" without complying with the statutorily-imposed requirements for such arrests. (IV:831.)

STATEMENT OF THE CASE

I. Factual background: ICE's practice of making unlawful warrantless arrests harms Plaintiffs and class members.

Congress granted ICE limited authority to make warrantless arrests of non-citizens without lawful status. ICE agents can make such arrests *only* if they have "reason to believe"—i.e., probable cause—the individual is *both* in the country unlawfully *and* "likely to escape before a warrant can be obtained for his arrest." 8 U.S.C. § 1357(a)(2); *accord* 8 C.F.R. § 287.8(c)(2)(ii); *Roa-Rodriquez v. United States*, 410 F.2d 1206, 1208-09 (10th Cir. 1969).

Despite Defendants' claimed adherence to these statutory requirements, the evidence overwhelmingly shows—and the district court likewise concluded—that ICE currently operates under a policy that authorizes warrantless arrests without an individualized flight-risk assessment.

A. ICE has a widespread policy and practice of making unlawful warrantless arrests in Colorado without probable cause of flight risk.

In May 2025, the Administration publicly set a goal of 3,000 daily immigration arrests, warning there would be "consequences for not hitting arrest targets." (VII:1514; *see also* VII:1511-16; VII:1564; IX:1801.[2]) Senior immigration

[2] Plaintiffs use the same "Volume:Page" format as Defendants when citing to the Appendix. (*See* Appellants' Opening Brief ("AOB") 2 n.1, Dkt. 35-1.) Plaintiffs' Supplemental Appendix begins with Volume X and is consecutively paginated from the last page of Appellants' Appendix Vol. IX.

officials have repeatedly encouraged immigration officers to meet this goal by arresting anyone suspected of being in the country unlawfully—without qualifying that directive to account for the statutory limits on their warrantless arrest authority. (*E.g.*, VII:1563-65; IX:1660-63, IX:1672-75.) Homeland Security Advisor Stephen Miller told "top ICE officials" that "[f]ederal agents need[] to 'just go out there and arrest illegal aliens.'" (VII:1511.) Todd Lyons, ICE's acting director, and Robert Guadian, then the head of ICE's Denver office, both echoed that directive, advising that ICE will arrest anyone who is illegally in the country. (VII:1564; IX:1800; IV:824-25.) And Tom Homan, the President's "Border Czar," confirmed the unequivocal nature of these commands: "unlike the last administration, we're not going to tell ICE officers not to arrest an illegal alien." (IX:1674; *see also* IX:1660 (Homan saying that anyone "in the country illegally" is "going to get arrested").)

Agents got the message, and arrests in Colorado have soared. (*See* VII:1506-09; VII:1539-41.) ICE has come here with a singular goal: "arrest more people." (IX:1663; *see also* VII:1546-50; IX:1679-83.) To achieve that objective, ICE has resorted to making warrantless arrests while ignoring the Congressionally-imposed limits on that authority. ICE targets areas with large Latine populations, often showing up in unmarked vehicles and plainclothes—but with guns, body armor, and masks—to interrogate and arrest community members as they go about their daily lives, without warrants and without individualized probable-cause determinations of arrestees' likelihood of escape. (*E.g.*, V:1148-49; VI:1208-10; VII:1524-38; IX:1723-27.)

Plaintiffs and class members are victims of the unlawful tactics ICE has adopted to meet the Administration's demand. The record reflects not only Plaintiffs' arrests—which the district court described as unfolding in a "nearly identical manner" (IV:844)—but those of many more. As the district court observed, these arrests show a clear pattern: residents were stopped, asked about their immigration status, and arrested without any inquiry or other investigation to determine their likelihood of escape. (*See* IV:817-30 (summarizing evidence); *see also* VI:1203-12; VI:1351-55; VII:1472-76; V:1008; V:1059-60; V:1033-34.) Plaintiffs and class members were snatched off the street without warrants and thrown into detention centers despite having jobs, homes, families, and other long-standing community ties showing they were not flight risks. The district court expressly concluded as much when examining Plaintiffs' individual circumstances. (IV:844-50.)

Plaintiffs' and other class members' arrests demonstrate that ICE agents have consistently ignored the statutory requirements for lawful warrantless arrests at the direction of an Administration determined to "arrest as many [people] as we can" and deport them. (IX:1660-63.)

B. Plaintiffs and class members have been harmed by Defendants' unlawful warrantless arrests and, absent the district court's intervention, faced an imminent risk of future harm.

ICE's unlawful arrest practices have significant consequences. Plaintiffs experienced lengthy incarcerations, ranging from 15 days to three months, in "atrocious" conditions. (IV:819; *see* V:1013; V:1065; V:1036-37.) *See also Arostegui-Maldonado v. Baltazar,* 794 F. Supp. 3d 926, 940 (D. Colo. 2025) (finding that "conditions at the Aurora Facility" are "abhorrent" and "strongly resemble penal confinement").

Plaintiffs' injuries have predictably reverberated beyond their incarcerations, causing them and their families both economic harm and emotional distress. Mr. Ramirez and his wife incurred significant debt. (V:1041.) Ms. Dias lost a job and had to move in with her parents and reduce her college courseload. (V:1014-15.) J.S.T. lost his apartment and belongings. (V:1067-68.) And G.R.R. could not work or take care of his son, a U.S. citizen. (VII:1460.) Plaintiffs Dias, J.S.T., and G.R.R. had to post sizable bonds and were forced to wear ankle monitors and adhere to strict reporting requirements as conditions of their release. (V:1014; V:1065-66; V:1156.)

Each Plaintiff also testified that their arrest and detention substantially changed their daily lives, as they and their families still experience ongoing fear and anxiety from their ordeals and the very real prospect of having another encounter with ICE that leads to arrest and detention.[3] (V:1015-16; V:1040-42; V:1068-69.) Each has adjusted their behavior accordingly: G.R.R. and J.S.T. avoid going out in public. (IV:822; V:1069; I:45 (¶ 141); I:58 (¶¶ 177-78); I:154 (¶ 37).) When Mr. Ramirez leaves his home, he will "look around and check" whether immigration officers are "coming around" him. (V:1046.) And Ms. Dias has avoided going to the DMV to replace her driver's license, which ICE confiscated during her unlawful arrest. (V:1015.)

II. The preliminary injunction order: the district court enjoins ICE's unlawful arrest practices and provisionally certifies a class.

Plaintiffs sued Defendants in October 2025 over ICE's unlawful warrantless arrest practices. (I:21-67.) Plaintiffs simultaneously moved for a preliminary injunction and provisional class certification, supported by a robust record. (I:75-III:759.) The district court granted Plaintiffs' motions after a two-day hearing during which it admitted 69 exhibits and received testimony from nine witnesses: the four Plaintiffs; Defendant Robert Guadian, former Field Office Director for ICE's Denver office; Gregory Davies, Assistant Field Office Director ("AFOD") for ICE's Denver office; and three attorneys who described the arrests of their clients and others. (*See* V:974-76; VI:1194-95.)

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[3] The lawsuit now also includes an organizational plaintiff, the East Colfax Community Collective, which has members who are subject to substantial risk of unlawful warrantless arrest, absent ICE compliance with the PI. (X:1927-2024.)

The district court found a clear through-line in this evidence: a "consistent pattern" (IV:827) of ICE agents "conducting warrantless arrests in Colorado without making the statutorily required individualized assessment of flight risk" (IV:831). (*See also* IV:817-30 (citing Plaintiffs' testimony and documents corroborating their accounts, a sworn declaration from another arrestee, and testimony about the arrests of many others).) That pattern, the court found, follows the Administration's stated arrest goals and the "numerous public statements" by senior officials, including those at ICE's Denver office, "declaring in unequivocal and unqualified terms that ICE *will* arrest anybody it encounters who is unlawfully present." (IV:824-26 (emphasis by court); *accord* IV:851-53.) That pattern is hardly surprising given AFOD Davies' testimony that arrests are permissible if there's a mere "possibility" an arrestee will escape, not the requisite probable cause. (IV:852-53; *see also* VI:1246-47; VI:1394.) Based on the evidence, the court concluded that Plaintiffs' arrests were "not isolated incidents, but part of a larger policy, pattern, or practice by ICE" in Colorado. (IV:850-51; *see also* VI:1394.)

The court then turned to standing and class certification. It found Plaintiffs Dias, J.S.T., and G.R.R. have standing because they continued to suffer "'direct and current' injuries as a result of their unlawful arrests and detention," as they were required to wear ankle monitors and follow strict reporting requirements. (IV:832-34 (quoting *Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 51 (1991).) As to class certification, the court found Plaintiffs satisfied the requirements of Rules 23(a) and 23(b)(2), which determinations flow naturally from the court's finding that ICE has a policy of ignoring the flight-risk inquiry when making warrantless arrests. (IV:836-41.)

That factual finding also supports the district court's findings on the preliminary-injunction factors. The court held Plaintiffs were likely to succeed on their claims under the Administrative Procedure Act ("APA") because: (1) their own warrantless arrests were unlawful; (2) ICE has a policy, pattern, or practice of making unlawful warrantless arrests without a flight-risk assessment; and (3) that policy qualifies as "final agency action" reviewable under the APA. (IV:844-57.) Given the nature of Plaintiffs' injuries and ICE's ongoing operations, the court also concluded class members would likely sustain irreparable harm absent an injunction. (IV:857-62.) The court found the balance of equities favored Plaintiffs because neither the government nor the public has any interest in systematically violating the statutory limits on ICE's warrantless arrest power. (IV:863-64.)

The district court entered the PI to (1) restore Plaintiffs Dias, G.R.R, and J.S.T to their pre-arrest positions; (2) prevent future violations of § 1357(a)(2) that would harm Plaintiffs and class members; and (3) ensure Defendants' compliance. The PI required that Defendants (1) refund Plaintiffs' bond-related costs, remove their ankle monitors, and terminate any reporting obligations; (2) cease conducting warrantless arrests in Colorado that violate § 1357(a); (3) document the circumstances surrounding warrantless arrests in Colorado; and (4) give Plaintiffs a sampling of that documentation. (IV:865-68.) The court denied Plaintiffs' requests for injunctive relief requiring training and related documentation. (IV:868.)

III. The enforcement order: the district court finds "material noncompliance" with the PI and orders additional relief.

In March 2026, Plaintiffs moved to enforce the PI because ICE continued to make unlawful warrantless arrests in Colorado in violation of both pre-existing law and the PI. (IV:874-88.) The court granted that motion after another two-day hearing in which it admitted another 22 exhibits and heard further testimony from AFOD Davies; three ICE deportation officers; and another victim of ICE's unlawful warrantless arrest practices. (IX:1839-40; XI:2026; XII:2272.)

According to the district court, this evidence "demonstrate[d] [D]efendants' material noncompliance with the PI." (IX:1859.) The court made three pertinent findings: (1) ICE had not sufficiently trained agents on the PI's (or the statute's) requirements, as *none* of the three testifying deportation officers understood how to make *lawful* warrantless arrests; (2) ICE continued to make unlawful warrantless arrests without the statutorily-required flight-risk assessment; and (3) ICE uniformly failed to comply with the PI's documentation requirements.[4] (IX:1840-61.) Based on these findings, the court ordered Defendants to provide officers further training consistent with the PI and to comply with additional reporting and documentation requirements. (IX:1863-85.)

The district court addressed the "Lyons Memo" (*see* AOB 7), issued two months after the PI, only when expounding on the ordered training requirements and only to the extent it concluded the memo conflicts with the PI—a fact that ICE's own senior official acknowledged. (IX:1867-69; *see* XI:2256-59.) Regarding those conflicts, the court ordered Defendants to train officers on the likelihood-of-escape analysis articulated in the PI, which embodies ICE's prior "broadcast" policy statement (*see* AOB 6), *not* the Lyons Memo. (IX:1867-68; *see* IX:1835; IV:811-14 (describing ICE's "broadcast" statements).) Aside from that, the court declined to further "prescribe the content of [D]efendants' training." (IX:1870.)

SUMMARY OF ARGUMENT

The district court did not abuse its discretion or otherwise err by enjoining Defendants' unlawful warrantless arrest practices in Colorado. The PI and the court's underlying conclusions about standing, class certification, and the merits of Plaintiffs' claims and requested relief are rooted in its *factual* determination that

[4] The three ICE officers were a representative sample as no formal discovery and no depositions had been allowed, and they were chosen essentially at random by class counsel from the arrest documents. (*See* XII:2334.)

ICE currently operates under a policy of disregarding the statutorily-required flight-risk inquiry when making warrantless arrests in Colorado. Defendants do not contend—let alone show—that this finding is clearly erroneous, choosing instead to challenge it solely as a *legal conclusion* about "final agency action." (*See* AOB 35-42.) That approach fails.

I. Defendants' justiciability arguments are meritless. First, Plaintiffs have standing to seek prospective relief, both individually and as representatives of the provisionally certified class, for two reasons: (1) Plaintiffs and class members face a realistic threat of future harm from an unlawful warrantless arrest given ICE's ongoing enforcement operations and its policy of ignoring the requisite flight-risk inquiry; and (2) several named Plaintiffs were suffering continuing injuries when they filed this lawsuit, thus giving them standing to seek injunctive relief redressing their own existing injuries *and* the risk of imminent future injury to the certified class. Second, the district court's grant of *interim* relief redressing Plaintiffs' continuing injuries did not moot their claims. And, third, the INA does not deprive the district court of jurisdiction over Plaintiffs' claims because they do not concern one of the three discrete actions triggering § 1252(g)—commencing removal proceedings, adjudicating cases, or executing removal orders. Instead, Plaintiffs challenge the circumstances of their warrantless arrests, which occurred *before* any removal proceedings were initiated.

II. The district court did not abuse its discretion in provisionally certifying a warrantless-arrest class under F.R.C.P. 23(b)(2). This Court has twice rejected Defendants' argument that each class member must individually prove standing to seek *injunctive* relief, and the Supreme Court has not held otherwise. Defendants' attempt to defeat certification by injecting individualized issues into the analysis of Plaintiffs' claims likewise fails. The crux of Plaintiffs' claims—and the district court's factual finding—is that ICE's policy directs agents to disregard the flight-risk inquiry altogether. That policy applies equally to, and violates the statutory rights of, all class members regardless of their individual circumstances.

III. Nor did the district court abuse its discretion by entering the PI or the enforcement order. The court's conclusions regarding the likelihood of irreparable harm and the balance of equities flow naturally from its finding that ICE has an ongoing policy of conducting unlawful warrantless arrests. That policy emanates from the highest levels of the Administration and is reviewable agency action under the APA—as several courts have found. Finally, neither the PI nor the enforcement order are impermissibly vague or overreaching. Both stem from uncontested factual findings regarding ICE's warrantless arrest practices, are well supported by the record, identify prohibited or required conduct with specificity, and set forth a probable-cause standard that is consistent with existing law and ICE's own previously-issued policies.

The Court should affirm the PI. Should it choose to review them, the Court should also affirm the class certification and enforcement orders.

ARGUMENT

I. Defendants' justiciability arguments fail.

Standard of review. This Court reviews rulings on justiciability de novo. *Shaw v. Smith*, 166 F.4th 61, 74 (10th Cir. 2026). Underlying factual findings are reviewed for clear error. *Fish v. Schwab*, 957 F.3d 1105, 1118 (10th Cir. 2020). The Court may "affirm a district court on alternative grounds" when "those grounds are adequate, apparent in the record, and sufficiently illuminated by counsel on appeal." *See AdHealth, Ltd. v. PorterCare Adventist Health Sys.*, 135 F.4th 1241, 1246 (10th Cir. 2025).

A. Plaintiffs have established Article III standing.

Only one Plaintiff needs to have standing to affirm. *See Colo. Cross-Disability Coal. v. Abercrombie & Fitch Co.*, 765 F.3d 1205, 1212 (10th Cir. 2014) ("*Abercrombie*"). At this preliminary stage, Plaintiffs can make the requisite "clear showing" that they are "likely" to establish standing, *Murthy v. Missouri*, 603 U.S. 43, 58 (2024), based on the evidence submitted in support of the preliminary injunction. *See Rocky Mountain Gun Owners v. Polis*, 121 F.4th 96, 108 (10th Cir. 2024); *accord Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992). Plaintiffs have standing to seek prospective relief enjoining Defendants' from making unlawful warrantless arrests, both individually and as representatives of the provisionally certified class.

1. Plaintiffs and class members face a realistic threat of future injury that confers standing.

Plaintiffs have standing to seek an injunction against unlawful conduct when they face a "realistic threat" of future injury from the challenged conduct. *Tandy v. City of Wichita*, 380 F.3d 1277, 1284 (10th Cir. 2004); *accord City of Los Angeles v. Lyons*, 461 U.S. 95, 109 (1983). The threat of future injury cannot be speculative, but it need not be "literally certain." *Shaw v. Smith*, 166 F.4th 61, 77 (10th Cir. 2026) (quoting *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 414 n.5 (2013)); *see also Sterling v. Feek*, 150 F.4th 1235, 1246 (9th Cir. 2025) (threat of future injury need not be "high"). It is enough if circumstances combine to raise a "substantial" risk of future harm. *Shaw*, 166 F.4th at 77. Where "there is a persistent pattern of police misconduct, injunctive relief is appropriate." *Id.* (quoting *Allee v. Medrano*, 416 U.S. 802, 815 (1974)).

This Court's recent decision in *Shaw* controls here. There, the plaintiffs sought to enjoin the Kansas Highway Patrol's ("KHP") practice of unlawful searches and seizures during traffic stops of out-of-state motorists. 166 F.4th at 68, 71-72. This Court held the plaintiffs had met "the *Lyons* requirements" for standing for several reasons, rejecting the defendants' arguments that the risk of repeated future injury was "too speculative" to confer standing. *Id.* at 75.

First, this Court found the plaintiffs had established a "substantial risk" of future traffic stops, which the Court noted "are routine and beyond the control of drivers" and passengers even when they intend to follow traffic laws. *Id.* at 75-76. That was especially true because "KHP policy require[d] its troopers to 'STOP A LOT OF CARS!'" and out-of-state motorists, like the plaintiffs, were stopped at disproportionately high rates. *Id.* at 75-76.

Second, this Court credited the lower court's factual finding that KHP officers were engaging in a pattern and practice of alleged unlawful conduct when stopping out-of-state motorists. *Id.* at 75-77. In particular, the lower court found that KHP's inadequate training effectively authorized troopers to make and conduct traffic stops in an unlawful manner and that troopers acted consistently with that training in the field. *Id.* at 77; *see also Shaw v. Jones*, 683 F. Supp. 3d 1205, 1249-51 (D. Kan. 2023). As this Court held, that consistent, authorized practice—even though unwritten and informal—"meet[s] the conditions described in *Lyons*" for establishing an actual controversy needed for standing. *Shaw*, 166 F.4th at 77; *see also Lyons*, 461 U.S. at 105-06 (explaining that plaintiff would have standing if "the City ordered or authorized police officers to act in … a manner" that violated the plaintiff's rights). By contrast, in *Lyons*, there was not "any evidence showing a pattern of police behavior that would indicate" the defendant authorized the use of unconstitutional chokeholds. 461 U.S. at 110 & n.9; *Shaw*, 166 F.4th at 77 (contrasting *Lyons*).

Third, this Court also found it made "little sense to deny standing to [the *Shaw*] plaintiffs" given the purposes of standing doctrine—to ensure rulings on actual controversies—because the plaintiffs had proven throughout the litigation that they "have a genuine and particularized interest and fear in how they will be treated by KHP in the future." *Shaw*, 166 F.4th at 78.

With *Shaw*, the Tenth Circuit joined other circuits in holding that members of a "discrete group[] targeted by law enforcement" have standing to challenge an unlawful "pattern of officially sanctioned … behavior" that violates their rights. *Id.* at 77 (quoting *Melendres v. Arpaio*, 695 F.3d 990, 998 (9th Cir. 2012), and citing *Deshawn E. by Charlotte E. v. Safir*, 156 F.3d 340, 344-45 (2d Cir. 1998)). That is particularly true where future encounters with law enforcement are a likely and unavoidable aspect of going about one's daily life. *Id.*; *Melendres*, 695 F.3d at 998-99; *LaDuke v. Nelson*, 762 F.2d 1318, 1326 (9th Cir. 1985), *amended on other grounds*, 796 F.2d 309 (9th Cir. 1986). Applying that reasoning, courts have found that past arrestees have standing to challenge ICE's practice of disregarding the required flight-risk inquiry when making warrantless arrests. *See M-J-M-A-*, 822 F. Supp. 3d at 1173-74; *Escobar Molina*, 811 F. Supp. 3d at 32-36. The same is true here, too.

a. Defendants' established policy creates a substantial risk of future injury to Plaintiffs and class members.

The district court's factual findings establish that Plaintiffs and class members face a substantial risk of future unlawful warrantless arrests, giving this Court appropriate alternative grounds for concluding that Plaintiffs have standing to seek prospective relief. The court expressly found class members are "likely to be arrested" in the future under circumstances similar to the named Plaintiffs' arrests "based on ICE's continued practice of disregarding the § 1357(a)(2) inquiry." (IV:837-38.) These findings directly support Plaintiffs' and class members' standing to seek prospective injunctive relief under *Lyons*, just as in *Shaw.*[5]

Plaintiffs and class members here face a substantial risk of having future encounters with ICE, even when ICE would not describe them as "targets." (*Cf.* AOB 28-29.) ICE's Colorado enforcement operations are not limited to "targeted" arrests of individuals for whom a warrant has issued. The Administration has promised—and Defendant Guadian confirmed—that ICE will arrest anyone it encounters in the field who it believes lacks lawful status (*e.g.*, IV:824-25; V:1115-16; VII:1511; IX:1660), and the Administration has continued to repeat that message since the PI issued.[6] The record—replete with examples of such collateral

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[5] The Supreme Court's interim decision staying a temporary restraining order in *Noem v. Vasquez Perdomo* does not inform the standing analysis here because it did not provide any reasoning and did not address either standing or claims under § 1357(a)(2). 146 S. Ct. 1 (2025). Even if it had, neither that order nor Justice Kavanagh's unjoined concurrence are precedential and, thus, neither disturb controlling precedent in this circuit.

[6] *See, e.g.*, Hamed Aleaziz, *Immigrant Arrests Surge to 10,000 in 5 days as ICE Clamps Down*, N.Y. Times (July 1, 2026),

or non-targeted arrests—confirms ICE follows these directives in the field, as that is the only way ICE can possibly meet the Administration's stated arrest goals. (*E.g.*, IV:818-22; IV:827-30; *cf.* IV:825.)

The district court also found that ICE's primary enforcement strategies in Colorado—random vehicle stops in areas with a high percentage of Spanish-speakers and "militarized raids of … locations known to host large Latino populations"—are "guaranteed to bring many nontargets without lawful status … face-to-face with ICE." (IV:826.) Mr. Ramirez was stopped and arrested while driving to work. (V:1026-32.) Ms. Dias was stopped and arrested while driving to a friend's house. (V:1006-07.) J.S.T. was stopped and arrested while leaving for work, when immigration officers raided his apartment complex. (V:1057-60.) G.R.R. was stopped and arrested when he went to pick up a friend at a nightclub, also the subject of an armed law-enforcement raid. (V:1147-51.) ICE's practices ensnare Plaintiffs and class members as they go about their daily lives, exposing them to repeated encounters with immigration officers who happen to be targeting other individuals.

Such exposure is only going to increase going forward: the Administration

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https://www.nytimes.com/2026/07/01/us/politics/ice-immigrant-arrests-surge.html (quoting DHS spokeswoman Lauren Bis as saying, "Our message is clear: If you come to our country illegally, we will find you, we will arrest you and we will deport you.").

has allocated billions to ICE for recruitment and hiring to meet its demand for more arrests. (*See* V:1138; IV:862.) ICE had already nearly doubled its headcount in Colorado by November 2025, and was also actively recruiting at that time. (V:1140.) As Defendant Guadian acknowledged, more officers means more arrests. (V:1139.) As shown during the motion-to-enforce proceedings, that trend has continued. (XI:2212-13.)

Plaintiffs have also shown—and the district court concluded—that ICE has a policy of making warrantless arrests without conducting an individualized flight-risk assessment. (Case Statement §§ I.A, II.) Given that policy, any individual who encounters ICE faces a meaningful risk of an unlawful warrantless arrest if they are suspected of being in the country unlawfully.

Defendants all but ignore these factual findings in arguing that the district court "did not even purport to make [the] findings" needed to show the requisite risk of future injury. (AOB 28.) But while they challenge the court's *legal conclusion* that ICE's consistent practice of making unlawful warrantless arrests constitutes "final agency action" under the APA (*see* AOB 35-42),[7] they do not argue the district court made a clearly erroneous *factual finding*, on that issue or any other. And, setting aside their empty complaining, they do not attempt to show,

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[7] *See Farrell-Cooper Mining Co. v. U.S. Dep't of Interior*, 864 F.3d 1105, 1109 (10th Cir. 2017).

by citing any authority or evidence, that the court erred by admitting or considering the evidence it did. Defendants have not, therefore, met their "heavy" burden of showing that any of the district court's factual findings are clearly erroneous. *See Butler v. Hamilton*, 542 F.2d 835, 838 (10th Cir. 1976) ("[A]ppellants must point out specifically where the findings of the trial court are clearly erroneous.").

Nor could they. The evidence was voluminous and consistent. The district court carefully assessed the witnesses' testimony, making credibility determinations to which this Court must defer, and its findings are well within the "range of permissible conclusions." *Chieftain Royalty Co. v. EnerVest Energy Institutional Fund XIII-A, L.P.*, 166 F.4th 34, 50 (10th Cir. 2026); *see also MVT Servs., LLC v. Great W. Cas. Co.*, 118 F.4th 1274, 1281 (10th Cir. 2024). And the court is not alone; *several* courts have reached the same conclusion based on similar evidence. (*See supra* note 1.) That Defendants have a different view of the evidence—based principally on the subsequently-issued Lyons Memo (AOB 27)—does not permit this Court to reject the district court's well-founded factual findings. *See Penncro Assocs., Inc. v. Sprint Spectrum, L.P.*, 499 F.3d 1151, 1161 (10th Cir. 2007).

Defendants' reliance on the Lyons Memo is misplaced for a separate reason. That memo was issued in January 2026, *after* the district court entered the PI. (AOB 7.) It has no bearing on the record before the court at that time. Nor does it undermine the court's factual determination that ICE has a practice of making warrantless arrests without a pre-arrest flight-risk assessment. The district court addressed the Lyons Memo in the enforcement order, finding it conflicted with the PI in material respects—as ICE's own senior official agreed—and that, despite its issuance, ICE agents continued to make unlawful warrantless arrests. (IX:1867-69; *see also* IX:1840-41; IX:1851-54; XI:2256-59.) Moreover, based on testimony from three deportation officers and AFOD Davies during the motion-to-enforce proceedings, the court expressly found that ICE inadequately trains agents because the testifying officers "clearly [did] not know or understand" the "existing statutory requirements for warrantless arrests." (IX:1843; *see also* IX:1840-48; IX:1861; IX:1867-68.) That conclusion mirrors the lower court's policy findings in *Shaw*—which, according to this Court, "[met] the conditions described in *Lyons* where officers were 'ordered or authorized … to act in such manner.'" *Shaw*, 166 F.4th at 77 (quoting *Lyons*, 461 U.S. at 106). These findings are also entitled to deference. *See Chieftain Royalty*, 166 F.4th at 50.

b. The named Plaintiffs' individual circumstances do not negate the risk of future injury.

The named Plaintiffs face a realistic threat of being subjected to a future warrantless arrest. While the district court did not address the likelihood that Plaintiffs Dias, J.S.T., and G.R.R. may be subjected to another unlawful warrantless arrest,[8] the record leaves little doubt that they do. (*See* Argument § I.A.1.) That alone is sufficient to confer standing for prospective relief. (*Id.*) Additionally, regardless of whether Plaintiffs are actually stopped and arrested again, fear of that occurrence has forced them (and class members) to alter their lives in painful ways—that is, to withdraw from core aspects of daily life—to minimize the risk of harm from a future arrest. (Case Statement § I.B.) That change in behavior is also "sufficiently concrete" injury to confer standing. *See Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 154-55 (2010) (taking measures to minimize the likelihood of crop contamination from agency decision satisfied injury-in-fact requirement); *Friends of the Earth, Inc. v. Laidlaw Env't Servs., Inc.*, 528 U.S. 167, 181-85 (2000) (avoiding desired recreational activities at polluted waterway was sufficient to confer standing where anticipating harm from such use was "reasonable"); *accord Bost v. Ill. State Bd. of Elections*, 146 S. Ct. 513, 524 (2026) (Barrett, J., concurring) (spending "money, time, and resources" to mitigate "reasonably probable harms" from challenged statute pleaded Article III standing).

Defendants' contrary argument—that Plaintiffs Dias, J.S.T., and G.R.R. face

[8] Although the district court concluded it is unlikely that Plaintiff Ramirez will be subject to a future warrantless arrest (IV:832 n.19), he has not been dismissed from this case, and Plaintiffs believe they can establish his standing on a more complete record. Plaintiffs, however, do not challenge the district court's preliminary conclusions about Plaintiff Ramirez in this appeal.

no risk of future injury because ICE has now issued I-200 administrative warrants for them (AOB 29)—should be rejected for several reasons.

First, the district court rejected Defendants' argument as nothing more than "a vehicle for depriving plaintiffs of standing" and concluded the "*post hoc* warrants had no legal effect." (IV:833.) Defendants don't challenge that conclusion.

Second, Defendants' argument rests on an unsupported factual claim—that any future arrest and detention of Plaintiffs would *necessarily* be pursuant to a warrant. That assumption has no support in the record. Defendants represent that any such warrant would be used *only if* Plaintiffs' "circumstances materially change," *e.g.*, they become subject to "a final order of removal" or "commit[] a crime." (AOB 13; *see also* VI:1302.) But as the district court concluded, Plaintiffs and other class members remain "subject to ICE's continued illegal practices"—*without* any change in their circumstances—simply "by virtue of being in Colorado without lawful status." (IV:838-39.) Given ICE's practice of indiscriminately arresting non-citizens encountered in the field, Plaintiffs face a substantial risk of future unlawful warrantless arrests even where Defendants' asserted preconditions for the use of the administrative warrant (changed circumstances) are not present.[9]

[9] These facts distinguish this case from *Clapper*, where the plaintiffs had "no actual knowledge of the Government's … targeting practices" under the challenged statute and could "only speculate" as to whether any targeted surveillance that

(*See* XII:2353-54 (presenting evidence of warrantless arrests despite the prior existence of an I-200 for the arrestee).)

And, *third*, Defendants' argument is a patent attempt to circumvent the statutory constraints on ICE's authority to make warrantless arrests by denying victims of ICE's unlawful practices the ability to seek injunctive relief—individually or on behalf of a class. (*See* V:995-98.) Denying standing just because Defendants issued an I-200 after an unlawful warrantless arrest would only incentivize such misconduct by hamstringing the courts' ability to enjoin it, thus subjecting Plaintiffs and others to future irreparable harm.

2. Plaintiffs' ongoing injuries also provide standing to seek prospective relief on behalf of themselves and the class.

A plaintiff suffering a current and ongoing injury caused by unlawful conduct has standing to seek prospective injunctive relief to redress that injury. *See Abercrombie*, 765 F.3d at 1211; *Deshawn E.*, 156 F.3d at 344-45 (plaintiffs had standing for injunctive relief because "unlike *Lyon*s, [they] allegedly continue to suffer harm from the challenged conduct"). That is precisely what the district court held. (IV:832-35.) Defendants identify no valid basis for rejecting that conclusion.

harmed plaintiffs would be via that statute or some other unchallenged authority for that surveillance. 568 U.S. at 411-13.

a. The named Plaintiffs' unlawful warrantless arrests caused ongoing injuries that are redressable through injunctive relief.

The district court concluded that Plaintiffs Dias, J.S.T., and G.R.R. are suffering a continuing infringement of their liberty interests because they were required to wear ankle monitors and follow strict reporting requirements as conditions of their release. (IV:832-35.) These "continuing, present adverse effects" of Defendants' unlawful conduct satisfy the injury-in-fact requirement for Article III standing. *See Ward v. Utah*, 321 F.3d 1263, 1269 (10th Cir. 2003); *see also Laidlaw*, 528 U.S. at 181-85; *McLaughlin*, 500 U.S. at 51.[10]

The remaining standing requirements are likewise satisfied. Plaintiffs' ongoing injuries are fairly traceable to their unlawful warrantless arrests, just as the district court concluded. (IV:834; VI:1388.) Absent an arrest and detention followed by release, plaintiffs would never have been required to wear an ankle monitor or regularly report to authorities. That is sufficient to establish causation. *See Petrella v. Brownback*, 697 F.3d 1285, 1293 (10th Cir. 2012) (but-for causal connection sufficient). Defendants' contrary argument is mere assertion that

[10] The district court's finding concerning Plaintiffs' ongoing injuries distinguishes this case from the Ninth Circuit's recent decision in *United Farm Workers of America v. Mullin*, in which it remanded to the district court to address the plaintiffs' standing to seek prospective relief because the district court considered only past harm in its standing analysis. Order, *United Farm Workers of Am. v. Mullin*, No. 25-4047, Dkt. No. 69.1 (9th Cir. Aug. 24, 2026).

ignores the district court's factual findings. (*Cf.* AOB 31.)

Plaintiffs' injuries are also redressable, as the PI itself makes clear. As Defendants conceded, the PI required that Plaintiffs "be returned to their original pre-detention position" by removing their ankle monitors, terminating all conditions of their release, and precluding the imposition of any new ones absent a material change in circumstances. (IV:835; AOB 31-32 (acknowledging the PI "redressed those injuries").)

Plaintiffs' continuing injuries are not merely the "residual effects [of] a completed event" for which prospective relief is unavailable. (*Cf.* AOB 30 (comparing Plaintiffs' injuries to the *Lyons* plaintiff's "damaged larynx").) Unlike previously-inflicted physical injuries that cannot be remedied by prospective injunctive relief (as in *Lyons*), Plaintiffs' injuries were current and continuing infringements on their liberty interests that could be remedied by the PI. Nothing more is required for Plaintiffs to establish Article III standing.

Nor does it matter that Plaintiffs did not specifically request preliminary injunctive relief directed at these particular injuries. (*Cf.* AOB 30.) Plaintiffs' complaint—on which standing must be based—prayed for "any and all such other relief as the Court deems just, equitable, and proper." (I:67.) Defendants' hyper-technical assertion that Plaintiffs' initial proposed preliminary injunction did not seek relief from ongoing restrictions flowing from their arrests has no bearing on whether their injuries are redressable for purposes of standing. *See Kirola v. City & Cnty. of S.F.*, 860 F.3d 1164, 1176 (9th Cir. 2017) (stating that "[r]edressability is a constitutional minimum" that "depend[s] on the relief that federal courts are *capable* of granting," not on the specific relief requested by the plaintiff's proposed injunction (emphasis by court)).

b. The named Plaintiffs' ability to seek injunctive relief that redresses the risk of future harm to the class is a question of scope of relief, not Article III standing.

Despite their verbal hand-waving, Defendants do not challenge the portion of the PI granting relief to redress Plaintiffs' ongoing injuries. (*See* AOB 4 (first issue).) Instead, the thrust of their standing argument is that the continuing injuries underlying the district court's standing conclusion do not support the *scope* of relief it granted—enjoining ICE from making warrantless arrests without regard to the statutorily-required individualized flight-risk inquiry. (*E.g.*, AOB 26, 30-31.) But as this Court has recognized, that "argument conflates standing and the ability to represent a class under Rule 23." *Abercrombie*, 765 F.3d at 1216.

Abercrombie illustrates the problem with Defendants' argument. There, plaintiffs brought a class action challenging accessibility barriers at the defendant's stores. 765 F.3d at 1208-09. This Court held that the named plaintiff had standing to pursue claims for injunctive relief based on her intent to revisit a single store in Colorado, which created an imminent threat of future injury from accessibility barriers at that store. *Id.* at 1212. The defendant, however, argued the plaintiff "lack[ed] standing to bring a claim for nationwide injunctive relief" because she did not intend to visit stores at any other location. *Id.* This Court disagreed. While the Court had "no doubt" the plaintiff "would lack standing to challenge accessibility barriers at stores she never intends to visit" if asserting such claims "in her own right," that fact did not raise *standing* concerns that would deprive the court of jurisdiction to enter the challenged injunction as a form of *class* relief. *Id.* Rather, as this Court explained, "whether an injunction may properly extend" to redress class members' likely future injuries "is answered by asking whether [the plaintiff] may serve as a representative of a class that seeks such relief." *Id.* at 1213; *accord id.* at 1216.

Accordingly, named class representatives may seek broader relief on behalf of the class than they would be able to seek individually. *Id.* at 1212-14.[11] Once individual plaintiffs establish their own standing to seek injunctive relief, any daylight between the plaintiffs' individual injuries and the scope of requested class

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[11] *See also Payton v. Cnty. of Kane*, 308 F.3d 673, 678-82 (7th Cir. 2002) (permitting plaintiffs to seek injunctive relief on behalf of a certified class against defendants for whom the named plaintiffs would not otherwise have standing to sue); *Barrows v. Becerra*, 24 F.4th 116, 128-29 (2d Cir. 2022) (rejecting argument that named plaintiffs lacked "standing to pursue the injunction ordered" because it included relief that would not redress their individual injuries where plaintiffs' interests were sufficiently aligned with those of the class to allow them to assert claims on behalf of class members who would benefit from the ordered relief).

relief presents questions about the propriety of certification and whether the class is entitled to that relief, not whether the individual plaintiffs have standing to seek such relief on their own behalf. *See Abercrombie*, 765 F.3d at 1212-13 & n.4, 1228 n.4.[12] That principle applies here. At a minimum, Plaintiffs Dias, J.S.T., and G.R.R. have shown—and the district court found—that they sustained both past and continuing injuries that give them the requisite "personal stake … to ensure the existence of a live case or controversy" under Article III. *See M.S. v. Premera Blue Cross*, 118 F.4th 1248, 1261 (10th Cir. 2024). Those injuries independently provide standing to seek injunctive relief. *Abercrombie*, 765 F.3d at 1211; *Laidlaw*, 528 U.S. at 181-85.

3. The provisionally certified class, as an independent juridical entity, has standing to seek an injunction against future unlawful warrantless arrests.

"[A] certified class becomes an independent juridical entity capable of satisfying the standing requirements of Article III." *Clark v. State Farm Mut. Auto.*

[12] *See also Lewis v. Casey*, 518 U.S. 343, 395-96 (1996) (Souter, J., concurring) ("Whether or not the named plaintiff who meets individual standing requirements may assert the rights of absent class members is neither a standing issue nor an Article III case or controversy issue but depends rather on meeting the prerequisites of Rule 23 governing class actions" (quoting 1 H. Newberg & A. Conte, Newberg on Class Actions § 2.07, pp. 2-40 to 2-41 (3d ed. 1992))); *cf. Fallick v. Nationwide Mut. Ins. Co.*, 162 F.3d 410, 423-24 (6th Cir. 1998) ("[O]nce a potential ERISA class representative establishes his individual standing to sue his own ERISA-governed plan, there is no additional constitutional standing requirement related to his suitability to represent the putative class of members of other plans to which he does not belong.").

Ins. Co., 590 F.3d 1134, 1138 (10th Cir. 2009).[13] Thus, because at least one named Plaintiff has standing (Argument §§ I.A.1-2) and the district court properly granted provisional certification (Argument § II), the class also has standing, and the substantial risk of future harm to class members must be considered in evaluating the court's jurisdiction.[14]

Defendants' argument that "class members lack standing" because the risk of injury from a future warrantless arrest is purportedly speculative (AOB 44) ignores the factual record and the district court's contrary findings. Those findings establish that absent the PI, class members face a substantial risk of having future encounters with ICE that result in an unlawful warrantless arrest, followed by detention and the imposition of restrictions on class members' liberties if later released. (*See* Argument § I.A.1.)

Defendants' argument is also legally wrong. Plaintiffs are not required to prove that all class members would individually have standing. *Abercrombie*, 765

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[13] *See also Payton*, 308 F.3d at 680 ("Article III standing requirements must be assessed with reference to the class as a whole, not simply with reference to the individual named plaintiffs."); *cf. Sosna v. Iowa*, 419 U.S. 393, 399 (1975).

[14] *See Armstrong v. Davis*, 275 F.3d 849, 861 (9th Cir. 2001) ("When a named plaintiff asserts injuries that have been inflicted upon a class … , we may consider those injuries … to determine whether a credible threat that the named plaintiff's injury will recur has been established."); *Deshawn E.*, 156 F.3d at 344 (plaintiffs had standing under *Lyons* where they alleged they were "likely to suffer future" injuries "as a certified class"); *LaDuke*, 762 F.2d at 1325 ("[T]his court's inquiry must focus on the standing of the class to seek equitable relief.").

F.3d at 1213-14 (rejecting argument that plaintiffs "must offer proof of 'actual members of the class who have standing' as to the 231 stores" against which the class sought relief); *DG ex rel. Stricklin v. Devaughn*, 594 F.3d 1188, 1197 (10th Cir. 2010) (plaintiffs not required to prove that each class member was injured or faced imminent future injury). "[O]nly named plaintiffs in a class action seeking prospective injunctive relief must demonstrate standing." *Abercrombie*, 765 F.3d at 1214 (quoting *DG*, 594 F.3d at 1197).

TransUnion LLC v. Ramirez did not change this rule. (*Cf.* AOB 44 (citing *TransUnion LLC v. Ramirez*, 594 U.S. 413, 431 (2021)).) While *TransUnion* held that "[e]very class member must have Article III standing in order to *recover individual damages*," the Court declined to address the "distinct question" of "whether every class member must demonstrate standing *before* a court certifies a class." 594 U.S. 431 & n.4 (first emphasis added). Moreover, *TransUnion* says nothing about the need to prove standing for individual class members where, as here, the class seeks *only declaratory or injunctive relief*, not damages. *See Refugee & Immigrant Ctr. for Educ. & Legal Servs. v. Mullin*, 174 F.4th 81, 114-15 (D.C. Cir. 2026) (rejecting Defendants' argument). The Court's silence does not implicitly overturn the longstanding rule in this Circuit and others that only a named plaintiff must have Article III standing when seeking prospective relief.

B. Plaintiffs' claims are not moot.

Neither of Defendants' undeveloped mootness arguments has merit. (*See* (AOB 32.) Their recycled standing argument—that Plaintiffs face no risk of future warrantless arrests because ICE issued I-200s for them—fails for reasons already stated. (Argument § I.A.1.) Reframing that argument changes nothing.

Further, Defendants cite no authority establishing that granting *interim* relief to redress Plaintiffs' continuing injuries somehow mooted their claims. It shows the opposite: absent a permanent injunction, Defendants threaten to cause further harm to Plaintiffs by resuming their conduct. *See FBI v. Fikre*, 601 U.S. 234, 241-43 (2024) (to meet the "formidable standard" for mootness, "a defendant must prove no reasonable expectation remains that it will return to its old ways" (internal quotation marks omitted)). In any event, "the termination of a class representative's claim does not moot the [class members'] claims." *McLaughlin*, 500 U.S. at 51-52. The Court still would have jurisdiction even if the named Plaintiffs' claims were moot, which they are not. *Id.*

C. The INA does not preclude jurisdiction over Plaintiffs' claims.

Section 1252(g) of the INA governs judicial review of removal orders and related proceedings. It does not strip federal courts' jurisdiction over challenges to ICE's policy and practice of conducting unlawful warrantless arrests that are untethered to removal proceedings. That section "applies only to three discrete actions": (1) commencing removal proceedings; (2) adjudicating removal cases; and (3) executing removal orders. *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). It does not extend to "other decisions or actions that may be part of the deportation process," but are collateral to those specific actions. *Id.*; *accord Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018) (recognizing that § 1252(g) does not "sweep in any claim that can technically be said to 'arise from' the three listed actions" but, instead, "refer[s] to just those three specific actions themselves") (Alito, J.) (plurality opinion).

Here, Plaintiffs do not challenge the commencement, adjudication, or execution of any removal proceeding or order; they challenge only the manner and legality of their initial arrests, which occurred *before* any decision to commence removal proceedings. (*See* AOB 13 (ICE served Notices to Appear "[a]fter" each Plaintiff's arrest); *see also* XII:2340 (Defendants arguing that Notices to Appear "do not affect the legality of a warrantless arrest under § 1357(a)(2)" and are "not relevant to the enforcement of the PI").) Courts broadly agree such claims do not "arise from the prosecutorial decisions listed in Section 1252(g)" but, instead, constitute separate challenges to ICE's unlawful warrantless arrest practices. *Nava v. Dep't of Homeland Sec.*, 435 F. Supp. 3d 880, 895 (N.D. Ill. 2020); *accord Escobar Molina*, 811 F. Supp. 3d at 41; *see also Urquilla-Ramos v. Trump*, 821 F. Supp. 3d 603, 615 (S.D.W. Va. 2026); *B.D.A.A. v. Bostock*, 2025 WL 3484912, at

*3-4 (D. Or. Dec. 4, 2025).

Defendants cannot shoehorn Plaintiffs' claims into § 1252(g) 's jurisdictional bar by mischaracterizing their unlawful warrantless arrests as the Government's chosen means of commencing removal proceedings, merely because ICE issued Notices to Appear *after* arresting them. (AOB 13, 34-35.) Other courts have rejected that argument, and this Court should too. *Escobar Molina*, 811 F. Supp. 3d at 41; *Nava*, 435 F. Supp. 3d at 903. As the district court observed, Plaintiffs were "not ICE targets"; they were encountered by mere "happenstance," "minimally questioned (if at all)," and then arrested in violation of the statutory limits on ICE's arrest authority. (IV:841.) That ICE later issued Notices to Appear does not transform the independent act of arresting them—without the statutory authority to do so—into the *post*-arrest exercise of discretion to initiate removal proceedings. *See Escobar Molina*, 811 F. Supp. 3d at 41; *Nava*, 435 F. Supp. 3d at 903. Holding otherwise would expand the scope of § 1252(g) well beyond the Supreme Court's "narrow reading" of that provision, thus giving it a reach Congress never intended. *Reno*, 525 U.S. at 487.

Defendants' cited cases do not show otherwise. Most involved only challenges to executing final removal orders; they say nothing about § 1252(g) 's application here, where there is no such order to execute. *See Rauda v. Jennings*, 55 F.4th 773, 777-78 (9th Cir. 2022); *E.F.L. v. Prim*, 986 F.3d 959, 964-65 (7th

Cir. 2021); *Camerena v. Director, ICE*, 988 F.3d 1268, 1274 (11th Cir. 2021). The other cases Defendants cite—*Tazu v. Att'y Gen. of the U.S.*, 975 F.3d 292, 296 (3d Cir. 2020), and *Alvarez v. ICE*, 818 F.3d 1194 (11th Cir. 2016)—are equally inapposite. In *Tazu*, the court found § 1252(g) barred the plaintiff's challenge to "re-detaining him for prompt removal" because that "brief door-to-plane detention" was necessary to completing the removal process and, thus, "executing his removal order." 975 F.3d at 298. Similarly, the *Alvarez* court found § 1252(g) applied where, after ICE lodged an immigration detainer against the plaintiff, he challenged ICE's decision to initiate the removal process through judicial proceedings instead of agreeing to a stipulated order of removal. 818 F.3d at 1197-98, 1203. In both cases then, the plaintiffs challenged the very decisions or acts enumerated in § 1252(g). That is not the case here, where Plaintiffs challenge only whether their warrantless arrests complied with statutory and regulatory requirements, not ICE's issuance of the Notices to Appear.

II. The district court did not abuse its discretion by certifying a provisional class under Rule 23(b)(2).

Defendants' initial contention—that the district court abused its discretion by provisionally certifying a class without allowing Defendants to respond (AOB

43-44)—is unavailing.[15] The court acknowledged it was reconsidering the issue during the preliminary-injunction hearing, Defendants argued against it at that time, and they made no subsequent effort to brief it in the month before the court issued its ruling. (V:999-1000; VI:1399-1400.) Thus, they had the opportunity to oppose certification, and they don't identify any argument or evidence they were unable to present below. Nor did the court err by provisionally certifying a class on the preliminary-injunction record; courts routinely do so. *See Al Otro Lado v. Wolf*, 952 F.3d 999, 1005 n.4 (9th Cir. 2020); *M-J-M-A-*, 822 F. Supp. 3d at 1175-77; *Escobar Molina*, 811 F. Supp. 3d at 54-61; *Padres Unidos de Tulsa v. Drummond*, 783 F. Supp. 3d 1324, 1350 (W.D. Okla. 2025) (citing cases).

None of Defendants' remaining arguments show any abuse of discretion.

A. Plaintiffs' proposed class satisfies the requirements of Rule 23(a).

Defendants challenge the district court's findings only as to the numerosity, commonality, and typicality requirements of Rule 23(a); they do not challenge the court's finding regarding adequacy. (AOB 45-50.)

Defendants' challenges to these requirements fail insofar as they rest on the fact-specific and individualized nature of the probable-cause determination required by § 1357(a)(2). (*See* AOB 46, 48-49.) Plaintiffs challenge ICE's practice

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[15] Although the court initially questioned whether it needed to certify the class to issue a statewide injunction, it never suggested the putative class was "unfit" for certification. (*Compare* AOB 43, *with* IV:955-57, *and* IV:957.)

of making warrantless arrests in Colorado without any consideration of flight risk, not the validity of any particular probable-cause determination. As the evidence shows, Defendants routinely arrest individuals without engaging in any probable-cause determination whatsoever. (*See* IV:831; I:22; I:65-66.) Plaintiffs' challenge to that policy does not "require[] wading into fact-specific and individualized determinations about each class members' arrest." *See Escobar Molina*, 811 F. Supp. 3d at 58-59; *see also M-J-M-A-*, 822 F. Supp. 3d at 1176.

1. Numerosity is satisfied.

Numerosity is satisfied where the proposed class is "so numerous as to make joinder impracticable," taking into account the class's size and the impracticability of "identifying, locating, and joining" individual class members. *Abercrombie*, 70 F.3d at 1214-15. A court may properly conclude numerosity is satisfied where it is "reasonable to infer" that the class consists of a "substantial number" of people and that "joining [them] in one suit would be impracticable." *Id.* at 1215.

Here, Plaintiffs submitted evidence detailing the experiences of dozens of class members who have *already* been subjected to unlawful warrantless arrests. (*See* IV:817-30.) The district court found that ICE had a "practice of disregarding the [flight-risk] inquiry" (IV:837-38) and that "non-targets"—who are most likely to be subjected to warrantless arrests—"account[] for, by far, the largest percentage increase in immigration arrests nationally and in Colorado this year" (IV:825).

Those findings provide a reasonable basis for inferring that many more of the roughly 169,000 people without lawful status in Colorado "are likely to be arrested under similar circumstances." (IV:837-38.) Defendants don't dispute that number or show how the court's factual findings constitute clear error. The district court acted within its discretion in concluding numerosity was met on this record. *See Abercrombie*, 70 F.3d at 1215.

2. Commonality and typicality are also satisfied.

The district court found Plaintiffs satisfied the commonality and typicality requirements because "all class members, by virtue of being in Colorado without lawful status, are subject to ICE's continued illegal practices." (IV:838-39.) That finding comports with this Court's precedent. *See DG*, 594 F.3d at 1197-99 ("[L]ike commonality, typicality exists where … all class members are at risk of being subjected to the same harmful practices[.]"). Plaintiffs' claims are "common to" the class because they rest on common questions of fact and law—whether ICE has a policy of ignoring the flight-risk inquiry required by § 1357 (a)(2), despite purporting to follow facially-compliant written policies, and whether that de facto policy is unlawful. *Cf. Abercrombie*, 765 F.3d at 1216; *see M-J-M-A-*, 822 F. Supp. 3d at 1176; *Escobar Molina*, 811 F. Supp. 3d at 58-59. Their claims are likewise typical of the class because, as the district court held, Plaintiffs and class members have sustained (or would absent the PI) the same or similar harms from the same course of conduct (IV:838-39). *Cf. DG*, 594 F.3d at 1199; *see M-J-M-A-*, 822 F. Supp. 3d at 1176; *Escobar Molina*, 811 F. Supp. 3d at 59.

Defendants provide no valid basis for finding the district court abused its discretion in reaching these conclusions. They again argue the court erred because ICE purportedly does not have a policy of disregarding the flight-risk inquiry, but they cannot show that the court's contrary factual finding—which is consistent with those in *M-J-M-A-* and *Escobar Molina*—is clearly erroneous. (Argument § I.A.1.a; Case Statement § II.) Invoking *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011), and *General Telephone Co. of Southwest v. Falcon*, 457 U.S. 147 (1982)—both disparate-impact employment discrimination cases—doesn't warrant a different conclusion. (*See* AOB 47-48.) The Supreme Court held the *Wal-Mart* plaintiffs could not satisfy commonality because the only company-wide policy supported by the evidence was one that granted individual managers discretion to make employment decisions, and the plaintiffs had not shown any "common mode of exercising discretion that pervades the entire company." 564 U.S. at 355-56. And in *Falcon*, the Court found commonality lacking because the only evidence of discrimination pertained to the plaintiff alone, leaving his allegation of a company-wide discriminatory policy "otherwise unsupported." 457 U.S. at 157-58. Here, the district court expressly found that ICE *has a policy* directing ICE agents to arrest as many non-citizens as possible without complying with the statutory limitations on ICE's warrantless arrest authority. (Case Statement §§ I-II; IV:824, IV:841, IV:849-53.)

Nor are Defendants correct that factual differences among Plaintiffs and class members negate commonality or typicality. Neither requirement mandates that "every member of the class share a fact situation *identical* to that of the named plaintiff." *Abercrombie*, 765 F.3d at 1216 (emphasis by court). Further, Defendants argue only that varying individual circumstances may produce different probable-cause determinations. (AOB 48-50.) That possibility is irrelevant given Defendants' complete disregard for having to make a probable-cause determination to begin with; hence, it does not defeat certification, as explained above.

B. The proposed class satisfies Rule 23(b)(2).

Rule 23(b)(2) imposes two requirements: (1) "the defendants' actions or inactions [are] based on grounds generally applicable to all class members"; and (2) "final injunctive relief [is] appropriate for the class as a whole." *Shook v. Bd. of Cnty. Comm'rs of Cnty. of El Paso*, 543 F.3d 597, 604 (10th Cir. 2008). Both are satisfied here. ICE's practice of conducting warrantless arrests without any pre-arrest flight-risk inquiry is "generally applicable to the class as a whole," as the district court concluded. (IV:840.) Likewise, the PI provides relief to each class member by enjoining that practice and alleviating the risk of future injury. Not surprisingly, other courts have also found Rule 23(b)(2)'s requirements satisfied in these circumstances. *See M-J-M-A-*, 822 F. Supp. 3d at 1175-77; *Escobar Molina*, 811 F. Supp. 3d at 54-61.

Defendants again argue certification is improper because each class member and arrest presents a unique circumstance that supposedly requires individualized relief. (AOB 50.) But these differences do not affect the (b)(2) analysis. What matters is that Defendants' unlawful warrantless arrest practices apply generally to the class and enjoining them provides relief to each class member. That the district court found certain relief was appropriate for the named Plaintiffs at this preliminary juncture does not render (b)(2) certification improper when broader, class-wide injunctive relief would benefit the class as a whole. *See Barrows v. Becerra*, 24 F.4th 116, 132 (2d Cir. 2022) ("Rule 23(b)(2) does not require that the relief to each member of the class be identical, only that it be beneficial.").

III. The district court did not abuse its discretion by entering the preliminary injunction.

A. The district court correctly concluded that Plaintiffs were likely to succeed on the merits of their APA claims.

The district court's determination that Plaintiffs are likely to prevail on their APA claims is rooted in the record and legally sound. The record amply supports the court's findings that ICE has a policy and practice of making warrantless arrests in Colorado without conducting an individualized flight-risk assessment. That policy and practice—which federal courts have also identified on a national level—originates from a de facto policy issued by top agency officials, constituting final agency action. (*See supra* note 1.)

1. The record leaves no doubt that ICE has a policy and practice of unlawful warrantless arrests across Colorado.

The robust evidentiary record in this case supports the district court's factual finding that ICE has a consistent pattern and practice in Colorado of ignoring the individualized flight-risk determinations mandated by federal law when conducting warrantless arrests. (Case Statement §§ I-III; *see* Argument § I.A.1.) Unable to challenge the veracity of this evidence, Defendants argue that widespread but individualized experiences cannot be amalgamated to identify an agency policy or practice and ask this Court, instead, to consider each unlawful arrest in isolation. (AOB 37-39.) That ask is not only nonsensical—it rests on a distortion of Plaintiffs' claims. By definition, identifying an agency pattern or practice requires comparing multiple accounts and considering whether they reflect a consistent course of conduct. *See M-J-M-A-*, 822 F. Supp. 3d at 1178; *Escobar Molina*, 811 F. Supp. 3d at 47. And Plaintiffs do not challenge isolated probable-cause determinations; rather, they contend that ICE agents disregard those determinations altogether. Thus, differing levels of flight risk among Plaintiffs or other victims do not refute the existence of an agency policy, pattern, and practice. (IV:851-52.)

2. ICE's policy and practice constitutes final agency action.

ICE's policy and practice of unlawful warrantless arrests stems from a de facto policy constituting final agency action. 5 U.S.C. §§ 704, 706(2)(C). Final agency action exists where it (1) "mark[s] the consummation of the agency's decisionmaking process," meaning the action is not tentative or interlocutory; and (2) is one from which "rights or obligations have been determined, or from which legal consequences will flow." *Cody Lab'ys, Inc. v. Sebelius*, 446 F. App'x 964, 968 (10th Cir. 2011) (quoting *Bennett v. Spear*, 520 U.S. 154, 178 (1997)). Courts approach APA finality "flexibly and pragmatically." *Nava*, 435 F. Supp. 3d at 901 (citing *U.S. Army Corps of Eng'rs v. Hawkes Co.*, 578 U.S. 590, 599-600 (2016)). Both elements are satisfied here.

a. ICE's policy marks the consummation of the agency's decisionmaking process.

ICE's policy and practice of unlawful warrantless arrests in Colorado and elsewhere did not emerge in a vacuum—it followed from calculated, public pronouncements of agency policy by the Administration's most senior immigration officials. That policy, even if unwritten and contrary to the INA and DHS regulations, reflects the consummation of agency decisionmaking. *Hawkes*, 578 U.S. at 597. Notably, an agency action may "be final despite taking a more informal form." *Planned Parenthood of Greater N.Y. v. U.S. Dep't of Health & Human Servs.*, No. 25-2453, 2025 WL 2840318, at *17 (D.D.C. Oct. 7, 2025).

The district court considered "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." (IV:824.) At the national level, ICE's then-acting director stated that "non-criminals living in the U.S. without authorization will also be taken into custody during arrest operations." (IV:824.) At the local level, ICE's Denver Field Office Director confirmed that if his agents "encounter[ed] someone who is illegally present during the course of [their] operations," they would take that person into custody. (IV:825.) Defendants wholly ignore these statements.

These statements—made within ten days of each other—"were of a piece with the Trump Administration's publicly confirmed minimum daily quota of 3,000 immigration arrests." (IV:825; VII:1514.) The same evidence convinced the district court in *Escobar Molina* that ICE had engaged in a decisionmaking process culminating in the exact same unlawful warrantless arrest policy at issue here. 811 F. Supp. 3d at 43. There, the court considered repeated public statements by senior DHS officials, including former DHS Secretary Noem, the DHS Assistant Secretary for Public Affairs, the Chief Border Patrol Agent, and DHS's official social media account, which together "emphasized an abandonment of the probable cause standard." *Id.* at 44-45; *see also M-J-M-A-*, 822 F. Supp. 3d at 1180-81 (finding similar public statements by agency officials reflected consummation of agency decisionmaking).

Defendants are wrong that no final policy could exist because "the statute and Department regulations require individualized" flight-risk determinations to conduct a warrantless arrest. (AOB 36.) For one, it's far from clear that ICE's written warrantless-arrest policies have been consistently faithful to federal law. As the district court observed, just last year, ICE issued a second "broadcast" statement that came suspiciously close to memorializing a warrantless arrest policy where probable cause of flight risk was an afterthought. (IV:814.) ICE back-tracked only after it was rebuked by a federal court—following widespread unlawful warrantless arrests in Chicago—and only then because the Illinois district court forced the agency to re-issue its initial policy statement. *Nava*, 806 F. Supp. 3d at 861. And ICE now tries to do essentially the same with the Lyons Memo—a policy that reduces the flight-risk inquiry to a "nullity." (*See* IX:1867-68.)

That Defendants purport to have facially-compliant written policies does not refute the mountain of on-the-ground evidence showing they've established and sanctioned a contrary unwritten policy. *See Ciba-Geigy Corp. v. U.S.E.P.A.*, 801 F.2d 430, 435-36 (D.C. Cir. 1986) (once the agency "publicly articulates an unequivocal position … the agency has voluntarily relinquished the benefit of postponed judicial review"). Denying review of agency action where, as here, such a policy "is essentially conceded but ostensibly unwritten" would not only clash with black letter law that "finality be interpreted 'pragmatically,'" it would incentivize agencies to just avoid putting their decisions to paper. *R.I.L-R v.*

Johnson, 80 F. Supp. 3d 164, 184 (D.D.C. 2015) (quoting *FTC v. Standard Oil Co. of Cal.*, 449 U.S. 232, 239 (1980)).

b. ICE's arrest practices have legal consequences for Plaintiffs and the named class.

ICE's policy and practice of making warrantless arrests without conducting an individualized flight-risk assessment has "direct and appreciable legal consequences" for the named Plaintiffs and for the class members, satisfying the second element of final agency action. *U.S. Army Corps of Engineers*, 578 U.S. at 598. Defendants' conduct has had and will continue to have real and detrimental effects on Plaintiffs' and class members rights, namely subjecting them to warrantless arrest and deprivation of liberty without the probable-cause analysis that Congress requires. *M-J-M-A-*, 822 F. Supp. 3d at 1181 ("individual rights are plainly affected by the challenged conduct"). These consequences span from physical—injuries caused by officers violently pushing Plaintiff G.R.R. to the ground, for example; to financial—job loss and debt incurred as a result of Plaintiffs' unlawful detention; to emotional—the lasting trauma of Plaintiffs having been ripped from their communities by nameless and faceless law-enforcement officers. (Case Statement § I.B; V:1150.) And because ICE's policy remains in effect today, Plaintiffs and class members are subject to substantial risk of unlawful warrantless arrests in the future, causing legally cognizable injury. (IV:837-38; Argument § I.A.1.)

B. The district court did not abuse its discretion in finding a likelihood of irreparable harm.

The district court found Plaintiffs showed a likelihood of irreparable harm upon concluding that Defendants' unlawful arrest practices had caused the named Plaintiffs substantial and irreparable harms that would likely befall other class members in the absence of an injunction. (IV:858-62.) Their unlawful arrests and detention disrupted the Plaintiffs' lives in irreversible ways, causing unnecessary economic and emotional distress to them and their families while also visiting continuing harms in the form of monitoring and reporting requirements. (IV:858-60; Case Statement § I.B.) This unlawful deprivation of liberty is irreparable harm. As the court recognized after describing these harms, Plaintiffs' 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.'" (IV:859 (quoting *Heideman v. S. Salt Lake City*, 348 F.3d 1182, 1189 (10th Cir. 2003)).)

Defendants do not contend Plaintiffs' injuries are reparable; they argue only that the district court erred in relying on them because they had already occurred. (AOB 51-52.) But that argument misconstrues the court's order and ignores its separate, unchallenged finding that "these and similar" irreparable harms "are likely to befall" other class members "without the requested injunction." (IV:859-60.) The court did not err by describing Plaintiffs' past injuries to illustrate the type of harm likely to flow from Defendants' unlawful conduct and the resultant deprivation of liberty to Plaintiffs and class members.

Nor did the district court err by purportedly requiring that Defendants disprove the likelihood of irreparable harm. (*Cf.* AOB 52-53.) The court plainly found Plaintiffs "met *their burden*" to prove likely irreparable harm—a conclusion based on the court's factual findings concerning Defendants' established practice of conducting unlawful warrantless arrests and the nature of the ensuing injuries. (IV:858 (emphasis added).) It then rejected Defendants' argument that future irreparable harm was unlikely because of an allegedly compliant written policy on warrantless arrests that Defendants had previously disavowed but then reissued to comply with a federal court order just days before the preliminary-injunction hearing. (IV:860-61.) Defendants' objection to the "heavy burden" language stems from the court's comparison of that argument to a voluntary-cessation claim under mootness doctrine. (*Id.*) That reference does not reflect a misallocation of Plaintiffs' burden. To the contrary, the court reasoned that Plaintiffs had shown irreparable harm "notwithstanding the most recent ICE policy statement" because, given all the evidence showing ICE has a "consistent pattern" of making unlawful warrantless arrests (IV:817-31), there was no reason to believe "ICE intends to change its practices" based on that statement (IV:860-62).

C. The district court did not abuse its discretion in finding the balance of equities favored a preliminary injunction.

The district court correctly found the balance of equities favors a preliminary injunction. (IV:863-64.) The PI does not harm the public or the government by interfering with federal authority to enforce immigration law; it merely requires that ICE officers comply with the statutory limits on their authority to arrest and detain individuals without a warrant. (IV:863.) The PI, therefore, furthers the public interest, which Defendants admit favors only enforcement of immigration laws "*within legal limits*." (AOB 54 (emphasis added).) Despite their rhetoric, Defendants point to no specific term of the PI that precludes them from enforcing immigration laws as Congress intended.

Nor are Plaintiffs' and class members' interests in avoiding irreparable harm insubstantial. (*Cf.* AOB 54.) Their interest is in not being subjected to an *unlawful* arrest and its attendant harms; it is not an interest in "evading the law." (*Id.*) Those harms "are not inevitable," even if Plaintiffs and class members might otherwise be "properly subject to apprehension, arrest, detention, and removal according to Congress's design." (IV:859-60.)

D. Defendants' challenges to the relief ordered in the PI and the enforcement order fail to show an abuse of discretion.

1. Defendants' vagueness challenge to the PI is waived and fails on its merits.

Defendants seek to overturn the PI as an impermissibly vague "follow-the-law" injunction under Rule 65(d), but they attack only one of the four paragraphs in the PI. (*Compare* IV:865-68, *with* AOB 55-56.) Thus, the rest of the PI remains in place regardless of their Rule 65(d) challenge. As to the one paragraph they do challenge, their vagueness argument fails because it is both waived and meritless.

Defendants waived their Rule 65(d) challenge to the PI's terms by not raising it below. Plaintiffs submitted a proposed preliminary injunction that mirrored the language Defendants attack in their appeal. (*Compare* I:115-18 (proposed order), *with* AOB 55-56, *and* IV:866 (Order).) Defendants did not raise any vagueness challenge to the proposed order in their opposition brief or during the preliminary injunction hearing, thereby waiving the issue on appeal. *EarthGrains Baking Cos. v. Sycamore*, 721 F. App'x 736, 741 (10th Cir. 2017).

Regardless, the provisions Defendants challenge comply with Rule 65(d). An injunction satisfies the rule if it is "reasonably specific" in "notify[ing] the defendant of what is prohibited." *Pryor v. Sch. Dist. No. 1*, 99 F.4th 1243, 1255 (10th Cir. 2024). The PI meets these requirements. It identifies the precise conduct it prohibits—effecting a warrantless arrest without first making a probable-cause determination that an individual is likely to escape—and describes the standard for making that determination with reasonable specificity. (IV:866.)

Defendants do not show the PI lacks reasonable specificity. They complain it is impermissibly vague solely because "probable cause" is a fact-specific, totality-of-the-circumstances inquiry, which according to Defendants, means the government has "no way … to know whether it is complying" with the PI's mandate for a probable-cause determination. (AOB 56-57.) But by that logic, there would also be no way for ICE to knowingly comply with existing law or its own purported policies governing warrantless arrests. Defendants claim the PI "adds nothing to what the law already demands." (AOB 56.) And they admit—as they must—that the PI mirrors the previously-issued "broadcast" policy statement that Defendants claim was "ICE's formal policy" until mid-2025 (AOB 6) and that they claim to have re-adopted pursuant to a federal court order in October 2025 (AOB 7; IV:814-15; IV:843). Indeed, as the district court explained, the standards set forth in the PI "track ICE's own official policy statements regarding flight risk assessment." (IX:1835 (citing the broadcast policy statement); *accord* IV:865 n.28.) Defendants even claim the Lyons Memo directs agents to make probable-cause determinations based on "similar factors." (AOB 57.) Defendants make no effort to explain how or why they can comply with either existing law or their own policies while not being able to comply with the PI.

Nor do Defendants cite any authority suggesting the PI is impermissibly vague just because it defines a fact-specific legal standard for making probable-cause determinations. The only authority they cite—*Schmidt v. Lessard* (AOB 56)—is easily distinguishable. There, the injunction prohibited the defendants from "enforc[ing] … the present Wisconsin scheme" without ever defining that phrase. 414 U.S. 473, 474 (1974). That's a far cry from the PI, which specifies the enjoined conduct and defines the applicable legal standard in a manner consistent with ICE's own policy statements. The district court did not abuse its discretion by ordering ICE to comply with those same standards in the PI.

2. The district court did not err by entering the enforcement order.

Defendants' challenges to the enforcement order are equally meritless, to the extent they are reviewable given that Defendants have not properly appealed that order. (*See* Jurisdiction Statement.) They do not argue that any specific term of the enforcement order constitutes an abuse of discretion. Nor do they contend the district court's underlying factual findings—that ICE officers lacked sufficient understanding of how to make lawful warrantless arrests and failed to comply with the PI—are clearly erroneous. (*See* Case Statement § III.) Instead, Defendants argue the court somehow erred by "impos[ing] the Broadcast Policy on the government and claim[ing] the Lyons Memo conflicted with it." (AOB 57.) Both arguments reflect a misunderstanding of the PI and the enforcement order.

Any argument that the district court abused its discretion by "imposing" the broadcast policy statement on ICE through the enforcement order is nonsensical. Defendants have affirmatively represented—here and in the proceedings below—that this policy statement was ICE's "formal policy" when the PI issued (AOB 6-7; IV:814-15; IV:843), and the district court used the standards set forth therein as the model for the PI (IV:865 n.28; IX:1835). Defendants are thus wrong insofar as they argue the enforcement order somehow changed the PI by incorporating the probable-cause standards set forth in the broadcast policy statement—those standards were already incorporated into the PI.

Defendants' arguments regarding the Lyons Memo also mischaracterize the enforcement order. The identified conflicts between that memo and the broadcast policy statement were not the basis for the factual findings that prompted the enforcement order. Rather, the district court ordered further relief because the evidence—three deportation officers' testimony and ICE's arrest reports (completed Form I-213s)—showed near-universal noncompliance with the PI. (IX:1859; Case Statement § III.) The district court addressed the Lyons Memo only to the extent needed to avoid training officers inconsistently with the PI, while also noting that even ICE's senior official AFOD Davies *agreed* during the enforcement proceeding that the Lyons Memo conflicted with ICE's prior policy statements, the PI, and his own 20 year experience as an ICE officer. (*See* IX:1867-69; XI:2256-59.) Even then, the court did not mandate that officers *always* consider or exclude certain factors when making probable-cause determinations in the field but, rather, only that ICE cannot train them in a way that diminishes the importance of certain factors (*e.g.*, community ties) or elevates others to the point of establishing a flight risk whenever present (*e.g.*, encountering a noncitizen in a vehicle).[16] (*Compare* AOB 57-60, *with* IX:1867-69.)

The PI and the enforcement order are consistent with both ICE's prior policies and existing law. Neither is impermissibly vague or contrary to established precedent. Defendants, therefore, have not shown that the district court abused its discretion in entering either order.

CONCLUSION

For the foregoing reasons, this Court should affirm the district court's orders entering and enforcing the preliminary injunction and granting class certification.

[16] The district court did not state that a noncitizen's ability to depart in a vehicle is *never* an appropriate consideration, only that it is not *alone* sufficient to establish a likelihood of escape. (*Compare* IX:1868, *with* AOB 58.) Other courts have held the same. *See Vladimir G. v. Easterwood*, 2026 WL 1786418, at *3 (D. Minn. June 22, 2026). Neither of the cases Defendants cite hold otherwise, as both involved additional circumstances. *See United States v. Quintana*, 623 F.3d 1237, 1241 (8th Cir. 2010) (finding probable cause of flight risk where defendant was suspected of drug trafficking and immigration agents could not verify his identity or claims of legal entry); *United States v. Cantu*, 519 F.2d 494, 497 (7th Cir. 1975) (same where informant provided specific information that defendant was engaged in human trafficking and defendant was stopped in the midst of interstate travel from the U.S.-Mexico border to Illinois, along the described route).

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Respectfully submitted,

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STATEMENT REGARDING ORAL ARGUMENT

Although Plaintiffs-Appellees believe the issues presented by this appeal are clear, they respectfully request oral argument to have the opportunity to address any questions the Court may have with respect to this case.

By: *s/ Natalie West*

CERTIFICATE OF COMPLIANCE WITH RULE 32(A)

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of PLAINTIFFS-APPELLEES' ANSWER BRIEF was served on all participants in the case who are registered CM/ECF users via the Tenth Circuit Court of Appeals' electronic email system on September 2, 2026.

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