

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

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

REFUGIO RAMIREZ OVANDO, CAROLINE DIAS GONCALVES, J.S.T., and G.R.R.,  
and all those similarly situated,

Plaintiffs,

v.

KRISTI NOEM, in her official capacity as Secretary of the Department of Homeland Security, TODD M. LYONS, in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement, and ROBERT GUADIAN, in his official capacity as Director of the Denver Field Office of the U.S. Immigration and Customs Enforcement,

Defendants.

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**PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION**

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Defendants attempt to avoid judicial scrutiny of their pattern and practice of unlawfully arresting Coloradans by raising a series of technical challenges to Plaintiffs' request for preliminary injunctive relief. Defendants' arguments are unavailing, ask the Court to credit their assertions over the facts, and seek to insulate their actions from judicial review. Defendants' conduct is causing profound and widespread harm in Colorado that will continue without this Court's intervention. Plaintiffs ask that this Court provisionally certify the proposed class and grant the requested preliminary relief to provide a meaningful check on the government's abuse of power.

**I. Plaintiffs Have Standing to Seek a Preliminary Injunction**

Defendants argue that Plaintiffs lack standing to seek prospective relief from warrantless arrest in violation of 8 U.S.C. § 1357(a)(2), citing *City of Los Angeles v. Lyons*,

461 U.S. 95 (1983). Unlike in *Lyons*, however, there is significant evidence that Plaintiffs and the putative class face recurrent harm. Plaintiffs and many others across the state have been previously arrested without a flight risk determination, and “[p]ast wrongs [are] evidence bearing on whether there is a real and immediate threat of repeated injury.” *Lyons*, 461 U.S. at 102. Plaintiffs also allege an ongoing pattern of unlawful governmental conduct that subjects them and the putative class to a “real and immediate threat” of future arrest in violation of 8 U.S.C. § 1357(a)(2). *Id.* (internal citation omitted).

Across Colorado, ICE continues to make warrantless arrests without any flight risk analysis, including arrests based on not having a REAL ID driver’s license. See Compl. ¶¶ 66, 99; Ex. H, Vasquez Dec.¶ 7. Like thousands of other Coloradans,<sup>1</sup> none of the Plaintiffs have REAL ID driver’s licenses. Plaintiffs and putative class members face a real and immediate threat of unlawful arrest if they drive to work, go to the grocery store, socialize with friends, or simply spend time in public spaces.<sup>2</sup> Compl. ¶¶ 9, 90,117,142. Federal courts have routinely rejected the Government’s argument that *Lyons* bars

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<sup>1</sup> See S. Tyler, All Colorado DMVs now offer driver’s licenses to undocumented residents, Colorado Newsline (June 6, 2023), <https://perma.cc/4KN3-UGUL> (noting that 250,000 Coloradans had received licenses under SB251 that do not require proof of lawful presence).

<sup>2</sup> Defendants mention in passing that ICE has arrest warrants for Plaintiffs, which they produced to Plaintiffs for the first time the day before hearing. Defendants fail to explain the significance of these warrants or context in which they were issued (after Plaintiffs were subjected to a warrantless arrest). Resp.15-20. Defendants suggest that any future arrest of them would be pursuant to those post hoc warrants and therefore deprive Plaintiffs of standing, meaning that nobody detained unlawfully could ever seek injunctive relief in this context. The Northern District of Illinois rejected an analogous gambit and this Court should do the same. *Nava v. DHS*, 2025 WL 2842146, at \*11-\*17 (N.D. Ill. Oct. 7, 2025) (rejecting ICE suggestion it could issue I-200 warrants to collaterals in the field because “such a policy would largely (if not entirely) negate 8 U.S.C. § 1357(a)(2)”).

standing to challenge recurring unlawful enforcement practices. See *Riggs v. City of Albuquerque*, 916 F.2d 582, 586 (10th Cir. 1990) (distinguishing *Lyons*, concluding that plaintiffs had standing because they alleged ongoing police surveillance); *Lyll v. City of Denver*, 2018 WL 1470197 at \*17 (D. Colo. 2018) (citing *Lyons*, holding that a putative class of unhoused plaintiffs subject to sweeps had standing to seek an injunction).<sup>3</sup>

Defendants urge the Court to interpret ICE Legal Advisor Wall's October 22, 2025 "broadcast" email as a binding instruction to ICE employees to comply with the law's "mandatory obligations" to assess flight risk. Resp.10-11. But this email conflicts with explicit directives from top Administration officials to ignore these obligations. And whatever the agency's policy on paper, the evidence is that immigration officers have been disregarding their obligations in reality. Given Defendants' recent refusal in this Court's October 24 status conference to agree to an enforceable Court order incorporating these obligations, the Court should afford them no weight. The government's real-world practices threaten Plaintiffs and putative class members with future unlawful arrest at any time.

## **II. Plaintiffs Seek Equitable Relief from Defendants' *Ultra Vires* Actions and Relief under the Administrative Procedure Act**

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<sup>3</sup> Defendants claim that a single Justice's concurrence in *Noem v. Vasquez Perdomo*, 2025 WL 2585637 (Supreme Court of the United States Sept. 8, 2025), should inform the Court's standing analysis in this case. It does not. That case only concerned the lifting of a stay regarding Fourth Amendment stops, not the federal statute at issue here. If anything, the concurrence and lifting of the stay will only encourage ICE to make arrests of people like Plaintiffs here. See also *Nava*, 2025 WL 2842146, \*15-16 (since the *Perdomo* decision, people who "share commonalities with or proximity to Latino foreign nationals" "may now find themselves more likely to be subjected to ICE questioning for sometimes lengthy period of detention, and potentially, warrantless arrests").

Defendants' only legal argument on the merits is that the challenged practice is not "final agency action" under the APA. That is wrong for the reasons explained below. But in any event, Defendants misconstrue Plaintiff's claims as arising solely under the APA. Their arguments fail to undermine Plaintiffs' likelihood of success on the merits of their separate claim that Defendants acted *ultra vires* by exceeding the scope of their statutory authority. This Court has inherent equitable authority to enjoin violations of federal law by federal officers, including the statutory violations at issue here. See *United Farm Workers v. Noem*, 785 F.Supp.3d 672, 731-42 (E.D. Cal. 2025) (granting preliminary injunction which plaintiffs sought under Fed. R. Civ. P. 65); see also *Armstrong v. Exceptional Child Ctr.*, 575 U.S. 320, 326 (2015); *Porter v. Warner Holding Co.*, 328 U.S. 395, 398 (1946) (explaining that "all the inherent equitable powers of the District Court are available for the proper and complete exercise of that jurisdiction").

In addition, Defendants' policy, pattern, and practice of unlawful warrantless arrests is final agency action. The analysis of finality is "pragmatic." *U.S. Army Corps of Engineers v. Hawkes Co., Inc.*, 578 U.S. 590, 599 (2016). A final action "must mark the consummation of the agency's decisionmaking process" and "must be one...from which legal consequences will flow." *Bennett v. Spear*, 520 U.S. 154, 177-78 (1997). Here, Defendants' practice of conducting warrantless arrests without making individualized determinations of flight risk marks the consummation of the agency's decision making process: it is a marked departure from prior practice and occurred after the government increased its enforcement targets, with officials instructing immigration officers to "just go out there and arrest" and "turn the creative knob up to 11." See Compl. ¶ 9,10. And the

action is one from which the legal consequences of arrest and detention will flow. See *Nava v. DHS*, 435 F.Supp.3d 880, 901-02 (N.D. Ill. 2020) (holding that Plaintiffs' challenge to "ICE's alleged policy and practice of failing to comply with a specific, mandatory, unambiguous statutory provision" sufficiently pled a final agency action).

The October 22, 2025 DHS "broadcast" email does not alter the analysis. First, that email was issued only pursuant to a federal court's order regarding a consent decree and over the government's objection; it is not the product of DHS's change of heart. Second, whatever DHS may broadcast at any time, the reality experienced by the people ICE has unlawfully arrested is proof of Defendants' actual decided practice. Finally, Defendants' refusal to agree to abstain from unauthorized warrantless arrests in Colorado begs the inference that DHS' stated policy says little about its actual practice.

### **III. This Court Should Provisionally Certify the Proposed Class for Preliminary Relief**

Defendants argue that this Court does not have authority to issue a state-wide injunction under *Trump v. CASA*, 606 U.S. 831, 851 (2025). Resp. Br. at 35. In June 2025, the Supreme Court held that the issuance of a "universal injunction"—a district court order which "prohibit[s] enforcement of a law or policy against *anyone*"—exceeds the authority Congress has granted to the district courts. *CASA*, 606 U.S. at 837. Courts nevertheless continue to have authority to grant complete relief between the parties to an action and set aside government policies under the APA. *Id.* at 847 n.10, 851, 869, 872. As the Court recognized, the class action is the modern-day mechanism for granting relief to individuals beyond the named plaintiffs. *Id.* at 849.

Also this year, the Supreme Court held that “courts may issue temporary relief to a putative class,” citing *Newberg & Rubenstein on Class Actions*. § 4:30 (6th ed. 2022 and Supp. 2024). *A.A.R.P. v. Trump*, 605 U.S. 91, 97 (2025).<sup>4</sup> *Newberg* cautions that there is unresolved tension between the Court’s May 2025 ruling in *A.A.R.P.* and its June 2025 ruling in *CASA* and notes that “a district court would be on safest ground if it were to go through the Rule 23 analysis prior to granting preliminary relief.” Given the Government’s position here and elsewhere,<sup>5</sup> the Court would be on safest ground by provisionally certifying the proposed class.

DATED: October 29, 2025

Respectfully submitted,

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<sup>4</sup> A later edition of *Newberg* explains that “the Court’s holding [in *A.A.R.P.*] means that the filing of a class suit (a putative class), coupled with a showing that the standard for interim relief has been met, is sufficient to enable such relief to the entire putative class.” (6th ed. 2022 and Supp. 2025).

<sup>5</sup> See *Labrador v. Poe*, 144 S. Ct. 921 (2025) (partially staying federal district court’s statewide injunction to the extent it applied to nonparties, where no class certified).

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