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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

Eugene Division

M-J-M-A- and VICTOR CRUZ GAMEZ, individually and on behalf of all similarly situated individuals,

Petitioner and Plaintiffs,

v.

LAURA HERMOSILLO, Seattle Field Office Director, Immigration and Customs Enforcement and Removal Operations ("ICE/ERO"); TODD LYONS, Acting Director of Immigration Customs Enforcement ("ICE"); U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; KRISTI NOEM, Secretary of the Department of Homeland Security ("DHS"); U.S. DEPARTMENT OF HOMELAND SECURITY; and PAMELA BONDI, Attorney General of the United States,

Respondents-Defendants.

Case No. 25-cv-02011-MTK

PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION AND MEMORANDUM OF LAW IN SUPPORT OF MOTION

EXPEDITED HEARING REQUESTED

ORAL ARGUMENT REQUESTED

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CERTIFICATION OF COMPLIANCE WITH LR 7-1

Pursuant to LR 7-1, counsel for Plaintiff certifies that they conferred with Defendants' counsel on January 9, 2026. Defendants' counsel represented that Defendants oppose this motion.

MOTION

Plaintiffs, on behalf of themselves and all similarly situated individuals, respectfully request that this Court grant a preliminary order enjoining Defendants and their agents from enforcing their policy or practice of making warrantless civil immigration arrests in the District of Oregon without a pre-arrest individualized determination by the arresting agent of probable cause that the person being arrested is likely to escape before a warrant can be obtained, as required by 8 U.S.C. § 1357(a)(2) and 8 C.F.R. § 287.8(c)(2)(ii), including contemporaneous documentation of the factors required by the Department of Homeland Security ("DHS") Broadcast Statement of Policy ("Broadcast Policy") issued pursuant to settlement agreement in *Castañon Nava v. DHS*.

MEMORANDUM OF LAW IN SUPPORT OF MOTION

INTRODUCTION

In the District of Oregon, Defendants are rounding up community members across the region without warrants, detaining them and then moving them swiftly out of district. Defendants take these actions in order "to do all in their power to achieve the very important goal of delivering the single largest Mass Deportation Program in History."[1]

[1] Declaration of Jordan E. Cunnings ("Cunnings Decl."), Ex. 1; Pres. Donald Trump, @realDonaldTrump, Truth Social (June 15, 2025, 5:43pm), https://truthsocial.com/@realDonaldTrump/posts/114690267066155731, ("ICE Officers are

Like other Oregonians caught up in these violent sweeps—citizen and immigrant alike—Plaintiffs have found themselves in an upside-down world.[2] M-J-M-A- was heading to work; Mr. Cruz was returning home from work, and other Oregonians were dropping their kids off at school, buying bread, or doing any of the everyday things people do, when suddenly they are pulled into the vast DHS detention machinery without warning.[3] Sometime in September or October 2025, DHS launched its Operation Black Rose, implementing a widespread policy and practice of conducting warrantless arrests irrespective of the legally required prerequisites for probable cause

herewith ordered, by notice of this TRUTH, to do all in their power to achieve the very important goal of delivering the single largest Mass Deportation Program in History.").

[2] Cunnings Decl., Ex. 2 (Claire Rush, *US citizen detained and held at ICE building in Portland for hours before release, lawyer says*, AP News, October 10, 2025, https://apnews.com/article/us-citizen-detained-ice-portland-oregon-646ac425d32902b5f447e021f70da7df (last visited Oct. 15, 2025)); Cunnings Decl. Ex. 3 (Julia Lopez, *Neighbors: ICE agents arrest dad driving kids to school in N Portland, shoot pepper balls*, Fox12 (Dec. 11, 2025), https://perma.cc/G8EW-RPF2).

[3] Ernst Fränkel, *The Dual State: A Contribution to the Theory of Dictatorship* 3, 24-25, 39 (Oxford U. Press 1941) (explaining how two states arose in Germany in the 1900s with the "co-existence of legal order and lawlessness" where executive officials "exercise[d] their discretionary prerogatives" to create the zones of "arbitrary actions" against the politically unpopular); *Trump v. CASA, Inc.*, 606 U.S. 281, 933-34 (2025) (Jackson, J., dissenting) (citing to Mr. Frankel and writing that "I am not the first to observe that a legal system that operates on two different tracks (one of which grants to the Executive the prerogative to disregard the law) is anathema to the rule of law…eerily echoing history's horrors is the fact that today's prerogative zone is unlikely to impact the public in a randomly distributed manner. Those in the good graces of the Executive have nothing to fear; the new prerogative that the Executive has to act unlawfully will not be exercised with respect to them.")

in order to meet detention quotas.[4] Following such unlawful arrests, vehicles are abandoned, families are ruptured, businesses are shuttered, and the community is shattered.[5]

The warrantless arrest is intended to be rare as a matter of statutory law; it may only be made after a double-determination of probable cause. The ordinary rule is that warrants are *required* before officers conduct a civil immigration arrest. *See Arizona v. United States,* 567 U.S. 387, 408 (2012). "If no federal warrant has been issued, those officers have more limited authority." *Arizona,* 567 U.S. at 408. That limited authority is codified in 8 U.S.C. § 1357(a)(2), which permits warrantless arrests only if the agent has "reason to believe that the [noncitizen] so arrested is in the United States in violation of any … law or regulation [made in pursuance of law regulating the admission, exclusion, expulsion, or removal of noncitizens] and is likely to escape before a warrant can be obtained for his arrest." 8 U.S.C. § 1357(a)(2). Section 1357(a)(2) "must be read in light of constitutional standards, so that 'reason to believe' must be considered the

[4] Plaintiffs use the term "Operation Black Rose" to refer to the enforcement actions of DHS that occurred in Oregon in the fall of 2025 and are on-going. The policy and practice of warrantless arrests has spanned and continues to span several operations. *See* Transcript of Dec. 2, 2025 Evidentiary Hearing, Dkt 55-57 at 134 (government lawyer explaining that "Operation Fortifying the Border is used generally to describe this movement of officers to the Portland area during mid to late October.") There may be more than one parallel or consecutive operation. *See, e.g.,* Hr'g Tr. 142 ("We get a lot of target packages through these kinds of operations."), 170 (purpose of temporary assignment was to "assist ICE with their immigration operations."); Tr. 200 (government witness indicating name of operation as "Operation Portland Safe."); Tr. 221 (government witness explaining that "[w]e received the e-mail that said we're going to be doing at-large enforcement."); Tr. 259 (government witness explaining that the operation had a name but "I just wasn't aware of it because it doesn't really matter what the operation is called. An at-large arrest is an at-large arrest."); Tr. 330 (government witness explaining she was part of "Operation Portland Sweep"); Tr. 337 (government witness explaining that "[t]here's still an operation being conducted."); Tr. 347 (government witness explaining about operation names as "I believe it was referred to as a couple of different operations while I was there[.]); Tr. 398 (government witness explaining that "[e]very operation that we do has a name, and that's what this one was called.").

[5] Cunnings Decl. Ex. 4 (Haleigh Kochanski, *What happened to some of the people detained by ICE in Oregon, Eugene Register Guard* (Dec. 7, 2025), https://www.registerguard.com/story/news/local/2025/12/07/ice-detainees-petition-courts-to-intervene/87114937007/).

equivalent of probable cause." *Au Yi Lau v. U.S. Immig. & Naturalization Serv.*, 445 F.2d 217, 222 (D.C. Cir. 1971). Probable cause "must be particularized with respect to the person to be searched or seized[.]" *Crowe v. County of San Diego*, 608 F.3d 406, 439 (9th Cir. 2010); *Barham v. Ramsey*, 434 F.3d 565, 573–74 (D.C. Cir. 2006) ("Probable cause" requires a "particularized" inquiry and must be "objectively discernible."). Accordingly, § 1357(a)(2) demands that, before an agent can make an immigration arrest without a warrant, the agent must first make an individualized determination of probable cause that the person *both* is in the United States unlawfully *and* is a flight risk.

Defendants' policy and practice for making warrantless arrests—what Plaintiffs refer to as the "Arrest First, Justify Later" policy— in Oregon is designed to subvert the INA because in the Defendants' view, detentions and deportations are about "numbers, pure numbers, [q]uantity over quality."[6] Similar DHS warrantless arrest policies and practices have been enjoined in the District of Colombia and District of Colorado. *Escobar Molina v. U.S. Dep't Homeland Security*, -- F. Supp. 3d --, 2025 WL 3465518, *2 (D.D.C. Dec. 2, 2025) (granting injunction against DHS policy of warrantless arrests in District of Colombia); *Ramirez Ovando v. Noem*, -- F.Supp. 3d --, 2025 WL 3293467, *23-25 (D. Colo. Nov. 25, 2025) (same for the District of Colorado).

Named plaintiffs are Oregonians who have been subjected to this warrantless arrest regime and suffered harm. They seek temporary, interim relief for themselves and the putative class to

[6] Cunnings Decl. Ex. 5 (Jennie Taer, *Trump admin's 3,000 ICE arrests per day quota is taking focus off criminals and 'killing morale': insiders warn*, NY Post, June 17, 2025, https://nypost.com/2025/06/17/us-news/trump-admins-3000-ice-arrests-per-day-quota-is-taking-focus-off-criminals-and-killing-morale-insiders/, https://perma.cc/DB9R-MJUC (last visited Oct. 15, 2025) ("The Trump administration's mandate to arrest 3,000 illegal migrants per day is forcing ICE agents to deprioritize going after dangerous criminals and targets with deportation orders, insiders warn. Instead, federal immigration officers are spending more time rounding up people off the streets, sources said. 'All that matters is numbers, pure numbers. Quantity over quality,' one Immigrations and Customs Enforcement insider told The Post.")).

restore the *status quo ante litem*. The Court here should grant an injunction for the District of Oregon.

BACKGROUND

In fall 2025, DHS implemented an expanded policy to effectuate civil immigration arrests in Oregon without a warrant and without an individualized inquiry about flight risk, what Plaintiffs refer to as the Arrest First, Justify Later policy.[7] The Defendants have misused and abused the warrantless arrest and, as a result, named Plaintiffs, class members, and the community in Oregon have suffered irreparable harm.

I. Defendants' Widespread Policy and Practice to Maximize Arrests and Detentions.

The expanded "Arrest First, Justify Later" policy has been urged on by high-ranking Government officials. For example, on November 2, 2025, President Trump urged DHS to push its detention dragnet farther.[8] On November 14, 2025, DHS's Chief of the Border Patrol stated that no U.S. city, such as Portland, will be a sanctuary and that "we know who we are looking for and we have collaterals which are those other illegals that are in that area [such as a Home Depot]" and that every state is subject to the so-called rules of the border.[9] Later, on Thanksgiving Day, 2025, Trump posted the following message on Truth Social:

> Even as we have progressed technologically, Immigration Policy has eroded those gains and living conditions for many. I will permanently pause migration from all Third World Countries to allow the U.S. system to fully recover, terminate all of the millions of Biden illegal admissions, including those signed by Sleepy Joe

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[7] *See, e.g.,* Cunnings Decl. Ex. 6 (Conrad Wilson, *'Arrest first and justify later': Oregon judge orders asylum seeker released*, OPB (July 14, 2025) (referencing earlier version of policy), https://perma.cc/6H5L-DED7).

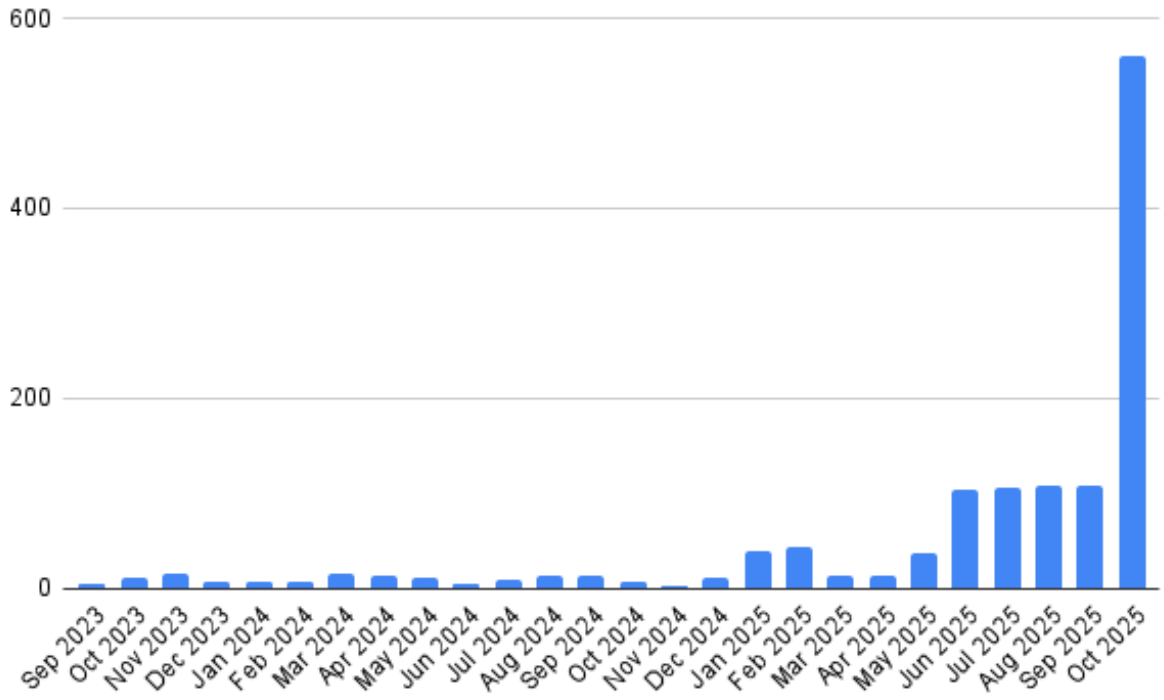
[8] Cunnings Decl. Ex. 7 (Aliza Chasan, *Trump says immigration raids "haven't gone far enough"*, CBS News, Nov. 2, 2025, https://www.cbsnews.com/news/trump-says-ice-raids-havent-gone-far-enough-60-minutes/).

[9] Cunnings Decl. Ex. 8 (Ali Bradley, Jeff Arnold, *No US city will be 'sanctuary' for migrants: Border Patrol chief*, NewsNation, Nov. 14, 2025, https://www.newsnationnow.com/us-news/immigration/no-sanctuary-migrants-patrol-chief/).

> Biden's Autopen, and remove anyone who is not a net asset to the United States, or is incapable of loving our Country, end all Federal benefits and subsidies to noncitizens of our Country, denaturalize migrants who undermine domestic tranquility, and deport any Foreign National who is a public charge, security risk, or non-compatible with Western Civilization. These goals will be pursued with the aim of achieving a major reduction in illegal and disruptive populations, including those admitted through an unauthorized and illegal Autopen approval process. Only REVERSE MIGRATION can fully cure this situation. Other than that, HAPPY THANKSGIVING TO ALL, except those that hate, steal, murder, and destroy everything that America stands for — You won't be here for long![10]

Government agents have implemented this expanded effort throughout Oregon, including through Operation Black Rose and similar operations. As illustrated in the following figure, since October 2025, civil immigration arrests in Oregon soared 1,400% over prior months, and more than 7,900% over the prior year.

Monthly ICE Arrests in Oregon, September 5, 2023-October 31, 2025



[10] Cunnings Decl. Ex. 9 (Donald J. Trump, @realDonaldTrump, Truth Social, Nov. 27, 2025, 8:26 PM, https://truthsocial.com/@realDonaldTrump/posts/115625427648743414).

See Declaration of Emily Ryo, *Clear Clinic, Inc, et al v. Noem*, 6:25-cv-01906-AA, Dkt. 78 (D. Or. 2025).[11] At least 35 people, including Petitioner-Plaintiff M-J-M-A-, were arrested in the heavily Latino community of Woodburn, Oregon on October 30, 2025.[12] On November 11, 2025, ICE arrested at least 24 people in and around Salem, Oregon.[13] On November 19, 2025, ICE agents detained at least 15 people in Eugene and the surrounding area.[14] Five people were arrested while seeking permits for mushroom foraging on federal land.[15] Earlier in the month, in the nearby town of Cottage Grove, agents pulled a Latina woman who is a Lawful Permanent Resident from her car, threw her to the ground, kneeled on top of her, handcuffed her, and detained her for a half hour. *See* Declaration of Juana Avila ISO Motion for Preliminary Injunction ("Avila Decl.").[16] In late November 2025, ICE agents dramatically increased surveillance and warrantless arrests in

[11] Emily Ryo is the Charles L. B. Lowndes Distinguished Professor of Law and Professor of Sociology at Duke University School of Law. Professor Ryo conducted an analysis of publicly available government data regarding immigration apprehensions in Oregon. Her declaration is filed at *Clear Clinic, Inc, et al v. Noem*, 6:25-cv-01906-AA, Dkt. 78 (D. Or. 2025) and is also available at https://perma.cc/5HJJ-EQ9D (Cunnings Decl. Ex. 10).

[12] Cunnings Decl. Ex. 11 (Dianne Lugo, *ICE arrests at least 24 in northeast Salem in highest one-day total, activists say*, Salem Statesman Journal, Nov. 11, 2025, https://www.statesmanjournal.com/story/news/politics/2025/11/11/ice-arrests-at-least-16-in-northeast-salem-oregon/87217507007/).

[13] Cunnings Decl. Ex. 12 (Madeleine Moore, *Immigration agents arrested 26 people in Salem on Tuesday, DHS says, Salem Reporter* (Nov. 14, 2025), https://www.salemreporter.com/2025/11/14/immigration-agents-arrested-26-people-in-salem-on-tuesday-dhs-says/ (last visited Jan. 8, 2026)).

[14] Cunnings Decl. Ex. 13 (Nathan Wilk, *Lane County advocates report at least 15 new ICE detentions*, KLCC (Nov. 21, 2025), https://www.klcc.org/politics-government/2025-11-21/lane-county-advocates-report-at-least-15-new-ice-detentions (last visited Jan. 8, 2026)).

[15] *Id.*

[16] Cunnings Decl. Ex. 14 (Jaime Adame, *Cottage Grove woman tells of being detained by ICE despite lawful status*, Lookout Eugene-Springfield, Nov. 7, 2025, https://lookouteugene-springfield.com/story/justice/2025/11/07/cottage-grove-woman-tells-of-being-detained-by-ice-despite-lawful-status/).

Yamhill County. Agents questioned and detained two U.S.-citizen high school students.[17] In one case, agents broke the student's car window and forcibly pulling him from the vehicle, with one agent commenting "I don't care" when the student asserted he was a U.S. citizen. In the second case, agents followed the student home and interrogated her parents about their immigration status. The agency flew surveillance drones over a local elementary school, brandished weapons at bystanders, and sped through school zones, ultimately arresting at least five people. Upon information and believe, most, if not all, of these arrests were made without a warrant.

II. DHS's Arrest First, Justify Later Policy

The existence of the Arrest First, Justify Later policy is widely admitted by Defendants. In *Escobar Molina*, the District Court reasoned that "[f]inding that defendants have implemented such a policy and practice does not require a far leap of logic[.]" 2025 WL 3465518 at *23. The *Escobar Molina* court explained that DHS and the other defendants in that case "have repeatedly emphasized an abandonment of the probable cause standard." *Id.* A spokesperson for DHS publicly explained that "DHS law enforcement uses 'reasonable suspicion' to make arrests." *See DHS Debunks Governor Pritzker's Harmful Lies About Operation Midway Blitz in Chicago, Federal Law Enforcement*, U.S. Dep't Homeland Security (October. 6, 2025), https://perma.cc/AD8T-MK8G. DHS has remarked that its "law enforcement is trained to ask a series of well-documented questions to determine status and removability." *See DHS Debunks New York Times False Reporting: DHS Does NOT Deport U.S. Citizens*, U.S. Dep't Homeland Security (Oct. 1, 2025),

[17] Cunnings Decl. Ex. 15 (Marina Dunbar, *ICE detained teenaged U.S. citizen during school lunch break, family says,* The Guardian, Nov. 23, 2025, https://www.theguardian.com/us-news/2025/nov/23/ice-oregon-student-citizen-detained-immigration); Ex. 16 (Michaela Bourgeouis, Joelle Jones, *Yamhill County nonprofit raises civil rights concerns amid 'extensive' ICE detainments*, KOIN6, Nov. 26, 2025, https://www.koin.com/news/oregon/yamhill-county-nonprofit-raises-civil-rights-concerns-amid-extensive-ice-detainments/).

https://perma.cc/S5L2-TKRZ. "[Y]et the press release notably said nothing about escape risk assessments, one of the two-pronged requirements for a warrantless civil immigration arrest." *Escobar Molina*, 2025 WL 3465518 at *23. Another high-ranking DHS agent doubled down on the illegal standard by stating that "We need reasonable suspicion to make an immigration arrest…You notice that I did not say probable cause, nor did I say I need a warrant." CGTN America News (@cgtnamerica), Instagram Reel (Oct. 9, 2025), https://perma.cc/Z68D-8NSX; *Escobar Molina*, 2025 WL 3465518 at *23. The court in *Escobar Molina* explained that "these statements are taken at face value as reflecting the current policy and practice of DHS and federal law enforcement agents making civil immigration arrests." *Id.* at *24.

In Oregon, Defendants have conceded that they make warrantless arrests and produce warrants only *after* the fact. But DHS does not consider these *post-hoc* warrants to be issued for the purpose of arrest or custody. At the December 2025 evidentiary hearing in this case, the following exchange occurred on cross-examination of the government witness, Agent K.K.:

> Q. And during [the period of time you were in Oregon] you would produce paperwork for whole—different people, different noncitizens who were presented through this system that has been described to us, from the arrest teams to these—I'm not sure the—sort of this triage team, then eventually to your processing team. Does that sound accurate?
> A. That sounds accurate.
> Q. And for any case that was presented to you that did not already have an I-200 in the file, you then produced and created an I-200; is that right?
> A. That's correct.
> Q. And so that would be—whether or not the arrest had been a warrantless arrest, you would then still create a warrant for the arrest after the fact?
> A. Correct.
> Q. And you did that across several cases?
> A. Correct.

Transcript of Dec. 2, 2025 Evidentiary Hearing, Dkt 55-57 at 356 ("Hr'g Tr."). A different government witness testified if he "encountered a file that did not have a warrant for arrest, an I-200" he would create one. Hr'g Tr. 306.[18]

In Oregon, Defendants have repeatedly admitted to or have been found to be making these warrantless arrests *without* the required probable cause findings. *See, e.g., B.D.A.A. v Bostock*, 2025 WL 3484912 at *7 (D. Or. 2025) (finding that warrantless arrest was improper because "even assuming that the ICE officers met the first probable cause prong, they did not meet the second. Respondents do not say that they conducted a flight risk assessment. And they provide no facts or documentation to discern any basis to make such assessment."); *Pichardo Medina v. Hermosillo*, 3:25-cv-02233-MC, Dkt. 15 at 3 (D. Or. 2025); *M-E-G-G- v. Hermosillo*, 3:25-cv-2160-AB, Dkt 9 at 2-4 (D. Or. 2025); *M-L-G-G-, et al. v. Wamsley*, 6:25-cv-02012-AA, Dkt. 31 at 2-4 (D. Or. 2025); *A-B-D- et al. v. Wamsley*, 6:25-cv-02014-AA, Dkt. 19 at 2-3 (D. Or. 2025); *A-B-D- et al. v. Wamsley*, 6:25-cv-02014-AA, Dkt. 20 at 2-3 (D. Or. 2025); *L-A-R-A- v. Wamsley*, 3:25-cv-01994-AB, Dkt. 1 at 10-12 (D. Or. 2025); *L.A.E. v. Wamsley*, 3:25-cv-01975-AN, Dkt. 18 at 2 (D. Or. 2025).

As explained below, Plaintiffs' cases are instructive as to the Defendants' Arrest First, Justify Later policy. First, both M-J-M-A- and Mr. Cruz were arrested without a warrant. Second, the arresting officer arrested them both without any articulation of the facts of "likely to escape"

[18] DHS does not consider a *post-hoc* I-200 as converting a warrantless arrest to a "warranted" arrest as the "usage of [the I-200] has changed." Hr'g Tr. 307. It is, according to DHS, "required for – for an individual to be processed as a [Voluntary Return]." Hr'g Tr. 307.

and made no individualized assessment. Third, the documentation shows that flight risk was never properly documented in accordance with policy.[19]

M-J-M-A-. The objective facts plainly demonstrate that the warrantless arrest of M-J-M-A- violated the statute, regulations, and documentation requirements.[20] First, the I-213 indicates that M-J-M-A- had no criminal record, she had no prior negative immigration record, she had not escaped and she did not try to escape from the enforcement action and had no history of escaping or attempting to escape from enforcement actions, and she was compliant with instructions. *See* Pet'r Exh. 109 (form I-213); Hr'g Tr. 268; *see also* Hr'g Tr. 290-91 (government concession that there no indication in the arrest documentation of a prior escape, prior attempted escape, prior flight from ICE officer.). The face of the I-213 fails to show that the arresting agents considered or

[19] DHS policy requires the arresting agent to consider "factors relevant to the determination may include the ICE Officer's ability to determine the individual's identity, knowledge of that individual's prior escapes or evasions of immigration authorities, attempted flight from an ICE Officer, ties to the community (such as a family, home, or employment) or lack thereof, or other specific circumstances that weigh in favor or against a reasonable belief that the subject is likely to abscond." The Broadcast Policy is a method of requiring arresting agents to document "likely to escape" prong of the probable cause determination. The arresting agent "must document the facts and circumstances surrounding that warrantless arrest in the narrative section of the alien's I-213 as soon as practicable." The documentation must include the following: documentation requirements which include, at a minimum, the following: (1) a statement that the person was arrested without a warrant; (2) the location of the arrest and whether this location was a place of business, residence, vehicle, or a public area; (3) whether the person is an employee of the business, if arrested at a place of business, or whether the alien is a resident of the residence, if arrested at a residential location; (4) the person's ties to the community, if known at the time of arrest, including family, home, or employment; (5) the specific, particularized facts supporting the conclusion that the person was likely to escape before a warrant could be obtained; and (6) a statement explaining how the agent identified himself or herself along with the reason for the arrest. *See* Cunnings Decl. Ex. 17 (Settlement Agreement, *Castañon Nava et al. v. Dep't of Homeland Sec.*, No. 18-cv-3757 (N.D. Ill.), https://perma.cc/65FA-SSX3).

[20] From the face of the Form I-213, DHS's listing of M-J-M-A's "U.S. Address" as the ICE detention center in Tacoma, Washington indicates that DHS had made a categorical decision to detain her instead of making an individualized decision based on her particular facts. *See* Pet'r Exh. 109 (form I-213); *see, e.g.,* Hr'g Tr. 295-296 (Government witness testifying that the use of the Tacoma address indicates the person will be transferred to the ICE detention center.)

made an inquiry on her family ties and residence. *See* Pet'r Exh. 109. The arresting agents omit all the key information that is required to document compliance with their warrantless arrest policy: nothing in the I-213 indicates the arrest was made without a warrant; the agent does not list her residence or make any analysis of her community ties, including her family; and the agent omits identifying the specific particularized facts supporting the conclusion that the M-J-M-A- was likely to escape. *Id.*; Hr'g Tr. 291 (government stipulation that arrest reports contain no documentation that it was warrantless).[21]

Mr. Cruz Gamez. The objective facts plainly demonstrate that the warrantless arrest of Mr. Cruz violated the statute, regulations, and documentation requirements. Mr. Cruz was driving home from his construction job when masked ICE agents arrested him. *See* Declaration of Victor Cruz Gamez ISO Motion for Preliminary Injunction ("Cruz Gamez Decl.") ¶ 9. The agents yelled at him and called him an "illegal." *Id.* ¶ 9. They did not show a warrant. *Id.* ¶ 10. According to the I-213 Record of Deportable/Inadmissible Alien created by DHS in Mr. Cruz Gamez's case, the decision to detain Mr. Cruz was made prior to the issuance of an arrest warrant and the face of the I-213 demonstrates the Defendants' policy of making warrantless arrests without considering flight risk. *See* Cruz Gamez Decl., Exhibit A (Form I-213).[22] The arresting agent knew that Mr. Cruz

[21] The Arrest First, Justify Later policy impermissibly disregards the requirement that the arresting agent have probable cause on immigration status violation before the arrest is made. Petitioner-Plaintiff M-J-M-A's case makes this plain. On similar facts, a U.S. District Court in Texas found that there was no probable cause of an arrest, and found in addition that the DHS conduct in that case was outrageous. *U.S. v. Quintanilla-Chavez*, --F.Supp.3d--, 2025 WL 2982191, *15-16 (W.D. Tx. 2025). Presently, the Plaintiffs motion for a preliminary injunction is limited to the Unassessed Escape Risk subclass while discovery proceeds. *See also, Escobar Molina*, 2025 WL 3465518, *30 (reserving the provisional class certification of a warrantless arrest class for additional factual development).

[22] The face of the I-213 shows Mr. Cruz's "U.S. Address" as the ICE detention center in Tacoma, Washington indicating, like M-J-M-A -, that DHS had already categorically decided to detain him without any individualized consideration of the particular facts in his case. *Id.*; *see, e.g.,* Hr'g Tr. 295-296.

had no criminal record, had no prior negative immigration record, had a U-nonimmigrant bona fide determination with work authorization, was gainfully employed, had a pacemaker, and had lived in the United States for more than 25 years. Cruz Gamez Decl. Exhibit A. These are all objective facts that Mr. Cruz had a low likelihood of escape. "Courts have also made the self-evident finding that the likelihood of escape is lower when the individual has resided in the country for a lengthy period of time and has strong community ties." *Escobar Molina*, 2025 WL 3465518, *13 (collecting cases). The face of the I-213 shows that the arresting agent did not consider and made no inquiry regarding his family ties and residence. Cruz Gamez Decl. Exhibit A. Finally, the arresting agent omits all the key information that is required: nothing indicates the arrest was made without a warrant, the agent does not list his residence, make any analysis of his community ties, including his family, and omits identifying the specific particularized facts supporting the conclusion that Mr. Cruz was likely to escape. *Id.*

III. DHS's Arrest First, Justify Later Policy Has Caused Extensive, Well-Documented, Irreparable Harm to Oregon

Plaintiffs and putative class members have already suffered harms because of Defendants' Arrest First, Justify Later policy in Oregon. There can be no doubt that the named Plaintiffs have been actually harmed. Both Plaintiffs were detained. For M-J-M-A-, Defendants actions caused her great fear. She "was so afraid [that she] was paralyzed" by the arrest itself. Dkt. 31 (Decl. of Petitioner ISO Habeas Petition) at ¶7. She "felt [that she] could not move and did not understand what was happening." *Id.* The conditions of her detention were poor. She "was placed in a very small cell with bunk beds and a sink and toilet. If I needed water, I had to drink it from that sink." *Id.* ¶18. For Mr. Cruz, Defendants action caused him harm. He "was terrified." Cruz Gamez Decl. ¶ 12. He "was thinking about my family and wondering whether they would know what had happened to [him] and how they would know [he] had been arrested by ICE." *Id.* At one point, he

was forced into a cell with approximately 80 other people. *Id.* ¶ 15. Multiple times, DHS pressured him to self-deport in spite of his lawful deferred action and work authorization, *Id.* ¶¶ 14, 16. He spent approximately three weeks in detention. *Id.* ¶ 17. Ms. Avila, a declarant in this case, was thrown to the ground, kneeled upon by masked ICE agents who refused to identify themselves. Avila Decl. ¶ 14-15. She "was afraid [the masked ICE agents] intended to harm [her] or kidnap [her]." *Id.* ¶ 14. She was "in complete shock" and "was crying" and "couldn't breathe." *Id.* ¶ 17. It was the "most severe form of panic [she has] ever experienced." *Id.* She was physically harmed and thought the ICE agents had broken her arm. *Id.*

DHS's unlawful arrests have sent shockwaves of terror across the state of Oregon and many residents are now staying home from work, school, and doctor appointments because of fear of unlawful arrests. Sales are plummeting at local businesses.[23] Students are afraid of attending school.[24] On October 15, 2025, the City of Portland, Oregon enacted an emergency ordinance to protect its residents because of the impacts of the Defendants' actions.[25] Local communities across Oregon have followed suit, including the cities of Hillsboro, Forest Grove, Cornelius, Woodburn

[23] Cunnings Decl. Ex. 18 (Gosia Wozniacki, *Latino businesses face economic fallout as immigration enforcement ramps up in Portland area*, OregonLive (Nov. 3, 2025), https://perma.cc/46RP-VHGT ("Business owners and managers report stark declines in sales since mid-September – some as much as half. It's worse than during the pandemic, many say, with empty store aisles, deserted restaurant floors and workers resigning or regularly calling in sick out of fear.")).

[24] Cunnings Decl. Ex. 19 (Miranda Cyr, *Springfield High students, educators march against ICE, call for action*, Eugene Register-Guard (Dec. 12, 2025), https://perma.cc/468G-ETLJ (an educator explained that "the increase of ICE activity has led to lower attendance at SHS as students either are fearful to leave home or must take on extra duties to help family members who can't leave the house for fear of being a target of ICE.")); Ex. 20 (Alex Baumhardt, *Oregon's largest teachers' union hosts training to protect students from ICE*, Oregon Capital Chronicle (Dec. 4, 2025), https://perma.cc/E6VE-XA2M).

[25] Cunnings Decl. Ex. 21 (Portland City Council, Emergency Ordinance 192115 (Oct. 15, 2025), https://perma.cc/3BNE-SC3J).

and Salem, as well as Washington and Multnomah Counties.[26] On December 9, 2025, the City of Eugene, Oregon also set aside public funds for immigrant community support because of the impacts of the Defendants' actions.[27] Other Oregon jurisdictions are considering similar declarations because of the impacts of Defendants' actions, including the Cities of Gresham and Springfield.[28] In other words, people like Plaintiffs—immigrants in Oregon—are withdrawing from the normal rhythms of civic life because of the danger posed by the Defendants' Arrest First, Justify Later policy.

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[26] Cunnings Decl Ex. 22 (Hillsboro City Council, Resolution No. 2906, *A Resolution of the City of Hillsboro Recognizing that a State of Emergency Exists Within the Community due to the Impacts of Federal Immigration Enforcement Actions and Setting Forth Various Actions the City Should Take to Address Such Impacts* (Nov. 18, 2025), https://perma.cc/XJB5-7XGK); Ex. 23 (Forest Grove City Council, Resolution No. 2025-61, *Resolution Declaring a State of Emergency to Address Community Impacts of Federal Immigration Enforcement* (Nov. 10, 2025), https://perma.cc/7QEM-JFBJ); Ex. 24 (Cornelius City Council, Resolution No. 2025-61, *Ratifying a State of Emergency Proclamation* (Nov. 17, 2025), https://perma.cc/E5YX-T9ZL); Ex. 25 (Sophia Cossette, *Woodburn declares state of emergency due to federal immigration crackdown*, Woodburn Independent (Nov. 21, 2025), https://perma.cc/QM48-ZL7H); Ex. 26 (Salem City Council, Resolution No. 2025-33, *A Resolution of the City of Salem Recognizing that a State of Emergency Exists within the Community due to the Impacts of Federal Immigration Enforcement Actions and Setting Forth Actions the city Should Take to Address Such Impacts* (Dec. 1, 2025), https://www.cityofsalem.net/home/showpublisheddocument/28579/639003687626500000J); Ex. 27 (Washington County Board of Commissioners, Resolution & Order 25-72, *In the Matter of Declaring a State of Emergency Regarding Federal Immigration Enforcement* (Nov 4, 2025), https://perma.cc/NM89-T7CP); Ex. 28 (Multnomah County Board of Commissioners, Executive Rule No. 432, *Declaration of Emergency Due to the Impacts of Federal Immigration Enforcement Actions* (Dec. 12, 2025), https://perma.cc/6CW3-MKT8).

[27] Cunnings Decl. Ex. 29 (Grace Chinowsky, *Eugene sets aside funds for future immigrant community support*, LookOut Eugene-Springfield (Dec. 9, 2025), https://lookouteugene-springfield.com/story/government-politics/2025/12/09/eugene-sets-aside-funds-for-future-immigrant-community-support/).

[28] Cunnings Decl. Ex. 30 (Christopher Keizer, *Gresham Mayor: 'We are a nation of laws. We are a nation of immigrants'*, Portland Tribune (Dec. 16, 2025), https://perma.cc/94B8-BCB8); Ex. 31 (Callee Ackland, *Springfield, Do Something: The city council should not be silent about the humanitarian crisis for immigrants*, Eugene Weekly (Dec. 31, 2025), https://perma.cc/S8DK-CJ3G).

ARGUMENT

I. Legal Standard

"The proper legal standard for preliminary injunctive relief requires a party to demonstrate (1) 'that he is likely to succeed on the merits, (2) that he is likely to suffer irreparable harm in the absence of preliminary relief, (3) that the balance of equities tips in his favor, and (4) that an injunction is in the public interest.'" *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1127 (9th Cir. 2009). As an alternative to this test, a preliminary injunction is appropriate if "serious questions going to the merits were raised and the balance of the hardships tips sharply in the plaintiff's favor," thereby allowing preservation of the status quo when complex legal questions require further inspection or deliberation. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir. 2011).

Plaintiffs satisfy all four factors and therefore are entitled to preliminary injunctive relief. Given that Plaintiffs seek preliminary injunctive relief on behalf of the proposed Unassessed Escape Risk class, as defined in the concurrently filed motion for class certification, the Court should provisionally certify the class and issue provisional class-wide preliminary relief.

II. Plaintiffs are likely to succeed on the merits.

Plaintiffs are likely to succeed on the merits of their claim that Defendants' Arrest First, Justify Later policy in Oregon violates 8 U.S.C. § 1357(a)(2); 8 C.F.R. § 287.8(c)(2)(ii); the APA; and, the *Accardi* doctrine.

A. DHS's Arrest First, Justify Later Policy is Final Agency Action.

Defendants' Arrest First, Justify Later policy is a final agency action. For an action to be "final" agency action, it must be an action that "mark[s] the consummation of the agency's decisionmaking process and … one by which rights or obligations have been determined, or from

which legal consequences will flow." *Corner Post, Inc. v. Bd. of Governors of Fed. Rsrv. Sys.*, 603 U.S. 799, 808 (2024) (citation omitted). The action "must not be of a merely tentative or interlocutory nature." *Bennett v. Spear*, 520 U.S. 154, 178 (1997).

Defendants' Arrest First, Justify Later policy of making warrantless immigration arrests without probable cause of flight risk satisfies both prongs of the final agency action test. Defendants' policy reflects a final decision by Defendants as to how to conduct warrantless immigration arrests in Oregon in pursuit of the President's goal of mass immigration arrests and deportations; it is not an action of "merely tentative or interlocutory nature." *Bennett*, 520 U.S. at 178. In addition, it is an action "by which rights or obligations have been determined, or from which legal consequences will flow," *Corner Post, Inc.*, 603 U.S. at 808, given that it is determinative of whether an individual will be arrested and detained without a warrant. *See Escobar Molina*, 2025 WL 3465518, *22-23 (concluding that warrantless arrest policy was final agency action); *Ramirez-Ovando,* 2025 WL 3293467 *19-20 (same); *Nava v. Dep't Homeland Security*, 435 F.Supp.3d 880, 902-03 (N.D. Ill. 2020) (same).

B. Plaintiffs are in imminent danger of harm from DHS's Arrest First, Justify Later policy

There is a significant likelihood that the named Plaintiffs and members of the class are in imminent danger of harm because it is the policy of DHS to conduct warrantless arrests against targets like Plaintiffs who cannot escape the ambit of the policy in the mere course of engaging in their daily life. Because evidence indicates that the challenged warrantless arrests "are part of an officially-sanction pattern . . . as a result, there is "a high likelihood of recurrent injury." *Vasquez Perdomo v. Noem*, 148 F.4th 656, 675 (9th Cir. 2025).

First, the named Plaintiffs rightly fear being re-arrested as a result of the DHS Arrest First, Justify Later policy in effect in Oregon. M-J-M-A- explains that "I am still afraid that ICE will

come and arrest me again. They have done it once without a reason, so I fear they will do it again." Dkt. 31 at ¶21; *see Vasquez Perdomo v. Noem*, 790 F. Supp. 3d 850, 887 (C.D. Cal. 2025) (finding harm sufficient for standing where plaintiff been previously stopped by immigration officers and was "disturbed and deeply concerned that federal agents will stop me and violate my rights again for the same reason"—"based on my skin color ... because I am brown, Latino"); *see also Ctr. for Food Safety v. Vilsack*, 636 F.3d 1166, 1173 (9th Cir. 2011) ("Past harms can tend to show the threat of a repeated injury"). Mr. Cruz expresses similar, reasonable fear. "My wife and I have a lot of fear that ICE will arrest and detain me again. We are afraid even to go to the grocery store." Cruz Gamez Decl. ¶ 19. He explains that he has started seeing a therapist to "manage the fear and anxiety [the warrantless arrest] has caused me." *Id.* Even so, he is "still deeply afraid and constantly vigilant, constantly nervous." *Id.*[29]

Indeed, it is Defendants' *policy* in Oregon to arrest first and then search for a justification which makes it highly likely the Plaintiffs will be subjected to the same warrantless arrest policy again. *Ortega-Melendres v. Arpaio*, 836 F. Supp. 2d 959, 979 (D. Ariz. 2011), *aff'd sub nom. Melendres v. Arpaio*, 695 F.3d 990 (9th Cir. 2012) ("[E]xposure to [the allegedly unlawful] policy is both itself an ongoing harm and evidence that there is 'sufficient likelihood' that Plaintiffs' rights will be violated again."); *Escobar Molina*, 2025 WL 3465518 at *15 (same). Defendants' warrantless arrest policy in Oregon is further buttressed by repeated public statements through which "defendants *themselves* have repeatedly emphasized an abandonment of the probable cause

[29] Likewise, a declarant in this case, Ms. Avila, is "deeply afraid that ICE will arrest [her] again." Avila Decl. ¶ 27. She "no longer feel[s] safe in [her] community and do[es] not know when or if [she] will ever feel safe again." *Id.* Her youngest son has austism and undergoes therapy because of the incident. *Id.* ¶ 24. Ms. Avila has "started seeing a therapist" and every time she leaves the house she is "constantly vigilant, checking [her] surrounding" fearful that ICE will arrest her again. *Id.*¶ 24.

standard." *Escobar Molina*, 2025 WL 3465518 at *23 (citing multiple statements by national officials affirming warrantless arrests occur without requisite probable cause).

Second, it is Defendants' *policy* to target people exactly like M-J-M-A- and Mr. Cruz for civil immigration arrests. The Defendants' policy focuses on individuals with an "immigration nexus" which means a person—including citizens of the United States, lawful permanent residents, asylum-seekers, and visitors—who has had some sort of interaction with an immigration official or an immigration agency in the past. Hr'g Tr. 130-131; and that entire geographic areas are targets. Hr'g Tr. 391-392. Persons who are targets are "agricultural workers and manual laborers," Hr'g Tr. 146; people who are traveling for work, particularly in the morning, Tr. 147, agricultural workers who share transport to work sites, Tr. 174, people who work in construction, Tr. 178, people who speak Spanish, Tr. 151, 181. According to high-ranking officials, DHS agents do not need to develop target lists of immigrants suspected of being in the U.S. illegally and instead DHS agents should "target Home Depot, where day laborers typically gather for hire, or 7-Eleven convenience stores" or just go out on the street and "arrest 30 people right away."[30] This focus on pre-designated locations rather than pre-identified individuals suggests that "Defendants' patrols will send contact teams to the same locations" that meet their parameters, which include the locations that M-J-M-A- and Mr. Cruz frequent in the course of their daily activities. *See Vasquez*

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[30] Cunnings Decl. Ex. 32 (Elizabeth Findell, et al, *The White House Marching Orders That Sparked the L.A. Migrant Crackdown* (June 9, 2025), https://www.wsj.com/us-news/protests-los-angeles-immigrants-trump-f5089877); Ex. 33 (Julia Ainsely, et al, *Under Trump administration, ICE scraps paperwork officers once had to do before immigration arrest*s (Sept. 9, 2025), https://perma.cc/ZL5Q-A8KX (Former DHS officials explaining that ICE officers do not know in advance whom they are arresting and that 'They're bending the definition of 'targeted' to conform with their operations. By 'targeted,' they might mean going to an area where they can find immigrants.'")).

Perdomo, 148 F.4th at 674-75. Plaintiffs are thus squarely "among the group of individuals that defendants target for civil immigration arrests." *See Escobar Molina*, 2025 WL 3465518 at *15.

Finally, there is nothing that Plaintiffs can do to escape Defendants Arrest First, Justify Later policy: every day that they go to work (M-J-M-A-), or come home from work (Mr. Cruz), or stop to buy bread (the petitioner in L-A-R-A-) or drive on the highway (the petitioner in B.D.A.A.), they are "realistically threatened by a repetition of [their] experience." *City of Los Angeles v Lyons*, 461 U.S. 95, 109 (1983). In M-J-M-A's case, she was innocently going to work. For Mr. Cruz, he was just coming home from work. *Melendres*, 695 F.3d at 998 (standing to challenge policy and practice of traffic stops while Latino plaintiffs were "going about ... daily life"); *Vasquez Perdomo v. Noem*, 148 F.4th 656, 675 (9th Cir. 2025) ("There is no predicate action that the individual plaintiffs would need to take, other than simply going about their lives, to potentially be subject to the challenged [immigration] stops."); *Escobar Molina*, 2025 WL 3465518 at *16 ("plaintiffs have sufficiently shown that they cannot avoid repeating the quotidian conduct that led to their original arrests" and were previously arrested "while going about unavoidable, lawful activities of daily life").

C. Plaintiffs are likely to succeed on Counts 7 & 9 (Policy and Practice of Warrantless Arrest Without Individualized Assessment of Flight Risk).

1. Warrantless Arrests & Likelihood to Escape

Under the INA, an immigration officer may conduct a warrantless arrest only if that officer has "reason to believe" that an individual is in the United States in violation of the immigration laws and is "likely to escape before a warrant can be obtained for [their] arrest." 8 U.S.C. § 1357(a)(2). A "reason to believe" is equivalent to "the constitutional requirement of probable cause." *Tejeda-Mata v. INS*, 626 F.2d 721, 725 (9th Cir. 1980). 8 C.F.R. § 287.8(c)(2)(i) specifies that before making a warrantless arrest, an immigration officer must have probable cause "to

believe that the person to be arrested has committed an offense against the United States or is [a noncitizen] illegally in the United States." The regulation at 8 C.F.R. § 287.8(c)(2)(ii) further requires that before making a warrantless arrest, an immigration officer must make an individualized determination that an individual is "likely to escape before a warrant can be obtained." *See also Mountain High Knitting, Inc. v. Reno*, 51 F.3d 216, 218 (9th Cir. 1995) (requiring officers to have "grounds for a reasonable belief that they were particularly likely to escape").

Whether a person is "likely to escape" before an administrative warrant can be obtained requires an individualized determination based on knowledge of facts particularized with respect to that person. *Ybarra v. Illinois*, 444 U.S. 85, 91 (1979); *Escobar Molina*, 2025 WL 3465518 at *13; *Ramirez-Ovando*, 2025 WL 3293467 at *2. An officer cannot predicate a search or seizure on an individual's mere propinquity to others independently suspected of criminal activity. *Ybarra*, 444 U.S. at 91.

The likely to escape requirement must be independently satisfied from the immigration status determination: even where probable cause exists for one prong of § 1357(a)(2), a warrantless arrest is invalid if probable cause does not exist for the other prong. *See* 8 U.S.C. § 1357(a)(2) (agent must have "reason to believe that the [noncitizen] so arrested is in the United States in violation of [an immigration law] *and* is likely to escape before a warrant can be obtained for his arrest") (emphasis added); *De La Paz v. Coy*, 786 F.3d 367, 376 (5th Cir. 2015) ("[E]ven if an agent has reasonable belief [that an individual is unlawfully present in the United States], before making an arrest, there must also be a likelihood of the person escaping before a warrant can be obtained for his arrest."); *Nava v. Dep't of Homeland Sec.*, 435 F. Supp. 3d at 891–92 ("The prescribed particularized determination of a detainee's flight risk [under § 1357] is not substantively related

to the question whether a non-citizen can lawfully be removed from the United States."); *U.S. v. Pacheco-Alvarez*, 227 F. Supp. 3d 863, 889 (S.D. Ohio 2016) ("ICE officers may make warrantless arrests for suspected immigration violations only when they have both probable cause for the arrest *and* probable cause that the subject is likely to escape.") (emphasis in original).

2. DHS's Arrest First, Justify Later Policy Is Unlawful

Defendants' Arrest First, Justify Later policy is unlawful because it violates the statutory requirement that before an arrest, agents must make an individualized, particularized probable cause determination that a person has violated civil immigration law *and* that the person is likely to escape before a warrant can be obtained. The policy also violates the regulation and agency policy implementing the regulation. "Defendants' systemic failure to apply the probable cause standard, including the failure to consider escape risk, directly violates the clear statutory requirements under the INA . . . and DHS's implementing regulations[.]" *Escobar Molina*, 2025 WL 3465518, *27; *Ramirez-Ovando*, 2025 WL 3293467, *19 (same).

The DHS policy violates the statute's plain language. The likelihood of escape (flight risk) prong of § 1357(a)(2) is "a statutory limitation" on agents' ability to arrest without a warrant that "is always seriously applied." *United States v. Cantu*, 519 F.2d 494, 496– 97 (7th Cir. 1975). Even where there is probable cause to arrest based on the immigration status prong of § 1357(a)(2), agents act "in direct violation of the statute" where "there is no evidence that [the plaintiff] was likely to escape before a warrant could be obtained for her arrest." *Westover v. Reno*, 202 F.3d 475, 479–80 (1st Cir. 2000); *see also, e.g.*, *Orellana v. Nobles Cnty.*, 230 F. Supp. 3d 934, 945 (D. Minn. 2017) ("[Plaintiff's] admission regarding his immigration status provided probable cause for the first half of what § 1357(a)(2) demands. There is, however, no evidence that ICE or any other immigration officer had probable cause to believe that [plaintiff] was 'likely to escape before a

warrant can be obtained for his arrest,' the second half of what is needed before a warrantless arrest under § 1357(a)(2) is lawful."). Courts have repeatedly found warrantless civil immigration arrests to be unlawful where officers fail to make "the requisite probable cause findings" as to an individual's risk of flight. *See Escobar Molina*, 2025 WL 3465518 at *27; *see also Ramirez Ovando*, 2025 WL 3293467 at *15 (concluding that "[n]o objectively reasonable officer could have found that these plaintiffs posed a 'substantial probability' of flight risk based on the limited information they possessed at the time of the arrest"); *United States v. Khan*, 324 F. Supp. 2d 1177, 1187 (D. Colo. 2004) (finding unlawful warrantless arrest where "the facts show that [the plaintiff] was likely to remain [locally] and continue working"); *United Farm Workers v. Noem*, 785 F. Supp. 3d 672, 735 (E.D. Cal. 2025) (finding likelihood of success on the merits where "the evidence shows a pattern and practice of warrantless arrests without Border Patrol agents performing individualized flight risk assessments to have probable cause for the arrest").

The DHS policy violates the plain language of the regulation. Under the *Accardi* doctrine, it is well-settled that agencies are required to follow the procedural and substantive standards contained in their own regulations. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 267– 68 (1954). In particular, "[w]here the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures." *Morton v. Ruiz*, 415 U.S. 199, 235 (1974). DHS's regulation, 8 C.F.R. § 287.8(c)(2)(ii), expressly requires that a "warrant of arrest shall be obtained except when the designated immigration officer has reason to believe that the person is likely to escape before a warrant can be obtained." This regulation protects individuals' rights under § 1357(a)(2) not to be subject to a warrantless arrest without probable cause. Defendants' failure to follow their own regulation significantly prejudices Plaintiffs and putative class members. Defendants' policy and practice of making warrantless immigration arrests without probable

cause that the person Defendants' agents are arresting without a warrant "is likely to escape before a warrant can be obtained" directly violates 8 C.F.R. § 287.8(c)(2)(ii). *See Escobar Molina*, 2025 WL 3465518, at *27; *Ramirez Ovando*, 2025 WL 3293467, at *15.

Defendants' policy also violates the agency's internal protocol implementing the flight risk determination requirement. The DHS Broadcast Policy states that "mere presence within the United States in violation of U.S. immigration law is not, by itself, sufficient to conclude that [a noncitizen] is likely to escape before a warrant for arrest can be *obtained*" and identifies factors that may be relevant to the flight risk determination, including "the ICE Officer's ability to determine the individual's identity, knowledge of that individual's prior escapes or evasions of immigration authorities, attempted flight from an ICE Officer, ties to the community (such as a family, home, or employment) or lack thereof, or other specific circumstances that weigh in favor or against a reasonable belief that the subject is likely to abscond." *See* Settlement Agreement, *Castañon Nava et al. v. Dep't of Homeland Sec.*, No. 18-cv-3757 (N.D. Ill.).[31] The Broadcast Policy further requires Defendants to "document the facts and circumstances surrounding a warrantless arrest" in each individual's Form I-213, including specific individualized findings such as "ties to the community" and "the specific, particularized facts" supporting a finding of flight risk. *Id.*; *Castañon Nava v. Dep't of Homeland Sec.*, 2025 WL 2842146, at *4 (N.D. Ill. Oct. 7, 2025). After Defendants' agents purported to terminate and rescind the Broadcast Policy notwithstanding their legally binding Settlement, a federal district court required extension of the Broadcast Policy from

[31] Notably, the remedy for those arrested in violation of this agreement within the jurisdiction of the Chicago Field Office is prompt release from custody. *Castañon Nava v. Dep't of Homeland Sec.*, 2025 WL 2842146, at *5 ("Class members who are arrested contrary to the terms of the Agreement and are in ICE custody shall be released from custody on their own recognizance without posting bond as soon as practicable" unless subject to mandatory detention under the INA).

October 7, 2025, through February 2, 2026. *See id.* at *24; *see also Escobar Molina*, 2025 WL 3465518 at *26 (describing Defendants' noncompliance with Broadcast Policy).[32] Because the Arrest First, Justify Later policy violates the ongoing Broadcast Policy, it is further contrary to law, and this Court should order relief. *See Ramirez Ovando*, 2025 WL 3293467 at *23 n. 28 (granting preliminary relief including the documentation of individualized flight risk findings consistent with the Broadcast Policy).

Plaintiffs are likely to succeed on the merits of their claim that Defendants' Arrest First, Justify Later policy violates 8 U.S.C. § 1357(a)(2); 8 C.F.R. § 287.8(c)(2)(ii) and the *Accardi* doctrine. DHS's Arrest First, Justify Later policy is arbitrary, capricious, or contrary to law and is in excess of statutory authority, *see* 5 U.S.C. § 706(2)(A), (C) and must be enjoined.

III. Plaintiffs will likely suffer irreparable harm if not granted temporary relief.

Irreparable harm is "harm for which there is no adequate legal remedy." *Arizona Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1068 (9th Cir. 2014). Violations of constitutional rights "unquestionably constitute[] irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976).

Absent intervention from this Court, Plaintiffs and the proposed class members will suffer irreparable harm caused by the Defendants' policy and practices. Pursuant to Defendants' ongoing unlawful arrests, Plaintiffs and class members will suffer from unlawful detention and "a loss of liberty… is . . . irreparable." *Moreno Galvez v. Cuccinelli*, 492 F. Supp. 3d 1169, 1181 (W.D. Wash. 2020), *aff'd in part, vacated in part on other grounds, remanded sub nom. Moreno Galvez v. Jaddou*, 52 F.4th 821 (9th Cir. 2022); *see also Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013) (irreparable harm is met where "preliminary injunction is necessary to ensure that

[32] The Seventh Circuit upheld the extension of the consent decree through February 2026. *Castanon-Nava v. U.S. Dep't Homeland Security*, 161 F.4th 1048, 1060 (7th Cir. Dec. 11, 2025).

individuals . . . are not needlessly detained" because they are neither a danger nor a flight risk).. Additionally, where parties cannot recover monetary damages from their injury, as in APA cases, economic harm can be considered irreparable. *E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 677 (9th Cir. 2021). "Intangible injuries may also qualify as irreparable harm, because such injuries 'generally lack an adequate legal remedy.'" *Id*.

IV. The balance of the equities and public interest factors tip sharply in favor of preliminary relief.

When the federal government is a party, the balance of the equities and public interest factors merge. *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073 (9th Cir. 2014) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)). The public interest inquiry primarily addresses impact on non-parties rather than parties." *League of Wilderness Defs./Blue Mountains Biodiversity Project v. Connaughton*, 752 F.3d 755, 766 (9th Cir. 2014). When the government's alleged action violates federal law, the public interest factor generally weighs in favor of the plaintiffs. *See Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013).

Here, the balance of equities and public interest tip sharply in favor of plaintiffs because the "public interest benefits" when "individuals are not deprived of their liberty" by an unlawful process. *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017). Avoiding such "preventable human suffering" strongly tips the balance in favor of Plaintiffs. *Hernandez*, 872 F.3d at 996. The public interest in the cessation of Defendants' unlawful Arrest First, Justify Later policy is particularly stark here, where jurisdiction after jurisdiction in Oregon has declared a state of emergency because of the outrageous conduct of the Defendants in executing warrantless arrests and the resulting terror that has taken hold in the community. *See supra* at Background § III. Furthermore, "it is always in the public interest to prevent the violation of a party's constitutional rights[.]" *Am. Beverage Ass'n v. City & Cnty. of San Francisco*, 916 F.3d 749, 758 (9th Cir. 2019).

By contrast, the government "cannot suffer harm from an injunction that merely ends an unlawful practice[.]" *Rodriguez*, 715 F.3d at 1145.

Even when considered from a fiscal perspective, the public interest in the efficient allocation of the government's financial resources weighs in favor of preliminary relief here. As the Ninth Circuit has explained, "[t]he costs to the public of immigration detention are "staggering": $158 each day per detainee, amounting to a total daily cost of $6.5 million." *Hernandez*, 872 F.3d at 996. The interests of the general public will not be served by the detention of individuals subjected to unlawful warrantless arrests.

The balance of equities and public interest tip sharply in favor of Plaintiffs.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court grant a preliminary order as follows:

1) **Provisionally certify** the Unassessed Escape Risk Class: All persons who, since September 28, 2025, have been or will be arrested in the District of Oregon for alleged immigration violations without a warrant and without a pre-arrest, individualized assessment of probable cause that the person poses an escape risk.
2) **Provisionally appoint** Plaintiffs' counsel from Innovation Law Lab as counsel for the provisionally certified Plaintiff class;
3) **Preliminarily enjoin** Defendants and their agents from enforcing their policy or practice of making warrantless civil immigration arrests in the District of Oregon without a pre-arrest individualized determination by the arresting agent of probable cause that the person being arrested is likely to escape before a warrant can be obtained, as required by 8 U.S.C. § 1357(a)(2) and 8 C.F.R. § 287.8(c)(2)(ii);

4) **Require** Defendants to promptly transmit any injunction to Defendants' officers, employees, agents, and contractors who have responsibilities related to the subject matter of this injunction;

5) **Require** Defendants to report every 30 days until the litigation is concluded (or if requested by Plaintiffs' counsel concerning specific individual warrantless arrests, no later than seven days after the request) on the following: (a) Any Defendant or their agent who conducts a warrantless civil immigration arrest in the District of Oregon shall, as soon as practicable, document the facts and circumstances surrounding the warrantless civil immigration arrest in narrative form. This documentation shall include the specific, particularized facts that supported the agent's pre-arrest probable cause to believe that the person is likely to escape before a warrant can be obtained, including the following facts that are consistent with the documentation required by the Broadcast Policy for compliance with 8 U.S.C. § 1357(a)(2) "that the alien was arrested without a warrant"; "the location of the arrest and whether this location was a place of business, residence, vehicle, or a public area"; "the alien's ties to the community, if known at the time of arrest, including family, home, or employment"; and "the specific, particularized facts supporting the conclusion that the alien was likely to escape before a warrant could be obtained." The documentation shall include the date and time of the arrest, and the date and time the agent completed the documentation;

(b) In describing the individualized assessment of escape risk in the documentation ordered above, specific details as to the person being arrested must be provided such that the use of boilerplate language may be deemed indicative of noncompliance.

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Dated: January 9, 2026. Respectfully submitted,

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