IN THE UNITED STATES DISTRICT COURT

FOR THE 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.	)	No. 6:25-cv-02011-MTK
LAURA HERMOSILLO, Seattle Field Office Director, Immigration and Customs Enforcement and Removal Operations ("ICE/ERO"), et al.	)	
Respondents-Defendants.	)	

Oral Argument

TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE MUSTAFA T. KASUBHAI

UNITED STATES DISTRICT COURT JUDGE

February 4, 2026

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(Wednesday, February 4, 2026, 9:35 a.m.)

P R O C E E D I N G S

(Whereupon, the following proceedings were held in open court:)

THE COURTROOM DEPUTY CLERK: Please remain seated.

The United States District Court for the District of Oregon is now in session, the Honorable Mustafa T. Kasubhai presiding.

THE COURT: Good morning.

Please call the case.

THE COURTROOM DEPUTY CLERK: And, Your Honor, we are here in the matter of M-J-M-A, et al., v. Wamsley, et al., Case Number 6:25-cv-02011-MTK, for oral argument on petitioner's motion for preliminary injunction, Docket Number 61.

THE COURT: All right. Counsel, good morning. I'd like you to please introduce yourselves. We'll start with plaintiffs' counsel first. Give me your full name and honorifics, such as Mr., Ms., or Mx.

MR. MANNING: Thank you. Good morning, Your Honor. Mr. Stephen Manning for the plaintiffs.

MS. GARCIA ORJUELA: Ms. Nelly Garcia Orjuela for plaintiffs.

MS. PROVO: Ms. Kelsey Provo for plaintiffs.

THE COURT: All right. And for defendants.

MR. RATCLIFFE: Good morning, Your Honor. Mr. Tom

Ratcliffe for the Government.

MS. GAROUSI: Good morning, Your Honor. Ms. Ariana Garousi for the Government.

THE COURT: All right. Thank you.

And we have our court interpreters also in the room. Would you be kind enough to introduce yourselves.

INTERPRETER McBRIDE: Good morning, Your Honor. Ms. Jessica McBride, certified Spanish interpreter.

INTERPRETER KNAEBEL: Good morning, Your Honor. Federally court-certified interpreter, Andre Knaebel.

THE COURT: Thank you.

INTERPRETER KNAEBEL: And that's Mr.

THE COURT: Thank you, Mr. Knaebel.

All right. Counsel, I have your briefs with respect to the motion for preliminary injunction, the motion for provisional certification of a class action.

I want to take up maybe some housekeeping matters first and make sure that we're all on the same page about the evidentiary issues that we'll need to address today, and then just make sure we lay out a map of the argument that I'll hear throughout the day.

So first things first. I did receive a witness statement or witness list from plaintiffs' counsel. You submitted that several days ago, if I'm not mistaken, correct?

MR. MANNING: That's correct, Your Honor. And we

submitted an updated one last night, and we provided a copy to the Court today.

THE COURT: Okay. Let's see. And do you happen to have a -- oh, it's -- thank you.

So Plaintiff Victor Cruz Gamez and then attorney Alicia Beesley and then Emely Avila and then M.A.M. will all be testifying today; is that correct?

MR. MANNING: That's correct, Your Honor.

THE COURT: All right. And I understand that there is -- and I believe it's M.A.M., I was notified, is not going to be able to testify in person, that you've asked that M.A.M. appear by either telephone or video for testimony. Is that also correct?

MR. MANNING: That's correct, Your Honor.

THE COURT: And is there any -- are there any objections from the Government?

MR. MANNING: No, Your Honor.

THE COURT: All right. I'll be happy to accommodate testimony remotely for M.A.M. I also understand that M.A.M. requires an interpreting -- interpreting; is that right?

MR. MANNING: That's correct, Your Honor.

THE COURT: Okay. So are there any other witnesses that the Government will be presenting, Mr. Ratcliffe?

MR. RATCLIFFE: No, Your Honor.

THE COURT: All right. Evidence at our discovery

hearing a bit over a week ago -- maybe it was just last week -- that there was some discussion about receiving video that was -- that the plaintiffs were going to present today. Did the Government have a chance to review the video evidence?

MR. RATCLIFFE: We did, Your Honor.

THE COURT: All right. And were there going to be any objections to the receipt of that evidence?

MR. RATCLIFFE: Your Honor, we would like to hear from the witnesses with respect to authentication of the videos. Our concern, however, is -- more broadly, is a relevance objection with respect to the videos.

We're not sure what Mr. Manning and team have in mind with respect to their relevance; but we'd like, as I -- as we indicated, I should say, in our notice last night of objections, we'd like to take that up before the evidence is actually introduced.

THE COURT: Okay. So we'll take up the relevancy argument when the evidence is being presented. I don't think we'll need to deal with it upfront, for now anyway.

And did you -- I take it we'll take up the evidence and complete all evidence, and then we'll turn to arguments on whether to grant the preliminary injunction, arguments against, as well as then the provisional issues associated with the class certification.

Any other housekeeping matters that we need to take

up?

Mr. Manning.

MR. MANNING: Not by us, Your Honor.

THE COURT: Mr. Ratcliffe.

MR. RATCLIFFE: No, Your Honor.

THE COURT: Okay. The one other matter that I have was -- is relating to the minute order that I issued Monday asking that the parties confer and submit a joint statement or a joint status report with respect to the memo that I understood may have been issued by acting director of -- I believe it's Homeland Security -- or, no, acting director of ICE, Mr. Todd Lyons.

Have you been able to identify, confirm the accuracy, existence of? And are there any objections? If so -- or any objections to the relevancy to the issues in this case?

Mr. Manning.

MR. MANNING: Thank you, Your Honor.

We conferred with -- plaintiffs conferred with the defendants. We submitted the joint status report yesterday. We are -- we both agree that it's authentic and that it is relevant.

THE COURT: Okay. And did you happen to bring a hard copy of that document?

MR. MANNING: I don't have a -- I do have a hard copy, actually, today. We did submit the copy with the -- with

our joint status report.

THE COURT: Okay. If you have an extra copy of the joint status report, I'd like to see that as well.

MR. MANNING: Your Honor, I don't have a copy of the joint status report. Maybe my colleagues do. But I do have a copy of the --

THE COURT: Well, let me ask you this. Is there anything, other than that which you've already described to me about authenticity and relevancy, that is in the joint status report that I'd need to consider?

MR. MANNING: That's -- that is the -- it is a four-sentence joint status report saying we think it's authentic and it is relevant; the defendants say it is authentic and it is relevant.

THE COURT: All right. Well, then given the Government isn't seeming to object to Mr. Manning's characterization, I'll accept it for now. And then we'll address argument about the meaning, implications, the impact of this January 28th memorandum from ICE acting -- I want to make sure I'm correct. Is it acting or interim director of ICE?

MS. GAROUSI: Your Honor, to read from the memo itself, it says "Todd M. Lyons, senior official performing the duties of the director."

THE COURT: Okay.

MS. GAROUSI: Which is a mouthful, so --

THE COURT: Okay.

MR. RATCLIFFE: Your Honor, for simplicity, we're happy for the Court to refer to him as the acting director.

THE COURT: I'll accept that invitation to be simple on that reference. And I just simply want to make sure that I'm identifying all the officials with their appropriate titles, both out of respect and making sure that we're all talking about the same person, too, in the course of our arguments today.

All right. Mr. Manning, any opening statements?

MR. MANNING: Yes, Your Honor. Thank you.

OPENING STATEMENT

MR. MANNING: So good morning. May it please the Court.

Plaintiffs, on behalf of class, are seeking a preliminary injunction to return the State of Oregon to the status quo ante litem. So, in particular, we're seeking to enjoin the defendants' "Arrest First, Justify Later" policy; that is, making warrantless arrests without evaluating flight risk and failing to document the flight risk.

In addition to the testimony and evidence that's already part of the record, we have four witnesses today. So, first, we're going to call Mr. Cruz Gamez. He's a named plaintiff and a proposed class representative. His testimony is intended to show that DHS arrested him without a warrant, as

part of their "Arrest First, Justify Later" policy or practice.

We will call M.A.M. She's being called to authenticate a video of what we characterize as a home invasion conducted by DHS without a warrant as part of its "Arrest First, Justify Later." The video will speak for itself.

And it is plaintiffs' position that relief in this case should extend to enjoining the May 2025 Lyons memo, which we reference in our reply, regarding home invasions without a warrant as it relates to the proposed class.

Plaintiffs will call Emely Avila. She's being called to authenticate a video of a warrantless arrest of Juana Avila, a declarant in this case. The video provides corroboration of the declaration from Ms. Avila, and the video can speak for itself.

Finally, we will call Alicia Vial Beesley, and she's also being called to authenticate a video. The purpose of this video is to demonstrate the nature of DHS sweeps. In earlier testimony in this case, we heard about DHS's conducting target -- they're targeting locations, using what was described as a Google-like -- something like Google Maps, looking for target-rich locations.

With the video, which can speak for itself, we intend to show that DHS showed up at an apartment complex without warrants with the intent to conduct warrantless arrests consistent with the policy of "Arrest First, Justify Later."

And with that, Your Honor, we are ready to call our first witness.

THE COURT: Mr. Ratcliffe, any opening statement?

MS. GAROUSI: Your Honor, you're dealing with me today.

THE COURT: All right.

OPENING STATEMENT

MS. GAROUSI: As a preliminary matter, the Government reminds the Court that this court [sic] started as a habeas petition that remains pending. The Government imposes habeas relief and intends to file a motion to dismiss those habeas counts in the future.

But, turning to today's hearing, which is the preliminary injunction, the factual question before the Court on this narrow preliminary injunction is: Is there a policy or practice regarding warrantless arrests?

The Lyons memo, which was issued last week, dispositively answers that question. Yes, there is a written policy. And the follow-up question then becomes: Does that policy resolve the prospective risk that immigration officers will conduct widespread warrantless arrests without the likelihood to -- of escape determination?

The Lyons memo also dispositively answers that question. Yes, it resolves -- it resolves that risk by directing officers to make and document escape determinations

for every warrantless arrest. This is exactly the remedy plaintiffs seek in their motion for preliminary injunction.

The Government disputes that plaintiffs' evidence reaches the threshold showing of a likelihood of success on the merits, but the Court need not reach the evidence because of the Lyons memo. It supersedes any compilation of past isolated incidents that plaintiffs seek to offer to establish a past unwritten pattern or practice of violating the statute and regulation regarding warrantless arrests.

The Government would respectfully request the Court deny the motion for preliminary injunction.

THE COURT: This may enter the realm of trying to understand some of the evidence here, and evidence in the form of government official statements, so I -- I do want to ask about this. I think I understood you to say that what we're calling the Lyons memo -- and we probably should -- I'd like to mark it as an exhibit and make sure that it's received and made part of the record, and we'll do that in just a few moments.

I'm converting your opening statement to a bit of an argument, for which now I'll ask a couple of questions. Are you suggesting that the -- this Lyons memo dated January 28th is a new policy? Or is it a reminder to ICE agents to do that which they were always supposed to be doing?

MS. GAROUSI: Yes, Your Honor. It's always been the Government's position that plaintiffs, prior to the Lyons memo,

haven't demonstrated that there's a pattern or practice that agents -- officers in Oregon have violated the statute with regard to likelihood of escape determinations.

The Lyons memo, it adds to that evidence that we've already -- that -- it adds to -- it cuts against the evidence that they intend to present that would show there's a pattern or practice. But I think it also provides the exact remedy they're looking for with this motion for preliminary injunction.

So, to be clear -- and the Lyons memo itself refers to -- refers to this as guidance and almost like a reaffirmation of the directives that ICE officers have to follow statutes. So this isn't a concession that this is somehow new, but this adds to the fact that the evidence demonstrates there is no policy or practice.

THE COURT: So there is no policy or practice of doing anything other than following the law, is what you're contending?

MS. GAROUSI: I mean, specifically this preliminary injunction comes before the Court as a challenge to officers' alleged failure to conduct individualized determinations of likelihood of escape. And I think the Lyons memo speaks exactly to that issue.

THE COURT: Well, and the memo, as I read it, indicates that officers are supposed to comply with Acting

Director Lyons' description of what the law is. But it would seem to me that the next layer of investigation and analysis would be whether, in fact, it's a correct statement of the law.

MS. GAROUSI: Yes, Your Honor, and I agree with that. And that's, I think, a different case than what's before the Court right now. I think what you're talking about is -- we're getting into the nitty-gritty of statutory interpretation and different APA claims challenging the actual interpretation of the policy.

Right now this preliminary injunction before you is a challenge to the fact that -- the allegation is that officers do not conduct this analysis; they don't do an individualized determination of likelihood to escape. This memo clearly orders officers to do that in compliance with the law.

THE COURT: And if I find that the evidence, which I also understand would include the evidentiary record that was developed back in December, if I were to find that that evidence likely points to not following the law, even if I understand that Acting Director Lyons' description of the law is the benchmark to work from, is not following the law, then -- then the preliminary injunction, at least with respect to likelihood of success, that element would be met.

MS. GAROUSI: Your Honor, the Government wouldn't concede that that element would be met because this is new evidence that is now being submitted. And I think what the

Court -- what the Court is referring to -- this is clearly a delineation of what the policy and practice is.

And so any preliminary -- any -- and a preliminary injunction is inherently forward-looking. We're not saying that if there was a past injury from named plaintiffs or other plaintiffs, there's no opportunity for redress. It just needs to be the appropriate mechanism.

A preliminary injunction is meant to keep the status quo during litigation. It's meant to ensure that no injury occurs while we resolve the merits of this class action. To issue a preliminary injunction based off of simply those past injuries, when we have this clear statement from a government official within the last week, it doesn't remedy those past issues, those past injuries.

THE COURT: All right. All right. I'll reserve my questions after evidence and we take up the more robust discussion of the legal arguments after evidence is received.

So first things first. Any objections to my receipt of the January 28th, Todd Lyons -- Acting Director Todd Lyons' memorandum? I'll mark it as Exhibit 1.

Are there any objections, Mr. Manning?

MR. MANNING: Not by plaintiffs, Your Honor.

THE COURT: Ms. Garousi.

MS. GAROUSI: Sorry. No, Your Honor.

THE COURT: Exhibit 1, the January 28th, 2026,

memorandum addressed to all ICE personnel from Acting Director Todd Lyons, is received.

(Exhibit No. 1 received.)

THE COURT: Mr. Manning, your first witness.

MR. MANNING: Thank you.

So, Your Honor, we would call Mr. Cruz Gamez. And for the direct examination, Ms. Kelsey Provo, my colleague, will be conducting that.

THE COURT: All right. Mr. Gamez, if you'd be kind enough to come up to the witness stand over here on my right side, your left, my courtroom deputy will swear you in.

THE COURTROOM DEPUTY CLERK: Please raise your right hand.

VICTOR CRUZ GAMEZ

Was thereupon called as a witness on behalf of the Plaintiffs; and, having been first duly sworn, was examined and testified as follows:

THE COURTROOM DEPUTY CLERK: Please state your full name and spell your last name for the record.

THE WITNESS: Victor Manuel Cruz Gamez.

THE COURT: Mr. Manning.

MS. PROVO: And, Your Honor, I'll be doing the --

THE COURT: Oh, sorry.

MS. PROVO: That's okay. Thanks.

DIRECT EXAMINATION

BY MS. PROVO

Q. Good morning, Mr. Cruz Gamez. How are you?

A. Good morning. Good. Thank you.

Q. How old are you?

A. I just turned 56.

Q. What is your educational level?

A. So here I got what was equivalent to high school.

Q. Are you referring to the GED?

A. Yes.

Q. When did you get your GED?

A. Approximately about eight years ago.

Q. Why did you decide to get your GED?

A. I have always thought that any kind of learning is a tool for personal growth.

Q. Do you have any trade certifications?

A. Yes. I have a general contracting license.

Q. When did you get this certification?

A. I got it about two years ago.

Q. What city do you live in currently?

A. I live in the city of Hillsboro.

Q. For how long have you lived in the city of Hillsboro?

A. We have been in that city for around four years.

Q. For how long have you lived in Oregon?

A. I've been in Oregon for approximately 27 years.

Q. When was the first time you entered the United States?
A. It was at the end of 1988.
Q. When was the last time you entered the United States?
A. The last time was 1999.
Q. Did you travel back and forth between the U.S. and Mexico between your first entry and your last entry?
A. Yes. If I'm remembering correctly, I left three times.
Q. Why did you travel back and forth?
A. At first I thought that just for staying a little while, I could -- a little bit of time, I could save up some money to start a small business.
Q. And were you able to do that on your first entry?
A. No. Unfortunately, I was only able to save very little, and so that's why I was forced to come back again.
Q. And what ultimately brought you to the United States the last time you entered?
A. The last time, at that point I was married, and I had my three kids. And I wasn't making enough money in Mexico, and so that's why I felt the need to come back to the United States.
Q. And do you have family here in Oregon?
A. Yes. I have a brother.
Q. And you mentioned you're married and have children. Does your wife live in Oregon?
A. Yes. My wife lives with me.
Q. How many children do you have?

A. I have three -- I have three children, one boy and two girls.
Q. Do your three children live in Oregon?
A. Yes. All three live in Oregon.
Q. In what cities do they live?
A. My son lives in Southeast Portland. One of my daughters lives in Milwaukie, and my other daughter lives in Forest Grove.
Q. Do you have grandchildren?
A. Yes. I have four grandchildren.
Q. How often do you see your children and your grandchildren?
A. My wife and I, we always try to get together with them every weekend.
Q. Have you applied to regularize your immigration status?
A. Yes. I was in the process of getting relief through a U-visa.
Q. Do you know why people apply for the U-visa?
A. Yes. Normally it's people who have been the victims of some crime and they help officers solve that crime.
Q. How long ago did you file your U-visa application?
A. I think that it was five years ago, more or less.
Q. What is the status of your U-visa application?
A. The Government had accepted -- or approved my petition and given me a work permit that was valid for four years and a social security number.

Q. Is your work permit still valid?
A. Yes. I think that it didn't expire until 2009. Sorry. 2029.
Q. Do you know if the Government made a preliminary decision on your U-visa application?
A. Honestly, I don't know if they're still in the process.
Q. Do you know why you received the work authorization while your U-visa application was pending?
A. Yes. The Government voted in my favor and gave me that permit or authorization in good faith.
Q. And do you know what it means to have authorization in good faith?
A. Yes. My understanding is that, even though it's still in the process, it's -- it's like a protection against, like, being detained.
Q. Do you understand it to be protection against being deported?
A. Yes.
Q. What do you do for work?
A. I have a company that specializes in remodeling, mostly residential.
Q. How long have you had your company?
A. Two years, but I've been working in construction for the last 20 years.
Q. Do you work alone?

A. Yes. Normally I work alone 90 percent of the time. But when I need help, if it's a bigger job, then I will hire people.

Q. Do you like your job?

A. Yes. It's very satisfying, especially when I see my customers and their happy faces when they see the final project.

Q. Now I'm going to ask you questions about what happened to you on October 14th, 2025.

A. Okay.

Q. Did you go to work on October 14th, 2025?

A. Yes.

Q. At what time do you usually go to work?

A. Normally around 7:00 or 8:00 in the morning.

Q. On that morning did you leave for work at your usual time?

A. Yes.

Q. Had you been going to work the previous week?

A. No. The week before, I did not. I had had an accident, so I stayed home the whole week. I had had an accident at work, on the job that I was going to finish that day.

Q. Can you briefly describe the accident?

A. Yes. So I was finishing a project putting siding on a house, and I was caulking the cracks when the ladder that I was on slipped and I fell off.

Q. And did you suffer any injuries?

A. Yes. I injured my left leg.
Q. How do you usually get to work?
A. I have a work van.
Q. Do you drive your work --
MS. PROVO: Interpreter, I believe it might be "truck."
INTERPRETER McBRIDE: Interpreter would like to clarify.
Okay. Yes. Interpreter's correction: A work truck.
BY MS. PROVO
Q. Do you drive your work truck?
A. Yes.
Q. And how did you get to work on October 14th?
A. So normally -- so I had broken my left foot, so I couldn't use it. But -- so I drove the truck, like, normal. But that day I needed some help, and so there was a person with me who was going to help me.
Q. What job were you doing on that particular day?
A. I was finishing up the project that I had started, caulking the cracks and doing detail paint, painting.
Q. What time did your work day end on that particular day?
A. Since there wasn't a lot of work to finish up, we finished early, at around 1:00 or 1:20.
Q. Where had you planned to go after work that day?
A. Straight home.

Q. Did you make it home?
A. No.
Q. Briefly tell us why you did not make it home after work on October 14th.
A. So when I was heading back, I made a stop to let my partner, coworker, out so that he could catch the bus. When I started driving again, I had made it about five blocks when I saw a vehicle that had its lights on. And that's when I was -- that's when I was stopped.
Q. Where were you when immigration stopped you?
A. I was relatively close to home. I was about three minutes from home. I was almost there.
Q. And when you saw the lights flashing, what was your first thought?
A. At first, I thought it was an officer that just needed to pass. And so I pulled over so that they could pass, but that's when they stopped behind me.
Q. At that time how many vehicles were there?
A. Just one.
Q. And describe the vehicle.
A. It was a brown Tahoe with no markings.
Q. And when you say "no markings," no police or law enforcement markings?
A. Yes.
Q. What happened next?

A. So right away two people got out of the vehicle, and they came to my vehicle. And one person was on my right and one person on my left.
Q. How many people or officers did you see total?
A. Three.
Q. Where was the third person?
A. Still in the vehicle.
Q. What were the officers wearing?
A. Two of them were just wearing bulletproof vests, but those vests didn't have any markings, like, indicating, like, which member of the police they were.
Q. What happened next?
A. So then right away the two officers started yelling at me, yelling at me if I was Victor Cruz Gamez. And they were both yelling at the same time and yelling to roll my window down and turn the truck off. And then they kept asking me if I was Victor Cruz Gamez until I opened the door.
Q. Were they yelling at you in English or in Spanish?
A. English.
Q. At what point did you become aware the officers were with immigration enforcement?
A. As soon as they got out and I saw that they didn't have uniforms, I knew that they were immigration.
Q. What were you feeling in that moment?
A. I was very, very anxious and terrified. I didn't know

what was going to happen.
Q. Did you respond to the officers when they asked you if you were Victor Cruz?
A. Yes. I said that that was me.
Q. After you identified yourself as Victor Cruz Gamez, what happened?
A. They got me out of the truck, and they took me to the back part.
Q. Then what happened?
A. Then -- so at that point the other officer had gotten out, and he was wearing a blue jacket that said DHS.
Q. What happened next?
A. The officer with the blue jacket on asked me if I had any identification with me.
Q. Did you provide your identification to the officer when you were asked?
A. Yes. At the beginning I showed them my driver's license.
Q. Did you offer additional identification to the officers?
A. Yes. Right away I told them that I had a valid work permit that was valid for four years.
Q. Why did you show the officers your work permit?
A. I thought that that would -- could maybe persuade them for my detention and that they would know that I was working here legally.
Q. What did the officers do when you showed them your work

permit?
A. So when the officer with the blue jacket saw it, he told me, "That's not valid for us. That doesn't protect you from anything. For us you're still an illegal."
Q. Do you want to take a short break?
A. Yes.
THE COURT: All right.
Were you going to say something, Mr. Ratcliffe?
MR. RATCLIFFE: I was just going to ask the courtroom deputy if she has tissues. She's on it.
THE COURT: I want to make sure I understand. You want to take a brief recess?
MS. PROVO: I just want to give him a brief moment. I don't know how long he needs.
THE WITNESS: I'm good.
MS. PROVO: Okay. I'm going to continue, Your Honor, with my questions.
BY MS. PROVO
Q. Did the officers ask you any questions about your work permit?
A. No. They just looked at it and said that to me.
Q. Did the officers ask you any questions about the status of your U-visa application?
A. No. They also didn't mention anything about that.
Q. Did the officers ask you any questions about your

immigration status?
A. No.
Q. What happened next?
A. The next thing that happened is that they -- they handcuffed me on my hands and around my stomach and on my ankles.
Q. Did they put you in the -- in the car?
A. Yes.
Q. When you were first put into the car, what did you observe?
A. I'm sorry.

Of the three officers, one of them was female. And she was sitting in front with the officer with the blue jacket. And this person had their phone, and on the phone was the picture of this person that they were supposedly looking for.

Q. Could you see the photo on the phone?
A. Yes. I did see it because they were showing it to the officer that was next to me.
Q. Was the person in the photo on the phone you?
A. No.
Q. What happened next?
A. They were showing the picture amongst themselves to each other, and there was another officer who was connected by telephone. And I -- I heard -- they were asking if the -- if the person that they had in the picture was me. And I -- I

heard that the person on the phone said, "It is him. It has to be him."

Q. Did the officers show you a warrant for your arrest?

A. No.

Q. Did the officers take you to the ICE facility in Portland?

A. Yes.

Q. What happened at the ICE facility in Portland?

A. Well, to start -- to start off, they put all of us in a -- in a cell. And then -- and then they start, like, talking to each person, like -- like, to register them.

Q. What happened next?

A. The -- the officer who had the blue jacket is the one who -- who registered me and who took my fingerprints. And after that he mentioned to the -- to the woman that was with them that he couldn't find anything in my record, that I was clean.

And he -- he asked what -- what did they want to do with me, whether they wanted me to be released or whether I should stay there. And the woman replied to him immediately, "Do whatever you want. I don't want anything to do with this case."

And then -- for that, then the -- the officer said to him, "Well, you're the one that arrested him. You have to tell me what you want done with him." And the woman responded to him again, "Do whatever you want." And then she turned around

and she left.

And then the officer said to me -- he turned to me, and he said immediately to me, "Since we've already got you here, we're going to" --

INTERPRETER KNAEBEL: Sorry. The interpreter needs to correct that.

THE WITNESS: And then the officer said to me, "Because we've already got you here, we're just going to send you immediately to Tacoma."

BY MS. PROVO

Q. At the --

MR. RATCLIFFE: Your Honor, I'm sorry. I'm going to interrupt with an objection.

I recognize that counsel's question may not have called for the witness to describe those conversations in that detail or at all. I did not object during the witness' answer. I do want to put counsel and the Court on notice that we do intend to pursue hearsay objections here, Your Honor.

I recognize that some of this may be offered for the effect on Mr. Cruz Gamez. But I just want to bring that issue up so that opposing counsel is aware and try to minimize the interruptions here, Your Honor.

THE COURT: I do want to confirm. Are you objecting to that last portion of the testimony as hearsay? Or are you going to object in the future?

MR. RATCLIFFE: I'm only looking at future objections, Your Honor.

THE COURT: Okay. As opposed to past -- past conduct, Mr. Ratcliffe?

MR. RATCLIFFE: Correct. Much like a preliminary injunction.

THE COURT: All right. I'll -- in the interest of making sure that I know when you want to object, because I don't want to presume that every hearsay statement is something that the Government would care to object to, please do make those hearsay objections timely so I can consider them.

MR. RATCLIFFE: Understood, Your Honor.

THE COURT: Thank you.

Ms. Provo.

BY MS. PROVO

Q. Were you allowed to contact an attorney while you were at the Portland ICE facility?

A. No.

Q. Were you presented with any documents at the ICE facility in Portland to sign?

A. Yes. When the officer finished registering me, he gave me several documents to sign. And -- and he also asked me that -- that that was an opportunity for me to sign for my voluntary departure.

Q. Did you sign for your voluntary departure?

A. No.
Q. Why not?
A. Since I had the program for the U-visa pending, I thought that that might help me to keep them from deporting me.
Q. To your knowledge, were the officers able to confirm your identity at the ICE facility in Portland?
A. Yes.
Q. And, to your knowledge, were you the person the officers had initially been looking for?
A. No. The person is completely different than me.
Q. After confirming your identity, did the officers permit you to leave the ICE facility?
A. No.
Q. Did the officers tell you why you were being detained?
A. No.
Q. What happened next?
A. We still stayed in Portland until about 7:00 or 8:00 in the evening. And then later, when there were more people gathered, that's when they transferred us to Tacoma.
MS. PROVO: Just one brief moment, Your Honor. I want to confer with co-counsel.
(Whispered discussion, off the record, 10:34 a.m.)
BY MS. PROVO
Q. During the stop, your arrest, or during processing at the ICE facility in Portland, did any officer ever ask you about

your family ties in the United States?
A. No.
Q. During the stop, your arrest, or during processing at the ICE facility in Portland, did any officer ever ask you about your length of residence in the United States?
A. No.
Q. During the stop, your arrest, or during processing at the ICE facility in Portland, did any officer ask you about your history of employment in the United States?
A. Just one time. When we were coming from Hillsboro to Portland, an officer asked me what I did for work.
Q. For how long were you detained at the detention center in Tacoma, Washington?
A. Three weeks.
Q. What stands out most to you about those three weeks?
A. The -- the psychological cruelty that the -- that the GEO people use.
Q. And when you refer to "GEO," are you referring to the staff that operate the detention center?
A. Yes. When we arrived in Tacoma, the first thing that they do is they put you in a concrete cell. And the temperature is -- it's very cold, and they do that on purpose. When we arrived, we -- we arrived like around 3:00 a.m. to Tacoma. We were tired. And many of us were sleepy, but how cold the cell was kept us from being able to sleep.

Q. Were you able to communicate with your family while you were detained at Tacoma?
A. Yes.
Q. How often?
A. I would talk with my wife normally about three to four times per day.
Q. Was there a point where you were not able to contact your wife or your family?
A. Yes. In the -- in the second week of being locked up.
Q. What happened?
A. There was a group of us, of those of us that were locked up, who would get together each night for prayer. And so when we finished with the prayers, the first thing that I tried to do was to try to contact my wife. And I -- I realized that I no longer had any money on my account.

And so I asked the guard what the reason was, as to why I no longer had any money in the account. And the officer told me that there were only two reasons. One was that they were going to move me to another state or that I was going to be deported.

Q. Did you find out, for you personally, which one of those reasons it was?
A. Yes. The next day, at 12:00 at night, they tell you to gather your things because they're going to transfer you. And so then they take you to the main office, to the -- to the cell

where they put the -- the air conditioning really cold. And then they start to register you again, return your belongings.

And at the very end, they give you a -- they give you a ticket. And that ticket is to be able to get your belongings back. And that ticket says whether you're going to be transferred or deported. And mine said that I was going to be deported.

Q. What happened next?

A. When I -- when I tried to talk to my wife -- I was finally able to do so through one of my friends, or companions, there who allowed me to use his -- his account so that I could call her. And I told my wife to please -- to please talk with the attorney because I was going to be deported.

Q. And, to your knowledge, what did your attorney do?

A. Well, thank God, they were able to communicate with her. And the attorney placed a restraining order so that they wouldn't move me.

Q. At any point during your detention at the Tacoma facility, did an officer speak to you about signing your deportation?

A. Yes. On two occasions.

Q. Did they offer you money to sign your deportation?

A. Yes. They were offering everyone a thousand dollars and their trip would be paid for.

Q. Did you ever agree to sign your deportation?

A. No.

Q. What is your understanding of why immigration ultimately released you from Tacoma?
A. Our attorney presented a petition for me to be released through habeas corpus.
Q. Did you ever have a bond hearing with an immigration judge?
A. Yes. In the -- in the first week, but the judge denied it.
Q. What is your understanding of why the judge denied your bond?
A. From what I could understand, it was because the judge said that it was outside of the judge's jurisdiction.
Q. Did the judge give you a bond amount in the alternative?
A. Yes. He said that, although that he couldn't approve it, that the amount would be for $3,000.
Q. And then after this bond hearing, your attorney filed the petition for habeas corpus with the federal court?
A. Yes.
Q. Did your family pay the bond?
A. Yes.
Q. Were you scheduled to appear in immigration court after you were released from detention?
A. Yes.
Q. Did you end up having to appear in immigration court?
A. No.

Q. Why not?
A. Well, thanks to the attorneys who filed the termination motion, and the judge accepted it.
Q. How has your arrest and your detention impacted you?
A. It's been really hard, especially with my wife. When I -- when I first got out, we went three weeks without even opening the door to the house because of the -- the fear that we were feeling. But, thank God, we were able to count on the generosity of the community, which has helped us a lot.
Q. Has your mental health been impacted?
A. Yes. I suffer from a lot of anxiety whenever I see any officer.
Q. How has your arrest and detention impacted your family?
A. Too much, especially my wife. And -- and one of my grandchildren, he -- he didn't want to go to school.
Q. Have you continued to see ICE enforcement in your community?
A. Yes.
Q. Are you afraid that you could be arrested and detained again?
A. Yes.
Q. And why do you think that?
A. Because, unfortunately, the ICE officers are not respecting the laws a lot right now.
Q. Do you know of other people in your community that have

been detained like you, without a warrant or while ICE was looking for another person?

A. Yes. I know of several cases close to us.

Q. Do you think it's important for your story to be heard?

A. Yes. I think that it's important that people see it and understand that we're not -- that we're not the criminals that they say that we are.

MS. PROVO: No further questions, Your Honor.

THE COURT: Ms. Garousi.

MR. RATCLIFFE: Your Honor, I'll be handling this witness. And with the Court's indulgence, I'd like to say something at the beginning.

(Counsel speaking Spanish.)

MR. MANNING: Your Honor, if we could ask that -- we appreciate the -- we definitely appreciate defendants' counsel humanity in the situation, but we would prefer that we would stick to the format of the direct and the cross-examination.

THE COURT: I'm going to allow Mr. Ratcliffe to go ahead and make a statement. I'll ask if the -- our court interpreters would communicate it into English so that it can be recorded appropriately.

If I'm not mistaken, I think I have had to address novel ways in which to receive interpreting in the past and -- and I'd like to try to make sure that we keep a sense of our humanity and just the human nature of -- of nonlinear

approaches to getting a record developed as best as we can.

Mr. Ratcliffe, you may continue; but, however, I'll ask you maybe -- can we get an interpretation of Mr. Ratcliffe's statement before the objection?

INTERPRETER McBRIDE: Thank you very much for your contributions to the community, for the -- what I believe are 27? -- 27 years here in Oregon.

MR. RATCLIFFE: I think I said (speaking Spanish), "I appreciate." Is that a fair translation?

INTERPRETER McBRIDE: Yes.

CROSS-EXAMINATION

BY MR. RATCLIFFE

Q. Mr. Cruz Gamez, good morning. Thank you for being here.

A. Good morning.

Q. I want to understand what you told us about when you were sitting in the back seat of the car after you were taken into custody by the officers.

I think you said that you were looking at -- at some point you could see at least a photo of another person on a -- some sort of device that the -- I think you said the female officer in the front seat was holding; is that correct?

A. Yes.

Q. Was that on a phone or on a laptop computer?

A. A phone.

Q. And I think you indicated that the officers were trying to

figure out whether that person was you; is that correct?
A. Yes.
Q. Were they speaking in English or in Spanish?
A. English.
Q. And can you give us a sense of your understanding or ability with English, how well you understand English?
A. I do understand quite a bit, but I prefer to speak my own language, especially when it's dealing with medical or legal things, but I understand.
Q. So you understood the agents to be trying to figure out if the person shown in the photo was you; is that correct?
A. Yes.
Q. And you testified, I believe, that you last came into the United States in 1999; is that correct?
A. Yes.
Q. And was that at a border crossing or an airport?
A. It was over the mountain.
Q. So not -- not a place where you had any interaction with Customs and Border Patrol or -- what they were called then, or any immigration officials?
A. No.
Q. So do you know whether your photograph or an old photograph of you is in the possession of immigration officials or law enforcement?
A. No, I don't know.

Q. You mentioned that you applied for what's called a U-visa, I think -- was that in 2012?
A. Around there.
Q. And that was because you were the victim of a -- was it a fraud and obstruction crime?
A. Yes.
Q. I'm sorry that you had to -- I'm sorry that you were a victim and that you had to go through that process just to be able to get some sort of status as a result of being a victim.
INTERPRETER McBRIDE: Sorry. "To get status and"? For the interpreter.
MR. RATCLIFFE: As a result of being a victim.
THE WITNESS: Thank you.
BY MR. RATCLIFFE
Q. Did you go to the office of any immigration or law enforcement officials as part of your application for that U-visa?
A. We just had interviews with the police department and the sheriff, and there was a federal officer who interviewed me as well.
Q. And did they take your picture as part of that application? Do you remember?
A. No.
Q. Did you give them a photograph as part of your application materials for the U-visa?

A. No.
Q. You mentioned that you prefer to speak Spanish when dealing with medical or legal issues; is that correct?
A. Yes.
Q. And did you work with your lawyers in this case to write a summary of what happened to you, kind of like what you've testified about here today? Did you work with them in Spanish to write a summary in Spanish of that?
A. Yes, I did work with them. But they also got a copy of the police report, and we worked with a psychologist to have a report also.
Q. I'm sorry that you had to work with a psychologist.
A. Thank you.
Q. But did you meet with your lawyers to prepare a six-page-long statement about what happened in this case that's relevant?
A. I don't really understand. With the lawyers who helped me with the U-visa or the lawyers that I have now?
Q. I'm sorry. I was -- I pointed earlier. I was talking about these lawyers here.
A. Sorry. Yes, I have met with them.
Q. And did you work with them to prepare a statement in Spanish about a summary of this case that we're here today to talk about?
A. Yes.

Q. And did you then sign a version in English of that summary, which I will call a declaration?
A. I think so.
Q. Or maybe you signed the Spanish version. But either way you understood what was being written in the statement, correct?
A. Yes.
Q. I just want to confirm. I'm not trying to trick you. I just want to confirm that you understood what's in this declaration that I'm about to ask you about.
A. Okay.
Q. Did you know that your lawyers filed on January 9th in this case a six-page declaration that has a signature date for you of January 6th?
A. Yes.
Q. So I want to get back to your testimony, this idea about you believing that the officers, when they took you into custody, had actually been looking for someone else. Do you remember testifying about that?
A. Yes.
Q. Do you remember writing in this declaration that you filed --
MR. RATCLIFFE: And, Counsel, this is at the top of page four --

BY MR. RATCLIFFE

Q. -- describing when those officers came to your vehicle and they were knocking on the window? Do you remember writing about that?

A. Yes.

Q. Do you remember writing that, before you got out of your truck, they asked you if -- repeatedly if you were Victor Cruz Gamez?

A. Yes.

Q. Then you also wrote that you -- because you were afraid to get out of the truck, you rolled down the window and told them that you were Victor Cruz Gamez, right?

A. Yes.

Q. I want to tell you that I'm sorry about what you went through for three weeks in this case while you were in custody.

A. Thank you.

Q. And, of course, I have read your declaration. And I know you talk about in the declaration, and you testified today about, the effect that your arrest and detention has had on your wife and your family, including one of your grandchildren specifically.

A. Thank you.

Q. And I'm sorry that they're all going through that.

A. Thank you.

MR. RATCLIFFE: Your Honor, may I have a moment?

(Whispered discussion, off the record, 11:06 a.m.)

MR. RATCLIFFE: Nothing further, Your Honor.

Thank you for your time, sir.

THE COURT: Ms. Provo.

MS. PROVO: No further questions, Your Honor.

THE COURT: Mr. Gamez, you may return to your seat.

THE WITNESS: Thank you.

THE COURT: Ms. Provo, I wanted to make sure I followed the evidence. I'll ask both you and Mr. Ratcliffe if you understand this part of the record for Mr. Gamez's testimony.

And there was some testimony that Mr. Gamez provided about a conversation he overheard while he was at the ICE facility, I believe, about somebody saying, "I don't care" -- something to the effect of "I don't care what you do with him. It's not my problem." I'm paraphrasing.

Do you recall the testimony that Mr. Gamez was providing, Ms. Provo?

MS. PROVO: I do, Your Honor.

THE COURT: All right. And what was the reason, if any, that was -- that Mr. Gamez explained about what that conversation was about?

MS. PROVO: Are you asking, like, the relevance to the case or the question that I asked that elicited that testimony?

THE COURT: What Mr. Gamez's understanding -- if Mr. Gamez provided it, it's -- there's a missing piece in my recollection of the testimony. Did Mr. Gamez explain what he understood that interaction between the officers were at the ICE facility?

MS. PROVO: Yes. So he did explain that interaction. My understanding from his testimony is that the officers were able to identify who he was through his fingerprints and biometrics, but did not provide him with a reason why they were going to detain him; and seemed to think that, because he was there, he needed to be transported to Tacoma, that release was not an option.

THE COURT: And I understand that ultimately was what an officer told Mr. Gamez, but I understood that there was a conversation between one officer and another, in which one officer said, "I don't care what you do with him. It's not my problem." Do you recall Mr. Gamez's testimony about that statement?

MS. PROVO: I do.

THE COURT: And how did that come up? What was the point of that conversation between the two officers?

MS. PROVO: Let me look back at my notes, Your Honor.

(Whispered discussion, off the record, 11:08 a.m.)

MS. PROVO: Oh, I'm just going to go back to the question, Your Honor, really quickly, if I may.

MR. RATCLIFFE: Your Honor, when you ask what was the point of the conversation, you're not asking counsel to speculate about the point of their conversation; you're asking about the point of her eliciting that testimony?

THE COURT: I'm interested in the testimony itself.

MS. PROVO: So, yeah, Your Honor, the intent was his understanding, his understanding of why he was being detained and what was happening at the facility.

THE COURT: And I'm getting more granular. And if -- maybe -- perhaps Mr. Gamez may need to come back up to explain this, if either of you can't recall the testimony. And maybe there's a reason there's a hole in my memory, perhaps because it wasn't clear in the testimony or the questions.

There's a reason why -- I'm -- I'm presuming there's a reason why one officer said something to the effect of "I don't care what you do with him." I want to understand what prompted that response from the officer.

MS. PROVO: So recalling the testimony and what I understand, is that the man -- the officer in the blue jacket asked the arresting officer, the woman in the field, what she wanted to do, detain him or how she wanted processing to go.

And she said, "Do whatever you want," and walked away. And at that point the officer in the blue jacket with HSI said, "Well, since you're here, you're going to Tacoma."

THE COURT: Okay. So the man in the blue jacket

was -- was there testimony from Mr. Gamez about what he understood why the man in the blue jacket was asking the field agent what they wanted to do with him?

MS. PROVO: I don't believe so, Your Honor.

THE COURT: Okay.

MS. PROVO: We can --

THE COURT: At that point I understand the testimony was that they were able to identify Mr. Gamez?

MS. PROVO: Yes.

THE COURT: Through the biometrics?

MS. PROVO: Yes.

THE COURT: All right. And is there any understanding as to why there would be any question about what they would do with him once they had him in custody?

Now, I'm stepping out of what the testimony may have provided and now allowing some level of informed speculation that really is about argument and not record development.

And, Mr. Ratcliffe, you'll have a chance to weigh in with your own speculation, if you'd like to, in a moment.

MS. PROVO: So, Your Honor, it shows that they could have released him, that he was not the person they were initially looking for. They could not find anything in his record as a reason to detain him. They could have released him, but there was an understanding among the officers that they must take him to Tacoma because he was there.

THE COURT: Okay. And, Mr. Ratcliffe, would you like to weigh in on your own speculative understanding of what that interaction between those two officers might have been about?

MR. RATCLIFFE: Your Honor, I don't think we have enough information to make any reasonably informed speculation or conclusions, I should say. Of course, all we have is the testimony of Mr. Cruz Gamez about events that happened last October during a stressful situation.

I can offer an alternative explanation, I suppose, a hypothesis, which is "I don't care what you do with him" means "This is your issue. This is your work problem. I got my own thing. Do what you want. I'm going to handle other things" or "I'm off for the day" or whatever.

THE COURT: So the field agent detains somebody, brings them to the facility. And then it's up to the people in the blue jacket, or at least this particular man in a blue jacket, to determine what to do next? Is that a fair reading, without speculating too much, as to what that interaction might have been about that Mr. Gamez described?

MR. RATCLIFFE: Your Honor, there are a lot of assumptions there. In your characterization of Mr. Cruz Gamez's testimony, from a man who was in a new environment, not understanding the roles necessarily that everyone was playing, I don't know that there's a significance of the blue jacket.

I don't know if -- I think we're layering speculation here, and I just want to caution that I -- I don't think we can draw any reliable conclusions from that snippet of testimony, which I think, based on the response of counsel, was not even really elicited with all these possibilities in mind, in terms of the level of detail that she was able to go into or even thought of going into, frankly, until the Court raised this issue now.

MS. PROVO: Well, so, I mean, that testimony is certainly relevant. And I would just ask the Court to consider this interaction that Mr. Cruz Gamez had with the testimony that came about through the two-day evidentiary hearing, at which point we heard officials talking about creating arrest warrants -- warrants for arrest after the fact and people essentially being sent from the Portland facility to Tacoma. So in the context of that pattern and practice, this is an example.

THE COURT: Okay. Well, you know, maybe I'll try to, you know, maybe show my cards. I'm trying to understand what reasonable inference, if any, I can make about those comments between the agents. Mr. Gamez's testimony is in the record. There was no objection to that testimony. It's now part of this evidence.

So there's a -- there's a -- there's a discussion between two agents. And of what I recall from that testimony

Mr. Gamez provided is that somebody said, "I don't know what you want to do with him.

"Well, I don't care what you want to do with him. It's essentially" -- and I'm reading into it -- "It's your problem now." And then the -- and I'm only using the reference for the blue jacket so I can distinguish between the two officers. The man in the blue jacket said, "I guess we'll go ahead and just transport you to Tacoma."

I don't know, and I don't suspect Mr. Gamez would understand, if there was some -- if, in the course of that conversation, there was some discussion about, "Well" -- and this is now purely hypothetical; and I'm just injecting, you know, some -- you know, some context here to try to understand what that conversation could have meant -- "We don't -- there's no reason to hold him because he's not the guy we were looking for" -- in essence, he was a collateral; and that term has -- having that term been described in past testimony -- "But since he's here, we'll go ahead and do what we would normally do, which is to transport them to Tacoma."

I mean, I think that could be a reasonable inference from the evidence from the two-day hearing, as well as what Mr. Gamez provided.

Mr. Ratcliffe.

MR. RATCLIFFE: Your Honor, there's a factual issue I'd like to address; and then I'd like to pass the baton, if I

could, to my co-counsel, who I think can speak to the higher level legal issue here.

But I want to back up to something the Court just said. It seems like -- that the Court is completely buying into this idea that Mr. Cruz Gamez is not the person they were looking for. You've heard testimony that, when they were at his window, they were asking for him by name, using all three names.

So I do not think that it is fair to conclude that Mr. Cruz Gamez's understanding, when he was in the vehicle, that they were actually looking for someone else can be -- can be relied on completely. We have his -- his declaration saying, before he ever got here today and three weeks ago, "They were knocking at my window. They were asking for me by name." So I mention that, of course, Your Honor.

And regarding the factual issues we've been discussing about process and speculating about who might have been doing what, and my overlay of, you know, sort of office politics of, like, "This is your job," I want to pass the baton, as I said, to Ms. Garousi because I think she has a higher level issue to address.

MS. GAROUSI: Thanks, Mr. Ratcliffe.

Yes, Your Honor. We would object to the relevance of this testimony.

THE COURT: Mr. Gamez's testimony?

MS. GAROUSI: As far as the -- this -- his perception of the "I don't care what you do with him," this interaction, as far as --

THE COURT: I want to make sure we're talking -- I want to make sure that we're oriented properly, which is are you objecting to Mr. Gamez's testimony or to the discussion that we're having?

MS. GAROUSI: The discussion, Your Honor.

THE COURT: Well, overruled, because it's a discussion and not evidence. So is there something else you want to say about it?

MS. GAROUSI: Yes, Your Honor.

I just want to point the Court's attention -- I want to remind the Court that what's before the Court is a preliminary injunction based off of this alleged policy or practice that immigration officers do not conduct a likelihood of escape determination when making an arrest.

Again, I think we're talking about speculation about what the -- what the officers were thinking when they were having that conversation. But, to the extent that the Court has concerns about detention, that's a separate statute. That's a separate issue.

And I understand this case has -- the genesis of this case, it started as a habeas petition, which is inherently a challenge to unlawful executive detention. But the posture in

front of the Court, as it stands today, is a preliminary injunction with this one narrow issue in mind. Detention is not relevant to this issue in front of the Court.

THE COURT: You're talking about detention at the ICE facility in Tacoma?

MS. GAROUSI: Detention at the ICE facility in Tacoma and determinations regarding detention, that's a completely separate statute than the one at issue in this preliminary injunction.

THE COURT: And I appreciate the reminder, but it's unnecessary. I'm familiar with what the process and standards are to be in considering what we're here for on the preliminary injunction. But that doesn't mean I'm going to refrain from asking questions to make sure I understand what it is both parties are talking about so we can stay on track.

MR. RATCLIFFE: Your Honor --

THE COURT: The issue about -- and I'll say this, and then we do need to move on. The issue about Mr. Gamez's testimony about the conversation does speak to whether there was any discussion or finding that is particular to Mr. Gamez about likelihood of escape, which is central to these issues that I think have been put before me on the motion for preliminary injunction.

All right. What other testimony or witnesses, Mr. Manning -- well, what's next?

MS. GARCIA ORJUELA: We --

MR. MANNING: Thank you, Your Honor.

We have three additional witnesses. The purpose of these witnesses is to authenticate video evidence that we would like to present to the Court.

THE COURT: How long are the videos?

MR. MANNING: I think the longest video is approximately two minutes.

THE COURT: Okay.

MR. MANNING: The longest video -- so it's a four-minute video, a one --

THE COURT: And are the witnesses that will be authenticating, other than M.A.M., are here to testify?

MR. MANNING: That's correct, Your Honor.

THE COURT: All right. Can we go ahead and take that up now?

MR. MANNING: Yes, Your Honor.

THE COURT: All right. Call your witness.

MR. MANNING: Your Honor, we would call Emely Avila. And then Ms. Garcia Orjuela will be doing the direct examination here, Your Honor.

THE COURTROOM DEPUTY CLERK: Please raise your right hand.

EMELY AGUSTIN

Was thereupon called as a witness on behalf of the

Plaintiffs; and, having been first duly sworn, was examined and testified as follows:

THE COURTROOM DEPUTY CLERK: Thank you.

And please state your full name and spell your last name for the record.

THE WITNESS: Emely Vanessa Agustin, A-g-u-s-t-i-n.

DIRECT EXAMINATION

BY MS. GARCIA ORJUELA

Q. Good morning, Ms. Avila.

A. Good morning.

Q. Do you know why you're being called to court today?

A. Yes.

Q. And can you tell the Court why?

A. To -- to say that I am the person who recorded this video.

Q. Thank you.

MS. GARCIA ORJUELA: Your Honor, may I draw the Court's attention to Plaintiff's Exhibit 101 that will be displayed on the screen.

(Whispered discussion regarding technical issues, off the record, 11:22 a.m.)

MS. GARCIA ORJUELA: I apologize, Your Honor. We're having some technical difficulties.

THE COURT: It's all right.

(Whispered discussion, off the record, 11:22 a.m. - 11:25 a.m.)

MS. GARCIA ORJUELA: All right. Sorry, Your Honor. I'm going to do that again.

Your Honor, may I draw the Court's attention to Exhibit 102 that will be displayed on the screen.

(Video recording played in open court, 11:25 a.m. - 11:26 a.m.)

BY MS. GARCIA ORJUELA

Q. All right. Do you want to take a moment, or are you good to continue?

A. No, I'm okay.

Q. Okay. Ms. Avila, who took this video?

A. I did.

Q. Can you describe what is shown in this video?

A. It's showing my mom being detained by a bunch of immigration agents.

Q. What happened before you started recording?

A. Sorry. What do you mean by that? Like, what was I doing before I started --

Q. Yeah.

A. I was just -- I was driving around, and I was helping my mom look for a car.

Q. Why did you start recording?

A. Because I saw the flashing lights, so I -- so -- and I saw a bunch of vehicles, so I assumed that it was someone else being stopped by immigration because I knew that they were in

town.
Q. Do you remember the date when you took the video?
A. Yes. November 5th.
THE COURT: What town is this?
THE WITNESS: Cottage Grove.
THE COURT: Sorry. Where?
THE WITNESS: Cottage Grove.
BY MS. GARCIA ORJUELA
Q. And where exactly is the location of the video?
A. This is off a road. It's on Pennoyer Street, right off Highway 99 in Cottage Grove.
Q. Is this video a fair and accurate depiction of what occurred that morning that you were recording?
A. Yes.
MS. GARCIA ORJUELA: Your Honor, plaintiffs move for admission into evidence of Exhibit 102.
THE COURT: Mr. Ratcliffe.
MR. RATCLIFFE: Your Honor, we recognize -- we agree that the witness has authenticated the video. We do still have concerns about relevance here, particularly because, as the Court, I believe, will soon learn, during my opportunity for cross-examination, Ms. Avila's mother was released from the scene.
And so we don't believe that this video is relevant to the issue of whether there was an arrest without a warrant

or whether there was an arrest without an individualized finding of escape risk.

THE COURT: So are you objecting to 102, or are you going to first inquire further before making an -- of the witness before objecting?

MR. RATCLIFFE: Well, that's where we get into the preliminary determination by the Court; but, yes, we're objecting on relevance grounds. And I'm happy to ask the witness questions on this limited issue of admissibility. I do have some other things I wanted to ask her as well.

I'm sorry. Limited issue of relevance and, therefore, admissibility.

THE COURT: Ms. Garcia Orjuela, anything else you want me to consider?

MS. GARCIA ORJUELA: Well, Your Honor, as my co-counsel has stated before, this is also a corroboration of declarant Juana Avila's declaration that we have submitted before the Court with our prior filings. And --

THE COURT: With respect to the issue of relevance, given that -- given the scope of the preliminary injunction that's being sought, somebody who was released from the scene in Cottage Grove, how does that inform my consideration in determining whether to grant your motion?

MR. MANNING: Your Honor, if I may address that question.

THE COURT: Go ahead.

MR. MANNING: Thank you, Your Honor.

So the relevance here -- so there's two points. One, it is corroboration of the declaration that has been submitted. The purpose of that declaration, and this video for corroboration, is to demonstrate the nature of the "Arrest First, Justify Later." Here there was an "Arrest First" that took place.

THE COURT: But there was no "Justify Later."

MR. MANNING: We do think there -- we think, within the context of the declaration, there is information regarding a "Justify Later." They were unable to actually justify it in this particular instance, but the declaration does speak to how they tried to justify it. So we do think it is relevant into the context.

THE COURT: And does the declaration provide that there was an understanding there was no warrant?

MR. MANNING: That's correct, Your Honor.

THE COURT: 102 is received, at least provisionally, until -- if you wish to raise an objection after further cross-examination, Mr. Ratcliffe, I'll -- I'll consider further any objection to the receipt of the exhibit.

(Plaintiffs' Exhibit No. 102 provisionally received.)

MR. RATCLIFFE: Well, Your Honor, I would like to go -- if I could respond to Mr. Manning on the legal issue,

there is a distinction, of course, between an investigative detention and an arrest.

And so we believe that the declaration, which is before the Court, admittedly -- or I should say "which is before the Court" -- and further informs, as opposing counsel have noted, what happened here, we believe that that indicates that there was an investigative detention and not an arrest. Again, this goes back to our concern with relevance for this video.

THE COURT: Okay. So my original decision stands, and it was provisional. So if you wish to cross-examine and renew an objection, I'll consider it after additional testimony is elicited.

MR. RATCLIFFE: Understood, Your Honor.

CROSS-EXAMINATION

BY MR. RATCLIFFE

Q. Ms. Avila, good morning. Thank you for being here.

A. Good morning.

Q. Do you want to take a second?

A. (Witness shakes head.)

Q. I don't have tough questions for you, so you don't have to be nervous.

A. Okay.

Q. Okay?

Am I correct that your mother was released from the

scene eventually?
A. Yes.
Q. And you know that she submitted a declaration or a sworn statement in this case, right?
A. Yes.
Q. Have you had a chance to read that?
A. No.
Q. Am I correct that -- in understanding that your mother works with law enforcement in Cottage Grove to help translate for them at times?
A. Yeah, occasionally.
Q. And that's part of the reason she was -- that she was familiar with -- it's your understanding she's familiar with some of those officers?
A. Yes.
Q. I understand from your mother's declaration that you may have a younger brother with special needs; is that correct?
A. Yes.
Q. And that this -- her arrest hit him hard?
A. Yes.
Q. And am I correct that her arrest also interfered with your schoolwork and your final exams specifically?
A. Yes.
Q. I hope your mom can keep working with law enforcement after this incident; and I hope that you, your brother, and

your whole family can put this behind you.

A. Thank you.

THE COURT: Anything further questions?

MR. RATCLIFFE: Nothing else, Your Honor.

THE COURT: Redirect?

MS. GARCIA ORJUELA: No, Your Honor.

THE COURT: All right. Is it Ms. Avila?

MS. GARCIA ORJUELA: Correct.

THE COURT: You may step down. Thank you.

MS. GARCIA ORJUELA: Your Honor, next --

THE COURT: Actually, before we do that, are you going to renew an objection that you want me to consider, Mr. Ratcliffe?

MR. RATCLIFFE: Yes, Your Honor. The declaration states that on -- at paragraph 20 -- this is ECF 63 -- that after Ms. Avila, referring to the woman who was arrested, not our witness, after she showed the officers her permanent residence card, they allowed her to leave.

And so we renew our objection to relevance in terms of whether this video does anything to advance the ball, so to speak, on the issue of whether there was a -- as Mr. Manning says, an "Arrest First, Justify Later" policy. We believe that this was an investigative detention under Terry.

And we also believe, as I said before, that this video doesn't go to the heart of the issues in the purported

class action -- and, therefore, the preliminary injunction and the request before the Court -- because there's no indication here that there was an arrest without a warrant; and there's no indication here that there was a failure to do an individualized escape risk in connection with what is seen on this video.

THE COURT: Mr. Manning.

MR. MANNING: Excuse me. Thank you, Your Honor.

We --

THE COURT: As I look at the declaration, it doesn't explain whether there was any understanding on Ms. Avila's part -- that's the declarant's part -- that there wasn't a warrant involved in this instance. It's silent on that matter.

And perhaps you can also speak to whether this evidence -- and paragraph 17 through 20 or so -- identify this as a stop based on reasonable suspicion alone or how it rises to the level of an arrest without a warrant.

MR. MANNING: So -- thank you for that, Your Honor.

So paragraph 14 explains in the declaration, "At this point I knew they were not police officers, and I was afraid they intended to harm or kidnap me. One asked where I was born. I was told I was under arrest. I asked for the reason I had been pulled over and why I was under arrest. I asked for a document or paperwork, but none of them showed me a warrant or gave me a reason for my arrest."

So we think paragraph 14 establishes that they told her she was under arrest, and so that would be an arrest. She asked; they said so. And she asked for the reason, and they did not show her a warrant. So we think paragraph 14 speaks to the issues that you've described.

THE COURT: Okay. 102 is received. And the parties may argue the legal status of the nature of the stop at an appropriate time after the -- after the conclusion of the evidentiary portion of this hearing.

(Plaintiffs' Exhibit No. 102 received.)

MS. GARCIA ORJUELA: Thank you, Your Honor.

Plaintiffs would like to call next Ms. Alicia Vial Beesley.

THE COURT: Ms. Beesley, if you would be kind enough to come up to the witness stand, the courtroom deputy will swear you in.

THE COURTROOM DEPUTY CLERK: Please raise your right hand.

ALICIA VIAL BEESLEY

Was thereupon called as a witness on behalf of the Plaintiffs; and, having been first duly sworn, was examined and testified as follows:

THE COURTROOM DEPUTY CLERK: Please state your full name and spell your last name for the record.

THE WITNESS: Alicia Vial Beesley, B-e-e-s-l-e-y.

THE COURTROOM DEPUTY CLERK: Thank you.

DIRECT EXAMINATION

BY MS. GARCIA ORJUELA

Q. Good morning, Ms. Vial Beesley.

A. Good morning.

Q. Do you know the reason why you're being called to court today?

A. To authenticate the video that I took on December 15th.

THE COURT: And you might want to speak just a little bit slower, so that way we can get the court reporter to fully record everything.

THE WITNESS: It's my fatal flaw.

THE COURT: Thank you.

MS. GARCIA ORJUELA: Your Honor, may I draw the Court's attention to Plaintiff's Exhibit 101 that will be displayed on the screen?

THE COURT: Yes.

(Video recording played in open court, 11:39 a.m. - 11:43 a.m.)

BY MS. GARCIA ORJUELA

Q. Ms. Vial Beesley, do you recognize this video?

A. Yes.

Q. Who took this video?

A. I took the video.

Q. When was this video taken?

A. December 15th.
Q. And where was this video taken?
A. I believe it was King City, in an apartment complex.
Q. What is your knowledge about this apartment complex?
A. I have clients who live in this apartment complex.
Q. What had happened before you went down to the apartment complex?
A. I received a call from my client saying that ICE had been at their door and threatened to arrest them.
Q. And why did you start recording?
A. Because I have seen that it's a smart idea to record. You don't know what ICE is going to do. I wanted to have on video what their excuse was for trying to arrest my clients.
Q. Were your clients under an order of release on recognizance?
A. No.
Q. Were they ever issued a warrant at a point of entry?
A. No.
Q. Is this video a fair and accurate depiction of what occurred that morning?
A. Yes.

MS. GARCIA ORJUELA: Your Honor, plaintiffs move to include evidence -- video evidence 101 into the record.

THE COURT: Mr. Ratcliffe.

MR. RATCLIFFE: Your Honor, we object. We object

based on hearsay. We object based on relevance. Let me take the relevance first.

We're now even farther afield than we were with the previous video. Of course, there's no arrest, no detention, no investigative -- investigatory stop under Terry shown in this video. So relevance. I'm not going to fill in the blanks. I'm sure the Court will have some back and forth here.

With respect to hearsay, there are a lot of things said in this video. They are out-of-court statements. I don't know if they're being offered for the truth of the matter asserted. I suspect that they are, given that Ms. Avila -- I'm sorry -- given that -- I'm sorry --

THE COURT: Ms. Vial Beesley.

MR. RATCLIFFE: -- I'm sorry -- Ms. Beesley -- I apologize -- has just sort of said things that are consistent with the things that were said on the video. And I think opposing counsel probably wants the Court to consider these statements on both sides for the truth of the matter asserted. But we have a hearsay problem with that, Judge.

THE COURT: Mr. Manning.

MR. MANNING: Thank you, Your Honor.

I think three responses. I appreciate the back and forth and the Court's indulgence here. So we're offering the -- we think the video can speak for itself. The Ninth Circuit has ruled that, in a preliminary injunction

hearing, the federal rules of evidence do not apply strictly; and that because of the emergency nature and the inability to do all of the normal things we do to create the factual record through depositions and discovery, et cetera, that that -- that's --

THE COURT: So are you -- are you at least conceding that there are evidentiary problems with this video?

MR. MANNING: For the purposes of the preliminary injunction hearing, no, Your Honor. For the purposes of -- if this were to -- if we were seeking -- we think the video speaks for itself. The purpose for showing --

THE COURT: Well, what's it saying?

MR. MANNING: So the video is showing that ICE -- so part of our burden is to prove an "Arrest First, Justify Later" policy. We have submitted numerous declarations. We have prior testimony.

THE COURT: Now, when you say "Arrest First, Justify Later" -- and, you know, what I'd like to use are terms -- are legal terms of art. And I think you mean warrantless arrests or the manner in which warrantless arrests are effected, one or the other. But I really want to make sure that we're talking about the legal issues so we're all properly focused on how to analyze them.

I mean, if I'm trying to read in between any lines here -- and I'm not suggesting I've -- I'm agreeing to receive

the evidence -- is that -- that this -- this video is offered to illustrate a warrantless arrest procedure.

MR. MANNING: That's correct, Your Honor. There was -- earlier in this case, there was testimony from various agents describing using different technology tools to locate target-rich areas.

THE COURT: In this video, or are you talking about back in December?

MR. MANNING: Back in December. We think this is an example of -- we are intending to show -- the purpose of showing this video is to show that this is an example of a -- ICE showing up in the community, sweeping people sort of to arrest individuals and then search for justification later, so without a warrant. That's the purpose.

We agree that in this video there was no actual arrest that took place, but we do think this video shows the tactics of showing up in locations to make arrests; and the video does speak to the fact that that's exactly what -- that's what was happening here.

So that's the purpose of the video, Your Honor. And we would offer it. We do think it's relevant, and we would offer the Court can admit it for the weight -- and give it the weight that it deserves.

THE COURT: Okay. Mr. Ratcliffe, anything else?

MR. RATCLIFFE: Your Honor, the Court had plenty of

evidence in the December 2nd and 3rd hearing regarding ICE, as Mr. Manning said, showing up in the community and making arrests. I recognize that he means it in a different way than I do. Just reading the transcript, I think that's a fair statement. But obviously he and I are both delivering the words with a different tone.

The question before the Court is: What relevance does this video have? I didn't hear Mr. Manning address in any substantive way, by the way, the hearsay objections, other than to just say, "Well, there are looser rules."

THE COURT: You agree there are looser rules on a preliminary injunction?

MR. RATCLIFFE: Yes, Your Honor, but I don't agree that we throw them out the window. And I don't agree that as a backdoor to getting in a bunch of substantive statements, including substantive statements by a lawyer, by the witness on the stand, that we can just say, "Well, it's a relaxed standard here or a different standard; so, therefore, we're not going to address the hearsay issues."

But, as the Court might say, going back to what I think is the bedrock issue, so to speak, in the rules of evidence, there's still a burning question about relevance here, we believe. And any different standards that might apply in the preliminary injunction context cannot dispense with the need for evidence to be relevant.

And since Mr. Manning has pointed out that he believes that this is an example of ICE going out and making arrests, different words, we think that this evidence then is cumulative and unnecessary. The Court has evidence of that without -- the Court has evidence of that without this video, Your Honor.

THE COURT: I mean, I don't -- I suspect you don't want me to read that last argument to mean that there's sufficient evidence of -- of warrantless arrests without -- without the probable cause findings.

MR. RATCLIFFE: That's not what I said, Your Honor. I said "of ICE agents going out and doing arrests." That's what Mr. Manning has proffered is the reason for this video, because there's no evidence of an arrest or detention or investigative detention in this video. And there's certainly no evidence about whether any -- anything else was in place or not in place with respect to warrants or individualized findings.

THE COURT: All right. This video provides little, if any, assistance; but that's something that really goes to weight in how I will consider this evidence for the very limited purpose of ICE's practices of engaging in -- in sort of community target -- community targeted missions.

And I think this is identified as having occurred in Tigard; is that correct, Ms. Vial Beesley?

THE WITNESS: Yeah. I --

THE COURT: I just want to make sure that this was in Tigard.

THE WITNESS: Yeah. It's actually right on the border between Tigard and King City.

THE COURT: Okay. All right. So, to be clear, the -- this evidence is only going to be considered for the very limited purposes of identifying a pattern or practice of engaging in warrantless arrests in, I think, the manner that's consistent with the theory that the plaintiffs have proposed in their preliminary injunction.

The specific comments are -- there are several comments associated with, you know, the status of individuals that live in the -- in the apartments. And I find that that hearsay, that cannot be -- cannot overcome the rules preventing such hearsay from being admitted.

All right. Anything else?

So this is 102; is that correct? Or 101?

MS. GARCIA ORJUELA: This --

THE COURT: This is 101.

MS. GARCIA ORJUELA: This is 101.

THE COURT: 101 is received for the very narrow and limited purpose, as I've described, only as evidence supporting the claim that warrantless arrest practices, such as sweeping through neighborhoods or apartment complexes, is -- is

occurring. And to the extent that that is a -- one of the bases for the claims under the motion for preliminary injunction, I'll regard it for that purpose only.

(Plaintiffs' Exhibit No. 101 received.)

THE COURT: Is this witness -- any other -- any other questions for this witness, Mr. Manning?

MR. MANNING: No, Your Honor.

THE COURT: Mr. Ratcliffe.

MR. RATCLIFFE: Your Honor, I have a question or two, but I just want to clarify. Then the Government's objection with respect to hearsay is sustained; is that correct?

THE COURT: Yes.

MR. RATCLIFFE: Understood.

THE COURT: Well, I want to make sure it's clear. It's sustained with respect to the many comments and statements made, I think, by Ms. Vial Beesley about status of individuals in the apartment complexes. So --

MR. RATCLIFFE: Understood.

THE COURT: -- I'll modify that broad "yes" to a "yes, but."

MR. RATCLIFFE: Not as good as a "yes, and," but I'll take it.

CROSS-EXAMINATION

BY MR. RATCLIFFE

Q. Ms. Beesley, thank you for being here. I just wanted to

confirm. You and I had a chance to talk earlier, and I just want to make sure that -- is it still your position that the client of yours, who you're discussing on this video, is someone whose name you're not willing to reveal; is that correct?

A. Correct.

Q. And that's because of a -- what you -- what you report is a pending asylum application?

A. It's my client, and that information is confidential.

Q. Okay. I'm not going to follow up on that because what I know about that is from what you said in the video, and we've already discussed the fact that that's hearsay.

MR. RATCLIFFE: So no further questions.

THE COURT: All right. Can this witness be released, Ms. Garcia Orjuela?

MS. GARCIA ORJUELA: Yes, Your Honor.

THE COURT: All right. Ms. Vial Beesley, you may step down. Thank you.

THE WITNESS: Thank you.

THE COURT: Counsel, I'm noting that it's 11:55. I think there's at least one more witness that -- that you are -- this is M.A.M. that you want to offer by telephone?

MS. GARCIA ORJUELA: That is correct, Your Honor.

THE COURT: I do want us to take a brief lunch break so we can be fully fueled as we charge into the afternoon,

but -- and I said "brief." How brief can we make it?

I'll give Mr. Ratcliffe first dibs on what you're requesting.

MR. RATCLIFFE: Well, Your Honor, there is a walk-in vending machine in this building effectively, as you know, so we'd ask for 35 minutes.

THE COURT: Mr. Manning, counsel?

MR. MANNING: That works for us, Your Honor.

THE COURT: All right. I'm going to see your 35 and raise it to 45, just to make sure that we all have sufficient time to get fully fueled. 45 minutes. That puts us out at -- well, let's just call it a straight 12:45, and we'll return with M.A.M.'s testimony.

After that, any other -- any other evidence?

MS. GARCIA ORJUELA: No, Your Honor. That will be all.

THE COURT: Okay. And to confirm Ms. Garousi, Mr. Ratcliffe, you won't be offering evidence today?

MR. RATCLIFFE: That is correct, Your Honor.

THE COURT: All right. And then the record will close, and then we'll proceed with argument. And the argument spans both the issue of the considerations -- the four factors in considering granting or denying a preliminary injunction, but I also understand there may be some standing issues with respect to sort of a final agency action that we'll need to

take up first.

And then we'll proceed, if -- as appropriate, with the factors outlined for considering a preliminary injunction. And while we just have to do it in a linear fashion, we'll take up the issue of provisional certification, with respect to their four factors as well. And then -- and then we'll see where we end up before the -- before the day's conclusion.

Any other -- I very generally outlined what I think we're going to be taking up. Are there any other questions that have to be answered than those I just outlined, Mr. Manning?

MR. MANNING: No, Your Honor.

THE COURT: Other than bond, if I were to approve the preliminary injunction; but that's a minor issue, if we even get to that point.

Any other questions that have to be answered, Ms. Garousi?

MS. GAROUSI: No, Your Honor.

THE COURT: All right. So we're all satisfied. There's four factors -- there's a standing question, four factors for a preliminary injunction, and four factors for a provisional certification of a class. Okay. We'll go one, four, four this afternoon. Sounds like it'll be quick, won't it?

MR. RATCLIFFE: You forgot about the Lyons memo,

Your Honor.

THE COURT: That's why I offered -- I wanted to have you weigh in. So there's Lyons and -- well, that's in the context of the preliminary injunction --

MR. RATCLIFFE: Yes, Your Honor.

THE COURT: -- factors and irreparable harm involving future considerations, right?

MR. RATCLIFFE: Yes, Your Honor.

THE COURT: All right. I know you were just trying to test me to see where I fit that into the analysis.

MR. RATCLIFFE: I think it may fit in other places also, but I'm going to let the brains of this operation address that after lunch.

THE COURT: All right. Very good.

So 12:45, I'll see you back, and we'll continue. Thank you.

(Recess taken, 11:59 a.m. - 12:56 p.m.)

THE COURTROOM DEPUTY CLERK: Please remain seated. Court is back in session.

THE COURT: All right. Mr. Manning, your next witness.

MR. MANNING: Thank you, Your Honor.

It's going to be community member M.A.M., appearing by telephone. And Ms. Garcia Orjuela is conducting the direct examination.

THE COURT: All right. M.A.M., please kindly raise your right hand, and the courtroom deputy will swear you in.

M.A.M.

Was thereupon called as a witness on behalf of the Plaintiffs; and, having been first duly sworn, was examined and testified as follows:

THE WITNESS: Yes.

THE COURTROOM DEPUTY CLERK: Would you please state your initials for the record.

THE WITNESS: M.A.M.

THE COURTROOM DEPUTY CLERK: Thank you.

DIRECT EXAMINATION

BY MS. GARCIA ORJUELA

Q. Good afternoon, Ms. M.A.M.

A. Good afternoon.

Q. Do you know why you were called to court today?

A. Yes.

Q. Did you receive this morning a message containing a copy of a video?

A. Yes.

Q. Do you recognize this video?

A. Yes. I took it.

MS. GARCIA ORJUELA: Your Honor, may I draw the Court's attention to Plaintiff's Exhibit 103 that will be displayed on the screen.

THE WITNESS: Okay.

INTERPRETER KNAEBEL: Your Honor, the interpreter has a brief matter for the Court, as sort of an administrative housekeeping matter.

THE COURT: Please go ahead.

INTERPRETER KNAEBEL: It occurred to me, as we were just beginning, that this interpreter should advise the Court that everything has to be done in consecutive mode with pauses for the interpretation, including objections.

There's no way for us to do simultaneous interpretation for this witness if there are objections which the Court would like the witness to hear in order to be able to answer meaningfully. And so this interpreter would just remind everybody that all statements will have to be done with pauses for the interpretation, including objections.

THE COURT: Thank you for that reminder and instruction. And you are authorized to admonish anybody you wish to maintain control of the translation.

INTERPRETER KNAEBEL: Thank you, Your Honor.

And obviously none of this was just interpreted for the witness. May the interpreter give her a brief summary, which is outside of what we would normally do in interpretation, of what just transpired in this dialogue?

THE COURT: Please.

INTERPRETER KNAEBEL: Thank you.

THE WITNESS: Okay.

(Video recording played in open court, 1:00 p.m. - 1:01 p.m.)

BY MS. GARCIA ORJUELA

Q. Ms. M.A.M., can you describe to the Court what is shown in the video?

A. Yes. It is ICE agents that were arriving to the house, who were looking for somebody who did not live there.

Q. What had happened before you started recording the video?

A. The ICE agents were getting very aggressive, and they were knocking really hard on the door. And that's when I decided to record the video because it seemed like they were going to come through the door by force.

Q. Did the agents tell you any information before you started recording?

A. No. They also didn't show us any order or anything like that before they came into the house. They just took my brother, my mom's husband, took them, and that was it. That was everything.

Q. Where were you when you started to take the video?

A. I was in the room. I was in my room with my -- my daughter, my mother's husband, and --

INTERPRETER KNAEBEL: Your Honor, the interpreter's going to request a repetition from the witness.

THE WITNESS: And my brother.

BY MS. GARCIA ORJUELA

Q. And where is your apartment located?

A. Ah, it's here in Portland, but I don't remember the address.

Q. Do you remember the date of the video?

A. Yes. October 15th of 2025.

Q. And is this video a fair and accurate depiction of what occurred that morning that you took the video?

A. Yes.

MS. GARCIA ORJUELA: Your Honor, plaintiff moves to admit Exhibit 103 into evidence.

THE COURT: Mr. Ratcliffe.

MR. RATCLIFFE: Your Honor, we renew our relevance objection.

THE COURT: The relevance of this video in the context of the motion for the preliminary injunction here?

MR. MANNING: Thank you, Your Honor. This is Mr. Manning.

The relevance is anything that tends to show a fact is in existence. And we think this shows -- goes to the warrantless arrests. In particular --

INTERPRETER KNAEBEL: Mr. Manning.

Continue.

MR. MANNING: -- after we filed our motion, but prior to filing our reply, we became aware of another memo from

Mr. Lyons, Todd Lyons, from May 2025. And that's referenced in our reply brief on page -- so docket 73, ECF page 14.

And what that memo -- and so we're offering this video because part of the relief we are seeking is that, because we think that ICE agents entered a home without any warrant to enforce civil immigration law, we believe, relying on this memo, and so we're -- and so part of our relief is to show, one, that these facts happened here and to make sure that the injunction we seek extends to enjoining the aspects of this memo that relate to warrantless entry into a home to enforce civil immigration law related to their, what we call, "Arrest First" --

INTERPRETER KNAEBEL: I'm sorry, Mr. Manning. Could you please repeat that for the interpreter.

MR. MANNING: Oh, let's see.

INTERPRETER KNAEBEL: It's, I'm sure, very hard to think and --

MR. MANNING: And I apologize for that.

We think that this -- that the -- part of the relief we're seeking is to ask the Court to make -- to enjoin the aspects of this memo as it relates to warrantless arrests in a home in civil immigration enforcement for the class under the unassessed escape risk clause.

THE COURT: Will there be any more questions of this witness, Mr. Manning -- or Ms. Garcia Orjuela?

MS. GARCIA ORJUELA: Sorry for the confusion. No, Your Honor.

THE COURT: Any other questions, Mr. Ratcliffe, for this witness?

MR. RATCLIFFE: Your Honor, may I have a moment? I realize I've already taken one.

(Whispered discussion, off the record, 1:09 p.m.)

MR. RATCLIFFE: Your Honor, we will pass on cross-examination; but, of course, I would like to address Mr. Manning's points at the appropriate time.

THE WITNESS: Okay.

THE COURT: I'll excuse this witness.

You can also advise her, Mr. Knaebel, that she can disconnect.

THE WITNESS: Okay. All right.

THE COURT: Mr. Knaebel, will you need to resume interpreting for the hearing at this time?

Or are -- I mean, will interpreting service be necessary going forward?

MR. MANNING: Thank you, Your Honor. For the plaintiffs, not at this time, Your Honor. For -- for the argument, we -- we do not need the interpretation.

Thank you, my friend.

INTERPRETER KNAEBEL: They're not coming back?

MR. MANNING: That is correct.

THE COURT: All right. I want to check with the Government.

Any need for interpreting services for the remainder of the hearing?

MR. RATCLIFFE: No, Your Honor.

THE COURT: All right. Thank you, Mr. Knaebel, Ms. Price [sic]. I think you're free to go, too.

INTERPRETER KNAEBEL: Thank you, Your Honor.

Is it okay if the interpreters try to quietly shutter things up and step out, hopefully without intruding in the process too much?

THE COURT: Do as you need; and, please, it won't be a distraction.

INTERPRETER KNAEBEL: Thank you.

THE COURT: While they're also getting ready to depart, this issue about the other memo from May is something that came up in the middle of -- in the middle of all the briefing in this matter.

I would understand the request, Mr. Manning, that you've made is to expand the scope of the preliminary injunction motion. And I don't know if the Government has had an adequate opportunity to respond to that -- to that additional scope.

MR. MANNING: I --

THE COURT: I will also -- let me also clarify. I

think in one of our interim either status meetings or -- it was definitely before last week where I -- I also became aware of this memo, which was attached to another document that, you know, purported to be submitted to Congress as sort of a whistleblower -- I think the heading was sort of whistleblower -- something.

And then at the end of that document was a memo from Todd Lyons from -- I believe it was a May date. Is that the document you're referring to, Mr. Manning?

MR. MANNING: That's correct, Your Honor.

THE COURT: Okay.

MR. MANNING: So I guess two points to that, Your Honor. We -- one, we would -- the plaintiffs would request that if an injunction were entered that it would specifically mention the May 2025 memo, that those portions of it that relate to the policy that the plaintiffs allege -- contend exist here --

THE COURT: I didn't hear you. Contending what?

MR. MANNING: -- contend -- that the plaintiffs contend exist here, the "Arrest First, Justify Later," the warrantless arrests here in Oregon, that that also -- that that injunction also applies to the elements of that memo that authorize warrantless entry into a home to effect the same -- to assist a warrantless entry that's taking place under that memo --

THE COURT: Is there a basis for warrantless entry into a home? A legal basis?

MR. MANNING: We don't think that --

THE COURT: And the reason I ask that question is that there is a legal basis for warrantless arrest in a public setting, and so -- and this is what I want to be very careful about, is expanding the scope of the preliminary injunction motion to something that is of sort of a different species of -- of arrest or entry, for that matter.

So I really want to be careful about going beyond an appropriate scope of any remedy, if I were to grant the preliminary injunction, to include things that aren't appropriately before me. And I'm not sure how that memo is probative evidence of the pattern and practice of warrantless arrests of individuals in public settings.

MR. MANNING: Thank you, Your Honor.

The class that we're asking -- the class that the -- that we're asking the Court to provisionally certify does not require people to be in a public setting. It requires -- the definition of the class is that ICE has made an arrest without a warrant of an individual.

And the point that we would -- the reason why we bring this forward now is that if the Court were to grant the injunction, we would ask the Court to name that memo as -- that it is -- the aspects of it that authorize the warrantless

arrest in the home are no different than the warrantless arrests that have taken place -- that we've contended otherwise in these other public settings.

So the Court -- we don't think it's an expansion of the injunction. We think it's just a -- because it doesn't require the Court to do anything other than to grant the injunction as it relates to the class, we -- we are asking for it strictly as a question of compliance because that memo exists; and that memo, we feel, has been relied upon; that -- we think it's a question of compliance; that if it's not named, we may be back before you again on a compliance question.

THE COURT: Mr. Ratcliffe.

MR. RATCLIFFE: Your Honor, would you like me to address the point about the memo first or the unresolved --

THE COURT: It's all preliminary injunction. And I'm at this point more concerned about ensuring that -- that the -- the memo -- the May memo from Acting Director Lyons has -- has been sufficiently put -- put before this Court for a decision under the preliminary injunction motion that I received from the plaintiffs earlier last month.

MR. RATCLIFFE: We believe, Your Honor, that it clearly has not. This is an issue that Mr. Manning raised in his reply brief, as he said, which was filed last Thursday. This is not something that has -- that the parties have had -- the Government, at least -- has had an opportunity to brief or

respond to or, frankly, even investigate.

Mr. Manning yesterday, in preparation for submitting the Lyons memo from this January to the Court, asked whether we would agree that the Lyons memo from May was relevant to this hearing and authentic. He asked us that at roughly 1 o'clock, which, of course, for our --

THE COURT: Today?

MR. RATCLIFFE: Yesterday, Your Honor. Our colleagues on the East Coast and most of our folks in the general counsel's offices, with whom we're working, that was late in the day for them.

So, Your Honor, we even haven't had a chance yet to figure out whether this memo is authentic. We don't agree that it is relevant to the issues that are framed and briefed and before the Court on the preliminary injunction.

And Mr. Manning's request to mention the memo by name in any relief that the Court might ask is interesting because, on the one hand, he's saying, "Well, it's not an expansion" -- he wants it both ways -- "It's not an expansion of what we're seeking in the preliminary injunction."

I hear him saying, I think also, maybe not so clearly, that it's not a modification of the proposed class of individuals. But he wants to name check it. He wants the Court to name check it for some reason so that we don't have to come back.

Your Honor, we -- I will give Mr. Manning and his team credit. They are from Innovation Law Labs, and this is an innovative approach. But --

THE COURT: What's an innovative approach?

MR. RATCLIFFE: Well, coming in with -- adding -- trying to modify requested relief based on something raised in a reply brief and a memo that's not even at -- that's not even properly before the Court; and that the Government has not even had a chance to not only analyze, but has not even had a chance to authenticate.

We have -- we have a copy that is -- that may be the same copy that the Court has. This is copied in a strange way, and it says "Redacted for Congress" on it. Judge, we need -- if due process requires anything, it means that we need notice and an opportunity to be heard.

That, going back to bedrock principles, is what we need with respect to this. We don't think it's at all appropriate for the Court to do anything with this memo, whether it's name checking it, including it, footnoting it, anything in any relief that the Court may grant.

And I'd like to follow up when you have a chance, Your Honor, with respect to my relevance objection for the video.

THE COURT: Do you want to do that now?

MR. RATCLIFFE: Sure. I didn't know if you wanted to

keep talking about that issue with the memo.

THE COURT: No.

MR. RATCLIFFE: So, Your Honor, Mr. Manning started out, in response to my objection for relevance, saying that he believes that the video that we just watched goes to warrantless arrests. And then he said "particularly," and then I think that's where we had a break for interpretation. But then he shifted quite dramatically, I think, to talking about this Lyons memo from May.

So what is it about that video that is relevant with respect to any warrantless arrests when we have no idea whether those arrests were accomplished with or without warrants, Your Honor? There's no evidence of that.

THE COURT: Well, I believe the witness who testified authenticating the document indicated that either they asked for papers or papers were not shown authorizing the agents entry into what I will conclude was a dwelling of some kind, inside --

MR. RATCLIFFE: That is --

THE COURT: -- inside a dwelling.

MR. RATCLIFFE: Warrantless arrest, Your Honor, that we've been talking about in this case, means a warrant for an arrest of a person. It doesn't mean a search warrant. I understood that inquiry to be going to the issue of "What authority do you have to come in our house?" That was the

suggestion. Nothing was offered.

And, Your Honor, I also think the Court has enough information as background in this case, having heard about the procedures, that the Court would -- I think, can expect that someone who is not the subject of an arrest would not be able to ask for and receive the arrest warrant for one of their friends or family members on scene in the moment.

The Court has heard how these I-200 arrest warrants are prepared, either ahead of time or contemporaneously or later. But there's no indication, Your Honor, that what the witness who testified by phone was talking about is some sort of request for an arrest warrant and that she was told there was no arrest warrant in place. There's no evidence about whether there was an arrest warrant for these folks.

THE COURT: Mr. Manning.

MR. MANNING: Thank you, Your Honor.

On terms of relevancy, again, it's a tendency -- any tendency to make a fact more or less probable than it would be without the evidence, and a fact of consequence. Here we think both of that is satisfied, so --

THE COURT: How so?

MR. MANNING: The witness authenticating the video indicated that they were -- they entered the home to arrest someone who did not live there. The video speaks for itself that two other individuals were then arrested, and the witness

then described that those two individuals were arrested.

So there was no warrant, according to the witness. They were seeking someone else, and then they arrested two individuals who were not that person in that home -- or in that --

THE COURT: So I want to make sure that we're all calibrated then, and remain calibrated, on the proper question, which -- and maybe you said this, Mr. Manning, but it was lost on me in the first instance -- is that, without regard to whether arrests are being executed in homes or in the public, if it's a warrantless arrest, it would still need to comply with the statutory provisions for a warrantless arrest?

MR. MANNING: That's correct, Your Honor.

THE COURT: So you're not seeking this -- an injunction from this Court addressing a very -- what I -- I have considered -- and maybe, again, I could've confused what you were arguing -- where -- where that memo that we're talking about, the May memo, addresses the use of administrative civil warrants to enter into homes?

MR. MANNING: That's correct, Your Honor. The memo also addresses entering into homes without even that civil administrative warrant.

THE COURT: You got to be careful about confusing me, Mr. Manning. You want to focus -- make sure that I'm focusing on the right question you are asking me to answer that's

properly in front of me because if you start making it sound broader than perhaps you mean it to be, it could be an overreach that keeps me from being even able to consider what it is you're asking me to do in the first place.

MR. MANNING: I think the way you described it, Your Honor, is correct. We are asking the Court to -- that warrantless arrests, wherever it may occur, has to comply with the statute. And that is -- and the purpose of this video is to demonstrate that a warrantless arrest occurred, in particular in a dwelling, and that is what we're seeking to --

THE COURT: And you're not asking this Court to expand the consideration of a preliminary injunction to address the propriety separately of the use of civil arrest warrants to enter homes as compared to the requirement of judicial warrants to do the same under the Fourth Amendment?

MR. MANNING: That's correct, Your Honor.

THE COURT: Okay. I know it might appear to be a splitting of hairs, but due process requires such hair splitting. And I appreciate that the Government acknowledges the importance of due process here because that I think is central and bedrock to the very question that I have to address.

So I'm glad we're all on the same page about its significance when I proceed to make my decision about what your clients have done or not done in furthering the recognition of

due process under our law, Mr. Ratcliffe.

MR. RATCLIFFE: I take your point, Your Honor.

May I go back to one other thing with respect to the admissibility of the video?

Not knowing where -- what Mr. Manning's theory of admissibility was when the evidentiary -- when the testimony was coming in, I did not understand the significance of the witness' statement that officers told her they were looking for someone else. That's objectionable hearsay.

And I'm posing that objection now and explaining why I didn't pose it before, because I didn't understand the significance of the video. But, again, we believe that there is not evidence before the Court that those were warrantless arrests; and, therefore, the video is not relevant to the Court's consideration.

THE COURT: Well, that's more of a -- I mean, that's a sufficiency question. And we have testimony from a lay witness indicating that there were no papers proffered.

And the other part of this is that, I mean, the Government's been on notice that these videos existed and had the opportunity to review them in advance of the hearing and could've also proffered evidence to indicate that there were warrants or an explanation that might assist me based on some evidence that rebuts the lay testimony here, the lay -- the testimony in evidence that I have to consider.

So either it's wholly unreliable and can be given no weight, which I think is maybe what you're arguing; but I think there's evidence of it, of the lack of a warrant, from what the witness said. Do I give it any weight, some weight, or sufficient weight, is maybe the question I have to answer.

And I'm not asking you to concede anything, but I understand the point. And I also -- you know, as you know, I'm oftentimes willing to engage in sort of the back and forth, in the hopes that somebody finally concedes that their case has no merit, but --

MR. RATCLIFFE: Your Honor, I will concede that I understand that my objection has been overruled with respect to hearsay -- I'm sorry -- with respect to -- with respect to relevance.

THE COURT: Yeah. And at least with respect to the issue of hearsay, if there were comments that were made by the agents, I mean, agents of a party opponent, how does it not come in?

And that wasn't intended to be a rhetorical slap-down. If there is something that I'm missing here about the agents of a party opponent admission or statement, let me know if I'm missing the boat on that evidentiary rule.

MR. RATCLIFFE: I'm thinking back through my hearsay files, Your Honor, but I'm not sure that I've encountered the idea before that agents speak in a representative capacity that

can bind -- can bind their agency or the Government. These aren't, for example, Rule 30(b) deponents who are authorized to speak on behalf of their agency. So I don't think the party opponent aspect of that quite fits here.

THE COURT: Mr. Manning, do you want to dig deep into your evidentiary files to comment on this?

MR. MANNING: Thank you, Your Honor.

We do think -- so the party opponent and the Rule 30(b) deposition, I think they're different. The statements of -- these are statements made by these officers under what they --

THE COURT: In their official capacity.

MR. MANNING: -- in their official capacity. They may -- whether they bind the agency or not, they are what they said. And so we do think they are statements of a party opponent.

THE COURT: For the narrow purpose of addressing the issue of warrantless arrests generally, whether in homes or in public, the Exhibit 103 is received, and the objections to relevance and hearsay are overruled.

(Plaintiffs' Exhibit No. 103 received.)

THE COURT: Any additional evidence, Mr. Manning?

MR. MANNING: Your Honor, attached to Ms. Cunnings' declaration there were -- which is ECF 64, if I'm not mistaken --

THE COURT: What's -- ECF 64?

MR. MANNING: Yes. I believe -- yeah, there are numerous -- it was numerous documents. Because we are -- the plaintiffs are operating with the -- that the federal rules of evidence, the rules do not strictly apply, we have not moved for those to be admitted. We are -- but we certainly can move for those to be admitted for the Court.

We believe they are a part of the record; in addition to the evidence that we've cited to in our briefs, that the Court can take notice of those, give them the weight they deserve, and just bring the Court's attention to those.

THE COURT: Are you asking that I take -- you know, I consider the quotes from agents and officials of ICE and DHS?

MR. MANNING: That's correct, Your Honor.

THE COURT: Okay. Mr. Ratcliffe, with respect to these exhibits being attached to declarations submitted in support of the motions or reply, your response.

MR. RATCLIFFE: Your Honor, may I have a moment?

(Whispered discussion, off the record, 1:30 p.m. - 1:31 p.m.)

MR. RATCLIFFE: Thank you, Your Honor.

Just thinking back to our hearing in December, I know that we went down this path -- and I won't ask the Court to spend much time on this. I know we went down this path with respect to at least a social media posting by President Trump.

And we were -- the Court allowed that to come into evidence.

We have concerns about the weight, certainly, that the Court should give any of these either social media or off-the-cuff or sort of extemporaneous statements that appear in the various places that Mr. Manning and his team have pointed to.

THE COURT: So are you suggesting that President Trump's social media post was an excited utterance?

MR. RATCLIFFE: No, Your Honor. I'm suggesting I lost then; and I'm trying to come up with a better argument now for why the Court should maybe not give these statements the weight, recognizing that we're going to lose on the argument of whether they're admissible generally.

But my colleague will have more to say on that when it comes to weighing and interpreting how to -- how to -- how to read these statements that have been in social media and in other places in the media and comparing them to what we believe is the more reasoned and agency position with respect to the things addressed in the January Lyons memo.

So we recognize that the statements that Mr. Manning has offered are admissible, but we do think that they should carry much less weight than an agency reasoned and written by -- written upon reflection and with attorneys policy.

THE COURT: Okay. I do want to confirm, Mr. Manning. There's -- I mean, there's several other descriptions and

reporting in these stories that are not quotes from agency officials. I mean, I'm not sure that has -- one, whether it would be admissible and, two, how relevant those reporting of facts -- how it would otherwise come in here in the -- without some additional opportunity for the parties to scrutinize those representations.

I do think that the quotes themselves, unless somebody is going to contest their authenticity, the quotes of agency officials themselves do -- can be considered as evidence in this -- in this record.

MR. MANNING: Thank you for that, Your Honor.

Our understanding is newspaper articles are self-authenticating, and so these newspapers would be self-authenticating. So the question would then be of relevance. We have cited to them.

So each time we made a citation in our motion for -- related to a fact that we believe is in existence, we then cited to it. And then we brought those forward in -- via this declaration so that those were in the record.

THE COURT: Are we talking about the quotes from officials?

MR. MANNING: Quotes from --

THE COURT: Are you asking that I consider other descriptive, you know, statements by the journalist writing the report about observations that they've made, separate from

quotes from officials? Because that, to me, is the -- is the difference that I'm trying to understand. I'm not sure the reportings on the facts necessarily come in.

And I don't think self-authentication resolves the issue of admissibility on those points. But the admissions, the statements of -- of agency officials, I think, can come in.

MR. RATCLIFFE: We have a hearsay concern, Your Honor, with respect to the other facts. I just wanted to make sure that I interpose that.

And I'm sorry to interrupt you, Mr. Manning.

MR. MANNING: Your Honor, so we do think they're relevant. We do think --

THE COURT: When you say "they," what are we talking about?

MR. MANNING: So there's a couple different sets of things that are attached to documents that are attached to ECF 64. We have statements made by President Trump. We have statements made --

THE COURT: Which exhibit is that?

MR. MANNING: That's Exhibit 1, is the Truth Social post. And Exhibit 9.

THE COURT: Let me make sure I get to that here.

All right. So I think we've already addressed the Truth Social post; and that is, in itself, a statement from the president of the United States.

MR. MANNING: There are also statements, Your Honor, within the articles from officials.

THE COURT: So I think my question is -- the question is straightforward -- or my inquiry is straightforward; maybe the question is not. I'm just simply asking: Are you only seeking consideration of the quotes from officials in these news reports?

MR. MANNING: In the news report, yes. And there's -- part of our burden is to demonstrate there is a policy, so that there is a pattern and practice. And so there is reporting that we are relying on --

THE COURT: Okay.

MR. MANNING: -- demonstrating that there have been arrests; there have been raids in the community. And we have drawn -- we have gone -- and that is attached to this declaration.

We have also drawn on the declaration from Emily Ryo, who is a professor at, I think, Wake Forest, who -- she is a data scientist who submitted a declaration in a separate case, which we have attached here, analyzing publicly available data showing the impacts of the arrests that would -- here in -- 'cause part of our burden is to show a policy.

And so to show that that policy, beginning with what we would call -- we generally describe as Operation Black Rose, has resulted in a thousand percent increase of ICE

apprehensions in Oregon over the prior year. And the Court can take notice of the existence of the record, even if facts within it may be disputed.

There are additional documents, Your Honor, that go to irreparable harm, that are official documents, related to resolutions adopted by various jurisdictions in Oregon declaring a state of emergency on account of the defendants' actions.

There is a -- there is additional information -- part of our burden is to show numerosity for our provisional class certification, which includes -- one of the documents attests --

THE COURT: Well, it would appear that the declaration of Emily Ryo provides evidence of numerosity, does it not? Even without regard to the actual news -- the newspaper printouts that -- or the news article printouts that are also part of Ms. Cunnings' declaration.

MR. MANNING: That's correct, Your Honor.

THE COURT: All right. What I'd like to do is -- so I want to address any other outstanding evidentiary matters. I've already ruled on the admissibility of Exhibit 103. It's admitted. The objections on hearsay and relevance are overruled.

I understand that 103 is offered to help me understand the -- sort of the scope and breadth of -- of the

warrantless arrests that are occurring in the District of Oregon; that -- that I am not being asked to consider, nor would I at this time, issues associated with the propriety of using administrative warrants to enter into peoples homes, which I think is also a very central aspect of the May 12th memo. But, again, that's not what I'm being asked to directly address, at least today.

With respect to the statements by President Trump or any other quotes by officials in any of these news reportings, they are admissible; and I will consider them in evaluating whether there is a policy, pattern, or practice contrary to the appropriate application of the relevant law involved in warrantless arrests associated with ICE agent and -- and DHS authority to use such arrests in enforcing immigration law.

With respect to any other reporting on -- and sort of the magnitude of what might be happening here in the District of Oregon, I'm going to withhold consideration at this point. I'm not sure it's necessary for those facts to be part of the record, given our evidentiary hearing back in December that may very well satisfy, under more traditional notions of admissibility, the evidence you want me to, at the end of the day, consider.

I'd like to turn to argument.

MR. MANNING: Thank you, Your Honor.

THE COURT: Well, we'll take a break at 2:30. And

then we'll -- for about 15 minutes, and then we'll come back and continue with argument today.

Mr. Manning.

MR. MANNING: Thank you, Your Honor.

So may it please the Court. So Portland --

THE COURT: Why did you -- I know I do this all the time.

MR. MANNING: Speak up?

THE COURT: No, no. I interrupt as soon as somebody starts something. I just -- I -- and just to make sure it's clear that I'm not just doing it to Mr. Ratcliffe and Ms. Garousi, it's you, too, Mr. Manning.

In your motion for the preliminary injunction, one of the first things you do is start going deep in political theory by citing to the dual state. Why? Why is that necessary for any of my consideration in the context of the legal rulings I have to make?

MR. MANNING: I think it's very relevant, Your Honor. And with the Court's indulgence, I actually will address the -- why a dual state theory, I think, is very important as a legal theory and why we're asking the Court to enter an injunction to prevent its spread, at least in this regard.

And so some of the facts that relate to that are that Portland, Hillsboro, Forest Grove, Cornelius, Woodburn, Salem, Washington County, and Multnomah County, some of the largest

cities and counties in Oregon, with the -- jurisdictions with the population of nearly half the state, are living under a state of emergency because defendants in this case, DHS's components, ICE and CBP, have been in the streets, the neighborhoods, and school areas, arresting people without warrants and sweeping them out of state into their massive and secretive detention apparatus.

Plaintiffs, DHS calls them "collaterals." M-J-M-A, who's an asylum seeker from Mexico; Mr. Cruz Gamez, a father and grandfather, with decades in the United States, are asking the Court to enter an order that allows them to provisionally represent people just like them, noncitizens arrested or who will be arrested by DHS without a warrant, and ask the Court -- without considering regard to flight, and asked the Court to issue an order to tell DHS to stop doing that.

So we think the record before the Court shows this, that DHS routinely makes warrantless arrests in Oregon. There are multiple examples. M-J-M-A's case, in the Government's very own words, they arrested her without a warrant for an alleged immigration violation before they knew her identity, before they knew her citizenship, before they knew her immigration status.

They arrested her first and then searched for a justification afterwards. Petitioner's Exhibit 101 from the evidentiary hearing in December, five others were in that van,

none of whom, in the Government's agents' own words, were named targets. By their own testimony, they were collaterals. None of the -- none of the agents identified any targets in that van, but for the so-called collaterals, and they were all arrested without a warrant.

Mr. Cruz Gamez's case --

THE COURT: Now, somebody -- I mean, are you disputing that -- that there was reasonable suspicion to conduct a stop?

MR. MANNING: We do, Your Honor. We don't think it's necessary for the Court's decision today, but we do dispute that --

THE COURT: You dispute it; but even assuming that there -- that there was reasonable suspicion, that at the end of the day, there was not probable cause, that a violation of immigration law had -- had -- had occurred?

MR. MANNING: For the purposes of -- so we -- so, yes, we dispute that. But even assuming that, we would --

THE COURT: You want to go to the second prong?

MR. MANNING: The second prong, that that's what we're seeking for the class -- sorry -- for the injunction, is to the unassessed escape risk clause. So even assuming, which we dispute, they could satisfy those -- the first probable cause, 'cause it's a double probable cause standard, even assuming the first, they fail the second. That's what we think

"Arrest First, Justify Later" means. And --

THE COURT: The framework, which is 8 -- Title 8, 1357(a)(2) and then Title 8 of the CFR 287.8 -- I'll -- I'll spare you the reference to the subparagraphs, but I think we know what we're talking about -- those are the statutes that are in play here.

It appears to me that the design of these statutes is to emphasize the need for a warrant, first and foremost, and that a warrantless arrest is an extraordinary exception to the basic rule of a warrant, correct?

MR. MANNING: That's correct, Your Honor.

THE COURT: All right. Now, I think there might be some confusion, and I want to make sure that it's cleared up. And if the Government has a different understanding, I'll give them an opportunity to add some additional explanation.

A warrant under these provisions or an administrative warrant, a civil warrant for an arrest of somebody for whom the agency has probable cause has violated an immigration rule or regulation or statute, does not require independent third -- third-party judicial review, correct?

MR. MANNING: Under the statute, that's correct.

THE COURT: And does not require even an immigration judge, who may be purportedly separate from an independent -- from -- from immigration policy considerations, they're not the ones to which an application for a warrant is submitted for

approval of an arrest?

MR. MANNING: That's correct, Your Honor.

THE COURT: All right. So from what I can understand, arrest warrants under these provisions -- an administrative arrest warrant is a warrant that is approved by a supervising officer from ICE or DHS?

MR. MANNING: That's correct, Your Honor.

THE COURT: I think there were at least two different titled authorities that can grant warrants. And the other one is escaping me.

Ms. Garousi, maybe you might recall.

MS. GAROUSI: I don't know, Your Honor. I don't have the statute in front of me, but I can pull it up and take a look for you.

THE COURT: But I'm not clear what needs to be submitted by a field agent, or any agent for that matter, what information needs to be submitted to a supervisor in order to obtain a warrant to arrest an individual who is considered to have violated immigration law.

Can anyone tell me what that minimum level of material and information in an application to a supervisor looks like?

MR. MANNING: Your Honor, from -- I can -- and the Government may be better able to address this. My understanding from the regulation and the statute is they need

to submit evidence of probable cause to obtain the warrant, which would mean they would need to set --

THE COURT: Is it under a signed declaration or sworn affidavit?

MR. MANNING: I do not believe so, Your Honor.

THE COURT: So is it in a -- is it the Form 213?

MR. MANNING: The I-213 could form a basis for -- is the arrest report, so it could be seen as an investigative report. I haven't -- so, in my experience, I -- I don't know the answer, and so I probably shouldn't speculate.

But I have not seen a -- any document that would form the basis for that application process to obtain a warrant. From the testimony from the December evidentiary hearing, that Agent K.K. and Agent B.W., who described they produced warrants after the fact --

THE COURT: These were the scratch forms, and then there was a -- were these the I-200s?

MR. MANNING: So there was the scratch I-213s, which were developed in the -- as we understand from the testimony, developed in the field, that then later were produced -- you know, entered into a database that became then the -- the arrest report.

There was no -- Agent B.W. and K.K. testified to creating warrants after the fact, but there was no testimony about warrants created prior to an arrest or the process for

that.

THE COURT: Okay. Ms. Garousi, Mr. Ratcliffe, do you have a general understanding of the process for obtaining an administrative warrant that field agents seek, and from whom?

MS. GAROUSI: I'd be speculating, Your Honor. No, I don't have an answer to that.

THE COURT: So not -- any reason to believe that it requires some evidence of probable cause, some statements of probable cause that an immigration violation has occurred?

MS. GAROUSI: Your Honor, as far as, like, what the evidence -- the form of the evidence, I can't speak to that. But in looking at the regulation, "A warrant shall be obtained except" -- I do believe it's a probable cause standard. I just don't know what the form of the evidence needs to be, which I think is what the Court's asking me.

THE COURT: And that form of evidence being in the form of a declaration or a sworn statement?

MS. GAROUSI: I'm unaware of that.

THE COURT: Okay. And do you have any understanding, Ms. Garousi, of how quickly a warrant can be obtained once a stop has been made?

MS. GAROUSI: Your Honor, I -- again, I don't want to speculate. From my understanding of immigration law, I think it's sort of a case-by-case. Like the Court mentioned, a supervisor has to be the one to sign off on the warrant. So I

think that's sort of dependent on the circumstances.

THE COURT: Okay. And were any of the witnesses that were part of either Team 7 supervisors? What was -- was it B.K. that was a supervisor?

MR. MANNING: I believe it was Agent K.K.

THE COURT: And was Agent K.K. a part of Team 7 in the field? I don't remember that, but --

MS. GAROUSI: No, Your Honor. Agent K.K. testified that he only did processing at the facility. The supervisors for Team 7 were -- now I got to remember initials -- I believe Officer C.H. and Officer --

THE COURT: Was it J.B.?

MS. GAROUSI: No. R.F. Officer R.F.

THE COURT: So they were supervisors. Do you know if they were authorized to issue warrants?

MS. GAROUSI: I do believe, as SDDOs, which is their title, they have the ability to sign warrants.

THE COURT: And I don't believe there was anything in the record that they authorized a warrant in the field.

MS. GAROUSI: No, Your Honor, I don't believe so.

THE COURT: Okay. All right. Mr. Manning, so I understand that administrative warrants were -- well, a warrantless arrest, which is an exception to the rule, requires an additional safeguard, which is a finding that is -- a particularized finding of the individual that is being

considered for an arrest without warrant, must be also findings that take into consideration the likelihood of escape.

MR. MANNING: That's right, Your Honor. The Supreme Court has emphasized that the ordinary rule for immigration arrests is that warrants are required before they can conduct a civil immigration arrest. That comes from Arizona v. United States.

And the Supreme Court writes that "If no federal warrant has been issued, those officers have more limited authority." That limited authority is the limited authority that you've described at U.S.C. 1357(a(2).

The statute requires an affirmative showing by the agent that they have undertaken the flight risk factors, the escape -- what we -- the statute refers to as "likely to escape," which has been interpreted to mean the flight risk factors.

THE COURT: Although Exhibit 1 suggests that those are two very different considerations; and the agency has conflated them, and practitioners have also conflated those two very different terms, right?

And the memo suggests that flight risk is really a consideration post-arrest on release conditions, whereas likelihood of escape is likelihood of escape at the time of the initiating stop or incident contact.

MR. MANNING: That is what the 2026 Lyons memo says.

THE COURT: I thought it was also -- and that's the January -- that's the most recent --

MR. MANNING: That's the most recent one, yes.

THE COURT: Yeah. Oh, when you say January '26, not May --

MR. MANNING: So, yeah, there's the --

THE COURT: -- May 12th. There's the May 12th and January -- okay. Go ahead.

MR. MANNING: And so, yes, that is what that memo says. And we think that memo is helpful to the plaintiffs, and we think it -- as a question of fact, we think it is helpful to indicate to the Court, in addition to all the other facts that are in the record, that there is a policy here in Oregon that is in effect now of "Arrest First, Justify Later."

And the reason we add --

THE COURT: Contrary to the January 26 memo from Acting Director Todd Lyons?

MR. MANNING: Absolutely, Your Honor. We don't think it's -- we think it's a fact that the Court should consider. We don't think it's actually a contrary fact, however. The statements of the officers and the evidence before the Court of these actual warrantless arrests, that's actually what happened.

That a memo created after the Government has been sued here, in Washington, D.C., in Colorado, in Minnesota, and

this memo was then submitted to the District Court in Minnesota, is merely a post hoc justification or an attempt to moot or an attempt to create some sort of concept of voluntary cessation of what actually is in effect.

We think right now in Oregon "Arrest First, Justify Later" is still in effect. That's a question of fact. As a question of law, the Lyons memo has many, many problems. We're not asking the Court to enter an injunction to order the DHS to comply with their memos.

We're asking the Court to enter an injunction to order DHS to comply with the statute. And the requirements in the statute require an affirmative showing by the agent why they cannot obtain a -- why -- why the flight risk is the factor.

Now, we think the memo has APA problems. We think that memo has -- we think the Court should eventually -- we will come back to Court to ask the Court to set that memo aside under the APA. We think they've adopted it in violation of the APA.

Frankly, Your Honor, we're not sure that a senior officer performing the duties of a director can even actually enter into such a document that would create policy for the agency. We're not sure about that.

THE COURT: Well, what about the Castanon Nava broadcast?

MR. MANNING: So Castanon Nava, the broadcast policy, my understanding right now, Your Honor, is that injunction -- that settlement agreement -- excuse me -- lasted up until February 2nd.

THE COURT: Oh, so it's now lapsed and not in effect.

MR. MANNING: So our ability to enforce the agreement -- to enforce the documentation requirements through that settlement agreement, we believe, has now lapsed. We do not believe, however, that actually impacts our Count 9 because the Lyons memo itself, the 2026 Lyons memo, again, reiterates that it's the agency's policy to document the facts of the warrantless arrest, what gave the agents cause for the warrantless arrest.

THE COURT: So everyone agrees the law, statute, and regulation requires particularized consideration and then, prior to arrest, documentation?

MR. MANNING: Yes, Your Honor.

THE COURT: And Ms. Garousi's saying no. You don't think it requires what specifically?

MS. GAROUSI: Your Honor, defendants -- the statute -- or the regulation do not require documentation. I think the first part of what you said we agree with, but the documentation we don't agree with.

THE COURT: Then how is it recorded and then considered, once an arrest has been made, to see if the arrest

was lawful?

MS. GAROUSI: Your Honor, well, as we've done in this case specifically, we had testimony from a number of witnesses who explained what those factors were that they considered at the time of the arrest. I'm simply stating that the --

THE COURT: But in the absence of contemporaneous documentation, they might be nothing more than post hoc justification, which is not appropriate under the statute or regulation.

MS. GAROUSI: Yes, Your Honor. I understand the Court's concern; however, probable cause is -- and probable cause of a likelihood to escape is an objective standard at the time of the arrest. I mean -- so, yes, I understand the concern that -- could witnesses testify with post hoc justification? Yes, it can happen. But I think that's a case-by-case determination.

THE COURT: And in this case the evidentiary record shows that the there was a -- almost a word-for-word, cut-and-paste language that's used, that was included in -- perhaps it was the I-213s -- that indicated not at all any particularized consideration of the five or six individuals that had been arrested on that day.

MS. GAROUSI: Yes, Your Honor. We don't --

THE COURT: They said that it was even -- I mean, if it were at all considered at some point earlier than being

taken into the facility, the record shows that there was nothing particularized about whatever was considered, as it was documented in the records that we have here in the purple binder.

MS. GAROUSI: Yes, Your Honor, that documentation. But, again, we had the two-day evidentiary hearing where we had a number of officers testify to their probable cause at the time.

THE COURT: Well, we'll come back to you on whether that was actually probable cause of likelihood of escape. I'm not -- I don't recall -- and you're going to have to point out to me where in the record -- that likelihood of escape was actually a consideration at the time that these arrests were made. But we'll come back to that.

Mr. Manning.

MR. MANNING: Thank you, Your Honor.

So Mr. Cruz Gamez's case is an exemplar, arrested without a warrant. DHS stopped him. We -- they were looking for someone else, not him. That's his testimony.

THE COURT: Do you have -- I mean, is there any other evidence in this record that indicates the number of times that ICE agents had a target in mind, whether with a warrant or not, but then they stopped somebody, thinking that it matches a description of the person they had in mind, and it turns out not to be that person?

Because I -- that was one of the bases, if I'm not mistaken, for stopping the vehicle in M-J-M-A's case, is that they thought that the person whose license plate -- the car was registered to was seen or observed, but that person never ended up being in that group of people.

MR. MANNING: We don't --

THE COURT: And I'm also trying to understand: Is there a pattern or practice of using pretextual, "Oh, I recognize this person in the rap sheet or the call sheet or the target sheet," and then they use that as a bootstrap opportunity to stop and then employ this broad sweeping investigation of what have been -- of collateral -- of collateral individuals?

MR. MANNING: So, Your Honor, we think there's evidence -- so I don't have an exact number; but there is evidence in the record of that practice, of "We're looking for X; but we didn't find X, so we'll take Y and Z instead." That's Mr. Cruz Gamez.

THE COURT: Well, perhaps I'm suggesting something, you know, more insidious: "We think we see X as our pretext, so we're going to stop." There never was a seeing of X. And so how is it otherwise proved or disproved? But I'd be curious to see how many times they, in fact, identified X and actually found X at any of these stops.

MR. MANNING: There's no evidence in the record at

this point, Your Honor. Part of the discovery we're seeking is actually to illuminate that very question.

But here we know that, for Mr. Cruz Gamez, they stopped him looking for someone else, a common pattern, that there's a target they can't seem to find. So they took Mr. Cruz Gamez. He shows them his --

THE COURT: It also seems to be consistent with the last video, 103.

MR. MANNING: That's correct, Your Honor. Mr. Cruz shows him his work permit, his lawful status in the United States. They still arrested him without a warrant and separated him from his family for three weeks. They had every fact known to him that he had submitted in his application.

It was to know -- to show that they could've actually made the -- if those officers making -- prior -- if that was a detentive stop -- we think it was an arrest; we don't think he was free to leave.

But, even setting that aside, they could have made, and they did not, the affirmative showing that he was not a flight risk. The man has been living in the United States for decades. U.S. citizen -- sorry -- grandchildren, children, a wife. They nearly deported him.

We have Agent K.K.'s testimony and Agent B.W.'s testimony in this record both explaining the routine nature of the warrantless arrests during Operation Black Rose, for which

they would then manufacture arrest warrants after the fact.

The record here shows, and we reference case after case after case after case before the many judges in this district, that DHS has made arrests without warrants. Judge McShane wrote in Pichardo Medina, "This Court is becoming all too familiar with respondents' self-apparent tactic of 'Arrest First, Ask Questions' later." That's from the decision in his case.

Judge Aiken, in a case arising from the same October 30th arrest from M-J-M-A, a different van, two petitioners, A-B-D and C-C-C-S, Judge Aiken wrote, "Petitioners' warrantless arrests were, in fact, improper because neither was made with probable cause." And she found the arrest violated the INA, the APA, and the Fourth Amendment.

In two cases, M-E-G-G and M-L-G-G, the Government's own declarants' attest to the warrantless arrests. And in B-D-A-A Judge Aiken again found that the warrantless arrest was unlawful for failure to show the double probable cause. So we think the record shows, and the plaintiffs have shown, that these warrantless arrests are done without satisfying the double probable cause standard.

We're asserting that because that is what DHS has been directed to do. The president has directed the defendants to do, quote, "all in their power to achieve the very important goal of delivering the single largest mass deportation program

in history." He then later stated that the immigration raids have not gone far enough.

To achieve that, we would note that the -- the word "power" in that statement -- and this goes back to the very first question the Court asked me about power. So to achieve that, the defendants are using power, not law, to achieve that. We have the U.S. Border Patrol chief, Michael W. Banks, saying, "We know who we are looking for, and we have collaterals."

Now, the record shows that -- government data shows that in October 2025 -- so we allege that -- we believe we've proven by a preponderance of the evidence that Operation Black Rose began around September 28th, 29th of 2025. In October 2025 immigration arrests in Oregon soared off the charts. We actually have a chart in the record.

The DHS has plainly stated -- and I will address the Lyons memo in a moment -- that they used reasonable suspicion to make arrests, that they do not need probable cause and that they do not need a warrant.

So on this record, including the Lyons memo, as a question of fact, we think that DHS -- the Court should find that DHS has adopted and has implemented and is in effect right now the "Arrest First, Justify Later" policy or practice of making warrantless arrests in Oregon without satisfying the second probable cause.

Very recently, Justice Jackson -- sorry, I don't know

why I get -- my colleagues tell me I get -- have some sort of like secondary trauma, but I get very choked up talking about the law. So give me just a moment.

Very recently, Justice Jackson warned us about perils for the country when zones of lawlessness, when arbitrariness open up in society, where state of law exists alongside state of lawlessness. That's the dual state. Now, she was writing a dissent in a case called CASA v. Trump, but we ask the Court to take heed of her warning nonetheless.

Going to work, coming home from work, driving on the highway, or buying bread or hanging out with your family at home, those are not existential threats for most of us. But for a significant portion of Oregon's population, they are. For immigrants or people perceived as immigrants, it is an upside-down world.

These very innocent things are the very things that cause a person to be swept up in DHS's warrantless arrest and deportation apparatus. So "Arrest First, Justify Later" and its permutations, I think, are the definition of arbitrary. It is that zone of lawlessness.

THE COURT: Well, I mean, I think what Ernst Fraenkel describes as the prerogative state, and what you're trying to describe here, is that it's the prerogative state that is reigning over this behavior and conduct.

MR. MANNING: That's correct, Your Honor. The

prerogative state is -- there's the normative state and the prerogative state. And the normative state is where these are not existential threats, where I stop at a red light and I go on a green, and I make my commercial transaction to buy my bread, or I go to work and I come home. Those are not threats in the normative world.

But in the prerogative state where it's -- whatever -- there is no law because it is whatever -- it's arbitrary. It's whatever someone wants -- it's pure -- pure unchained discretion.

THE COURT: Well, I mean --

MR. MANNING: That's the prerogative state.

THE COURT: -- it's pure policy-driven behavior and conduct.

MR. MANNING: That's correct, Your Honor.

THE COURT: Well, you know, I also think that the dual state speaks to the concern over the complicity of the normative state in service to the prerogative state. I mean, is that something that you are expressing concern about here?

And perhaps, more specifically, I think what Fraenkel was describing is the lack of judicial review and, frankly, the rule of law in Nazi Germany, which rendered the normative state ineffective in holding back "might makes right."

MR. MANNING: I think that's right, Your Honor. I think -- this case is coming to you as a class. The executive

branch, from the plaintiffs' point of view, exists for the sole reason to faithfully execute the law. And if the only way to ensure that they execute the law faithfully is we have to come to court, then we have to come to court.

And I think what Professor Dr. Fraenkel was describing is the slow erosion, that then sped up quickly, of the ability for judicial review of executive action to check the expansion of the prerogative state until it eventually consumed the normative state.

We're asking the Court to provisionally certify the class. There are several factors we have to satisfy to certify the class.

THE COURT: So that's numerosity, typicality, commonality -- and is it ability, availability of counsel?

MR. MANNING: That's correct, Your Honor. Adequacy.

THE COURT: So I think you filed a declaration yesterday at some point, in which you outlined the qualifications of each of -- I think four, five attorneys?

MR. MANNING: That's correct, Your Honor.

THE COURT: From the Innovation Law Lab?

MR. MANNING: That's correct.

THE COURT: Okay. I don't think we need to address that consideration. You know, I would find that the qualifications, experience, and capabilities are adequately met for that factor.

MR. MANNING: Thank you, Your Honor.

On the -- one moment.

THE COURT: Numerosity, typicality, aren't those the ones that typically merge?

MR. MANNING: Thank you, Your Honor.

So numerosity -- so the proposed -- so the proposed class and subclass here are so numerous and -- so for here -- for purposes here, we would just note that provisional certification is not an ultimate ruling on the merits. It's just provisionally certifying --

THE COURT: Provisional certification is necessary for me to even consider your preliminary injunction.

MR. MANNING: That's correct, Your Honor. But it is not --

THE COURT: But you're not seeking the preliminary injunction in the context of the original habeas case involving M-J-M-A.

MR. MANNING: That's correct, Your Honor.

So Oregon has a large immigrant population, so numerosity. According to data that we've submitted from the American Immigration Council, there's about 400,000 people living in the -- in Oregon that are foreign born, so about 10 percent of the state's population.

That's about -- one quarter of that is to -- estimated to be undocumented. And there's about an estimated

89,000 U.S. citizen Oregonians living in mixed status households. So we think thousands of Oregonians are vulnerable to being targeted, and so we think we satisfy the numerosity requirement.

The class claims raise common questions of law and fact under Rule 3023(a)(2).

THE COURT: And the general fact patterns in which the purported class fall into are quite similar as well.

MR. MANNING: That's correct, Your Honor. So that's typicality. And for adequacy, we've heard from M-J-M-A herself; we've heard from Mr. Cruz Gamez himself. We've heard -- both of their fact patterns fit those fact patterns and the evidence related to them as well.

Ascertainability's not a requirement in the Ninth Circuit, but we also believe our proposed classes are ascertainable, as they are clearly defined and have objective criteria. And so we think the Court should grant provisional certification.

THE COURT: Why don't we take a break. I said we were going to stop at 2:15 for a recess. Let's continue at 2:30.

Now, was there anything else with respect to the provisional certification issue that you were going to argue?

MR. MANNING: Not by us, Your Honor.

THE COURT: All right. Then what I'd like to do is

take this up in sort of two parts. I'll want to hear anything the Government wants to say in response to the provisional certification -- class certification, and then we'll then turn to the preliminary injunction factors. Okay?

MR. MANNING: Thank you, Your Honor.

THE COURT: 2:30.

(Recess taken, 2:16 p.m. - 2:34 p.m.)

THE COURTROOM DEPUTY CLERK: Court is back in session.

THE COURT: Ms. Garousi or Mr. Ratcliffe, who's taking this issue up?

MS. GAROUSI: Me, Your Honor.

THE COURT: All right.

MS. GAROUSI: The Court wanted to hear about class certification; is that right? Provisional class satisfaction?

THE COURT: Yes.

MS. GAROUSI: Your Honor, defendants were not on notice today that provisional class certification would be taken up.

THE COURT: Why not?

MS. GAROUSI: Because there was no motion for provisional class certification. There's a request in plaintiffs' motion for preliminary injunction for class certification, which they argue in their reply constitutes incorporation by reference.

We disagree with that characterization that it's incorporation by reference of their arguments in their motion for class certification. So that's --

THE COURT: So I'm usually the last one to know what's going on, but I knew that provisional class certification was part of the issue. Tell me -- I'm trying to understand how it was missed or why it was -- not overlooked, but why it wasn't on your radar.

MS. GAROUSI: In part because they didn't motion specifically for provisional class certification. We're not saying that provisional class certification can't be granted with a preliminary injunction. We're saying that we weren't on notice that was being taken up today, in part because that's not made clear in their motion for preliminary injunction or a separate motion, as it should be.

And we also were on the -- working under the understanding that the Court requested briefing on the motion for class certification on February 20th.

THE COURT: Right. Well, I mean, isn't that part of also what you -- how you responded, that -- or at least maybe -- or maybe it was during our discussion last week about this idea that -- that class certification is sort of -- it's an ongoing separate and parallel track where -- where we have a briefing schedule for that.

But do you agree or disagree that provisional class

certification has to be addressed in order to even consider the preliminary injunction?

MS. GAROUSI: Yes, Your Honor. We do agree with that. It needs --

THE COURT: So if I agree with you that it's not properly before me, provisional class certification, then we're done today. We don't even get to the purpose of -- we don't even get to the preliminary injunction considerations.

MS. GAROUSI: Yes, Your Honor. And, I mean, certainly if -- the Court can order us to brief the issue, but I'm just explaining our position to the Court. We did not come prepared to talk about this today because of the procedures that were followed in this case. And --

THE COURT: Now, in the morning today, before we started, I took pains to outline the issues that we're discussing. And I did explicitly say provisional certification of the class. Nobody objected. Everybody agreed that these were the issues that were on the table for the day. Anything change between then and now?

MS. GAROUSI: No, Your Honor. I didn't understand what you were saying to mean raise my objection then 'cause I think this -- I assumed you meant to talk about class certification later in the afternoon without the witnesses present. I wasn't -- no, my understanding didn't change from this morning to this afternoon.

THE COURT: Mr. Manning.

MR. MANNING: I think, Your Honor --

THE COURT: Do you want to address this issue of provisional certification appropriately being before the Court?

MR. MANNING: Thank you, Your Honor.

So we do think it's properly before the Court. So plaintiffs did request provisional class certification. We've requested it twice. So we requested in our motion for class certification itself at note five.

THE COURT: You asked for provisional class certification in your motion for certification of the class?

MR. MANNING: So we made a motion for class certification.

THE COURT: Yeah.

MR. MANNING: We also requested provisional class certification for the purposes of this preliminary injunction.

THE COURT: But I want to be clear. Did you -- did you ask for a provisional class certification consideration in your motion for class certification or --

MR. MANNING: Yes.

THE COURT: Is it elsewhere in your motion for preliminary injunction?

MR. MANNING: It's in both.

THE COURT: Well, I'm interested in where it is in the preliminary injunction.

MR. MANNING: So it's at note five.

THE COURT: Note five. Page what?

So I'm looking on page three, note five, of the plaintiffs' motion for a preliminary injunction. Is that what you are referring to?

MR. MANNING: I am looking at ECF 60, at five, note five.

THE COURT: ECF 60?

MR. MANNING: Yes.

THE COURT: Okay. That's the motion to certify the class.

MR. MANNING: That's right.

THE COURT: But I asked you if it's in the motion for a preliminary injunction.

MR. MANNING: And it's also in the motion for --

THE COURT: And that's what I'm asking. Where is it in your motion for a preliminary injunction?

MR. MANNING: At page 16.

THE COURT: Okay. Where?

MR. MANNING: So it's on page -- sorry. ECF 61, page -- ECF page 20, under argument, legal standard.

THE COURT: But not page 16?

MR. MANNING: ECF -- so internal page 16, ECF page 20.

THE COURT: Oh, I see. Okay.

MR. MANNING: "Plaintiffs satisfy all four factors and, therefore, are entitled to preliminary injunctive relief. Given that plaintiffs seek preliminary injunctive relief on behalf of the purposed unassessed escape" --

THE COURT REPORTER: Slow down, please.

MR. MANNING: -- "risk class" -- thank you -- "as defined in the concurrently filed motion for class certification, the Court should provisionally certify the class and issue provisional" --

THE COURT: Is it section one, two? Legal standard or --

MR. MANNING: That's --

THE COURT: Paragraph one or paragraph two?

MR. MANNING: Paragraph two, Your Honor.

THE COURT: Okay. And, Ms. Garousi, are you contending that there needs to be some separate motion, outside of the preliminary injunction motion, to address -- or to raise the issue of a motion for provisional certification of a class?

MS. GAROUSI: I think at the very least, Your Honor, there needs to be better notice than what was -- what's at issue here, what Mr. Manning is contending somehow put us on notice.

THE COURT: Like what?

MS. GAROUSI: Your Honor, in their reply brief, in response to our argument, they say that the -- the arguments

were incorporated by reference based off of this sentence that he just read. It's the -- "unassessed -- the unassessed escape risk class, as defined in the concurrently filed motion for class certification," that's the definition of the class.

I see that as a reference to the definition of the class, not the arguments made in regard to that. And I think that's potentially inappropriate also as a motion within a motion. Under the Local Rules 7-1, that would be considered a motion within a motion.

THE COURT: So are you saying that in your response you make no mention of the provisional certification issue as part of the argument for why preliminary injunction should not be -- a preliminary injunction motion should not be granted?

MS. GAROUSI: The argument that we make in our response mirrors the argument that I'm putting before the Court right now.

THE COURT: Which is what?

MS. GAROUSI: Which is that the Government wasn't sufficiently noticed that provisional certification was being requested.

THE COURT: And so you declined to address the argument altogether in your response?

Let me put it this way. Where in your response are you indicating that you weren't on sufficient -- you weren't on notice sufficiently that provisional certification was at

issue?

Or is -- I'm trying to make sure I follow the argument. You're raising it for the first time in the afternoon, and I'm generally not -- well, I'm not pleased. And the objection, at this stage of the game, will keep us all here past midnight.

So if you're going to make a valid, full-throated objection, then I better find something here that properly raised the issue and an objection at an appropriate and convenient time -- at an appropriate time and a convenient time for anyone to have been able to respond.

And, you know, I've taken pains to try to make sure that we've identified the agenda at many different stages of today's process, in the course of our discussions on discovery last week. I'm -- I'm failing to appreciate how this could not have been noticed in any more meaningful way, especially -- especially if provisional certification is a predicate to even considering the preliminary motion -- preliminary injunction motion.

MS. GAROUSI: Yes, Your Honor. I understand the Court's concerns. I don't think it's appropriate to have -- the way in which that they've requested provisional certification --

THE COURT: Well, let's break it back down into a couple pieces. Is there anything in your response, ECF 70,

that indicates lack of notice of this -- of the -- of the plaintiffs seeking provisional certification?

And if you see it, Mr. Manning, point it out.

MR. MANNING: In the Government's response?

THE COURT: Yes.

MR. MANNING: Yes, Your Honor. They have a section devoted to provisional certification.

THE COURT: Give me the page number, please.

MR. MANNING: It is ECF 70, page -- ECF page 29, internal page 23.

THE COURT: Ms. Garousi, a page and a half devoted to that issue.

MS. GAROUSI: Yes, Your Honor. And the way in which I -- this is written is meant to say they didn't follow -- plaintiffs didn't follow the procedures that they were supposed to. It came to us as a request in their relief section as a remedy. There's no argument in their motion regarding class certification. There's no incorporation by reference to their motion for class certification.

THE COURT: I thought you said, Mr. Manning, that there was an incorporation by reference in your -- in your brief, your motion.

MR. MANNING: Yes, Your Honor. So in the -- so -- yes, so in the PI motion, we do -- so we reference our motion for class certification.

THE COURT: It always helps to give me page numbers.

MR. MANNING: So this is ECF --

THE COURT: And just stick with the internal page numbers.

MR. MANNING: Thank you. So it is page 16.

THE COURT: And where are you incorporating by reference?

MR. MANNING: So that is in the second paragraph of the legal standard, the last sentence.

THE COURT: How is it incorporating your motion?

MR. MANNING: It refers to it "as defined in the concurrently filed motion for class certification."

Your Honor, we understand Rule 23, if I may, to -- that no separate motion is required for provisional certification, that Rule 23 -- that the motion for class certification itself can operate as a provisional certification. Like, the Court can rule provisionally when there is a need to.

We've referenced it -- it would've been duplicative briefing, from our point of view, 'cause it's the same -- the same factors that are set forth in the motion for class certification.

And then, not to belabor the point, Your Honor, in our reply we did then resummarize the provisional class certification, why it is warranted, on page 18.

THE COURT: Okay.

MR. MANNING: And if I may just add one more thing, Your Honor. We do not understand Local Rule 7 to have also required a separate motion for provisional certification because it is -- one, we think it's part of the class motion itself. We understand that rule that we could not combine pleadings with other responses, replies, or other pleadings.

But by referencing the motion -- the class motion, that was our intent. We were absolutely not intending not to bring this to the Government's attention or defendants' attention. That was our point with all of these references.

We also -- that was our point. So we didn't think it was necessary, and we -- we strove to bring all of the questions -- the legal questions to their attention to be able to argue today.

THE COURT: Any last words, Ms. Garousi?

MS. GAROUSI: Your Honor, we'd request that the Court stay the ruling on the provisional certification until we're able to brief the class certification on February 20th.

THE COURT: Which would necessarily mean I would stay the preliminary injunction motion?

MS. GAROUSI: Yes, Your Honor.

THE COURT: Motion is denied. The motion to stay is denied. I find that there's been adequate notice in the course of these motions, the briefs, the discussions with -- with me

on the record at the time in which we discussed discovery. I think we had another status conference even before that.

And, as I've indicated before, if I'm aware that the issue is before you, then -- then that is a satisfactory benchmark for me to conclude that, at the very minimum, counsel has been aware of this issue all along.

But even setting aside, you know, using me as some benchmark for what other people are and ought to be aware of, I mean, you take one-and-a-half pages to outline the factors: Numerosity, commonality, typicality, fair and adequate protection of the interest of the class, and maintainability. It was, at the end of the day, your choice not to brief it. And that's not my problem today.

So, counsel, perhaps some insight to how I try to approach litigation; and, that is, is when somebody raises an issue, I will actually take great pain to make sure that you have an opportunity to fully explore it because I operate on a presumption that if you're bringing it to my attention, it means something substantive, weighty, that you want to have me consider.

This isn't one of those issues. It could've been raised as an objection well before today's hearing. It could've been raised in the morning when I outlined the agenda. We could've tried to address some matters well before this late afternoon.

It's my intent and practice to give every attorney a full opportunity to present a full-throated argument and to allow everyone to build as much as of a record as they possibly can. And part of that means I end up taking a great deal of time, a lot of deliberation, and an opportunity for people to really extend themselves, perhaps for better or worse.

I'd rather make sure that deliberation and due process are an incredibly important and vital part of the judicial review. And that requires reciprocal good faith arguments. This is not one of them.

I'm also taking great pains not to try to, you know, get my veins popping out of the forehead and chastise and admonish people, perhaps like I might feel like I want to do on the inside, because I've also wanted to extend the professionalism and good faith, as practitioners and officers of the Court and honorable members of the bar, that you do, in the first instance, the right thing. And I'll accept that.

I also am taking great pains to make sure that when I treat each and every one of you, that you are not a proxy for your client or clients. And that is a professional courtesy I want to extend to everybody who appears in front of me as lawyers.

In that spirit, I am not going to exercise any louder volume of disapproval and disappointment, but I want to make it very clear: Please don't assume or take advantage of the

opportunities to present argument that has meaningful merit and assistance for my decisions going forward.

MR. RATCLIFFE: Your Honor, could I address one thing that the Court just mentioned? I -- we're grateful for the way the Court is treating this issue and the measured tones. We understand the Court's frustration. I'm a little concerned that you've suggested that we're making an argument in bad faith. You said this is not an argument in good faith.

I just want the Court to know that, coming at this from a slightly different perspective than my civil colleagues, because I have been on the criminal side for years, I knew certainly, and the parties knew, that class certification was an issue.

I want to make clear, though, what my partner and I did not understand is simply that it was going to be argued and decided today. I recognize that the Court and Mr. Manning have made the point that inherent in being able to move forward on a preliminary injunction question is the issue of provisional class certification.

I did not know that coming in, and I want to apologize to the Court for not being aware of that and not -- not allowing -- and I think, as a result of that lack of understanding of the Rules of Civil Procedure in this context, I did not realize, in the references that we had in previous hearings or in the briefing schedule, that the issue needed to

be addressed and decided today.

I just want the Court to know we are -- we are raising this issue out of good faith confusion and in, on my part, a good faith misunderstanding of what was inherent in today's preliminary injunction matter. And so I apologize to the Court for taking this time and creating this confusion, but I just -- like I said, I wanted the Court to know that we're coming from a place of good faith.

THE COURT: I'll accept your representation, Mr. Ratcliffe. I won't need to say any more. Let's move on.

The arguments have been made in the briefs. And unless, Ms. Garousi, you're going to offer anything more than that which you provided in your brief, in the response in opposition to the motion for preliminary injunction, I'll give Mr. Manning an opportunity to conclude any of his argument on the provisional certification argument.

MS. GAROUSI: Nothing further, Your Honor.

THE COURT: All right. Mr. Manning, anything else?

MR. MANNING: We don't have anything further, Your Honor. So the numerosity, commonality, typicality, adequacy, ascertainability, which is not a factor, but is -- may be considered, we think they've all been satisfied; and so we do think the Court should grant provisional certification.

THE COURT: I agree. Based on the arguments that have been made both in the motion for preliminary injunction,

the summaries that are there, and by incorporation the arguments that have been raised in the motion for class certification are well taken.

And we have discussed at length both the numerosity, the substantial increase in government action and enforcement of immigration -- of immigration matters. And the way that it has unfolded here, in this District of Oregon, highlights the substantial number of individuals that are subject to this change -- or this exercise in execution of policy.

The typicality and commonality do merge to some extent. The fact patterns associated with the kinds of sweeping arrests, particularly in -- specifically in the context of warrantless arrests, are very common throughout the many instances which are described in the record, either in the declarations that have been provided in these motions, as well as in the two-day evidentiary hearing that we held in December, ample evidence to find that typicality of those instances are sufficient to qualify this class on that factor.

Commonality associated with the kinds of claims and legal claims associated with every one of them turn on warrantless arrests, along with all of the other protections associated with the Constitution and, again, the provisions set out in the two -- the two-prong factors for administrative warrantless arrests.

This class, as identified -- or the representative

parties do fairly and adequately protect the interests of this large class of individuals. The -- I think I understand both from counsel's representation primarily that these -- that these individuals are prepared to represent the class fairly and appropriately. I see no reason and no fact that would counter that indication, and so I accept it.

I've already addressed the issue with respect to counsel representation. The Innovation Law Lab counsel are highly qualified, experienced, and fully capable of adequately and fully representing the individuals in this class.

These findings are provisional. I also note that -- that a full argument for appropriate and complete certification considerations have a separate briefing schedule, after which I'll consider those briefs, arguments, the law, and then either hold oral argument or issue an opinion that answers that question with greater finality than now.

Provisional certification is appropriate, and I so order it. It is a predicate consideration for being able to proceed with the motion for a preliminary injunction, and that will be now the time to address the factors set out for whether a preliminary injunction is appropriate.

Mr. Manning.

MR. MANNING: Thank you, Your Honor.

THE COURT: And, by the way, my oral ruling is an attempt to try to provide sufficient detail of a ruling so that

it is, at the end of the day, referenced in a minute order that -- that incorporates my explanations. However, I will be submitting a written opinion with more detail than I probably can provide in my oral presentation as we move through these decisions.

Mr. Manning.

MR. MANNING: Thank you, Your Honor.

For the plaintiffs to succeed on their preliminary injunctive motion, there's four factors: So likelihood to succeed on the merits, likelihood to suffer irreparable harm in the absence of relief, the balance of equities tip in the plaintiffs' favor, and that an injunction is in the public interest.

THE COURT: And before we go through those factors, I do know that the Government has raised standing. Why don't we address the issue of at least final agency action and any other points that the Government wants me to consider on the standing issue.

MR. MANNING: Thank you, Your Honor.

So we consider standing under the first factor, whether we are likely to succeed on the merits. We understand our burden to be that we have to prove that the -- we have to prove a substantial likelihood that the policy or practice that we contend exists, exists.

The policy that we -- we describe it as "Arrest

First, Justify Later," using the words of essentially the courts in this district, to describe the pattern and practice of making warrantless arrests without satisfying the double probable cause standard.

In order to succeed, we have to show that there is likely -- there is a substantial likelihood that this policy exists in this District of Oregon for the class for which the Court has just certified provisionally.

We believe the record has demonstrated -- the record, as a whole, demonstrates the existence of this policy. There's no need for the policy --

THE COURT: When you say "this policy," we're talking about a warrantless arrest policy that is in violation of a statute?

MR. MANNING: That's correct, Your Honor.

THE COURT: And the statute and the regulations that I know we've cited to earlier?

MR. MANNING: That's correct, Your Honor.

The fact that this policy or practice is not committed to writing is not dispositive. That the -- it is -- it is an unwritten practice; it is unwritten policy. It is the -- what the agents here, DHS has been doing and is doing in this district.

We have to show, to show for final -- final agency action -- so there's two parts that we think that go to the

standing, so final agency action and then it also -- it doesn't merge, but it blends with injury in fact.

So we have to show that the plaintiffs have -- in order to get prospective relief, would suffer an injury in fact, that there's imminence. And to show the imminence, we would also have to show the policy. So they are both bound to each other, the injury in fact and the final agency action.

So to show final agency action, we have to show that the agency has consummated its decision-making process; and that process, that consummation, is one by which rights or obligations have been determined or from which legal consequences will flow.

We look to the facts in this case and what --

THE COURT: Do you think that the Exhibit 1, Acting Director Lyons' memo, is an effort to argue that there really can be no -- the final agency action is that memo; and if it is, in fact, that memo, then it's nothing more than just simply following the law, for which there is no need for a preliminary injunction?

MR. MANNING: That's what I think -- that, I think, is what the purpose -- so I think that memo has two purposes. So, one, I think that is one of its intended purposes. It was -- we think it was drafted in the context of litigation, a similar case as this one brought in Minnesota, and submitted in that case in Minnesota before the judge.

THE COURT: It's admitted meaning what? Meaning --

MR. MANNING: That they submitted it as part of their opposition.

THE COURT: The Government submitted it in its opposition to what?

MR. MANNING: To the -- to a motion for a preliminary injunction, similar to the motion that we're seeking here today.

THE COURT: For warrantless arrests?

MR. MANNING: That's correct, Your Honor.

So we think that's -- that was the purpose. But the other point of the memo is it actually opens the door for vast warrantless arrests because it changes -- the interpretation that it proffers is so radically different from the statute and the regulations on allowing for warrantless arrests --

THE COURT: Arguably, it guts prong two.

MR. MANNING: It eliminates prong two. That's correct, Your Honor.

THE COURT: I think my word was "guts."

MR. MANNING: That's --

THE COURT: But you want to call it "eliminate."

MR. MANNING: We would -- either one.

THE COURT: I mean, there'd be practically no factual -- factual situation in which somebody could not conclude there would be probable cause of a likelihood of

escape if that -- if the description provided in the January memo holds --

MR. MANNING: That's correct, Your Honor.

THE COURT: -- holds water.

MR. MANNING: So in terms of the final agency action, plaintiffs contend, and we believe we have shown with the evidence, that there is a policy and practice here in Oregon of making arrests without a warrant.

THE COURT: How many cases do I need to conclude exists for there to be a policy and practice? How many incidents or instances do I need to conclude that there's been a policy or practice of not following the law here? Prong two, particularly.

MR. MANNING: So I think you need two. And then those two cases, M-J-M-A and Mr. Cruz Gamez, I think those two, they're similar fact patterns, similar treatment, different periods of -- same scope of time, but different days, different officers.

In order for that -- for those officers to just randomly, by happenstance, do the same thing at both times in different instances would certainly -- is an indication that that is the practice. But not only do you have M-J-M-A and Mr. Cruz Gamez. We have all the other cases that have been litigated at this district.

THE COURT: And final agency action also has to

incorporate some level of consequence that is imposed on the subjects of those actions.

MR. MANNING: That legal consequences would flow. And those legal consequences are the deprivation of liberty; detention; and, in Mr. Cruz Gamez's case and many other cases for individuals who are not presently before the Court, their deportation.

The Escobar Molina court in --

THE COURT: Judge Howell in D.C.?

MR. MANNING: -- that's correct, Your Honor -- wrote at length on final agency action, and we think -- we find that very persuasive. And obviously the Court is aware of that opinion, and there's nothing more that I could offer that --

THE COURT: And, in fact, I mean, Judge Howell dealt with substantial similar fact patterns there, so -- so in terms of trying to determine whether we're dealing with the same kind of agency action and whether it's final or not, Judge Howell provided some very thoughtful and deep reasoning on that point.

MR. MANNING: That's correct, Your Honor.

So I have -- I'm happy to continue to -- if the Court's aware, I have no additional argument to make, other than the references. I could certainly walk through the individual factors, but I do think -- based on the record before the Court, I think the fact -- the facts show that there's a pattern or practice, a policy, of making warrantless

arrests in violation of the double-prong probable cause requirement outlined in the statute and the regulations.

The 2026 Lyons memo does not alter that fact. It merely doubles down on the illegality by gutting the second probable cause, for which we are -- of escape risk, which we are -- which is the motion before the Court to enjoin the Government from violating that provision.

Again, we're not asking the Court to order the agency to follow its policy, which we think is -- the Lyons memo is an unlawful policy, if that is their policy. We're asking the Court to enjoin the Government from violating the statute and to adhere to the double-prong statutory requirement and the regulatory requirement.

THE COURT: Okay. So move on to the injury in fact -- or substantial likelihood of success.

MR. MANNING: So on the substantial likelihood of success, Your Honor, so it's a question of imminence. So do we have -- have the plaintiffs -- do the plaintiffs -- have they shown that there is a likelihood that they would be impacted by this policy, such that they could get prospective relief on behalf of the class?

The primary case I think the Court should look to is the City of Lyons [sic]. It's a Supreme Court decision. It's been briefed by us, by the Government. And in that case what the Supreme Court said is that when there's a series of

presumptions or speculation that require a lot of hoop jumping to get prospective relief, that an individual to show that they may be subject to some policy or practice or -- or -- like, in that case it was an unlawful chokehold by the City of Los Angeles Police Department -- that that's not possible.

But what that case also said, and what Escobar Molina, Ramirez Ovando, what those cases say, what Vasquez Perdomo, what those cases say is that here the plaintiffs, Mr. Cruz Gamez, M-J-M-A, they're just going about their lives. Before the Court there is evidence that people just going about their everyday lives -- Mr. Cruz was coming home from work. M-J-M-A was going to work, along with the other people in her van.

M-E-G-G, she was going to work. That's a case that we've referenced. That case is before Judge Baggio. There's M-L-G-G, just going to work. L-A-R-A, just going to the grocery store to buy bread. B-D-A-A --

THE COURT: So no one -- no one being stopped for a violation of any traffic violation or -- or city code violation or any other criminal activity. They're -- they're being stopped while conducting daily -- activities of daily living.

MR. MANNING: That's right, Your Honor.

The testimony in this case from the DHS agents is they created -- they look for target-rich locations where there are an immigration nexus, which they define broadly to include

naturalized citizens or anyone who has had contact or appears in their database, that those -- that that creates the target zone.

And anyone within that target zone is subject to this warrantless arrest practice and policy, and that happens in all the everyday aspects of someone's life. So it is impossible for Mr. Cruz Gamez, it's impossible for M-J-M-A to escape the reaches of the policy.

So City of Lyons, the Supreme Court case, would then instruct that this case can proceed 'cause there is a -- that they have an injury in fact. Their fear is an injury 'cause that fear is real.

THE COURT: And you're still addressing essentially a standing argument. And have you addressed the first element of a preliminary injunction on likelihood of success?

MR. MANNING: So I think, Your Honor, if we prove the existence -- if we have an injury in fact -- and that injury in fact is the existence of this policy, right -- so, like, there is an imminence that they will be arrested -- then I believe we have also satisfied the -- that we are likely to succeed on the merits because the policy itself is unlawful.

And so I believe that --

THE COURT: Well, injury alone doesn't establish that you're likely to succeed on the merits. I mean, let's accept for the moment that injury -- and not past injury, but

prospective injury can be established. But I still think you need to establish that -- that there's a violation of the warrantless arrest procedures that are set out in the statute and regulations, specifically with respect to likelihood of escape considerations.

MR. MANNING: So we think that -- thank you, Your Honor for that opportunity. I believe that that is also demonstrated in each of their individual cases, as well as what we would say is voluminous evidence before the Court: A two-day evidentiary hearing describing routine warrantless arrests occurring here in Oregon; fact patterns that have appeared before in M-J-M-A and Mr. Cruz Gamez, where neither one objectively applying the factors for flight risk.

There was no actual application of those factors. Had those factors been applied, those individuals would not -- the Government would not have been able to satisfy, we think, the secondary probable cause. But, in fact, they did not do the secondary probable cause.

There's no evidence from a two-day evidentiary hearing with --

THE COURT: And this turns on your understanding of the likelihood of escape factors. Are you conflating them with the same considerations that are applied for flight risk?

MR. MANNING: That's -- yes, Your Honor.

THE COURT: Why?

MR. MANNING: Because that is -- that is the statutory standard. The language in the statute uses the word "escape." The long -- the courts have interpreted that to mean flight risk. The courts have used different factors to describe what flight risk means.

We understand the agency in the 2026 Lyons memo has made a -- has abruptly departed from that, like, decades-long interpretation. But that break from a decades-long interpretation, we think, is unlawful and does not accord with the statutory standard 'cause if it did --

THE COURT: Would that make its practice in violation of the Accardi factors?

MR. MANNING: It would make it --

THE COURT: Or, you know -- the Accardi doctrine requires that agencies follow their own regulations. And are you suggesting that they aren't?

MR. MANNING: Yes, Your Honor.

THE COURT: And that -- well, if I were to accept that, then we'd have to find that the Lyons memo of 2026 is false or a farce or pretextual.

MR. MANNING: I think so. I don't -- so we see the Lyons memo two ways. So one is it's a question of fact, right? So that goes to the establishment of a policy. The second is its legal validity, so its interpretation of the law. Its interpretation of the law, we think, is wrong.

We also think it was adopted incorrectly; and there's other APA, like, externality legality factors to it that make it wrong. But its actual interpretation of the statute is wrong. Does the Court have to determine that? I don't know if the Court has to determine that.

But the Court -- but I think we could -- like, it's substantially likely that it is wrong, right? And so our burden is not to show -- like, at this preliminary stage, our burden is to show likely to succeed, not that we will succeed. We think we will succeed, but that the burden is likely to succeed.

And so I think at this stage we have likely shown that the 2026 Lyons memo is legally inconsistent with the statutory standard and that --

THE COURT: Is it more or less consistent with the practice or policy that's in effect on the streets?

MR. MANNING: It -- it describes, rather frankly, what's the practice in the streets.

THE COURT: Okay.

MR. MANNING: Which we think does not accord with the statutory standard.

THE COURT: You know, I understand that the case law is pretty clear up to this point that whether somebody is likely to escape requires an individualized determination, particularized with respect to that person. So that's not

happening, or it wouldn't happen necessarily, in the context of even the Lyons memo's direction.

MR. MANNING: That's correct, Your Honor.

THE COURT: Okay.

MR. MANNING: Your Honor, we have to also demonstrate that in the absence of relief that we would -- that the plaintiffs or the class would suffer irreparable harm. So there are numerous counties, nearly half the State of Oregon is living under a declared state of emergency because of the injuries inflicted by the DHS's activities with their warrantless arrest practices.

The plaintiffs themselves have already been harmed. And because they are likely -- because there is a -- because there is a likelihood that -- because they are within the target zone of the policy now, they -- that harm, that deprivation of liberty, is sufficient to be irreparable.

The final two factors, the balance of equities and the injunction is in the public interest, when the Government is a party, they merge. So the balance of equities and the public interest, they merge into one factor. And here, Your Honor, there is always the public interest. The equities always weigh in favor of following the law and having the Government follow the law.

And there's other reasons outlined why we think we satisfy those factors, but that is fundamentally what this case

is about, asking the Government to follow the law. And that's -- unless the Court has questions, that is --

THE COURT: That'll be your opening volley?

MR. MANNING: That is my volley, Your Honor.

THE COURT: All right. Ms. Garousi.

MS. GAROUSI: Yes, Your Honor. Thank you.

Your Honor, the Government believes that the Lyons memo is determinative for ruling on this PI for two reasons, that goes to two of the PI factors that Mr. Manning just mentioned. The first one I'll take up is the likelihood to succeed on the merits.

So the merits of plaintiffs' claim, what they have to prove, is that there's a policy or practice violating -- in Oregon that violates the statute and regulation with respect to defendants' failures -- failure to conduct individualized likelihood of escape determinations.

They also have to demonstrate that they will suffer an injury as a result of that policy and practice, and that policy and practice is a final agency action. In light of the Lyons --

THE COURT: Can you tell me why you don't think -- why the evidence here does not establish a final agency action?

MS. GAROUSI: Your Honor, I think that the -- the Lyons memo itself would be the final agency action. From what I'm hearing with -- from counsel is they'd be challenging the

interpretation of the Lyons memo with regard to the statutory interpretation.

THE COURT: I mean, doesn't consideration -- appropriate consideration also include -- you know, there can also be parallel final agency actions that are not formal or officially declared policies. And it's oftentimes what this -- this -- these lines of cases are trying to address, which is the Government is saying that they are doing one thing or that they -- or that they should be doing one thing, but what's happening in the field is entirely inconsistent with what they say, and that we ought to observe what it is that they're doing.

And what they're doing, facts suggest, that it is likely that they are conducting warrantless arrests without an appropriate consideration of the likelihood of escape consideration. So if that's happening on a regular basis, isn't that enough for there to be final agency action?

MS. GAROUSI: I first want to just point out that we don't concede that there's -- that that policy and practice exists, setting aside the Lyons memo.

THE COURT: I appreciate you don't concede it. Then maybe I'll ask at what point would -- and how many -- how many -- what would be the frequency necessary to establish a policy or practice?

MS. GAROUSI: I don't know the answer to that,

Your Honor.

THE COURT: Mr. Manning says two.

MS. GAROUSI: Your Honor, I would point the Court to Escobar Molina and Ramirez Ovando, where there was a significant amount of evidence in those cases, which the Court used in deciding that there was a policy or practice.

THE COURT: So in the -- at the evidentiary hearing with M-J-M-A, I think they arrested everybody in that vehicle. I think that's what the record indicated.

MS. GAROUSI: I don't recall, Your Honor.

THE COURT: I'll rely on my recollection for the moment. If it happens to be incorrect later, please let me know.

I don't recall there being a discussion, during the course of that evidentiary hearing, in which there was some investigation, evaluation -- I think we even saw a video of -- of the stop. And while I acknowledge it wasn't a complete video of the entire -- the entire stop, it was at least the initial stages.

There had been no indication that there were attempts to determine risk of -- risk of -- not risk of flight, but likelihood of escape. Now, let me also point out there was at least one person who ran, at least as described.

MS. GAROUSI: Your Honor, there were three people who ran.

THE COURT: Well, I said "at least one."

MS. GAROUSI: Yeah.

THE COURT: Okay. And, now, I think the person in the vehicle was trying to turn around and then ended up honking the horn. But did they actually get out -- I don't think they got out of the vehicle and were running.

MS. GAROUSI: Your Honor, if I recall the testimony correctly, someone was in the -- there are three different instances. One person jumped from the front seat of the cargo van all the way to the back seat of the cargo van while the officers were trying to survey who was in the car.

There was another instance where one of the individuals was put in the back seat of the car and then jumped to the front seat of the car, which is when -- the horn-honking incident. And then another individual got up and fled.

THE COURT: Okay. And I think it's also clear that when we're talking about individualized considerations that are particular to the person in determining likelihood of escape, that what other people might be doing in the area cannot be considered, especially if M-J-M-A, as I recall, didn't even want to get out of the van.

MS. GAROUSI: Yes, Your Honor. We're not disputing that individualized determinations need to be made. But I think the facts of what were occurring at the time are relevant and that -- I do believe that there was maybe some testimony

that there could have perhaps been a concerted effort with regard to escape. I'll have to double-check the transcript, but I believe --

THE COURT: And if that had been articulated in some way, I'm not sure I could find that to be credible based on the evidence that I observed, especially when we look at the documents that -- no one's going to try to bail me out, are they? It's all right. I sometimes let you all swim in your own juices before I might say something.

MR. MANNING: You might be looking for --

THE COURT: I'm looking for the cut-and-paste paragraph.

MR. MANNING: I think it's Exhibit 107 -- 109.

THE COURT: Under the term "encounter." And this is the I-213.

MR. MANNING: That's correct.

THE COURT: Which is the arrest warrant, correct?

MR. RATCLIFFE: Arrest report, Your Honor.

THE COURT: Arrest report.

And if I recall one of the witness' testimony, one of the agents, is that they basically cut and paste that language into every one of them -- every one of those individuals who were stopped in that -- stopped on that day, in that car with M-J-M-A.

MS. GAROUSI: I think that's right, Your Honor.

THE COURT: Okay. So there's at least five instances in which there was no individualized consideration of any of the factors associated with likelihood of escape, at least on that one day.

MS. GAROUSI: Your Honor, we haven't seen the 213s in regard to that. At -- I don't think that that agent's testimony was meant to say those are the only things that were in the 213. I think that certainly we can draw the inference it is in the 213 based off of her testimony, but I don't know that that's the only thing that's in the 213.

THE COURT: Well, have you -- so I take it you haven't seen them?

MS. GAROUSI: No, Your Honor.

THE COURT: Okay. Well, I imagine that, because you're counsel for the Government, you would have access to them if you wanted to review them?

MS. GAROUSI: Yes, Your Honor.

THE COURT: All right. So the record that I do have, and the testimony from an agent themselves, indicates that the "encounter" consideration was the same in every one of those instances.

MS. GAROUSI: Your Honor, again, I just want to -- the narratives were -- based off of Officer R.F.'s testimony -- I think that's who we're referring to here -- Officer R.F. and the other officers on Arrest Team 7 would prepare individual

narratives that were associated with each one.

So I think what -- and, again, I don't have the document in front of me, but I think there are two paragraphs that Officer R.F. testified she put in every 213. But then there's a separate section that is specific to M-J-M-A. That would've been different for each individual.

THE COURT: But not the encounter -- not the encounter paragraph?

MS. GAROUSI: I don't know what the heading is, Your Honor, and how they would've characterized each one with each 213.

THE COURT: Okay. So you would agree that the number of instances that are described then in -- in the Molina case out of the District of Columbia -- for the District of Columbia is sufficient to establish final agency action?

MS. GAROUSI: I would say that the evidence in that case was significantly more than the Court has in front of it today.

THE COURT: Okay. All right. What else?

MS. GAROUSI: So, again, the Government's position is that the Lyons memo is determinative in this case. And to go to the first element of standing, the Lyons memo plainly states what the Government's policy or practice is. And there's language in it that says, "This memorandum serves as a reminder of this essential authority, provides guidance for the lawful

and consistent exercise of warrantless arrest authority for civil immigration violations."

It goes on to say in multiple instances that officers must comply with the statute and regulation. It defines what those -- what those requirements are, both -- and it plainly states what's required is a probable cause determination for both unlawful -- or that the subject is removable, unlawful status in the United States, in addition to a probable cause finding that the individual's likely to escape before a warrant could be obtained.

THE COURT: Well, I don't think anyone is disputing that that's the statutory language. But I understand that the Lyons memo interprets likelihood of escape in a very different way than case law or even its own practices before the issuing of that memo.

MS. GAROUSI: Right, Your Honor. And I think -- I agree with that.

THE COURT: So if it's different from the practice before the issuance of the memo, what do I make of the references both by -- I think it's Tricia McLaughlin of the -- of DHS, as well as even the language within that memo from Todd Lyons, that indicate that this is only a reminder of that which has always been in place?

MS. GAROUSI: Well, Your Honor, I think that this is a more -- a formalized narrower interpretation. And I think

what it -- to the extent that the Court and plaintiffs have expressed interest or consternation about the interpretation of it, of -- of how the Lyons memo interprets the statute and regulation, I think that's a separate question.

I think that requires probing statutory interpretation, legislative history, all the fun stuff we like to do. But I think that's different than is there a policy and practice that in Oregon officers are violating the statute and regulation when it comes to warrantless arrests and not assessing a flight risk -- a likelihood of escape.

THE COURT: Well, statute and regulation as people understood it prior to this memo. I mean, are you either asking me to find that -- that the Lyons memo is the practice and policy of -- of ICE now or it has always been that way? But if you're asking me that it be the latter, that it's always been that way, I have to disagree because it hasn't always been this way.

What the Lyons memo describes is not what it has been on the street, in the courtroom, in consideration of the likelihood of escape factors until this Lyons memo attempts to reframe the consideration.

MR. RATCLIFFE: Your Honor, page two of the memo says, "This memorandum serves as a reminder of this essential authority and provides guidance for the lawful and consistent exercise of warrantless arrest authority for civil violations

of immigration laws."

We think the memo did two things, Your Honor. It reaffirmed existing regulations and, of course, acknowledges the effect of 1357. So, in one sense, it is saying, "We're reminding everyone of the rules, but we're also now giving different and clear guidance about what factors could be considered, when they should be considered, and how they should be documented."

So this is both a reminder of previous law and policy, as well as an implementation directive to make sure that people -- that the agents are doing it right. And one thing, Your Honor, I know this has come up a couple times; and the Court and Mr. Manning have suggested that the Lyons policy should be disregarded because -- I think the Court maybe used the word "pretextual" -- because it was -- because it came along after litigation.

I have a problem with that because of the long-standing principle of not holding against someone or an entity subsequent remedial measures. We think that this is analogous to Rule 407, which is "When measures are taken that would have made an earlier inquiry [sic] or harm less likely to occur, evidence of the subsequent measures is not admissible to prove culpable conduct, negligence" -- and there are other things regarding product defects.

But without any evidence before the Court of a

disingenuous motive or some improper motive, we think that it is unjustified, unwarranted -- to use a pun, unwarranted for the Court to conclude that the Lyons memo is just fluff or is just somehow window dressing.

We think that the Court needs to rely on what it says on its face, which is "This is the law, and here's the new guidance about how to do it. And you better put it in the 213s. You better document this." And that, Your Honor, is testable and can be tested going forward, even in the absence of injunctive relief.

And we're asking, in part, that you give the executive time -- the executive branch time to implement and follow this policy, train their employees, train their agents, instead of taking the drastic step of a mandatory injunction in this case.

And I'm sorry that I've gotten in the way of my partner's arguments.

THE COURT: Well, you've also raised the issue of describing it as a mandatory injunction as opposed to a prohibitory injunction. And I'll probably hear argument from the plaintiffs about the different standard I would need to apply or consider between the two, but we'll save that for after Ms. Garousi's done.

Go ahead.

MS. GAROUSI: Thank you, Your Honor.

Thank you, Mr. Ratcliffe.

Like my co-counsel just pointed out, the Lyons memo is the direct evidence of what the agency's policy is. It's not a constellation of events that occurred to describe an unwritten policy. And we have a clear directive about what the agency is saying.

So we think that the Lyons memo clearly shows that there's no policy or practice with regard to violating the statute as far as individualized flight -- excuse me -- escape determinations.

Under standing as well -- under, space, standing as well -- the plaintiffs have the burden of showing that they'll suffer -- that an injury or harm would be imminent. Here the Lyons memo shows that injury would not be imminent because it clearly directs officers to conduct individualized escape determinations.

THE COURT: As defined in the memo. And the likelihood of escape consideration, as Acting Director Lyons describes it, would essentially gut prong two.

MS. GAROUSI: Your Honor --

THE COURT: I mean, there would be no way that an officer could not find probable cause for likelihood of escape under the way in which Acting Director Lyons describes in the memo.

MR. RATCLIFFE: I don't think that's right,

Your Honor. Let me give you a situation. The focus is on whether someone can escape from the scene or can escape from the encounter and essentially can't be found to serve the warrant on them in the future.

If you're encountering people in cars, we agree it's very easy to conclude in that situation, if you don't know where they live or don't know where you can find them in the future, where they work, it's going to be easier to conclude that there is -- that prong two is satisfied, as we've been talking about.

But if you -- if the -- I'm sorry -- if an agent or law enforcement know where someone's living, if they go to their house, if they go to the job that that person has had for years and years, if they know the person has family, if there's a way to predict with reasonable certainty where that person's going to be, then you can't satisfy prong two; and you're going to have to do -- you're going to have to issue an arrest warrant in order to bring them into custody.

So we don't think it guts at all. It changes -- we recognize that it changes, but we don't think it eliminates prong two for that reason.

THE COURT: Absent the change in the executive's policy for immigration enforcement, we wouldn't have an issue with warrantless arrests because, up until more recently, they've been substantially warrant-based arrests on sort of

individualized targets, as opposed to the dragnet practice that has occurred in the M-J-M-A case, for example, and the other descriptions of what has happened with other people in the District of Oregon.

MR. RATCLIFFE: It seems there's been a change, Your Honor, yes, but I'm not sure what that leads the Court to conclude. That this is --

THE COURT: Well, I'm suggesting that the problem here is certainly in sort of the Government's own making, which is by virtue of altering its approach to immigration enforcement, frankly, which its right -- it is its right to affect policy in the way that it seems to. But that doesn't make -- it doesn't give it the prerogative to disregard the law as it relates to warrantless arrests.

MR. RATCLIFFE: Absolutely, Your Honor.

THE COURT: And so we have a problem now, because of the Government's choices in immigration enforcement, to reconcile those practices with the law that requires these individualized determinations. And so I make the comment just to make sure that we're all focused -- that I'm focused and we're oriented on the appropriate questions and considerations here.

I mean, the reason we're dealing with this today, and not a year ago or six years ago in the same degree, is because there's been a broadscale approach to target collaterals, as

have been described here, people that are not part of individualized targeted efforts, but are swept up in, frankly, the misidentification of targets in the course of conducting these field activities.

MR. RATCLIFFE: That's right, Your Honor. And when you have a statute like 1357 that does not speak to the issue that the Court was inquiring about earlier, which is how to document and when to document what those factors were that the officer are looking at; and when you have a CFR like 8 CFR 287.8 that does not speak to how to document things; and then you have a year-plus of, as the Court has described it, different policy choices resulting in apparently -- and I don't disagree with the Court -- more warrantless arrests, what you end up with -- and you have the -- what I consider to be the laudable use of the federal courts to come in and challenge those policies and orders issued in other districts, then what you're left with is the need, as an agency, to figure out how to tell your people what to do.

And that's a six-page memo, yes, written after litigation, fine, but also written after, frankly, in some ways, the mess that the Court is referring to, of how to do things in this new era, where there are going to be a lot more warrantless arrests than there were in the years past.

I think that's another reason, Your Honor -- part of the reason I say it that way, I think it's another reason to

credit the Lyons memo instead of dismissing it, instead of dismissing it as a pretext or dismissing it as simply a response to litigation.

It is very easy to interpret that as a response to real-world problems and perhaps real-world failures in how to accomplish and properly document when the statutes and the CFR don't tell you how to do it, how to accomplish warrantless arrests.

THE COURT: All right. Ms. Garousi, anything else? What other factors do you want to address?

MS. GAROUSI: Yes, Your Honor.

So in regard -- so in proving standing, the plaintiffs also bear the burden of demonstrating that their injury is imminent. And so turning to -- again, sorry to use the word "Lyons," but the case Lyons, City of Los Angeles v. Lyons, under that case for the harm to be imminent, there needs to be a reality of the threat of repeated injury.

And so the Lyons memo dissuades any notion that there could be an imminent harm of a violation of the statute or regulation with regard to an individualized escape determination. To conclude otherwise, plaintiffs would have to allege that -- that agents are simply going to disregard the directive in this memo to follow the statute and regulation.

We also -- the Government also would argue that the harm needs to be related to what's being challenged here.

We're not -- we understand there's a lot of immigration enforcement going on. As the Court's pointed out, there's been a shift in policy.

Frankly, a lot of us are in here a lot more doing immigration habeas petitions than we would have done in the future [sic], and that's different than what we used to do. We're not unsensitive to that. We understand that.

But the fear needs to be related not to increased immigration enforcement. It has to be related to -- that someone will be arrested without regard to the statutory and regulatory duties to conduct a probable cause determination of likelihood to escape.

I don't think we've heard testimony today, or there's been any evidence that's presented, that that's what individuals here are afraid of. There was actually testimony from Mr. Cruz Gamez to the contrary, that said -- I believe Ms. Provo asked him, "Are you afraid of being arrested and detained?" And he said, "Yes."

He didn't say he was afraid of being arrested and detained -- arrested without regard to the statute. He said he was afraid of being arrested. And I understand that, that it's scary, but --

THE COURT: I mean, I wouldn't expect a lay witness to be able to talk about the legal issues around being arrested and detained. The act of being arrested and detained,

independent of the lawfulness of it, is what -- is what creates the harm, the fear, the terror, the agony of not being able to see a family member again. It's for the Court to determine if it's unlawful.

MS. GAROUSI: Right, Your Honor. Yes, I understand that. But I think the harm just -- the harm necessarily would extend whether the -- the arrest itself was lawful or unlawful. It's the fear of being picked up by immigration enforcement and the wider -- the more increased immigration enforcement that's going on in the country right now. It's not necessarily with regard to whether it's lawful or unlawful.

We also believe that the Lyons memo is dispositive in plaintiffs' inability to demonstrate that they're likely to suffer irreparable harm if the PI isn't granted. And so I think that, in part, goes to what I just was speaking about, in that the harm needs to somehow be connected to not just writ large immigration enforcement, but specifically to the lack of individualized determination.

I think it's also -- under Ninth Circuit precedent, a speculative injury does not constitute irreparable harm sufficient to warrant granting a preliminary injunction. Plaintiff must do more than merely allege imminent harm sufficient to establish standing.

A plaintiff must demonstrate immediate threatened injury as a prerequisite for preliminary injunctive relief.

And that's Caribbean Marine Services Company v. Baldridge, 844 F.2d 668, pincite 674, Ninth Circuit 988.

And I think, in light of the Lyons memo, it's a speculative chain of events that irreparable harm will occur. You have to necessarily assume that officers are not going to follow the directive in this memo to follow the statute and regulation and to make individualized flight risk -- excuse me -- likelihood of escape determinations.

And I recognize the Court and plaintiffs have -- dispute, perhaps, the Lyons memo's interpretation of the statute; but that's a separate question than the question before the Court, which is do officers -- is there a policy and practice that officers are warrantlessly arresting people in Oregon without regard to making individualized likelihood of escape determinations as required by the statute and regulation?

THE COURT: And do you think there's evidence in this record that says they're doing that, that they are making those individualized likelihood of escape determinations?

MS. GAROUSI: Your Honor, we think that M-J-M-A's arrest would indicate that there --

THE COURT: Tell me where. What's the evidence in that record, in this record, that indicates that M-J-M-A was considered not to be a flight risk -- or made that determination that she was a flight -- excuse me -- that there

was likelihood of escape sufficient to arrest her?

MR. RATCLIFFE: Your Honor, there's not. We recognize that there's not documentation of that. But you heard, over the course of two days, from the officers who did that -- who accomplished the arrest eventually and did the traffic stop initially.

And the fact that M-J-M-A was unwilling -- was, first of all, in a vehicle and, therefore, not located at a home or business, as I indicated before, is one factor to indicate that she was likely to escape before she could be served with an arrest warrant or a notice to appear in immigration proceedings.

But the big factor, Your Honor, that we kept going back to in that hearing was the fact that she refused to identify herself. They couldn't -- because they didn't know who she was, they had to extend the investigative detention to be able to find out who she was, to determine if their hunches, if their feelings, if their probable cause factors and reasonable suspicion factors that made them believe that she was here in violation of immigration laws were accurate.

But certainly without knowing who she was, thanks to her refusal to identify herself, they couldn't ever rely on the ability to go back to her and serve her with an arrest warrant. They literally would've had no --

THE COURT: Well, I want to make sure that we're not

conflating that which is necessary for continued investigation under reasonable suspicion with that of probable cause for having committed a violation of the immigration laws.

I can appreciate that under M-J-M-A's circumstances, if she had not identified herself -- because she did not identify herself, that a stop could be extended for the purposes of identification, which includes taking somebody down to the precinct to -- to the department and identified either by fingerprint or some other means. And I think they did that.

But once there, where's evidence that they conducted an individualized determination of her likelihood of escape that would have then served -- because -- that would've then served the basis for a warrantless probable -- a warrantless arrest?

MR. RATCLIFFE: Well, Your Honor, we -- there was evidence that they then served an I-200 on her. So there was -- we believe that there was a determination along the way, looking at all those factors, that went from reasonable suspicion to probable cause, as well as factors that, as an overlay, supported a likelihood that she would escape before a warrant could be issued.

THE COURT: And I think that I-200 is Exhibit 109. And at this point now, they have a document while she's being held in detention, either for conducting an ongoing investigation or perhaps an arrest, one or the other. But once

that I-200 is issued and given to her, that now would be the document to which I would turn to determine what considerations the ICE agents made in arresting her and then transporting her to Tacoma.

So we're dealing with a warrantless arrest. I don't think -- is there a dispute that we're dealing with a warrantless arrest with M-J-M-A? I don't think there is; but if I'm wrong, let me know.

MR. RATCLIFFE: Well, I thought you just said that maybe extending the stop and taking her back to the office to determine her identity meant that there was not yet an arrest. This is part of the problem, that we haven't had a chance to resolve the --

THE COURT: I mean, at least for the purposes of analyzing the warrantless arrest considerations, I'm not -- I am not concluding that her extended custodial status to the -- to be taken to the facility for identification is a warrantless arrest, but maybe I'm wrong on that front.

But I do think that there's an issue about refusing to identify, which is one's right, but I think it also triggers the -- you know, law enforcement's authority to be able to identify somebody with the facilities necessary to do so. So, you know -- so if I'm correct on analyzing the law in that area, then what do we do with her when she's there? I mean, is the I -- is the I -- excuse me, it's the I-213 -- doesn't seem

to describe anything about likelihood of escape.

MR. RATCLIFFE: Well, yes, Your Honor. And before I understood you to be asking about whether the I-200, once the arrest warrant was issued, would document that. And I was going to say that I think that's not how the I-200 is set up. You're right that the I-213, as the arrest report, is where one would expect to find those factors.

Even though it would be backwards looking, it would be written presumably soon after they had access -- the officers had access to a -- to a laptop or something to write that up. But it would necessarily be describing what had already happened to justify the warrantless arrest.

We agree, as I already said, that there's a gap in the guidance and in the statutes for when and how to document it. But that's what we think the Lyons memo does. It fills that gap with extremely clear forward-looking guidance on what to do.

THE COURT: Okay. So you want me to consider the Lyons memo a corrective measure to bring into line the practices on the -- in the field with the law?

MR. RATCLIFFE: Yes.

THE COURT: Okay. Anything else with respect to the factors for preliminary injunction that you want me to consider, Ms. Garousi?

MS. GAROUSI: I don't believe so, Your Honor.

THE COURT: Mr. Manning.

MR. MANNING: Thank you, Your Honor. Just three quick points, and then I had a point on mandatory versus prohibitory.

So we understand that the Lyons memo -- the purpose of the Lyons memo is -- it's being used in this case to prove the prior policy didn't exist. We think the policy is what has been happening on the ground. And so the Lyons memo, I mean, is functionally irrelevant to the existence of the actual policy. Either they match and both are unlawful, or the Lyons memo isn't what is actually happening on the ground. That's point one.

Point --

THE COURT: Well, I mean, I think I understand the Government to say the Lyons memo isn't what's happening on the ground. That's why they issued a reminder.

MR. MANNING: Which in which case it matches with what's happening on the ground, which is unlawful because it's -- we're not asking the Government to adhere to its policy. We're asking the Government to adhere to the statute. And the statute requires a double probable cause. The Lyons memo eliminates the second probable cause functionally.

The second point is we think the Lyons memo merges two different factors. Let's take the case of M-J-M-A. So -- and we're happy to brief this later, Your Honor. We don't

think it's necessary at all to the Court's decision.

We don't think she had any obligation to identify herself. We don't think -- she had a right -- like, Oregon is not a state that requires identification. It's not a -- you don't have to identify yourself to law enforcement in Oregon.

THE COURT: I think we're all on the same page with that. But then if law enforcement has reasonable suspicion and can conduct an investigation, then that stop can be extended to identify somebody.

MR. MANNING: And we disagree that there was reasonable suspicion. We don't --

THE COURT: But for the purposes of today, yeah, everyone has presumed reasonable suspicion and prong one probable cause, so I can't undo that at this point.

MR. MANNING: Right. And we are fine with that. We're not asking the Court to do that. What we're saying, however, is that the Lyons memo merges -- from our point of view, what the statute requires is if the officer encounters, for example, M-J-M-A on the street and they don't have enough facts available to them to determine that she is a flight risk, uncertainty weighs against them, not against her; that in order to restrain someone civilly -- it's a civil immigration arrest. It's a civil power to restrict someone's liberty -- that that weighs against the agent.

The statute requires an affirmative showing. And if

they don't -- can't make that affirmative showing, their options are to continue investigating or under Section 239, 8 U.S.C. -- what is it 1229? -- 1229, they can initiate removal proceedings without conducting an arrest.

They can issue her a notice to appear, say, "Go to court. We think you're removable, but we don't have -- we can't satisfy the secondary probable cause of detaining you." This -- by enjoining the Government from violating 1357 does nothing to prevent any of their immigration enforcement activities. It only prevents them from conducting immigration enforcement unlawfully.

They can continue issuing notices to appear. They can continue calling people into immigration court, charging them with removability. They could've done that with M-J-M-A. They did that with Mr. Cruz Gamez, and they dismissed his case. But they can do that. It is irrespective.

The detention question is a separate question. They need the double probable cause. So that's our second point. The Lyons memo makes is a binary: "If we find them, we got to detain them if there's uncertainty." And we think uncertainty weighs against the agent, not against the individual, in order to restrain someone civilly.

And, finally, we -- Castanon Nava was a settlement agreement. The Government settled that case and agreed to certain conditions. And they violated them repeatedly, which

is why there was another action in the court.

So to suggest today that the Government -- that the policy -- that all they need to do is issue some more paper to instruct their agents to follow the law, that's what they did in the Castanon Nava. And they did not follow the law because there was another policy in place.

So we think that's what's happening here with Lyons. There's no reason to think -- we think that the record would speak for itself in that regard.

THE COURT: You're arguing that I shouldn't trust the Government?

MR. MANNING: Oh, that's a hard thing to say. So I think that the Government at this point in time, as a litigant in this case, because of their pattern and practice of violating the orders of similar kinds, particularly in Castanon Nava, that the Lyons memo is exactly the same thing; that we don't see that there's any reason to think that that memo would -- either it's functionally irrelevant 'cause it matches what's happening on the ground or they're just going to ignore it if it makes a positive change.

And, with that, I would go to we're not asking for mandatory injunction, Your Honor. We're asking for a prohibitory injunction, asking the Court to order -- to enjoin the Government from making warrantless arrests without the secondary probable cause. That's what this preliminary --

that's what we're seeking the preliminary injunction for.

I'm not asking for -- we're not asking for them to do anything different. So we're not asking for an order to compel a change in our relative positions of the parties. We are asking for the Court to order the Government to report particular things, but that's a question of compliance.

And that's a question -- we can look to Castanon Nava for that. We can look to the Ramirez Ovando, and we can look at Escobar Molina. The relief that we're seeking regarding reporting requirements matches pretty closely to what the Court ordered in Escobar Molina.

So we're asking for a prohibitory injunction with reporting requirements based on compliance. There's other cases I can cite to, including United Farm Workers -- that's 785 F. Supp. 3d 743 -- Melendres v. Arpaio, 784 F.3d 1254, Ninth Circuit 2015. So those cases, in addition to Ramirez Ovando and Escobar Molina, they all require reporting requirements to demonstrate compliance and are prohibitory injunctions.

THE COURT: All right. Thank you, Counsel.

And I'm looking on the internal page 27 of ECF 61, which in your conclusion in the motion for a preliminary injunction, you identify five -- five items you're asking me to order, should I grant the preliminary injunction. And -- is that correct?

MR. MANNING: That's correct, Your Honor.

THE COURT: I've already provisionally certified; but that doesn't really speak to the merits of the preliminary injunction, only on the provisional certification question.

Well, I guess I can do the second, too, which is provisionally appoint plaintiffs' counsel from Innovation Law Lab as counsel for the provisionally certified plaintiffs' class, since I've already found that the immigration -- Immigration [sic] Law Lab is qualified, experienced, and capable of doing so.

So items one and two -- so we're only looking at three factors -- three matters of relief the plaintiffs are asking, should I grant the preliminary injunction.

MR. MANNING: That's correct, Your Honor.

The one is to enjoin the Government from violating the statute. The second is to require them to transmit that, the injunction, which we don't see as problematic in any regard. And the third is just a reporting requirement.

Those reporting requirements, we look to other cases to help frame them, to Castanon Nava. We looked at Escobar Molina. Those are intended only for questions of compliance. There's a range of options that the Court could --

THE COURT: And you're asking me to, in essence, incorporate some of the reporting requirements outlined in the broadcast policies?

MR. MANNING: Essentially, Your Honor, yes.

THE COURT: Okay. Counsel, let's take a recess. It's 4 o'clock. We'll return in 15 minutes, and we'll discuss what happens next. Thank you.

(Recess taken, 4:07 p.m. - 4:26 p.m.)

THE COURTROOM DEPUTY CLERK: Court is back in session.

THE COURT: All right. Counsel, I know we are coming to the end of the afternoon. I believe I've received all the argument that everyone wanted to make. And if not, this might be the time to chime in and let me know if there's something you wanted to have me hear before we conclude.

All right. I'll accept the silence as ready to move on.

Counsel, I know we've all been living with these cases for -- for now, at least back into October. And I know that at least counsel here are familiar with the posture, the procedure, where we are in the case, and also the evidentiary hearing and the contents of that, as well as the evidence that's been received here.

One thing that I do want to make sure I've clarified. I know that plaintiffs' counsel wanted me to address or consider the May 12th, 2025, memo with respect to using administrative warrants for entering homes. That's an issue that's outside of the scope of, I think, the narrow and --

importantly narrow question that has been put to me through the preliminary injunction motion.

I understand that plaintiffs' counsel, Mr. Manning, you may be bringing additional considerations or motions for expanding the scope of that which you may want me to consider. But that will be left for another time and an opportunity to either develop that record; and for everybody here, including Government's counsel, to be able to adequately brief that issue.

So the May 12th memo is not received as part of this evidence here. It's not because I'm unmindful of whatever those -- the implications that come about as a result of that memo, but that's not this case today.

MR. MANNING: Understood. Thank you, Your Honor.

THE COURT: I believe everything else is in order with respect to the evidence that I have considered and received. I do want to make it clear that the record from our December evidentiary hearing is part of my consideration here. It's been amply discussed and invoked, and so there's no reason for any of that to be carved away from the ongoing development of the record in these cases.

I've already addressed the issues with respect to provisional certification and appointment of counsel. I don't need to go into any further detail today. My written opinion will provide the -- I guess, the written memorialization of my

reasoning with whatever additional explanation will be appropriate to make clear why I've decided those things.

With respect to the preliminary injunction, there are several factors that I have to consider. And it's been laid out, considering the four factors that are typical in considering these types of motions: Whether the plaintiff is likely to succeed on the merits, whether it's likely to suffer -- the plaintiffs are to suffer irreparable harm in the absence of a preliminary relief, the balance of equities tip in its favor, and the issuance of a preliminary injunction is in the public interest.

I'm stating the law out loud. I think you all know it. And three and four effectively merge when the Government is a party to a case. Likelihood to succeed on the merits, now, I think it's important to make sure that I'm adequately framing what the issue is.

And I know that, Mr. Manning, you've taken some pains to make sure that we're all on the same page; and so I will summarize it here.

This is not a request -- a motion for an injunction of warrantless arrests in the District of Oregon. It is to enjoin the unlawful application of the statute and regulation as it relates to prong two, that being specifically the findings necessary for likelihood of escape and whether those findings are appropriate and legally supportable to affect,

execute, a warrantless arrest.

If I have mischaracterized or over -- overreached in my framing of that matter, this is your time to correct me if I'm wrong.

Mr. Manning.

MR. MANNING: That is correct, Your Honor.

THE COURT: Okay. Also, I want to make sure it's clear that my written opinion will more thoroughly explain the background and basis for my decisions today.

The questions of standing are -- there may be at least two parts for me to address. And whether this injunctive relief is forward looking, rather than past, I'm focusing only on past injuries and -- as well as needing to address whether there's a final agency action at play here.

I think the case law is quite clear that, while you need not look to the formal procedures and policies as written, it is important to determine, in a pragmatic approach, what those policies and practices are that are in question and at issue here.

I'll have more to comment on with respect to the Lyons memo of January 2026; but, setting that aside for the moment, there is ample evidence in this case that establishes a pattern and practice of executing warrantless arrests without sufficient -- legally sufficient consideration under the state of the law that is in place today that supports the finding and

conclusion that -- that likelihood of escape considerations are not being made on a far-reaching scale across the populations in our communities who are subject to immigration law.

That has come about as a result of what is within the purview of the executive branch, is to affect changes in policy. That change in policy, in terms of enforcement of immigration law, has expanded, in large part, by the practice of either attempting to identify individual targets and sweeping many more people that are -- had been identified in the terms of this case and others as collaterals, people that were not targets; but, by virtue of their close proximity to or living in what has been variously described as target-rich areas, end up falling under the radar, in the absence of any warrant, of the -- of ICE agents' scrutiny.

Because of that practice, warrantless arrests have become operative in this district, as it has throughout the country. Because of that fact, warrantless arrests and the -- and the statute that provides for guidance of that is under greater stress and scrutiny because of its very broad application in the field.

The consistent practice of not providing particularized and individualized findings of likelihood of escape is a pattern and practice, for the purposes of finding that this practice here in the district is a final agency action, appropriate for judicial review.

With respect to forward-looking injunctive relief, the plaintiffs are not seeking a remedy for what has happened in the past, but past -- past activity, past exposure to harm being unlawful detentions -- and then detentions generally, but specifically unlawful detentions, specifically -- is clearly something that I, frankly, can't find good reason to consider argument to the contrary.

It's overwhelming, the evidence in this record and from the comments by public officials, that these broad-reaching dragnet sweeping approaches will continue to -- to force people that would otherwise not be targets and otherwise conducting activities of daily living from going to work, taking children to school, going to the hospital, or seeking medical treatment or just simply running errands that are just a function of living in everyday life will be and can be caught up again and again.

So the injuries that are being sought to be protected against here with this preliminary injunction are also future injuries. Plaintiffs have also shown a substantial likelihood, along the lines of future injury here, that they are among the group of individuals that defendants target for civil immigration arrests.

Mr. Gamez was stopped while transporting himself to work, as M-J-M-A was, again, activities of daily living, not otherwise arising on the radar screen of any law enforcement

here. And clearly, for M-J-M-A, collateral without having been identified by law enforcement prior to having been targeted that day.

And for Mr. Gomez -- Mr. Gamez -- excuse me -- there's sufficient evidence here to find that the person that they were looking for, even if they had the same name, was not Mr. Gamez who testified in this courtroom today, specifically turning to the evidence and testimony of the photo that they were trying to identify him as matching was not Mr. Gamez.

With respect to the evidentiary record here, I do want to point out that I think I've taken pains to make sure that everyone has an opportunity to present evidence. I've asked several times to ensure that -- that anyone who does wish to offer evidence will have that opportunity.

The Government has not expressed an interest in proffering any other evidence to dispute or rebut Mr. Gamez's testimony. I find that Mr. Gamez testified credibly and convincingly; and there's no reason to doubt his understanding and characterization of his experience and what he heard and saw during the course of his stop, arrest, and lengthy detention.

In sum, I would find that it is substantially likely that the plaintiffs will prevail on its APA violation claims. First -- first prong -- or first factor, among the four, for preliminary injunction is established.

Irreparable harm: The harm must be certain and great; actual and not theoretical; and imminent, such that there is clear and present need for equitable relief to prevent irreparable harm. I think I've discussed some of those factors in the evidence already.

The activities of daily living and the exposure to recurrent stopping, arresting, and unlawfully being detained is extremely high in the current environment of the execution of the immigration policies from the executive branch.

The harm is great, significant, and severe, pervasive for both the individuals, their families, and their communities. I think the word was either "terror" or "fear" that was described by Mr. Gamez. And I don't want to use that term casually.

To be arrested by agents in, frankly, the way that people are being stopped is not a theoretical action. But what I've seen in the videos that have been presented into evidence here, it's violent and brutal. The drawing of firearms in the course of an immigration arrest, a civil administrative process, is excessive and defies human decency.

The actions of ICE agents contribute to the irreparable harm in the manner in which they conduct law enforcement activities. There can be no injury more irreparable than being illegally arrested in the manner in which Mr. Gamez, M-J-M-A, and the many other examples of people

being stopped, detained, thrown to the ground and handcuffed.

The balance of equities -- the balance of equities and the public interest factors: In considering the Government's authority and obligation to enforce the laws of this country, I find that imposing and ordering a preliminary injunction consistent with the relief that the plaintiffs are seeking will not impede lawful law enforcement activity with respect to immigration law.

In fact, I think it will enhance it, improve its reliability and credibility, and increase public confidence that members of the public will not be unlawfully detained and irreparably harmed. Those are interests that are close to and necessarily a part of the considerations that the Government itself would benefit from, as do the community members who will be protected from this -- by this preliminary injunction.

And because officers are expected and required to provide detailed and particularized considerations for the likelihood of escape, there is no additional burden, other than doing that which they are obligated under the law that they are not complying with to fulfill.

For those reasons, the factors I've explained have been met for issuing -- granting a preliminary injunction. I've discussed already, in the midst of our arguments today, the plaintiffs have sufficiently established the facts necessary to authorize provisional certification of a class.

It would be the -- described as an unassessed escape risk class, which are 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.

Returning to the issue of the Lyons memo of 2026, yes, it came about -- well, I think it was issued last week, January 28th. I gave everyone an opportunity to tell me whether it was relevant, and everyone agreed.

It is difficult for me to reconcile and make complete sense of how this memo impacts our case. It is relevant in at least that it attempts to articulate what -- by virtue of the words in the memo describe as a reminder of the law that already exists.

In other various ways, it is purporting to, and perhaps by counsel's argument attempting to, describe an accurate statement of the law that would have been inconsistent with the practices prior to the issuance of that memo. I'm not sure either position serves the Government well or appropriately.

What I do understand is that the law, up until that memo's issuance and as of today, has not changed with understanding likelihood of escape as contemplated and articulated by our case law; in fact, considered even by the

Department of Homeland Security and ICE prior to the issuance of a memo.

Moreover, there are issues with respect to the validity of the memo as articulating new policy. As Mr. Manning has pointed out, I don't need to reach that issue today.

Observing this case, observing the other cases that have come out of our district and other districts, I'm also mindful of the importance of due process. I think counsel has described it and declared it as an important element, foundational and bedrock to our government, our system of government, our system of law, the rule of law, and, frankly, embedded deeply into our Constitution in so many different ways.

And I appreciate and respect that; and I'm grateful that everyone in this courtroom does so, too. And I'm concerned, as a public servant and somebody who has to, by virtue of my oath, and I do so quite willingly and joyfully, to uphold that Constitution and our rule of law, when I see actions and behavior on the part of our executive branch that does not share that same -- same commitment.

Due process calls for those who have great power to exercise great restraint. That is the bedrock of a democratic republic founded on this great Constitution. I think we're losing that. And it's not because our executive branch should

be hamstrung in exercising its authority to apply the laws. It's the manner in which it is being done which insults the due process principles that are so dear to a constitutional republic.

It is when those with power consider that might makes right is when we have lost all sense of the sanctity of due process. And it is the Court's obligation not to judge the decision policymaking, but to evaluate and consider under judicial review the propriety of due process. And that is what this Court has endeavored to do here today.

I would hope that our coequal branches would take up and endeavor to do the same. With respect to the additional remedies and relief sought in the preliminary injunction, I grant the requests that plaintiff has made.

Defendants are preliminarily -- defendants and their agents are primarily enjoined 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 Title 8 United States Code Section 1357(a)(2) and Title 8 of the CFR Sections 287.8(c)(2)(ii).

Defendants are to promptly transmit the injunction to defendants' officers, employees, agents, and contractors who have responsibility related to the subject matter of this

injunction.

Defendants are required 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 document shall include the specific particularized facts that support 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 Title 8 United States Code Section 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. 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.

These requests are entirely consistent with the facts that are developed in this record and designed to adhere to the factors that are already lawfully considered to be appropriate in determining likelihood of escape.

In other words, I cannot find that at this point, at this stage of litigation, that the Lyons memo of 2026 is a sufficient and accurate and complete description of the factors that are required to consider -- to be considered in determining likelihood of escape.

Mr. Manning, any additional considerations or questions that you need answered before we conclude today?

MR. MANNING: No, Your Honor.

THE COURT: Ms. Garousi and Mr. Ratcliffe.

MR. RATCLIFFE: Well, Your Honor, during the break, anticipating what we thought was coming, our team and Mr. Manning's team discussed some, what I would call maybe, simplification to number five, the provision number five that the Court's just read, regarding what documentation needs to be produced and when.

To boil it down -- and we can go back and forth on -- on specific language, if the Court's willing at this hour to

even entertain that -- what we were thinking is, because we believe that the broadcast policy has been replaced by the Lyons memo of 2026, we could simply -- the Court could simply reference the Lyons memo, allow the Lyons memo and the implementation of that to play out.

Of course, the Court is going to get visibility as a result of what is required to be disclosed on how that is playing out. But, to simplify it further, we would propose that the -- that for all warrantless arrests, the 213 be provided. Instead of coming up with this other documentation, just make it clear it's the 213.

Mr. Manning did propose that we keep the -- among other things maybe -- keep the language at the end; that that document, meaning the 213, shall include the date and time of the arrest and the date and time -- date and time the agent completed the documentation.

As I said, Your Honor, we're trying to simplify this and recognizing that -- that Mr. Manning and his team put this together before they knew of the 2026 Lyons memo.

THE COURT: Mr. Manning.

MR. MANNING: Your Honor, we think the -- it is true that we did discuss in between -- we never reached agreement on anything in particular. We think what the -- in fact, what the Court has outlined is exactly what we think should be produced and provided.

If that's produced and provided in a particular format -- excuse me -- if it's produced and provided in a particular format or if the production of this becomes difficult, we did say to the Government we would be absolutely willing to confer and come back to court if there's any issues in it.

But what we set forth in our motion, what the Court ordered today is exactly what we -- the plaintiffs should -- is what the plaintiffs are seeking.

THE COURT: And perhaps there might not have been a complete meeting of the minds during the recess. If the parties wish to confer and propose different language at some point in the near future, I'm happy to consider it. But from what I understand here today and what Mr. Manning has just indicated, unless I've misunderstood something, the language that I described, that will be part of a preliminary injunction, should still stand.

Mr. Ratcliffe.

MR. RATCLIFFE: Your Honor, the concern remains though that this refers to the broadcast policy, which we think is the wrong thing for the Court to tie this to, given the Lyons memo's existence.

THE COURT: Whether the broadcast policy is expired or not, it is still a document that could be referred to for the purposes of determining the information that would need to

be provided, would it not?

MR. RATCLIFFE: Well, Your Honor, I'm concerned about the conflict that folks who are writing 213s might find themselves in in our district if they're told one thing by the acting director of ICE about what factors to use and then they're told a different thing by this Court about broadcast -- the broadcast policy and those factors to use.

That's, again, why, Your Honor, we ask that the agencies have time to play out the implementation of the Lyons memo. And this could simply require producing those -- providing the 213s that are written, the facts that are consistent with the documentation required by the 1-28-26 memorandum by Todd Lyons, et cetera, et cetera.

THE COURT: Well, let me inquire. The factors that are laid out in quotes after the reference to broadcast policy in paragraph five, are those factors that are laid out in the broadcast policy, are they not?

MR. RATCLIFFE: You mean are they factors that are laid out in the Lyons policy?

THE COURT: The broadcast policy.

So "documentation required by the broadcast policy for compliance," and then -- and then I listed out all of these factors for consideration. And if broadcast -- if employing the term "broadcast policy" might be confusing, then I think it might be appropriate to remove it if the structure of those

factors that are described in the second half of paragraph five are -- remain in place.

MR. RATCLIFFE: May I have a quick moment with co-counsel, Your Honor?

THE COURT: Sure.

(Whispered discussion, off the record, 5:01 p.m.)

MR. RATCLIFFE: Your Honor, my co-counsel is going to do that comparison quickly. And I would like to raise one more issue, which is with respect to subpart (b) for number five. That's -- it appears to me to be creating a presumption that the use of boilerplate language indicates noncompliance.

Our concern is that the use of boilerplate language with respect to, for example, a particular operation, like the Court heard about in this case, could be included. But, of course, five -- the other part to five -- it's not listed as 5(a) -- maybe it is -- the factors required by the meat of number five would still need to be included.

So I'm trying to get around this bind, again, that I think folks drafting 213s might find themselves in, where they're accused of putting in something that's written like some other document they wrote or some document that their -- that their colleague wrote, and then finding -- having ourselves -- having Mr. Manning and his team come back and say, "Well, that's indicative of noncompliance because it's boilerplate."

We'd just ask the Court to let the factors that are written in a 213 stand on their own instead of creating some sort of trigger of noncompliance based on what someone could characterize later as boilerplate.

THE COURT: Mr. Manning.

MR. MANNING: Thank you, Your Honor.

The reason for the -- so two -- one, that it comes from -- so that language we drew from Escobar Molina as well as from Castanon Nava. And so that is -- so that language is -- that's where -- that is our precedent for that.

For the facts here, we had series of -- we had an evidentiary hearing where the actual factors that revolved around the individuals' arrest were boilerplate and that the agents testified to cutting and pasting and that there were various agents involved.

So we think the facts and the manner in which the Government produces the documentation has indicated that the boilerplate language is not -- that they use the boilerplate. We -- I think, from our -- so that presumption should stand in the order.

We think -- we obviously are going to act in good faith regarding -- as class counsel, if individual violations are brought to our attention. We certainly understand the need to produce government -- the Government -- when I produce documents, like, I --

THE COURT: Are you, in essence, saying that you think (b) should stay in its form?

MR. MANNING: (b) should stay in place, absolutely.

THE COURT: All right. Given the facts specific to particularly the M-J-M-A hearing and the very patent use of -- I think it's -- boilerplate means exact use of a clause or a phrase or paragraph. That's, in fact, what happened. And that cannot be, in and of itself, appropriate for considering individualized -- an individualized consideration of -- you know, that is particular to a person.

I see this as an appropriate and direct addressing of a concern that has been very explicitly raised and established in this case. And that does not -- this language does not indicate that I'm going to find, as a matter of law, that any time identical language may be used to describe something is a violation.

It may be probative if it becomes an extreme pattern in some way. And I can appreciate that there can be -- I don't know -- 20 or 30 different clauses or phrases describing different circumstances that might very well be appropriate to pull down from a -- from a drop-down menu to describe a certain situation. But the individualized assessment still has to pass muster. Specific details as to the person being arrested still need to be included.

MR. RATCLIFFE: Understood, Your Honor.

Can we return to the issue of 5(a) then?

THE COURT: Yes. Go ahead.

MR. RATCLIFFE: So my co-counsel has helped sift through this. And our concern is that the examples here, the quotes from the broadcast policy, that -- they're in the broadcast policy; but we think they are inconsistent with, and perhaps conflict with, the Lyons memo.

And so do we have to provide -- does the Court have to provide examples of what is required? Can't the Court just say that -- that the 213 needs to be provided that includes facts that are consistent with -- well, that describes the individualized finding and includes facts that are consistent with either the broadcast policy or the Lyons memo?

THE COURT: Mr. Manning.

MR. MANNING: Your Honor, the broadcast policy outlines the longstanding agency practice and policy and interpretation that's consistent with the statute. We do not think the Lyons memo is consistent with the statute. And our injunction is to enforce the statute, not the Lyons memo. So we think those factors are the factors that should be articulated.

MR. RATCLIFFE: But the language in the 213 -- we're talking about what language needs to be in the 213, not the legal effect of it or whether one interpretation is accurate or not.

THE COURT: As I understand the law and the consideration for likelihood of escape, the factors that are laid out here in paragraph five are that which is consistent with the current state of the law, accepting -- I understand that there is an interest in trying to assert that the Lyons memo is an accurate statement of the law, but I've also indicated that on its face it isn't, not today.

And it seems to tie the consideration of likelihood of escape to the site of the instance of the -- of the initial stop. And I don't read and understand our case law to suggest that is the limited scope in considering likelihood of escape. The factors that are laid out here in paragraph five are appropriate and an accurate characterization of the -- of the factors that are lawfully considered in determining likelihood of escape. They will remain in place.

I don't see, Mr. Manning, why the reference to the broadcast policy is needed if the factors remain in the order.

MR. MANNING: We concur, Your Honor.

THE COURT: So the -- so it'll say "including the following facts that are -- including the following facts," and then there'd be a colon, but we'd -- I'd remove "that are consistent with the documentation required by the broadcast policy for compliance with 8 U.S.C. 1357(a)(2)."

Actually, I'm going to -- this is always the trouble with trying to wordsmith something out loud in real time.

"Following facts for compliance with 8 U.S.C. Section 1357(a)(2)," colon, and then -- then all of the factors that are then laid out here.

Okay. Anything else?

MR. RATCLIFFE: Not from plaintiffs, Your Honor.

THE COURT: Ms. Garousi, Mr. Ratcliffe.

MR. RATCLIFFE: Your Honor, then no movement on, instead of requiring documentation, just simplifying it and saying we provide the 213s? And the other issue is that we would like the Court's permission for a protective order for attorneys' eyes only treatment of whatever documentation, whether it's the 213s, as I proposed, or anything else that is produced pursuant to the Court's order.

THE COURT: So the issue of -- I want to make sure I understand. You are suggesting that it should just be -- what? -- the supplying of 213s?

MR. RATCLIFFE: Correct, Your Honor.

THE COURT: To plaintiffs' counsel?

MR. RATCLIFFE: Yes, Your Honor. In terms of the burden on the agency, that -- the Court knows that they're supposed to dump this information now into a 213. We think that's where the information will live. Instead of -- we're trying to strike a balance here with a reasonable burden, understanding what the Court is requiring.

THE COURT: Mr. Manning.

I mean, if they're complying with the law, then you would expect to find all of this information in the 213. Would that be the best place for -- would that be the document that you would want to confirm compliance with my order?

MR. MANNING: Your Honor, we -- if -- so we don't think a modification in the order is necessary. If it's provided in the I-213, that's documentation. That's completely acceptable. If it's provided outside of a I-213, that's acceptable.

Actually, as the order is drafted, it gives the Government more options, better variability. So if all this information appears in the I-213 and they produce the I-213s, that's fine by us. We don't think the order needs modification.

THE COURT: I'd like to be able to make sure that my order is customized and precise enough to make sure it doesn't create any additional burdens, such that it then becomes another point of litigation by the parties about compliance.

So I'm not hearing any strong objection, if any objection at all, that the 213s shall be the document that embodies proof of compliance with my order, Mr. -- Mr. Ratcliffe?

MR. RATCLIFFE: Well, it's my understanding that -- now that the focus is on me, it's my understanding that the 213 is that document. And maybe I'll get an earful from agency

counsel; but for right now yes, Your Honor that's the document.

THE COURT: Okay. Then make sure that -- well, so I -- all right. Well, we'll go with it. But, as I've understood the record and, I think, as you and Mr. Manning and the Innovation Lab team understand the 213s, are where -- where the references to individualized consideration of likelihood of escape must be found, should be found, has to be included in the factors that I've laid out here in paragraph five, are those -- among those factors that must be considered and articulated in the I-213. So let's make it so.

If it becomes a problem, not because of -- well, if it becomes -- if there is some fundamental misunderstanding about the document that records likelihood of escape, then I'll ask that counsel confer and then come back to me so we can modify the order appropriately.

The second thing was attorneys' eyes only.

MR. MANNING: Your Honor, there's an existing protective order. We would just -- if the -- if these are produced under that protective order, that's fine by us. That protective order is a tier one protective order. It's not an attorneys' eyes only.

Attorneys' eyes only would actually be extremely burdensome on plaintiffs' counsel. We think the tier one protective order that's currently in place, no additional protective order's necessary. We're happy to receive those

documents, as class counsel, under the existing protective order.

THE COURT: Is there any reason why attorneys' eyes only, that heightened protective order consideration, needs to be made here?

MR. RATCLIFFE: Sorry, Your Honor. May I have a moment?

THE COURT: Yeah.

(Whispered discussion, off the record, 5:14 p.m.)

MR. RATCLIFFE: Your Honor, I'm not sure what the concern is about the additional burden on the parties. We are concerned that the 213s are some of the -- have incredibly sensitive information in them. Now, I'm not suggesting that they're going to be produced without redaction. We're going to need to confer with agency counsel on that.

But we think attorneys' eyes only and a tier two protective order in this case is only sensible, given the amount now of information that's going to flow to plaintiffs' counsel as a result of the Court's order. I don't know if there are going to be hundreds of these coming in, but there are certainly going to be -- there's going to be a burden here.

And so, because of the sensitive information, the nature of the arrests, what they may reveal operationally about law enforcement activities, we think it needs to be attorneys' eyes only. If -- for all those reasons, Your Honor. I'll stop

talking.

THE COURT: Mr. Manning, what burden will there be if it's attorneys' eyes only?

MR. MANNING: Your Honor, we are a small nonprofit. That would limit the ability for any of our -- so attorneys' eyes only is literally just the attorneys, and so that would put the burden on --

THE COURT: A tier one requires confidentiality among you and all staff that are involved in the -- in reviewing the materials?

MR. MANNING: That's right. My paralegal, my legal assistant. We'd be able to, like, store things, file things, that -- we rely on that. We take our obligations under the protective order quite seriously.

THE COURT: Do you have adequate measures to orient any new staff, employees, externs, law students who may be involved in the organization to understand the consequence -- the obligations and consequences of abiding by a protective order?

MR. MANNING: We do, Your Honor. We actually engage in regular training, particularly on this case. And we have a couple other cases where there's protective orders. And we engage in -- there's a limited number of individuals who work on each case. And in order to be associated with the case, they go through a training on what the protective orders

require. So we think the tier one's sufficient.

THE COURT: Tier one is sufficient, yeah, given my discussion with Mr. Manning and your -- your description of the protocols and methods used to train, orient, and -- and manage your personnel.

If it becomes -- if there are different considerations down the road that you want me to revisit, Mr. Ratcliffe, I've pretty much had an open door, so you're welcome to reach back out as needed.

MR. RATCLIFFE: Thank you, Your Honor.

THE COURT: Okay. Anything else?

MR. MANNING: Excuse me, Your Honor. Nothing from plaintiffs.

MR. RATCLIFFE: No, Your Honor. Thank you for your time.

THE COURT: You're very welcome.

MR. RATCLIFFE: All day.

THE COURT: Counsel, ruling from the bench or actually making statements from the bench, particularly in cases like this is always dangerous, for me perhaps, less for all of you. But I -- it is in these times that I think it's important when there are people with some level of authority to bear witness to what's happening to also find appropriate ways in which to speak.

And I don't speak from any political angle or any

ideological space, but I want to speak to just simply bearing witness to sort of the necessity of decency in our system and my fear that we're losing it. But today what I find is an incredibly valuable model of ensuring a level of respect and courtesy to one another is still found here in our court system. And I'm grateful for that.

And to the extent, too, that I observed with Government's counsel, Mr. Ratcliffe, your efforts at simply trying to engage in a human process, in consideration of the witnesses that have testified, is commendable because not everyone would need to do that; and in an adversarial system, sometimes the hostility and antagonism is that which reigns supreme, rather than efforts at simply trying to be decent. And I respect and appreciate that.

I -- I make the observation and the comment today because it is in, frankly, striking contrast to that which I see the Government acting in treating people who may not lawfully be authorized to be in this country. Decency would go a very long way of ensuring all of our humanity.

And I hope that perhaps lessons can be learned from the way in which we in the court system are trying to conduct themselves, including government lawyers. So thank you, Counsel, for your time and your effort and patience in working through these very hard and necessary considerations.

You will receive a more complete written opinion and

order; but I believe that my ruling and explanations, my incorporation of -- and adopting of the arguments that counsel has made, plaintiffs' counsel has made in its opening brief and reply, are sufficient to ensure the legal sufficiency of my ruling today and the order that I provided at the end of this discussion granting the preliminary injunction.

And a minute order will follow that incorporates the discussion on the record and my findings with a -- with an explanation that a written opinion order will follow. To the extent that there may need to be -- or will be an appeal, I'll leave it to all of you to determine whether the minute order or the written opinion is the basis for one. But I do expect, by virtue of my ordering and ruling from the record with explicit language of the preliminary injunctive relief, that that be effective immediately.

All right. Thank you, Counsel. Be well.

* * *

(Court adjourned, 2-4-26 at 5:20 p.m.)

C E R T I F I C A T E

M-J-M-A, et al., v. Wamsley, et al.

Case No. 6:25-cv-02011-MTK

Oral Argument

February 4, 2026

I certify, by signing below, that the foregoing is a true and correct transcript of the record, taken by stenographic means, of the proceedings in the above-entitled cause. A transcript without an original signature, conformed signature, or digitally signed signature is not certified.

/s/Lindsey A. Weresch, RMR, CRR, CSR

Official Court Reporter — Signature Date: 2/9/2026
Oregon CSR No. 14-0427 — CSR Expiration Date: 6/30/2026

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