IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

EUGENE DIVISION

M-J-M-A-, an adult,	)	
	)	
Petitioner,	)	No. 6:25-cv-02011-MTK
	)	
v.	)	September 21, 2026
	)	
	)	Portland, Oregon
CAMILLA WAMSLEY, Seattle Field Office Director, Immigration and Customs Enforcement and Removal Operations ("ICE/ERO"); TODD LYONS, Acting Director of Immigration Customs Enforcement ("ICE"); et al.,	)	
	)	
Respondents.	)	

TRANSCRIPT OF PROCEEDINGS - VOLUME 2 of 2

(Evidentiary Hearing)

BEFORE THE HONORABLE MUSTAFA T. KASUBHAI

UNITED STATES DISTRICT COURT JUDGE

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(September 21, 2026, 9:35 a.m.)

P R O C E E D I N G S

THE COURTROOM DEPUTY: United States District Court for the District of Oregon is now in session, the Honorable Mustafa T. Kasubhai by presiding.

Your Honor, this is the time set for continuation of an evidentiary hearing in Case 6:25-cv-2011-MTK, M-J-M-A, et al. vs. Wamsley, et al.

And I'd like to invite counsel for petitioner to enter your appearance for the record.

MS. CUNNINGS: Good morning, Your Honor. Jordan Cunnings here on behalf of petitioner with my co-counsel.

MR. MANNING: Mr. Stephen Manning.

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

MR. MANNING: And behind us, Your Honor, is Ms. Kelsey Provo, and then Ms. Saavedra Vanacore is listening in on the public line.

THE COURT: Thank you.

THE COURTROOM DEPUTY: And counsel for the government.

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

MS. LUSE: Susanne Luse for the government.

THE COURT: All right. Good morning, counsel. I did receive your supplemental briefing with respect to the issue of warrants and their expiration, if at all. I've had the chance to review them and I look forward to having a conversation about that part as part of our closing arguments.

Any other housekeeping matters before we jump into argument, Ms. Cunnings?

MS. CUNNINGS: None from us.

THE COURT: Ms. Garousi?

MS. GAROUSI: No, Your Honor.

THE COURT: All right. You have the floor, Ms. Cunnings.

PETITIONER'S CLOSING ARGUMENT

MS. CUNNINGS: Thank you. All right. I'm going to start by addressing the arguments raised in defendants' briefing that was filed last night, which I think is illustrative as a start to our argument regarding this case in its entirety.

So defendants cite two unpublished, out-of-district cases that contradict hundreds of habeas decisions that have found revocation of release under 1226(b) to require changed circumstances and, thus, probable cause of flight risk or danger to the community. And neither case holds precisely what defendants claim that it holds.

In *Marufov*, the district court rejected the pro se

petitioner's request for immediate relief, but granted the habeas petition and ordered a bond hearing because the petitioner's due process rights had been violated. Courts have --

THE COURT: Say that again. In *Marufov* it denied -- what did the court deny in *Marufov*?

MS. CUNNINGS: The petitioner had requested immediate release as a remedy, and that was not granted, but he did grant a bond hearing and found that his due process rights had been violated by his detention.

THE COURT: And what state was *Marufov*?

MS. CUNNINGS: I believe -- I would need to pull it up. Let me see.

THE COURT: Let's see. Colorado.

MS. CUNNINGS: Colorado. *Cortez*, another unpublished decision, was decided the other way on mandatory detention grounds, finding the petitioner to be subject to mandatory detention under 1225 -- 1225(b), but this conclusion has been disagreed with not only in the Ninth Circuit, but also shortly after the decision by the Sixth Circuit, in which this case was decided. It was an Ohio case. So at best, it's an uncompelling --

THE COURT: So was *Cortez* reversed by the Sixth Circuit or was it addressed on another case?

MS. CUNNINGS: It was an unpublished decision, so I

don't think the particular decision had a need to be reversed, but the Sixth Circuit just, I believe, two weeks after this case was decided disagreed with the decision here, which held that the petitioner could be subject to mandatory detention even though he entered the country without inspection.

THE COURT: So the Sixth Circuit's unpublished decision was relating to a difference case.

MS. CUNNINGS: Relating to a different case, yes, the published opinion.

At best, it's an uncompelling out-of-circuit dicta in an unpublished case that quickly became irrelevant. Defendants cite to *Demore v. Kim* as perhaps more revealing.

(Interruption by reporter for clarification)

MS. CUNNINGS: *Demore* is about 236(c), which is a mandatory detention statute under which Congress has functionally predecided that non-citizens with certain criminal convictions are dangerous and, thus, can be subject to civil detention.

The statute before us today, 1357, provides the exact opposite, requiring field officers to have individualized probable cause of escape risk before conducting a warrantless arrest.

Defendants over-read *Demore* and suggest that the constitution doesn't apply to ICE, because they are arresting non-citizens, but that couldn't be further from the truth.

THE COURT: Do you think the government is actually saying that, that non-citizens do not enjoy the protections of -- is it the Fifth Amendment?

MS. CUNNINGS: I think their arguments on Friday suggest that that's the direction they would like this Court to take. They've basically said that the warrant requirement is meaningless.

THE COURT: Because we're dealing with non-citizens or --

MS. CUNNINGS: That's -- that's the cite that they put in their briefing from *Demore*. They said different rules can apply to non-citizens.

THE COURT: Okay.

MS. CUNNINGS: And I think that's worth noting.

THE COURT: Okay.

MS. CUNNINGS: The Fourth Amendment bars arbitrary arrests of anyone regardless of citizenship status, and the statute, 1357, bars arrests where the agency, ICE, has not done its homework. The agency is bound to obey the Fourth Amendment and the statutory requirement of due diligence.

1357(a)(2) is not a means to bypass the Fourth Amendment altogether; instead, the double probable cause requirement of 1357 means to constrain the agency's power and not expand it. Nevertheless, starting last year, Defendant ICE adopted a policy or practice that subverted the statute

and the Constitution, eliminating the necessary escape risk finding and allowing its agents to sweep hundreds of Oregonians from the street without cause and without due process.

This Court granted an injunction enjoining that policy or practice and returning the district to the status quo of the double probable cause standard.

Warrantless arrests should be rare, because if the agency does its due diligence as it is statutorily and constitutionally required to do, many, if not most, people are simply not at risk of escape. They have homes, they have families, they have jobs, they have community ties, and they're eligible for relief in immigration court, all things that cut against the justification for a warrantless arrest, but the evidence and the concessions by defendants show that they've never taken the Court's injunction seriously and, in fact, are taking steps to thwart it.

Broadly speaking, the documentation they've provided pursuant to the injunction's reporting requirement is missing any pre-arrest flight risk determinations. That omission is instructive. That means that those determinations were never made and they never tried to make them; instead, trying to justify arrests after the fact.

The cases of our witnesses and class members show something more pernicious, too: defendants thwarting

injunctions by creating warrants after the fact and concealing that action in relevant documentation.

THE COURT: And how are they concealing the issuing of these field warrants?

MS. CUNNINGS: I think the case of J -- the testimony of J-C-C-V as compared to the testimony of defendants' witness is where that is most clear, where the I-213 states an entirely different narrative from what actually happened in the field.

THE COURT: And remind me what that was.

MS. CUNNINGS: I'm sorry. H-D-G-H. There's a lot of letters.

THE COURT: And H-D-G-H involved the situation where, was it, J.G. testified about not -- not having been able -- not identifying H-D-G-H until after -- or at least not identifying or knowing who that individual was. They were collateral, as I think that term is used.

MS. CUNNINGS: That's correct.

THE COURT: But in the I-213 narrative or the "Encounter" section, I believe that's where he describes that they had made a positive identification of this person.

MS. CUNNINGS: Yes.

THE COURT: Okay.

MS. CUNNINGS: The I-213 --

THE COURT: And what do I make of that distinction,

that difference between what's in the I-213 and what he testified to on the stand?

MS. CUNNINGS: I think it is relevant to the relief that we would ask you to order today in terms of the type of documentation that is needed to ensure compliance with the order. All that we were provided was -- and I -- actually, we may have even gotten it from the witness -- was the I-213 itself. We didn't have the officer's testimony until the context of this hearing.

THE COURT: So the witness H-D-G-H had the I-213? Or was it 200?

MS. CUNNINGS: I believe that was served (pause) -- it was filed with his habeas petition by the government, is what my co-counsel is informing me.

THE COURT: That the 213 was filed with the petition?

MS. CUNNINGS: I believe by the government.

THE COURT: And if either of you have an answer, that's -- I mean, I'm happy for you to tag team in, because it --

MS. CUNNINGS: Thank you.

THE COURT: The government does that, too, so --

MS. CUNNINGS: We appreciate that.

THE COURT: So just -- what is it that --

MS. CUNNINGS: I'll just say --

THE COURT: What did the I-213 -- H-D-G-H's I-213.

MS. CUNNINGS: The -- yes. Sorry, Your Honor. The point I was trying to make is with the documentation, it looks as if defendants followed the law, that they --

THE COURT: Which documentation?

MS. CUNNINGS: The I-213. So the I-213 states that he was the subject of an investigation, a warrant was issued based on probable cause after that investigation, that they then began looking for him, that they located him in the field and arrested him pursuant to an existing warrant.

The testimony that was presented on Friday reveals exactly the opposite. They were running plates. They followed a target, who was not the witness. They then stopped, arrested him, conducted an investigation. A supervisory detention -- a supervisory ICE officer, excuse me, then issued a warrant to himself, which is also a violation of the law and agency policy, and then arrested him on that warrant. And none of that would have been known absent the testimony of the officer.

THE COURT: So did -- and who draft -- who drafted that I-213? Is it J.G. or was it --

MS. CUNNINGS: The officer testified that he himself drafted it, yes.

THE COURT: So are you suggesting that he lied?

MS. CUNNINGS: Yes.

THE COURT: Well, then he was telling the truth on

the stand.

MS. CUNNINGS: So it would seem. In part.

THE COURT: What part was it that was truthful and what part was it that was not truthful? Mr. Manning?

MR. MANNING: Thank you, Your Honor. So the -- we believe that J.G.'s testimony was consistent with the preparation of that I-200 indicating that it was prepared by, I believe, the --

THE COURT: D.C., an SDDO.

MR. MANNING: -- the SDDO, who conducted their own investigation of -- then made the warrant -- made out the warrant to himself to then effectuate the arrest. There's other aspects of --

THE COURT: We didn't have any testimony from D.C., the SDDO.

MR. MANNING: We did not, Your Honor.

THE COURT: So, I mean, how do we know what and how that I-200 was actually completed?

MR. MANNING: Because Agent J.G. testified that it was prepared onsite, that he saw -- that he observed the SDDO --

THE COURT: Sure. But he also --

MR. MANNING: -- taking those actions.

THE COURT: He also lied about the contents of the I-213.

MR. MANNING: He did, Your Honor. And there is -- there's some aspects of his testimony that I think are cred- -- that I think overall he's not a credible witness when it comes to the justifications for his actions. I think he himself stated that the I-213 that he wrote and that also the SDDO examined and approved, that both of them together prepared a report that on its face contained fabricated information.

THE COURT: That being the I-213?

MR. MANNING: The I-213. The I-200 on its face does not contain fabricated information, but in combination, it conceals how it was created so that on -- anyone looking at the documentation would be, like, oh, this warrant -- this arrest complied with the law, when in fact nothing about it complied with the law. And --

THE COURT: But you only know that from reviewing the I-213 or the testimony from J.G.?

MR. MANNING: From -- from J.G.'s testimony. There are indicia in the I-213 itself that had he -- I mean, he admitted on direct examination that it -- that he had fabricated it, that it wasn't accurate, that he could not have known the -- that he could not have -- that what he wrote was not true. At that point, there's -- he has a credibility problem. We acknowledge that.

We do think his testimony about the creation of the

I-200, that there's -- we don't see any reason why he would conceal that, and, in fact, that is actually rather damning to the agency.

THE COURT: What is damning to the agency?

MR. MANNING: Well, that in order for a warrant to issue, even an administrative warrant, the Supreme Court has said that you have to have a detached examiner review the probable cause and issue the warrant. Here --

THE COURT: And you're saying that a supervising officer, an SDDO, in the field is not that -- not that detached officer?

MR. MANNING: I -- not -- the -- this was the officer who collected the evidence, so this was the officer --

THE COURT: When you say "this," who are you referring to?

MR. MANNING: The SDDO.

THE COURT: So my question was either a rhetorical or perhaps maybe more of a softball. I'm just trying to confirm you're suggesting that D.C. is not the kind of detached officer that would be authorized under the law to issue a warrant?

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

THE COURT: All right. Was there anything else about the inconsistencies or that which was consistent or truthful in J.G.'s testimony that you wanted to comment on before I

turn back to Ms. Cunnings?

MR. MANNING: No, Your Honor.

THE COURT: All right. And you -- well, Ms. Cunnings, do you find it odd at all that D.C. didn't testify about -- about completing the warrant?

MS. CUNNINGS: Perhaps, but I think that's defendants' case to make or choose not to make.

THE COURT: Well, it's your argument to make, though; their choice to call, but your argument to make about whether it's (pause) --

MS. CUNNINGS: Whether or not he should have testified?

THE COURT: Yeah. What does it -- does it have any meaning to you that D.C. didn't testify?

MS. CUNNINGS: I don't know.

THE COURT: Okay.

MS. CUNNINGS: I'll be honest with that one.

THE COURT: Mr. Manning -- I think he wants to co-opt your closing arguments.

MS. CUNNINGS: No. He's just chomping at the bit on these particular issues.

Do you have a comment? It's wonderful if you do.

MR. MANNING: Your Honor, the -- I mean, if I were presenting a -- so, like, I think it is telling that the SDDO did not testify. I think it is telling in two reasons -- two

ways. So, one, that it wasn't -- like, J.G. testified that he was -- been on the -- on ICE for 11 months, I think, something to that effect. And he is a deportation officer, he is an underling.

The SDDO is a supervisory officer entrusted with a lot of power under the law. And an individual of that status to not testify, one, to support his own agent in the field, I think is telling, and it's telling to the fact of, like, what was the agency's policy and practice that if a supervisory -- an SDDO, a supervisor, was engaged in this type of work, it had to have been -- we think an inference can be drawn that it was -- it is part of their policy and practice to intentionally thwart the injunction by creating documentation after the fact so that no one would know from any of the compliance reporting that they are making arrests without warrants, in violation of the injunction.

So it's like a double -- a double whammy. Not only did they violate the injunction, I think the case of H-D-G-H demonstrates, and the failure of the SDDO to testify, that they're actively thwarting the injunction's effect.

THE COURT: What if I ordered the reopening of the record and ordered that D.C. testify? Will that help make the record more complete?

MR. MANNING: We would welcome that opportunity. We don't think -- we think the record stands as is, but we would

welcome the opportunity to cross-examine and to have the examination of the SDDO.

THE COURT: Okay. Ms. Cunnings.

MS. CUNNINGS: There are other problems with the I-200s as well. There --

THE COURT: All of them or are we just talking about H-D-G-H?

MS. CUNNINGS: I'm talking about more generally what the evidence shows, moving on from H-D-G-H's case in particular.

The evidence shows that I-200s are being issued before a notice to appear is issued. And pursuant to the law, an I-200 is only valid once removal proceedings have been initiated or when they're ongoing.

THE COURT: So you're saying that a notice to appear would have to be issued either before or at the same time of an I-200?

MS. CUNNINGS: That's correct.

THE COURT: And the function of the notice to appear, is that effectively a summons?

MS. CUNNINGS: The notice to appear initiates removal proceedings.

THE COURT: Okay. So it's not just a notice to appear as I might understand it in other -- in other legal contexts, but it's initiating removal proceedings.

MS. CUNNINGS: Correct. It does contain the first hearing date at which someone will appear in immigration court, but it sort of contains the charges for someone saying the allegations in the immigration case and giving the opportunity to respond in the proceeding.

THE COURT: And you're saying an NTA is necessary before an I-200 can be authorized.

MS. CUNNINGS: Correct.

THE COURT: Okay. And where in the regulations or statute is that -- can I find that procedure?

MS. CUNNINGS: It is 8 C.F.R. 236.1(b). And I believe it's also in the statute 1226(a).

THE COURT: So 8 236.1(b)(1).

MS. CUNNINGS: Yes.

THE COURT: Where it says at the time of issuance of the notice to appear or at any time thereafter and up to the time of removal, the proceedings are completed -- that removal proceedings are completed, the respondent may be arrested and taken into custody.

MS. CUNNINGS: Correct.

THE COURT: All right. So under the authority of an I-200. So this language here suggests that I-200s can't precede an NTA.

MS. CUNNINGS: That's correct.

THE COURT: Is there anything else in any of the

regulations that may cast a different understanding about the order of -- the order of operation here between an I-200 and an NTA?

MS. CUNNINGS: No.

THE COURT: All right. So the other -- the question that -- that prompted my -- my direction to file a supplemental briefing is this idea that warrants don't ever expire. Do you want to talk about that some more? Help me understand why you think they do and should under certain circumstances and in others maybe not.

MS. CUNNINGS: Certainly. So I think the important context perhaps are these several -- many cases that have been filed about revocation of release. So when someone has been arrested on a warrant and then the agency decides to release them, the agency has made a determination that they can be released because they are not a flight risk or a danger to the community.

The agency does have the authority to re-detain that person, but not without reason or for any reason. They need a later finding of probable cause that something has changed since their initial determination that that person was not a flight risk or a danger to the community.

And so I think the context in which we're discussing, it's a different probable cause finding that has to -- to come at that second arrest.

THE COURT: And isn't that second arrest also -- doesn't that also require revocation of any release agreement?

MS. CUNNINGS: Yes.

THE COURT: Or revocation of any release order.

MS. CUNNINGS: Yes. So that is that context. I think defendants' position seems to be that an I-200 once issued would be valid to allow someone's arrest at any time and for any reason throughout the course of proceedings.

THE COURT: Can people be released from detention without a release order --

MS. CUNNINGS: No.

THE COURT: -- such that a warrant remains valid in the absence of any revocation? You can't revoke something that doesn't exist. So if -- if somebody is released from ICE detention without a release order or -- or on conditions of release, there's nothing to revoke.

MS. CUNNINGS: I see what you're saying. The people who are released from detention who have ongoing removal proceedings are released pursuant to conditions to some sort of -- it's not necessarily that everyone has reporting, but there's some sort of release order that governs their time at liberty while their removal proceedings are ongoing. Does that answer the question?

THE COURT: So functionally there always has to be an order. What -- the content of a -- excuse me -- a release

order. The content and conditions that are included in the release order can be extensive or -- or none at all.

MS. CUNNINGS: Correct.

THE COURT: Okay. All right.

MS. CUNNINGS: Correct. So that --

THE COURT: How would you -- how would you revoke a release order that has no conditions? I mean, what would they -- what would someone be violating such that it would allow the government to revoke a release order?

MS. CUNNINGS: Well, perhaps someone has become a danger to the community or they failed to appear at an immigration court hearing.

THE COURT: Okay.

MS. CUNNINGS: There's other sort of implicit conditions.

THE COURT: So implicit in any kind of release where there are specific conditions included. Danger to the community and flight risk are always implicit to any release?

MS. CUNNINGS: I think so.

THE COURT: Okay.

MS. CUNNINGS: I think that's fair. This backdrop all shows that the evidence -- that defendants are significantly underreporting warrantless arrests in Oregon.

THE COURT: Help me. You've got to spell that out for me. Why do you think that leads to underreporting?

MS. CUNNINGS: Sure. So they're claiming that arrests occurred with a warrant that were warrantless, as the testimony in this case has shown. So H-D-G-H as an example, just on its face if you just look at the paperwork, that arrest occurred lawfully with a warrant. That was not the case. That was a warrantless arrest.

THE COURT: So unlawful -- invalid warrants are effectively warrantless arrests?

MS. CUNNINGS: That's how we would describe them. I suppose you could -- you could also think about it that way, as unlawful arrests with a warrant, but I think it's cleaner for the purposes of this case to think about them as warrantless arrests.

THE COURT: Well, we don't -- well, I mean, but the government is insisting that their -- their warrant -- I mean, there is a warrant. I mean, they're not arresting without a warrant, but the warrant's in -- at the end of the day, you're arguing that the warrants are invalid, so there is no -- there is no valid warrant to effect -- execute an arrest. And in those circumstances, it reverts to a warrantless arrest, which requires these individualized determinations in the field.

MS. CUNNINGS: Correct. Otherwise, it's a meaningless requirement. They could just write "Warrant" on a piece of paper and hand it to someone and call that an arrest with a warrant.

THE COURT: Well, isn't that what the I-200s in the field look like?

MS. CUNNINGS: Yes.

THE COURT: Okay. One thing that interested me about the evidence is that the form seemed to have already been pre-filled out with a -- with a pre-printed checkmark in the last of the four or five paragraphs. Do you have any comment or understanding or argument about why that might be in some way significant for me to consider?

MS. CUNNINGS: I think it goes to show this pattern and practice of conducting fishing expeditions in the community with pre-filled warrants that they're then investigating in the field and issuing on occasion to themselves.

THE COURT: Would it be more credible if the government had presented -- or there were -- there was evidence of other I-200s that were pre-filled but with other checkmarks -- with other paragraphs pre-checked? I mean, so in essence -- I mean, not everybody has a printer and computer in their car, although I think J.G. testified that D.C. sometimes does, but sometimes doesn't, but if they had, like, a file folder of five different pre-filled forms with the different checkmarks already pre-printed, that -- that they can just pull the one that applies that -- to that particular case at hand.

MS. CUNNINGS: Perhaps, yeah. And the pre-marked box here is statements made voluntarily by the subject to an immigration officer as the basis for their probable cause, and so I think that goes in with the -- what seems to be a pattern and practice of doing these arrests and then gathering information during the course of the arrest and then justifying the arrest based on the statements made during that arrest.

THE COURT: Well, it also begs the question in my mind what's so hard about actually checking a box in the field with the blank form? What's -- what's going on here? I mean, I think Mr. Manning is the one who's more suspicious than you are about what's going on, so maybe he has comments about what this all means.

MS. CUNNINGS: Would you like to opine?

MR. MANNING: Thank you, Your Honor. The -- so I think it's Exhibit 113. Is that right?

THE COURT: 113.

MR. MANNING: 113. Thank you. Exactly. The -- the -- what Agent J.G. testified to is that part of the warrant was completed and then they had -- SDDO had a stack of these. And he always keeps a blank stack, but for his name and that -- if I understand, that check box, assuming that this is what they will encounter, but a check box is just a check box and that -- you could just check the box.

Once -- if -- once an individual is out in the field and they have done their due diligence -- and this is the thing about 1357. It has two probable cause standards. It's a barrier.

THE COURT: You said 1357?

MR. MANNING: 1357 is a barrier to warrantless arrests. It requires two levels of probable cause.

The warrant -- this -- this -- the way Agent J.G. described the use of this particular warrant, this I-200, made it sound like it was just a form to be filled out, they just fill out the form, put it in the file, not dissimilar at all from the testimony that this Court heard when they were producing warrants much -- much further after the fact of the arrest from M-J-M-A's evidentiary hearing.

This is just still that same piece of paper, a warrant for the arrest produced after the arrest, just closer in time to the arrest itself, so in the field as opposed to in the field office, but we think it has all the hallmarks of a document that's just a form that complied with none of the rules. Like, at the top of the form itself, it says any immigration officer pursuant to Sections 287 and -- 287 of the INA and part 287 of Title VIII of the C.F.R. So it's actually invoking the law that it's actively disregarding.

So we think the agents -- we think the policy and practice that this case enjoins goes straight to the heart of

what this piece of paper -- the agent's use of this document as a piece of paper to thwart the injunction's effect to return the district to the status quo of requiring agents to do their fieldwork, to actually make the pre-arrest determination -- this is in the injunction, make the pre-arrest determination of flight risk. Like, they have to do that. They have to have immigration status, know about the immigration status, the person's in violation of immigration. That's probable cause one. Probable cause two within the same statute is the flight risk pre-arrest. That's --

THE COURT: That's escape risk.

MR. MANNING: Escape risk. They just have -- that means they have to do their work. If they do their work, the statute authorizes them to make arrests, but their policy and practice is intended to bypass this, the work that they're supposed to do. And we think H-G --

THE COURT: Well, how much harder do you think the work is to do it lawfully than what they're currently doing?

MR. MANNING: I don't know that it would be -- I mean, the way that they've described it, they have a -- I don't think it's that much harder for them to actually comply with the law. It does require work, it requires foresight, it requires diligence.

Agent J.G. testified there was a whole arrest -- whole arrest center, I can't recall the acronym he used, but

that was available on a Sunday morning at 7:30 on, like -- I think this is --

THE COURT: The FCC, right?

MR. MANNING: The F -- yes, where there's entire units who are -- individuals who are able to produce intelligence, that they seem to have a lot of resources. And with all the resources and all this power comes a lot of responsibility and obligation, and that is not what they have demonstrated, that they are following the law.

THE COURT: All right. Ms. Cunnings, when is the I-213 supposed to be completed, prepared, and filed?

MS. CUNNINGS: I believe it's created after the arrest to document the facts and circumstances regarding the arrest.

THE COURT: So the I-213 isn't the -- sort of a written documented basis for -- for obtaining an I-200? Perhaps it could be, but it's not required.

MS. CUNNINGS: I think that's right.

THE COURT: Okay. And so I-213s can either be prepared before an arrest or -- well, would an I-2- -- an I-213 -- I guess an I-213 could be prepared before an actual arrest, couldn't it?

MS. CUNNINGS: It looks to me like part of the narrative could include the work done before the arrest to then justify the arrest, but it contains a narrative of the

encounter in the case disposition, which would necessarily include information after the -- after the arrest.

THE COURT: So -- so what else -- how else is a warrant -- the probable cause material, evidence to be documented prior to issuing an I-200?

MS. CUNNINGS: It's a good question. Yeah. I mean, the warrants are referencing statements made voluntarily by the subject to an immigration officer. From the documents that we've -- reliable evidence -- and/or other reliable evidence affirmatively indicating the subject lacks immigration status notwithstanding.

From the documents that have currently been produced to us in this case, the I-213 is the only thing we have available, but it's possible that those statements or evidence would exist in other pieces of paper.

THE COURT: Well, I mean, the Innovation Law Lab has been doing this for a while. Are you aware of any other documents that are made contemporaneous to the -- to the stop and detention or immediately thereafter that's used to obtain I-200s?

MS. CUNNINGS: I'm going to -- I'm going to ask my bench here. I can't think of any off the top of my head.

MR. MANNING: Your Honor, my -- like, my experience with the I-213, it is the -- it is -- we've been referring to it in this case, or at least since Friday, as an arrest

report, but it's actually an investigative document. It's a document that can be prepared to support an arrest, it is a document that outlines -- it's a record --

THE COURT: To support a warrantless arrest.

MR. MANNING: To support an actual warrant for an arrest.

THE COURT: Okay.

MR. MANNING: It is a document, it's called a Record of Deportable Alien, and it is -- their investigators collect facts and record them in that form.

Now, that's not the only place where that information can sit. As we've seen in the compliance reporting, there is also -- agents have access to a series of databases. And we've seen in the evidentiary hearing -- the earlier evidentiary hearings in this case, they have access to a series of databases where they record interactions.

And I'd also draw the Court's attention to -- back to Exhibit 113 where this was not submitted. There was no -- what -- sorry. Let me walk that back.

13 was submitted, and what it says, what they clicked, "Statements made voluntarily by the subject to an immigration officer and/or other reliable evidence that affirmatively indicate the subject either lacks immigration status, or notwithstanding such status, is removable under U.S. immigration law," that's fine, but where is the evidence

that supports that statement?

THE COURT: Well, and that's the question I have. Where -- I mean, if you're suggesting to me that -- that an I-213 can follow an I-200, then an I-213 isn't necessarily the document that -- or the collection of evidence that precedes the issuing of a 2 -- of an I-200. So I guess I'm not very clear as to what -- how do -- how is the agency supposed to substantiate the basis for its I-200s?

MR. MANNING: I think there's probably -- there's at least two ways, Your Honor. So the I-213 itself; so it's only of recent vintage, I would say, that -- this case where I-213s are created after the fact.

THE COURT: Meaning what? Meaning they're --

MR. MANNING: That the I-213s -- and my experience in doing this for three decades now is I-213s I've seen precede the creation of a notice to appear, because they are the Record of Deportable Alien, that they then use to create the charging document.

THE COURT: Which is part of the NTA.

MR. MANNING: Which is the NTA. And then once that NTA is created, the warrant to arrest, the I-200 is authorized by regulation and statute and that's when it comes into being.

THE COURT: So from your experiences having done this for a bit, a while, that I-213s are developed as part of an investigate -- is an investigative record, I think you used

that term already, an investigative record in preparation for determining deportability, issuing a notice to appear, and also filing a warrant to be executed -- arrest warrant?

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

THE COURT: And that would have been the normal sort of series or sequence of operations in times past?

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

THE COURT: Okay. But now, that's one way to do it lawfully, and it seems to comport with, you know, other systems in other -- in other parts of our justice system, but it also seems that in -- from these regulations that -- that an officer can call a supervisor who is detached from the situation to obtain a warrant, and it sounds -- and under those circumstances that that verbal representation would be appropriate as well to justify an I-200.

MR. MANNING: I don't know if that's -- if that would satisfy the probable cause standard. I think there would have to be some type of memorialization of the evidence.

THE COURT: And I think in other aspects of our justice system, that makes a lot of sense because that's how we've done it, but I'm not sure I see regulation -- unless you're asking that I superimpose those procedures that are well understood in our criminal justice system in this system, I'm not sure I see anything in the regulations that -- of the immigration regulations here that suggest that some kind of

written affidavit or declaration or sworn testimony to an SDDO over the phone even is -- is necessary or is required, at least in the way in which I read these regulations. If you see something else in the regulations that say otherwise, I'm interested in knowing about where that is.

MR. MANNING: I think it comes from the way that the form is created itself that it requires the statements -- it require -- the -- if I'm calling -- if I'm a field agent and I'm calling this in, so -- and I'm getting the warrant and I haven't made an arrest yet, so I've got -- some investigation has gone on, I've got enough information, I think I've got probable cause, so I'm calling it in to a detached officer and then I need to make my case. If me making my case -- if there's no memorialization of me making my case, then that becomes unchallengeable in any future proceeding. And I do not --

THE COURT: Unless you accept that the I-213 that is prepared after the fact is that -- that memorialization.

MR. MANNING: If -- I think -- and then we are able to challenge the I-213. I think that could work, but it -- as long as there is some aspect that allows the individual whose liberty is about to be taken away from them, be restrained based on a probable cause standard, this form that they're clicking the box on indicates that there's some evidence that they're basing it on. And so that evidence, if it was a

statement, then there would have to be a report like an I-213, like, where the agent is memorializing it if it was -- and the form says, "and/or other reliable evidence that affirmatively indicate", like, "I did a database set of queries and this is what it said, and I'm attaching that," there would have to be some means for the individual to challenge it after the fact.

THE COURT: Well, and after the fact, the I-213 would be, it seems to me, the one place where all that information can be gathered. Whether it is or -- whether it is or not is -- is a question of fact.

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

THE COURT: All right. So are you prepared today to say an I-213 prepared after the fact can be the document in which one can -- anyone can turn to to review whether the probable cause was established to get the warrant? I'm not suggesting it's the only document, but it -- but it is at least the one that everyone seems to be familiar with.

MR. MANNING: Yes, Your Honor.

THE COURT: And certainly like in the other evidentiary hearings that we've had, other documentation can -- may be available, but that doesn't seem to be something that is stored in some consolidated file on any of the folks that are -- people that have been detained.

MR. MANNING: I think that's right, Your Honor. I think there's a lot of electronic information that is stored

that frequently ends up memorialized. And the document that is used in immigration court to support both detention and deportation is almost universally the I-213. So I think that is right, but it is not the only place where this information might be.

THE COURT: All right. Well, then in an instance where -- it seems that the regulations authorize a field officer to contact an SDDO back at headquarters at the facility to get approval for a warrant. Is that -- is that a fair statement, an accurate statement?

MR. MANNING: Yes.

THE COURT: Okay. And so if that's the case, a field officer when making that phone call tells the SDDO, "I need a warrant to arrest this individual, and here's my probable cause," SDDO's listening on the phone, assesses, evaluates, determines that there's sufficient probable cause, and says, "Yes, there's probable cause for an arrest warrant," what happens then? Do they wait for someone to deliver a signed warrant or do they -- they pull a form out of their -- their car that's been pre-filled and signed on behalf of the SDDO? I mean, what's the next valid, approved authorized step after the SDDO in the office says, "Yes, a warrant's appropriate"?

MR. MANNING: I think some of the practical and logistical questions you're asking underscore the -- why a field warrant is an anomaly.

THE COURT: Let's assume it's anomalous -- it's an anomaly, but that doesn't make it invalid.

MR. MANNING: And we --

THE COURT: And if you think it's invalid because it's in the field and that's the only consideration that makes it invalid, then help me understand why.

MR. MANNING: If that warrant is issued prior to the issuance of a charging document so that NTA has to come with it or before it, then that warrant is invalid.

THE COURT: Okay.

MR. MANNING: In the field or not, that's -- that NT -- they've got to make the decision to actually -- they're going to charge this individual in court.

THE COURT: And that's 236.1(b)(1).

MR. MANNING: That's right, Your Honor. And it's the statute itself, the statute says -- 1226(a) says when you're -- you've got to have the charging -- like, you're going to bring removal proceedings, you can arrest them, and that's -- that regulation interprets the statute and it sets forth the timing. So in the I-220 -- I'm sorry, I-200 that precedes the NTA is invalid and cannot be issued in the field. So the logistical problems you're describing, they're solvable. Like, they've got a lot of resources. They could solve those logistical problems, but that process has to be complied with.

THE COURT: All right. And I appreciate you're returning to the issue of the NTA, because I need to make sure that I'm being reminded of the C.F.R. 236.1 when thinking about the validity of a field warrant. Okay.

MS. CUNNINGS: Thanks, Your Honor. So we'd like to talk about the relief that we're requesting and how that would remedy the violations we think have been surfaced in the context of this motion to enforce.

THE COURT: All right. Well, and -- and recalling Ms. Qureshi's testimony, about 570 people have been detained and arrested in Oregon since, was it, February?

MS. CUNNINGS: Yes. Let me give you --

THE COURT: Or was it since, I think, September of 2025? I'm trying to remember. I think it might have been February.

MS. CUNNINGS: So I believe it was 5 -- something around 570. Of those, 504 of those arrests were non-custodial, most relevant for this proceeding.

THE COURT: And Ms. Qureshi mentioned -- or testified that non-custodial, in her experience, really meant warrantless -- or for the most part would have been warrantless arrests.

MS. CUNNINGS: There's going to be a greater correspondence in those categories, yes, because they're arrests that are happening outside of, like, a prison or a

jail facility where someone's already in custody for some other matter.

THE COURT: And she wasn't asked about this scenario where there are these warrant -- field warrants being issued, was she?

MS. CUNNINGS: No. She was talking about the data on the number -- number of arrests and what could be extrapolated from that data.

THE COURT: All right.

MS. CUNNINGS: So we believe the evidence shows that the injunction is being violated in two broad ways. First, defendants are repeatedly violating the law and the injunction by conducting warrantless arrests without a proper warrant and without an individualized pre-arrest finding of probable cause of escape risk. Second --

THE COURT: Well, they're also not issuing an NTA consistent with any valid warrant.

MS. CUNNINGS: That would go -- we would characterize those as arrests without a proper warrant, a warrantless arrest, uh-huh.

Second, they're failing to document and report the same, which is required by the injunction to ensure compliance.

THE COURT: You know, I know that in the exhibits there's -- the documents that have been provided, that it was

just, I think, the "Encounter" sections of the I-213s that were provided, not the entire I-213.

MS. CUNNINGS: Correct.

THE COURT: Remind me, I know that there was some discussion at the time of our preliminary injunction hearing and the relief that was being requested and some discussion about whether to disclose the entire I-213 or just the -- like, the narrative "Encounter" section.

What's your understanding of what this Court ordered regarding the production of I-213s over narrative information?

MS. CUNNINGS: So what the order says is that defendants are required to document the facts and circumstances surrounding warrantless arrests. My -- our understanding of the discussion we had about what that documentation should include at the time the injunction was issued was production of the I-213. And I believe Your Honor said something along the lines of let's -- let's try that, and we can revisit if that is not all the proper documentation needed to show compliance or non-compliance.

THE COURT: And you weren't being provided the I-213s?

MS. CUNNINGS: In certain cases, that's correct. We were given the ERM printout.

THE COURT: And did you have any understanding from your discussions with counsel about why in some instances the

I-213 was provided and in other instances it was just a portion of the "Encounter" sections?

MS. CUNNINGS: I don't believe that's something we discussed with the defendants.

THE COURT: Okay. All right.

MS. CUNNINGS: But I think that goes to show why in this case we're asking that part of the remedy for the violation is the production of all documents related to the arrest, which would include the I-200; the I-213; all documents served on the arrested individual; the evidence underlying that I-200, whether in the I-213 or elsewhere; and body camera footage of the arrest, if available.

THE COURT: Well, would it help to know whether other documents served on the individual -- I mean, at what time rather than date so you know what order in which these things were -- were generated and processed?

MS. CUNNINGS: That would be immensely helpful. Yes, we're making inferences from the timing of some of the certificates of service. I believe it was F-M -- H-F-M-J's case, the NTA was served two days after, so that was clear on its face, but, yes, without a timestamp, it would be difficult to know the exact order.

So going back --

THE COURT: And the issue with the I-213s, in some way did we resolve some of this in the context of our

discovery matters where -- because of the protective orders in place that redacting information about -- or about the names of people that are not specifically class members or, for that matter, parties to the -- the case itself, that you would be entitled to be able to get those documents? I'm wondering if there's some parallels or just simply -- if there's any objection to producing I-213s in the context of a preliminary injunction order that -- any protective orders that exist in the underlying -- in the overriding case would -- would prevent dissemination of that -- of that material?

MS. CUNNINGS: I'm sorry, Your Honor. Are you asking if the protective order is sufficient to protect any of the additional documents that we're requesting defendants produce?

THE COURT: That's much more succinctly stated. Yes.

MS. CUNNINGS: Okay. Then, yes, I do think the protective order would be sufficient, but we think -- just to be clear, we do think that the obligation from the preliminary injunction is to affirmatively disclose -- report within 30 days, and then upon request from plaintiff's counsel within seven days. It's not merely through the discovery process. It's an affirmative obligation tied to the injunction.

We would also like the Court to -- sorry, just one moment -- to reemphasize and prohibit defendants from using the wrong legal standards to assess escape risk in the limited instances in which they are claiming to have assessed --

THE COURT: Do you mean the underlying --

MS. CUNNINGS: Correct. Through most of the reporting on warrantless arrests that was provided by the defendants, there's no analysis of escape risk, and those that do any sort of analysis appear to apply the Lyons memo, which I --

THE COURT: I mean, part of the challenge that I think I'm looking at here is that in order to really address the sufficiency of what you're asking me or the -- the ability of being able to get what you're asking this Court to order is that I think I have to first determine that the large volume of arrests with warrants are, in fact, invalid, but how do I do that without making individual determinations on each case about the validity of a warranted arrest?

MS. CUNNINGS: Well, I think the evidence presented by Ms. Qureshi and also by Ms. Walker Keller speaks to this. So of the 504 non-custodial arrests in the district from the time of the injunction, February 5th through July 31st, 2026, defendants assert that only 15 were warrantless.

We were able to present at least three additional cases before this Court just in this -- in this context of this motion to enforce. And as you, I believe, noted on Friday, we don't have access to the rest of the information, but there's reason to believe that the I-213s don't contain correct information. Defendants also have a misunderstanding

of when an arrest is occurring with a warrant if the NTA is being issued after the I-200, and so --

THE COURT: If I were -- I were to order the government to produce all 570 case files for you to review the I-200s, I-213s, the NTAs, and any of the other documents associated with them, are you prepared to evaluate and determine which one -- and argue then which ones were, in fact, invalid warrants such that these were warrantless arrests?

MS. CUNNINGS: Yes. That's what we're arguing is necessary to ensure compliance, based on the evidence that's been surfaced at this hearing.

THE COURT: And do you think I have authority under the preliminary injunction to expand the scope of that which I've ordered to include this?

MS. CUNNINGS: I think, as we've requested -- so you've ordered documentation that contains the circumstances surrounding warrantless arrests, and so we think it would be enforcing that order as written to order full documentation. The preliminary injunction that you issued doesn't say anything that's narrowed to I-213s.

THE COURT: But full documentation of everyone arrest -- or detained, rather, not just arrested with a warrant or arrested with -- without a warrant, because we're going to run into the situation here where the government is

saying there was only 19 warrantless arrests, all of the other ones were based on warrants. And so in order to really determine if your hypothesis that, you know, the large majority of the 504 non-custodial arrests were warrantless, you're going to have to review all of them.

MS. CUNNINGS: I think --

THE COURT: And then who makes the decision about which ones were based on invalid warrants?

MS. CUNNINGS: Well, I think we've presented pretty clear criteria under the law as to situations that are clearly an invalid use of the warrant. So, again, the I-200 issuing before the NTA, I think that -- I don't know what defendants will say, but I think that's sort of undisputable under the law that that's a warrantless arrest.

The testimony as to falsification of an I-213, obviously that is something that required an evidentiary hearing and it was more in depth to investigate, but body cam footage would go a long way towards uncovering whether there was actually a factual discrepancy to the documents being presented to justify an arrest.

THE COURT: And that would only work for the last month, since body-worn cameras have been employed.

MS. CUNNINGS: Yes. And I'll also note this could be -- we'll leave it to you, but this could be prospective, right? This is an ongoing injunction, and so we'd be

requesting that this full documentation be provided for arrests moving forward. And hopefully the accountability required by increased reporting requirements will also motivate increased compliance. Excuse me.

(Discussion off the record: Petitioner's counsel)

MS. CUNNINGS: The other option would be just clarifying this in the context of our good faith request for documentation about future warrantless arrests, so instead of ordering a remedy as to all arrests, allowing plaintiff's counsel to request the information when we have outside information suggesting an arrest was made improperly to defendants, to then give us that additional information, and then we could come back to court for a larger remedy if we're making a lot of those requests and we're surfacing a lot of problems.

THE COURT: And you're only asking for information relating to the non-custodial arrests?

MS. CUNNINGS: I think that is a circumstance in which these warrantless arrests seem to be happening.

THE COURT: Okay.

MS. CUNNINGS: Often once someone's identified in custody, I think that's a more likely situation in which there's a warrant.

THE COURT: All right. Anything else? You're not asking for attorney's fees?

MS. CUNNINGS: Not today.

Would it be helpful to the Court if we talked about the Lyons memo or do you feel you have an understanding of why we're requesting that relief?

THE COURT: I think that's a more straightforward, linear evaluation of the issues than what we've been talking about.

Do you want to address at all, maybe briefly, the standard that I'm supposed to apply, preponderance or clear and convincing? It appears to me from the case law that clear and convincing is appropriate when there's, you know, I think more sort of a punitive remedy that is being sought.

MS. CUNNINGS: Sure. I don't know if I would characterize the remedy we're seeking as punitive. We're seeking compliance, we're not seeking sanctions, but I think it's not necessary for the Court to resolve that, because I think this meets the clear and convincing evidence standard.

THE COURT: Okay. All right.

MS. CUNNINGS: We'll leave it at that. Thank you.

THE COURT: Thank you. Let's take a recess, ten minutes. And Ms. Garousi, I'll be -- you'll be arguing?

MS. GAROUSI: Yes, Your Honor.

THE COURT: Okay. Ten minutes, and then we'll come back and take up the government's position.

(Recess: 10:33 - 10:47)

THE COURT: Ms. Garousi.

RESPONDENTS' CLOSING ARGUMENT

MS. GAROUSI: Thank you, Your Honor. I'm going to start with the supplemental briefing that was submitted yesterday.

So the government understood the Court's question on Friday afternoon to be a narrow one about whether a warrant in the A File, even if it had been previously executed, could be used for a future arrest, and the statute clearly says, yes, it can, because under 1226(b), the Attorney General at any time may revoke a bond or parole authorized --

THE COURT: Slow down. I want to be able to follow what you're talking about, and I'm not sure I understand what the preface was in describing my inquiry to be a narrow one; meaning what?

MS. GAROUSI: The -- so -- and I guess I would have gotten there. From plaintiff's argument, plaintiffs seem to be conflating arrest with detention, and those are two distinct concepts.

The question posed to us was whether a previously executed warrant could be used again. And so to the extent that plaintiffs take issue with the cases that defendants cite and the proposition that defendants cite, they're speaking more about the detention authority that was asserted over the individuals as opposed to the arrest itself, and those are two

distinct concepts.

THE COURT: And tell me how you think they're distinct in this context.

MS. GAROUSI: In -- so in the context of the briefing that was submitted, the question was about a warrant. And a warrant is issued separate and apart from the detention authority that's asserted over the individual to -- for them to remain in custody.

THE COURT: So my direction to counsel was to provide additional briefing in light of what you represented to the Court, which was that warrants remain valid even after someone has been arrested and detained, and after they're released, they can be re-arrested on that same warrant.

MS. GAROUSI: And that's true, Your Honor. I'm not speaking --

THE COURT: I'm -- well, I'm not asking what you think is accurate. I'm trying to represent -- or recreate what it was that you described on Friday. And I wanted to get more information from you and from counsel about why you think a warrant is not cleared upon somebody's arrest. And that's -- and then I invited briefing on that subject generally.

So I'm not sure it was narrow intentionally or -- or incidentally, accidentally. It was an invitation for both of you to write on the status, longevity, and expiration

conditions of warrants in the immigration context.

MS. GAROUSI: And, Your Honor, I agree with what the Court -- how the Court just characterized what happened on Friday. My point solely is that to the extent that plaintiffs take issue with the cases that we cited in our supplemental briefing, those arguments were about the detention authority asserted over those petitioners, and that detention authority is what the courts ultimately found invalidated the detention. The detention is separate from the arrest, is all -- is what I'm trying to say.

THE COURT: Well, and why are -- why are those cases that you cited in your supplemental brief relevant to the question that I asked everyone to brief on on Friday?

MS. GAROUSI: Because -- so the *Marufov* case, and that's the District of Colorado case, found that the arrest was lawful where the petitioner was re-arrested on a warrant that had previously been issued and executed in 2024, and then I believe the petitioner was re-arrested in 2026 on that same warrant. The court ended up finding that the detention itself was unlawful for different reasons, but found that the warrant -- the arrest itself was lawful on that warrant.

THE COURT: So there is a district opinion -- district court opinion in Colorado and one in the Southern District of Ohio that say the same thing?

MS. GAROUSI: Yes, Your Honor. And they rely on the

plain language of 1226(b).

THE COURT: And what about all the other districts that might deem it otherwise, consider it otherwise, or are you suggesting that everybody else is either remaining silent on this issue or is not -- is in some way inapposite to the case here?

MS. GAROUSI: In my research with respect to being able to re-arrest an individual on a warrant that was previously executed that is still in the A File, this is what I found. The cases that defendant -- or plaintiffs seem to be citing to are cases about, like, 1225(b)(2) detention authority, which at this point the Ninth Circuit has found to be invalid. That's separate than what I'm talking about here.

THE COURT: Okay. And there are no opinions, either district or circuit, here in the Ninth?

MS. GAROUSI: Not that I'm aware of, Your Honor.

THE COURT: And why should I -- why should I regard what it is that's been cited in Colorado or Ohio as in some way instructive?

MS. GAROUSI: Your Honor, I don't even think you need to regard them as instructive. I think the plain language is enough. We provided those citations to give color to what the plain language said and provide examples, but the statute itself says that DHS can re-arrest the non-citizen under the original warrant.

THE COURT: Show me where.

MS. GAROUSI: 8 U.S.C. 1226(b).

THE COURT: Specifically where it says the Attorney General at any time may revoke a bond or parole authorized under subsection A, then re-arrest the alien under the original warrant and detain the alien?

MS. GAROUSI: Yes, Your Honor.

THE COURT: And the precondition is a revocation of the bond or parole.

MS. GAROUSI: Correct, Your Honor.

THE COURT: All right. And how is that being done -- or how was that being -- how was that in some way -- well, where was the evidence, I think, at J-C-C-V -- I think that was the particular witness in our case whose situation is raising this issue here. Right?

MS. GAROUSI: Yes, Your Honor.

THE COURT: All right. So where was the evidence of revocation of bond or parole in J-C-C-V's case that suggests that the warrant remained valid?

MS. GAROUSI: So, Your Honor, I think -- I mean, they're connected concepts, revocation of the -- of the release, the bond order, in addition to the warrant. I'm citing a proposition for the fact that you could use an original warrant to re-arrest the non-citizen.

THE COURT: Under conditions, but I want to make sure

you understand that you just don't simply bootstrap one portion of authority as if it stands alone without meeting certain minimal conditions. And here I'm reading the statute, the plain language, that says you have to first revoke bond or parole.

MS. GAROUSI: Yes. I understand, Your Honor. And, I mean, I -- we recognize that the -- I think it was the Western District granted the habeas petition in this case, but if you look at the 213, the 213 does indicate that --

THE COURT: Which 213?

MS. GAROUSI: I have to find the exhibits. One second. So that would be Exhibit 106.

THE COURT: Oh. The I-213.

MS. GAROUSI: Oh, yes. Sorry, Your Honor. And so the I-213 states that (pause - referring) -- somewhere in here it says that -- okay. So in what looks to be on the second page, the second paragraph, additional record checks indicated that J- -- excuse me, sorry -- J-C-C-V was on order of recognizance abscond with no lawful status.

So that to me indicates that (pause) --

THE COURT: Where is this, a records check?

MS. GAROUSI: The second paragraph, the second sentence, "additional records checks" is what it starts with.

THE COURT: Is this the same page that the "Encounter" section is in?

MS. GAROUSI: Yes, Your Honor.

THE COURT: And is it above it?

MS. GAROUSI: No. Below it.

THE COURT: All right. So, I mean, it's pretty difficult to -- I mean, the paragraph in the "Encounter" is not set out clearly enough for me to find what you're referring to, so tell me how many lines down or how many lines from the bottom.

MS. GAROUSI: Do you see the sentence in about the middle of the page, it says, "DOs introduce themselves as police"?

THE COURT: Yes.

MS. GAROUSI: Okay. And then if you keep reading to the next line, it starts with, "additional records checks".

THE COURT: So how am I to know and conclude from this sort of narrative "Encounter", one, that it describes a specific legal -- a legal condition and that it would be consistent with that the Attorney General at any time may -- had in J-C-C-V's case revoked bond or parole? I mean, is it automatic that if somebody's identified as an absconder that bond or parole had been revoked?

MS. GAROUSI: Your Honor, I think that gets into questions that are sort of beyond the scope of this lawsuit.

THE COURT: It's not beyond the scope of my question. I mean, if we're trying to determine whether warrants were

lawful, and you raised the issue that J-C-C-V could have been arrested at any time because there was an active warrant in his file, the government's raised this issue, and if it is entangled, as it appears to be, with the question of warrantless arrests, validity of warrants and the execution of them are, I think, central to this -- to this case.

So, I mean, is -- is the government relying on this reference in the "Encounter" section to substantiate that that bond or parole was revoked?

MS. GAROUSI: I believe that sentence indicates there was an intention to revoke the bond or parole, which is a discretionary decision under the statute.

THE COURT: But there has to be an actual revocation.

Without knowing anything more, the fact that people are suggesting or making decisions on a whim and without memorialization is troubling to me. I mean, the only way that the courts or any other -- or any other decision-maker can review conduct is through some -- some reliable record, and I don't have anything here in the I-213 that suggests that his bond was revoked.

MS. GAROUSI: Understood, Your Honor.

THE COURT: Okay. Why didn't you call D.C. to testify, the SDDO who issued the warrant in H-D-G-J? I'll get those letters right in just a moment, but the individual who was at Immigrant Lake. And I don't want to -- I don't want

the response to be, "Well, because we don't have the burden of proof."

And I want to make it very clear here, I'm -- in just about every other case where parties have burdens of proof and particular standards to carry that burden, parties can present the evidence they wish.

When I'm both the fact finder and I'm also now determining whether somebody has or has not violated a preliminary injunction order, then I'm interested in actually understanding the full spectrum of what's going on and whether people are complying with the court order. So tell me why D.C. wasn't called to testify.

And why, Ms. Luse, are you the one going to be answering this question?

MS. LUSE: Because I'm a little perplexed and perhaps confused that the Court is asking us to delve into a privileged area that would not be appropriate for us to speak to.

THE COURT: Well, then what you just need to simply say is that -- that, "Your Honor, this is a matter of privilege and I can't explain the reason why he wasn't ordered to testify." I don't need anything more than that, and then we can -- I can take it from there.

MS. LUSE: That would be correct.

THE COURT: All right. So is -- is D.C. still

stationed in Oregon?

MS. GAROUSI: I believe so, Your Honor.

THE COURT: Okay. So if I ordered that he be -- or they be presented to testify under oath about -- about that arrest, is there -- is there going to be some concern, consideration, challenge with that person being brought in to testify?

MS. LUSE: Other than perhaps availability, timing, no.

THE COURT: Okay.

MS. LUSE: The Court has authority to order a witness to appear. We recognize that.

THE COURT: All right. Ms. Garousi, what do I -- what and how should I consider the fact that J.G. acknowledged that he did not tell the truth in the I-213?

MS. GAROUSI: Your Honor, so I think J.G. candidly and truthfully answered the questions about the inconsistencies between the I-213 and his testimony.

THE COURT: So, I mean, I -- don't you agree -- well, I'm not going to ask you to agree. They're pretty striking differences: one -- one which clearly establishes some knowledge prior to the stop and -- prior to the stop that J.G. knew this person was unlawfully in this country and justified the stop, and that's what was put in the I-213. The I-213 is what's used to review even if -- if prepared after a

detention and -- an arrest and detention, is used to review the validity of that. So these aren't minor discrepancies.

His clarification on the record is appreciated, but had it not ever been brought to light under oath in a courtroom, that material he included in the narrative would have stood uncontested and would have been a solid, factual basis, clearly wrong and a lie, to establish the validity of that witness's detention.

MS. GAROUSI: Yeah. Understood, Your Honor. I --

THE COURT: And don't you think this is *Brady* material? I mean, he lied in a memorializing document about his conduct and his observations and knowledge about what in fact happened during an arrest.

MS. GAROUSI: Your Honor, I'm not as familiar with the *Brady* standards.

THE COURT: All right. Well, then you might want to make sure that you're considering this as we go forward with these evidentiary hearings.

MS. GAROUSI: Understood, Your Honor. If I may say, we understand the Court's concerns about the differences between the I-213 and what was testified to; however, it would be defendants' position that in -- the testimony demonstrated that the arrest was conducted pursuant to a warrant.

THE COURT: Spell it out for me.

MS. GAROUSI: So --

THE COURT: Which one are we talking about? H-D-G-J?

MS. GAROUSI: H-D-G-H.

THE COURT: H-D-G-H.

MS. GAROUSI: Yes, Your Honor. And so that was the case that the -- H-D-G-H and his friend were at the Wal-Mart and then they were going fishing. You heard testimony from Officer J.G. that they had a warrant issued for the driver of the vehicle and then they followed that vehicle to the lake.

At the lake, they executed the warrant with respect to the driver. And then after the driver was put into the -- his vehicle, they asked H-D-G-H questions. He answered them, he told them their name. I don't recall if he told them his immigration status or not, but then you heard testimony from Officer J.G. that D.C. got on the phone with another SDDO, asked the SDDO to verify the information, which he did, and then D.C. filled out a warrant and served it on H-D-G-H. That whole process, I think, took under ten minutes, and it wasn't until the warrant was served on H-D-G-H that an arrest occurred.

THE COURT: And what about the requirement of issuing an NTA at or before the issuance of a warrant?

MS. GAROUSI: Yes, Your Honor. So other courts have considered this issue, mainly *Castañon Nava*, which is the case out of the Northern District of Illinois which sort of spawns a lot of this litigation, and the court there considered this

issue and the district entered an injunction, which was overturned -- or was stayed by the Seventh Circuit on the basis that the question of when an NTA is supposed to be issued with respect to a field warrant is outside of the scope of a lawsuit surrounding 1357(a)(2). It's a different statute. It's not what's at issue here. I recognize that -- let me take that back.

THE COURT: The government has taken the position that the 504 non-custodial arrests that apparently -- I'm using that -- well, do you agree that there have been 504 non-custodial arrests in Oregon, I think, since February?

MS. GAROUSI: That's I suppose what Ms. Qureshi's declaration states.

THE COURT: Do you have any reason to dispute those numbers?

MS. GAROUSI: No, Your Honor.

THE COURT: Okay. And if I'm also not mistaken, there was, what, maybe 19 or so records of individuals that -- that the government provided over those same number of months representing warrantless arrests?

MS. GAROUSI: I don't know the exact number.

THE COURT: Are you the one responsible for providing that information on a monthly basis?

MS. GAROUSI: I ferry the I-213s to opposing counsel. I don't review them personally. I don't have access to that

information.

THE COURT: All right. So you didn't review whether these I-213s represented warrantless arrests?

MS. GAROUSI: Your Honor, I don't -- I don't have access to that information. I'm provided that information by my client.

THE COURT: Okay. And so my question, then, is you're not -- and maybe it's a statement, and then I want you to tell me whether it's an accurate statement. You're not reviewing substantively whether any of the information that your client is giving you to forward to the plaintiffs consist of warrantless arrests -- or describe warrantless arrests?

MS. GAROUSI: I review what is provided to me, but beyond that, I don't have any access.

THE COURT: Well, that wasn't my question.

MS. GAROUSI: Okay.

THE COURT: So you're reviewing the materials that are provided to you before sending them on to the plaintiff?

MS. GAROUSI: Yes, Your Honor.

THE COURT: Okay. And all of this is to confirm your understanding that there are about 19 that were forwarded over the -- over these months since February?

MS. GAROUSI: I would have to count, Your Honor. I don't know off the top of my head.

THE COURT: Well, take your time. Take a look.

MS. GAROUSI: Okay.

(Pause in proceedings)

MS. GAROUSI: Your Honor, I count at least 20 -- 25, about. I don't have all of them listed in here, but about 25.

THE COURT: Okay. All right. So about 20 -- let's just call it 25 for the moment. With -- at this point, the only evidence I have on this record from the analysis and then testimony from Ms. Qureshi is that there are about 504 non-custodial arrests. Have you been able to determine what -- the status or the type of arrests for all of the other non-custodial arrests other than the 25 that you -- that you produced to plaintiffs?

MS. GAROUSI: My understanding would be that those arrests were conducted pursuant to warrants in some respect or just didn't rely on that authority, the 1357(a)(2), so warrants.

THE COURT: So as far as you're aware, the remainder are based on warrant -- execution of warrants?

MS. GAROUSI: I would assume so. I will add the caveat that there are circumstances that aren't being challenged in this lawsuit about immigration officers can conduct warrantless arrests under other circumstances, like if you were at the border and you had probable cause that someone had entered unlawfully, they had just committed an immigration crime, that's separate, or there are other circumstances.

THE COURT: Would those be the 1325 cases?

MS. GAROUSI: No, Your Honor. They would be 1357, but a different part of the -- an earlier part of the statute.

THE COURT: Okay.

MS. GAROUSI: So I just want to make sure that warrantless arrests with escape risk is what I'm talking about.

THE COURT: So as opposed to warrantless arrests associated with activity at a border, at a national border?

MS. GAROUSI: Or criminal activity, I believe, is grounds in which they can effectuate warrantless arrests.

THE COURT: And you don't have any information about whether the 500 -- excuse me -- the 480 other cases other than the 25 -- or 479, how many of those involve warrantless arrests involving this unique circumstance you're describing.

MS. GAROUSI: My understanding would be that they are all warrant -- they're arrests that don't need to be reported under this injunction.

THE COURT: Well, that remains for me to decide. So I'm asking about whether they're warrantless or warrant-based arrests. So are you saying that they're -- the other 479 are -- comprise arrests involving a warrant?

MS. GAROUSI: I don't know for certain. That would be my understanding. If I'm told that these are the warrantless arrests and I report them, then I would assume

that the other ones are, therefore, not things that need to be reported under the injunction.

THE COURT: All right. And if I find that these warrants that are exemplars here in the evidence in this record on this enforcement action are in fact invalid, then what should I do when trying to determine the validity and reporting requirements -- the validity and reporting requirements of all the other 479 cases?

MS. GAROUSI: Well, Your Honor, I think then we're talking about a different statute in which it would be challenged. We'd be talking about 1226(a) and whether the requirements under 1226(a) have been met.

THE COURT: How so? Explain it to me.

MS. GAROUSI: So 1226(a) is the authority under which an immigration officer issues a warrant. And so to the extent that the Court has concerns that the warrants are invalid, that would implicate 1226(a) authority. And this was the issue that was reached in *Castañon Nava* the Seventh Circuit then stayed an injunction about. So it's outside the scope of this lawsuit on 1357(a)(2).

THE COURT: I mean, that would be looking at this case quite myopically in that if, in fact, the government, the respondents here, are effecting invalid warrants to arrest people to circumvent the warrantless arrest requirements that have been pervasive in this state, then I'm not sure I can

just simply disentangle that practice from -- from the focus of this case and the allegations of warrantless arrests in this case.

MS. GAROUSI: Understood, Your Honor, but I think the flip side of that coin, then, is that we're expanding this injunction to monitor all arrests that occur in the District of Oregon.

THE COURT: It seems like your client might be flipping coins.

MS. GAROUSI: Your Honor, all I can say is that this issue with respect to the validity of arrests -- or warrants, I've presented my position regarding --

THE COURT: I understand you're presenting a position, but you're also the representative here, and so you're the only person I get to talk to about trying to figure out what's going on.

I mean -- I mean, can you appreciate the -- the challenge that this Court's in when trying to evaluate whether your client is complying with my injunction -- my preliminary injunction order to produce documents associated with warrantless arrests, but after that preliminary injunction order was issued, the conduct is now construed as warranted arrests, therefore, they don't have to produce any information associated with them?

It raises some very troubling questions about --

about veracity here and good faith, especially in light -- let me -- J.G. lied on the stand -- lied in the I-213. For whatever reason, he decided to clarify his testimony and speak more truthfully here on the stand, but there's some discrepancies that are -- that exist in these documents that raise significant concerns about what I've always believed to be the high level of integrity that -- that law enforcement officers engage their work with in documenting things accurately and with veracity.

And when you have I-213s also making significant oversights in the forms that are being used and referring to an arrest occurring in Napa, California, when it was here in Oregon also speaks to the lack of attention to detail and competency.

MS. GAROUSI: Can I clarify? Because you did ask me last week, can I clarify?

THE COURT: Yes. Go ahead.

MS. GAROUSI: Okay. I was informed that the officer when filling out the 213 wrote "Wine Country Road", which is a road in Hood River, and it -- the 213 autopopulated as "Wine Country, Napa".

THE COURT: Is -- is Wine Country a road in Napa County -- or Napa, California?

MS. GAROUSI: I don't know about that, but the location where the arrest occurred is on Wine Country Avenue,

Hood River. Oh, I see. Wine Country Avenue, Napa, California.

THE COURT: Okay. All right. I appreciate you following up.

All right. Please continue with your closing arguments.

MS. GAROUSI: Okay. Thanks, Your Honor. I just -- I want to return to the Court's point about Officer J.G.'s testimony. I don't think what he did was malicious. And I understand the Court has concerns about the documentation --

THE COURT: And what do you mean by "malicious" in this instance?

MS. GAROUSI: I don't think -- to me, the word "lied" sounds like he did it on purpose, and I just don't think he did.

THE COURT: You're entitled to make that argument.

MS. GAROUSI: Okay. I think he was candid on the stand and he wasn't trying to conceal what happened. Opposing counsel had the opportunity to cross-examine him on the discrepancies between the I-213 and the testimony, and I don't think that anything was brought out that wasn't already brought out on direct examination, so --

THE COURT: You know, so I do need to respond, because it raises this issue about the breadth of what it is that -- that I'm not now made aware of in light of my

preliminary injunction order that requires production. When -- when officers are misstating material facts and those misstatements of fact are used and are considered to be, I think, very substantiating for the -- for the obtaining of a warrant, that raises concerns about this not being simply minor and not related to something that's central to this litigation.

When I consider that and these other discrepancies in other I-213s that also may speak to just simply sloppiness and not proofreading one's work raises meaningful questions for me about what else is going on with the other 479 cases and what other inaccuracies are being perpetuated, what other misrepresentations are being perpetuated in these documents that are not being reviewed in any -- in any way that I can tell to ensure their validity to substantiate warrants. That's a concern for me.

And it would be circumventing my preliminary injunction order to attempt to convert what is otherwise a warrantless arrest on a collateral. H-D-G-H was a collateral individual as far as I can tell from this record. And in circumstances preceding my preliminary injunction order, these would have been clearly warrantless arrests, not to mention the evidentiary record from back in December that -- that uncovered the fact that there was copying and pasting of material between several different I-213s. So right now your

client doesn't have a lot of credibility when it comes to documentation.

MS. GAROUSI: I understand, Your Honor. And I respect the Court's concerns, I understand the Court's concerns. My point was just to the fact that I think the officer was candid on the stand with respect to his credibility about how he testified.

THE COURT: All right. What else do you want me to know?

MS. GAROUSI: I think also just sort of on the point of, I think this maybe speaks to the Court's larger concerns with the issuance of the field warrants, I don't know that it should necessarily be viewed as an attempt to thwart the Court's order, but rather to try to document the circumstances of the arrest and do the thing the right way. So I think that's -- that would be our position with respect to using warrants rather than warrantless arrests.

THE COURT: Well, then if that is in fact the intent, then perhaps it's consistent with an order producing all of the documents to ensure that it's being done consistent with my previous orders.

MS. GAROUSI: Defendants would still argue that that's outside of the scope, because it would be pursuant to 1226(a) and this lawsuit's about 1357(a)(2).

THE COURT: And are you saying 236.1 -- C.F.R.

236.1(b)(1) is not applicable in this case when it comes to the issuing of an NTA?

MS. GAROUSI: I'm saying whether -- sort of, I suppose. I think the -- this case is about warrantless arrests. If a warrant is issued, then by virtue of a warrant being issued, whether or not the Court finds that to be a valid warrant, is a separate case, and that's the issue that was taken up in *Castañon Nava*. And then --

THE COURT: And then why do you think the current posture of *Castañon Nava* is somehow dispositive here?

MS. GAROUSI: Your Honor, I think we're in this world in which a lot of different district and circuit courts are considering these arguments. I'm not saying it's dispositive. I'm just bringing the Court's attention to another court that's taken this issue up. That's all.

THE COURT: Well, has another court had to address the issues that are precisely postured in this case in the way that they have with respect to having to preside over an enforcement action relating to production of materials relating to warrantless arrests but then confronted with warrant arrests -- warrant-based arrests that seem to now be the predominant method of detaining people in the district?

MS. GAROUSI: Yes, Your Honor. So in the District of Colorado, *Ramirez Ovando*, which I believe the Court cited in the preliminary injunction order, there was a motion to

enforce there in which the District of Colorado also recognized that taking up the validity of when a warrant is issued with respect to when an NTA is issued was outside of the scope of that litigation.

THE COURT: Okay.

MS. GAROUSI: With respect to the evidence that was presented on Friday, we've already talked about H-D-G-H with -- so I want to also talk about C-J-V-M. This was the individual who was encountered at the McDonald's.

The testimony indicates that C-J-V-M was not arrested. You heard from Officer J.G. that C-J-V-M was traveling in a vehicle that was registered to someone else who had a final order of removal for which they had a warrant of removal. Officers had previously seen that vehicle at the McDonald's. They came back, I think, a few days later to wait for the vehicle, which C-J-V-M was traveling in. It was about 4:00 in the morning. It was dark out.

Officer -- C-J-V-M pulls in. Officers get out of the vehicle and instruct him multiple times in Spanish and in English, I think it was, roll down the window. C-J-V-M covered his face and then reached in to, by his testimony, a pile of jackets in his passenger seat to pull out his phone. At that point is when Officer J.G. broke the window because he was concerned that C-J-V-M could be getting a weapon.

For -- for officer safety purposes, C.J. -- or

Officer J.G. took C-J-V-M out of the vehicle, put him in handcuffs, and then asked him questions to ascertain who he was and whether -- ask him who he was. C-J-V-M, I think, said that he had a pending application, to which the officers then verified, let him go.

THE COURT: Pending application for asylum?

MS. GAROUSI: Yes, Your Honor. And the whole encounter took about two minutes from when C-J-V-M was taken out of the car and put in handcuffs to when he was released.

That wasn't an arrest. That was an investigatory stop, and he was put in handcuffs for officer safety reasons, so that's not a violation of the preliminary injunction.

THE COURT: And, yes, I do agree that reaching across the driver's seat into some other location poses some serious concerns for officer safety. So I'll give the petitioner an opportunity to explain why this case might fall under the -- under my concerns about enforcement of my preliminary injunction order, but it doesn't seem like there's any inconsistent testimony between the officer and the witness about how the -- how the stop took place.

MS. GAROUSI: Thank you, Your Honor. With respect to the testimony that was presented by Ms. Walker Keller and Ms. Qureshi, they spoke generally to enforcement that took place in the district. None of that was specific to warrantless arrests. And I believe the Court asked

Ms. Qureshi that, and she said that there was no way to know whether they were warrantless or not. She did say that she thought that they would be warrantless, but that's speculation. That's not based on any empirical evidence.

THE COURT: Well, I think the logical connections that she made in her testimony was that non-custodial arrests are typically warrantless arrests, based on her review of data. I don't have anything else other -- other than that testimony to -- that rebuts that assessment.

MS. GAROUSI: Your Honor, so with respect to this non-custodial arrest being in the data itself, we identified just a few instances, and we haven't gone through the whole document, but instances in which the event landmark takes place at a prison or a jail. So to the -- that contradicts Ms. Qureshi's testimony. She testified that non-custodial arrests would be not in a prison or a jail, and we've identified instances in which it says the landmark event took place at FCI Sheridan and then it says non-custodial arrest.

So to the extent that the Court's relying on this to -- this evidence to demonstrate -- with respect to non-custodial arrests and warrantless arrests, we think that this is inaccurate.

THE COURT: All right. Which lines?

MS. GAROUSI: You know, Your Honor, unfortunately, there aren't line numbers here, but if -- do you have the

declaration in front of you?

THE COURT: I do, and I also have the Excel file --

MS. GAROUSI: Okay.

THE COURT: -- printout.

MS. GAROUSI: We can just -- if you're looking at the first page of the declaration -- or the Excel file printout, about a quarter down the page, there are two arrests that occurred on October 7, 2025, and one of them says Sheridan FCI and then the one below it says United States Marshals Service Multnomah County, and both of those are listed as non-custodial arrests.

THE COURT: Yeah. I see those.

MS. GAROUSI: And then if you go to the bottom of this page, about ten lines up or so on October 17th, 2025, there was an arrest that it says Washington County Jail, also listed as non-custodial arrest.

THE COURT: Okay.

MS. GAROUSI: And there are a couple more on the next page. Our point is just that the identifier "non-custodial arrest" can't be treated as synonymous with warrantless arrests, one, because we don't think that there's evidence to demonstrate that, but two, the evidence itself that plaintiffs are putting forth to bolster that suggestion is inaccurate.

THE COURT: And you said that you only looked at the first two pages or did you look at the entire document?

MS. GAROUSI: I -- so far I've looked at the first two pages.

THE COURT: All right. What else?

MS. GAROUSI: So considering all that evidence, we don't think that plaintiffs have demonstrated that there has been a violation of the injunction, let alone have they met their clear and convincing burden.

THE COURT: Why do you say it's clear and convincing and not preponderance?

MS. GAROUSI: Because the case law says that when a -- plaintiffs are accusing defendants of violating a court order, and the standard for that -- for demonstrating that is clear and convincing evidence.

THE COURT: Isn't that, though -- I mean, the standard is -- is usually attached to the remedy sought, not necessarily the allegation made.

MS. GAROUSI: Your Honor, I would think that plaintiffs have to prove by clear and convincing evidence that we -- that defendants violated the injunction.

THE COURT: Why -- you're saying you would think, but there's -- there's -- there's case law also cited that the preponderance standard, unless it's otherwise provided for in statute, and certainly for a contempt, a civil contempt and other kinds of monetary sanctions where the standard is usually higher, but you're saying that it's across the board

always clear and convincing?

MS. GAROUSI: For a violation of a court order?

THE COURT: For a violation of a preliminary injunction order.

MS. GAROUSI: Yes, Your Honor. In all the case law that I've seen on it, it's a clear and convincing evidence standard.

THE COURT: So what do you -- how do you respond, then, to the petitioner's arguments and case law citations? They're wrong?

MS. GAROUSI: Well, first, in their original motion, they did say clear and convincing evidence. And then second, in their reply, they then changed the standard to be preponderance of the evidence. And it's not specific to a motion to enforce. It's gen- -- they generally speak about burdens of proof in civil litigation being preponderance of the evidence. And that's true, but when you accuse someone of violating a court order, that requires a higher standard of evidence.

THE COURT: Can you point to where they actually say it was preponderance -- or that it's clear and convincing in their -- in their opening petition?

MS. GAROUSI: Yes, Your Honor.

THE COURT: Maybe I'll ask also Ms. Cunnings. Do you agree that that's what was originally described in you're

petition -- or your motion for enforcement?

MS. CUNNINGS: I'd like to take a look, if that's okay.

MS. GAROUSI: Do you have the motion in front of you, Your Honor?

THE COURT: I do.

MS. GAROUSI: Page 8, so then the legal standard section, the last citation: moving party must demonstrate violation of the Court's order by clear and convincing evidence to warrant civil contempt.

THE COURT: Civil contempt. We're not here on a civil contempt, are we?

MS. GAROUSI: Your Honor, they're accusing defendants of violating a court order.

THE COURT: Do you understand there's a difference between a finding of civil contempt and a violation of a court order, or are you saying they're one in the same?

MS. GAROUSI: Your Honor, I'm saying that in all the cases that I've seen, it's a clear and convincing evidence standard for --

THE COURT: Do you understand that the petitioners are asking me to find the government -- the respondents in civil contempt?

MS. GAROUSI: Your Honor, I'm understanding them to ask you to find that we've -- that defendants have violated a

preliminary injunction order.

THE COURT: And does that include finding of civil contempt?

MS. GAROUSI: I don't know.

THE COURT: Okay. Anything else on the standard?

MS. GAROUSI: No, not on the standard, Your Honor.

THE COURT: All right. Anything else in your closing argument?

MS. GAROUSI: Yes, Your Honor. With respect to the PI order itself, the plain- -- defendants haven't violated the order, and that's clear by the plain language of it. The plain language requires documentation for warrantless arrests, and as we've previously stated, reading the injunction as plaintiffs do would expand the scope to all immigration enforcement in the district. It would essentially result in unfettered discovery and -- and overseeing all immigration enforcement that occurred in the district.

THE COURT: I think you used the term "policing," but I'm not sure what -- I mean, why would you describe this as policing agency action here as opposed to monitoring and ensuring compliance with my order?

MS. GAROUSI: Your Honor, there would be no limit on what plaintiffs could request under this injunction. They could -- so if -- if the Court allows plaintiffs to now inquire into warrant -- arrests pursuant to warrants, that

essentially covers all immigration that occurs in this district that they're now entitled to make document requests for.

THE COURT: I'm sure you can appreciate, although I imagine you disagree, that by virtue of your client's conduct in -- in the executing of these warrants is what's raised this question and has entangled these two -- two subjects in a way that's going to be difficult to untangle without ensuring the honoring of my preliminary injunction order.

MS. GAROUSI: Your Honor, I understand that the concepts are closely related, because we're talking about arrests, but, again, the scope of this lawsuit is warrantless arrests under 1357.

THE COURT: Anything else before we finish up? I want to give the petitioners an opportunity to reply.

MS. GAROUSI: Yes, Your Honor, a few more things.

Also the plain language of the preliminary injunction order requires that an escape risk be documented, and they're to format and produce. There wasn't a requirement for documentation beyond the narrative. And we had this discussion with the Court, because we had concerns that brought us right back here.

THE COURT: Well, wasn't the presumption that the I-213 is that which would be required to produce?

MS. GAROUSI: Yes, Your Honor, and that brings me to

my one --

THE COURT: So how is the point you just made last somehow inconsistent with producing an I-213?

MS. GAROUSI: It's not inconsistent with that. We have been producing the I-213s and there was, it sounds like, some argument that we produced EARM printouts, which are the -- where the I-213 lives before someone presses "Create I-213", so -- and the documents itself, you'll see at the top it says, "I-213 Narrative".

THE COURT: But is it the entire document, the entire I-213, or is it just the "Encounter" section, because, I mean, I think that was the issue when Ms. Provo was examining the witness, or we were having this conversation, that the EARM printout did not include the references or the information about Napa -- Napa Valley or Napa, California, and that -- so that information would not have been present. It was not present in the documents that the plaintiff received -- petitioner received from your clients.

MS. GAROUSI: Right, Your Honor, but the order itself says the narrative format. And in large part, that lives in the I-213 until, like, they're in -- it gets inputted into a computer database first. And so to the extent that we've produced the narrative format before it gets put into the I-213, if the Court is concerned about the narrative format, which it was in the order, we've produced that. We complied

with the order in that sense.

THE COURT: But in the other sense, you didn't produce the entire I-213, which was the presumptive document to be produced in my order. I mean, I think if I -- as I read the briefs and recalled my -- our discussion here, I think the I-213 was that which would be presumptively the document to be produced to provide the necessary information.

MS. GAROUSI: Yes, Your Honor.

THE COURT: And -- but not -- but there were times in which an actual I-213 was provided and then there were times in which only the EARM printout of a -- of the "Encounter" section was provided.

MS. GAROUSI: In large part, Your Honor, the EARM -- and, again, the Court has pointed out the Napa thing. In large part, the substantive information is in the EARM printout that is required by the court order that we've produced to counsel.

THE COURT: All right. And by providing I-213s in some cases and EARM printouts of the "Encounter" section is inconsistent. So what was the reason your clients provided I-213s in some circumstances and EARMs in others -- EARM printouts of just the "Encounter" section in some of these cases?

MS. GAROUSI: Logistically speaking, I don't know why, but I can tell you from a substantive perspective it's

the same thing.

THE COURT: It does raise questions about consistency and why the same documents are not being provided in every instance.

MS. GAROUSI: Right. Your Honor, I can -- again, this is me speculating, but I could imagine a circumstance in which if you don't have access to the I-213 -- or the A File in which the I-213 lives and we have reporting due tomorrow and they need to get something quickly, pulling something from the database is a lot easier to do than try to figure out where the actual file is.

THE COURT: Then why not just simply print out the EARMs in every instance?

MS. GAROUSI: I don't know, Your Honor.

THE COURT: All right. Anything else?

MS. GAROUSI: A few more things. And so now I want to turn to the relief requested, and I want to point the Court's attention to -- plaintiffs make a lot of arguments about the Court enjoining reliance on the Lyons memo. And recently the Central District of California actually had the opportunity to hear the same argument, and they declined to order the relief that plaintiffs are asking for here. And so we would ask the Court to -- if the Court is looking towards remedies, we would ask the Court to consider what the *Vasquez Perdomo* case was and not enjoin reliance on the Lyons

memo. Some of the reasoning there was that --

THE COURT: Now, is this adequately described in your -- in your response?

MS. GAROUSI: Your Honor, the -- the preliminary injunction order was sealed up until Wednesday of last week, so the briefing came in -- we did not have access to the briefing until --

THE COURT: So at one point -- I mean, I didn't give the petitioners an opportunity to argue any of this, so I need to make sure that I have -- I want to hear -- if there's new information about this, I think you need to brief it, because if it's not in either one of your -- your briefs, motions, or responses, then it's going to be important for me to review what it is you'd like me to consider. So let's set that matter aside for a moment and finish up the remaining closing arguments, and then we can talk about whether additional supplemental briefing on the Lyons memo is necessary.

MS. GAROUSI: Your Honor, there were some other points with the *Vasquez Perdomo* case that I'd also like to make with respect to this. Would you like me to hold that for supplemental briefing as well?

THE COURT: Yes.

MS. GAROUSI: Okay. Then we'll rely on the papers for everything else.

THE COURT: All right. Ms. Cunnings.

PETITIONER'S REBUTTAL ARGUMENT

MS. CUNNINGS: Just a few points, Your Honor. So plaintiffs are seeking a tailored order to remedy violations that are apparent from our evidence and defendants' evidence and concessions here. The *Ramirez Ovando* decision supports the relief that we're seeking. The Court declined to rule broadly and invalidate all field warrants, but required defendants to account for and furnish all documents related to arrests even if they'd been made pursuant to field warrants, and -- and issued relief similar to that that we're requesting.

THE COURT: And which district was this in?

MS. CUNNINGS: This was in Colorado.

Similarly, *Castañon Nava* also supports our position. In that case, there was also no discussion or evidence about active concealment of documentation as there is here, but even so, the Seventh Circuit only stayed a part of the relief that was issued to the class under sectional grounds, and the relief in that case was release as a remedy for warrantless arrests.

Here, we're talking about production of documents to show compliance with a court order, which is an entirely different situation.

A point of clarification on Ms. Qureshi's data. Her declaration at paragraph 9 notes that the

custodial/non-custodial designation comes from ICE's own dataset.

THE COURT: From whose own dataset?

MS. CUNNINGS: ICE. So it's not information that is changed by her. I'd also just point out briefly that they did not cross her, which would have given us a better understanding.

THE COURT: They did not what?

MS. CUNNINGS: They didn't cross-examine her. So if she were here, we could examine her about this discrepancy -- supposed discrepancy, but they declined to do so on Friday.

THE COURT: Do you want to comment on whether the review of warrant-based arrests is outside of the scope of this litigation and so, therefore, inappropriate to consider in the context of the enforcement of this preliminary injunction order?

MS. CUNNINGS: I don't believe so, Your Honor. I think the evidence that's been presented shows that that's essential to showing compliance. If it's not reviewed, defendants have a blank check to avoid compliance with the order.

Again, the relief that's requested is reporting, increased production of documents that are in defendants' -- they're created as a natural part of immigration enforcement actions that are taking place, so there aren't concerns about

infringing upon their authority to arrest or to exercise their enforcement actions. It's simply a matter of ensuring compliance with the injunction.

THE COURT: Ms. Garousi made some comments about how the NTA requirements in 236 may not be on point with what's required or considered in this case. I want to make sure I'm following the argument, so I want to give you an opportunity to clarify my understanding of that.

MS. CUNNINGS: I think the statute is entirely clear and the regulation, so I don't think there's a way they can say those warrants are valid when issued before the NTA. The cases that they cite are talking about specific relief that was ordered in terms of the relief of release, which is a rather significant remedy. That's not the relief that's at issue in this case.

The relief is an injunction requiring them to follow the law instead of their unlawful policy, and it's entirely within the Court's discretion to look closely at what's happening, especially when there's evidence that the existing production contain serious inaccuracies and concerns about accurate -- about data.

THE COURT: And the Southern District of California's unsealing of --

MS. CUNNINGS: I believe it's the Central District.

THE COURT: Central District.

MS. CUNNINGS: And the -- my understanding, and I'm happy to revisit this, but is that they also enjoined reliance on the Lyons memo, but on a different basis upon that which we argued in this case, and that's been decided by two other district courts in *Escobar Molina* and *Ramirez Ovando*. The *Vasquez Perdomo* decision concludes that the Lyons conflates immigration violation with escape risk, which we also think it does. That's not precise argument we've raised here, but that would be another reason to enjoin reliance on the Lyons memo.

THE COURT: Any need for briefing on this case and its unsealing to help me understand the argument -- the position and arguments here?

MS. CUNNINGS: I don't think so, given the urgency of the matter and the -- the evidence that's before --

THE COURT: Given the urgency of the matter here?

MS. CUNNINGS: Yes.

THE COURT: Okay.

MS. CUNNINGS: But we're always happy to provide more writing if that's helpful to Your Honor.

THE COURT: And are you -- I mean, in light of this -- I mean, this statement about urgency, do you think it's necessary, then, to develop additional testimony with respect to D.C.'s involvement in the H-D-G-H case?

MS. CUNNINGS: We don't believe it's necessary, given the record that's already before you; however, we would again,

of course, defer to the Court if uncovering that information would further aid in resolving the questions before you.

THE COURT: Okay. All right. Anything else, Ms. Cunnings?

MS. CUNNINGS: We just have some proposed factual findings, if I might share those with you, and a reminder on the requested relief if that would be helpful.

THE COURT: And are the -- is the requested relief that you're asking already articulated in your briefing or is it something else?

MS. CUNNINGS: It's evolved slightly only since the course of Friday just with what's been presented.

THE COURT: All right. Go ahead.

MS. CUNNINGS: Okay. So we would ask the Court to find that defendants are routinely violating the injunction by not making a lawful finding of escape risk before performing a warrantless arrest; defendants are routinely violating the injunction by improperly finding escape risk through reliance on the Lyons memo; defendants are routinely failing to document the facts and circumstances giving rise to warrantless arrests, including by making that articulation before the arrest and distinguishing what happens post-arrest, as required by the preliminary injunction; and defendants are underreporting warrantless arrests and withholding information necessary to determine whether an arrest was subject to a

lawful warrant, and fabricating forms after the fact of an arrest to thwart the injunction.

We, therefore, would ask for the following relief: prohibiting reliance an the Lyons memo, because it violates the terms of the injunction; instructing that defendants have a continuing obligation to instruct on the terms of the preliminary injunction order to all officers, employees, and contractors who have responsibility related to its content; requiring defendants to reproduce all previous compliance reporting without redaction; and produce for every reporting period all documents related to the arrest, including Forms I-200, I-213, all documents served on the arrested individual, the evidence underlying the I-200, and body camera footage of the arrest, or an affirmative statement under oath that no additional documentation or body camera footage exists; and produce all ongoing compliance reporting in the same manner; and finally, clarifying that defendants must produce the same documentation just described within seven days when plaintiffs make an individual request for information under the terms of the injunction regardless of defendants' position on whether or not the arrest was warrantless.

Thank you.

THE COURT: All right. I'll ask that you submit that in written form to make sure that I have it properly documented within the next seven days.

MS. CUNNINGS: Certainly.

THE COURT: All right. Anything else before we conclude here? Ms. Garousi.

MS. GAROUSI: Is the Court considering -- I guess, what is the Court's inclination with respect to supplemental briefing with respect to the *Vasquez Perdomo* decision?

THE COURT: Well, seeing that the petitioners don't deem it necessary, do you?

MS. GAROUSI: Well, I'd just like to make my record either way, if that's okay with the Court.

THE COURT: I don't know what that means.

MS. GAROUSI: Well, I stopped my arguments because I understood --

THE COURT: You're right. You're right. I did -- I did -- I did ask you to delay discussion. In light of that, you can file supplemental briefing in seven days time.

MS. GAROUSI: Thank you, Your Honor.

THE COURT: If you'd like to respond or simultaneous briefing, Ms. Cunnings?

MS. CUNNINGS: Just a moment. We can do it simultaneously.

THE COURT: Okay. So in seven days. My minute order today will reflect those timelines, too.

In the meantime, this matter is under advisement and I'll start working on putting my opinion and order together.

Thank you all. We are adjourned.

MS. GAROUSI: Thank you.

(Proceedings adjourned at 11:52 a.m.)

C E R T I F I C A T E

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.

DATED this 25th day of September 2026.

/s/ Kellie M. Humiston

Kellie M. Humiston, RMR, CRR
Official Court Reporter
Certificates Expire: 9/2027

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