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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

Eugene Division

M-J-M-A-; VICTOR CRUZ GAMEZ, on behalf of
a class of all similarly situated individuals,
Plaintiffs,

v.

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

Case No. 6:25-cv-02011-MTK

Agency No. 

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

Preliminary Injunction Hearing:
February 4, 2026 at 9:30 AM

PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

INTRODUCTION

The Defendants' opposition to a preliminary injunction requiring the DHS to obey the law on warrantless arrests bears no reality to the zone of lawlessness that they have intentionally created in Oregon's streets, neighborhoods and school yards. In court, they argue laws and legal doctrines, but on the streets of Oregon, it is the opposite: brute, ugly, dangerous force.¹

The through-line in this case—and the modest injunction that the Plaintiffs seek—is the simple proposition that the Defendants—government agents who took oaths of loyalty to uphold the U.S. Constitution and the Law of the Land—do not stand above or outside of the law. The Defendants have no prerogative to take or leave the law as they wish. The law includes the Fourth Amendment, the Fifth Amendment, and all the provisions of the Immigration and Nationality Act and its implementing regulations. “Law alone saves a society from being rent by internecine strife or ruled by mere brute power however disguised.” *Cooper v Aaron*, 358 U.S. 1, 23 (1958) (Frankfurter, J., concurring).

¹ After the public execution of Alex Pretti by DHS agents during a similarly, expanded DHS enforcement operation in Minnesota, DHS indicated that they intend to amplify their violence in Oregon to match that of Minnesota. See Jonathan Allen, et al, *Inside the White House in the chaotic hours after Alex Pretti's shooting*, NBC News (Jan. 28, 2026), <https://perma.cc/F8Q4-WHTQ> (quoting a former White House official who stated “Minnesota is not going to be the last state that ICE goes to. Oregon was next. We were not done. We need to keep going.”). Like in Oregon, DHS created a lawless zone in Minnesota. See *Juan T.R. v. Noem*, 0:26-cv-00107-PJS-DLM, Dkt. 10 (D. Minn. Jan. 28, 2026) (“Attached to this order is an appendix that identifies 96 court orders that ICE has violated in 74 cases... This list should give pause to anyone—no matter his or her political beliefs—who cares about the rule of law. ICE has likely violated more court orders in January 2026 than some federal agencies have violated in their entire existence... ICE is not a law unto itself.”)

The sole purpose of the Executive Branch of the U.S. Government is to “take Care that the Laws be faithfully executed[.]” U.S. Const. art. II, § 3. Under these laws, civil immigration warrantless arrests are the exceptions to the rule and have strict protocols and requirements. Under these laws, the Defendants must obtain an administrative warrant to conduct an arrest or must specifically document their reasoning when they do not.

Every one of the Defendants’ legal arguments opposing the injunction is meritless. The Defendants’ actions manifest their policy of “Arrest First, Justify Later”—a blatantly unlawful practice. The Court should grant the preliminary injunction.

DEFENDANTS’ POSITION

Defendants oppose the entry of a preliminary injunction not because the Plaintiffs are wrong that such a policy is unlawful, but rather because they dispute the existence of a policy or practice of “Arrest First, Justify Later” in Oregon. Defendants assert that Plaintiffs M-J-M-A- and Mr. Cruz lack standing because their “own subjective fear of future arrest” is insufficiently imminent to create an injury-in-fact and because there is no such policy. ECF 70 at 7-8. They contend that the statements of high-ranking DHS officials are not relevant because they did not mention Oregon; that decisions in two related warrantless arrest cases, *Escobar Molina v. Dep’t of Homeland Sec.* and *Ramirez Ovando v. Noem*, are distinguishable on the facts; and that the sworn declarations filed across habeas cases in the District of Oregon should be discounted because they are hearsay. *Id.* at 9-10. Defendants contend that because there is no Arrest First, Justify Later policy, there is no final agency action that can be reviewed. *Id.* at 19. They assert that M-J-M-A- was lawfully arrested without a warrant. *Id.* at 21-25. Finally, they contend that the motion for a preliminary injunction should be denied because provisional certification of the class is

unwarranted and the Plaintiffs delayed in bringing their motion such that there is no irreparable harm for the court to protect against. *Id.* at 19-24.

ARGUMENT

Defendants' arguments in opposition fail. Their attack on standing incorrectly applies governing law, and overlooks and mischaracterizes voluminous evidence in the record. Their argument against final agency action is unpersuasive legally and untethered from the facts; it has been rejected by several courts. Their remaining arguments are meritless.

I. Defendants' Standing Arguments Are Meritless.

Defendants attack Plaintiffs' standing in three ways. First, they rely on *City of Los Angeles v. Lyons*, 461 U.S. 95 (1983) and *Clapper v. Amnesty Int'l USA*, 568 U.S. 398 (2013) as authority that the Plaintiffs' fear of harm is "not reality[.]" ECF 70 at 6-8. Second, they argue that there is insufficient evidence to demonstrate an unlawful enforcement policy. ECF 70 at 8-10. Third, they assert that M-J-M-A-'s own arrest was validly made without a warrant, ECF 70 at 15-19, and is therefore not evidence of the policy. Defendants are wrong on all counts.

A. Plaintiffs M-J-M-A- and Mr. Cruz Gamez Have Suffered An Injury-in-Fact.

Defendants' interpretation of *Lyons* and *Clapper* is unpersuasive. Plaintiffs' fear of harm under the Arrest First, Justify Later policy is an injury-in-fact because they are "realistically threatened by a repetition of [their] experience," *Lyons*, 461 U.S. at 109, under the Arrest First, Justify Later policy. The harm feared by Plaintiffs is sufficiently imminent to satisfy the injury-in-fact prong of standing.

Lyons does not support the Defendants' argument. In *Lyons*, the Supreme Court found that a plaintiff previously subjected to an unlawful chokehold by the Los Angeles police lacked

standing to seek forward-looking injunctive relief regarding the policy of chokeholds. 416 U.S. at 109. The problem for the *Lyons* plaintiff was that the Supreme Court had refused to assume the plaintiff would again commit a traffic infraction prompting a police-stop in which a chokehold was likely to be used. *Id.* at 105. But this case is not like *Lyons*. Here, it is impossible for Plaintiffs to avoid the sweep of the Defendants' policy or practice because the DHS targets people for warrantless arrests when they are engaging in the everyday acts of life: going to work, coming home from work, driving on the highway, or going to the grocery store. ECF 61 at 20.²

The plaintiff in *Lyons* also did not establish a policy and practice that ordered or authorized police officers to perform illegal chokeholds. *Id.* at 106. Here, Plaintiffs have shown a substantial likelihood that they are far more likely to have future encounters with immigration officers. Plaintiffs have proffered evidence suggesting not only that they are among the group of individuals targeted by Defendants' agents, but also that they cannot avoid run-ins with these agents lest they avoid "going about ... daily life." *See Melendres v. Arpaio*, 695 F.3d 990, 998 (9th Cir. 2012) (finding plaintiffs had standing to challenge a policy and practice of racially discriminatory traffic stops targeting Latinos, even where the likelihood of any one individual being stopped was not "high").

Clapper offers no support to Defendants, either. In *Clapper*, the Supreme Court found that the plaintiffs lacked standing because their feared injury of government surveillance relied on a

² This case is far more analogous to *LaDuke v. Nelson*, 762 F.2d 1618 (9th Cir. 1985), in which the Ninth Circuit distinguished *Lyons* and found a group of migrant workers had standing to challenge immigration raids conducted without reasonable suspicion, probable cause, or a warrant. In *LaDuke*, the court explicitly found that, as is also the case here, "defendants engaged in a standard practice of officially sanctioned officer behavior," as compared to *Lyons*, where there was no written policy of inflicting unlawful chokeholds and the record was devoid of evidence showing a pattern and practice of the same. 762 F.2d at 1324. Moreover, *LaDuke* noted that concerns about overreach of the federal courts into state law enforcement are not present in a challenge to the executive branch's activities, where a state court cannot interfere. *Id.* at 1325.

“speculative chain of possibilities.” 568 U.S. at 414. The Supreme Court held that because the plaintiffs there had failed to offer *any* evidence that they had been harmed, or any evidence that the practice they were seeking to enjoin would even target them for harm, they could not satisfy the “imminence” requirement for injury-in-fact. *Id.* at 411-412. This case is not like *Clapper*. Here, Plaintiffs have presented substantial evidence of their own harm caused by the DHS enforcement policy and that they are targets fairly described by the policy. ECF 61 at 17-20.

B. The Record Contains Ample Evidence of the Arrest First, Justify Later Policy

Defendants contend that the evidentiary record here is insufficient to prove the existence of the Arrest First, Justify Later policy. ECF 70 at 8. There are two parts to their argument. First, they argue that the record here “is markedly different than either of” the records in *Escobar Molina* and *Ramirez Ovando*, such that findings in those cases are not relevant for this case. ECF 70 at 9. Second, they argue that the declarations filed in related habeas cases in the District of Oregon are not “admissions or findings” of warrantless arrests. ECF 70 at 10. Their argument is unpersuasive for several reasons.

Defendants fail to actual grapple with the voluminous record in this case. The record as it stands today consists of testimony from a two-day evidentiary hearing, numerous exhibits, dozens of public statements made by the Defendants, declarations from the Plaintiffs, declarations from others impacted by the warrantless arrest policy, and numerous party-opponent admissions in court. ECF 61 at 5-13 (detailing and describing the voluminous evidence of the Arrest First, Justify Later policy).³ Plaintiffs have amply satisfied their burden at this stage of the proceedings to show

³ Notably, the Defendants do not the dispute the accuracy or authenticity of any of this evidence and therefore they have waived those arguments. They merely claim that it is insufficient. ECF 70 at 10. Defendants never say that there is *not* an Arrest First, Justify Later policy in effect in Oregon.

that there is a substantial likelihood that Defendants have implemented the Arrest First, Justify Later policy. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 32 (2008) (citing *Amoco Production Co.*, 480 U.S., at 546, n. 12).⁴

The Defendants' attempts to distinguish *Escobar Molina* and *Ramirez Ovando* mischaracterize the record and are misplaced. Defendants have mischaracterized the Plaintiffs' position: Plaintiffs have not asked and do not ask the Court here to adopt the factual findings made in *Escobar Molina* and *Ramirez Ovando*. *Contra* ECF 70 at 8-9. Plaintiffs offered voluminous evidence of public statements made by the Defendants which can and should be weighed by the Court. ECF 64 (Declaration of Jordan Cunnings with numerous exhibits). This evidence demonstrates by a substantial likelihood that the Arrest First, Justify Later policy is in effect in Oregon. *Id.* Identical and similar evidence was considered by the *Escobar Molina* and *Ramirez Ovando* courts which is clearly relevant to the Court's consideration of the evidence presented here. ECF 61 at 18.

Notably, whereas in *Escobar Molina* and *Ramirez Ovando* the plaintiffs submitted declarations from impacted parties to prove that warrantless arrests were routinely being made by DHS, here in this case, DHS has already admitted in testimony that they routinely make warrantless arrests in Oregon. ECF 61 at 9-10. Likewise, there is publicly available government data submitted in this case, not available in *Escobar Molina* or *Ramirez Ovando*, as evidence indicating the expansive nature of the enforcement operations in Oregon. ECF 64, Ex. 10.

⁴ During the December evidentiary hearing, Defendants confirmed that via Operation Black Rose (and its various permutations) they have set up a dragnet of immigration enforcement across Oregon where they locate areas that are "target rich" with individuals that have an "immigration nexus," and where the agents have to make arrests to achieve quotas with a focus on "collaterals." ECF 55, at 124-165, 203-208.

The declarations filed in the numerous cases in this District may be weighed by the Court in concluding that there is a substantial likelihood that DHS has a policy of Arrest First, Justify Later in Oregon. The Defendants' evidentiary objections are misplaced because the references by Plaintiffs are admissible for purposes of the preliminary injunction. *Herb Reed Enterprises, LLC v. Florida Entertainment Management, Inc.*, 736 F.3d 1239, 1250, n5 (9th Cir. 2013) (“Due to the urgency of obtaining a preliminary injunction at a point when there has been limited factual development, the rules of evidence do not apply strictly to preliminary injunction proceedings.”).

Finally, as described in more detail below, Plaintiff M-J-M-A-'s arrest is evidence of DHS's pattern and practice of unlawful warrantless arrests in Oregon. Accordingly, the Plaintiffs have satisfied their burden to prove the substantial likelihood of the Arrest First, Justify Later policy or practice in Oregon.

C. M-J-M-A-'s Warrantless Arrest is Evidence of the Arrest First, Justify Later Policy.

Defendants' warrantless arrest of M-J-M-A- is evidence of their policy or practice of Arrest First, Justify Later. On October 30, 2025, DHS sent out roving bands of arrest teams including “Arrest Team 7” with the intent to arrest so-called “collaterals.” See Pet Ex. 110 (DHS form providing a check box to indicate if an arrest is a “collateral”). The Defendants concede that M-J-M-A- was arrested without a warrant. See, e.g., ECF 55, at 204. In their contemporaneously-created, official forms documenting the agency action of the warrantless arrest in M-J-M-A-'s matter, Defendants reasoned that:

“Subject was encountered by United States Immigration and Customs Enforcement, Enforcement and Removal Operations on October 30, 2025, in Woodburn, Oregon at 0535 as part of Operation Fortifying the Border. ICE officers walked up to the individual with clear markings and verbally identified themselves and did a consensual encounter. The subject proceeded to comply with commands but would

not give her ID or name. Subject was advised she was under arrest for immigration violations. After being fingerprinted subject was found to be a visa overstay.”

See Pet. Ex. 109 at 2. Their official reasoning goes further and explains that she had no criminal history. *Id.* It is *this* reasoning that the DHS must defend. *Pinto v. Massanari*, 249 F.3d 840, 847 (9th Cir. 2001) (“Although we can affirm the judgment of a district court on any ground supported by the record, we cannot affirm the decision of an agency on a ground that the agency did not invoke in making its decision.”).

On its face, the agency reasoning fails to satisfy the statute, regulations, and Broadcast Policy.⁵ According to the agency, the DHS arrested M-J-M-A- for an immigration violation *before* they knew her identity, *before* they knew her alienage, and *before* they knew her immigration status. Their actions here with M-J-M-A- prove that she, too, was a victim of their “Arrest First, Justify Later” policy. They arrested her first *before* they had any reason to and then justified it later. Nowhere in the official agency documentation is there an indication that the arrest was made without a warrant. In fact, the agency admitted to producing a warrant after the fact. ECF 57 at 304-309.

The Defendants’ post-hoc rationalization is barred by law, inconsistent with the facts and implausible. In their opposition, Defendants’ attorneys offer a post-hoc rationalization. ECF 70 at 19. They argue that “[n]ot only did officers have probable cause that MJMA was unlawfully present in the United States, but there several factors that indicated she was likely to escape before a warrant could be obtained.” *Id.* The facts their lawyers point to as justification for the agency’s

⁵ During the evidentiary hearing and implied in (but not specified) their opposition, Defendants have asserted the “so-called collective knowledge doctrine” as a key element in the theory of their defense for the collateral arrest of M-J-M-A-. ECF 50 at 118-119. But fatal to their theory is that the collective knowledge doctrine does not apply to civil immigration arrests. *Lopez-Flores v. Douglas County*, No. 6:19-cv-00904-AA, 2020 WL 2820143, at *6 (D. Or. May 30, 2020).

arrest of M-J-M-A- without a warrant are: (1) “MJMA and the passengers in the van were non-compliant with the officers’ instructions;” (2) “MJMA specifically urged the other passengers to be noncompliant and to refuse to answer the officers’ questions;” (3) other individuals “attempted to flee from the officers, indicating there could have been a concerted effort to provide an opportunity for others to escape;” (4) “MJMA has no apparent community ties as she has only been in the United States since January 19, 2025;” and (5) because she did not identify herself, an “officer would not have known where to find her again if they had released her.” *Id.* at 19.

Such post-hoc rationalization is barred by law. “It is well established that an agency’s action must be upheld, if at all, on the basis articulated by the agency itself.” *See Motor Vehicle Mfrs. Ass’n of U.S., Inc., v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 50 (1983); *accord SEC v. Chenery Corp.*, 318 U.S. 80, 87 (1943) (“The grounds upon which an administrative order must be judged are those upon which the record discloses that its action was based.”); *Dep’t of Homeland Sec. v. Regents of the Univ. of California*, 140 S. Ct. 1891, 1907–08 (2020) (“It is a ‘foundational principle of administrative law’ that judicial review of agency action is limited to ‘the grounds that the agency invoked when it took the action.’”) (quoting *Michigan v. E.P.A.*, 576 U.S. 743, 758 (2015)). Indeed, “[p]ost hoc explanations of agency action by . . . counsel cannot substitute for the agency’s own articulation of the basis for its decision.” *Arrington v. Daniels*, 516 F.3d 1106, 1113 (9th Cir. 2008), *citing Fed. Power Comm’n v. Texaco, Inc.*, 417 U.S. 380, 397 (1974).

Their post-hoc rationalization is inconsistent with the facts. First, in the Defendants’ own words, M-J-M-A- “proceeded to comply with commands but would not give her ID or name.” Pet. Ex. 109. Moreover, nothing in the agency’s reasoning refers to any other passenger being non-compliant as a reason to arrest M-J-M-A- without a warrant; indeed, it would be more than passing strange that the actions of another person could give cause to arrest M-J-M-A-. Second, the

agency's reasoning does not suggest that M-J-M-A-'s invocation of her Fifth Amendment right to remain silent was a reason to consider her as non-compliant; as documented by the agency, she "proceeded to comply with commands[.]" Pet. Ex. 109. Nor is there any mention of her advising others in the van about their Fifth Amendment rights as being a cause for making a warrantless arrest. *Cf.* Pet. Ex. 109. Third, again, there is no mention in the agency's reasoning of others escaping and in fact there is no suggestion anywhere that M-J-M-A- attempted to escape. *Id.* Fourth, M-J-M-A- has meaningful community ties and the Defendants' post-hoc rationalization is simply factually wrong. *See* ECF 31 (describing family ties, residence, work history in Oregon). The Defendants' final post-hoc reason—M-J-M-A-'s lawful refusal to identify herself meant she needed to be arrested without a warrant—is logically inconsistent with the Defendants' own theory of their case. According to their official agency reasoning, she was placed "under arrest for immigration violations" and then, later, "[a]fter being fingerprinted subject was found to be a visa overstay." Pet. Ex. 109. According to the agency, the DHS arrested M-J-M-A- for an immigration violation *before* they knew her identity, *before* they knew her alienage, and *before* they knew her immigration status. Their actions here with M-J-M-A- prove that she, too, was a victim of their "Arrest First, Justify Later" policy. They arrested *before* they had any reason to and then justified it later.⁶

⁶ The particular facts surrounding M-J-M-A's arrest also demonstrate that the DHS had no reasonable suspicion for any stop or probable cause for any arrest. *See, e.g.,* ECF 55 at 204 (arresting agent stating that he did not have a warrant, did not know the identity of the petitioner, did not know the identity of any of the passengers in the van, and did not have any targets they were pursuing inside the van); Pet. Ex. 109 (M-J-M-A- arrested before identity, alienage, or immigration status were known). The Defendants argue otherwise, ECF 70 at 17. But the Court does not have to resolve the reasonable suspicion or probable cause questions to grant the preliminary injunction for the provisional Unassessed Escape Risk class, which is based on the failure to have probable cause of an individual's flight risk to make the warrantless arrest.

Their post-hoc rationalization is inconsistent with the law. The Broadcast Policy requires “an ICE Officer [to] document the facts and circumstances surrounding that warrantless arrest in the narrative section of the alien’s I-213 as soon as practicable.” *See* Settlement Agreement, *Castañon Nava et al. v. Dep’t of Homeland Sec.*, No. 18-cv-3757, ECF 155-1 at *19 (N.D. Ill. Feb. 7, 2022). Officers must record a specific set of details, including if the arrest was made without a warrant. *Id.* For vehicle stops, the I-213 must include “the specific, articulable facts that formed the basis for the ICE Officer’s reasonable suspicion that an alien in the vehicle stopped was presented within the United States in violation of U.S. immigration law.” *Id.* at *20. The agency failed to comply with the Broadcast Policy when arresting M-J-M-A- because these details are omitted from the I-213. *Cf.* Pet. Ex. 109 (I-213) with ECF 64, Pet. Ex. 17 (Broadcast Policy).

Their post-hoc rationalization is implausible. Not a single agent who testified at the December evidentiary hearing — C.M., J.B., A.W., D.R. — none of them—mentioned *anything* about trafficking or criminal activity during the stop. None of their contemporaneously-created, official agency records that document the agency action of the arrest—the official government reports of the arrest—mention a word about criminal activity or trafficking. *Compare* Pet Ex. 109 with ECF 70 at 18. In fact, the official agency reasoning is that M-J-M-A- had no criminal record. Pet. Ex. 109. The text threads among the agents mentioned nothing about criminal activity or trafficking. Pet. Ex. 102-106. The spoken words of the agents heard in the body-worn camera footage indicates that M-J-M-A- was pulled from the van because, in the words of agent C.M. “she wants to lawyer up” and “she doesn’t want to identify herself[.]” Pet. Ex. 101. No one mentions anything about criminal activity or trafficking. *Compare* Pet. Ex. 101 with ECF 70 at 18. The post-hoc rationalization is thus implausible. Importantly, judges, like detectives, can take note when the

dog does not bark. *Chisom v. Roemer*, 501 U.S. 380, 396 n.23 (1991) (citing A. Doyle, Silver Blaze).

II. Defendants' Final Agency Action Argument Is Meritless.

Defendants argue that Plaintiffs have failed to identify “final agency action” that is reviewable under the Administrative Procedures Act (APA). ECF 70 at 10-21. They are wrong, as at least three courts throughout the United States have found that Defendants have the very same warrantless arrest policy alleged here and that the policy is final agency action. *See Escobar Molina*, 2025 WL 3465518, at *22-23 (D.D.C. Dec. 2, 2025) (concluding that warrantless arrest policy was final agency action); *Ramirez-Ovando*, 2025 WL 3293467 *19-20 (D. Co. Nov. 25, 2025) (same); *Nava v. Dep't Homeland Security*, 435 F.Supp.3d 880, 902-03 (N.D. Ill. 2020) (same).

To constitute “final agency action” for the purposes of the APA, a policy must reflect a final decision and be an action “by which rights or obligations have been determined, or from which legal consequences will flow.” *Corner Post, Inc. v. Board of Governors of Federal Reserve System*, 603 U.S. 799, 808 (2024). Finality must be interpreted “pragmatic[ally]”, *FTC v. Standard Oil Co. of Cal.*, 449 U.S. 232, 239 (1980); writing is not required because otherwise “an agency [could] shield its decisions from judicial review simply by refusing” to record them, *Grand Canyon Trust v. Public Service Co. of New Mexico*, 283 F. Supp. 2d 1249, 1252 (D.N.M. 2003).

Here, “finding that defendants have implemented [the alleged] policy and practice does not require a far leap of logic: defendants *themselves* have repeatedly emphasized an abandonment of the probable cause standard.” *Escobar Molina*, 2025 WL 3465518 at *23. Chief Border Patrol Agent Gregory Bovino has stated as such perhaps most clearly, telling the press “We need reasonable suspicion to make an immigration arrest You notice I did not say probable cause,

nor did I say I need a warrant. We need reasonable suspicion of illegal alienage that's well-grounded within the United States immigration law.” *Id.* DHS press releases have said the same, *see id.* (describing DHS press release that described officer training to determine removability but not mentioning flight risk), and both the agency’s spokesperson, Tricia McLaughlin, and its social media accounts have claimed that only reasonable suspicion is required for immigration arrests, *see id.* More recently, sources revealed a secret DHS memo that purports to allow agents to enter someone’s *home* without a warrant in order to effectuate an immigration arrest. Whistleblower Aid, *Secretive DHS memo authorizes ICE to illegally enter homes without a warrant in violation of the Fourth Amendment*, Jan. 7, 2026, <https://www.documentcloud.org/documents/26499371-dhs-ice-memo-1-21-26/>. This, and the voluminous evidence submitted by Plaintiffs attesting to the broad implementation of such a policy in Oregon, are sufficient to show the consummation of the agency’s decision-making on the issue. *See* Declaration of Jordan Cummings, ECF 64 (submitting 37 articles describing ICE warrantless arrests in Oregon and the states of emergency declared by several Oregon localities in response thereto).⁷

Finally, it is abundantly clear that Defendants’ warrantless arrest policy is one from which “rights or obligations have been determined, or from which legal consequences will flow.” *Corner Post, Inc.*, 603 U.S. at 808. After being subjected to a warrantless arrest, a person is deprived of their liberty, held in immigration detention, and may ultimately be deported, absent intervention

⁷ Defendants argue that Plaintiffs have not shown that they have a policy of requiring warrantless arrests to be made without consideration of the statutory factors. ECF 70 at 21. On the contrary, the voluminous evidence submitted shows that Defendants policy is to actively ignore facts that show a target is not removable (because they have deferred action, for example, or other lawful status in the United States) and to not inquire about or consider flight risk factors under any circumstances. *See, e.g.*, Ex. 2 to Cummings Declaration (describing arrest of U.S. citizen in Oregon); Ex. 14 to Cummings Declaration (describing arrest of lawful permanent resident in Oregon); Ex. 15 to Cummings Declaration (describing arrest of teenage U.S. citizen in Oregon).

of the courts. The policy is final and it has a meaningful effect on the lives of Plaintiffs here; the agency action may therefore be challenged under the APA.

III. Plaintiffs Meet the Other Preliminary Injunction Factors

Plaintiffs have shown that they have standing and that they challenge final agency action under the Administrative Procedures Act. And they also demonstrate that they meet the factors required for preliminary injunctive relief.

A. Plaintiffs Have Established a Clear Likelihood of Irreparable Harm

Plaintiffs' supposed delay in seeking a preliminary injunction, *see* ECF 70 at 27, does not undercut the fact that they will suffer irreparable harm absent an injunction.⁸ To support their argument, Defendants rely predominantly on a series of copyright infringement cases in which some plaintiffs filed for injunctive relief years after the alleged infringement occurred. *See Lydo Enters., Inc. v. City of Las Vegas*, 745 F.2d 1211, 1213 (9th Cir. 1984) (plaintiff delayed five years before taking any action). Notably, in each of the cases Defendants cite, the court analyzed irreparable harm through the copyright lens and considered other factors beyond delay in filing, including that the harms alleged were predominantly monetary in nature and thus recoverable later in the litigation through damages, to deny preliminary injunctive relief. *See Garcia v. Google, Inc.*, 786 F.3d 733, 744 (9th Cir. 2015) ("[Petitioner] seeks a preliminary injunction under copyright law, not privacy, fraud, false light or any other tort-based cause of action. Hence, [Petitioner's] harm must stem from copyright- namely, harm to her legal interest *as an author*.") (citing *Salinger v. Colting*, 607 F.3d 68, 81 & n.9 (2d Cir. 2010) (emphasis in original); *Lydo Enters., Inc.* 245 F.2d

⁸ Plaintiffs have proceeded with due deliberate diligence in prosecuting this case, including bringing their motion for a preliminary injunction as soon as practical.

at 1213 (immediate closure of plaintiffs' business constitutes harm that is economic in nature); *Oakland Tribune, Inc. v. Chronicle Publ'g Co.*, 762 F.2d 1374, 1376 (9th Cir. 1985) (plaintiff's initial injury claim involved purely monetary harm).

This is not a copyright infringement case and the harms Plaintiffs fear in this case – which include unlawful arrest and unlawful deprivation of liberty – are certainly not monetary in nature. The irreparable harms that stem from unlawful arrest and detention are significant and extend beyond the arrest and detention themselves. They do not simply disappear when the unlawful detention ends, and M-J-M-A- and Mr. Cruz continue to suffer significant harm as a result of their unlawful detainment. Cruz Decl. ¶ 19 (“I have a lot of fear that ICE will arrest and detain me again...I have started seeing a therapist to help me manage the fear and anxiety this event has caused me.”); M-J-M-A- Decl. ¶ 21 (“I have now returned home but I am still afraid that ICE will come and arrest me again.”). Similarly, individuals like Plaintiffs are living in fear and afraid to engage in daily life as a result of Defendants’ Arrest First, Justify Later policy.

The harm to Plaintiffs and the proposed class is not speculative and is certainly not based solely on their subjective fear that Defendants will re-detain them. *See* ECF 70 at 27. That M-J-M-A- and Mr. Cruz have already been swept up in Defendants’ unlawful dragnet of immigration enforcement in no way diminishes their likelihood of suffering future irreparable harm given Defendants’ continued pattern and practice of making unlawful arrests in their communities. Given Defendants’ continued conduct, the risk that Defendants will again target M-J-M-A- and Mr. Cruz is clearly more than speculative. This is especially true given Defendants’ testimony that they target entire areas for enforcement, areas where M-J-M-A- lives and works, *see* ECF 55 at 213 (describing October 30 enforcement target as the Woodburn area), ECF 64, Ex. 25 (Woodburn declaring state of emergency due to federal immigration crackdown), and areas where Mr. Cruz

lives and works, Cruz Decl. ¶ 20 (describing continued immigration enforcement in his community of Hillsboro), ECF 64, Ex. 22 (Hillsboro City Counsel Resolution declaring state of emergency due to federal immigration enforcement). Moreover, what has unfolded in Minnesota since the filing of Plaintiffs' motion for preliminary injunctive relief cannot be ignored.⁹ Indeed, it appears Oregon is the next target in Defendants' ramp up of immigration enforcement.¹⁰ Against this backdrop, Plaintiffs have established a clear likelihood of irreparable harm.

B. The Balance of Equities Tip Sharply in Plaintiffs' Favor

The balance of equities and the public interest clearly favor Plaintiffs. Defendants' assertion that the government's compelling interest in immigration enforcement outweighs Plaintiffs' interest in preventing violations of constitutional rights is without merit. *See* ECF 70 at 28. Defendants have no legitimate interest in exercising their immigration enforcement authorities in violation of the Constitution or federal law. *See United States v. U.S. Coin & Currency*, 401 U.S. 715, 726 (1971) (Brennan, J., concurring); *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013); *see also Betschart v. Garret*, 700 F. Supp. 3d 965, 984 ("Generally, public interest concerns are implicated when a constitutional right is violated, because all citizens have a stake in upholding the Constitution.") (quoting *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2018)). Defendants' argument that the public interest is "served by allowing ICE to continue to conduct its operations without preliminary intervention" misses the mark entirely. *See* ECF 70 at 28. To the contrary, Plaintiffs seek to enjoin Defendants from continuing to violate constitutional and federal

⁹ Katie Angell, *2025-26 Minnesota ICE Deployment*, Britannica (Jan. 29, 2026), <https://www.britannica.com/event/2025-26-Minnesota-ICE-Deployment> (last visited Jan. 29, 2026)

¹⁰ Jonathan Allen, et al., *Inside the White House in the chaotic hours after Alex Pretti's shooting*, NBC News (Jan. 28, 2026), <https://perma.cc/F8Q4-WHTQ>.

law while conducting their immigration enforcement operations within the state. Plaintiffs merely ask that Defendants comply with the law. *See Ramirez Ovando v. Noem*, No. 1:25-CV-03183-RBJ, 2025 WL 3293467, at *24 (D. Colo. Nov. 25, 2025) (finding that “[n]either the government nor the public interest can claim any legitimate interest in the systemic violation of § 1357(a)(2)’s prohibition against warrantless arrests except upon individualized probable cause of flight risk”). While Defendants caution the Court not to “blithely” dismiss the public interest in immigration enforcement, ECF 70 at 28, “deference [to executive judgments in detention administration] is not permissible in the face of continuing constitutional violations.” *Mercado v. Noem*, 800 F. Supp. 3d 526, 579 (S.D.N.Y. 2025). Courts have repeatedly found that Defendants’ policy and practice of performing warrantless arrests pursuant to detentive stops to execute immigration enforcement is unlawful without an individualized assessment of probable cause as to both flight risk and unlawful presence, granting preliminary relief or enforcement of settlements in a class wide setting. *Escobar Molina*, 2025 WL 3465518, at *38039 (preliminarily enjoining Defendants from performing warrantless arrests in the District of Columbia without a pre-arrest individualized determination by the arresting agent of probable cause under 8 U.S.C. § 1357(a)(2) and 8 C.F.R. § 287.8(c)(2)(ii)); *Vasquez Perdomo v. Noem*, Case No.: 2:25-cv-05605-MEMF-SP (C.D.Cal.) (enjoining Defendants from conducting detentive stops in the Central District of California without reasonable suspicion), *stay of preliminary injunctive relief granted by* 2025 WL 2585637 (S. Ct. Sept. 8, 2025); *Ramirez Ovando v. Noem*, Case No. 1:25-cv-03183-RBJ, 2025 WL 3293467 at *23-24 (D. Co. Nov. 25, 2025) (enjoining Defendants from further violating the requirement of the individualized-assessment-of-flight-risk “enshrined in § 1357(a)(2) and § 287.8(c)(2)(ii)”). Defendants may not “bootstrap the consequences of ignoring the Constitution and their own standards into cognizable harm that outweighs ongoing constitutional injury.” *Mercado*, 800 F.

Supp. 3d at 579. Here, an injunction would halt ongoing constitutional injuries and merely require Defendants to adhere to the law. “[I]t is always in the public interest to prevent the violation of a party’s constitutional rights.” *Innovation Law Lab v. Nielsen*, 310 F.Supp.3d 1150, 1162 (D. Or. 2018). The balance of equities and public interest decisively favor Plaintiffs.

IV. Provisional Class Certification Is Warranted

Defendants argue that provisional class certification is improper at this juncture because Plaintiffs, according to them, have not met their burden of showing they meet Rule 23(a)’s requirements, and Defendants have not yet had a chance to respond to Plaintiffs’ motion for class certification “as Defendants response deadline is February 20, 2026.” ECF 70 at 24. They are wrong. Plaintiffs fully made their case for class certification, and provisional class certification, in their Motion for Class Certification, which was filed concurrently with the Motion for Preliminary Injunction and incorporated by reference in their Motion for Preliminary Injunction. *See* Motion for Class Certification, ECF 60; Motion for Preliminary Injunction, ECF 61 at 16 (requesting provisional class certification of the Unassessed Escape Risk class “as defined in the concurrently filed motion for class certification”). Those arguments are fully available to Defendants, and Defendants could have responded to those arguments in their opposition to the motion for preliminary injunction, yet they did not. Defendants may not simply rely on their later deadline to oppose full class certification to excuse their failure to make a fulsome argument against the provisional class certification sought for the purposes of preliminary injunctive relief.

As more fully described in their Motion, *see* ECF 60, Plaintiffs have shown that the proposed class meets Rule 23’s requirements and that provisional certification is appropriate. The class is sufficiently numerous such that joinder would be impracticable. Fed. R. Civ. P. 23(a)(1). At least 100,000 people in Oregon are undocumented, and therefore similarly situated to Plaintiffs

in that they have been, or will be, subject to Defendants' policy and practice of unlawful warrantless arrests. Pls.' Mot. for Class Cert., ECF 60 at 6-9. The proposed Unassessed Escape Risk class also meets the commonality requirement, Fed. R. Civ. P. 23(a)(2), because all class members will be subject to the same unlawful policy (warrantless arrests without an assessment of flight risk); have suffered the same injury (of unlawful arrest and detention); and may benefit from a common remedy (declaratory and injunctive relief preventing Defendants from making such warrantless arrests without probable cause of flight risk). *See id.* at 11-12. Similarly, the proposed class meets the typicality requirement, Fed. R. Civ. P. 23(a)(3), because they are all subject to the same course of conduct by Defendants (warrantless arrests); though the details underlying their immigration cases may differ, putative class members suffer common harms (unlawful arrest and detention) from that course of conduct; therefore, the Plaintiffs' claims typify the claims of putative subclass members. *Id.* at 12-14. Finally, the proposed class meets the adequacy requirement, Fed. R. Civ. P. 23(a)(4), because there is no conflict between Plaintiffs and unnamed class members; they seek the same relief and benefit from this litigation, and thus their interests squarely align. *See id.* at 13-14.¹¹ And class counsel is adequately skilled and appropriately situated to vigorously and adequately protect the interests of all class members. *See* Motion for Class Certification, ECF 60 at 14. Plaintiffs have met their burden of showing that provisional class certification is warranted for the purposes of injunctive relief. *Accord Carrillo v. Schneider Logistics, Inc.*, 2012

¹¹ Alternatively, Plaintiffs can also show that provisional class certification is warranted under Rule 23(b). Defendants are acting on grounds that apply generally to the class because they have a broad policy and practice of making warrantless arrests without the required individualized assessments of probable cause; as such, Plaintiffs seek "uniform injunctive or declaratory relief from policies or practices that are generally applicable to the class as a whole." *Parsons v. Ryan*, 754 F.3d 657, 688 (9th Cir. 2014). Since Plaintiffs seek uniform relief from a uniformly applicable practice, certification under Rule 23(b) would be appropriate in the alternative. *See* Motion for Class Certification, ECF 60 at 17-18.

WL 556309, at *9 (C.D. Cal. Jan. 31, 2012), *aff'd*, 501 F. App'x 713 (9th Cir. 2012 (“[C]ourts routinely grant provisional class certification for purposes of entering injunctive relief.”).

V. No Bond Should Be Required

Defendants argue that Plaintiffs should be required to post bond. ECF 70 at 24, *citing* Fed. R. Civ. P. 65(c). The district court has “widely recognized discretion . . . not only to set the amount of security but to dispense with any security requirement whatsoever.” *Fed. Prescription Serv. v. American Pharmaceutical Ass’n*, 636 F.2d 755, 759 (D.C. Cir. 1980); *accord Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th Cir. 2003) (“Rule 65(c) invests the district court ‘with discretion as to the amount of security required, *if any*.’”) (quoting *Barahona-Gomez v. Reno*, 167 F.3d 1228, 1237 (9th Cir. 1999)). Because this is a public interest case in which an injunction would not cause harm to the government, it would be appropriate for this Court to waive any bond requirement for the Plaintiffs. Alternatively, Plaintiffs would request that the Court require only a nominal bond of one dollar. *Accord CASA, Inc. v. Trump*, 793 F.Supp.3d 678, 702 (D. Md. 2025) (“In public interest cases like this one, when the risk of harm to the government is non-existent or remote, a nominal bond may be appropriate.”); *see also L.G.M.L. v. Noem*, 800 F. Supp. 3d. 100, 134 (D.D.C. 2025) (setting bond amount of \$1 in public interest immigration case); *Barbara v. Trump*, 790 F. Supp. 3d 80 104 (D.N.H. 2025) (same).

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court grant the requested preliminary injunctive relief.

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Respectfully submitted,

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