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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

M-J-M-A; Victor CRUZ GAMEZ,

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

Plaintiffs,

v.

**REPLY IN SUPPORT OF
DEFENDANTS' MOTION TO
DISMISS COUNTS 7-9**

**JULIO HERNANDEZ; TODD
LYONS; U.S. IMMIGRATION AND
CUSTOMS ENFORCEMENT;
MARKWAYNE MULLIN; U.S.
DEPARTMENT OF HOMELAND
SECURITY; TODD BLANCHE,**

Defendants.

Defendants moved to dismiss counts 7 through 9 because the Court set an accelerated deadline for Defendants to respond to the supplemental pleading before resolving the pending stay motion. The motion to stay is fully briefed. Defendants' motion to dismiss is not dilatory—it is consistent with their position throughout this litigation that Plaintiffs do not have standing for the sweeping, forward-looking classwide relief they ask this Court to provide.

Relatedly, since the Court granted the preliminary injunction and provisional class certification on February 4, 2026, two district courts have refuted claims virtually identical to those Plaintiffs present here and declined to grant forward-looking relief.

In *Aguilar Peralta v. Department of Homeland Security*, the court granted the defendants' motion to dismiss and denied as moot the plaintiffs' motions for preliminary injunction and provisional class certification because the plaintiffs lacked standing. No. 2:26-cv-337, 2026 WL 2069917, at *30 (S.D. Ohio July 17, 2026). The *Aguilar Peralta* court found there was an unofficial practice of conducting illegal warrantless arrests but also found that the plaintiffs failed to demonstrate they had standing to justify forward-looking relief because they did not show “an injury-in-fact, either through a certainly impending threat of future injury or a past injury with continuing adverse effects.” *Id.* In reaching this conclusion, the district court rejected much of the same evidence and many of the same arguments Plaintiffs advance here. *Id.* at *26, 29. Due to a reduction in immigration enforcement officers in Ohio and DHS's ability to exercise prosecutorial discretion, the court found there was no

certainly impending threat of future injury, i.e., there was not a sufficient likelihood the defendants would encounter and unlawfully re-arrest the plaintiffs. *Id.* at *25–28 (citing *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 412 (2013)) (“That Defendants’ practice authorizes unlawful arrests, as opposed to requiring or mandating them, supports this conclusion.”).

The *Aguilar Peralta* court also found that the plaintiffs’ past injuries and “continuing, present adverse effects” did not justify forward-looking relief. *Id.* at *28–30. The court put it simply:

As discussed above, it is far from assured that Defendants will encounter Plaintiffs again, let alone act consistently with their practice and re-arrest Plaintiffs without a warrant or a probable cause determination of likelihood of escape. That Plaintiffs *subjectively* fear this outcome does not *objectively* establish a certainly impending threat of enforcement. Instead, Plaintiffs’ chill ‘aris[es] merely from [their] knowledge that a governmental agency was engaged in certain activities or from [their] concomitant fear that, armed with the fruits of those activities, the agency might in the future take some other and additional action detrimental to [them],’ which is not sufficient for standing. Allegations of such a subjective ‘chill’ are ‘not an adequate substitute for a claim of specific present objective harm or a threat of specific future harm[.]’

Plaintiffs’ continuing fear, anxiety, and physical and psychological hardships certainly amount to lingering effects, and the Court does not intend to minimize them. But Plaintiffs have not explained how these effects stem from the *unlawful, warrantless nature* of their past arrests, rather than from the fact that they were arrested at all and subsequently detained in conditions that were, to put it lightly, less than ideal. There is no dispute that all four Plaintiffs lacked lawful status in the United States when they encountered Defendants’ agents. This means that Defendants could have gotten a warrant and lawfully arrested them at a later time pursuant to that warrant, after which they would likely have experienced similar effects of having to pay bond, fearing re-arrest, injuries from handcuffs, and other things.

Id. at *29–30 (emphasis in original and citations omitted).

Similarly, in *Hussen v. Noem*, the court found DHS has a policy authorizing their officers to arrest individuals in violation of 8 U.S.C. § 1357(a)(2), but it also concluded the plaintiffs did not have standing because they failed to show a significant probability that they would be stopped or arrested again. 822 F. Supp. 3d 944, 998–99 (D. Minn. 2026). Again, relying on *Clapper*, the court noted that “[the d]efendants’ policy of authorizing unlawful stops and arrests, as opposed to requiring or mandating them,” supported that there was not a substantial risk of future injury. *Id.* at 1000. The court also added that the lingering effects of the plaintiffs’ injuries were insufficient to demonstrate standing. *Id.* at 1000–01. Accordingly, the court denied the motion for preliminary injunction and provisional class certification. *Id.* at 1007.

The factual scenarios of *Aguilar Peralta* and *Hussen* are not meaningfully different from this case. “[I]t is far from assured that Defendants will encounter Plaintiffs again, let alone act consistently with their practice and re-arrest Plaintiffs without a warrant or a probable cause determination of likelihood of escape.” See *Aguilar Peralta*, 2026 WL 2069917, at *29. Plaintiffs here also fear future arrest, but their fears are not specific to future unlawful arrest. Rather, the fears Plaintiffs allege would result from any type of arrest—lawful or not. For the same reasons that the plaintiffs in *Aguilar Peralta* and *Hussen* lack standing, so, too, do the Plaintiffs here.

Moreover, the Court relied on *Melendres v. Arpaio*, 695 F.3d 990 (9th Cir. 2012), to find that Plaintiffs have standing. Dkt. 88 at 31. In *Melendres*, the

court found standing where an explicitly stated policy violated the law. *Id.* at 998. By contrast, as discussed at length during the preliminary injunction hearing, the January 2026 Lyons Memo is the agency's policy regarding warrantless arrests. That policy explicitly directs officers to make the necessary findings outlined in 8 U.S.C. § 1357(a)(2), unlike *Melendres* where the stated policy was to violate the law. Additionally, *Melendres* is unpersuasive in this case in light of Justice Kavanaugh's concurrence in *Noem v. Perdomo*, 146 S. Ct. 1 (Mem) (2025). That opinion addressed the same standing question presented here and concluded that "Plaintiffs' standing theory largely tracks the theory rejected in *Lyons*." 146 S. Ct. at 2 (Kavanaugh, J., concurring). In sum, Plaintiffs lack standing, and the Court should dismiss their claims.

CONCLUSION

For the reasons stated in Defendants' Motion to Dismiss Counts 7–9 and herein, Defendants respectfully request the Court grant Defendant's motion and dismiss Plaintiffs' claims.

Respectfully submitted this 13th day of August, 2026.

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