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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

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

Plaintiffs,

v.

LAURA HERMOSILLO; TODD LYONS; U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; KRISTI NOEM; U.S. DEPARTMENT OF HOMELAND SECURITY; PAMELA BONDI,

Defendants.

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

DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

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INTRODUCTION

Plaintiffs MJMA and Victor Cruz Gamez are noncitizens living in Oregon who were arrested by immigration officers in October 2025 but have since been released from custody. Plaintiffs, on behalf of all similarly situated individuals, bring claims for immigration officers' alleged violations of 8 U.S.C. § 1357(a)(2), 8 C.F.R. § 287.8(c)(2)(ii), the *Accardi* doctrine, and the *Castanon Nava* Broadcast policy. Dkt. 68. Plaintiffs seek to preliminarily enjoin "Defendants and their agents from enforcing their policy or practice of making warrantless civil immigration arrests in the District of Oregon without a pre-arrest individualized determination by the arresting agent of probable cause that the person being arrested is likely to escape before a warrant can be obtained, as required by 8 U.S.C. § 1357(a)(2) and 8 C.F.R. § 287.8(c)(2)(ii)." Dkt. 61 at 31. Because Plaintiffs have not met their burden to demonstrate they are entitled to preliminary injunctive relief, the Court should deny their motion. Dkt. 61.

Plaintiffs cannot establish they are likely to succeed on the merits for three reasons: (1) Plaintiffs lack standing to enjoin warrantless arrests based on speculative future injuries; (2) Plaintiffs have not shown they are challenging a final agency action under the APA; and (3) named-Plaintiff MJMA has not demonstrated that her arrest violated 8 U.S.C. § 1357(a)(2) and 8 C.F.R. § 287.8(c)(2)(ii).

Similarly, Plaintiffs cannot establish they are likely to suffer irreparable harm in the absence of an injunction because the harm they fear is speculative. Plaintiffs' delay in seeking preliminary injunctive relief also belies their argument that they are

likely to suffer irreparable harm. Additionally, the balance of equities favors the government because Plaintiffs seek an injunction that would interfere with a core and exclusive function of the Executive Branch: immigration enforcement. Lastly, Plaintiffs fail to meet their burden under Fed. R. Civ. P. 23 that their "Unassessed Escape Risk" class should be provisionally certified.

BACKGROUND

I. Procedural History

On October 30, 2025, MJMA filed a petition for a writ of habeas corpus challenging her stop, arrest, and resulting detention as unlawful. Dkt. 1. On December 2 and 3, 2025, the Court held a two-day evidentiary hearing during which nine witnesses testified. Before testimony began on December 2, MJMA indicated the intention to amend her pleading to include class allegations in addition to filing motions to certify a class and for a preliminary injunction. The Court later set a briefing schedule on the merits of the habeas petition.

On January 9, 2026, MJMA along with Plaintiff Victor Cruz Gamez, filed four motions: a Motion to Supplement the Pleading, a Motion for a Preliminary Injunction, a Motion for Class Certification, and a Motion to Reset the Briefing Schedule. Plaintiffs' complaint alleges that Defendants have a policy and practice of making warrantless arrests in Oregon in violation of 8 U.S.C. § 1357(a)(2), 8 C.F.R. § 287.8(c)(2)(ii), the *Accardi* doctrine, and the *Castanon Nava* Broadcast Policy. Dkt. 68 ¶¶ 85–96.

Plaintiffs' motion for a preliminary injunction specifically requests that the Court enjoin Defendants from continuing their alleged policy and practice of violating 8 U.S.C. § 1357(a)(2) and 8 C.F.R. § 287.8(c)(2)(ii) in Oregon. Dkt. 61 at 31. Plaintiffs also seek to provisionally certify the "Unassessed Escape Risk Class." *Id.*

II. Legal Framework

The INA permits an immigration enforcement officer to arrest an alien in the United States without a warrant if the officer "has reason to believe that the alien so arrested is in the United States in violation of any such law or regulation and is likely to escape before a warrant can be obtained for his arrest." 8 U.S.C. § 1357(a)(2). Regulations promulgated under the INA track the statute specifying that "an arrest shall be made only when the designated immigration officer has reason to believe that the person to be arrested has committed an offense against the United States or is an alien illegally in the United States." 8 C.F.R. § 287.8(c)(2)(i). These arrests require a warrant unless "the designated immigration officer has reason to believe that the person is likely to escape before a warrant can be obtained." *Id.* § 287.8(c)(2)(ii). An immigration officer has reason to believe that an alien is "likely to escape before a warrant can be obtained" if the officer determines the alien is unlikely to be present at the same location or another clearly identifiable location when the officer returns with a warrant. Whether the alien is likely to remain at the same location is based on the totality of the circumstances known to the immigration officer at the time of the encounter and prior to the arrest.

III. Factual Background

MJMA is a citizen and national of Mexico. She was admitted to the United States on a B2 visa on January 21, 2025. Dkt. 26 ¶ 4. MJMA overstayed her visa, which expired on March 21, 2025, and remained in the United States without lawful status. *Id.*

On October 30, 2025, MJMA was a passenger in a van whose registered owner was allowed to previously voluntarily return to his home country and had no subsequent grant of lawful status, indicating that he reentered without status following his voluntary return. Hr'g 236:1–237:6. Passengers in the van, including MJMA, were noncompliant with the officers' instructions. Hr'g 185:13–186:13. MJMA specifically instructed the other passengers to not speak to the officers and refused to identify herself. 186:4–13. Biometrics later revealed that MJMA was present in the United States without lawful status by virtue of overstaying her visa. Hr'g 435:23–236:13.

MJMA was released from the Northwest ICE Processing Center ("NWIPC") on November 1, 2025. Dkt. 26 ¶ 5. MJMA was never issued a Notice to Appear ("NTA"), and ICE has indicated it will not be issuing an NTA as a result of the October 30 arrest. *Id.*

Victor Cruz Gamez was stopped and arrested on October 14, 2025, by immigration officers.[1] Dkt. 62-1 at 2. Mr. Cruz Gamez admitted to entering the

[1] Defendants reserve the right to present evidence at the February 4, 2026, preliminary injunction hearing on the circumstances of Mr. Cruz Gamez's arrest.

United States without inspection. *Id.* His immigration history revealed he was allowed to voluntarily return to Mexico in 1999. *Id.* Mr. Cruz Gamez was issued an NTA. *Id.* On October 30, 2025, Mr. Cruz Gamez filed a petition for a writ of habeas corpus in the Western District of Washington challenging his immigration detention under 8 U.S.C. § 1225(b)(2)(A). Petition for Writ of Habeas Corpus, *Cruz-Gamez v. Bondi*, 2:25-cv-02154-KKE-GJL, Dkt. 1 (W.D. Wash. October 30, 2025). On November 7, 2025, District Court Judge Tiffany M. Cartwright granted Mr. Cruz Gamez's habeas petition and ordered his release from custody. *Cruz-Gamez v. Bondi*, 2:25-cv-02154-TMC, Dkt. 11 (W.D. Wash. November 7, 2025).

LEGAL STANDARD

A preliminary injunction is an "extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). A plaintiff seeking a preliminary injunction must prove (1) that she is likely to succeed on the merits; (2) she is likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in her favor; and (4) an injunction is in the public interest. *Id.* at 20.

In the Ninth Circuit, courts may apply an alternative test that allows for a preliminary injunction where a plaintiff shows "serious questions going to the merits" and the balance of equities tips sharply in a plaintiff's favor, assuming the plaintiff proves the other two *Winter* elements. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131–32 (9th Cir. 2011). In any event, a plaintiff requesting a preliminary injunction must carry her burden to establish a "clear showing" of the four *Winter*

elements. *Lopez v. Brewer*, 680 F.3d 1068, 1072 (9th Cir. 2012).

There are two types of preliminary injunctions: (1) a prohibitory injunction that "preserve[s] the status quo pending a determination of the action on the merits," and (2) a mandatory injunction that "orders a responsible party to take action." *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F. 3d 873, 878–79 (9th Cir. 2009) (citation modified) (alteration in original). A mandatory injunction "'goes well beyond simply maintaining the status quo pendente lite [and] is particularly disfavored.'" *Stanley v. Univ. of S. Cal.*, 13 F.3d 1313, 1320 (9th Cir. 1994) (cleaned up).

ARGUMENT

I. Plaintiffs are unlikely to succeed on the merits.

Plaintiffs are unlikely to succeed on the merits of their claims because (1) they lack standing, (2) they cannot demonstrate they are challenging a final agency action, and (3) MJMA has not shown her arrest violated either the statute or regulation.

A. Plaintiffs lack standing to enjoin warrantless arrests.

"No principle is more fundamental to the judiciary's proper role in our system of government than the constitutional limitation of federal-court jurisdiction to actual cases or controversies." *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 341 (2006) (internal quotation marks omitted). This constitutional limitation requires plaintiffs to demonstrate they have standing to sue so that courts do not operate as an open forum for "general complaints about the way in which government goes about its business." *Allen v. Wright*, 468 U.S. 737, 760 (1984), *abrogated by Lexmark Int'l, Inc.*

v. Static Control Components, Inc., 572 U.S. 118 (2014). "To have standing under Article III, a plaintiff must have (1) a concrete and particularized injury that (2) is caused by the challenged conduct and (3) is likely redressable by a favorable judicial decision." *Juliana v. United States*, 947 F.3d 1159, 1168 (9th Cir. 2020).

To support standing, an injury must be "concrete, particularized, and actual or imminent[.]" *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013) (quoting *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 149 (2010)). "[P]ast wrongs do not in themselves amount to that real and immediate threat of injury necessary to make out a case or controversy." *City of Los Angeles v. Lyons*, 461 U.S. 95, 103 (1983). In *Lyons*, police officers stopped the plaintiff for a traffic violation, seized him, and placed him in a chokehold. *Id.* at 97. The Court held that, while the plaintiff could pursue a retrospective damages claim, he lacked standing to seek prospective relief because he had not shown that "he was likely to suffer *future* injury from the use of . . . chokeholds by police officers." *Id.* at 105 (emphasis added). Because the plaintiff had shown no "immediate threat" that he would again be "choke[d] . . . without any provocation or resistance on his part," he "failed to demonstrate a case or controversy . . . that would justify the equitable relief sought." *Id.* at 95, 105–06.

Plaintiffs attempt to rely on their own subjective fear of future arrest to meet their burden that a future allegedly unlawful arrest is imminent. Dkt. 61 at 22. The mere fact that Plaintiffs fear being arrested again does not merit consideration in

whether the threat of being unlawfully arrested is imminent.[2] In *Lyons*, the Court rejected the argument that "the plaintiff's subjective apprehensions" of future enforcement could satisfy Article III standing; instead, it was "the *reality* of the threat of repeated injury" that was "relevant to the standing inquiry." 461 U.S. at 107 n.8. In short, the "fear" of future enforcement "is insufficient to create standing." *Clapper*, 568 U.S. at 417. Here, Plaintiffs rely on fear, not reality, to argue their unlawful arrest is imminent. Fear does not establish standing.

To the extent Plaintiffs argue that an allegedly unlawful enforcement policy exists in Oregon, they again fail to meet their burden. Plaintiffs largely rely on the courts' findings in *Escobar Molina v. DHS*, 1:25-cv-03417-BAH, 2025 WL 3465518 (D.D.C. Dec. 2, 2025), and *Ramirez Ovando v. Noem*, No. 1:25-cv-03183-RVJ, 2025 WL 3293467 (D. Colo. Nov. 25, 2025), to demonstrate there was an unlawful enforcement policy regarding warrantless arrests. In *Escobar Molina*, that court specifically relied on statements from DHS officials in the absence of more specific evidence. 2025 WL 3465518, at *22–25. That court contended that the defendants had the opportunity to clarify the record as to the standards used for warrantless arrests but did not. *Id.* at *24. In addition, the Court relied on "over two dozen declarations describing roughly forty warrantless civil immigration arrests conducted without the requisite probable cause findings." *Id.* at *25.

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[2] As discussed extensively below, MJMA has not shown that she even suffered a past injury such that a future injury would be imminent. *See* discussion *infra* section I.C.

The court in *Ramirez Ovando* took a similar approach, again relying on media statements from government officials but also placing great weight on "the testimony . . . of the four named plaintiffs, the hearsay accounts of four putative class members . . . , and evidence from a veteran immigration attorney regarding 15-20 similar warrantless arrests seemingly made without any individualized assessment of flight risk." 2025 WL 3293467, at *18.

The record this Court has is markedly different than either of those records. At the evidentiary hearing regarding MJMA's stop and arrest, officers testified extensively to the facts that supported the reasonable suspicion and probable cause for MJMA's stop and arrest. *See generally* Dec. 2, 2025, Hr'g. Tr.; discussion *infra* section I.C. For the Court to give more weight to generalized statements in the media than to the in-person testimony of officers who conducted enforcement operations in Oregon would be problematic. Indeed, what Plaintiffs challenge is a policy they allege has taken root in Oregon. Plaintiffs cannot meet their burden by relying on statements that were not made specifically about Oregon immigration enforcement operations, given the credible and detailed in-person testimony about MJMA's arrest.

Plaintiffs' citations to declarations in habeas petitions filed in this District similarly do not carry the day for demonstrating there is a policy of unlawful warrantless arrests. Plaintiffs incorrectly claim that "[in] Oregon, Defendants have repeatedly admitted to or have been found to be making these warrantless arrests without the required probable cause findings." Dkt. 61 at 10. Plaintiffs rely on hearsay/declarations to argue that Defendants have not complied with the

warrantless arrest statute. Those declarations are neither admissions nor findings. Plaintiffs cite only one case in this district where a judge has found that ICE officers did not determine that the arrestee was likely to escape before a warrant could be obtained. This meager evidentiary showing is far from sufficient to meet Plaintiffs' burden on a preliminary injunction. Plaintiffs have not come close to the "quantum and quality of pattern or practice evidence needed to demonstrate likelihood of success on the merits. *See Ramirez Ovando*, 2025 WL 3293467, at *18.

Despite their contentions, MJMA—one of the two named class members—has not and cannot demonstrate that her arrest violated the warrantless arrest statute and regulation. *See* discussion *infra* section I.C. The handful of uncorroborated hearsay declarations Plaintiffs cite in conjunction with news articles, many of which do not relate to immigration enforcement operations in Oregon, do not tend to demonstrate there is a policy of conducting unlawful warrantless arrests in Oregon. Dkt. 61 at 14; *see generally* Dkt. 64. At most, the evidence presented demonstrates unconnected encounters, not an official, routinely applied, district-wide warrantless arrest pattern and practice. Plaintiffs thus have not even shown an unlawful law enforcement policy—let alone that they face a "real and immediate" threat of being harmed by it. *Lyons*, 461 U.S. at 102.

B. Plaintiffs have not shown they are challenging a final agency action under the APA.

Plaintiffs bring this case under the APA asserting that Defendants have adopted a policy (or pattern and practice) of unlawful warrantless arrests, and that this amounts to a final agency action subject to challenge under the APA. Suppl.

Compl., Dkt. 68 ¶¶ 87, 92, 96; *see also* Dkt. 61 at 20–21. But Plaintiffs fail to show that there is a final agency action to challenge here. In general, judicial review under the APA "is available only for 'final agency action.'" *Corner Post, Inc. v. Bd. of Governors of Fed. Rsrv. Sys.*, 603 U.S. 799, 808 (2024) (quoting 5 U.S.C. § 704). The APA defines "agency action" as "the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent[,] or denial thereof, or failure to act." 5 U.S.C. § 551(13). In limiting APA review to "final" agency action, Congress restricted "pervasive oversight by federal courts over the manner . . . of agency compliance with . . . congressional directives," which would "inject[] the judge into day-to-day agency management." *Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 67 (2004).

The Supreme Court has articulated "two conditions that generally must be satisfied for agency action to be 'final' under the APA." *Army Corps of Eng'rs v. Hawkes Co.*, 578 U.S. 590, 597 (2016) (citing *Bennett v. Spear*, 520 U.S. 154 (1997)). "First, the action must mark the consummation of the agency's decisionmaking process—it must not be of a merely tentative or interlocutory nature." *Id.* (quoting *Bennett*, 520 U.S. at 177). "[S]econd, the action must be one by which rights or obligations have been determined, or from which legal consequences will flow." *Id.* (quoting *Bennett*, 520 U.S. at 177–78). The APA thus permits courts to consider only those claims that challenge discrete, "identifiable" final actions with "concrete effects." *Lujan v. Nat'l Wildlife Fed'n,* 497 U.S. 871, 890 (1990). Plaintiffs are not challenging an action that meets either condition.

1. Plaintiffs have not challenged a final action that is the consummation of an agency decision-making process.

An agency's final policy decision that binds its employees may reflect a discrete, consummated decision-making process and meet the first condition for final agency action. For example, in *Biden v. Texas*, 597 U.S. 785, 808 (2022), the Supreme Court held that two DHS memoranda terminating a policy (the Migrant Protection Protocols) under which certain aliens were returned to Mexico met the first condition for final agency action, because the memoranda marked the consummation of the agency's decision-making process and "bound DHS staff" to not follow the Protocols. In contrast, an agency practice is not enough, without more, to meet this condition. In *Lujan*, 497 U.S. at 877–78, the Court explained that the mere fact that an agency has taken multiple similar actions does not suffice to show that a different, discrete final agency action exists knitting them all together. There, the plaintiffs characterized various individual decisions about public land management as a "land withdrawal review program," and sought review under the APA. The Supreme Court held that the agency decisions could not be combined in this way and considered a single, final "agency action" under the APA. *Id.* at 890; *see also id.* at 891 (APA does not allow plaintiffs to amalgamate actions into a purported overarching policy and then "seek wholesale improvement of th[e] program by court decree").

Applying *Lujan*, courts reject APA claims like the ones in this case where a plaintiff (1) identifies several discrete, allegedly unlawful acts; (2) claims that a common pattern, policy, or practice underlies all the acts; and (3) attempts to challenge the purported pattern, policy, or practice. *See, e.g.*, *Nat'l Treasury Emps*

Union v. Vought, 149 F.4th 762, 783–84 (D.C. Cir. 2025) (multiple actions that changed an agency's operations characterized as overarching decision to shut down the agency); *Bark v. United States Forest Serv.*, 37 F.Supp.3d 41, 50 (D.D.C. 2014) (claimed policy based on five instances of agency permitting concessioners to improperly charge use fees).

Plaintiffs' APA claims here are like the claims in these cases: they assert that Defendants' conduct in various arrests shows an agency pattern and practice of not complying with section 1357(a)(2), which they seek to challenge under the APA. As in the cases discussed above and under *Lujan*, this means that they have not challenged an agency action that reflects the consummation of an agency decision-making process, such as a written policy that binds employees. *Cf. Nat'l Treasury Emps. Union*, 149 F.4th at 787 ("Cases involving final agency action not committed to writing are few and far between.").

Plaintiffs also have not shown that Defendants are "applying some particular measure across the board" in all law enforcement encounters that result in warrantless arrests. *Lujan*, 497 U.S. at 890 n.2 (conceding that such a measure may be susceptible to APA review). The Court has in front of it a robust record regarding MJMA's arrest, and that record cannot demonstrate immigration officers violated the warrantless arrest statute or regulation. Where one of the two named Plaintiffs cannot demonstrate her arrest was unlawful, the alleged unlawful arrest policy or practice cannot be deemed a final agency decision. And even if Plaintiffs had shown an across-the-board practice, that still would be insufficient in this case, as they have

not shown that such an across-the-board practice is the result of some other "specific order or regulation" that is "final." *Lujan*, 497 U.S. at 890 n.2.

In short, the first condition for final agency action is not met because Plaintiffs have not shown that the purported wrongful pattern and practice is the result of a concrete, identifiable, consummated decision-making process.

2. Plaintiffs have not shown the alleged general policy and practice itself has direct consequences for them.

Plaintiffs also have not met the second condition for final agency action: that the challenged action itself determined "rights or obligations" or is a source "from which legal consequences will flow." *Bennett*, 520 U.S. at 177–78. For agency action to be "final," the "legal consequences" of the challenged action must be "direct and appreciable." *Hawkes*, 578 U.S. at 597. An internal directive can meet this test if it "b[inds] [agency] staff" to act a certain way that affects third parties. *Texas*, 597 U.S. at 808–09 (memo that "forb[ade]" agency employees from "continu[ing] a program" determined rights and obligations of program's beneficiaries); *cf. Indep. Equip. Dealers Ass'n v. EPA*, 372 F.3d 420, 426 (D.C. Cir. 2004) (no final agency action where agency letter did not "[c]ompel[] [any] one to do anything").

Here, Plaintiffs do not challenge the actual directives Defendants have issued that instruct immigration law enforcement agents to comply with § 1357(a)(2) when making warrantless arrests. Rather, they point to an alleged policy and practice of violating that provision, but they have not shown that Defendants have made a decision that will assuredly affect Plaintiffs if immigration law enforcement agents encounter them. Plaintiffs have not shown, for example, that Defendants required

that all warrantless arrests in Oregon be made without assessing the statutory factors. There is no evidence of that in the record in MJMA's habeas petition. The purported policy and practice of warrantless arrests thus does not meet the second condition for final agency action. In sum, neither condition for final agency action is met. Plaintiffs' APA claims challenging the purported policy and practice are unlikely to succeed.

C. MJMA's arrest was lawful under the warrantless arrest statute and regulation.

MJMA's claims that she was stopped and arrested in violation of the statute or regulation fail.[3] Under section 1357(a)(2), immigration officials "have power without warrant . . . to arrest any alien in the United States, if [they have] reason to believe that the alien so arrested is in the United States in violation of any such law or regulation and is likely to escape before a warrant can be obtained for his arrest." *Id.* "The phrase 'has reason to believe' has been equated with the constitutional requirement of probable cause." *Tejeda-Mata v. INS*, 626 F.2d 721, 725 (9th Cir. 1980) (citations omitted).

Establishing probable cause "is not a high bar." *Kaley v. United States*, 571 U. S. 320, 338 (2014). "It 'requires only a probability or substantial chance of criminal activity, not an actual showing of such activity.'" *District of Columbia v. Wesby*, 583 U.S. 48, 57 (2018) (quoting *Illinois v. Gates*, 462 U. S. 213, 243-44 (1983)). "Because probable cause deals with probabilities and depends on the totality of the

[3] As previously mentioned, Defendants reserve the right to present evidence at the February 4, 2026, preliminary injunction hearing on the circumstances of Mr. Cruz Gamez's arrest.

circumstances, it is a fluid concept that is not readily, or even usefully, reduced to a neat set of legal rules." *Wesby*, 583 U.S. at 57 (citation modified).

Numerous contextual factors may signal that escape is likely before a warrant can be obtained. These include "[w]hen an alien's removability 'is clear and undisputed,'" *Vazquez-Medrano v. Sessions*, 726 F. App'x 92, 93 (2d Cir. 2018) (quoting *Contreras v. United States*, 672 F.2d 307, 309 (2d Cir. 1982)), when the alien admitted that he "had been picked up before," *Aguirre v. INS*, 553 F.2d 501, 502 (5th Cir. 1977), or appeared "extremely nervous" and seemed to be "looking for an opportunity to run," *United States v. Meza-Campos*, 500 F.2d 33, 34 (9th Cir. 1974), or admitted that he had previously been removed, *United States v. Puebla-Zamora*, 996 F.3d 535, 538 (8th Cir. 2021), or attempted to evade custody, *Contreras*, 672 F.2d at 309, or was "stopped in a vehicle." *United States v. Murillo-Gonzalez*, 524 F.Supp.3d 1139, 1151 (D.N.M. 2021), *aff'd*, No. 22-2123, 2024 WL 3812480 (10th Cir. Aug. 14, 2024) (citing *United States v. Quintana*, 623 F.3d 1237, 1241 (8th Cir. 2010)), or presented conflicting documents when questioned about his status. *Yam Sang Kwai v. Immigration & Naturalization Service*, 411 F.2d 683, 687 (D.C. Cir. 1969); *see also United States v. Sagastume-Galicia*, Mag. No. 19-0287 (BAH), 2020 U.S. Dist. LEXIS 70806, at *13 (D.D.C. Apr. 22, 2020) (Defendant is a flight risk because he is "not currently employed," and "[c]ombined with defendant's history of physical violence and his inability to conform his conduct to court-ordered removal, his undocumented status and the existence of the detainer tip this factor in favor of detention.").

Finally, neither 8 U.S.C. § 1357(a)(2) nor 8 C.F.R. § 287.8(c)(2)(ii) imposes any affirmative obligation on immigration law enforcement officers to make the assessment of the risk of flight in any particular manner. "Because of the difficulty of making an on-the-spot determination as to the likelihood of escape without any opportunity to verify information provided or to conduct a full-scale interview, an [immigration] officer's determination will not be upset if there is any reasonable basis for it." *Contreras*, 672 F.2d at 308 (citation modified).

MJMA's arrest does not show that immigration enforcement officers have a practice of ignoring probable cause or the risk of flight before making warrantless arrests.[4] Rather, the evidence demonstrates officers relied on reasonable suspicion to stop her and probable cause to arrest her. Officer J.B. testified that in the early morning hours of October 30, 2025, he observed an individual leave the same address as a known target and enter a white work van. Hr'g 235:17–236:5. The Woodburn area where officers were conducting enforcement operations was known as an agricultural area where people work without status. Hr'g 241:14–242:6; 147:1–15; 177:24–178:17. Officers observed the van make multiple stops, picking up adults at each stop. Hr'g 238:1–24. Database results ultimately indicated that the registered owner of the vehicle had a prior voluntary return and no indication that he had been lawfully admitted afterward. Hr'g 236:1–237:6. Officer J.B. further testified that he

[4] The government cautions that the parties have not even had an opportunity to present proposed findings of fact or brief the merits of the issues addressed during the December 2 and 3, 2025, evidentiary hearing. The government urges the Court to allow the parties to brief those issues before reaching conclusions about MJMA's arrest.

believed the registered owner's database checks returned a rap sheet with an assault charge. Hr'g 237:7–17.

When officers initiated the stop of the van, the van very slowly came to a stop. Hr'g 244:6–7. Officers then approached the driver side door and asked the driver to roll his window down. Hr'g 245:19–246:10. When the driver did not comply with the officers' multiple directions, Officer J.B. broke the window, and another officer removed the driver from the vehicle. Hr'g 245:19–246:17. After the driver was secured, officers inquired with the other individuals in the van who they were and what their immigration status was. Hr'g 185:4–9. MJMA repeatedly ordered all of the passengers in the vehicle to not speak to the officers. Hr'g 186:4–13. MJMA's direction that the other passengers not speak to the officers indicated to Officer C.M. that MJMA could be a ringleader or handler for criminal activity or trafficking. Hr'g 187:24–188:17. The passengers also ignored the officers' commands to see their hands and stop moving. Hr'g 186:1–3. Officer J.B. witnessed one passenger climb to the backseat of the cargo van in what he perceived as an attempt to flee out the backdoor. Hr'g 247:12–25. MJMA refused to follow the officers' instructions and was eventually removed from the van. Hr'g 191:17–192:18.

After all the passengers were removed from the van and while officers continued their investigation, one individual who had been placed into a car created a commotion by climbing to the front seat of the car and slamming himself into the steering wheel. Hr'g 251:7–25. While officers were responding to the honking horn, another individual fled on foot, requiring another officer to give chase. Hr'g 251:1–6.

MJMA refused to provide her identity to the officers. Hr'g 429:5–430:9. Facial recognition technology indicated MJMA was a potential match for someone with a prior immigration encounter with DHS. Hr'g 430:21–432:1. MJMA's fingerprint later revealed that she had entered the United States in January 2025 and overstayed her visa, which expired in March 2025. 436:4–13.

Not 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. First, MJMA and the passengers in the van were non-compliant with the officers' instructions. MJMA specifically urged the other passengers to be noncompliant and to refuse to answer the officers' questions. Second, three individuals attempted to flee from the officers, indicating there could have been a concerted effort to provide an opportunity for others to escape. Hr'g 153:14–154:8. Third, MJMA has no apparent community ties as she has only been in the United States since January 19, 2025. Dkt. 26 ¶ 2. MJMA's noncompliance coupled with the context of three individuals attempting to flee indicate that she was likely to escape before a warrant could be obtained. Most importantly, due to her refusal to identify herself, officer would not have known where to find her again if they had released her. The evidence does not indicate officers violated the warrantless arrest statute or regulation in arresting MJMA on October 30.

II. Plaintiffs fail to show they will suffer irreparable harm.

Even if the Court finds that Plaintiffs have a likelihood of succeeding on the merits, the court should still deny the preliminary injunction because Plaintiffs have

failed to establish that they will suffer irreparable harm absent preliminary relief. To meet their burden for a preliminary injunction, Plaintiffs must "demonstrate that irreparable injury is *likely* in the absence of an injunction." *Winter*, 555 U.S. at 22 (emphasis in original). "Speculative injury does not constitute irreparable injury sufficient to warrant granting a preliminary injunction." *Caribbean Marine Servs. Co. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988). This is because a preliminary injunction is an "extraordinary remedy that may only be awarded upon a clear showing" that Plaintiffs are "entitled to such relief." *Winter*, 555 U.S. at 22. Courts cannot presume irreparable harm: there must be a satisfactory showing— "No such thumb on the scales is warranted." *Monsanto Co.*, 561 U.S. at 157. "Allegations of irreparable harm must be supported with actual evidence, and not merely conclusory statements or unsupported allegations." *Nevada v. United States*, 364 F. Supp. 3d 1146, 1151 (D. Nev. 2019).

"Plaintiff's long delay before seeking a preliminary injunction implies a lack of urgency and irreparable harm." *See Oakland Tribune, Inc. v. Chronicle Publ'g Co.*, 762 F.2d 1374, 1377 (9th Cir. 1985); *Lydo Enters., Inc. v. City of Las Vegas*, 745 F.2d 1211, 1213 (9th Cir. 1984) ("A delay in seeking a preliminary injunction is a factor to be considered in weighing the propriety of relief"); *Hi-Rise Technology, Inc. v. Amateurindex.com*, 2007 WL 1847249, at * 4 (W.D. Wash. June 27, 2007) ("Such a long delay in seeking relief weights against granting a temporary restraining order or a preliminary injunction."); *La Tonya D. Denham v. City of Glendale*, No. CV 26-265-JFW(KES), 2026 WL 127936, at *2 (C.D. Cal. Jan. 12, 2026) (""Plaintiffs' delay

in seeking relief demonstrates a lack of urgency and irreparable harm and weighs heavily against granting a TRO or preliminary injunction.").

Here, Plaintiffs delay in seeking injunctive relief cuts deeply against their argument that they will suffer irreparable harm without injunctive relief. Mr. Cruz Gamez was arrested on October 14, 2025, Dkt. 62 ¶ 9, and MJMA was arrested on October 30, 2025, Dkt. 26 ¶ 5. But Plaintiffs did not file their motion for a preliminary injunction until January 9, 2025, almost three months after Mr. Cruz's arrest and ten weeks after MJMA's arrest. This delay in moving for relief undercuts Plaintiffs' claim that they will suffer irreparable harm if the Court does not issue an injunction. *Garcia v. Google, Inc.*, 786 F.3d 733, 746 (9th Cir. 2015) (explaining the district court did not abuse its discretion by finding that a 3-month delay in seeking a preliminary injunction undercut Garcia's claim of irreparable harm).

Moreover, Plaintiffs are not seeking to prevent irreparable harm. Instead, they seek an injunction to prevent past harms from recurring. As explained above, past law enforcement contact does not create a presumption of imminent repetition. *Lyons*, 461 U.S. at 105–06. "Absent a sufficient likelihood that [they] will again be wronged in a similar way," Plaintiffs cannot establish standing to seek an injunction much less irreparable harm. *Id.* at 111. Additionally, Plaintiffs' belief that they will be rearrested without probable cause is speculative, and it is well established that a movant cannot show "certain[] impending" injury when the asserted injury is based on a "speculative chain of possibilities." *Clapper*, 568 U.S. at 410. Because Plaintiffs cannot establish standing to seek an injunction, they likewise cannot establish

irreparable harm. *Associated Gen. Contractors of Cal., Inc. v. Coal. for Econ. Equity*, 950 F.2d 1401, 1410 (9th Cir. 1991).

III. Neither the balance of equities nor the public interest favors a preliminary injunction.

The final two preliminary injunction factors, the public interest and the balance of the equities, "merge" when the Executive Branch is a party. *Nken v. Holder*, 556 U.S. 418, 435 (2009). Plaintiffs have not shown that these factors strongly weigh in their favor. While Plaintiffs have identified their concerns, "courts of equity should pay particular regard for the public consequences in employing the extraordinary remedy of injunction." *Winter*, 555 U.S. at 24 (citation omitted). Here, the public interest in enforcing the immigration laws is "substantial[]." *United States v. Martinez-Fuerte*, 428 U.S. 543, 556-57 (1976). An alien's unlawful presence in the United States is a continuing violation of the law and the government has a legitimate and significant interest in ensuring that immigration laws are enforced. *See INS v. Lopez-Mendoza*, 468 U.S. 1032, 1047 (1984). Courts may not "blithe[ly]" dismiss that public interest in immigration enforcement. *Nken*, 556 U.S. at 436. The order Plaintiffs seek, though, would do just that and interfere with the federal government's significant immigration enforcement function. Additionally, the reporting requirements Plaintiffs seek to impose would disproportionately burden government resources. The public interest is, therefore, served by allowing ICE to continue to conduct its operations without preliminary intervention by the Court.

IV. Plaintiffs have not met their burden to demonstrate their class should be provisionally certified.

Plaintiffs seek to provisionally certify the "Unassessed Escape Risk" class as part of the relief requested in their motion for a preliminary injunction. Dkt. 61 at 27. "A party seeking provisional certification 'has the burden of meeting the threshold requirements' of Rule 23(a)." *United Farm Workers v. Noem*, 785 F. Supp. 3d 672, 707–08 (E.D. Cal. 2025) (citing *Meyer v. Portfolio Recovery Assocs., LLC*, 707 F.3d 1036, 1041 (2012)).

A class action is proper if: "(1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a). The court must engage in a "rigorous analysis" to determine if the prerequisites of Rule 23(a) have been met. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350–51 (2011).

If the court finds the party seeking certification satisfies the prerequisites of Rule 23(a), the court next analyzes "whether the class is maintainable under Rule 23(b)." *United Farm Workers*, 785 F. Supp. 3d at 708 (citing *DZ Reserve v. Meta Platforms, Inc.*, 96 F.4th 1223, 1232 (9th Cir. 2024))

"Rule 23 does not set forth a mere pleading standard. A party seeking class certification must affirmatively demonstrate his compliance with the Rule—that is, he must be prepared to prove that there are *in fact* sufficiently numerous parties, common questions of law or fact, etc." *Wal-Mart*, 564 U.S. at 350 (emphasis in

original). "Consequently, it is not enough for the Court to assume the Rule 23 factors can be satisfied." *United Farm Workers v. Noem*, 785 F. Supp. 3d 672, 709 (E.D. Cal. 2025). The party seeking certification bears the burden to "actually prove–not simply plead–that their proposed class satisfied each requirement of Rule 23." *White v. Symetra Assigned Benefits Service Comp.*, 104 F.4th 1182, 1201 (9th Cir. 2024) (citing *Halliburton Co. v. Erica P. John Fund, Inc.*, 573 U.S. 258, 275 (2014)).

Here, Plaintiffs fail to address their burden under Fed. R. Civ. P. 23 to provisionally certify the Unassessed Escape Risk class. Plaintiffs put forth no argument as to why the class should be provisionally certified let alone the threshold requirements under Rule 23(a). They simply request the Court provisionally certify the class without explanation. The Court cannot engage in a rigorous analysis of the Rule 23(a) prerequisites at this juncture. This is especially so because Defendants have not had the opportunity to address Plaintiffs' motion for class certification as Defendants response deadline is February 20, 2026. Dkt. 67. Accordingly, the Court cannot grant the injunctive relief Plaintiffs seek in their motion.

V. Plaintiffs must post a bond.

If the Court is inclined to grant a preliminary injunction, it must do so "only if the movant gives security in an amount that the court considers proper to pay the posts and damages sustained by any party to have been wrongfully enjoined or restrained." Fed. R. Civ. P. 65(c). Accordingly, the Court should require Plaintiffs to post a bond pursuant to Rule 65(c).

CONCLUSION

For the reasons discussed above, Defendants respectfully request the Court deny Plaintiffs' motion for a preliminary injunction.

Respectfully submitted this 23rd day of January, 2026.

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