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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CARMEN ARACELY PABLO SEQUEN,
YULISA ALVARADO AMBROCIO,
MARTIN HERNANDEZ TORRES, and LIGIA
GARCIA,

Plaintiffs-Petitioners,

v.

SERGIO ALBARRAN, MARCOS CHARLES,
THOMAS GILES, MONICA BURKE, KRISTI
NOEM, U.S. DEPARTMENT OF
HOMELAND SECURITY, TODD M. LYONS,
SIRCE E. OWEN, PAMELA BONDI, U.S.
IMMIGRATION AND CUSTOMS
ENFORCEMENT, UNITED STATES
DEPARTMENT OF JUSTICE, EXECUTIVE
OFFICE FOR IMMIGRATION AND
REVIEW, UNITED STATES OF AMERICA,

Defendants-Respondents.

CASE NO. 25-cv-06487-PCP

**RESPONDENTS' OPPOSITION TO MOTION
FOR STAY OF AGENCY ACTION**

Date: November 20, 2025
Time: 10:00 a.m.
Courtroom: Courtroom 8 – 4th Floor

Honorable P. Casey Pitts
United States District Judge

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1 I. INTRODUCTION

2 Petitioners’ motion to stay is a blatant attempt to advance their preferred immigration policies. But
 3 their differences of opinion about what the Government policy should be do not equate to a violation of
 4 the Administrative Procedure Act (“APA”). Petitioners ignore: (1) the complete history of civil
 5 enforcement actions in or near courthouses in multiple presidential administrations; (2) the legitimate
 6 reasons why Respondents issued Operating Policies and Procedures Memorandum 25-06 (“OPPM 25-06”)
 7 and the Memorandum entitled, “Civil Immigration Enforcement Actions In or Near Courthouses” (the
 8 “2025 Courthouse Arrest Guidance”); (3) the actual language of both policies; (4) the reasonable
 9 justifications for both policies; and (5) the Memorandum entitled “Interim Guidance: Civil Immigration
 10 Enforcement Actions in or near Courthouses” (“Interim Guidance”) is not “final agency action” under the
 11 APA. *See* Pls.’ Mot. for Stay of Agency Action (“Mot.”), ECF No. 94. But more fundamentally, their
 12 motion fails to satisfy the requirements for obtaining the “extraordinary” remedy of staying the
 13 enforcement of OPPM 25-06 or the 2025 Courthouse Arrest Guidance.

14 As a threshold matter, Petitioners’ claims are not justiciable, Petitioners lack standing, their claims
 15 are not ripe for adjudication, and their claims are moot. Indeed, three Petitioners have already received
 16 relief on their habeas claims preventing their further arrest at any courthouse, while the fourth Petitioner—
 17 after withdrawing his petition for review before the Ninth Circuit—has been removed to Mexico. But
 18 there is a myriad of other reasons Petitioners’ motion should be denied. First, the Interim Guidance is not
 19 “final agency action,” and neither OPPM 25-06 nor the 2025 Courthouse Arrest Guidance is subject to
 20 review under the APA. Second, Petitioners are unlikely to succeed on the merits of their claims
 21 challenging OPPM 25-06 and the 2025 Courthouse Arrest Guidance because courthouse arrests are
 22 authorized, and there is no common-law privilege against them, as Petitioners suggest. The Immigration
 23 and Nationality Act (“INA”) codifies the Executive Branch’s constitutional and inherent authority to arrest
 24 and detain aliens who are suspected of being, or found to be, unlawfully present in the United States to
 25 effectuate their removal. *See* 8 U.S.C. §§ 1182, 1225, 1226, 1231, 1357. Third, both policies are reasoned,
 26 rational, and justified. Neither OPPM 25-06 nor the 2025 Courthouse Arrest Guidance is arbitrary or
 27 capricious. Fourth, Petitioners cannot demonstrate that they are likely to suffer irreparable harm in the
 28

1 absence of a stay. Petitioners are not at risk of being arrested at a courthouse. And finally, the balance of
 2 equities tips in favor of Respondents enforcing the immigration laws of the United States.

3 **II. OBJECTIONS TO EVIDENTIARY SUBMISSIONS**

4 Petitioners submit five declarations from attorneys and former immigration judges to support their
 5 motion to stay. *See* Declarations of Bette Kane Stockton, George Pappas, Milli Atkinson, Sean Lai
 6 McMahon, and Shira M. Levine, ECF Nos. 96-100. These declarations are objectionable and should be
 7 disregarded on several grounds: (1) relevance - Fed. R. Evid. 401; (2) lack of foundation and speculation -
 8 Fed. R. Evid. 602; and (3) hearsay – Fed. R. Evid. 801(c).¹

9 First, some of the declarations are irrelevant. Two are not focused on the relevant time period,
 10 instead largely addressing time periods before actions were initiated in or near courthouses started. For
 11 example, Judge Stockton’s declaration includes facts pre-dating 2011, or nearly three years before the
 12 administration of Barack Obama initiated the commencement of civil enforcement actions in or near
 13 courthouses in 2014. *Compare* Decl. of Bette Kane Stockton, ECF No. 96 *with* Decl. of Douglas Johns
 14 (“Johns Decl.”) ¶ 2, Ex. A, ECF No. 107. Similarly, Judge Pappas’ declaration ignores most of the
 15 relevant time period and presents facts from a small portion of the time period relevant to this dispute. *See*
 16 Decl. of George Pappas, ECF No. 97. Judge Pappas’s declaration is irrelevant for the additional reason
 17 that he only discusses a venue that is not at issue. *See id.* at 1 (discussing the Chelmsford Immigration
 18 Court in Massachusetts, a different court from where Petitioners were arrested). Finally, the Pappas and
 19 McMahon declarations are irrelevant to the extent they are merely criticizing another Government
 20 policy—the Government’s motions to dismiss immigration proceedings—that is not at issue in this case.
 21 *See* Decl. of George Pappas, ECF No. 97 (describing Respondents moving to dismiss proceedings); Decl.
 22 of Sean Lai McMahon, ECF No. 99 (criticizing Respondents’ tactic of moving to dismiss proceedings).

23 Second, two declarations rely on statements that are speculative and lack any foundation. Milly
 24 Atkinson concludes, without any foundation, that courthouse arrests have had a “chilling effect” on all
 25

26 ¹ Petitioners also rely on prior declarations proffered in support of their prior motions. *See* Mot. at
 27 6, 12, 13, 15 (citing Decl. of Nicole Zanardi, ECF No. 33-9 and Decl. of Nikolas de Braemaker, ECF No.
 28 33-10). These declarations suffer from the same defects as the new declarations proffered in support of
 Petitioners’ motion to stay. *See* ECF No. 111 at 1 n.1 (stating objections to de Braemaker declaration).
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immigration proceedings, but provides no evidentiary basis for such a conclusion. *See* Decl. of Milli Atkinson at 6, ECF No. 98. On similarly objectionable grounds, Sean Lai McMahon also speculates and concludes that arrests have caused aliens not to appear for their court appearances. *See* Decl. of Sean Lai McMahon at 4, ECF No. 99. Judge Levine concludes without any support or foundation that she “attribute[s] the significant increase in absenteeism to the fact that people were scared to come to court once the courthouse arrests began.” *See* Decl. of Shira M. Levine at 1, ECF No. 100. OPPM 25-06 directly contradicts that conclusion. *See* Johns Decl. ¶ 8, Ex. G at 2 (disputing the alleged “chilling effect” by providing statistics about the over 530,000 aliens who failed to attend their scheduled hearing). The Court should not rely on statements that lack foundation and are speculative. Finally, and to the extent Petitioners are offering these witnesses as experts, they have not satisfied the requirements of the Federal Rules of Civil Procedure. *See* Fed. R. Civ. P. 26(a)(2)(B)-(C).

Third, two declarations rely on hearsay. Milli Atkinson makes declarations about reports of observations of unidentified third parties and includes criticism of law enforcement officers based entirely on hearsay from unspecified “AOD attorneys and Court Observers.” *See* Decl. of Milli Atkinson at 2, 4, 5, 6, 7, ECF No. 98 (purporting to describe the observations of an “AOD attorney” and unspecified “Court Observers”). And Atkinson in turn relies on these hearsay statements to conclude that “[c]ourthouse arrests in San Francisco appear to be increasing in frequency.” *See id.* at 3. Likewise, the declaration of Sean Lai McMahon suffers from the same defects. *See* Decl. of Sean Lai McMahon at 3-4, ECF No. 99 (criticizing law enforcement officers based on what the declarant learned from “reports” of third parties and “AOD volunteers”). The Court should not consider these inadmissible submissions that are based on hearsay from unnamed and unspecified third parties.

III. FACTUAL BACKGROUND

A. History of Courthouse Arrests Through Multiple Presidential Administrations.

1. Policies During Barack Obama’s Presidency.

Since at least 2014, U.S. Immigration and Customs Enforcement (“ICE”) has engaged in civil immigration enforcement actions in or near courthouses. *See* Johns Decl. ¶ 2, Ex. A. In a March 19, 2014 Memorandum entitled “Enforcement Actions at or Near Courthouses” (the “March 2014 Guidance”), ICE

1 stated that “[e]nforcement actions at or near courthouses will only be undertaken against Priority 1 aliens,”
 2 including aliens engaged in or suspected of terrorism or espionage or who otherwise pose a danger to
 3 national security, and those aliens who pose a serious risk to public safety as shown by certain criminal
 4 activity. *See id.* After March 2014, ICE’s guidance with respect to courthouse arrests has been amended
 5 several times to reflect changes in U.S. Department of Homeland Security (“DHS”) enforcement
 6 priorities. In guidance dated January 26, 2015, during the Obama Administration, ICE revised the March
 7 2014 Guidance to reflect enforcement priorities set forth in then-DHS Secretary Jeh Johnson’s November
 8 20, 2014, Memorandum entitled “Policies for the Apprehension, Detention, and Removal of
 9 Undocumented Immigrants.” *See id.* ¶ 3, Ex. B. The guidance dated January 26, 2015, still permitted
 10 enforcement actions at or near courthouses under certain circumstances. *See id.*

11 **2. Policies During President Donald Trump’s First Presidency.**

12 On January 25, 2017, President Trump issued Executive Order 13,768, which expanded the
 13 categories of aliens to be prioritized for removal. 82 Fed. Reg. 8799 (Jan. 25, 2017). To implement the
 14 Executive Order, on January 10, 2018, ICE issued the Memorandum entitled “Directive 11072.1: Civil
 15 Immigration Enforcement Actions Inside Courthouses” (the “2018 Directive”), which revised ICE’s
 16 policy “regarding civil immigration enforcement actions inside federal, state, and local courthouses.” *See*
 17 Johns Decl. ¶ 3, Ex. C at 1. The 2018 Directive explained that “civil immigration enforcement actions
 18 taken inside courthouses can reduce safety risks to the public, targeted alien(s) and ICE officers and
 19 agents,” because “[i]ndividuals entering courthouses are typically screened by law enforcement personnel
 20 to search for weapons and other contraband.” *Id.*

21 **3. Policies During Joseph Biden’s Presidency.**

22 On January 20, 2021, President Biden issued Executive Order 13,993, “Revision of Civil
 23 Immigration Enforcement Policies and Priorities,” 86 Fed. Reg. 7051 (Jan. 20, 2021), which revoked
 24 Executive Order 13,768. On the same day, Acting DHS Secretary David Pekoske issued the Memorandum
 25 which amended the agency’s immigration enforcement priorities. *See* Johns Decl. ¶ 5, Ex. D. DHS
 26 revoked the 2018 Directive and issued interim guidance “governing [ICE] civil immigration enforcement
 27 actions in or near courthouses” (“2021 Guidance”). *See id.* The 2021 Guidance provided that a civil
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1 immigration enforcement action may be taken in or near a courthouse under certain conditions. *See id.* ¶ 5,
2 Ex. D at 2. In the absence of hot pursuit and subject to advance supervisory approval, ICE officers were
3 permitted to undertake a civil immigration enforcement action in or near a courthouse against an
4 individual posing a threat to public safety if there was no other safe alternative location or it would be too
5 difficult to undertake the action elsewhere. *Id.*

6 **B. Declaration of National Emergency and President Trump’s Executive Orders.**

7 Among President Trump’s priorities was to enforce the immigration laws of the United States, and
8 he changed the approach of the United States with respect to immigration enforcement. On January 20,
9 2025, the first day of his administration, President Trump declared a national emergency at the Southern
10 Border of the United States. *See* Proclamation No. 10886, 90 Fed. Reg. 8327 (Jan. 20, 2025). He also
11 issued two Executive Orders relating to immigration that are relevant to Petitioners’ motion.

12 First, on January 20, 2025, President Trump issued Executive Order 14159, “Protecting the
13 American People Against Invasion,” to “faithfully execute the immigration laws against all inadmissible
14 and removable aliens, particularly those aliens who threaten the safety or security of the American
15 people.” *See* Exec. Order No. 14159, 90 Fed. Reg. 8443 (Jan. 20, 2025). President Trump ordered the
16 Secretary of Homeland Security to “promptly take all appropriate action and allocate all legally available
17 resources . . . to detain removable aliens” and “ensure the detention of aliens apprehended for violations of
18 immigration law pending the outcome of their removal proceedings or their removal from the country.” *Id.*
19 at 8445.

20 Second, on January 20, 2025, President Trump also issued Executive Order 14165, “Securing Our
21 Borders” because of the “large-scale invasion” of the United States by “illegal aliens from nations and
22 regions all around the world” including “potential terrorists, foreign spies, members of cartels, gangs, and
23 violent transnational criminal organizations, and other hostile actors with malicious intent.” *See* Exec.
24 Order No. 14165, 90 Fed. Reg. 8443 (Jan. 20, 2025). Under Executive Order 14165, it is the policy of the
25 United States to “secure the borders of our Nation” through “[d]etaining to the maximum extent
26 authorized by law, aliens apprehended on suspicion of violating Federal or State law, until such time as
27 they are removed from the United States,” and “[r]emoving promptly all aliens who enter or remain in
28

violation of Federal law.” *Id.* Like Executive Order 14159, President Trump ordered the Secretary of Homeland Security to “detain, to the fullest extent permitted by law, aliens apprehended for violations of immigration law until their successful removal from the United States” and “terminate” the “practice commonly known as ‘catch-and-release,’ whereby illegal aliens are routinely released into the United States shortly after their apprehension for violations of immigration law.” *Id.* at 8468.

C. Current Courthouse Arrest Guidance.

1. DHS and ICE Courthouse Arrest Guidance.

On January 21, 2025, the day after President Trump issued Executive Order 14159 and Executive Order 14165, and also declared a national emergency, Acting ICE Director, Caleb Vitello, issued the Interim Guidance. *See* Johns Decl. ¶ 6, Ex. E. The Interim Guidance rescinded the Memorandum entitled “Civil Immigration Enforcement Actions in or near Courthouses” issued during President Biden’s administration. *See id.* at 1. The Interim Guidance explains that “Federal, state, and local law enforcement agencies routinely engage in enforcement activities in or near courthouses because many individuals appear in courthouses for unrelated criminal or civil violations.” *Id.* The Interim Guidance further explains that civil immigration enforcement actions in or near courthouses are safer for the public, targeted aliens, and law enforcement officers because “[i]ndividuals entering courthouses are typically screened by law enforcement personnel to search for weapons and other contraband.” *Id.* Finally, the Interim Guidance states that civil immigration enforcement actions are necessary “when jurisdictions refuse to cooperate with ICE, including when such jurisdictions refuse to honor immigration detainers and transfer aliens directly to ICE custody.” *Id.*

On May 27, 2025, Todd M. Lyons, Acting ICE Director, issued the 2025 Courthouse Arrest Guidance, which superseded the Interim Guidance. *See* Johns Decl. ¶ 7, Ex. F at 1. The 2025 Courthouse Arrest Guidance explains that civil immigration enforcement actions taken in or near courthouses “can reduce safety risks to the public, targeted alien(s) and ICE officers and agents,” because “[i]ndividuals entering courthouses are typically screened by law enforcement personnel to search for weapons and other contraband.” *See id.* And civil immigration enforcement actions in or near courthouses are consistent with the actions of “[f]ederal, state and local law enforcement officials” who “routinely engage in enforcement

activities in or near courthouses because many individuals appear in courthouses for unrelated criminal or civil violations.” *Id.* The 2025 Courthouse Arrest Guidance further explains that courthouse arrests “are often required when jurisdictions refuse to cooperate with ICE,” such as refusing “to honor immigration detainers and transfer aliens directly to ICE custody.” *Id.*

Under the 2025 Courthouse Arrest Guidance, law enforcement officers “may conduct civil immigration enforcement actions in or near courthouses when they have credible information that leads them to believe the targeted alien(s) is or will be present at a specific location.” *Id.* at 2. Officers will “conduct civil immigration enforcement actions against targeted aliens discreetly to minimize their impact on court proceedings.” *Id.* Officers will “make substantial efforts to avoid unnecessarily alarming the public or disrupting court operations,” and “make every effort to limit their time at courthouses while conducting civil immigration enforcement actions.” *Id.* at 3.

2. EOIR Courthouse Arrest Guidance.

The Executive Office for Immigration Review (“EOIR”) is an agency within the U.S. Department of Justice that oversees the immigration courts and the Board of Immigration Appeals. *See* 8 C.F.R. § 1003.0; *see also* <https://justice.gov/eoir/about-office> (last visited on Oct. 29, 2025). EOIR is responsible for adjudicating immigration cases. *Id.* During President Biden’s administration, on December 11, 2023, EOIR issued Operating Policies and Procedures Memorandum 23-01 (“OPPM 23-01”), which purported to prohibit some, but not all, civil immigration enforcement actions by DHS in or near courthouses. *See* Johns Decl. ¶ 8, Ex. G, at 1.

On January 28, 2025, EOIR issued OPPM 25-06, which rescinded and canceled OPPM 23-01, also recognizing that OPPM 23-01 was superseded by the Interim Guidance. *See id.* OPPM 25-06 further criticizes the reasons why President Biden’s administration issued OPPM 23-01 including that the “bases for OPPM 23-01 were unpersuasive, inconsistent with current Executive Branch policy, pretextual, or unsubstantiated on any systematic basis.” *Id.* OPPM 25-06 disputes whether the alleged “vague, unspecified ‘chilling effect’” exists because of immigration enforcement actions in or near courthouses. *Id.* OPPM 25-06 correctly acknowledges that this latter claim was unsupported, and questions its foundation based on established data. *See id.* For example, OPPM 25-06 notes that from the time when

OPPM 23-01 was issued until January 27, 2025, over 530,000 aliens failed to attend their scheduled hearing, thus suggesting that President Biden’s policy to limit enforcement actions near courthouses was not contributing to aliens failing to attend their scheduled hearings. *See id.* at 2.

OPPM 25-06 refutes the other reasons upon which OPPM 23-01 rests. To start, OPPM 23-01 allowed enforcement actions in select circumstances, including “hot pursuit,” threats to national security, and imminent risk of death or harm. *See id.* But, as OPPM 25-06 recognizes, these circumstances hold “greater safety risks” than a “routine enforcement action that was otherwise prohibited.” *See id.* Thus, OPPM 23-01’s purported concerns about safety lack merit. Next, OPPM 25-06 disputes OPPM 23-01’s allegations about maintaining the “separate and distinct roles” of EOIR and DHS. *See id.* OPPM 25-06 highlights that “EOIR leadership at the time OPPM 23-01 was issued only seemed interested in ensuring a separation between EOIR and DHS in certain situations with a particular valence.” *Id.* at 2. Thus, its analysis about maintaining these distinct roles was baseless. *See id.* Finally, OPPM 25-06 notes that EOIR lacks the authority to prohibit DHS from “conducting any action it is otherwise lawfully authorized to take” including an immigration enforcement action in or near a courthouse. *Id.* OPPM 25-06 concludes that “there is no basis to retain OPPM 23-01, especially in light of DHS’s Interim Guidance and current Executive Branch policies.” *Id.*

IV. RELEVANT PROCEDURAL BACKGROUND

This case presents a rich, yet convoluted, background that is well documented. Respondents only include the relevant procedural background for this motion. On October 16, 2025, Petitioners filed their instant motion seeking a stay of (1) the Interim Guidance; (2) the 2025 Courthouse Arrest Guidance; and (3) OPPM 25-06. *See Mot.* at 2. Petitioners allege that all three policies violate the APA. *See id.*

On October 24, 2025, Respondents filed a motion to dismiss and motion to sever. *See Resp’ts’ Mot. to Dismiss and Mot. to Sever*, ECF No. 106. Respondents moved to dismiss Petitioners’ claims arising under the APA including the claims at issue in their motion about courthouse arrests. *See id.* at 16-22. The Court should defer ruling on Petitioners’ motion to stay the courthouse arrest policies until after it rules on Respondents’ motion to dismiss. The adjudication of Respondents’ motion to dismiss may eliminate the need for the Court to rule on Petitioners’ motion to stay. The Court has not made any factual

findings in the case. The parties have not engaged in any discovery.

V. LEGAL STANDARD

The APA provides that “[o]n such conditions as may be required and to the extent necessary to prevent irreparable injury, the reviewing court . . . may issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings.” 5 U.S.C. § 705. The staying of agency action under the APA is governed by the preliminary injunction factors. *See Nat’l TPS Alliance v. Noem*, 150 F.4th 1000, 1015 (9th Cir. 2025); *see also Immigrant Legal Res. Ctr. v. Wolf*, 491 F.Supp.3d 520, 529 (N.D. Cal. 2020) (“the factors considered when issuing such a stay substantially overlap with the *Winter* factors for a preliminary injunction”).

“A preliminary injunction is an ‘extraordinary remedy’ that ‘is never awarded as of right.’” *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). “A plaintiff seeking a preliminary injunction must show that: (1) 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.” *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (citing *Farris v. Seabrook*, 677 F.3d 858, 864 (9th Cir. 2012) and *Winter*, 555 U.S. at 20). Such an injunction is “an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion.” *Lopez v. Brewer*, 680 F.3d 1068, 1072 (9th Cir. 2012).

VI. ARGUMENT

A. Petitioners’ Claims Are Not Justiciable.

“Article III confines the federal judicial power to the resolution of ‘Cases’ and ‘Controversies.’” *TransUnion LLC v. Ramirez*, 594 U.S. 413, 423 (2021). And “[n]o 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.” *Spokeo, Inc. v. Robins*, 578 U.S. 330, 337 (2016) (quoting *Raines v. Byrd*, 521 U.S. 811, 818 (1997)). Federal courts may only act in the context of a justiciable case or controversy. *See Benton v. Maryland*, 395 U.S. 784, 788 (1969). Courts must consider the threshold issue of jurisdiction before addressing the merits of a case. *Steel v. Citizens for a Better Env’t*, 523 U.S. 83, 94-95 (1998).

Petitioner, Yulisa Alvarado Ambrocio (“Ambrocio”), has never been arrested at a courthouse. *See* Pls.’ Am. Compl. (“FAC”), ECF No. 32; *see also* Decl. of Yulisa Ambrocio, ECF No. 33-11. And on September 16, 2025, and October 15, 2025, the Court granted the motions for a preliminary injunction filed by Ambrocio and Petitioners, Carmen Aracely Pablo Sequen (“Sequen”) and Ligia Garcia (“Garcia”). *See* Orders Granting Prelim. Inj., ECF Nos. 27, 90. Under these orders, Ambrocio, Garcia, and Sequen cannot be arrested at a courthouse unless they are provided a pre-detention bond hearing before a neutral immigration judge where the Government bears the burden of demonstrating by “clear and convincing evidence” that they are a flight risk or danger to the community and “that no conditions other than detention would be sufficient to prevent such harms.” *See* ECF No. 27 at 16; ECF No. 90 at 24. Put simply, Ambrocio, Sequen, and Garcia cannot be arrested at a courthouse.

Separately, Torres was detained in the Eastern District of California because of a removal order. *See* Decl. of Sellenia Olson (“Olson Decl. I”) ¶¶ 6-15, ECF No. 108. After Torres withdrew his petition for review to the United States Court of Appeals for the Ninth Circuit, he was removed to Mexico and no longer resides in the United States. *See* Supplemental Decl. of Sellenia Olson (“Olson Decl. II”) ¶¶ 4, 7, Ex. V. Given these circumstances, Petitioners’ claims are not justiciable. First, Petitioners lack standing generally, and more specifically, standing to pursue injunctive relief. Second, Petitioners’ claims are not ripe because they involve uncertain or contingent future events. Third, Petitioners’ claims are moot.

1. Petitioners Lack Standing and Lack Standing to Pursue Injunctive Relief.

“Standing to sue is a doctrine rooted in the traditional understanding of a case or controversy” that “limits the category of litigants empowered to maintain a lawsuit in federal court to seek redress for a legal wrong.” *Spokeo, Inc.*, 578 U.S. at 338. Standing exists only where the plaintiff demonstrates that (1) he has suffered an “injury in fact” that is concrete, particularized, and actual or imminent, (2) the injury is “fairly traceable” to the defendant’s conduct, and (3) the injury can be “redressed by a favorable decision.” *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992); *see also Massachusetts v. EPA*, 549 U.S. 497, 517 (2007) (same). “[A] plaintiff must demonstrate standing separately for each form of relief sought.” *See Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC)*, 528 U.S. 167,

185 (2000). To have standing, a party “must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties.” *Warth v. Seldin*, 422 U.S. 490, 500 (1975).

Petitioners lack standing because (1) in the case of Ambrocio, Sequen, and Garcia, they have received relief from the Court prohibiting their future arrest at a courthouse (*See* ECF Nos. 7, 27, 36, 90); and (2) in the case of Torres, he was detained and later removed to Mexico. *See* Olson Decl. I ¶¶ 12-15; *see also* Olson Decl. II ¶¶ 4, 7, Ex. V. For these same reasons, Petitioners lack standing to pursue injunctive relief, which is the very relief sought in their motion to stay. As a result of the Court’s orders and Torres subsequent detention and removal, Petitioners will not be arrested at a courthouse. *See generally* Mot. Thus, they lack standing to enjoin an event which is unlikely to happen in the future. Petitioners must have standing for each form of relief sought. *See Friends of the Earth*, 528 U.S. at 185 (“a plaintiff must demonstrate standing separately for each form of relief sought”).

2. Petitioners’ Claims Are Not Ripe.

The doctrine of ripeness “is a means by which federal courts may dispose of matters that are premature for review because the plaintiff’s purported injury is too speculative and may never occur.” *Chandler v. State Farm Mut. Auto. Ins. Co.*, 598 F.3d 1115, 1122 (9th Cir. 2010). For a claim to be ripe, the plaintiff must be subject to a “genuine threat of imminent prosecution.” *See Clark v. City of Seattle*, 899 F.3d 802, 813 (9th Cir. 2018). The central concern of the ripeness inquiry is “whether the case involves uncertain or contingent future events that may not occur as anticipated, or indeed may not occur at all.” *Richardson v. City and County of Honolulu*, 124 F.3d 1150, 1160 (9th Cir. 1997).

For the same reasons expressed, Petitioners’ claims are no longer ripe. Because of the Court’s orders (ECF Nos. 7, 27, 36, 90) and Torres’ detention and subsequent removal to Mexico, Petitioners’ claims involve uncertain or contingent future events. There is no evidence that Petitioners will be arrested at any courthouse. Importantly, and for these same reasons, Petitioners’ claims for injunctive relief, which is the subject of their motion to stay, are no longer ripe.

3. Petitioners’ Claims Are Moot.

Mootness is “the doctrine of standing set in a time frame: the requisite personal interest that must exist at the commencement of litigation (standing) must continue throughout its existence (mootness).”

1 *United States Parole Comm’n v. Geraghty*, 445 U.S. 388, 397 (1980). A case becomes moot “when the
 2 issues presented are no longer ‘live’ or the parties lack a legally cognizable interest in the outcome.” See
 3 *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013). To avoid mootness, “an actual controversy must be
 4 extant at all stages of review, not merely at the time the complaint is filed.” *Arizonaans for Official English*
 5 *v. Arizona*, 520 U.S. 43, 67 (1997) (quoting *Preiser v. Newkirk*, 422 U.S. 395, 401 (1975)).

6 For the same reasons expressed above, Petitioners’ claims are moot. Because Petitioners cannot be
 7 arrested at any courthouse, their claims challenging courthouse arrests and attempting to stop them are
 8 moot. See ECF Nos. 7, 27, 36, 90. Further, all of Torres’ claims became moot when he was transferred to
 9 the Eastern District of California and later removed to Mexico because of a final removal order. See Olson
 10 Decl. I ¶¶ 6-15; see also Olson Decl. II ¶¶ 4, 7, Ex. V. There is no longer a “live” controversy for the
 11 purpose of staying OPPM 25-06 and the 2025 Courthouse Arrest Guidance because Petitioners are no
 12 longer affected by either policy.

13 **B. Petitioners Are Unlikely to Succeed on the Merits of Their Challenges to OPPM 25-06, the Interim Guidance, and the 2025 Courthouse Arrest Guidance.**

14 To stay OPPM 25-06, the Interim Guidance, and the 2025 Courthouse Arrest Guidance, Petitioners
 15 must demonstrate that they are likely to succeed on the merits of their claims challenging these policies
 16 under the APA. See *Winter*, 555 U.S. at 20. Petitioners are unlikely to succeed on the merits of their
 17 claims, however, for the following three reasons. First, the Interim Guidance is not “final agency action,”
 18 and OPPM 25-06 and the 2025 Courthouse Arrest Guidance are not reviewable under the APA. Second,
 19 there is no common-law privilege against courthouse arrests. Third, neither OPPM 25-06 nor the 2025
 20 Courthouse Arrest Guidance is arbitrary or capricious.

21 **1. OPPM 25-06, the Interim Guidance, and the 2025 Courthouse Arrest**
 22 **Guidance Are Not Subject to APA Review.**

23 APA review is limited to “final agency action.” *Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 61-
 24 62 (2004) (quoting 5 U.S.C. § 704). But not all agency conduct qualifies as “final agency action” under
 25 the APA. See *Ctr. for Biological Diversity v. Haaland*, 58 F.4th 412, 417 (9th Cir. 2023). An agency
 26 action is “final” only if it both (1) “mark[s] the consummation of the agency’s decisionmaking process—it
 27 must not be of a merely tentative or interlocutory nature,” and (2) is “one by which rights or obligations
 28

1 have been determined, or from which legal consequences will flow.” *Id.* (quoting *Bennett v. Spear*, 520
 2 U.S. 154, 177-78 (1997)). Day-to-day operations of federal agencies are generally not considered final
 3 agency action, and thus not subject to APA review. *See Lujan*, 497 U.S. at 899 (plaintiffs “cannot demand
 4 a general judicial review of the [agency]’s day-to-day operations” under the APA).

5 The APA does not permit “judicial review over everything done by an administrative agency.” *See*
 6 *Wild Fish Conservancy v. Jewell*, 730 F.3d 791, 800-01 (9th Cir. 2013) (quoting *Fund for Animals, Inc. v.*
 7 *U.S. Bureau of Land Mgmt.*, 460 F.3d 13, 19 (D.C. Cir. 2006)) (quotation omitted). Rather, review is
 8 permitted only as expressly provided by statute. In particular, the APA precludes judicial review where the
 9 “agency action is committed to agency discretion by law.” 5 U.S.C. § 701(a)(2); *see Dep’t of Homeland*
 10 *Sec. v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891, 1905 (2020); *Lincoln v. Vigil*, 508 U.S. 182, 190–91
 11 (1993). Thus, “even where Congress has not affirmatively precluded review, review is not to be had if the
 12 statute is drawn so that a court would have no meaningful standard against which to judge the agency’s
 13 exercise of discretion.” *Heckler v. Chaney*, 470 U.S. 821, 830 (1985). In addition, the APA bars judicial
 14 review to the extent that “statutes preclude judicial review.” *See* 5 U.S.C. § 701(a)(1). Finally, the APA
 15 does not apply where there is “[an]other adequate remedy in a court.” 5 U.S.C. § 704. Federal courts lack
 16 jurisdiction over APA challenges when Congress has provided another adequate remedy. *See Brem-Air*
 17 *Disposal v. Cohen*, 156 F.3d 1002, 1004 (9th Cir. 1998).

18 OPPM 25-06, the Interim Guidance, and the 2025 Courthouse Arrest Guidance are unreviewable
 19 under the APA for at least four reasons. First, the Interim Guidance is not final agency action since (1)
 20 the Courthouse Arrest Guidance superseded the Interim Guidance, *see* Johns Decl. ¶ 7, Ex. F at 1, and
 21 (2) the Interim Guidance is therefore no longer effective, *see id.*

22 Second, the INA, from which ICE’s civil arrest authority derives, provides no “meaningful
 23 standard” by which a court can evaluate the appropriateness of ICE’s discretionary choice of public
 24 locations for targeted immigration enforcement actions. *See* 8 U.S.C. § 1226(a); *id.* § 1357(a). The INA’s
 25 broad language grants ICE discretion to determine the location of a civil enforcement action against an
 26 alien illegally present in the United States. And with respect to arrests by ICE with a warrant, ICE’s
 27 decisions about the location of such arrests are unreviewable for the separate reason that another statute
 28

“preclude[s] judicial review,” 5 U.S.C. § 701(a)(1), as the INA provides that immigration authorities’ “discretionary judgment regarding the application of [§ 1226, authorizing arrests with a warrant] shall not be subject to [judicial] review,” 8 U.S.C. § 1226(e).

Indeed, the 2025 Courthouse Arrest Guidance reflects ICE’s balancing of several discretionary factors. For example, the 2025 Courthouse Arrest Guidance discusses various factors that ICE considered, which favor conducting arrests in or around courthouses, including that (1) arrestees appear at courthouses at scheduled times; (2) individuals entering courthouses are typically screened by law enforcement personnel for weapons and other contraband and therefore enforcement actions in or near courthouses can reduce safety risks to the public, targeted aliens, and ICE officers and agents; and (3) such arrests may be required in jurisdictions that refuse to honor immigration detainers. *See* Johns Decl. ¶ 7, Ex. F at 1. And OPPM 25-06 recognizes that EOIR lacks authority to prohibit DHS from conducting civil immigration enforcement actions at or near courthouses. *See* Johns Decl. ¶ 8, Ex. G at 2. Given the lack of a restriction on ICE’s discretion and that there is no privilege preventing courthouse arrests, there is no “meaningful standard against which to judge the agency’s exercise of discretion,” *Heckler*, 470 U.S. at 830. The 2025 Courthouse Arrest Guidance and OPPM 25-06, therefore, are unreviewable.

Third, ICE’s decisions about the location of arrests with a warrant are unreviewable because the INA specifically provides that immigration authorities’ “discretionary judgment regarding the application of [§ 1226, authorizing arrests with a warrant] shall not be subject to [judicial] review,” 8 U.S.C. § 1226(e). By conferring that discretion, review is improper under the APA. Fourth, Petitioners have another remedy available in the form of a habeas action or potential claim for damages.

2. OPPM 25-06 and the 2025 Courthouse Arrest Guidance Are Not Arbitrary or Capricious.

OPPM 25-06 and the 2025 Courthouse Arrest Guidance are neither arbitrary nor capricious. First, and as a starting point, the Federal Government has broad power to regulate immigration in the United States. Second, there is no common-law privilege against courthouse arrests. Third, both OPPM 25-06 and the 2025 Courthouse Arrest Guidance are reasoned, rational, and justified. Petitioners ignore why the policies were issued, what the policies are trying to accomplish, and what the policies actual say.

(a) **There Is No Common-Law Privilege Against Federal Immigration Enforcement In and Around Courthouses.**

Petitioners allege that there is a common-law privilege against courthouse arrests. *See* FAC ¶ 41; *see also* Mot. at 14 n. 4. However, there has never been a privilege, either when the INA was adopted or at any time before, resembling the one alleged by Petitioners—much less one with “deep historical roots” (Mot. at 14 n.4) that the INA should be deemed to have included it. *United States v. Craft*, 535 U.S. 274, 288 (2002) (holding that, to conclude that Congress meant to incorporate a common-law rule, that rule must have been “so well established” that it can be “assume[d]” that Congress considered it). To the contrary, historical cases demonstrate speak only to a much narrower common-law immunity from certain types of civil arrest, which itself rests on rationales that no longer exist and that do not apply to this case involving the arrest and detention of aliens.

As the First Circuit recognized in a challenge to ICE’s prior courthouse arrest guidance in *Ryan v. United States Immigration and Customs Enforcement*, the “hoary common law privilege against civil arrests for parties and witnesses attending court proceedings” arose at a time when “a plaintiff in a civil action obtained personal jurisdiction over a defendant” by having that defendant arrested under a writ of *capias ad respondendum*. 974 F.3d 9, 15 (1st Cir. 2020). But individuals attending court proceedings in other matters were protected from such civil case-initiating arrests by an immunity devised by the courts, “both to remove a disincentive for inhibiting parties and witnesses from coming forward (especially the risk of arrest in connection with another matter) and to ensure that arrests did not disrupt the orderly operation of the courts.” *Id.* at 21. As long as personal jurisdiction was obtained through arrest, courts “continued to recognize the vitality of the common law privilege against courthouse arrests.” *Id.* at 22.

As “arrests in civil suits fell largely out of fashion” and were replaced by service of summonses to obtain personal jurisdiction and initiate a civil action, courts “ruled that a similar privilege against service of a summons should extend to at least some parties and witnesses.” *Id.* Thus, in cases now nearly a century old, the Supreme Court recognized an immunity from service of process in a private civil suit when the person to be served entered a jurisdiction solely to attend a court proceeding as a witness or party. *See Lamb v. Schmitt*, 285 U.S. 222, 225 (1932); *Page Co. v. MacDonald*, 261 U.S. 446, 446–47 (1923); *Stewart v. Ramsay*, 242 U.S. 128, 129 (1916).

Both the privilege against case-initiating arrest and the privilege against service of process of a person attending court were extensions of the now-outdated principle that a state court's jurisdiction over a person rested on that person's physical presence. *See Daimler AG v. Bauman*, 571 U.S. 117, 125–26 (2014). Because physical presence was historically the key to state-court personal jurisdiction, potential defendants had a strong incentive not to attend court proceedings in states in which potential plaintiffs might seek to serve them with civil process—just as they had the same incentive not to attend when they might be subject to arrest to subject them to a state court's jurisdiction. *See Stewart*, 242 U.S. at 130–31.

But that physical-presence requirement is now obsolete. In *International Shoe Co. v. Washington*, the Supreme Court announced the modern rule that a defendant need only have “certain minimum contacts” with a forum state to be sued there. 326 U.S. 310, 316 (1945). That decision broadly “increase[d] the ability of the state courts to obtain personal jurisdiction over nonresident defendants,” *Shaffer v. Heitner*, 433 U.S. 186, 204 (1977), and many states responded by enacting long-arm statutes enabling their courts to exercise personal jurisdiction over out-of-state defendants, *see Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 926 (2011); *Rosenblatt v. Am. Cyanamid Co.*, 86 S. Ct. 1, 3 (1965) (Goldberg, J., in chambers). Thus, the rationale for immunity against service of process or arrest to initiate a civil action has disappeared, given that neither physical presence nor physical custody is required for a court to obtain personal jurisdiction. With that rationale no longer present, the common-law rule that resulted from it no longer carries any force. *See United States v. Denedo*, 556 U.S. 904, 911 (2009) (noting change in common-law rule when rationale has been superseded); *Kansas v. Colorado*, 533 U.S. 1, 10 (2001) (rejecting common-law rule that rested on unsound distinction).

Accordingly, since the dawn of long-arm jurisdiction, judicial decisions have not applied the common-law privilege. That same logic vitiates any argument that the privilege should apply against courthouse arrests by ICE that Petitioners seek to stay by their motion. Aliens are subject to federal law enforcement jurisdiction or enforcement actions anywhere in the United States. *See* 8 U.S.C. § 1226(a) (providing for arrests “[o]n a warrant” without geographic limitation), *id.* § 1357 (providing for warrantless arrests without geographic limitation); 8 C.F.R. § 287.5(c) (similar).

(b) The INA Cannot Be Read to Incorporate the Common-Law Privilege Against Courthouse Arrests.

Because there was no “long-established and familiar common law rule protecting against civil arrests on behalf of the sovereign” at the time of the INA’s enactment (or at any other time), any assertion that the INA does not authorize such arrests at courthouses lacks merit. *Ryan*, 974 F.3d at 23. Congress is presumed to legislate against the background of the common law and to retain a common-law rule except when it evidently intends not to. *Baker Botts LLP v. ASARCO LLC*, 576 U.S. 121, 126 (2015); *Samantar v. Yousuf*, 560 U.S. 305, 320 & n.13 (2010). However, that presumption of nonderogation of the common law only applies to “long-established and familiar principles.” *Samantar*, 560 U.S. at 320 n.13 (quotation marks omitted). When the common-law rule is “not so well established,” or there is “not much of a common-law background on the question,” it cannot displace “broad statutory language” enacted by Congress. *Craft*, 535 U.S. at 288. Only when the “common-law . . . rule clearly barred” a statute’s effects may the courts infer that Congress intended the common-law rule to apply over the text of the statute. *Pasquantino v. United States*, 544 U.S. 349, 359–60 (2005). Similarly, when the “traditional rationales” for the common-law rule “do not plainly suggest that it swept so broadly,” the rule will not supplant the effect of a federal statute. *Id.* at 360.

Moreover, Congress amended the INA in 2006 to add 8 U.S.C. § 1229(e), which expressly acknowledges the practice of conducting immigration enforcement actions against aliens at courthouses. *Id.* § 1229(e)(1)–(2) (“where an [immigration] enforcement action leading to a removal proceeding was taken against an alien at . . . a courthouse (or in connection with that appearance of that alien at a courthouse if the alien is appearing in connection with [certain specified matters or circumstances]”). Section 1229(e) reflects Congress’s explicit recognition that courthouse arrests are permitted under the INA. Had Congress thought in 2006 that there was a privilege against those arrests, it would not have acknowledged the authority to make them or would have clearly distinguished impermissible civil ICE arrests from permissible criminal arrests. The provision is best read to mean that Congress never meant to bar courthouse arrests. By the time Congress established a comprehensive immigration-arrest statutory scheme in the INA, any privilege against extra-jurisdictional civil arrest was a historical artifact. Even when it was in force, it never applied to arrests by the government for law-enforcement purposes. Stated

1 differently, even if the alleged privilege survived until the INA was enacted in 1952, there is no long-
 2 established and familiar common-law rule protecting against civil arrest on behalf of a sovereign. The
 3 INA therefore cannot have codified the purported privilege. *See Pasquantino*, 544 U.S. at 364 (rejecting
 4 importation of a common-law rule where no case “clearly establishes” the rule’s applicability).

5 **(c) Federal Courts Have Recognized that Immigration**
 6 **Enforcement Actions In and Around Courthouses Are**
 7 **Authorized.**

8 The First Circuit examined courthouse arrests during President Trump’s first administration in
 9 *Ryan*. There, the plaintiff moved for a preliminary injunction and argued that ICE lacked statutory
 10 authority to conduct courthouse arrests under the INA because that statute implicitly incorporates a
 11 common-law privilege against courthouse arrests. *Ryan*, 974 F.3d at 14. The plaintiff further argued that
 12 ICE’s policy of conducting courthouse arrests violates the APA. *See id.* at 17.

13 The First Circuit comprehensively analyzed the history of enforcement actions at courthouses in
 14 the United States. *See id.* at 15-16, 21-23. It found that there was no authority stating a common-law
 15 privilege extending to civil arrests on behalf of the sovereign. *See id.* at 24. The First Circuit rejected the
 16 plaintiffs’ assertion that Congress would have reflexively inferred that the privilege protected against any
 17 and all forms of civil arrest, including the civil immigration arrests that it was authorizing in the INA. *See*
 18 *id.* at 26. Civil immigration arrests are initiated by the sovereign in order to vindicate uniquely sovereign
 19 interests rather than private or proprietary interests. *See id.* at 26. Controlling immigration and the
 20 presence of noncitizens within United States are duties and powers vested exclusively in the sovereign.
 21 *See id.* (citing *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 139 (2020)). The First Circuit
 22 found that the plaintiffs were unlikely to succeed on the merits of their claims and remanded the case back
 23 to the district court. *See id.* at 14-15.

24 More recently, in *African Communities Together v. Lyons*, No. 25-cv-6366 (PKC), 2025 WL
 25 2633396, at *1 (S.D. N.Y. Sept. 12, 2025), the Southern District of New York analyzed courthouse arrests
 26 during President Trump’s second administration and reached a similar result as the First Circuit. The
 27 district court concluded that the plaintiffs failed to establish a common-law privilege against courthouse
 28 arrests that was incorporated into the INA and failed to demonstrate that ICE’s courthouse arrest policy is

arbitrary, capricious, or otherwise contrary to law for three reasons. First, there was neither a common-law privilege against courthouse arrests in the INA, nor other relevant restriction on the location of an arrest in the INA or its implementing regulations, and thus the policy is permissible. *See id.* at *20-21. Second, the agency has stated grounds that are facially “good reasons” for the change, even though the sufficiency of those reasons may be “hotly contested.” *See id.* at *21. Third, the agency on the face of the January 2025 policy acknowledged the existence and rescinding of the prior policy, which is an implicit and sufficient statement of belief that the new policy is better.² *See id.*

(d) OPPI 25-06 and the 2025 Courthouse Arrest Guidance Are Neither Arbitrary Nor Capricious.

The Federal Government “has broad, undoubted power over the subject of immigration and the status of aliens.” *Arizona v. United States*, 567 U.S. 387, 394 (2012); *see* U.S. Const. art. I § 8, cl. 4 (granting Congress the power to “establish an uniform Rule of Naturalization”). The INA grants broad discretionary authority to the Executive Branch to administer the removal process and the decision to waive an internal policy is not a final agency action within the meaning of the APA. *See Perez Perez v. Wolf*, 943 F.3d 853, 860 (9th Cir. 2019) (“Review under the APA is unavailable when ‘statutes preclude judicial review’ and when the ‘agency action is committed to agency discretion by law.’” (internal quotations omitted)) (quoting 5 U.S.C. § 701(a)(1)-(2)).

Congress has codified in the INA the Executive Branch’s constitutional and inherent authority to investigate, arrest, and detain aliens who are suspected of being, or found to be, unlawfully present in or otherwise removable from the United States to effectuate their removal. *See* 8 U.S.C. §§ 1182, 1225, 1226, 1231, 1357. The INA authorizes federal immigration officials to make civil immigration arrests with

² Respondents acknowledge that there are cases decided in the Southern District of New York and the Southern District of California finding that there was a common-law privilege against courthouse arrests. *See African Communities Together*, 2025 WL 2633396, at *16 (citing *New York v. U.S. Immigration and Customs Enforcement*, 466 F.Supp.3d 439 (S.D.N.Y. 2020) and *Doe v. U.S. Immigration and Customs Enforcement*, 490 F.Supp.3d 672 (S.D.N.Y. 2020)); *see also Velazquez-Hernandez v. U.S. Immigration and Customs Enforcement*, 500 F.Supp.3d 1132 (S.D. Cal. 2020). *New York* and *Doe* failed to properly account for the 2006 Amendment to add subdivision (e) to § 1229. *See id.* And for the reasons *supra* at 17-18, the INA cannot be read to incorporate a common-law privilege against courthouse arrests. The other cases were also decided during President Trump’s first administration and before further policy changes pertaining to courthouse arrest policies.

1 an administrative warrant, 8 U.S.C. § 1226(a), and without a warrant, 8 U.S.C. § 1357(a). Consistent with
2 that authority and the Executive Branch’s “broad” and “undoubted power” over the enforcement of this
3 Nation’s immigration laws, *Arizona v. United States*, 567 U.S. 387, 394 (2012), ICE has long exercised its
4 detention authority in executing removal operations, including the considerations that go into determining
5 where an alien under a removal order is detained, transferred, or removed. These decisions necessarily
6 “implicate our relations with foreign powers and require consideration of changing political and economic
7 circumstances.” *Jama v. Immigration and Customs Enforcement*, 543 U.S. 335, 348 (2005) (internal
8 quotation marks omitted).

9 The Supreme Court has held that “[t]he scope of review under the ‘arbitrary and capricious’
10 standard is narrow and a court is not to substitute its judgment for that of the agency.” *Motor Vehicle Mfrs.*
11 *Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). “Normally, an agency rule
12 would be arbitrary and capricious if the agency has relied on factors which Congress has not intended it to
13 consider, entirely failed to consider an important aspect of the problem, offered an explanation for its
14 decision that runs counter to the evidence before the agency, or is so implausible that it could not be
15 ascribed to a difference in view or the product of agency expertise.” *Id.* An agency must examine the
16 relevant data and “articulate a satisfactory explanation for its action.” *See F.C.C. v. Fox Television*
17 *Studios, Inc.*, 556 U.S. 502, 513 (2009). “And of course the agency must show that there are good reasons
18 for the new policy.” *Id.* at 515. “But it need not demonstrate to a court’s satisfaction that the reasons for
19 the new policy are *better* than the reasons for the old one; it suffices that the new policy is permissible
20 under the statute, that there are good reasons for it, and that the agency *believes* it to be better, which the
21 conscious change of course adequately indicates.” *Id.* at 515 (emphasis in original).

22 Petitioners allege that the 2025 Courthouse Arrest Guidance and OPPM 25-06 are arbitrary,
23 capricious, and therefore violate the APA. *See generally* Mot. But in so doing, Petitioners ignore the plain
24 language of the policies and the history of immigration enforcement actions in and around courthouses.

25 To start, the 2025 Courthouse Arrest Guidance plainly addresses the concerns raised by
26 Petitioners. They speculate that the 2025 Courthouse Arrest Guidance will “chill” access to courts. *See*
27 Mot. at 14-15. However, the 2025 Courthouse Arrest Guidance includes provisions designed to ensure that

1 enforcement actions within courthouses are conducted in an orderly, safe, and non-disruptive manner. For
2 example, the 2025 Courthouse Arrest Guidance mandates that, “when practicable,” ICE officers “conduct
3 civil enforcement immigration actions against targeted aliens discreetly to minimize their impact on court
4 proceedings.” *See* Johns Decl. ¶ 7, Ex. F at 2. In line with prior policies, the 2025 Courthouse Arrest
5 Guidance also prioritizes non-public arrests when possible. *Id.* The 2025 Courthouse Arrest Guidance
6 further directs ICE officers and agents to “exercise sound judgment” and “make substantial efforts to
7 avoid unnecessarily alarming the public,” and requires them to “make every effort to limit their time at
8 courthouses while conducting civil immigration enforcement actions.” *Id.* at 3. In addition, it provides that
9 to the extent practicable, civil immigration enforcement actions inside courthouses should take place in
10 non-public areas of the courthouse, be conducted in collaboration with court security staff, and utilize the
11 court building’s non-public entrances and exits. *Id.* at 2.

12 Moreover, the 2025 Courthouse Arrest Guidance is reasoned and rational, and also justifies why it
13 is necessary. The 2025 Courthouse Arrest Guidance states that “when ICE engages in civil immigration
14 enforcement actions in or near courthouses it can reduce safety risks” because “[i]ndividuals “entering
15 courthouses are typically screened by law enforcement personnel to search for weapons and other
16 contraband.” *Id.* at 2. The 2025 Courthouse Arrest Guidance further explains that “enforcement activities
17 in or near courthouses are often required when jurisdictions refuse to cooperate with ICE.” *Id.* Thus, the
18 2025 Courthouse Arrest Guidance strikes a balance between ICE’s legitimate interests in enforcing
19 immigration law; protecting the safety of its officers, the arrestee, and members of the public; and the goal
20 of minimizing interference with judicial proceedings. Finally, as described above, Petitioners’ argument
21 that the 2025 Courthouse Arrest Guidance reverses “decades” of prior policy that created “serious reliance
22 interests” lacks merit and ignores the policies of prior administrations. *See* Mot. at 11-12. As explained
23 above, ICE first issued the March 2014 Directive regarding civil immigration enforcement activities at or
24 near courthouses over ten years ago, and that guidance, over time, has been amended to incorporate
25 changes in DHS enforcement priorities.

26 In the same manner, OPPM 25-06 explains why it was issued and why the prior policy, OPPM 23-
27 01, was ineffective. *See* Johns Decl. ¶ 8, Ex. G at 1. OPPM 25-06 explains that the prior policy, OPPM
28

23-01, was outdated based on new guidance, inconsistent with Executive Branch policy, and unsubstantiated on any systematic basis. *See id.* OPPM 25-06 addresses Petitioners’ chilling argument, disputes it, and states that there is no support for it. *See id.* OPPM 25-06 defers to DHS’ authority on conducting immigration enforcement in and around courthouses. *See id.* The 2025 Courthouse Arrest Guidance and OPPM 25-06 are reasoned and justified, not arbitrary or capricious.

(e) Petitioners’ Challenges to OPPM 25-06 and the 2025 Courthouse Arrest Guidance Lack Merit.

Petitioners offer five arguments to support staying OPPM 25-06 and the 2025 Courthouse Arrest Guidance, but they all lack merit. First, Petitioners argue that the 2025 Courthouse Arrest Guidance lacks a reasoned explanation. *See* Mot. at 9. But that is false and egregiously ignores the plain language of the policy. As discussed above, the 2025 Courthouse Arrest Guidance plainly states that it can “reduce safety risks to the public, targeted alien(s), and ICE officers and agents.” *See* Johns Decl. ¶ 7, Ex. F at 1. And it plainly states that “enforcement activities in or near courthouses are often required when jurisdictions refuse to cooperate with ICE, including when such jurisdictions refuse to honor immigration detainers and transfer aliens directly to ICE custody.” *Id.* The 2025 Courthouse Arrest Guidance provides two separate reasons that justify it. Likewise, OPPM 25-06 offers a substantive analysis on why OPPM 23-01 was “unpersuasive, inconsistent with current Executive Branch policy, pretextual” and “substantiated.” *See* Johns Decl. ¶ 7, Ex. F at 1-2. The fact that Petitioners may have preferred policy preferences does not refute the reasons why DHS and ICE issued the 2025 Courthouse Arrest Guidance and EOIR issued OPPM 25-06. *See* Mot. at 10 (suggesting that ICE screen aliens for weapons and contraband in places other than courthouses). Finally, and although Petitioners cite *African Communities Together* (Mot. at 11), the Southern District of New York found in that case there were “good reasons” for the 2025 Courthouse Arrest Guidance. *See African Communities Together*, 2025 WL 2633396, at *21. *African Communities Together* supports Respondents’ position and a denial of Petitioners’ motion.

Second, Petitioners argue that Respondents failed to consider the “serious reliance interests created by DHS prior position.” *See* Mot. at 11-12, 21-22. Petitioners’ argument rests on the baseless assertion that Respondents’ courthouse arrest policy was identical for “decades.” *See* Mot. 11-12, 14, 24. As set forth above, and as Petitioners fail to acknowledge in their motion, decisions pertaining to immigration

1 vary significantly from one presidential administration to the next with the electorate having considerable
 2 sway on the types of policies that are pursued. Petitioners’ reliance argument ignores the reality of how
 3 immigration policies have evolved since at least 2014 including those on courthouse arrests. *See* Johns
 4 Decl. ¶¶ 2-5, Exs. A-D; *see also* *Ryan*, 974 F.3d at 14-16 (analyzing ICE’s courthouse arrest policy during
 5 President Trump’s first administration). And Petitioners fail to address how a reliance interest can even be
 6 formulated in the context of evolving policies that are uniquely dedicated to the sovereign and evolving
 7 political factors. Petitioners’ reliance argument is speculative and unsupported.

8 Third, Petitioners argue that the 2025 Courthouse Arrest Guidance fails to consider the supposed
 9 “chilling effect” of courthouse arrests. *See* Mot. at 14. But as the district court explained in *African*
 10 *Communities Together*, DHS and ICE “acknowledged the existence and rescinding of the prior policy,
 11 which is an implicit and sufficient statement of belief that the new policy is better.” *See African*
 12 *Communities Together*, 2025 WL 2633396, at *21. In other words, DHS and ICE concluded that safety
 13 and other jurisdictions’ refusal to cooperate outweighed other factors including an alleged “chilling
 14 effect.” *See* Johns Decl. ¶ 7, Ex. F at 1-2.

15 Fourth, as with the 2025 Courthouse Arrest Guidance, Petitioners claim that OPPM 25-06 lacks a
 16 reasoned explanation. *See* Mot. at 16. But once again, Petitioners ignore the actual policy. OPPM 25-06.
 17 *See* Johns Decl. ¶ 7, Ex. F at 1-2. OPPM 25-06 plainly disputes the prior reasons why OPPM 23-01 was
 18 issued and refutes them. *See id.* To illustrate, OPPM 25-06 questions OPPM 23-01’s alleged “chilling
 19 effect” and disputes the statistics that alleged effect is based on. *See id.*; *see also supra* at 3, 7-8. OPPM
 20 25-06 further questions OPPM 23-01’s concerns about safety and argues that enforcement actions at
 21 courthouses are safer. *See id.* at 2. OPPM 25-06 criticizes the motivation behind OPPM 23-01 and
 22 explains why OPPM 23-01 was inconsistent. *See id.* at 2. Lastly, OPPM 25-06 recognizes that EOIR lacks
 23 authority to “prohibit DHS from conducting any action it is otherwise lawfully authorized to take”; thus,
 24 OPPM 23-01 was “likely *ultra vires*.” *See id.* (italics in original). OPPM 25-06 provides a reasoned
 25 explanation for rescinding OPPM 23-01. Petitioners are ignoring these reasons and prefer OPPM 23-01. A
 26 preference for one policy does not render the other arbitrary and capricious.

Fifth, Petitioners argue that OPPM 25-06 “fails to consider the adverse impact of courthouse arrests on EOIR’s mission and function.” *See* Mot. at 22. OPPM 25-06 directly addresses Petitioners’ argument. *See* Johns Decl. ¶ 7, Ex. F at 2. In sum, and as OPPM 25-06 explains, when OPPM 23-01 was issued, EOIR “only seemed interested in ensuring a separation between EOIR and DHS in certain situations with a particular valence,” which “not only undermined the internal coherence of OPPM 23-01, but also seriously subverted EOIR’s integrity and impartiality.” Like the rest of Petitioners’ arguments, they choose to ignore what the policies state.

C. Petitioners Fail to Demonstrate Irreparable Harm.

Demonstrating irreparable harm in the absence of a stay is a dispositive element. *See Winter*, 555 U.S. at 20. The “possibility of irreparable harm” is insufficient to justify the drastic remedy of an injunction. *See id.* at 22. “Issuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with our characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.” *Id.*

Here, Petitioners cannot demonstrate irreparable harm in the absence of a stay. Based on the Court’s orders granting their motions for a preliminary injunction, Ambrocio, Sequen, and Garcia cannot be arrested at a courthouse. *See* Orders, ECF Nos. 7, 27, 36, 90. Torres was detained in the Eastern District of California and later removed to Mexico because of his final removal order. *See* Olson Decl. I ¶¶ 6-15; *see also* Olson Decl. II ¶¶ 4, 7, Ex. V. Petitioners have not demonstrated any irreparable harm that any of the four of them will suffer in the absence of a stay. Petitioners’ failure to demonstrate irreparable harm is fatal to their motion because it is a required element for staying agency action. *See Winter*, 555 U.S. at 20. Instead, Petitioners summarily conclude and speculate that unspecified members of their alleged “putative class” will suffer irreparable harm. *See* Mot. at 22-23. However, no class has been certified. Petitioners should not be permitted to rely on unnamed and unspecified “class members” to justify staying policies seeking to further the enforcement of the immigration laws of the United States.

D. The Balance of Equities and Public Interest Tip In Favor of the Government.

The Government has a compelling interest in the steady enforcement of its immigration laws. *See, e.g., Demore v. Kim*, 538 U.S. 510, 523 (2003); *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1140 (9th Cir.

2009) (holding that the court “should give due weight to the serious consideration of the public interest” in enacted laws); *see also Noem v. Vasquez Perdomo*, 606 U.S. —, 2025 WL 2585637, at *4-5 (2025) (Kavanaugh, J., concurring) (finding that balance of harms and equities tips in favor of the government in immigration enforcement given the “myriad ‘significant economic and social problems’ caused by illegal immigration”). Here, the balance of equities and public interest tip in favor of the Federal Government. OPPM 25-06 and the 2025 Courthouse Arrest Guidance advance the Federal Government’s interest in enforcing the United States’ immigration laws, particularly after the election of a new President, the issuance of two Executive Orders, and the declaration of a national emergency. Petitioners offer no argument or analysis to dispute the authority or justification of those Executive Orders, the Federal Government’s need to enforce immigration laws, or the response to a national emergency. Respondents are executing a sovereign prerogative in deciding how best to execute the country’s immigration laws.

Moreover, Respondents will suffer prejudice if the Court stays OPPM 25-06 and the 2025 Courthouse Arrest Guidance. By staying these policies, the Court would interfere with the enforcement of the immigration laws of the United States and the detention and removal of aliens. Once again, the United States has a compelling interest in enforcing immigration laws. And state-by-state variance for immigration policy is untenable. *See Trump v. CASA, Inc.*, 606 U.S. 831, 872-73 (2025) (Kavanaugh, J., concurring) (explaining the negative consequences of a “patchwork scheme” of consequential policies). On balance, the public interest favors not staying OPPM 25-06 and the 2025 Courthouse Arrest Guidance.

VII. CONCLUSION

The Court should deny Petitioners’ motion to stay OPPM 25-06, the Interim Guidance, and the 2025 Courthouse Arrest Guidance.

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Respectfully submitted,

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