Mark L. Hejinian (SBN 281417)
ef-mlh@cpdb.com
Marcia V. Valente (SBN 321852)
ef-mvv@cpdb.com
David C. Beach (SBN 226972)
ef-dcb@cpdb.com
Charmaine G. Yu (SBN 220579)
ef-cgy@cpdb.com
Evan G. Campbell (SBN 342223)
ef-egc@cpdb.com
Darien Lo (SBN 347244)
ef-dxl@cpdb.com
COBLENTZ PATCH DUFFY & BASS LLP
One Montgomery Street, Suite 3000
San Francisco, CA 94104
Telephone: (415) 391-4800

Marissa Hatton (SBN 348678)
mhatton@lccrsf.org
Andrew Ntim (SBN 347084)
antim@lccrsf.org
Jordan Wells (SBN 326491)
jwells@lccrsf.org
Nisha Kashyap (SBN 301934)
nkashyap@lccrsf.org
LAWYERS' COMMITTEE FOR CIVIL RIGHTS OF THE SAN FRANCISCO BAY AREA
131 Steuart Street, Suite 400
San Francisco, CA 94105
Telephone: (415) 543-9444

Neil K. Sawhney (SBN 300130)
nsawhney@aclunc.org
Lauren M. Davis (SBN 357292)
ldavis@aclunc.org
AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF NORTHERN CALIFORNIA
39 Drumm Street
San Francisco, CA 94111
Telephone: (415) 621-2493

Laura Victoria Sanchez (SBN 253736)
laura@carecensf.org
Tala Berardi Hartsough (SBN 230204)
tala@carecensf.org
CARECEN SF
3101 Mission Street, Suite 101
San Francisco, CA 94110
Telephone: (415) 642-4402

Attorneys for Plaintiffs-Petitioners

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. 5:25-CV-06487-PCP

CLASS ACTION

PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR STAY OF AGENCY ACTION

Date: December 9, 2025
Time: 10:00 a.m.
Crtrm.: 8 - 4th Floor
Judge: Honorable P. Casey Pitts

Trial Date: None Set

COBLENTZ PATCH DUFFY & BASS LLP
ONE MONTGOMERY STREET, SUITE 3000, SAN FRANCISCO, CALIFORNIA 94104-5500
415.391.4800 · FAX 415.989.1663

COBLENTZ PATCH DUFFY & BASS LLP
ONE MONTGOMERY STREET, SUITE 3000, SAN FRANCISCO, CALIFORNIA 94104-5500
415.391.4800 · FAX 415.989.1663

TABLE OF CONTENTS

Page

COBLENTZ PATCH DUFFY & BASS LLP
ONE MONTGOMERY STREET, SUITE 3000, SAN FRANCISCO, CALIFORNIA 94104-5500
415.391.4800 · FAX 415.989.1663

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes & Rules

COBLENTZ PATCH DUFFY & BASS LLP
ONE MONTGOMERY STREET, SUITE 3000, SAN FRANCISCO, CALIFORNIA 94104-5500
415.391.4800 · FAX 415.989.1663

Other Authorities

COBLENTZ PATCH DUFFY & BASS LLP
ONE MONTGOMERY STREET, SUITE 3000, SAN FRANCISCO, CALIFORNIA 94104-5500
415.391.4800 · FAX 415.989.1663

COBLENTZ PATCH DUFFY & BASS LLP
ONE MONTGOMERY STREET, SUITE 3000, SAN FRANCISCO, CALIFORNIA 94104-5500
415.391.4800 · FAX 415.989.1663

INTRODUCTION

This stay motion is not about Plaintiffs' "preferred immigration policies" or "preferred policy preferences." ECF No. 113 ("Opp.") at 1, 22. It is not even about the wisdom of ICE's or EOIR's preferences. The single issue this motion presents is whether ICE and EOIR may abandon a decades-long practice of all but abstaining from immigration courthouse arrests without explaining that dramatic shift. The ICE Courthouse Arrest Policy does not even mention immigration courts, let alone explain why the agency has forsaken the "core principle" it once embraced of avoiding arrests that impair the "fair administration of justice" by chilling people from pursuing their day in court. What's more, the policy instructs officers generally to *avoid* arrests near "non-criminal" courthouses, which would naturally encompass immigration courthouses. Inexplicably, however, ICE reads that limitation out of the policy and has rolled out widescale immigration courthouse arrests—an incongruity that Defendants entirely fail to address, and that underscores why ICE's new policy is not the product of reasoned decision-making. The EOIR Courthouse Arrest Memo, which largely relies on ICE's deficient policy to abandon EOIR's prior policy prohibiting courthouse arrests, is arbitrary and capricious for similar reasons. Defendants evidently aim to convert immigration courthouses into yet another weapon in ICE's enforcement arsenal, but their doing so without presenting a reasoned explanation or considering important (and obvious) aspects of the problem likely violates the Administrative Procedure Act ("APA") and thus warrants the issuance of a stay by this Court to avoid further irreparable harm.

ARGUMENT

Defendants seek to avoid this Court's review through a series of threshold objections, but Plaintiffs'[1] claims are justiciable and subject to APA review. Plaintiffs also meet the requirements of 5 U.S.C. § 705: They are likely to succeed on the merits and will likely suffer irreparable harm in the absence of a stay, and the balance of equities and public interest tips in favor of staying the agency action. *See Immigrant Defs. L. Ctr. v. Noem*, 145 F.4th 972, 986 (9th Cir. 2025). And, if the Court finds that Plaintiffs have shown only "serious questions going to the merits," it should

[1] "Plaintiffs" refers to the putative Courthouse Arrest class throughout.

COBLENTZ PATCH DUFFY & BASS LLP
ONE MONTGOMERY STREET, SUITE 3000, SAN FRANCISCO, CALIFORNIA 94104-5500
415.391.4800 · FAX 415.989.1663

nonetheless stay the courthouse arrest policies, since the "balance of hardships tips sharply in [Plaintiffs'] favor." *Id.* (citations omitted).

I. Plaintiffs Are Likely To Succeed In Challenging The Immigration Courthouse Arrest Policies As Arbitrary And Capricious

A. Plaintiffs' Claims Are Justiciable

It is undisputed that, at the time the amended class complaint was filed, putative class representative Yulisa Alvarado Ambrocio faced likely arrest at her then-upcoming hearing at the 630 Sansome Street immigration courthouse, pursuant to the policies at issue in this motion. *See* ECF No. 90 at 6. She thus had standing and a ripe claim for injunctive relief. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 569 n.4 (1992) (standing assessed at the time the complaint is filed).

Contrary to Defendants' assertions, Opp. at 10–12, the Court's preliminary injunction order enjoining Ms. Abrocio's arrest did not moot the putative class's claims. Under the relation-back doctrine, class actions presenting claims that are "so inherently transitory that the trial court will not have even enough time to rule on a motion for class certification before the proposed representative's individual interest expires" relate back to the time the class complaint was filed. *U.S. Parole Comm'n v. Geraghty*, 445 U.S. 388, 399 (1980); *see e.g.*, *Nielsen v. Preap*, 586 U.S. 392, 403 (2019) (explaining that, where named plaintiffs had obtained release from custody or similar relief before class certification, "the fact that a class 'was not certified until after the named plaintiffs' claims had become moot does not deprive [a court] of jurisdiction' when . . . the harms alleged are transitory enough to elude review.") (plurality opinion) (citing *Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 52 (1991)); *Pitts v. Terrible Herbst, Inc.*, 653 F.3d 1081, 1090 (9th Cir. 2011). Plaintiffs' claims are not moot, and therefore justiciable under Article III and.

B. Plaintiffs' Claims Are Subject To APA Review

The APA "manifests a congressional intention that it cover a broad spectrum of administrative actions." *Bowen v. Massachusetts*, 487 U.S. 879, 904 (1988) (citation omitted). "The presumption of judicial reviewability is so strong that 'only upon a showing of clear and convincing evidence of a contrary legislative intent should the courts restrict access to judicial review.'" *Allen v. Milas*, 896 F.3d 1094, 1103 (9th Cir. 2018) (quoting *Abbott Labs. v. Gardner*, 387 U.S. 136, 140–

COBLENTZ PATCH DUFFY & BASS LLP
ONE MONTGOMERY STREET, SUITE 3000, SAN FRANCISCO, CALIFORNIA 94104-5500
415.391.4800 · FAX 415.989.1663

41 (1967)). Defendants come nowhere close to meeting that high standard here.

Defendants do not contest that the challenged policies constitute final agency action,[2] but they assert there is "no 'meaningful standard' by which a court can evaluate the appropriateness" of ICE's new carte blanche authorization of immigration courthouse arrests. Opp. at 13 (quoting *Heckler v. Chaney*, 470 U.S. 821, 830 (1985) and citing 5 U.S.C. § 701(a)(2)). The exception barring review of action "committed to agency discretion by law," however, is "very narrow," *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 410 (1971), and applies only in "rare circumstances." *Lincoln v. Vigil*, 508 U.S. 182, 191 (1993). Defendants do not cite a single decision rejecting APA review of an immigration arrest or detention policy under 5 U.S.C. § 701(a)(2). To the contrary, courts regularly subject policies governing discretion in the immigration context to APA review. *See, e.g.*, *Biden v. Texas*, 597 U.S. 785, 798–807 (2022); *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 17–19 (2020). Moreover, here the agencies' pre-existing longstanding policies "provide 'law to apply'" in evaluating whether their new policies "irrational[ly] depart[]" from those earlier policies. *California v. Ross*, 362 F. Supp. 3d 727, 745 (N.D. Cal. 2018).[3]

Defendants suggest that 8 U.S.C. § 1226(e) precludes review, Opp. at 14, but they again do not cite any case applying Section 1226(e) to bar APA review of detention policies. For good reason: courts have consistently rejected this argument. *See, e.g.*, *R.I.L-R v. Johnson*, 80 F. Supp. 3d 164,

[2] Defendants claim that ICE's Interim Courthouse Arrest Guidance, issued in January 2025, is not final agency action since it was superseded by ICE's May 2025 Courthouse Arrest Policy. Opp. at 13. Whether the Court regards the January 2025 Policy as a nullity, as Defendants suggest, or instead stays both policies (which are materially the same and thus suffer from the same defects), what matters most from Plaintiffs' perspective is that any stay order have the effect of pausing the rescission of the pre-existing policies that narrowly limited courthouse arrests.

[3] Defendants' reliance on *Chaney* is misplaced. That case concerns an agency's decision *not* to enforce, which "often involves a complicated balancing of a number of factors which are peculiarly within [the agency's] expertise," including the proper allocation of agency resources. 470 U.S. at 831. The Ninth Circuit has interpreted *Chaney* narrowly. *See Pinnacle Armor, Inc. v. United States*, 648 F.3d 708, 720 (9th Cir. 2011). ("Just because a statute calls on the agency to exercise its 'judgment' in making its determination does not necessarily make an agency's action unreviewable. . . . . The fact that an agency has broad discretion in choosing whether to act does not establish that the agency may justify its choice on specious grounds.") (cleaned up).

COBLENTZ PATCH DUFFY & BASS LLP
ONE MONTGOMERY STREET, SUITE 3000, SAN FRANCISCO, CALIFORNIA 94104-5500
415.391.4800 · FAX 415.989.1663

177 (D.D.C. 2015) ("The Court will not construe § 1226(e) to immunize an allegedly unlawful DHS policy from judicial review."). Notably, the District Court for the Southern District of New York recently rejected the government's invocation of Section 1226(e) in a challenge involving the ICE Courthouse Arrest Policy. *See African Communities Together v. Lyons*, No. 25-cv-6366, 2025 WL 2633396, at *19 (S.D.N.Y. Sept. 12, 2025) (explaining that Section 1226(e) did not bar review because challenge was not to any individual exercise of discretion).

Finally, Defendants claim that Plaintiffs "have another remedy available" in habeas or damages, Opp. at 14, but the availability of other general remedies does not preclude judicial review under the APA. *See Bowen*, 487 U.S. at 904–905. Instead, APA review is barred only where Congress has created *specific* procedures for review of *specific* agency actions, because it would duplicate that process. *Id.* Congress has "never manifested an intent to require those challenging an unlawful, nationwide detention policy to seek relief through habeas rather than the APA." *R.I.L-R*, 80 F. Supp. 3d at 186.

C. The Courthouse Arrest Policies Are Arbitrary And Capricious

Defendants fail to rebut Plaintiffs' actual APA claim, which seeks relatively modest relief.[4] Simply put, if Defendants are to abandon a decades-long policy of abstaining from immigration courthouse arrests and instead opt to turn immigration courthouses into dragnet arrest sites, the APA requires them to own that decision by forthrightly acknowledging it as a dramatic shift, stating logical reasons for it, and balancing their reasons against countervailing considerations. *See, e.g.*, *Alliance for the Wild Rockies v. Petrick*, 68 F.4th 475, 493 (9th Cir. 2023) ("[A]n agency's action can only survive arbitrary or capricious review where it has articulate[d] a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.") (citation omitted). ICE and EOIR have not done so here.

[4] Defendants largely focus, Opp. at 15–19, on disputing whether the common law constrains ICE's authority to make civil immigration arrests at courthouses, as multiple courts have held. S*ee, e.g.*, *Velazquez-Hernandez v. U.S. Immigration & Customs Enf't*, 500 F. Supp. 3d 1132, 1137 (S.D. Cal. 2020); *New York v. U.S. Immigration & Customs Enf't*, 466 F. Supp. 3d 439 (S.D.N.Y. 2020). But nothing about Plaintiffs' APA claim turns on that question.

COBLENTZ PATCH DUFFY & BASS LLP
ONE MONTGOMERY STREET, SUITE 3000, SAN FRANCISCO, CALIFORNIA 94104-5500
415.391.4800 · FAX 415.989.1663

1. The ICE Courthouse Arrest Policy Is Arbitrary And Capricious.

As a preliminary point, Defendants obfuscate that ICE's Courthouse Arrest Policy has worked a seismic shift in immigration courthouse arrests, which all around the country have gone from virtually nonexistent to a weekly or even daily occurrence. ECF No. 94 ("Mot.") at 2 (citing declarations of long-tenured immigration judges and attorneys); *id.* at 5 (citing statistical evidence of thousands of courthouse arrests nationwide during May-July 2025). Defendants unconvincingly object to these declarations as irrelevant. Opp. at 2–3. Not so—the declarations instead draw Defendants' policy shift into sharp relief.[5] And Defendants' declarations fail to rebut Plaintiffs' showing. They do not point to any actual practice (let alone consistent history) of ICE conducting immigration arrests at immigration courthouses.

Defendants' narrative conceit that ICE has long engaged in courthouse arrests relies entirely on past policies primarily related to criminal courthouse arrests, not any actual practice with respect to *immigration courts* specifically. Opp. at 3–8. Their blinkered account of the relevant history was adopted by the Southern District of New York at the preliminary relief stage in *African Communities Together* and put that court's arbitrary-and-capricious analysis on an erroneous footing. *See* 2025 WL 2633396, at *19–22. The Court here should conduct its arbitrary and capricious analysis aided by the more accurate picture Plaintiffs have presented.

a. ICE's Sub Silentio Departure From Prior Policy

Plaintiffs' stay motion argued that "since the plain text of the ICE Courthouse Arrest Policy *excludes* immigration courts as specialized noncriminal courts, there necessarily is no reasoned explanation supporting ICE's mass arrests at immigration courts." Mot. at 11 (citing ICE Courthouse Arrest Policy's instruction that officers, absent operational necessity and high-level approval, "should [] avoid enforcement actions in or near courthouses, or areas within courthouses that are wholly dedicated to non-criminal proceedings"). In a hearing before the Southern District of New

[5] Defendants also contend that the declarations lack foundation, rely on hearsay, or are speculative, but the rules of evidence do not apply strictly to preliminary injunction proceedings. *See Herb Reed Enters. v. Fla. Ent. Mgmt.*, 736 F.3d 1239, 1250 n.5 (9th Cir. 2013); *see also Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981) ("[A] preliminary injunction is customarily granted on the basis of procedures that are less formal and evidence that is less complete than in a trial . . . .").

COBLENTZ PATCH DUFFY & BASS LLP
ONE MONTGOMERY STREET, SUITE 3000, SAN FRANCISCO, CALIFORNIA 94104-5500
415.391.4800 · FAX 415.989.1663

York, the government struggled to conjure any explanation for the incongruity between the policy's text and ICE's actual implementation of the policy. Mot. at 10. And here, given time to formulate a written response, Defendants still offer no explanation.

There is none, or at least none that supports Defendants' position. The written ICE Courthouse Arrest Policy replicates and reflects its predecessor policies' contemplation that the limited universe of permissible ICE courthouse arrests would take place primarily (if not exclusively) at *criminal* courts, absent exceptional circumstances with high-level approval. *Accord* ECF No. 107 ("Johns Decl."), Ex. C (2018 directive with same instruction to avoid non-criminal courthouses). The longstanding focus on criminal courthouses can further be seen both in ICE's targeting of individuals with substantial criminal history, *see, e.g.*, Johns Decl., Ex. A (2014 guidance limiting courthouse arrests to terrorism, national security, and public safety threats); Ex. C (same), and in ICE's justification—expressed in both the current policy and the 2018 policy—that courthouse arrests are "necessitated by the unwillingness of jurisdictions to cooperate with ICE in the transfer of custody." Johns Decl., Ex. C; Ex. F. Thus, whatever the wisdom of the current and previous policies with respect to ICE arrests at criminal courthouses, ICE at least consciously identified relevant considerations.

The same cannot be said of ICE's new policy with respect to *immigration* courthouses. Indeed, beyond the explicit instruction to avoid arrest operations at non-criminal courthouses, other features of the ICE Courthouse Arrest Policy make clear that the agency did not consider any concerns relating to immigration courthouse arrests. For example, the "Background" section states that "agencies routinely engage in enforcement activities in or near courthouses because many individuals appear in courthouses for *unrelated criminal or civil violations*." Johns Decl., Ex. F (emphasis added). Of course, that does not describe immigration arrests at immigration courts, where ICE is not arresting people appearing for unrelated violations but within the very same proceeding for which those people already are attending court. Likewise, while immigration arrests at *non*-immigration courthouses serve to apprehend individuals in order to place them into removal proceedings or to effectuate removal, no such function is served by ambushing a person in immigration court who has been previously released by either DHS or an immigration judge and is

COBLENTZ PATCH DUFFY & BASS LLP
ONE MONTGOMERY STREET, SUITE 3000, SAN FRANCISCO, CALIFORNIA 94104-5500
415.391.4800 · FAX 415.989.1663

voluntarily appearing for their day in court, in reliance on the basic expectation that they can safely go home afterward. Mot. at 11–12. *Cf. Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017) (explaining that release "reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk"). Had the policy considered this distinction, one naturally would expect it to include language setting out that arrest partway through removal proceedings is prohibited absent a "change of circumstances" warranting detention. *Matter of Sugay*, 17 I. & N. Dec. 637, 640 (BIA 1981).

It is "[a] central principle of administrative law is that, when an agency decides to depart from decades-long past practices and official policies, the agency must at a minimum acknowledge the change and offer a reasoned explanation for it." *Am. Wild Horse Pres. Campaign v. Perdue*, 873 F.3d 914, 923 (D.C. Cir. 2017). That the ICE Courthouse Arrest Policy does not evince *any* awareness of the sea change it works in ICE arrest practices around *immigration* courthouses—let alone address the significant ways in which immigration courthouse arrests involve considerations far different from the primarily criminal courthouse enforcement that both the current policy and its predecessors contemplate—demonstrates that the Policy is not the product of reasoned decision-making.[6] *Cf. Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221–22 (2016) (holding that when an agency changes its position—including by abandoning a "decades-old practice" related to enforcement actions—it must (1) "display awareness that it is changing position," (2) "show that there are good reasons for the new policy," and (3) balance those good reasons against "engendered serious reliance interests.").

Defendants also concede that they failed to consider the "serious reliance interests" engendered by Defendants' prior position. *Thakur v. Trump*, 787 F. Supp. 3d 955, 982 (N.D. Cal. 2025) (citing *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 30 (2020)).

[6] Nor does the Administrative Record, filed two days ago in the Southern District of New York, evince any awareness of the sea change the Courthouse Arrest Policy works in ICE arrest practices around immigration courthouses or shed light on the significant ways in which immigration courthouse arrests involve considerations distinct from criminal courthouse enforcement. *See* Notice of Filing of Administrative Record, *African Communities Together*, No. 25-cv-6366, ECF No. 64. (S.D.N.Y. Nov. 4, 2025).

COBLENTZ PATCH DUFFY & BASS LLP
ONE MONTGOMERY STREET, SUITE 3000, SAN FRANCISCO, CALIFORNIA 94104-5500
415.391.4800 · FAX 415.989.1663

Defendants' cursory rejoinder that no reliance interest was formulated ignores the extensive record of the reliance interests of noncitizens appearing in immigration court, practitioners and legal service providers, and immigration judges. *See* Mot. at 12–13, 21 (summarizing declarations). More critically, the ICE Courthouse Arrest Policy lacks any indication that Defendants even assessed whether there *were* reliance interests, which the Supreme Court has held is itself arbitrary and capricious in violation of the APA. *Regents*, 591 U.S. at 33 ("[B]ecause DHS was not writing on a blank slate, it *was* required to assess whether there were reliance interests.") (citation omitted) (emphasis in original).

* * *

"[T]he requirement that an agency provide reasoned explanation for its action would ordinarily demand that it display awareness that it *is* changing position." *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009). ICE has not done so here with respect to immigration courthouse arrests. Thus, its sub silentio departure from prior policy is arbitrary and capricious.

b. ICE's Failure To Consider Chilling Effect

The ICE Courthouse Arrest Policy is arbitrary and capricious for the separate and independent reason that it "entirely failed to consider an important aspect of the problem." *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). ICE previously recognized the "core principle" that courthouse arrests chill court access. Mot. at 14. Yet Defendants identify nothing showing that ICE considered the chilling effect of permitting courthouse arrests, let alone considered it in specific relation to *immigration* courthouse arrests. Furthermore, the Court may take judicial notice that the Administrative Record, filed two days ago in the Southern District of New York, damningly confirms that ICE also did not otherwise consider the issue of chilling court access in formulating the policy. *See* Notice of Filing of Administrative Record, *African Communities Together*, No. 25-cv-6366, ECF No. 64 (S.D.N.Y. Nov. 4, 2025).

Defendants unresponsively point to generic instructions to avoid disrupting court proceedings, Opp. at 20–21, but those instructions have nothing to do with addressing the chilling effect of courthouse arrests. The fact that the policy encourages ICE officers to make arrests in an "orderly" fashion or in non-public areas of the courthouse is entirely beside the point. Opp. 21. The

COBLENTZ PATCH DUFFY & BASS LLP
ONE MONTGOMERY STREET, SUITE 3000, SAN FRANCISCO, CALIFORNIA 94104-5500
415.391.4800 · FAX 415.989.1663

chilling effect on immigration courthouse access arises from the prospect of being snatched up and abruptly incarcerated in the middle of ongoing removal proceedings, not from how ICE conducts arrests (although the arrests have, in fact, been disorderly). Mot. at 14–15. And this chilling effect has borne out in reality: "Once ICE began conducting arrests at the San Francisco Immigration Court," there was a "dramatic decline in attendance at master calendar hearings" that immigration judges "attribute[d] . . . to the fact that people were scared to come to court once the courthouse arrests began." ECF No. 100 ("Levine Decl.") ¶¶ 6–8; *see also, e.g.*, ECF No. 77 ("Garcia Decl.") ¶ 20; ECF No. 91–1 ("Colon Solano Decl.") ¶ 12; ECF No. 82 ("Malagon Torres Decl.") ¶ 11; ECF No. 70 ("Pablo Sequen Decl." ¶ 13; ECF No. 79 ("Mendez Decl.") ¶ 6; ECF No. 98 ("Atkinson Decl.") ¶ 38; ECF No. 33–2 ("Weiner Decl.") ¶¶ 23–24; ECF No. 33-9 ("Zanardi Decl.") ¶¶ 27–34. ICE's failure to address this central consideration—in fact, the primary concern animating the government's longstanding policies and practices *prohibiting* courthouse arrests—renders the ICE Courthouse Arrest Policy arbitrary and capricious.

c. ICE's Inapposite Invocation Of Ostensible Safety Risks

Defendants fall back on courthouse arrests' purported reduction of safety risks. Opp. at 21–22. But whatever justification that may provide for arrests in *non*-immigration courthouses, *but see New York*, 466 F. Supp. 3d at 449, *vacated as moot*, No. 20-2622, 2023 WL 2333979 (2d Cir. Feb. 28, 2023) (conclusory invocations of reduced safety risk were insufficient to save ICE's 2018 policy from being found arbitrary and capricious), Defendants fail to rebut Plaintiffs' point that it makes little sense in the context of arresting people attending *immigration* court whom the government already has determined do *not* present a safety threat or flight risk. Mot. at 9.

2. The EOIR Courthouse Arrest Memo Is Arbitrary And Capricious

For similar reasons, the EOIR Courthouse Arrest Memo ("OPPM 25-06"), ECF No. 95 ("Beach Decl."), Ex. E—which rescinds EOIR's previous prohibition on immigration courthouse arrests in OPPM 23-01, Beach Decl., Ex. B—fails to provide a "reasoned explanation," identify and balance serious reliance interests, or consider "important aspect[s] of the problem." *Encino Motorcars*, 579 U.S. at 221–22. OPPM 25-06 blindly follows the ICE Courthouse Arrest Policy, flatly dismisses the chilling effect of immigration courthouse arrests, and fails entirely to consider

COBLENTZ PATCH DUFFY & BASS LLP
ONE MONTGOMERY STREET, SUITE 3000, SAN FRANCISCO, CALIFORNIA 94104-5500
415.391.4800 · FAX 415.989.1663

the reliance interests of noncitizens appearing before EOIR, legal services providers who operate within EOIR courts, and EOIR personnel themselves. Mot. at 16–22.

Nor do Defendants explain EOIR's failure to consider the impact of its policy change on its own mission and function. Defendants summarily say that OPPM 25-06 "directly addresses Petitioners' argument," but cite only to the entire second page of OPPM 25-06, Opp. at 24; they do not identify any language which evinces awareness, let alone consideration, of the havoc that permitting mass immigration arrests could wreak on the operation of the immigration courts. *See* Mot. at 21–22 (summarizing declarations). OPPM 25-06 criticizes previous EOIR leadership for "only seem[ing] interested in ensuring separation between EOIR and DHS in certain situations with a particular valence," Opp. at 24, but that does nothing to explain why, despite continuing to acknowledge "the two agencies' distinct roles," OPPM 25-06 at 2, EOIR reflexively has fallen into lockstep with ICE's plan to turn immigration courthouses into dragnet arrest sites.

Ultimately, Defendants attempt to justify the EOIR Courthouse Arrest Memo not on its own merits but primarily based on two faulty premises. First, OPPM 25-06 relies on the ICE Interim Arrest Guidance (which later became the ICE Courthouse Arrest Policy in nearly identical form), but as explained above, that is illogical since ICE instructs officers to *avoid* enforcement actions "in or near" courthouses "wholly dedicated to non-criminal proceedings," which would include immigration courts. EOIR offers no reason why it reads this instruction to instead exclude immigration courts.

And second, OPPM 25-06 claims that the 2023 policy it rescinds was ultra vires because EOIR ostensibly lacks authority to "prohibit DHS from conducting any action it is otherwise lawfully authorized to take." Opp. 23. OPPM 25-06 offers this statement without any elaboration, aside from citing to all of Title 8. OPPM 25-06 at 2. But 8 U.S.C. § 1103(g) confers broad authority on the Attorney General to administer the immigration courts, and 5 U.S.C. § 301 gives executive department heads the power to make rules concerning the use of their respective agencies' property. *See also* 6 U.S.C. § 521 (establishing that EOIR is subject to the direction and regulation of the Attorney General). And 8 C.F.R. § 1003.0(b) sets out various powers of the Director of EOIR, including to prescribe EOIR operations and to "[p]rovide for appropriate administrative

COBLENTZ PATCH DUFFY & BASS LLP
ONE MONTGOMERY STREET, SUITE 3000, SAN FRANCISCO, CALIFORNIA 94104-5500
415.391.4800 · FAX 415.989.1663

coordination with . . . the Department of Homeland Security." 8 C.F.R. § 1003.0(b)(1)(i), (iii). These authorities appear to provide more than ample authority for the 2023 policy. But because the EOIR Courthouse Arrest Memo does not discuss any of them, it is impossible to discern EOIR's theory for its conclusory statement that the 2023 policy was "likely *ultra vires*." Opp. at 23. And even if EOIR had supported that statement with legal analysis and correctly concluded that the 2023 policy exceeded EOIR authority in some specific way, the agency then would have been required to consider what parts of the 2023 policy could and should have been preserved. *See Regents*, 591 U.S. at 25–26 ("[D]eciding how best to address a finding of illegality moving forward can involve important policy choices.") (faulting DHS Secretary for terminating an entire program when only certain aspects of it were illegal).[7]

At bottom, it is arbitrary and capricious for EOIR to justify rescinding its prohibition on immigration arrests based on (1) the policy of a separate agency with a law enforcement—not adjudicatory—mission, when the text of that other agency's policy does not even purport to generally authorize immigration courthouse arrests; and (2) a spurious claim that its prior policy was ultra vires in some undefined way, without any explanation of why that is so and without even considering the prospect of preserving any parts of the policy that are not found to be ultra vires.

II. Plaintiffs Will Suffer Irreparable Harm Absent A Stay

Defendants do not dispute that, absent a stay, ICE will continue to stake out immigration hearings and arrest people who show up for their day in court. Thus, the continued effectiveness of Defendants' courthouse arrest policies would force Plaintiffs to choose between accessing immigration courts to pursue immigration relief, at the risk of arrest and detention, or abandoning their immigration cases and receiving a deportation order. Mot. at 22–23. And "unlike economic harm, the harm from detention pursuant to an unlawful departure from agency procedure cannot be remediated after the fact." *Damus v. Nielsen*, 313 F. Supp. 3d 317, 342 (D.D.C. 2018).

Defendants' only argument against irreparable harm is that the proposed class

[7] For example, if EOIR were to conclude that OPPM 23-01 exceeded EOIR's authority by limiting *criminal* arrests, then it could make an appropriate modification, but that would not justify rescinding OPPM 23-01 in toto.

COBLENTZ PATCH DUFFY & BASS LLP
ONE MONTGOMERY STREET, SUITE 3000, SAN FRANCISCO, CALIFORNIA 94104-5500
415.391.4800 · FAX 415.989.1663

representatives have been granted preliminary relief and that "no class has been certified." Opp. at 24. But the proposed class representatives did face irreparable harm at the time of filing, and moreover they have sought provisional class certification for purposes of their motions for preliminary relief. Thus, if the Court finds the proposed provisional class meets the requirements for certification, Defendants offer no reason—and none exists—why a stay would not prevent irreparable harm to the provisionally certified class.

III. The Balance Of Equities and Public Interest Tip Decidedly In Favor Of A Stay

The final two factors—the balance of equities and public interest—"merge when the Government is the opposing party" *Nken v. Holder*, 556 U.S. 418, 435 (2009), and they weigh in favor of granting a stay. "[T]he public has a strong interest in upholding procedural protections against unlawful detention, and the Ninth Circuit has recognized that the costs to the public of immigration detention are staggering." *Diaz v. Kaiser*, No. 3:25-cv-05071, 2025 WL 1676854, at *3 (N.D. Cal. June 14, 2025) (citation omitted). While Defendants invoke a generalized interest in giving effect to the immigration laws, Opp. at 25, a stay of the policies at issue here would serve that interest by allowing people to access the immigration process and laws through attendance at immigration court without fear of arrest. Moreover, Defendants will face minimal, if any, hardship from a stay because they would be in the same position they have been in for decades when civil immigration arrests at immigration courts were proscribed, absent narrow exceptions. *See Immigrant Defs. L. Ctr. v. Noem*, 781 F. Supp. 3d 1011, 1043 (C.D. Cal. 2025) ("The status quo to be restored is the last peaceable uncontested status existing between the parties *before* the dispute developed.") (cleaned up) (emphasis in original). Moreover, Defendants' concern about state-by-state variance is addressed by the fact that "[w]hen a reviewing court determines that agency regulations are unlawful, the ordinary result is that the rules are vacated—not that their application to the individual petitioners is proscribed." *E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 681 (9th Cir. 2021) (affirming nationwide scope of preliminary APA relief) (cleaned up).

/ / /

/ / /

/ / /

COBLENTZ PATCH DUFFY & BASS LLP
ONE MONTGOMERY STREET, SUITE 3000, SAN FRANCISCO, CALIFORNIA 94104-5500
415.391.4800 · FAX 415.989.1663

CONCLUSION

For these reasons, Plaintiff respectfully request that the Court stay the ICE Courthouse Arrest Policy and EOIR Courthouse Arrest Memo.

DATED: November 6, 2025

LAWYERS' COMMITTEE FOR CIVIL RIGHTS OF THE SAN FRANCISCO BAY AREA

By: */s/ Marissa Hatton*
MARISSA HATTON
ANDREW NTIM
JORDAN WELLS
NISHA KASHYAP
Attorneys for Plaintiff-Petitioners

DATED: November 6, 2025

CARECEN SF

By: */s/ Laura Victoria Sanchez*
LAURA VICTORIA SANCHEZ
TALA BERARDI HARTSOUGH
Attorneys for Plaintiff-Petitioners

DATED: November 6, 2025

AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF NORTHERN CALIFORNIA

By: */s/ Neil K. Sawhney*
NEIL K. SAWHNEY
LAUREN M. DAVIS
Attorneys for Plaintiff-Petitioners

DATED: November 6, 2025

COBLENTZ PATCH DUFFY & BASS LLP

By: */s/ Mark L. Hejinian*
MARK L. HEJINIAN
MARCIA V. VALENTE
DAVID C. BEACH
CHARMAINE G. YU
EVAN G. CAMPBELL
DARIEN LO
Attorneys for Plaintiff-Petitioners