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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

CARMEN ARACELY PABLO SEQUEN,
YULISA ALVARADO AMBROCIO, and
LIGIA GARCIA,

Plaintiffs,

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.

CASE NO. 25-cv-06487-PCP

**DEFENDANTS' COUNTER-MOTION AND
OPPOSITION TO PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT – COURTHOUSE
ENFORCEMENT ACTIONS**

Honorable P. Casey Pitts
United States District Judge

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NOTICE OF MOTION AND COUNTER-MOTION

PLEASE TAKE NOTICE that Defendants respectfully oppose Plaintiffs’ motion for partial summary judgment and move for partial summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure and Civil Local Rule 16-5 to resolve all claims arising under the Administrative Procedure Act pertaining to the Operating Policies and Procedures Memorandum 25-06 (“OPPM 25-06”), the Memorandum entitled “Interim Guidance: Civil Immigration Enforcement Actions in or near Courthouses” (“Interim Guidance”), and the Memorandum entitled, “Civil Immigration Enforcement Actions In or Near Courthouses” (the “2025 Courthouse Arrest Guidance”). Defendants’ opposition and counter-motion is based on this Notice of Motion, the Declaration of Stanley Rili, the accompanying Memorandum of Points and Authorities, and all the matters of record filed with the Court.

STATEMENT OF RELIEF

Defendants seek an order concluding that OPPM 25-06, the Interim Guidance, and the 2025 Courthouse Arrest Guidance comply with the Administrative Procedure Act.

I. INTRODUCTION

The immigration laws of the United States empower U.S. Immigration and Customs Enforcement (“ICE”) to conduct immigration arrests. The immigration laws make no distinction as to where those arrests must take place. Instead, Congress left that operational decision to the discretion of ICE. With the safety of the public, ICE officers, and aliens in mind, ICE has decided that arrests may occur at, or near, courthouses. A ruling from this Court vacating ICE’s courthouse arrest guidance would not only be contrary to the law; such a ruling would regrettably put the public, ICE officers, and aliens in danger.

Plaintiffs’ suit is an attempt to shoehorn a *policy* disagreement, i.e., an opposition to immigration enforcement writ large, into a legal claim of violations of the Administrative Procedure Act (“APA”). However, no violation of the APA exists, and their APA claims fail. First, the Interim Guidance is not “final agency action,” and neither OPPM 25-06 nor the 2025 Courthouse Arrest Guidance is subject to review under the APA. Second, ICE has the authority and discretion to authorize courthouse arrests, and, contrary to Plaintiffs’ assertions, there is no common-law privilege against them. The Immigration and Nationality Act (“INA”) codifies the Executive Branch’s constitutional and inherent authority to arrest and

1 detain aliens who are suspected of being, or found to be, unlawfully present in the United States to
 2 effectuate their removal. See 8 U.S.C. §§ 1182, 1225, 1226, 1231, 1357. Third, both policies are reasoned,
 3 rational, and justified. Neither OPPM 25-06 nor the 2025 Courthouse Arrest Guidance is arbitrary or
 4 capricious. For these reasons, and the reasons expressed in Defendants' opposition to Plaintiffs' motion
 5 for a stay of agency action, the Court should deny the motion for partial summary judgment and grant
 6 Defendants' counter-motion.

7 In the alternative that the Court finds that Defendants violated the APA, the Court should carve out
 8 exceptions permitting ICE to enforce the INA's mandatory detention provisions and to detain at
 9 courthouses aliens found to be a danger or flight risk. If the Court finds an APA violation, the Court
 10 should also remand the policies to the components for correction rather than vacate the guidance entirely.¹

11 **II. ISSUES TO BE DECIDED**

12 1. Whether the Court should stay the proceedings in this case pending Defendants' pending
 13 appeal.

14 2. Whether Plaintiffs lack standing to seek relief outside of ICE's San Francisco area of
 15 responsibility.

16 3. Whether OPPM 25-06, the Interim Guidance, and the 2025 Courthouse Arrest Guidance are
 17 subject to review under the APA.

18 4. Whether there is a common-law privilege against federal immigration enforcement actions.

19 5. Whether OPPM 25-06, the Interim Guidance, and the 2025 Courthouse Arrest Guidance are
 20 arbitrary or capricious.

21 6. If the Court concludes that OPPM 25-06, the Interim Guidance, and the 2025 Courthouse
 22 Arrest Guidance fail to comply with the APA, whether it should limit relief pursuant to statutory
 23 exceptions under the INA and community safety.

24
 25
 26 ¹ Pursuant to Civil Local Rule 16-5, the parties' prior stipulation, and the Court's order granting
 27 the stipulation, the parties forego oral argument unless the Court deems it necessary or helpful. *See* Civil
 28 L.R. 16-5; Order Granting Stipulated Joint Req. at 5, ECF No. 168; Pls.' Notice of Mot. at 1 n.1, ECF
 No. 176.

7. If the Court concludes that either OPPM 25-06, the Interim Guidance, or the 2025 Courthouse Arrest Guidance fail to comply with the APA, whether the guidance should be remanded to the federal components at issue pursuant to further instructions from the Court.

III. THIS COURT SHOULD STAY PROCEEDINGS PENDING APPEAL

For the reasons expressed in Defendants’ opposition to Plaintiffs’ motion for final class certification, the Court should stay the proceedings in this case pending appeal. *See* Defs.’ Opp’n to Pls.’ Mot. for Final Class Certification at 2-4, ECF No. 179. On November 25, 2025, this Court issued an order provisionally certifying Plaintiffs’ two proposed classes. *See* Order Provisionally Certifying Classes, Granting Prelim. Inj., and Denying Stay at 1, 31, ECF No. 138. On December 23, 2025, Defendants appealed that order. *See* Defs.’ Notice of Appeal at 2, ECF No. 154. In their motion for partial summary judgment, Plaintiffs are seeking relief on behalf of one of the classes at issue in the pending appeal. *See* Pls’ Mot. for Partial Summ. J. (“Mot.”) at 1, ECF No. 176 (seeking relief on behalf of the “Courthouse Arrest Class”). When Plaintiffs filed their motion for partial summary judgment, the Court had not certified the Courthouse Arrest Class. Certification of the Courthouse Arrest Class is at issue in Defendants’ appeal. Defendants’ appeal of the provisional class certification has not resolved.

In addition, on February 23, 2026, Defendants filed a notice of appeal of the Court’s Order Staying Agency Action. *See* Defs.’ Notice of Appeal at 2, ECF No. 182. The Court’s prior order staying the courthouse arrest guidance is now at issue on appeal. That appeal also has not resolved.

Consistent with Supreme Court precedent including *Griggs* and *Coinbase*, this Court should stay this case while the Court of Appeals considers the questions of whether Plaintiffs’ proposed classes should have been certified at all and the prior order staying the courthouse arrest guidance. *See* Defs.’ Notice of Appeal, ECF No. 154 and Defs.’ Notice of Appeal, ECF No. 182; *see also Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982) (explaining that the filing of a notice of appeal “divests the district court of its control over those aspects of the case involved in the appeal”); *see also Coinbase, Inc. v. Bielski*, 599 U.S. 736, 741 (2023) (recognizing that an automatic stay of district court proceedings is required related to any aspect of the case involved in the appeal). In addition, the Court should stay the case as a matter of discretion. *See Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936) (acknowledging the

power of the district court to stay proceedings). For either reason, and as further set forth in Defendants' opposition to Plaintiffs' motion for final class certification, the Court should stay the proceedings.

IV. OBJECTIONS TO EXPERT DECLARATION

To support their motion, Plaintiffs rely on the declaration of Graeme Blair ("Blair"). *See* ECF No. 176 at 21. Defendants raise their previous objections to Blair's declarations as set forth in their opposition to Plaintiffs' motion for final class certification. *See* Defs.' Opp'n to Pls.' Mot. for Final Class Certification at 4-5, ECF No. 179. Importantly, and as specifically relevant here, Blair does not offer an explanation for his analysis on the transfer of cases. *See* Blair Decl. ¶¶ 15-18. He only concludes that some cases were transferred to two of the largest metropolitan areas of the United States, Los Angeles and New York City. *See* Blair Decl. ¶ 17. Based on Blair's own analysis for cases on or after January 20, 2025, less than 2% of the "newly initiated cases" were transferred. *See* Blair Decl. ¶ 18 (explaining that of the "8,641 cases originating in the ICE San Francisco Field Office . . . 143 were transferred to a court in another area of responsibility at some point later in 2025"). Blair never explains that immigration transfers can occur for a variety of reasons including at the request of the alien or based on the address of the alien. He does not establish that any of these cases were transferred sua sponte by the Executive Office for Immigration Review ("EOIR"). In other words, transfers can and most typically does occur because of actions taken by the alien.

Plaintiffs rely on Blair's analysis to try and make a connection between transfers and courthouse enforcement actions and then argue for nationwide vacatur. *See* ECF No. 176 at 21. Put simply, there is no connection between the transfer of immigration cases, the venue of immigration cases, and courthouse enforcement actions. Blair's analysis is speculative and lacks foundation. Blair's analysis only supports the conclusion that aliens move to population centers, and their immigration cases follow them there.

V. LEGAL BACKGROUND OF NATIONAL IMMIGRATION POLICIES AND DETENTION AUTHORITY

Defendants have previously set forth the multi-layered statutory scheme for the civil detention of aliens during an initial inspection, pending removal proceedings, and post removal proceedings in other briefs. *See* Defs.' Opp'n to Pls.' Mot. for Provisional Class Certification at 1-4, ECF No. 109 (discussing

8 U.S.C. §§ 1225, 1226, 1231); Defs.’ Opp’n to Pls.’ Mot. for Final Class Certification at 4-5, ECF No. 179. For brevity, and given the Court’s prior rulings, Defendants will not set forth the detailed statutory scheme for mandatory detention again in this opposition. But Defendants reserve all of their rights on appeal concerning the Federal Government’s detention authority under 8 U.S.C. § 1225. To the extent the Court wants further briefing on 8 U.S.C. § 1225, Defendants can provide it.²

VI. FACTUAL BACKGROUND

A. Prior Briefing on History of Courthouse Enforcement Actions and Defendants’ Reservation of Their Rights.

In their oppositions to Plaintiffs’ motion for provisional class certification and Plaintiffs’ motion for stay of agency action, Defendants set forth the comprehensive history of courthouse arrests through multiple presidential administrations. *See* Defs.’ Opp’n to Pls.’ Mot. for Provisional Class Certification at 5-7, ECF No. 109; Defs.’ Opp’n to Mot. for Stay of Agency Action at 3-8, ECF No. 113. Defendants recognize that the Court rejected their analysis of the history of courthouse arrests. *See* Order Staying Agency Action, ECF No. 155. Accordingly, for brevity, and given the Court’s prior order, Defendants will not provide the comprehensive history of courthouse arrests in the United States again. However, Defendants reserve all of their rights including the right to raise any prior argument they made arising under the history of courthouse arrests in the United States. *See* Defs.’ Opp’n to Pls.’ Mot. for Provisional Class Certification at 5-7, ECF No. 109; Defs.’ Opp’n to Mot. for Stay of Agency Action at 3-8, ECF No. 113. By not providing the comprehensive history of courthouse arrests again, Defendants are not waiving any of their rights.

B. Additional Relevant Factual Background.

Plaintiffs are aliens who entered the United States without being inspected or admitted. *See* Pls.’ Am. Compl. (“FAC”) at 34-40, ECF No. 32. The U.S. Department of Homeland Security (“DHS”) initiated removal proceedings against Plaintiffs charging them with being present in the United States

² Defendants note that more recently, the United States Court of Appeals for the Fifth Circuit concluded that the Federal Government’s interpretation of 8 U.S.C. § 1225 is “correct.” *See Buenrostro-Mendez v. Bondi*, Nos. 25-20496, 25-40701, 2026 WL 323330, at *1 (5th Cir. Feb. 6, 2026). In the Ninth Circuit, there is currently an appeal pending on that issue, and it has been set for oral argument in March of 2026. *See Rodriguez Vazquez v. Bostock*, No. 25-6842, Dkt. Entry No. 18 (9th Cir. 2026).

without admission. Plaintiffs’ individual circumstances are different. *See id.* at 34-40. Plaintiff, Yulisa Alvarado Ambrocio (“Ambrocio”), has never been arrested by ICE or detained at 630 Sansome. *See* FAC at ¶¶ 204-205. There is no evidence that Ambrocio will be arrested or detained at 630 Sansome, especially given the Court’s order granting a preliminary injunction. *See* Order Granting Prelim. Inj. at 24, ECF No. 90.

Plaintiffs’ connections to Defendants’ challenged policies are limited to ICE’s San Francisco area of responsibility. Indeed, Plaintiffs’ proposed Courthouse Arrest Class includes “[a]ll persons who have an immigration court hearing in a proceeding on EOIR’s non-detained docket in an immigration courthouse in ICE’s San Francisco Field Office Area of Responsibility.” *See* Pls.’ Mot. for Final Class Certification at 2, ECF No. 172. ICE’s San Francisco area of responsibility includes multiple facilities in Northern California, Hawaii, Guam, and Saipan.

VII. PROCEDURAL BACKGROUND

A. Procedural History.

The parties and the Court are aware of the procedural history of this case. Defendants only include the relevant procedural background for Plaintiffs’ motion for partial summary judgment on the 2025 Courthouse Arrest Guidance. On October 16, 2025, and before Defendants had even responded to the amended complaint, Plaintiffs filed their motion for a stay of EOIR and ICE’s courthouse arrest guidance. *See* Pls.’ Mot. for Stay of Agency Action, ECF No. 94. On October 30, 2025, Defendants filed their opposition. *See* Defs.’ Opp’n to Mot. for Stay of Agency Action, ECF No. 113.

On December 24, 2025, and after a hearing, the Court granted Plaintiffs’ motion for a stay of agency action. *See* Order Staying Agency Action, ECF No. 155. The Court postponed the date of the Courthouse Arrest Guidance and OPPM-25-06 within ICE’s San Francisco’s area of responsibility until the entry of final judgment. *See id.* at 38. On February 23, 2026, Defendants filed a notice of appeal of this Court’s Order Staying Agency Action, entered on December 24, 2025. *See* Defs.’ Notice of Appeal, ECF No. 182.

B. Definition of Plaintiffs' Courthouse Arrest Class.

Plaintiffs filed their motion for partial summary judgment on behalf of the Courthouse Arrest Class. *See* Mot. at 1. Plaintiffs define their Courthouse Arrest Class as “[a]ll persons who have an immigration court hearing in a proceeding on EOIR's non-detained docket in an immigration courthouse in ICE’s San Francisco Field Office Area of Responsibility.” *See* Pls.’ Mot. for Final Class Certification at 2, ECF No. 172. Plaintiffs’ Courthouse Arrest Class is expressly limited to ICE’s San Francisco area of responsibility. *See id.*

VIII. LEGAL STANDARD

A moving party is entitled to summary judgment “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). A genuine issue of material fact is one that “might affect the outcome of the suit under the governing law.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). In determining whether a genuine issue of material fact exists, the court must view all facts, and reasonable inferences drawn therefrom, in the light most favorable to the nonmoving party. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986); *Porter v. Cal. Dep’t of Corr.*, 419 F.3d 885, 891 (9th Cir. 2005). Summary judgment must be granted if there is no genuine issue as to any material fact, viewing the evidence in the nonmoving party’s favor. *Vaz v. Neal*, 33 F.4th 1131, 1135 (9th Cir. 2022).

“It is well established that, in a suit brought under the APA to review agency action, ‘the function of the district court is to determine whether or not as a matter of law the evidence in the administrative record permitted the agency to make the decision it did.’” *See Nat’l Family Farm Coal. v. Vilsack*, 758 F.Supp.3d 1060, 1071 (N.D. Cal. 2024) (quoting *Occidental Eng’g Co. v. INS*, 753 F.2d 766, 769 (9th Cir. 1985)). “In reviewing agency action other than the interpretation of a statute, the scope of review under the APA is narrow,” and “agency action will be upheld unless it is found to be ‘arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.’” *Nat’l Family Farm Coal.*, 758 F.Supp.3d at 1073 (quoting *Natural Grocers v. Vilsack*, 627 F. Supp. 3d 1130, 1143 (N.D. Cal. 2022)). “Agency action is arbitrary and capricious when the agency ‘relie[s] on factors which

1 Congress has not intended it to consider, entirely fail[s] to consider an important aspect of the problem,
 2 [or] offer[s] an explanation for its decision that runs counter to the evidence before the agency.” *Ctr. for*
 3 *Biological Diversity v. U.S. Fish and Wildlife Serv.*, 67 F.4th 1027, 1035 (9th Cir. 2023) (alterations in
 4 original) (quoting *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

5 “The Court’s deference extends to less than stellar work by an agency, so long as its analytical
 6 path and reasoning can be reasonably discerned,” *Natural Grocers v. Vilsack*, 627 F. Supp. 3d 1130,
 7 1142 (N.D. Cal. 2022) (quotation omitted), although it is still incumbent on agencies to “engage in
 8 ‘reasoned decisionmaking,’ ” *Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 16
 9 (2020) (quoting *Michigan v. EPA*, 576 U.S. 743, 750 (2015)), and “articulate a satisfactory explanation
 10 for its action including a ‘rational connection between the facts found and the choice made,’ ” *State*
 11 *Farm Mut. Auto. Ins. Co.*, 463 U.S. at 43 (quoting *Burlington Truck Lines v. United States*, 371 U.S.
 12 156, 168 (1962)).

13 **IX. ARGUMENT**

14 **A. Plaintiffs Lack Standing to Seek Relief Outside of ICE’s San Francisco Area of** 15 **Responsibility.**

16 “Standing to sue is a doctrine rooted in the traditional understanding of a case or controversy” that
 17 “limits the category of litigants empowered to maintain a lawsuit in federal court to seek redress for a
 18 legal wrong.” *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016). Standing exists only where the plaintiff
 19 demonstrates that (1) he has suffered an “injury in fact” that is concrete, particularized, and actual or
 20 imminent, (2) the injury is “fairly traceable” to the defendant’s conduct, and (3) the injury can be
 21 “redressed by a favorable decision.” *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992); *see*
 22 *also Massachusetts v. EPA*, 549 U.S. 497, 517 (2007) (same). “[A] plaintiff must demonstrate standing
 23 separately for each form of relief sought.” *See Friends of the Earth, Inc. v. Laidlaw Environmental*
 24 *Services (TOC)*, 528 U.S. 693, 706 (2000); *see also TransUnion LLC v. Ramirez*, 594 U.S. 413, 431
 25 (2021).

Plaintiffs lack standing to seek relief outside of ICE’s San Francisco area of responsibility based on their own class definition. *See* Pls.’ Mot. for Final Class Certification at 2, ECF No. 172. Plaintiffs are bringing this motion on behalf of “all persons who have an immigration court hearing in a proceeding on EOIR’s non-detained docket in an immigration courthouse in ICE’s San Francisco Field Office Area of Responsibility.” *See id.* Plaintiffs have expressly defined the geographic area in which they are seeking relief, yet they are seeking nationwide relief. *See* Mot. at 20-21. Based on their own class definition, Plaintiffs lack standing to seek relief outside of ICE’s San Francisco area of responsibility.

B. Plaintiffs’ Claims Are Not Justiciable.

For the reasons previously expressed. Defendants contend that Plaintiffs’ claims are not justiciable because they lack standing, are not ripe, and are moot. *See* Defs.’ Opp’n to Mot. for Stay of Agency Action at 9-12, ECF No. 113. Defendants acknowledge this Court’s prior rulings in this case rejecting their Article III arguments. For brevity, and given the Court’s prior rulings, Defendants will not set advance those arguments again in this opposition. But Defendants reserve all of their rights on appeal concerning the Article III arguments that they previously raised, and the right to raise those prior arguments in any future appeal.

C. The Court Should Not Vacate or Set Aside OPPM 25-06, the Interim Guidance, or the 2025 Courthouse Arrest Guidance.

Plaintiffs should not prevail on the merits of their claim for three reasons. First, the Interim Guidance is not “final agency action,” and OPPM 25-06 and the 2025 Courthouse Arrest Guidance are not reviewable under the APA. Second, there is no common-law privilege against courthouse arrests. Third, neither OPPM 25-06 nor the 2025 Courthouse Arrest Guidance is arbitrary or capricious.

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

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

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 the
 20 Courthouse Arrest Guidance superseded the Interim Guidance. That supersession means the Interim
 21 Guidance is no longer effective.

22 Second, the INA, from which ICE’s arrest authority derives, leaves open to ICE’s discretion when
 23 and where to enforce the INA’s detention provisions. 5 U.S.C. § 701(a)(2). Thus, there is no “meaningful
 24 standard” by which a court can evaluate the appropriateness of ICE’s discretionary choice of public
 25 locations for targeted immigration enforcement actions. *See* 8 U.S.C. § 1226(a); *id.* § 1357(a); *Heckler v.*
 26 *Chaney*, 470 U.S. at 830. The INA’s broad language grants ICE discretion to determine the location of a
 27 civil enforcement action against an alien illegally present in the United States. Nothing in the INA or its

1 regulations say ICE cannot arrest at immigration courthouses. In fact, certain provisions *require* ICE to
 2 arrest an alien at an immigration courthouse under certain circumstances.

3 To give a common example, an alien may attend a hearing at an immigration court on the merits of
 4 an asylum application and at the conclusion of the hearing the immigration judge may order the alien
 5 removed. If the alien opts to waive appeal of the immigration judge’s order of removal, that order
 6 becomes final and now ICE “shall detain the alien” for ninety days to effectuate the removal order. *See* 8
 7 U.S.C. §§ 1231(a)(1), (a)(2), (2)(A). A stay of the courthouse arrest guidance contradicts the express
 8 language of the INA.

9 The Court stated in its Stay Order that, despite ICE’s recognized discretion over when and where
 10 to conduct arrests, “ICE and EOIR’s *prior* policies governing courthouse arrests” are the meaningful
 11 standard by which the Court can evaluate the challenged guidance. ECF No. 155 at 16 (emphasis in
 12 original). In reaching this conclusion, the Court principally relied on *Jajati v. U.S. Customs & Border*
 13 *Prot.*, 102 F.4th 1011 (9th Cir. 2024). But the Ninth Circuit in *Jajati* did *not* look to an agency’s “prior
 14 policies” as the “meaningful standard” by which to judge an agency’s exercise of discretion. Instead, the
 15 Ninth Circuit in *Jajati* judged the agency’s exercise of discretion against the standard found in related
 16 *statutes and regulations*. *Id.* at 1018 (“Here, the statute and regulation governing SENTRI provide such
 17 meaningful standards.”). The Court also cited *ASSE Int’l, Inc. v. Kerry*, 803 F.3d 1059, 1069 (9th Cir.
 18 2015), to support its reliance on prior policies as the meaningful standard. But that case too saw the Ninth
 19 Circuit reviewing an agency’s exercise of discretion against the agency’s own *regulations*. Thus, the cases
 20 relied on by the Court are not examples where “the prior policies provide the ‘law to apply’ in determining
 21 whether the new agency action is arbitrary and capricious.” ECF No. 155 at 16.

22 The Court’s Stay Order also stated that “the Ninth Circuit ‘ha[s] held that there are meaningful
 23 standards of review and have declined to apply § 701(a)(2)’ in ‘several immigration cases.’” ECF No. 155
 24 at 16-17 (citing *Perez Perez v. Wolf*, 943 F.3d 853, 861 (9th Cir. 2019)). *Perez Perez* cites to three cases in
 25 support of the language quoted by the Court. The first case is *ASSE*, which, as explained in the previous
 26 paragraph, held that agency *regulations* provide a meaningful standard by which to review an agency’s
 27 exercise of discretion. The second case is *Gonzalez-Caraveo v. Sessions*, 882 F.3d 885, 893 (9th Cir.

2018), which held that case law from the Board of Immigration Appeals provided a “sufficiently meaningful standard.” The third case is *Taslimi v. Holder*, 590 F.3d 981, 986 (9th Cir. 2010), which held that regulations provided a meaningful standard. Again, none of these cases held that an agency’s *prior policies* provided a meaningful standard. And *Perez Perez* itself looked to a set of statutes for the “meaningful standard” against which to review agency discretion. 943 F.3d at 863 (“This statutory framework affords ‘meaningful standards’ for reviewing claims challenging USCIS’s compliance with that framework.”).

Perez Perez goes on to acknowledge that “Only where there is truly ‘no law to apply’ have we found an absence of meaningful standards of review.” 943 F.3d at 861 (quoting *Spencer Enters., Inc. v. United States*, 345 F.3d 683, 688 (9th Cir. 2003)). *Perez Perez* gives the example of *Ekimian v. INS.*, 303 F.3d 1153 (9th Cir. 2002), where the Ninth Circuit held that it could not review an agency determination because there was *no statute, regulation, or case law* that provided a standard. This, then, is the same problem that Plaintiffs face in the instant case. *There is no statute, regulation, or case law to serve as a meaningful standard against which to judge ICE’s exercise of discretion in conducting courthouse arrests.* The attempt to rely on prior policy as the meaningful standard appears to lack precedent in the relevant case law. There is thus “no law to apply” and no meaningful standards of review.

The 2025 Courthouse Arrest Guidance reflects ICE’s careful balancing of several discretionary factors. ICE-AR-1-3.³ 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. ICE-AR-1. OPPM 25-06 recognizes that EOIR lacks authority to prohibit DHS from conducting civil immigration enforcement

³ Citations to “ICE AR” are citations to the certified administrative record for the 2025 Courthouse Arrest Guidance that was filed on December 19, 2025. *See* Defs.’ Notice of Filing of Certified Administrative Record, ECF No. 146.

actions at or near courthouses. 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 discretion is reinforced by provisions of the INA precluding judicial review of ICE’s decision regarding where and when to arrest an alien. With respect to arrests by ICE with a warrant, the INA “preclude[s] judicial review,” 5 U.S.C. § 701(a)(1), of ICE’s decisions about the location of such arrests. Under 8 U.S.C. § 1226(e), immigration authorities’ “discretionary judgment regarding the application of [§ 1226, authorizing arrests with a warrant] shall not be subject to [judicial] review.” The Court stated in its Stay Order that § 1226(e) “precludes review only of individual custody determinations,” ECF No. 155 at 15, but neither the text of the statute nor any of the cases cited by the Court stand for such a proposition. *Doe v. Noem*, 783 F. Supp. 3d 907, 932 (W.D. Va. 2025) does collect cases declining review of individual custody determinations after an alien is detained but does not say that § 1226(e) precludes review of discretionary determinations to arrest, whether on an individual basis or as a class. *Id.* The Court also cited to the Supreme Court holding that § 1226(e) does not preclude *statutory* challenges. *Id.* (citing to *Jennings v. Rodriguez*, 583 U.S. 281, 295 (2018)). However, Plaintiffs do not challenge a *statute*; they are challenging ICE’s *discretion* to conduct arrests at courthouse. The language of § 1226(e) precludes, head on, judicial review of such discretionary judgments.

Fourth, there is no agency action for the Court to review. *See S.F. Herring Ass’n v. Dep’t of Interior*, 946 F.3d 564, 575 (9th Cir. 2019); *see also* 5 U.S.C. § 704. ICE’s guidance to conduct widespread civil arrests at immigration courthouses is not the result of any policy per se but instead stems from individual officers’ discretionary enforcement decisions. Similarly, there is no EOIR “Courthouse Arrest Policy” that can be vacated. *See* ECF No. 176 at 20-26. EOIR’s prior “policy,” set forth in OPPMs 23-01 and 96-6, cites no statutory or regulatory authority that authorizes EOIR to prohibit ICE’s lawful exercise of discretionary enforcement.⁴ OPPM 25-06 merely recognizes that EOIR lacks authority to

⁴ The routine authorities cited by Plaintiffs regarding the administration of EOIR and its “coordination” with DHS do not provide *any* basis for EOIR to prohibit the lawful exercise of ICE

DEFENDANTS’ COUNTER-MOTION AND OPPOSITION TO PLAINTIFFS’ MOTION FOR SUMMARY JUDGMENT –
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1 prohibit DHS from conducting civil immigration enforcement actions at or near courthouses. If anything,
 2 that is a recognition that EOIR cannot have its own “courthouse arrest policy.” EOIR itself does not and
 3 cannot conduct courthouse arrests as a matter of fact, legal authority, and operational capability. The
 4 Court interpreted OPPM 25-06’s disclaimer that nothing in the ““Policy Memorandum authorizes DHS to
 5 conduct civil immigration enforcement actions in private EOIR space...”” to conclude that “EOIR’s
 6 authorization would be required for ICE to conduct arrests in such spaces.” ECF No. 155 at 30 (quoting
 7 25-06, Dkt. No. 107, at 29 n.1). It is unclear how the Court’s conclusion logically flows from OPPM 25-
 8 06’s disclaimer. The disclaimer specifically says that nothing in OPPM 25-06 authorizes ICE courthouse
 9 arrests. That language in no logical way implies that EOIR *can* authorize ICE to conduct arrests,
 10 especially when OPPM 25-06 additionally states that EOIR lacks authority to “prohibit DHS from
 11 conducting any action it is otherwise lawfully authorized to take.” Legal *disclaimers* cannot and should
 12 not be read as *concessions*. Lastly, Plaintiffs have another remedy available for allegedly unlawful arrests
 13 in the form of a habeas action.

14 **2. There Is No Common-Law Privilege Against Federal Immigration** 15 **Enforcement In and Around Courthouses.**

16 Plaintiffs allege that there is a common-law privilege against courthouse arrests. *See* ECF No. 176
 17 at 16. To begin with William Blackstone, as Plaintiffs do, Blackstone’s Commentaries state plainly that
 18 the Executive retains full discretion to remove aliens: foreigners are “liable to be sent home *whenever the*
 19 *king sees occasion.*” 1 William Blackstone, Commentaries on the Laws of England *259–60 (1765)
 20 (emphasis added). Plaintiffs otherwise rely exclusively on Blackstone for the alleged “time-honored
 21 common law privilege against civil arrest in or near court.” ECF No. 176 at 16. Plaintiffs offer no other
 22 authority for their historical claim. Thus, there has never been a privilege, either when the INA was
 23 adopted or at any time before, resembling the one alleged by Plaintiffs. *See United States v. Craft*, 535
 24 U.S. 274, 288 (2002) (holding that, to conclude that Congress meant to incorporate a common-law rule,
 25 that rule must have been “so well established” that it can be “assume[d]” that Congress considered it).
 26 Defendants previously set forth the history of courthouse arrests and explained why there is no common-

27 _____
 28 discretionary authority. ECF No. 176 at 16.

law privilege against courthouse enforcement actions. *See* Defs.’ Opp’n to Mot. for Stay of Agency Action at 15-19, ECF No. 113. Defendants reserve all of their rights to raise any prior argument arising out of the lack of a common-law privilege against federal immigration enforcement actions including in any appeal. To the extent the Court wants further briefing on the lack of a common-law privilege against federal immigration enforcement actions, Defendants can provide it.

3. The ICE Courthouse Arrest Guidance Is Not Arbitrary or Capricious.

The ICE Courthouse Arrest Guidance is neither arbitrary nor capricious. First, and as a starting point, the Federal Government has broad power to regulate immigration in the United States, and the ability to detain aliens, especially in safe environments, is a necessary and logical collar to that broad power. Second, both OPPM 25-06 and the 2025 Courthouse Arrest Guidance are reasoned, rational, and justified. Plaintiffs ignore why the policies were issued, what the policies are trying to accomplish, and what the policies actual say.

(i) ICE Has Broad Discretion In Operational Decisions Enforcing The INA.

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 an administrative warrant, 8 U.S.C. § 1226(a), and without a warrant, 8 U.S.C. § 1357(a). Consistent with

1 that authority and the Executive Branch’s “broad” and “undoubted power” over the enforcement of this
 2 Nation’s immigration laws, *Arizona v. United States*, 567 U.S. 387, 394 (2012), ICE has long exercised its
 3 detention authority in executing removal operations, including the considerations that go into determining
 4 where an alien under a removal order is detained, transferred, or removed. These decisions necessarily
 5 “implicate our relations with foreign powers and require consideration of changing political and economic
 6 circumstances.” *Jama v. Immigration and Customs Enforcement*, 543 U.S. 335, 348 (2005) (internal
 7 quotation marks omitted).

8 **(ii) ICE’s Courthouse Arrest Guidance is Reasoned, Rational, and**
 9 **Justified to Protect the Community.**

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

23 Plaintiffs allege that the 2025 Courthouse Arrest Guidance and OPPM 25-06 are arbitrary,
 24 capricious, and therefore violate the APA. *See generally* ECF No. 176. But in so doing, Plaintiffs ignore
 25 the plain language of the policies and the history of immigration enforcement actions in and around
 26 courthouses.

1 Plaintiffs speculate that the 2025 Courthouse Arrest Guidance will “chill” access to courts. But
 2 under the INA, aliens have always been subject to arrest and detention for violations of immigration laws.
 3 Any supposed chilling effect is thus minimal and makes little logical sense: a potential adverse outcome at
 4 a court hearing is no reason to not attend at all, especially when the consequences for not attending are
 5 severe. *See* 8 U.S.C. § 1229a(b)(5)(A) (in absentia removal orders); 8 U.S.C. § 1253 (criminal penalties
 6 for aliens who fail to depart within ninety days of being ordered removed). Countless Americans attend
 7 their criminal court hearings when they also know full well that they may be detained at a courthouse. No
 8 one could credibly claim that no arrests on criminal charges should ever occur near a courthouse for fear
 9 of a “chilling effect” on criminal defendants’ willingness to attend their hearings. So too, then, with aliens
 10 in immigration court proceedings who have always been subject to arrest and detention for violations of
 11 immigration laws.

12 Plaintiffs demonstrate a troublingly cavalier attitude towards the issue of public safety as identified
 13 in the 2025 Courthouse Arrest Guidance. Plaintiffs claim that “the government already has determined
 14 that the noncitizens attending immigration court hearings do *not* present a safety threat or flight risk.” ECF
 15 No. 176 at 18. But this sweeping generalization misses important context. First, the statement assumes that
 16 every alien to attend hearings at immigration court has had a prior release from custody following a
 17 danger or flight risk determination. However, there are innumerable scenarios under which an alien may
 18 appear at immigration court *without* having ever been released previously from DHS custody. These
 19 include aliens who applied for asylum affirmative with USCIS, whether because they are not apprehended
 20 at the border or because they were initially admitted into the United States. Second, even those who were
 21 released after a prior danger or flight risk determination may have engaged in conduct that amounts to
 22 changed circumstances rendering the previous danger or flight risk determination stale. Imagine an alien
 23 who was released at the border years ago by DHS but who after remaining for some period in the interior
 24 of the United States has been convicted of aggravated felony such as murder. The commission of an
 25 aggravated felony renders the alien subject to mandatory detention under 8 U.S.C. § 1226(c). If ICE
 26 knows that this aggravated felon alien has an upcoming immigration court hearing, ICE ought to be able
 27 to decide for reasons of public safety that the courthouse is the safest place to conduct the arrest. This

1 would make sense given the security measures surrounding courthouses that are described in the 2025
2 Courthouse Arrest Guidance. ICE-AR-1-3. If this Court denies ICE the ability to conduct a courthouse
3 arrest of violent aliens, ICE will be left with the only other option to conduct a field arrest that is more
4 dangerous for the alien, the general public, and the ICE officers. *See* Declaration Of Supervisory
5 Detention And Deportation Officer Stanley Rili (“Rili Decl.”) ¶ 8-10.

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

18 The 2025 Courthouse Arrest Guidance is reasoned and rational, and justifies why it is necessary.
19 The 2025 Courthouse Arrest Guidance states that “when ICE engages in civil immigration enforcement
20 actions in or near courthouses it can reduce safety risks” because “[i]ndividuals “entering courthouses are
21 typically screened by law enforcement personnel to search for weapons and other contraband.” ICE-AR-1-
22 2. The 2025 Courthouse Arrest Guidance further explains that “enforcement activities in or near
23 courthouses are often required when jurisdictions refuse to cooperate with ICE.” *See id.* Thus, the 2025
24 Courthouse Arrest Guidance strikes a balance between ICE’s legitimate interests in enforcing immigration
25 law; protecting the safety of its officers, the arrestee, and members of the public; and the goal of
26 minimizing interference with judicial proceedings. ICE-AR-1-3.

Finally, Plaintiffs’ argument that the 2025 Courthouse Arrest Guidance reverses “decades” of prior policy that created “serious reliance interests” lacks merit and ignores the policies of prior administrations. *See* ECF No. 176 at 14. Plaintiffs’ argument rests on the baseless assertion that Defendants’ courthouse arrest policy was identical for “decades.” *See id.* at 10. Plaintiffs fail to acknowledge in their motion that decisions pertaining to immigration vary significantly from one presidential administration to the next with the electorate having considerable sway on the types of policies that are pursued. Plaintiffs’ reliance argument ignores the reality of how immigration policies have evolved since at least 2014 including those on courthouse arrests. *See e.g., Ryan v. U.S. Immigration and Customs Enforcement*, 974 F.3d 9, 14-16 (1st Cir. 2020) (analyzing ICE’s courthouse arrest policy during President Trump’s first administration). And Plaintiffs fail to address how a reliance interest can even be formulated in the context of evolving policies that are uniquely dedicated to the sovereign and evolving political factors. Plaintiffs’ reliance argument is speculative and unsupported.

(iii) Vacating the 2025 Courthouse Arrest Guidance Would Threaten Public Safety And Frustrate The Rule Of Law.

ICE’s 2025 Courthouse Arrest Guidance permits the agency to detain aliens who should be arrested to enforce the laws of the United States and protect the community. The Guidance explains that public safety is a major motivation behind ICE’s decision to conduct courthouse arrests. *See* ICE-AR-1. “Courthouse arrests are safe for targeted aliens, ICE officers, and the public for several reasons.” *See* Rili Decl. ¶ 8. Admittance to courthouses is limited to those with court business and their associates. *Id.* Individuals entering courthouses are screened for weapons and contraband. *Id.*

If ICE cannot conduct courthouse arrests, then ICE must conduct arrests somewhere else, such as on public streets or at houses. However, “house and street arrests require officers and agents to enter high crime and unfamiliar neighborhoods, where there are many variables that cannot be controlled.” *Id.* ¶ 10. “Officers have faced aggressive neighbors, family members, and bystanders who attempt to interfere with ICE immigration enforcement operations, as recent Media reports have demonstrated.” *Id.* This is why “courthouse arrests are safer for targeted aliens, ICE officers, and the public.” *Id.* ¶ 5. If Plaintiffs succeed

1 in vacating ICE’s 2025 Courthouse Arrest Guidance, the safety of the public will be at risk. Plaintiffs fail
2 to grapple with these consequences.

3 There are numerous situations where, as a matter of public safety and to fulfill the mandates of the
4 INA, ICE must maintain its lawful ability to conduct courthouse arrests. As one example, consider a non-
5 detained alien who appears for a pre-deprivation hearing at an immigration courthouse pursuant to an
6 order from a district court to determine whether the alien is a flight risk or a danger to the community. *See*
7 *Order Granting Prelim. Inj.* at 16, ECF No. 27 (ordering the Federal Government not to detain Plaintiff,
8 Carmen Aracely Pablo Sequen, “without providing her with a pre-detention bond hearing”). If the
9 immigration judge who conducts the hearing concludes that the alien is a flight risk or a danger to the
10 community, Defendants must arrest the alien to protect the community. Even Plaintiffs would concede
11 that Defendants cannot allow a dangerous alien to walk out of a hearing at an immigration courthouse and
12 into the community if an immigration judge has concluded that the alien is dangerous. Vacating ICE’s
13 Courthouse Arrest Guidance would prohibit the agency from acting against those aliens who should be
14 arrested at a courthouse after being found to be a danger by a neutral third party or an immigration judge.

15 As a second example, the Courthouse Arrest Class includes aliens who are subject to an expedited
16 removal order. Aliens subject to an expedited removal order may be: (a) found to have a credible fear,
17 released from custody pending or after referral to an immigration judge, and later appear at an
18 “immigration court hearing” at an immigration courthouse related to his or her application for asylum, 8
19 U.S.C. § 1225(b)(1)(B)(ii), or (b) found to have a negative credible fear and seeking review of that
20 determination before an immigration judge. *See* 8 U.S.C. § 1225(b)(1)(B)(IV); *see also, e.g., Feng Gui Lin*
21 *v. Holder*, 588 F.3d 981, 983-84 (9th Cir. 2009) (analyzing subsequent asylum-related proceedings after
22 an alien was ordered removed). For the latter category, if the immigration judge affirms the negative
23 credible fear determination, Defendants have a legitimate interest in arresting the alien to effectuate
24 removal. And if the asylum application is denied, Defendants have an interest in detaining the alien to
25 timely effectuate removal after an appeal, if any, is resolved or the time to file an appeal has elapsed. In
26 some cases, and even following an asylum grant that is appealed, Defendants may wish to detain or
27

1 continue detaining the alien if they are a flight risk or a danger to the community. Vacatur does not
2 account for any of those situations.

3 As a third example, consider an alien who is not detained but subsequently commits an offense that
4 would qualify the alien for mandatory detention. *See, e.g.*, 8 U.S.C. § 1226(c)(1)(E)(ii) (describing certain
5 offenses that mandate detention including those “which constitute the essential elements of any burglary,
6 theft, larceny, shoplifting, or assault of a law enforcement officer offense, or any crime that results in
7 death or serious bodily injury to another person”). The alien’s appearance at an immigration courthouse
8 for an immigration proceeding may be the best, safest, or only opportunity to conduct an arrest. Vacatur
9 would prevent that arrest even if it was in the best interest of the community. Similarly, if an alien admits
10 to conduct that would render him or her subject to mandatory detention, vacatur would prevent the arrest.

11 As a fourth example, suppose an alien, who is not detained but in removal proceedings under 8
12 U.S.C. § 1229a, attends an immigration court hearing and is ordered removed by an immigration judge.
13 Then, the alien can decide to waive his or her right to appeal the immigration judge’s order of removal. At
14 that point, the removal order becomes administratively final, and the alien is subject to mandatory
15 detention under 8 U.S.C. § 1231(a)(2)(A). If the Court vacates the courthouse arrest guidance for all
16 aliens, Defendants could not comply with the law and arrest the alien at the courthouse pursuant to 8
17 U.S.C. § 1231(a)(2)(A). Vacatur of the courthouse arrest guidance would nullify Defendants’ ability under
18 8 U.S.C. § 1231 to detain aliens despite the plain language of the statute.

19 **4. OPPM 25-06 Should Not Be Set Aside as Arbitrary or Capricious.**

20 Just as with ICE’s Courthouse Arrest Guidance, OPPM 25-06 explains why it was issued and
21 why the prior policy, OPPM 23-01, was ineffective. For the two reasons explained below, OPPM 25-06
22 is reasoned and justified, not arbitrary or capricious.

23 First, as with the ICE Courthouse Arrest Guidance, Plaintiffs claim that OPPM 25-06 lacks a
24 reasoned explanation. *See* ECF No. 176 at 20-22. But once again, Plaintiffs ignore the actual policy. 25-06
25 plainly disputes the prior reasons why OPPM 23-01 was issued and then refutes them. OPPM 25-06 offers
26 a substantive analysis on why OPPM 23-01 was “unpersuasive, inconsistent with current Executive
27 Branch policy, pretextual” and “unsubstantiated.” To illustrate, OPPM 25-06 questions OPPM 23-01’s
28 DEFENDANTS’ COUNTER-MOTION AND OPPOSITION TO PLAINTIFFS’ MOTION FOR SUMMARY JUDGMENT –
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alleged “chilling effect” and disputes the statistics that the alleged effect was based on. OPPM 25-06 further questions OPPM 23-01’s concerns about safety and argues that enforcement actions at courthouses are safer. OPPM 25-06 criticizes the motivation behind OPPM 23-01 and explains why OPPM 23-01 was inconsistent. Lastly, OPPM 25-06 recognizes that EOIR lacks authority to “prohibit DHS from conducting any action it is otherwise lawfully authorized to take”; thus, OPPM 23-01 was “likely *ultra vires*.” (italics in original). OPPM 23-01 did not purport to cite a statutory or regulatory authority that authorized a prohibition on ICE enforcement actions, and the court should reject Plaintiff’s attempts to backfill authority that was never acknowledged or adopted by EOIR. ECF No. 176 at 16. EOIR’s prior “policy,” set forth in OPPMs 23-01 and 96-6, cites no statutory or regulatory authority that authorizes EOIR to prohibit ICE’s lawful exercise of discretionary enforcement.⁵ OPPM 25-06 provides a reasoned explanation for rescinding OPPM 23-01. Plaintiffs ignore these reasons. A preference for the prior policy does not render OPPM 25-06 arbitrary and capricious.

Second, Plaintiffs 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 Plaintiffs’ argument. 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.” This language in OPPM 25-06 adequately considers EOIR’s mission and function. Like the rest of Plaintiffs’ arguments, they choose to ignore what the policies clearly state.

D. Even If The Court Finds An APA Violation, The Court Should Limit Its Relief and Allow Exceptions Pursuant to the Plain Language of the INA.

In the alternative that the Court decides to vacate, at least in part, OPPM 25-06 and ICE’s courthouse arrest guidance, the Court should carve out exceptions for the mandatory detention provisions of the INA. These provisions include § 1226(c) and § 1231(a)(2). Defendants further contend that 8 U.S.C. § 1225(b)(2) is a mandatory detention provision. The Court should also permit ICE to detain aliens

⁵ The routine authorities cited by Plaintiffs regarding the administration of EOIR and its “coordination” with DHS do not provide *any* basis for EOIR to prohibit the lawful exercise of ICE discretionary authority. ECF No. 176 at 16.

1 at courthouse who have been found by an immigration judge to be a danger or flight risk.

2 Owing to the alleged APA violations, Plaintiffs ask the Court to vacate the courthouse arrest
 3 policies. *See* ECF No. 176 at 20-22. It is questionable whether vacatur is a permissible APA remedy. *See*
 4 *United States v. Texas*, 599 U.S. 670, 693-703 (2023) (Gorsuch, Thomas, & Barrett, JJ., concurring). Even
 5 if it is, it is unwarranted in this case. The agency can cure any defects identified by the Court. Vacatur
 6 would also be disruptive to the agencies' critical law enforcement and public safety missions. Instead, the
 7 Court should remand the guidance to the agencies to take corrective action consistent with the Court's
 8 opinion. This is appropriate where, as here, the agencies retain discretion over the actions deemed to
 9 violate the APA. *See Ramirez v. ICE*, 568 F. Supp. 3d 10, 24 (D.D.C. 2021) (citing *Am. Hop. Assoc. v.*
 10 *Azar*, 385 F. Supp. 3d 1, 11 (D.D.C. 2019)). Alternatively, should the Court vacate the "policy," vacatur
 11 should not be universal. Rather, it should operate only with respect to the specific parties involved in the
 12 lawsuit and be the sole remedy ordered as it would render all other remedies duplicative and unnecessary.

13 Nationwide vacatur is improper for a final reason. It equates to an impermissible universal
 14 injunction. In *Trump v. Casa*, 606 U.S. 831, 837 (2025), the Supreme Court held that universal injunctions
 15 likely exceed the equitable authority that Congress granted to district courts. Although the Supreme Court
 16 did not decide *CASA* under the APA, it cautioned against awarding complete relief to nonparties. *See id.* at
 17 851. In fact, the Supreme Court explained that "'complete relief is not synonymous with 'universal
 18 relief.'" *Id.* "It is a narrower concept: The equitable tradition has long embraced the rule that courts
 19 generally 'may administer complete relief *between the parties*.'" *Id.* (quoting *Kinney-Coastal Oil Co. v.*
 20 *Kieffer*, 277 U.S. 488, 507 (1928) (emphasis added)).

21 More recently, in *National TPS Alliance v. Noem*, No. 25-5724, -- F.4th --, 2026 WL 226573, at *1
 22 (9th Cir. Jan. 28, 2026), the Ninth Circuit examined setting aside an agency rule under the APA. There,
 23 the plaintiffs challenged DHS' vacatur and termination of Temporary Protected Status designations for
 24 certain countries. *See id.* The Ninth Circuit declined to resolve the question of whether a universal stay
 25 under the APA is consistent with Supreme Court precedent. *See id.* at *17 (citing *Trump v. CASA, Inc.*,
 26 606 U.S. 831 (2025)). But the Ninth Circuit suggested that a district court should consider whether a
 27 universal stay is appropriate based on the needs of each case. *See id.* In analyzing whether the district

1 court should have vacated the policy at issue across the United States, the Ninth Circuit explained that it
 2 would be “impossible” for the district court to “craft relief that is complete *and* benefits only the named
 3 [P]laintiffs.” *Id.* (italics in original). The Ninth Circuit criticized the Federal Government for failing to
 4 explain how an order affording relief to the plaintiffs could be crafted. *See id.* Because the district court
 5 could not afford relief to only the plaintiffs, it did not abuse its discretion by setting aside the policies at
 6 issue in full and across the United States. *See id.* at *18.

7 Here, if the Court finds that the guidance at issue fails to comply with the APA is can award
 8 “complete relief” to Plaintiffs by vacating or setting aside the guidance for ICE’s San Francisco area of
 9 responsibility. Plaintiffs’ proposed class is based on ICE’s San Francisco area of responsibility. Awarding
 10 relief beyond ICE’s San Francisco area of responsibility violates the principles that the Supreme Court
 11 rejected in *CASA*.

12 **E. Remand Without Vacatur Is The Appropriate Remedy In This Case.**

13 In APA cases, the typical remedy is for the court to “hold unlawful and set aside agency action,
 14 findings, and conclusions.” 5 U.S.C. § 706(2)(A). This is commonly termed “vacatur.” *Texas*, 599 U.S.
 15 at 695 (concurrence). But the APA “does not say anything about ‘vacating’ an agency action
 16 (‘wholesale’ or otherwise),” and accordingly, a plurality of the Supreme Court has said that section
 17 702(2)(A)’s terms, “set aside,” do not mean “vacate,” but rather to “disregard.” *See id.*; *see also* 5
 18 U.S.C. § 703 (APA remedies). As such, while courts may order an agency action to be “disregarded” for
 19 purposes of the parties, they may not vacate an agency action for non-parties. *See Texas*, 599 U.S. at 693
 20 (noting when a court “finds a remedy merited, it provides party-specific relief”); *see also CASA*, 606
 21 U.S. at 851 (stating the rule that complete relief should generally be limited to the parties in the lawsuit).
 22 Because Plaintiffs seek vacatur for non-parties, *see* ECF No. 176 at 21, under the plurality’s reasoning,
 23 their request should be denied.

24 Remand without vacatur is the appropriate remedy for any APA violation found here because
 25 vacatur could produce disruptive consequences to the Executive’s implementation and enforcement of
 26 immigration laws. Vacatur is not a required remedy for unlawful agency action. *See Stand Up for*
 27 *California! v. U.S. Dep’t of Interior*, 879 F.3d 1177, 1190 (D.C. Cir. 2018) (“the district court acted well
 28 DEFENDANTS’ COUNTER-MOTION AND OPPOSITION TO PLAINTIFFS’ MOTION FOR SUMMARY JUDGMENT –
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within its discretion in finding vacatur unnecessary to address any harm the defect had caused”). On remand, the agency can fix its process in line with the Court’s decision. *Cf. I.N.S. v. Orlando Ventura*, 537 U.S. 13, 16 (2002) (“Generally speaking, a court of appeals should remand a case to an agency for decision of a matter that statutes place primarily in agency hands”). Specifically, it can take “new agency action” in line with the Court’s findings and conclusions. *See Biden v. Texas* (“*Biden*”), 597 U.S. 785, 807-08 (2022) (discussing *DHS v. Regents of Univ. of Cal.*, 591 U.S. 1, 20-21 (2020)). ““Whether agency action should be vacated depends on how serious the agency’s errors are ‘and the disruptive consequences of an interim change that may itself be changed.’” *California Communities Against Toxics v. U.S. E.P.A.*, 688 F.3d 989, 992 (9th Cir. 2012) (quoting *Allied-Signal, Inc. v. U.S. Nuclear Regulatory Comm’n*, 988 F.2d 146, 150–51 (D.C. Cir. 1993)).

The disruptive consequences of vacatur are indisputable because vacatur of the guidance potentially encompasses a breadth of enforcement action necessary to execute the immigration laws of the United States and to protect the public, aliens included. *See supra*. The agencies’ guidance implicates the Executive’s authority to prioritize its immigration enforcement efforts. *See Texas*, 599 U.S. at 679-680. (citing *Wayte v. United States*, 470 U.S. 598, 607-608 (1985)). Given the public safety interests at stake, the Executive charged with implementing the immigration laws and protecting the public should have an opportunity to conform enforcement priorities to the Court’s findings on remand without the interference of vacatur.

X. CONCLUSION

For the reasons stated above, the Court should deny Plaintiffs’ motion for partial summary judgment under the APA as to OPPM-25-06, the Interim Guidance, and the 2025 Courthouse Arrest Guidance. The Court should grant Defendants’ counter motion. In the alternative, Defendants request that the Court remand without vacatur or limit vacatur pursuant to the statutory exceptions under the INA.

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Respectfully submitted,

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