

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

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

14 Attorneys for Plaintiffs

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

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

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

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

19 Plaintiffs,

20 v.

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

27 Defendants.

Case No. 5:25-CV-06487-PCP

PLAINTIFFS' REPLY IN SUPPORT OF PARTIAL SUMMARY JUDGMENT AND OPPOSITION TO DEFENDANTS' COUNTER-MOTION (COURTHOUSE ARRESTS)

Date: N/A
Time: N/A
Crtrm.: 8
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

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INTRODUCTION

Defendants fail to rebut Plaintiffs’ showing on the decisive issue presented here: that it was arbitrary and capricious for ICE and EOIR to abandon a decades-long practice of abstaining from immigration courthouse arrests without explaining that dramatic shift, including its abandonment of the “core principle” of avoiding chilling people from accessing their rights through their day in court. Defendants’ post hoc attempt to justify the policies—for example, by minimizing the salience of chilling effect, ECF No. 186 (“Opp.”)¹ at 17—necessarily fails under black-letter law requiring courts to “judge the propriety of [an agency’s] action solely by the grounds invoked by the agency” at the time it undertook the action under review. *See SEC v. Chenery Corp.*, 332 U.S. 194, 196 (1947).

Defendants’ fallback positions fare no better. They offer no persuasive reason to depart from Section 706 of the Administrative Procedure Act’s identification of vacatur as the default remedy. The agencies’ failure to consider important aspects of the issue is a fundamental flaw that undermines the policies in their entirety. Defendants misapprehend the role of judicial review under the APA in asking this Court to “carve out exceptions” to an order invalidating and setting aside the challenged policies as arbitrary and capricious. Opp. at 22. Courts do not rewrite arbitrary and capricious policies. It is instead the agencies’ role to consider and rationally approach all important aspects of the problem in the first instance upon vacatur and remand. Moreover, the Court should reject Defendants’ invitation to defy precedent and the text of Section 706 by transplanting a rule about the scope of injunctive relief under the Judiciary Act of 1789 to this inapposite context. Traditional APA “set aside” relief does not enjoin unlawful agency action as applied to the challenging party; rather, it operates against the action itself and deprives it of legal effect. This Court should order that traditional relief here, declaring unlawful and setting aside the Courthouse Arrest Policies.

¹ Defendants style their submission as both an “Opposition” to, and “Counter-Motion” seeking, partial summary judgment. Pursuant to the so-ordered jointly proposed schedule, the instant filing completes the parties’ briefing on the motions. ECF No. 168 at 5.

ARGUMENT

Defendants seek to delay or avoid this Court’s review through a series of threshold objections, but Plaintiffs’ claims are ripe for decision, justiciable, and subject to APA review. And on the merits, the policies are arbitrary and capricious for their failure to, *inter alia*, “consider an important aspect of the problem” and “articulate a satisfactory explanation . . . including a rational connection between the facts found and the choice made.” *All. for the Wild Rockies v. Petrick*, 68 F.4th 475, 492–93 (9th Cir. 2023) (cleaned up). That failure is especially egregious here, because the policies forsake the agencies’ previous longstanding concern for chilling court attendance without even “acknowledge[ing] the change,” let alone “offer[ing] a reasoned explanation for it.” *Am. Wild Horse Pres. Campaign v. Perdue*, 873 F.3d 914, 923 (D.C. Cir. 2017).

I. The Court Should Not Stay Proceedings Pending Defendants’ Appeal

Defendants’ request for a stay pending an appeal (in which they have yet to file a brief, having obtained an extension) repeats arguments made in Defendants’ opposition to class certification. *Compare* Opp. at 3–4, with ECF No. 179 at 2–4. Plaintiffs respectfully incorporate by reference their opposition to such a stay, as set forth in their reply in support of the motion for class certification (ECF No. 181 at 12) and reserve all rights with respect to their opposition to Defendants’ stay request, including but not limited to the right to raise arguments on appeal.

II. 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 to challenge those policies, including to obtain “set aside” relief pursuant to Section 706 of the APA. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 598 n.4 (1992) (standing assessed at the time the complaint is filed). And 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. *United States Parole Comm’n v. Geraghty*, 445 U.S. 388, 399 (1980); *accord Nielsen v. Preap*, 586 U.S. 392,

403 (2019); *Pitts v. Terrible Herbst, Inc.*, 653 F.3d 1081, 1090 (9th Cir. 2011). Plaintiffs’ claims are therefore justiciable and not moot. And for the reasons discussed *infra*, Part VI, the class definition does not curtail the availability of traditional set-aside relief under Section 706.

As Defendants concede (Opp. at 9), the Court has rejected Defendants’ remaining justiciability arguments regarding standing, ripeness, and mootness. Defendants do not advance additional arguments or offer reasons why the Court should reconsider its prior rulings, and thus Defendants’ justiciability arguments should fail for the reasons set forth in the Court’s prior decisions. *See* ECF No. 138 at 25–30; ECF No. 155 (“Stay Order”) at 9–11.

III. 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 Laboratories v. Gardner*, 387 U.S. 136, 140–41 (1967)). Defendants do not come close to meeting that high standard here.

Defendants offer four arguments why the Courthouse Arrest Policies ostensibly are unreviewable (Opp. at 10–14), all of which the Court thoroughly and correctly rejected, pursuant to Supreme Court and Ninth Circuit law, in granting Plaintiffs’ Section 705 motion. ECF No. 155 at 12–17. *First*, Defendants claim that the ICE Interim Guidance is not final agency action. But since the Final ICE Courthouse Arrest Policy constitutes final agency action, the interim policy is also “subject to review.” 5 U.S.C. § 704. *See* Stay Order at 13. To ensure the ICE Interim Guidance does not come back into force upon the vacatur of the later policy, the Court should set aside both policies, which are materially the same and suffer from the same defects.

Second, Defendants 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 10 (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

1 “very narrow,” *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 410 (1971), and
 2 applies only in “rare circumstances.” *Lincoln v. Vigil*, 508 U.S. 182, 191 (1993). “The fact that an
 3 agency has broad discretion in choosing whether to act does not establish that the agency may
 4 justify its choice on specious grounds.” *Pinnacle Armor, Inc. v. United States*, 648 F.3d 708, 720
 5 (9th Cir. 2011) (citing *Newman v. Apfel*, 223 F.3d 937, 943 (9th Cir. 2000) (“To concede
 6 otherwise would be to disregard entirely the value of political accountability, which itself is the
 7 very premise of administrative discretion.”)).

8 Defendants do not cite a single decision rejecting APA review of an immigration arrest or
 9 detention policy under 5 U.S.C. § 701(a)(2). To the contrary, courts have subjected policies
 10 governing discretion in the immigration context to APA review. *See, e.g., Biden v. Texas*, 597
 11 U.S. 785, 798–807 (2022); *Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1,
 12 17–19 (2020). Indeed, the Supreme Court rejected the argument Defendants advance here when it
 13 invalidated the rescission of DACA, *Regents*, 591 U.S. at 17–18, even though that program is
 14 more directly analogous to the selective enforcement considerations at play in *Heckler*—i.e.,
 15 discretion to opt for *inaction*. *Heckler*, 470 U.S. at 831. By contrast, an affirmative agency action
 16 “provides a focus for judicial review.” *Id.* at 832.

17 Defendants’ attempt to distinguish *Jajati v. U.S. Customs & Border Prot.*, 102 F.4th 1011,
 18 1017 (9th Cir. 2024), fails. “[J]udicial review under the APA concerns not only the particular
 19 outcome the agency reaches, but also the *process* in which the agency engages and the reasoning
 20 the agency articulates.” *Id.* (emphasis added). Plaintiffs seek the latter form of review, based on
 21 Defendants’ failure to consider and rationally explain important aspects of the issue, and several
 22 guideposts identify which aspects are important and thereby inform the Court’s arbitrary-and-
 23 capricious analysis. The agencies’ pre-existing longstanding policies “provide ‘law to apply’” in
 24 evaluating whether their new policies “irrational[ly] depart[]” from those earlier policies.
 25 *California v. Ross*, 362 F. Supp. 3d 727, 745 (N.D. Cal. 2018). And, as in *Jajati*, where statutes
 26 and regulations identified the “goal[s] of the program” and the “duties” of the agency, 102 F.4th at
 27 1018, here the immigration statutes and their implementing regulations are replete with provisions
 28 indicating that Congress has prioritized maximizing immigration court attendance. *See, e.g.,* 8

1 U.S.C. § 1229(a)(1) (mandating specific, detailed written notice of time and place of removal
 2 hearings and of consequences of failing to provide updated address information and appear at
 3 hearings); § 1229(a)(2) (requiring written notice of changes to hearing date); § 1229a(b)(7)
 4 (revoking discretionary relief eligibility for failure to appear); *accord* 8 C.F.R. § 1003.15 (relating
 5 to notice); § 1003.26 (relating to in absentia hearings). Thus, judicial review of whether
 6 Defendants considered the chilling effect that immigration courthouse arrests would have on
 7 hearing attendance is entirely consistent with the immigration statutes. *See Pinnacle Armor*, 648
 8 F.3d at 719 (“In determining whether judicial review is precluded on § 701(a)(2) grounds, [courts]
 9 consider ‘the language of the statute and whether the general purposes of the statute would be
 10 endangered by judicial review.’”) (quoting *Cnty. of Esmeralda v. Dep’t of Energy*, 925 F.2d 1216,
 11 1218) (9th Cir. 1991). The Court therefore should again reject Defendants’ *Heckler* argument.
 12 *Accord* Stay Order at 15–17.

13 *Third*, Defendants reprise their contention that 8 U.S.C. § 1226(e) precludes review, Opp.
 14 at 13, but they do not cite any case applying Section 1226(e) to bar APA review of detention
 15 policies. For good reason: courts have consistently rejected this argument. *See, e.g., R.I.L.-R v.*
 16 *Johnson*, 80 F. Supp. 3d 164, 177 (D.D.C. 2015) (refusing to “construe § 1226(e) to immunize an
 17 allegedly unlawful DHS policy from judicial review.”). For the same reasons the Court previously
 18 rejected Defendants’ Section 1226(e) argument (Stay Order at 14–15), it should again do so.

19 *Fourth*, Defendants implausibly claim that “there is no agency action for the Court to
 20 review,” stating incoherently that “ICE’s guidance to conduct widespread civil arrests at
 21 immigration courthouses is not the result of any policy per se but instead stems from individual
 22 officers’ discretionary enforcement decisions.” Opp. at 13. Reality and the record in this case
 23 refute that contention, which also ignores that most of the thousands of recent immigration
 24 courthouse arrests resulted from the agencies’ rescission of their prior policies limiting arrests to
 25 narrow circumstances—which alone constitutes reviewable agency action. The Court should again
 26 reject this argument. Stay Order at 13–14.²

27
 28 ² The Court also should reject Defendants’ stray remark (Opp. at 14), that a habeas action would

IV. Defendants' *Post Hoc* Attempt to Rationalize the ICE Courthouse Arrest Policy Fails

For Defendants to abandon a decades-long policy and practice of abstaining from immigration courthouse arrests in favor of turning immigration courthouses into dragnet arrest sites, the APA required them to own that decision: forthrightly acknowledging it as a dramatic shift, stating logical reasons for it, and balancing their reasons against countervailing considerations. As Plaintiffs' largely un rebutted motion explains and the administrative records reflect, ICE and EOIR failed to do so here. And it is black-letter law that the Court reviews the policies "only" based on their "contemporaneous explanations"—not based on "impermissible *post hoc* rationalizations" or "convenient litigation positions." *Regents*, 591 U.S. at 22–23 (cleaned up). The time-honored approach of "requiring a new decision before considering new reasons promotes agency accountability by ensuring that parties and the public can respond fully and in a timely manner to an agency's exercise of authority" and avoids "forcing both litigants and courts to chase a moving target." *Id.* (cleaned up). The Court should follow that paradigm here.

Under that paradigm, ICE's complete failure to consider the chilling effect of immigration courthouse arrests on immigration court attendance cannot be justified through Defendants' bare assertions in litigation that the chilling effect is "minimal and makes little logical sense." Opp. at 17.³ And Defendants' litigation position regarding the common-law privilege against courthouse arrests (Opp. at 14–15), cannot excuse ICE's failure to consider the importance of chilling effect

afford Plaintiffs a forum to challenge Defendants' policies as arbitrary and capricious. Stay Order at 17. APA review is barred only where, unlike here, it would duplicate *specific* statutory procedures for review of *specific* agency actions. *Bowen*, 487 U.S. at 904–05; *see also R.I.L.-R*, 80 F. Supp. 3d at 186. Plaintiffs hereby respectfully incorporate by reference their related discussion of this issue in their recently filed reply in support of their other motion for partial summary judgment. *See* ECF No. 188 at 3–4.

³ As Plaintiffs have explained and the administrative records support, concern for chilling effect was the "core principle[]" underlying both agencies' prior policies. Pls' Mot. at 4–5; *accord* ICE-AR-25 ("Executing civil immigration enforcement actions in or near a courthouse may chill individuals' access to courthouses, and as a result, impair the fair administration of justice."); EOIR-AR-2 (explaining that courthouse enforcement actions would "inevitably produce a 'chilling effect' on noncitizens who appear before our immigration courts," would "disincentivize noncitizens from appearing for their hearings.").

1 in inaugurating a program of widespread courthouse arrests. Pls’ Mot. at 11. Likewise, ICE’s
2 failure even to consider whether reliance interests had been formed based on the agency’s
3 previously consistent prohibition on mass immigration courthouse arrests, (Pls’ Mot. at 14–15),
4 cannot be waved away simply because Defendants’ litigation position expresses doubt over
5 whether such reliance interests are justified. Opp. at 19.

6 Nor can Defendants justify ICE’s carte blanche immigration courthouse arrest policy based
7 on the four specific scenarios that they narrate at length (Opp. at 20–21), none of which are
8 presented in the administrative record or addressed (even indirectly) in the challenged policies.
9 Indeed, those examples underscore that the ICE Courthouse Arrest Policy lacks a reasoned
10 explanation as to arrests at *immigration courthouses specifically*, as opposed to criminal
11 courthouses or courthouses generally.⁴ Pls’ Motion, ECF No. 176 at 12–14.

12 For similar reasons, Defendants cannot fill gaps in the administrative record by relying on
13 the declaration of a deportation officer to articulate ostensible reasons for the ICE Courthouse
14 Arrest Policy. Opp. at 18–19. *See Overton Park*, 401 U.S. at 419 (rejecting “litigation affidavits”
15 from agency officials as “merely ‘post hoc’ rationalizations”). Indeed, the “general rule” is that
16 judicial review of agency action is “limited to the administrative record,” and the few exceptions
17 to that rule “are narrowly construed and applied.” *Lands Council v. Powell*, 395 F.3d 1019, 1029–
18 30 (9th Cir. 2005). The party seeking to admit extra-record evidence “bears the burden of
19 demonstrating that a relevant exception applies.” *San Luis & Delta-Mendota Water Authority v.*
20 *Locke*, 776 F.3d 971, 992 (9th Cir. 2014). Defendants have not identified an exception, let alone
21 made any attempt to meet their burden. Thus, the Court should exclude the declaration submitted
22 by Defendants.

23 Finally, Defendants rely extensively on local jurisdictions’ non-cooperation with detainers
24

25 ⁴ On the merits, moreover, Defendants fail to grapple with whether the agencies’ prior policies
26 would have permitted ICE to make an immigration courthouse arrest in any of these specific
27 scenarios; and if they would not, Defendants fail to state what problems, if any, have previously
28 resulted. All of these are issues that the agencies should consider in the first instance in
formulating a policy that takes into account the countervailing chilling effect considerations in
identifying the circumstances where that concern must yield to other considerations.

1 and on safety concerns. While those considerations at least appear in the ICE Courthouse Arrest
 2 Policy, they relate to the asserted need for ICE to conduct arrests at *criminal* courthouses, not
 3 immigration courthouses. Stay Order at 24–27.⁵ Defendants point out that in a subset of cases,
 4 immigrants appearing in immigration court were not previously released from DHS custody or
 5 were released but now present a danger or flight risk. Opp. at 17. If ICE concludes upon remand
 6 and upon consideration of all relevant factors that immigration courthouse arrests may be
 7 appropriate in a subset of such circumstances, then the agency should state that position in
 8 formulating a corresponding policy; Defendants cannot, however, take rationales formulated in
 9 relation to criminal courthouses and transpose them, via their litigation position, onto the distinct
 10 context of immigration courthouses and use them to justify mass immigration courthouse arrests.

11 On the administrative record presented here, the Court should declare the ICE Courthouse
 12 Arrest Policy arbitrary and capricious.

13 **V. The EOIR Courthouse Arrest Memo Is Arbitrary and Capricious**

14 The EOIR Courthouse Arrest Memo (“OPPM 25-06”) is arbitrary and capricious for
 15 similar and additional reasons. It lacks a reasoned explanation for disavowing any authority to
 16 maintain limits on immigration courthouse arrests or for rejecting the predecessor policy’s concern
 17 for chilling effect and access to justice. Moreover, it fails to consider and balance serious reliance
 18 interests. Defendants fail to rebut these showings.

19 It is irrelevant whether the predecessor policy cited statutory or regulatory authority for
 20 limiting the circumstances in which immigration courthouse arrests were authorized. Opp. at 22.
 21 What matters is that EOIR may not premise the agency action challenged here (recission of the
 22 prior policy) on the unsupported—and unsupportable—notion that the agency lacked the lawful
 23 authority to limit such arrests. *See Regents*, 591 U.S. at 26–30 (explaining that failure “to
 24 appreciate the full scope of [an agency’s] discretion” is arbitrary and capricious).

25
 26 ⁵ Defendants eschew their ostensible “comprehensive history of courthouse arrests in the United
 27 States,” referring back to prior briefing. Opp. at 5. Plaintiffs likewise reserve their right to raise
 28 their prior arguments regarding the history of courthouse arrests. *See* ECF No. 123 at 5–10; ECF
 No. 94 at 10–11.

Moreover, Defendants state that OPPM 25-06 “directly addresses Plaintiffs’ argument,” Opp. at 22, but 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. Nor do Defendants offer any defense of EOIR’s failure to even consider the reliance interests that may have resulted from the prior longstanding policy and practice of avoiding immigration courthouse arrests. *Cf. Thakur v. Trump*, 787 F. Supp. 3d 955, 982 (N.D. Cal. 2025) (where agency is “not writing on a blank slate,” it is required to consider any “serious reliance interests” its prior policy may have engendered, “determine whether they [are] significant, and weigh them against competing policy concerns”). For these reasons, the Court should declare OPPM 25-06 arbitrary and capricious.

VI. Complete Vacatur and Remand is Appropriate and Necessary

Where a reviewing court determines that an agency action is unlawful, the “ordinary result” under Section 706 of the APA is that the action is “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). Defendants fail to meet their burden to justify departing from that presumptive APA remedy. Their arguments for partial vacatur or remand without vacatur misunderstand the statute and badly misread the recent decisions in *Trump v. CASA, Inc.*, 606 U.S. 831 (2025), and *National TPS Alliance v. Noem*, 166 F.4th 739 (9th Cir. 2026). *See* Opp. at 22–25. This Court should order traditional APA relief and vacate the Courthouse Arrest Policies in their entirety.

A. Complete Vacatur of the Courthouse Arrest Policies is the Default Remedy Under the APA, and There is No Basis for Partial Vacatur Here

The APA’s text is clear: A reviewing court “*shall* . . . hold unlawful and set aside agency action” that is “arbitrary, capricious . . . or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A) (emphasis added). Accordingly, “[w]here a court holds an agency action unlawful, vacatur and remand is the default remedy under the APA.” *Montana Wildlife Fed’n v. Haaland*, 127 F.4th 1, 50 (9th Cir. 2025).⁶ Here, Plaintiffs challenge agency policies that operate on a

⁶ Defendants passingly suggest that vacatur is not permissible *at all* under the APA, citing dicta in Justice Gorsuch’s concurrence in *United States v. Texas*, 599 U.S. 670 (2023). Opp. at 23. Not only

1 nationwide basis. If those policies are arbitrary and capricious, then under the APA they should be
2 vacated in full.

3 Defendants contend that the Court should limit the relief granted in various ways. They
4 first ask the Court to “carve out exceptions” to the vacatur order to authorize arrests under certain
5 detention provisions. Opp. at 22. But the Court is not crafting an injunction; it is vacating unlawful
6 agency action, where the agencies’ failure to engage in reasoned decisionmaking has infected the
7 challenged policies as a whole. There are not any severable provisions within the policies that
8 could enable the Court to leave in place authority for Defendants’ preferred categories of
9 courthouse arrests, nor do the policies themselves contain severability clauses, which are among
10 the prerequisites for partial vacatur. *See MD/DC/DE Broadcasters Ass’n v. F.C.C.*, 253 F.3d 732,
11 734 (D.C. Cir. 2001) (explaining that severance is proper “where the agency has stated its intent
12 that an [unlawful] portion of a regulation be severed” and “when the remainder of the regulation
13 could function sensibly without the stricken provision”) (cleaned up).

14 Defendants next ask that the Court’s order of vacatur “operate only with respect to the
15 specific parties involved in the lawsuit” and apply only to “ICE’s San Francisco area of
16 responsibility.” Opp. at 23–24. But they identify no legal basis under the APA for this attempted
17 geographic excision of facially universal agency policies, and they cite no cases in which a court
18 has entered a partial vacatur along geographic lines. For good reason: “APA suits are not suits in
19 equity,” but suits under “a direct statutory grant of federal court jurisdiction over cases arising
20 from final agency actions,” in which “Congress explicitly provided one mandatory remedy.” *Am.*
21 *Fed’n of Tchrs. v. Dep’t of Educ.*, 796 F. Supp. 3d 66, 119–20 (D. Md. 2025). The class
22 definition, moreover, defines who the plaintiffs are; it does not define what the court must do
23 when faced with an unlawful agency action. That latter question is controlled by the APA’s text,
24 which mandates that the agency action be “set aside.” 5 U.S.C. § 706(2)(A); *see Corner Post, Inc.*
25 *v. Bd. of Governors of Fed. Rsrv. Sys.*, 603 U.S. 799, 831 (2024) (Kavanaugh, J., concurring)

26 _____
27 does that conflict with binding Ninth Circuit precedent holding that vacatur is the default remedy,
28 but no court has adopted the concurrence’s approach, which would fatally undermine the APA’s
judicial review provisions.

1 (“When a reviewing court determines that agency regulations are unlawful, the ordinary result is
2 that the rules are vacated—not that their application to individual petitioners is proscribed.”)
3 (citation omitted). Thus, vacatur under Section 706 is simply not susceptible to the type of
4 equitable limitation that Defendants request.

5 Furthermore, Defendants conspicuously fail to mention that *National TPS Alliance*—the
6 only case that they *do* cite in support of a partial vacatur—actually *affirmed full nationwide*
7 *vacatur* of a DHS policy. *See Nat’l TPS Alliance*, 166 F.4th at 767–68 (explaining that “the proper
8 remedy under APA § 706(2) is to set aside [Secretary Noem’s] actions and restore the status
9 quo”). In doing so, the Ninth Circuit expressly rejected the government’s arguments that APA
10 relief should be limited to the named plaintiffs, even though the policy was nationwide in scope.
11 *See id.* That is precisely what this Court should do here.

12 Defendants’ reliance on the Supreme Court’s recent decision in *Trump v. CASA*, 606 U.S.
13 831 (2025), is likewise meritless. *See Opp.* at 23. *CASA* addressed only equitable injunctions
14 under the Judiciary Act of 1789. *See* 606 U.S. at 860 (holding that universal injunctions “likely
15 exceed the authority conferred by the Judiciary Act”). As this Court observed elsewhere, “[t]he
16 reasoning and holding in *CASA* were grounded in and limited to the statute at issue there,” and
17 “[t]he opinion says nothing that calls into question the longstanding practice of vacating . . .
18 agency action under the APA.” *Garro Pinchi v. Noem*, No. 25-CV-05632-PCP, 2025 WL
19 3691938, at *33 (N.D. Cal. Dec. 19, 2025); *see also Make the Rd. New York v. Noem*, No. 25-
20 5320, 2025 WL 3563313, at *34 (D.C. Cir. Nov. 22, 2025) (“*CASA* is a statutory-interpretation
21 case, and the statute interpreted was the Judiciary Act of 1789. Necessarily then, *CASA* is not a
22 case about the scope of relief for agency review authorized by the APA.”). In fact, *CASA* expressly
23 declined to address the “distinct question” of vacatur under Section 706 of the APA. *See CASA*,
24 606 U.S. at 847 n.10. And Justice Kavanaugh’s concurrence in *CASA* specifically noted that the
25 APA’s set aside remedy remained viable. *See id.* at 869 (Kavanaugh, J., concurring).

26 Plaintiffs here seek vacatur under Section 706(2) of the APA, not an injunction. *CASA*’s
27 universal-injunction bar is therefore simply inapplicable. Indeed, five months after *CASA*, the
28 Ninth Circuit affirmed a nationwide vacatur order. *See National TPS Alliance*, 166 F.4th at 767–

68. Numerous other post-*CASA* decisions across the country are in accord. *See, e.g., Ass’n of Am. Universities v. Dep’t of Def.*, 806 F. Supp. 3d 79, 120–23 (D. Mass. 2025); *Doctors for Am. v. Office of Personnel Mgmt.*, 793 F. Supp. 3d 112, 148 n.17 (D.D.C. 2025) (“[A]s this is a case involving APA vacatur, not a universal or national injunction, . . . [*CASA*] does not apply.”); *Haitian Evangelical Clergy Ass’n v. Trump*, 789 F. Supp. 3d 255, 270 (E.D.N.Y. 2025) (*CASA* “explicitly distinguished between injunctions and orders pursuant to 5 U.S.C. § 706(2)” and granting APA relief); *Refugee & Immigrant Ctr. for Educ. & L. Servs. v. Noem*, 793 F. Supp. 3d 19, 104–05 (D.D.C. 2025) (noting that binding precedent and the text of the APA plainly authorize vacatur); *Cornerstone Credit Union League v. CFPB*, 791 F. Supp. 3d 720, 741 n.10 (E.D. Tex. 2025). Thus, this Court should reject Defendants’ invitation to extend *CASA* beyond its express holding, contrary to the Ninth Circuit’s own post-*CASA* precedent, in a direction no court has taken.⁷

Finally, Defendants’ request would have troubling implications: Courthouse Arrest class members whose cases are transferred to other immigration courthouses would suddenly find themselves facing the very risk of courthouse arrest pursuant to the arbitrary and capricious policies that they sought to avoid through this litigation. Defendants acknowledge that venue is transferred in some percentage of cases, regardless of their objection to the declaration of Professor Graeme Blair. Opp. at 4.⁸ Thus, although *CASA*’s “complete relief” principle, 606 U.S. at 852, does not govern this case, assuming *arguendo* that it did, it would necessitate nationwide vacatur of the challenged policies to ensure that the Courthouse Arrest class members before this Court receive complete relief.

⁷ Where APA courts post-*CASA* have “craft[ed] interim equitable relief” that is tailored to particular circumstances or parties, they have relied on the text of Section 705 of the APA. *Immigr. Defs. L. Ctr. v. Noem*, 145 F.4th 972, 995 (9th Cir. 2025) (citing Section 705’s language that “grants courts the power to issue all ‘necessary and appropriate process’ tailored to the circumstances of a particular case to ‘preserve status or rights’”). The text of Section 706 does not sound in language involving equitable or tailoring considerations; rather, it instructs courts to “set aside agency action.” 5 U.S.C. § 706(2)(A).

⁸ Plaintiffs respectfully incorporate by reference their previous responses to Defendants’ objections to Professor Blair’s declaration. *See* ECF No. 181 at 3–4.

B. Defendants Cannot Satisfy the Standard for Remand Without Vacatur

As noted above, the Ninth Circuit has made clear that vacatur is the “default” and “presumptive” remedy under the APA for unlawful agency actions. *See Montana Wildlife*, 127 F.4th at 50. Defendants nevertheless contend that the Court should instead remand the Courthouse Arrest Policies without vacating them. But the Ninth Circuit allows “remand without vacatur only ‘in limited circumstances.’” *Ctr. for Biological Diversity v. United States Bureau of Land Mgmt.*, 141 F.4th 976, 1014 (9th Cir. 2025) (quoting *Cal. Cmty. Against Toxics v. EPA*, 688 F.3d 989, 994 (9th Cir. 2012)). Specifically, “[w]hether 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.” *Cal. Cmty. Against Toxics*, 688 F.3d at 992 (internal quotation marks omitted).

Defendants do not meaningfully engage with the first factor, asserting only that, “[o]n remand, the agency can fix its process in line with the Court’s decision.” Opp. at 25. That conclusory assertion is not enough to justify remand without vacatur. As explained above and in Plaintiffs’ motion, and as analyzed by the Court in staying the challenged policies, the APA violations here are serious and numerous. They are not mere procedural errors that Defendants can easily “fix” on remand but rather are “fundamental flaws” that weigh in favor of vacatur. *Pollinator Stewardship Council v. EPA*, 806 F.3d 520, 532 (9th Cir. 2015). Moreover, Defendants offer no explanation of what the agencies would do differently, suggesting the possibility that remand without vacatur could allow them to simply re-adopt the same unlawful policy, putting thousands of people to the impossible choice of facing sudden arrest or forgoing their lawful claims to remain in the United States. *See Humane Soc. of U.S. v. Locke*, 626 F.3d 1040, 1053 n.7 (9th Cir. 2010) (noting that remand without vacatur is justified only “[w]hen an agency may be able readily to cure a defect in its explanation of a decision”) (quoting *Heartland Reg’l Med. Ctr. v. Sebelius*, 566 F.3d 193, 198 (D.C. Cir. 2009)). At bottom, ICE and EOIR fundamentally failed to engage in reasoned decisionmaking, and it is far from certain what policies may ultimately be appropriate once they do so, assuming the agencies take account of all the relevant issues and interests at stake here.

Defendants claim that vacatur would disrupt “a breadth of enforcement action necessary to execute the immigration laws,” Opp. at 25, but several facts undermine that claim. First, ICE has locally abstained from immigration courthouse arrests for some six months and has not sought a stay of this Court’s Section 705 Stay Order. Second, the predecessor policies continue to permit courthouse arrests where exigent circumstances so require. Third, vacatur would not affect the myriad other mechanisms of immigration enforcement Defendants have at their disposal. Thus, this Court should order the APA’s presumptive, traditional remedy of vacatur.

CONCLUSION

For these reasons, Plaintiffs respectfully request that the Court grant their Motion for Partial Summary Judgment on the Courthouse Arrest Policies and deny Defendants’ Counter-Motion for Partial Summary Judgment.

DATED: March 12, 2026

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 Plaintiffs

DATED: March 12, 2026

CARECEN SF

By: /s/ Laura Victoria Sanchez

LAURA VICTORIA SANCHEZ

TALA BERARDI HARTSOUGH

Attorneys for Plaintiffs

DATED: March 12, 2026

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF NORTHERN CALIFORNIA

By: /s/ Neil K. Sawhney

NEIL K. SAWHNEY

LAUREN M. DAVIS

Attorneys for Plaintiffs

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

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DATED: March 12, 2026

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 Plaintiffs

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

ATTESTATION

I, Mark L. Hejinian, am the ECF user whose identification and password are being used to file the PLAINTIFFS' REPLY IN SUPPORT OF PARTIAL SUMMARY JUDGMENT AND OPPOSITION TO DEFENDANTS' COUNTER-MOTION (COURTHOUSE ARRESTS). In compliance with LR 5-1(i)(3), I hereby attest that all parties have concurred in this filing.

DATED: March 12, 2026

COBLENTZ PATCH DUFFY & BASS LLP

By: /s/ Mark L. Hejinian
Attorney for Plaintiffs