UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOSE ESCOBAR MOLINA, et al., Plaintiffs, v. DEPARTMENT OF HOMELAND SECURITY, et al., Defendants.	Civil Action No. 25-3417 (BAH)

DEFENDANTS' SUPPLEMENTAL MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION TO ENFORCE

TABLE OF CONTENTS

Background……………………………………………………………………………………..1

Argument ……………………………………………………………………...……………..2

I. The Court Lacks Jurisdiction to Expand the Scope of the Preliminary Injunction ………..2

II. The Lyons Memo Reflects Defendants' Current Nationwide Policy on Warrantless Immigration Arrests But Cannot Be Considered as Part of the Merits of Plaintiffs' Claims ………………………………………………………………………………….……….4

III. The Lyons Memo Is Consistent with 8 U.S.C. § 1357(a)(2) ……………………….…………6

IV. Plaintiffs' Critiques of the Memo Underscore the Jurisdictional and Practical Problems with the Preliminary Injunction ……………………………………………………...…..12

Conclusion …………………………………………………………………...……………14

Pursuant to the Court's March 11, 2026 minute order, Defendants, various government officials and agencies responsible for administering the Nation's immigration laws and programs sued in their official capacities, respectfully submit this supplemental brief in opposition to Plaintiff's motion to enforce the preliminary injunction. Mot. to Enforce (ECF No. 78).

BACKGROUND

On December 2, 2025, the Court preliminarily enjoined Defendants from making warrantless civil immigration arrests in Washington, D.C. "without a pre-arrest individualized determination by the arresting agent of probable cause that the person being arrested is likely to escape before a warrant can be obtained, as required by 8 U.S.C. § 1357(a)(2) and 8 C.F.R. § 287.8(c)(2)(ii)." Order at 2 (ECF No. 67). Defendants timely noticed an appeal of the Court's order entering the preliminary injunction. Not. of Appeal (ECF No. 73). The appeal remains pending before the D.C. Circuit. *See Molina v. Dep't of Homeland Security*, No. 26-5045 (D.C. Cir.)

Plaintiffs moved to enforce the preliminary injunction on February 19, 2026, Mot. to Enforce (ECF No. 78), which Defendants opposed. Def. Opp'n (ECF No. 82). The Court held a hearing on March 11, 2026. Min. Entry, Mar. 11, 2026. The Court deferred ruling on Plaintiffs' motion and instead ordered the parties to submit supplemental briefing addressing: "(a) the Court's authority to scrutinize the Lyons Memo and any jurisdictional limits to that authority; (b) whether, as a legal matter, the Lyons Memo provides accurate guidance as to what may satisfy probable cause to believe that a person being arrested is likely to escape before a warrant can be obtained, see 8 U.S.C. § 1357(a)(2); and (c) other issues raised at the hearing that the parties believe would benefit from supplemental briefing." Min. Order, Mar. 11, 2026. Plaintiffs filed their

supplemental brief on March 27, 2026, Pl. Supp. Br. (ECF No. 91), to which Defendants now respond.

ARGUMENT

First, as explained below, because the preliminary injunction is on appeal, the Court's jurisdiction over the preliminary injunction is limited to preserving the status quo. The Court cannot expand the preliminary injunction at this stage in the proceedings. Second, Plaintiffs have not brought a challenge to the Lyons Memo, which postdates the agency action that is the subject of this lawsuit; thus the Court lacks the authority to rule on whether the Lyons Memo is contrary to 8 U.S.C. § 1357 (a)(2). The Lyons Memo simply serves as evidence that Defendants are complying with the preliminary injunction and the requirements of 8 U.S.C. § 1357(a)(2) prospectively. Third, the instructions in the Lyons Memo are consistent with the standard needed to conduct a warrantless immigration arrest under 8 U.S.C. § 1357(a)(2). Finally, Plaintiffs' reliance on anecdotes about individual arrests to advance their arguments in favor of their motion to enforce underscore the jurisdictional and practical problems with the preliminary injunction.

I. The Court Lacks Jurisdiction to Expand the Scope of the Preliminary Injunction.

Defendants have appealed the Court's order entering the preliminary injunction. Not. of Appeal (ECF No. 73). Although the Court retains jurisdiction to enforce the existing preliminary injunction, it lacks jurisdiction to expand the preliminary injunction while it is on appeal. In their motion to enforce, Plaintiffs sought to expand the preliminary injunction by asking the Court to order Defendants to prepare written training materials based on this Court's Orders and accompanying opinions and use them to conduct trainings of immigration officers, and order additional reporting requirements, including requiring Defendants to produce, among other things, body-worn camera footage or any other video footage of warrantless arrests in this District. Pl.

Mot. to Enf. at 29 (ECF No. 78). Defendants previously argued that such broad relief was unreasonable. Opp'n at 13 (ECF No. 82). But Defendants add that the appeal strips this Court of jurisdiction to expand the scope of the preliminary injunction.

Federal Rule of Civil Procedure 62(d) "codifies the inherent power of courts to make whatever order is deemed necessary to preserve the status quo and to ensure the effectiveness of the eventual judgment." *Tribal Vill. of Akutan v. Hodel*, 859 F.2d 662, 663 (9th Cir. 1988). Courts have interpreted Rule 62(d) as only allowing modification after appeal to preserve the status quo. *Nat. Res. Def. Council, Inc. v. Sw. Marine Inc.*, 242 F.3d 1163, 1166 (9th Cir. 2001) ("The district court retains jurisdiction during the pendency of an appeal to act to preserve the status quo."); *Abdi v. Nielsen*, 287 F. Supp. 3d 327, 332 (W.D.N.Y. 2018); *Wash. Metro. Area Transit Comm'n v. Reliable Limousine Serv., LLC*, 985 F. Supp. 2d 23 (D.D.C. 2013).

Plaintiffs' requests for additional training, documentation and the ability to review and comment on training materials are well beyond the scope of what this Court required in its original preliminary injunction. *Compare* Pl. Mot. to Enf. at 29 (ECF No. 78) *with* Order (ECF No. 67). Plaintiffs' request an expansion of the injunction that goes beyond the status quo because they seek changes that significantly alter the terms of the preliminary injunction that cannot be described as "minor adjustments." *In re Tronox Inc.*, 855 F.3d 84, 97-98 (2d Cir. 2017) (regardless of how an order is captioned, an injunction has been modified when it has been extended beyond its original reach); *Nat. Res. Def. Council, Inc.*, 242 F.3d at 1167 (finding the district court had jurisdiction to modify the preliminary injunction because the district court only made "minor adjustments that effectuated the underlying purposes of the original requirements."). If the Court grants Plaintiffs motion to enforce in full, the Court would place added burdens on Defendants by not only requiring them to produce documents but also to create training materials, conduct trainings, and produce

body-worn camera footage among other requirements. Pl. Mot. to Enf. at 29. Such an order would significantly expand Defendants' obligations under the preliminary injunction.

II. The Lyons Memo Reflects Defendants' Current Nationwide Policy on Warrantless Immigration Arrests But Cannot Be Considered as Part of the Merits of Plaintiffs' Claims.

On January 26, 2026, Todd Lyons, the Senior Officia Performing the Duties of the Director of Immigration and Customs Enforcement issued Memorandum titled "Civil Immigration Arrest Authority: Administrative Arrest Warrants and Warrantless Arrests", which is referred to as the "Lyons Memo." *See* ECF No. 82-1. The memo "provides guidance for the lawful and consistent exercise of warrantless arrest authority for civil violations of immigration laws." Lyons Memo at 2 (ECF No. 82-1 at 3). Defendants introduced the Lyons memo as an exhibit supporting their memorandum in opposition to Plaintiff's motion to enforce the preliminary injunction, and the Court can scrutinize the Lyons Memo as evidence concerning Defendants' compliance with 8 U.S.C. § 1357(a)(2). That is the only reason for why the Lyons Memo is before the Court.

Importantly, the Lyons Memo is not properly before this Court as part of the merits of the case. Plaintiffs brought this lawsuit alleging that the immigration arrests that Defendants conducted in Washington, D.C. were unlawful under the Immigration and Nationality Act ("INA"), see Compl. (citing 8 U.S.C. § 1357(a)(2)) and thus contrary to law under the APA. 5 U.S.C. § 706(2)(A)(C)(D). Plaintiffs did not and do not challenge to the Lyons Memo. Instead, Plaintiffs' lawsuit concerns immigration enforcement activity that occurred in Washington, D.C. in August 2025, predating the Lyons Memo by five months, Compl. ¶¶ 3-6, and Plaintiffs have not sought leave to amend their complaint to include a request for relief that the Court "hold unlawful and set aside" the Lyons Memo. 5 U.S.C. § 706(2).

Plaintiffs argue that the Lyons Memo is evidence that Defendants are in violation of the preliminary injunction. Pl. Supp. Br. at 9-10 (ECF No. 91). Plaintiffs are incorrect. The Lyons Memo sets forth the factors that immigration officers must consider when conducting civil immigration arrests in any jurisdiction. It is not limited to immigration officers operating in the District of Columbia. More importantly, the Lyons Memo's articulation of the factors that an immigration officer may consider when determining whether an alien is likely to escape was not intended to fully incorporate this Court's opinion granting Plaintiffs' motion for preliminary injunction. For example, the Court determined that an alien's presence in a vehicle is not sufficient to find that an alien is likely to escape, Mem. Op. at 30 n.20 (ECF No. 91), but the Lyons Memo states that "the subject's ability and means to promptly depart the scene of the encounter" which could include the subject's presence in and ability to control a vehicle, is a factor that immigration officers can consider in assessing likelihood of escape. Lyons Memo at 3 (citing *United States v. Cantu,* 519 F.2d 494, 497 (7th Cir. 1975)). In *Cantu*, 519 F.2d at 497, the Seventh Circuit found presence in a vehicle was sufficient to establish a likelihood of escape because "[f]rom one moment until the [arrestees'] location was uncertain and their destination not entirely predictable."

Defendants respectfully disagree with this Court's analysis of what constitutes a likelihood of escape and believe that the Court's standard is more demanding than what the statute requires. Despite this disagreement, Defendants understand that to the extent the Court's opinion requires a heightened standard for assessing likelihood of escape than the Lyons Memo, Defendants must abide by the Court's standard when making warrantless civil immigration arrests in Washington, D.C. while the preliminary injunction remains in effect. *See* Weiss Decl. ¶ 6 (ECF No. 82-10) ("any officers not adhering to this Court's Order will be counseled"). But nothing prevents Defendants from applying the likelihood of escape standard that they believe is consistent with the

text of the statute when conducting immigration arrests in any of the many jurisdictions where no similar injunction is in effect.

That said, the Lyons Memo is relevant to the Court's assessment of whether Defendants' are complying with 8 U.S.C. § 1357(a)(2) and this relevant to Defendants' compliance with the preliminary injunction. Plaintiffs brought this lawsuit on the premise that Defendants were making warrantless immigration arrests in Washington, D.C. based on reasonable suspicion that the arrestee was in the United States in violation of the immigration laws, *see generally* Compl., and moved to enforce the preliminary injunction because "Defendants continue to enforce their unlawful policy and practice, carrying out warrantless immigration arrests without the required probable cause determinations." Mot. to Enforce at 6 (ECF No. 78). Defendants deny that they ever had a policy allowing immigration officers to make warrantless civil immigration arrests based on any standard less than probable cause, and the Lyons Memo confirms Defendants' position and practice that an immigration officer can only make a warrantless civil immigration arrest if "there is probable cause to believe that: (1) the subject is a removable alien; and (2) the subject is 'likely to escape' before a warrant for his arrest can be obtained.'" Lyons Memo at 3.

In short, the Lyons Memo explains Defendants' policy on warrantless civil immigration arrests and the Court can consider it in evaluating whether Defendants are continuing to enforce an unlawful policy of conducting warrantless civil immigration arrests without an individualized likelihood of escape determination. The Lyons Memo serves as evidence that Defendants are making the assessment in accordance with the statute.

III. The Lyons Memo Is Consistent with 8 U.S.C. § 1357(a)(2).

Plaintiffs argue the Lyons Memo violates 8 U.S.C. § 1357(a)(2). Pls. Supp. Br. at 12. Plaintiffs are incorrect. An immigration officer is permitted to arrest an alien in the United States

without a warrant if the officer "has reason to believe that the alien so arrested is in the United States in violation of any such law or regulation and is likely to escape before a warrant can be obtained for his arrest." 8 U.S.C. § 1357(a)(2). An immigration officer is reasonable in believing that an alien is "likely to escape before a warrant can be obtained" if the immigration officer determines that the alien "is unlikely to be located at the scene of the encounter or another clearly identifiable location once an administrative warrant is obtained." Lyons Memo at 3; *see also Hussen v. Noem*, Civ. A. No. 26-0324, 2026 U.S. Dist. LEXIS 47700, at *125 (D. Minn. Mar. 9, 2026) (observing that according to the Lyons Memo "'likely to escape' asks whether the subject 'is unlikely to be located at the scene of the encounter or another clearly identifiable location once an administrative warrant is obtained.'"). The likelihood of escape determination is not limited to the likelihood that the alien will remain at the scene of the encounter.

Plaintiffs misconstrue the portion of the memo that discusses the difference between likelihood of escape and flight risk. Pl. Supp. Br. at 13. The Lyons Memo explains that "the flight-risk analysis assesses whether an already identified and detained alien is likely to comply with future immigration obligations such as court appearances and appearances before [Enforcement and Removal Operations]" whereas "the likelihood-of-escape analysis is narrowly focused on determining whether the person is likely to escape before the officer can practically obtain an administrative arrest warrant, while in the field." Lyons Memo at 5. This is consistent with the INA and accompanying regulations. The INA provides "[o]n a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). But only certain immigration officials have been authorized or delegated the authority to issue warrants. 8 C.F.R. § 287.5(e)(2). Additional categories of immigration officers may serve arrest warrants. Id. § 287.5(e)(2). Immigration

officers, including those who lack the authority to issue an arrest warrant, can still make the arrest if the officer has probable cause to believe the alien is likely to escape before a warrant can be obtained. 8 U.S.C. § 1357(a)(2); 8 C.F.R. § 287.8(c)(2). Naturally, an immigration officer would need to make this assessment "while in the field" and without the benefit of a complete picture of the alien's immigration history. Lyons Memo at 5. Waiting until a later time to make this assessment would defeat the purpose a warrantless immigration arrest, which is to allow an immigration officer who encounters an alien without an official authorized to issue a warrant nearby to still make the arrest in circumstances where the alien is unlikely to be easily located if the officer needs to wait for a higher level official to issue a warrant.

Of course, an alien's ties to the community through family, employment or otherwise could be relevant to whether an alien is likely to escape. The likelihood of escape factors in the Lyons Memo are not exhaustive. Lyons Memo at 3 ("possible factors include but are not limited to"). Indeed, the Lyons Memo contemplates immigration officers asking for an alien's identity cards or work authorization, and if an alien is able to produce documents showing he or she has a long-term residence and gainful employment, that would weigh against finding that the alien is likely to escap. *Id.* at 3-4. More importantly, the relevance of the alien's ties to the community is inherent in the Lyons Memo's definition of what makes an alien likely to escape because a home or place of employment would qualify as a "clearly identifiable location" where an alien could be found after a warrant is obtained. *Id.* at 3. But when arresting an alien at large, an immigration officer must make a split-second determination about whether the alien is likely to escape which does not allow for an extensive investigation into the alien's biography. Warrantless civil immigration arrests are often made in circumstances where an immigration officer has "limited information

about the subject's identity, background, or place of residence and no corroboration of any self-serving statements made by the subject." Lyons Memo at 5.

Plaintiffs cite to the likelihood of escape factors 6 and 7 of the Lyons Memo to argue the Lyons Memo improperly conflates unlawful presence with likelihood of escape. Pl. Br. at 17 (ECF No. 91). Not so. Factor 6 states that an immigration officer can satisfy the escape risk requirement if he or she has probable cause to arrest the subject for improper entry by an alien, in violation of 8 U.S.C. § 1325, or reentry of a removed alien, in violation of, 8 U.S.C. § 1326. Lyons Memo at 5. Factor 7 states that an immigration officer can satisfy the escape risk requirement if the subject failed to comply with the registration requirements under 8 U.S.C. § 1302, and notification of the Secretary of his or her address under 8 U.S.C. § 1305. Take another look at 8 U.S.C. § 1357(a)(2): the statute permits an immigration officer to make a warrantless immigration arrest "if he has reason to believe that the alien so arrested is in the United States in violation of any [immigration] law or regulation and is likely to escape before a warrant can be obtained for his arrest." But factors 6 and 7 in the Lyons memo require an immigration officer to find something more than presence in the "United States in violation of any [immigration] law or regulation" in order to find that the alien is likely to escape. *Id.*

Under factor 6, the officer must have probable cause to believe the alien committed one of two immigration related offenses: improper entry, 8 U.S.C. § 1325 or reentry after removal, 8 U.S.C. § 1326 in order to find a likelihood of escape. An alien can be in the United States "in violation of any [immigration] law or regulation" without having entered improperly or having reentered after being removed. For example, an alien can be admitted into the United States on a non-immigrant visa and then remain in the United States after the visa expires. See 8 U.S.C. § 1227(a)(1)(C). That alien is in the United States in violation of the immigration laws but has not

improperly entered the United States in violation of 8 U.S.C. § 1325. On the contrary, an alien admitted on a non-immigrant visa would have entered the United States in a time and place "designated by immigration officers" and would have been subject to "examination or inspection by immigration officers" and thus could not have violated 8 U.S.C. § 1325(a). In contrast, an individual who enters the United States improperly violates 8 U.S.C. § 1325 and can be subject to a fine or imprisonment "under title 18, United States Code." *Id.* § 1325. The Lyons Memo thus appropriately informs that an alien who improperly entered the United States is more likely to be an escape risk because the alien "facilitated his or her unlawful presence in a surreptitious and criminal manner that demonstrates a wanton disregard for the laws of the United States." Lyons Memo at 4.

Factor 7similarly does not conflate the unlawful presence and likelihood of escape elements. Factor 7 simply states that an alien is more likely to escape if he or she has not complied with the registration requirements under 8 U.S.C. § 1302 or the address notification requirements of 8 U.S.C. § 1305. These requirements apply to any alien "who remains in the United States for thirty days or longer." 8 U.S.C. § 1302(a). Thus, it is possible for an alien to be present in the United States in violation of the immigration laws but to have registered and been fingerprinted within thirty days of his or her initial arrival as required under 8 U.S.C. § 1302(a). The Lyons Memo properly concluded that an alien who failed to comply with these requirements is more likely to escape because by failing to register, the alien has already signaled "an unwillingness to cooperate with an immigration officer's lawful authority to enforce [the immigration] laws." Lyons Memo at 5. In contrast, an alien who has registered and complied with the address notification requirements has demonstrated a willingness to cooperate with immigration officers and thus is less likely to escape. *See Id.*

Plaintiffs nit-pick the rest of the likelihood of escape factors and criticize them as vague and overbroad and inconsistent with the probable cause standard. Pl. Br. at 21-22 (ECF No. 91). But Plaintiffs ignore the fundamentals of the probably cause standard. An officer's belief is based on probable cause "when known facts and circumstances are sufficient to warrant [an officer] of reasonable prudence in the belief[.]" *Dukore v. District of Columbia*., 799 F.3d 1137, 1142 (D.C. Cir. 2015) (*quoting, United States v. Davis*, 458 F.2d 819, 821 (D.C. Cir. 1972)). "The standard does 'not demand any showing that such a belief be correct or more likely true than false.'" *Dukore*, 799 F.3d at 1142 (*quoting, Texas v. Brown*, 460 U.S. 730, 742, (1983)). "The existence of probable cause thus turns on objective considerations, rather than the actual mental state of the arresting officer." *Dukore*, 799 F.3d at 1142. Importantly, probable cause is a "totality of the circumstances" determination. *United States v. Holder*, 990 F.2d 1327, 1328, (D.C. Cir. 1993). Consistent with these principles, the Lyons Memo states that "[w]hether an alien is likely to remain at the scene of the encounter is based on the totality of the circumstances known to the immigration officer at the time of the encounter and prior to the arrest," Lyons Memo at 4, and that "no single factor is determinative." *Id*. at 5. In other words, the Lyons Memo lists the factors as examples of circumstances that immigration officers can consider in making a likelihood of escape assessment. The relevance of any factor and the degree to which it supports a likely to escape finding will vary depending on the specific facts of the encounter. *Id*. For example, although an officer cannot find that an alien is an escape risk on an unfounded assumption that the documents that the alien presents attempting to verify his or her identity are fraudulent, an officer's objectively reasonable belief that are documents are fraudulent could support a conclusion that the alien is an escape risk. *Dukore*, 799 F.3d at 1142. An alien willing to deceive immigration officers about his or her identity is less likely to cooperate with immigration enforcement.

Importantly, even if the Court agrees with Plaintiff's critiques of the Lyons Memo, the Court does not have the authority to vacate the memo because Plaintiffs have not brought claims arising from or challenging the memo. As noted above, Defendants understand that to the extent that this Court's preliminary injunction order places more restrictions on an immigration officer's authority to conduct warrantless immigration arrests than the Lyons Memo, then Defendants' must follow the preliminary injunction when operating within the District of Columbia.

IV. Plaintiffs' Critiques of the Memo Underscore the Jurisdictional and Practical Problems with the Preliminary Injunction.

Plaintiffs offer a parade of alleged anecdotes from both the District of Columbia and other jurisdictions, where they believe immigration officers acted consistent with the factors Lyons Memo but in violation of the Court's order. Pl. Mot. at 20-22. But the fact that Plaintiffs are relying on these allegations to support their motion to enforce underscores the jurisdictional and practical defects in their claims and in the preliminary injunction itself. The Court itself has stated, "I have to stay at the policy level where I have jurisdiction[,]" as opposed to the individual arrests "where my jurisdiction is, as I said, zero to none." Hearing Tr. at 17-18 (ECF No. 88). With respect to the policy, although the Lyons Memo simply memorialized ICE and its predecessor agencies' long-standing interpretation of 8 U.S.C. 1357(a)(2), the Lyons Memo is evidence that since the Court issued its preliminary injunction, immigration officers have been instructed that civil immigration arrests must be made based on probable cause, not reasonable suspicion and that when making an arrest without a warrant, an immigration officer must find probable cause both that the arrestee is in the United Stated in violation of the immigration laws and that the arrestee is likely to escape before a warrant can be obtained. Lyons Memo at 3.

Any alien who is arrested in violation of 8 U.S.C. 1357(a)(2) will have the opportunity to challenge the lawfulness of his or her arrest in immigration court during removal proceedings and,

if the alien receives a final removal order, as part of judicial review of the final removal order. See 8 U.S.C. 1252(b)(9). That includes policy challenges, which are also zipped up to the petition-for-review process. *See Khalil v. President, United States*, 164 F.4th 259, 276 (3d Cir. 2026) (holding that the petitioner could litigate policy challenge through a petition for review after the Board of Immigration Appeals issued a final order of removal). Plaintiffs' arguments concerning individual arrests invite the Court to opine on the lawfulness of individual arrests as part of its ruling on Plaintiffs' motion to enforce. If this Court weighs in on whether any particular arrest was made in violation of 8 U.S.C. 1357(a)(2) this Court would become a pseudo immigration Court and step into an area where its jurisdiction is "zero to none." Hearing Tr. at 18. That is because these challenges may make their way through the appropriate administrative process and culminate in the appropriate circuit court of appeals opining on the legality of the original arrest. This outcome would place the government in an impossible position of having to choose which decision and order to follow: the court of appeals or this Court.

Accordingly, for jurisdictional certainty, this Court should refrain from potentially further encroaching on Congress's intent to channel these challenges through a petition for review and instead maintain the status quo, especially in light of the pending appeal in this matter.

* * *

CONCLUSION

For these reasons, and the reasons stated in Defendants' Opposition to Plaintiff's Motion to Enforce (ECF No. 82) the Court should deny Plaintiff's motion to enforce.

Dated: April 10, 2026
Washington, D.C.

Respectfully submitted,

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