IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOSÉ ESCOBAR MOLINA, *et al.*, *individually and on behalf of all others similarly situated*, *Plaintiffs*, v. U.S. DEPARTMENT OF HOMELAND SECURITY, *et al.*, *Defendants*.	Civil Action No. 25-3417 (BAH)

PLAINTIFFS' SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION TO ENFORCE PRELIMINARY INJUNCTION

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INTRODUCTION

The January 28, 2026 Lyons Memorandum, ECF 78-1 (Third Widas Declaration), Ex. 10 ("Lyons Memo"), violates this Court's preliminary injunction because it continues Defendants' unlawful policy that this Court enjoined of making warrantless civil immigration arrests in this District without a pre-arrest, individualized determination of probable cause that the person is likely to escape before a warrant can be obtained. It does so by construing probable cause for escape risk in ways that both contravene this Court's December 2, 2025 Preliminary Injunction Order (ECF 67) and Memorandum Opinion (ECF 68) and flout case law interpreting the escape risk requirement under 8 U.S.C. § 1357(a)(2). This Court has jurisdiction to order Defendants not to rely on the probable cause standard or analytical approach set forth in the Lyons Memo when conducting warrantless civil immigration arrests in this District pursuant to the Court's inherent authority to enforce its orders and Federal Rule of Civil Procedure 62. Alternatively, as Defendants conceded during the March 11, 2026, hearing on Plaintiffs' motion to enforce the preliminary injunction, the Court also has authority to issue a clarifying order to make explicit that the Lyons Memo is inconsistent with the preliminary injunction.

ARGUMENT

I. This Court Has Authority To Scrutinize the Lyons Memo.

The Lyons Memo is properly before this Court because enforcing and clarifying an unstayed injunction falls squarely within the Court's continuing authority. Defendants' appeal does not strip the Court of jurisdiction to ensure Defendants' compliance with the preliminary injunction or to prevent post-injunction guidance from undermining the relief ordered.

A. The Court has authority to scrutinize the Lyons Memo and preserve the status quo pursuant to its inherent powers and Rule 62(d).

The impact of Defendants' appeal of the preliminary injunction in this case is narrow. A

notice of appeal generally divests the district court's jurisdiction "over those aspects of the case involved in the appeal." *Barnstead Broad. Corp. v. Offshore Broad. Corp.*, 869 F. Supp. 35, 37 (D.D.C. 1994). "When an appeal is taken from an interlocutory order, such as the grant or denial of an injunction,… the district court retains jurisdiction to act with respect to matters not related to the issues involved in the appeal or when a district court's action would aid in the appeal." *Id.* at 38. "[W]hether the addressee of an injunction has complied *is not a subject 'involved in the appeal.*'" *Union Oil Co. of Cal. v. Leavell*, 220 F.3d 562, 566 (7th Cir. 2000) (emphasis added).

"A [district court] judge may—and should—enforce an un-stayed injunction while an appeal proceeds." *Id.* at 565. The D.C. Circuit has recognized "the trial court's powers to enforce its unstayed judgment since the [trial] court has retained that power throughout the pend[e]ncy of the appeal." *Deering Milliken, Inc. v. F.T.C.*, 647 F.2d 1124, 1128–29 (D.C. Cir. 1978). Indeed, no court has been "persuaded … that, absent a stay, a district court is without jurisdiction to enforce its orders pending appeal. The precedent is voluminous and convincing." *In re Grand Jury Subpoena No. 7409*, 2018 WL 8334866, at *2 (D.D.C. Oct. 5, 2018) (collecting cases), *aff'd sub nom. In re Grand Jury Subpoena*, 749 F. App'x 1 (D.C. Cir. 2018); *see also Sergeeva v. Tripleton Int'l Ltd.*, 834 F.3d 1194, 1201–02 (11th Cir. 2016) ("Absent entry of a stay on appeal … the District Court retained jurisdiction to enforce its orders."); *Williamson v. Recovery Ltd. P'ship*, 731 F.3d 608, 626 (6th Cir. 2013) (district court "retains jurisdiction to enforce its judgment" following a notice of appeal). This Court should not depart from this overwhelming authority.

Federal Rule of Civil Procedure 62 codifies courts' discretionary authority to enforce unstayed orders while they are pending on appeal. Under Rule 62(d), "[w]hile an appeal is pending from an interlocutory order," such as a preliminary injunction, the district court has jurisdiction to "suspend, modify, restore, or grant an injunction on terms for bond or other terms that secure the

opposing party's rights." Fed. R. Civ. P. 62(d). Rule 62(d) "codifies this inherent power of a court to preserve the status quo where, in its sound discretion, the court deems the circumstances so justify, and specifically authorizes the district court to modify, if necessary, the terms of the injunction being appealed from." *Wash. Metro. Area Transit Comm'n v. Reliable Limousine Serv., LLC*, 985 F. Supp. 2d 23, 29 (D.D.C. 2013) (cleaned up). Accordingly, it is "well-settled that a court retains the power to grant injunctive relief to a party to preserve the status quo during the pendency of an appeal." *Hawaii Hous. Auth. v. Midkiff*, 463 U.S. 1323, 1324 (1983); *see also Wash. Metro. Area Transit Comm'n*, 985 F. Supp. 2d at 29 ("[T]he Court has jurisdiction to modify or clarify its … Order on appeal to preserve the status quo or otherwise supervise compliance."); *Samma v. U.S. Dep't of Def.*, No. 20-cv-01104, 2022 WL 1449404, at *2 (D.D.C. Mar. 22, 2022).

Here, the status quo when Defendants noticed their appeal was clear: Defendants were preliminarily enjoined from enforcing their policy or practice of making warrantless civil immigration arrests in this District without the required probable cause for escape risk. The Lyons Memo, issued nearly two months later, purports to define how agents should determine escape risk and is proffered by Defendants as evidence of their compliance. *See* Lyons Memo at 2 ("This memorandum serves as a reminder of this essential authority [to make warrantless civil immigration arrests] and provides guidance for the lawful and consistent exercise of warrantless arrest authority for civil violations of immigration laws."); ECF 82 (Defs.' Opp. to Pls.' Mot. to Enforce) at 8 ("Although Defendants deny ever making arrests under a 'deficient standard,' the Lyons Memo establishes that they are complying with the Court's order."); March 11, 2026 Hearing Transcript ("Hr'g Tr.") at 49:23–24 (Defendants' counsel stating that the Lyons Memo was issued at least in part to facilitate compliance with the preliminary injunction order in "this case and other [warrantless arrests] cases around the country"); *id.* 58:13–16 (Defendants' counsel

agreeing that this Court has "authority to look at [the memorandum] as evidence that [Defendants] are complying with the PI"). Because Defendants rely on the Lyons Memo to justify their conduct under the injunction, the Court plainly has jurisdiction to preserve the status quo and enforce its orders by examining whether it in fact complies with the preliminary injunction.

Moreover, where, as here, post-injunction developments risk undermining the injunction, "additional supervisory action by the court is required" in order to preserve the status quo. *Hoffman v. Beer Drivers & Salesmen's Local Union No. 888,* 536 F.2d 1268, 1276 (9th Cir. 1976). The issuance of the Lyons Memo presents precisely such a development: a new, centralized directive issued "after this Court's initial injunction" that "threatens to render the initial injunction ineffective," *Pacito v. Trump*, 772 F. Supp. 3d 1204, 1213 (W.D. Wash. 2025), *aff'd in part, rev'd in part*, 2026 WL 620449 (9th Cir. Mar. 5, 2026). "Accordingly, this Court has jurisdiction to consider Plaintiffs' motion, as it seeks to preserve the Court's ability to grant effective relief and to maintain the force of the Court's prior order." *Id.*

Because the Lyons Memo bears directly on Defendants' compliance with the preliminary injunction, the Court maintains jurisdiction to adjudicate Plaintiffs' motion to enforce the preliminary injunction by prohibiting Defendants from relying on the probable cause standard and analytical approach set forth in the Lyons Memo when making warrantless civil immigration arrests in this District.

B. Alternatively, the Court has authority to assess the Lyons Memo pursuant to its jurisdiction to clarify its injunction.

Alternatively, the Court has jurisdiction to scrutinize and enter relief related to the Lyons Memo pursuant to its authority to clarify the preliminary injunction while an appeal is pending. Defendants agree that the Court "would have jurisdiction to issue a clarifying order." Hr'g Tr. at 47:9. "The district court's power to modify an injunction to preserve the status quo necessarily

includes the lesser power to clarify the injunction to supervise compliance." *Wash. Metro. Area Transit Comm'n*, 985 F. Supp. 2d at 29. "By clarifying the scope of a previously issued injunction, a court 'add[s] certainty to an implicated party's effort to comply with the order and provide[s] fair warning as to what future conduct may be found contemptuous.'" *NTEU v. Vought*, __ F. Supp. 3d __, 2025 WL 3771192, at *3 (D.D.C. Dec. 30, 2025) (citing *N.A. Sales Co., Inc. v. Chapman Indus. Corp.*, 736 F.2d 854, 858 (2d Cir. 1984)). A motion for clarification assists with maintaining the status quo because "[t]he general purpose of a motion for clarification is to explain or clarify something ambiguous or vague, not to alter or amend." *NTEU*, 2025 WL 3771192, at *3 (quoting *United States v. Philip Morris USA Inc.*, 793 F. Supp. 2d 164, 168 (D.D.C. 2011); *see id.* at *4, 17 (deciding the motion to clarify while the appeal was pending); *see also Philip Morris USA Inc.*, 793 F. Supp. 2d at 168–69 (discussing motions to clarify as those where a court is asked "to construe the scope of its Order by applying it in a concrete context or particular factual situation").

Clarification is warranted here because the parties' positions are irreconcilable. Defendants contend that the Lyons Memo demonstrates compliance with the preliminary injunction, and Plaintiffs contend it is evidence of the opposite and continues the policy this Court's injunction forbids. Where a party adopts guidance that blatantly contradicts an injunction's requirements, courts have the authority to clarify the injunction's scope to ensure compliance. *See Wash. Metro. Area Transit Comm'n*, 985 F. Supp. 2d at 32 (clarifying order to make explicit that the injunction applied to any entity owned or controlled by the defendant).

The Court's Order and accompanying Memorandum Opinion prohibited Defendants from enforcing their policy or practice of making warrantless civil immigration arrests in this District without a pre-arrest individualized determination of probable cause for escape risk, and ordered

Defendants to document the facts and circumstances of warrantless arrests consistent with the Broadcast Statement of Policy. The Lyons Memo, by contrast, sets forth guidance to establish probable cause for escape risk that contravenes the preliminary injunction, including the terms of the Broadcast Statement of Policy that are incorporated by the preliminary injunction order. Therefore, clarifying the Court's earlier order to make explicit that the Lyons Memo violates the preliminary injunction would "add[] certainty" to Defendants' "effort to comply with the order," *NTEU*, 2025 WL 3771192, at *3 (clarifying that "acting in accordance with [the Office of Legal Counsel's] flawed reasoning would contravene the plain terms of the statute and implicit requirements of this Court's Order"); *see also HIV & Hepatitis Pol'y Inst. v. United States Dep't of Health and Hum. Servs.*, No. 22-cv-02604, 2023 WL 10669681, at *2 (D.D.C. Dec. 22, 2023) (court had jurisdiction to clarify preliminary injunction where "the relief sought is clarification of ambiguity rather than a substantive alteration, and the appeal is still in its infancy"); *Barnstead Broad. Corp.*, 869 F. Supp. at 39 ("The Court retains jurisdiction to decide Defendant's Motion for Clarification because to do so might aid in the appeal."); *Does 1-10 v. Univ. of Washington*, No. 16-cv-01212, 2018 WL 453451, at *2 (W.D. Wash. Jan. 17, 2018) (finding jurisdiction to decide the motion for clarification while the order was on appeal); *Abdi v. Nielsen*, 287 F. Supp. 3d 327, 333 (W.D.N.Y. 2018) (finding jurisdiction despite the appeal because "Petitioners' motion to clarify does not raise new claims, but rather seeks clarification of the scope and effect of the" prior decision).

II. The Lyons Memo Violates This Court's Preliminary Injunction and 8 U.S.C. § 1357(a)(2).

The Lyons Memo violates this Court's preliminary injunction and § 1357(a)(2) by setting forth a policy and practice of making warrantless civil immigration arrests without the required probable cause for escape risk. It does so in two ways. First, it provides an inconsistent—and at

times incorrect—definition of "escape risk." Second, it provides inaccurate guidance as to the facts that may satisfy probable cause to believe that a person is likely to escape before a warrant can be obtained under this Court's December 2, 2025 Order and Memorandum Opinion and under § 1357(a)(2).

A. The Lyons Memo misdefines "escape risk."

The Lyons Memo inconsistently and, in some places incorrectly, defines "escape risk." Although the Memo initially accurately defines "escape risk" as whether "an immigration officer determines [the person] 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 4 (emphasis added), it subsequently limits the immigration officer's analysis to "[w]hether the [person] is *likely to remain at the scene of the encounter*," *id.* (emphasis added); *id.* at 5 (incorrectly limiting "escape risk" to "whether the [person] is *likely to remain at the scene of the encounter* while a warrant for his or her arrest is issued") (emphasis added). Additionally, in distinguishing the likelihood of escape under § 1357(a)(2) from "flight risk" in the context of immigration bond hearings, the Lyons Memo incorrectly states that "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 warrant, *while in the field*." *Id.* at 6 (emphasis added). Defendants' view that the escape risk requirement under § 1357(a)(2) is limited to whether a person is "likely to remain at the scene of the encounter" or whether the arresting agent can obtain an administrative warrant "while in the field" contravenes applicable case law and sharply departs from ICE's longstanding interpretation of "escape risk." Nothing in the statute or case law supports an approach that treats physical mobility at the moment of contact as sufficient to meet the probable cause standard.

Instead, the case law interpreting the likelihood of escape requirement under § 1357(a)(2) demonstrates that the relevant inquiry is whether the person is likely to abscond from arrest, not

whether the person is "likely to remain at the scene of the encounter," Lyons Memo at 4. As this Court held when it issued the preliminary injunction, "[c]ourts have … made the self-evident finding that the likelihood of escape is lower when the individual has resided in the country for a lengthy period of time and has strong community ties." *Escobar Molina v. DHS*, 811 F. Supp. 3d 1, 31 (D.D.C. 2025) (citing *La Franca v. Immigr. & Naturalization Serv.*, 413 F.2d 686, 689 (2d Cir. 1969); *United States v. Abdi*, No. 04-cr-00088, 2005 WL 6119695, at *6 (S.D. Ohio Sept. 12, 2005), *rev'd on other grounds*, 463 F.3d 547 (6th Cir. 2006); *United States v. Pacheco-Alvarez*, 227 F. Supp. 3d 863, 890 (S.D. Ohio 2016); *United States v. Khan*, 324 F. Supp. 2d 1177, 1187 (D. Colo. 2004); *see also United States v. Bautista-Ramos*, 2018 WL 5726236, at *7 (N.D. Iowa Oct. 15, 2018) (holding that based on, *inter alia*, Bautista-Ramos's community ties, "there is no indication that ICE officers would have had trouble finding Bautista-Ramos again if they had released him while they obtained a warrant"), *report and recommendation adopted*, No. 18-cr-04066, 2018 WL 5723948 (N.D. Iowa Nov. 1, 2018); *A.B.D. v. Wamsley*, No. 25-cv-02014, 2026 WL 178306, at *12 (D. Or. Jan. 22, 2026) (holding that community ties are relevant to assessing escape risk); *Ramirez Ovando v. Noem*, 810 F. Supp. 3d 1209, 1216–17 (D. Colo. 2025) (same). Community ties are relevant to this inquiry because someone with employment, a family, or a home is likely to be readily located when a warrant is issued.

Immigration authorities have long accepted the principle that a person's long-term connection to the area in which they live indicates a lack of probable cause for escape risk. The Immigration and Naturalization Service, ICE's predecessor, established "criteria for determining a likelihood of escape" that included, among other things, "lack of ties to the community such as family, home, or a job." *Pearl Meadows Mushroom Farm, Inc. v. Nelson*, 723 F. Supp. 432, 449 (N.D. Cal. 1989). In *Pearl Meadow*s, like the other cases discussed above, the workers who were

arrested without warrants did not fit the INS's own escape risk criteria because they "were long-term employees, *had roots in the community*, and family with proper immigration status[,]" and several of them "were involved in pending immigration proceedings and had attorney representation." *Id.* (emphasis added). The more recent Broadcast Statement of Policy reflects the longstanding view that "ties to the community (such as a family, home, or employment) or lack thereof" are a relevant factor for determining escape risk. ECF 17-1 (First Widas Decl.), Ex. 1 at 8. An earlier ICE Academy training presentation on warrantless arrests also instructs that I-213s "must contain the following … facts for an individual flight risk analysis," including "[w]hether the noncitizen is an employee or a resident of [the] location where the arrest took place" and "[t]he noncitizens [*sic*] ties to the community at the time of arrest." *See* Declaration of A. Widas ("Fifth Widas Decl."), Ex. 1 (presentation attached to plaintiff's May 12, 2025 reply brief in *Castañon Nava v. DHS*, No. 18-cv-03757 (N.D. Ill.), ECF 185-2, at 3. There is no support for the Lyons Memo's unprecedented definition of escape risk as whether a person will remain rooted to a particular spot at a particular moment in time.

That ties to the community, including family, home, and work, have been recognized by courts and immigration authorities alike as relevant to escape risk under § 1357(a)(2) underscores that the test is not—as the Lyons Memo asserts—whether the person is likely to remain at the scene of the encounter. Rather, the relevant escape risk determination is whether specific facts establish probable cause that the person is unlikely to be found at any known location in order to be arrested in the future. During a hearing on a motion to enforce a preliminary injunction order issued by the federal district court in Colorado prohibiting defendants from effecting warrantless immigration arrests in that district without pre-arrest probable cause for escape risk, the Assistant Field Office Director for the Denver ICE Field Office testified that the instruction in the Lyons

Memo that agents should consider whether the person is going to remain at the scene is different from the escape risk analysis required by, and conflicts with, the preliminary injunction order in that case. *See* Fifth Widas Decl., Ex. 2 (excerpts of transcript of March 10, 2026 hearing in *Ramirez Ovando v. Noem*, No. 25-cv-03183 (D. Colo.)) ("D. Colo. Hr'g Tr.") at 234:3–12. The same is true here. Indeed, this Court observed as much during the March 11, 2026, hearing, asking, "the fact that the Lyons memo has in it 'unlikely to be located at the scene of the encounter,' isn't that just swallowing the whole standard, the definition that the Lyons memo is putting out?" Hr'g Tr. at 65:19–22; *see also id.* 64:10–14 ("So that prong ['unlikely to be located at the scene of the encounter'], doesn't that basically give carte blanche to execute a civil immigration arrest to anybody who's en route someplace and unlikely to stay standing still at the scene of the encounter, like, forever?").

B. The Lyons Memo's guidance on probable cause for escape risk violates the preliminary injunction and 8 U.S.C. § 1357(a)(2).

The Lyons Memo sets forth seven "[p]ossible factors" for immigration officers to take into account in evaluating escape risk:

1. The subject's behavior prior to and during the encounter (e.g., refusal to follow lawful commands, attempts to evade officers, or other suspicious behavior prior to the arrest);
2. The subject's ability and means to promptly depart the scene of the encounter (e.g., the subject was encountered in a vehicle and continues to have control over the vehicle);
3. The subject's age and health;
4. Possession of identity or work authorization documents that the immigration officer suspects are fraudulent;
5. Presentation of unverifiable or suspected false information to the immigration officer;
6. Whether the officer has probable cause to arrest the subject for improper entry by an alien, in violation of INA§ 275, 8 U.S.C. § 1325, or reentry of a removed alien, in violation of INA§ 276, 8 U.S.C. § 1326; and
7. Whether the alien has complied with the legal requirements for registration

> under INA § 262, 8 U.S.C. § 1302, and notification of the Secretary of his or her address under INA § 265, 8 U.S.C. § 1305, including whether he or she is carrying on his or her person evidence of registration as required by INA§ 264(e), 8 U.S.C. § 1304(e).

Lyons Memo at 3–4. These factors violate this Court's preliminary injunction by prescribing a legally erroneous standard that enlarges probable cause for escape risk to permit agents to arrest without a warrant virtually any individual who is stopped while in a vehicle or on the street. Specifically, the Lyons Memo authorizes agents to make warrantless arrests without "ask[ing] any questions about the arrestees' personal circumstances—such as the person's residence, length of stay in the United States, family members, work history, or anything else about the person's community ties," even if the "arrested individuals [did not] display attempts to evade law enforcement, such as by walking, running or driving away when stopped." *Escobar Molina*, 811 F. Supp. 3d at 47. In other words, the Lyons Memo permits agents to make arrests without a warrant by relying on precisely the same types of facts (or absence of facts) this Court previously held were insufficient to establish probable cause for escape risk, and in doing so, it facially violates the preliminary injunction and the statute.

For example, of the seven "[p]ossible factors" enumerated in the Lyons Memo, two of them are expressly concerned with removability and the person's compliance with immigration laws. *See* Lyons Memo at 4 (factors 6 and 7). These factors resurrect a rationale this Court has already foreclosed: "conflating unlawful status and escape risk 'is contrary to the statute itself'" and "would run counter to the Supreme Court's instruction that the likelihood-of-escape requirement be seriously applied to cabin 'officers [to a] more limited authority' where 'no federal warrant has been issued.'" *Escobar Molina*, 811 F. Supp. 3d at 32 (citations omitted). The Lyons Memo's attempt to connect removability with escape risk confirms Defendants continue to give short shrift to the escape risk analysis: the memo instructs agents to infer from a person's "improper entry" or

"reentry of a removed [noncitizen]," Lyons Memo at 4, factor 6, or noncompliance with the registration and notification requirements under the Immigration and Nationality Act ("INA"), *id.*, factor 7,[1] that the person is "unwilling[] to cooperate with an immigration officer's lawful authority" and/or that the person's conduct "demonstrates a wanton disregard for the laws of the United States." Lyons Memo at 4. There is no logic or authority to support such a blanket inference, however. Indeed, many asylum seekers have crossed into the United States at locations other than a port of entry and then sought out immigration officers to turn themselves in for immigration processing. *O.A. v. Trump*, 404 F. Supp. 3d 109, 148–51 (D.D.C. 2019); *Las Americas Immigrant Advoc. Ctr. v. DHS*, 783 F. Supp. 3d 200, 222–24 (D.D.C. 2025), *appeal docketed*, No. 25-5313 (D.C. Cir. Aug. 28, 2025).

Moreover, these factors double-count the same facts for two separate inquiries that Congress set out as distinct—violating this Court's admonition against "conflating unlawful status and escape risk." *Escobar Molina*, 811 F. Supp. 3d at 32. The only case the Lyons Memo cites in support of factor 6, *United States v. Puebla-Zamora*, 996 F.3d 535 (8th Cir. 2021), concludes without any analysis or explanation that the person's "previous removal for illegal entry established probable cause that he may escape before a warrant could issue." *Id.* at 538. *Puebla-Zamora* involved unusual facts—taking the individual into custody in the course of a burglary-focused investigation—and the litigant did not in fact challenge or make any argument as to probable cause or likelihood of escape. *See* Br. of Appellant, *United States v. Puebla-Zamora*,

[1] Although factor 7 may sound more relevant to escape risk than factor 6, ICE has applied it only in combination with—and effectively synonymously with—an allegation of unlawful entry, as illustrated in several of the I-213s from December and January. *See, e.g.,* ECF 78-12 (Adolfo Doe I-213). Moreover, since ICE rarely obtains and documents a person's residential address at the time of arrest, it is unclear how ICE determines that the person has allegedly failed to register and update their address. *See id.*

2020 WL 3227548 (June 4, 2020). An out-of-circuit authority "reflect[ing] cursory reasoning on this point" cannot and does not undermine this Court's holding that removability alone does not establish probable cause for escape risk—which this Court has already held "is contrary to the statute itself." *Escobar Molina*, 811 F. Supp. 3d at 30–31 & n.20.

Defendants' I-213s for arrests prior to the issuance of the Lyons Memo underscore why conflating the probable cause analysis as to the two prongs of section 1357(a)(2) actually means Defendants engaged in no escape risk analysis at all, in violation of this Court's order. Just as the Lyons Memo instructs agents to broadly recast immigration violations as demonstrating a propensity for "surreptitious and criminal" behavior, Lyons Memo at 4, Defendants' I-213s mechanically recharacterize entering without inspection as entering "after evading inspection," attributing a risk of escape regardless of the actual circumstances. For example, agents relied on Rolando Doe's allegedly having "entered the United States after evading inspection" as a basis for finding probable cause he was likely to escape, even though the actual facts underlying his entry—coming to the United States as an unaccompanied minor at age 11 and being resettled by the Office of Refugee Resettlement at an address known to immigration authorities—demonstrate that alleged improper entry by itself has nothing to do with escape risk; concretely, Rolando's efforts to reach the United States at age 11 sheds no light on whether he would pose a likelihood of escape before immigration officers could obtain a warrant in his particular circumstances nearly eight years later. *Compare* Rolando Doe I-213, ECF 78-17 *with* Declaration of Rolando Doe, ECF 78-9 ¶ 1. More fundamentally, the guidance provided in factors 6 and 7 and the paragraph that follows in the Lyons Memo violate this Court's preliminary injunction by reinserting into the escape risk analysis factors this Court already held cannot suffice to establish probable cause. *Escobar Molina*, 811 F. Supp. 3d at 32.

Another factor in the Lyons Memo that this Court already expressly rejected as sufficient to establish probable cause for escape risk is factor 2, "[t]he subject's ability and means to promptly depart the scene of the encounter (e.g., the subject was encountered in a vehicle and continues to have control over the vehicle)." Lyons Memo at 3. In support of its assertion that "control over" a vehicle satisfies probable cause, the Lyons Memo cites *United States v. Cantu*, 519 F.2d 494 (7th Cir. 1975), but that case does not support Defendants' broad position. As discussed in Plaintiffs' reply in support of their motion to enforce, ECF 83 at 11, in *Cantu*, there was a tip by an informant that three people were driving undocumented individuals cross country, and the individuals were observed traversing the country from Texas to Illinois over the course of a two-day period while they were traveling on "a heavily-trafficked interstate highway system at high speeds and for a great distance." *Cantu*, 519 F.2d at 497–98. Despite the specific and fact-intensive analysis in *Cantu*, factor 2 "functionally" suggests that "if you find someone in a car, that ought to be sufficient for likelihood of escape," as the Assistant Field Office Director for the Denver ICE Field Office testified in a recent hearing. D. Colo. Hr'g Tr. at 234:13–20. Moreover, in practice, Defendants' agents have treated presence in a vehicle as a decisive factor for probable cause for escape risk, with I-213s relying solely on the facts that the person was "at large" (encountered while in public) and was "encountered … while in a vehicle" to establish probable cause. Benito Lopez I-213, ECF 78-30. *See, e.g.*, Joshua Doe I-213, ECF 78-24;; L.C. I-213, ECF 78-29. The idea that every person encountered in a traffic stop, even in a parked vehicle, is unlikely to be encountered at the same location or at their home or work after immigration officers obtain a warrant is, on its face, preposterous.

Like factor 2, factor 3 in the Lyons Memo ("[t]he subject's age and health") is overbroad and vague. The Memo lists "age and health" without any further explanation or supporting

authority, setting forth "far too broad of an interpretation of probable cause." *United States v. Westley*, 2023 WL 5377894, at *7 (6th Cir. Aug. 22, 2023). Further, this Court has already rejected the contention that "an individual poses an escape risk … because he could flee on foot, without more…." *Escobar Molina*, 811 F. Supp. 3d at 31 n.20.

Both of these factors plainly fail to meet the D.C. Circuit's requirement that the "proffered grounds for probable cause" must "narrow the number of suspects to a level tolerable under the Fourth Amendment." *United States v. Short*, 570 F.2d 1051, 1054 (D.C. Cir. 1978).

Certain other factors, such as factors 4 ("[p]ossession of identity or work authorization documents that the immigration officer suspects are fraudulent") and 5 ("[p]resentation of unverifiable or suspected false information to the immigration officer") impermissibly permit immigration agents to rely on mere suspicion, or their lack of affirmative knowledge, rather than objectively reasonable inferences. Lyons Memo at 3–4. These factors permit agents to rely on, as they did in the I-213s Defendants produced, an individual's "home address, employment, and family ties" being "unknown or unverified," *e.g.*, W.L.R. I-213, ECF 78-35, to support probable cause for escape risk, where Defendants' agents had apparently conducted no investigation into these details. "[B]ut probable cause, of course, requires more than mere suspicion." *United States v. Green*, 670 F.2d 1148, 1151 (D.C. Cir. 1981). Factor 1, "[t]he subject's behavior prior to and during the encounter (e.g., refusal to follow lawful commands, attempts to evade officers, or suspicious behavior prior to the arrest)," Lyons Memo at 3, similarly permits agents to rely on whatever they deem "suspicious behavior," regardless of whether the person actually "manifest[ed] an intent to escape." *United States v. Santos-Portillo*, 2019 WL 3047427, at *4 (E.D.N.C. May 31, 2019), *report and recommendation adopted*, 2019 WL 3059774 (E.D.N.C. July 10, 2019), *aff'd*, 997 F.3d 159 (4th Cir. 2021). The emphasis in these factors on what the

immigration officer "suspects" also inverts the probable cause analysis, which should properly be based on "the reasonable conclusion to be drawn from the facts *known* to the officer at the time of the arrest," and which does not absolve agents of the necessity of conducting any investigation or knowing facts specific to the individual. *Lin v. District of Columbia*, 47 F. 4th 828, 839 (D.C. Cir. 2022) (emphasis added) (cleaned up).

The cases cited in the Lyons Memo for factors 1, 4 and 5 also do not support those factors. Defendants alternate between isolating one factor from a detailed totality-of-the-circumstances analysis and extracting overbroad factors from decisions that barely analyze escape risk. The case cited in support of factor 1, *United States v. Meza-Campos*, involved a person who appeared to be someone whom the officer previously observed in immigration custody and whom the officer testified "was extremely nervous, was 'looking around to the left and right past [him],' and … was looking for an opportunity to run." 500 F.2d 33, 34 (9th Cir. 1974). *Meza-Campos* does not support the overbroad language in factor 1. For factor 4, the Memo cites *United States v. Reyes-Oropesa*, 596 F.2d 399 (9th Cir. 1979), which, as Plaintiffs argued in their reply in support of their motion to enforce, "contains hardly any analysis and relies on the arresting agent's observation that the individual matched the description provided by an informant and was carrying a forged immigration document." ECF 83 at 12. For factor 5—presentation of unverifiable or suspected false information—the Lyons Memo cites to *United States v. Quintana*, 623 F.3d 1237 (8th Cir. 2010), but that is no better: the court conducted no meaningful analysis in concluding that the defendant in that case was likely to escape before a warrant could be obtained. There, the defendant was speeding in North Dakota and stated that he was traveling to Washington in a relative's vehicle. *Id.* at 1238. The defendant's only litigation argument as to likelihood of escape was a claim that the official arrest occurred the following day, when he was already in custody and

therefore unlikely to escape. Appellant's Reply Br., *Diaz-Quintana*, 2009 WL 3761331 (Oct. 29, 2009). Even if the facts and context in *Quintana* were disregarded, that case does not support the Lyons Memo's extension of information that is not supported by government records to "suspected false information." Lyons Memo at 4.

Recent reliance by DHS agents on incorrect claims of "false" or "unverified" documents as probable cause to arrest people with citizenship or affirmative immigration status demonstrates that factors 4 and 5 are in fact no basis for probable cause. In *Hussen v. Noem*, the federal district court in Minnesota held that DHS agents lacked probable cause that individuals were violating immigration law when they saw their legitimate documents and claimed that they were fake or that they proved nothing. *Hussen v. Noem*, No. 26-cv-00324, 2026 WL 657936, at *13 (D. Minn. Mar. 9, 2026); *see also* Declaration of José Eliseo Escobar Molina ECF 17-2 ¶ 6 ("They called me 'illegal' repeatedly, and I responded that I have papers. They said, 'No you don't. You are illegal.'"); Declaration of Joshua Doe, ECF 78-7 ¶ 6 (immigration agents "broke my driver's license in half"). In one instance, when a legal permanent resident provided his green card, an agent "said it was fake and that they had no way to prove it is real," handcuffed him, and drove him to an ICE detention center. *Hussen*, 2026 WL 657936, at *17. In another, a U.S. citizen provided his driver's license and REAL ID paperwork, but "agents asserted that the REAL ID papers were fake and that the driver's license proved nothing," handcuffed the individual, and drove him around for thirty minutes before finally releasing him following a face scan. *Id.* at *13. The *Hussen* court found that both individuals were in fact detained pretextually based on their Latino ethnicity. *Id.* at *13, *17. Defendants' asserted broad and vague factors would permit similar outcomes in the District of Columbia.

Equally significant is what the Lyons Memo omits. It provides no guidance on considering

an individual's ties to their community—including their family, home, and work. As noted above, this Court held that community ties are relevant to the escape risk analysis as it is "self-evident" that the likelihood of escape is lower when the individual has resided in the country for a lengthy period of time and has strong community ties. *Escobar Molina*, 811 F. Supp. 3d at 31. This factor was also expressly listed as relevant to the escape risk analysis in the Broadcast Statement of Policy and was incorporated into this Court's preliminary injunction order. Order at 2–3. Although the Lyons Memo gestures toward "mitigating factors," it identifies none and focuses exclusively on "aggravating" considerations. Lyons Memo at 5. And crucially, it does not explain *how* to incorporate analysis of community ties, failing to explain that ties to the community tend against establishing probable cause as to escape risk, and that officers must *establish* specific facts, as a lack of "verification" of community ties is irrelevant to the analysis—only affirmative knowledge of a lack of community ties contributes to probable cause. *Hall v. District of Columbia,* 867 F.3d 138, 154 (D.C. Cir. 2017) (probable cause requires "at least some evidence supporting each element" and "reasonably trustworthy information sufficient to warrant a prudent person in believing" the basis for arrest was satisfied) (cleaned up).

The I-213s Defendants have produced—which, although prepared before the Lyons Memo, shed light on the practice the Memo was intended to codify—demonstrate how Defendants are entirely ignoring community ties, or any mitigating facts, as a matter of policy. Although Adolfo Doe told the immigration officers that he had lived in the District of Columbia for 25 years, Declaration of Adolfo Doe, ECF 78-2 ¶ 4, his I-213 does not mention his longstanding ties to the city. *See* Adolfo Doe I-213, ECF 78-12. Similarly, Joshua Doe was arrested in a work van with the company's logo on it, and told agents he had children at home to support, Declaration of Joshua Doe, ECF 78-7, ¶¶ 2, 7, but his I-213 does not include information about his employment or family.

Joshua Doe I-213, ECF 78-24.

By issuing and purportedly adhering to the Lyons Memo, Defendants continue to "enforce[] their policy or practice of making warrantless civil immigration arrests in the District of Columbia 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," Order at 2, violating both the preliminary injunction and 8 U.S.C. § 1357(a)(2). This Court should enforce its preliminary injunction by ordering Defendants not to rely on the probable cause standard and analytical approach set forth in the Lyons Memo when conducting warrantless civil immigration arrests in the District.

CONCLUSION

The Court should grant Plaintiffs' motion to enforce the preliminary injunction and issue the attached proposed order.

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Respectfully submitted,

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