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 REPLY IN SUPPORT OF MOTION TO ENFORCE PRELIMINARY INJUNCTION

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INTRODUCTION

Defendants do not address Plaintiffs' revised requested relief: an order precluding Defendants from relying on the probable cause standard or analytical approach in the Lyons Memo, ECF 78-1, Ex. 10, when making warrantless civil immigration arrests in this District, ECF 91-2 ("Revised Proposed Order"). Nor do they dispute this Court's jurisdiction to scrutinize the Lyons Memo and enter relief on Plaintiffs' motion to enforce the preliminary injunction. ECF 94 at 6 (admitting the Lyons Memo is "relevant to Defendants' compliance with the preliminary injunction"). Defendants' response therefore narrows the dispute by effectively conceding that, if the Lyons Memo's probable cause guidance contravenes the preliminary injunction, the Court may enter the revised relief Plaintiffs seek limiting Defendants' reliance on the Memo when making warrantless arrests in this District. Because the Lyons Memo does contravene the preliminary injunction, the Court should grant Plaintiffs' requested relief.

ARGUMENT

I. This Court Has Authority To Assess the Lyons Memo and Order Defendants Not to Rely on its Analytical Approach in this District.

This Court has jurisdiction to scrutinize the Lyons Memo and to order Defendants not to rely on its articulation of the probable cause standard when conducting warrantless civil immigration arrests in this District. Defendants' interlocutory appeal does not strip the Court of that authority because, as Defendants concede, "the Court retains jurisdiction to enforce the existing preliminary injunction" and to "preserve the status quo." ECF 94 at 2–3. Relief addressing the Lyons Memo would do both, because the Memo continues Defendants' unlawful policy in defiance of this Court's order. Defendants' contrary arguments lack merit.

Defendants misconstrue Plaintiffs' arguments and requested relief. Their jurisdictional argument rests on outdated and erroneous premises: (1) Plaintiffs still seek the relief in their

original proposed order, ECF 78-36; and (2) Plaintiffs ask the Court to consider the Lyons Memo at this stage "as part of the merits of the case," ECF 94 at 4. Neither is correct.

Plaintiffs' *Revised* Proposed Order supersedes their earlier proposed order. Plaintiffs now seek only an order directing Defendants not to "rely on the probable cause standard or analytical approach set forth in the Lyons Memo when conducting civil immigration arrests without a warrant in this District." ECF 91-2. Defendants' concerns about alleged "added burdens," ECF 94 at 3, pertain only to the superseded proposal and are inapposite to the revised requested relief. Indeed, Defendants do not address the Revised Proposed Order *at all*. Their argument that the Court "lacks jurisdiction to expand the preliminary injunction while it is on appeal" relies entirely on the earlier, overridden proposed order. *See id.* at 4–5. By raising no objection to Plaintiffs' operative request, Defendants effectively concede that the Court has jurisdiction to enter the revised relief limiting reliance on the Lyons Memo in this District.

Plaintiffs need not bring a separate claim against the Lyons Memo to obtain relief from it through their motion to enforce the preliminary injunction. Judge Friedman of this Court recently rejected the government's nearly identical contention that if "plaintiffs wish to challenge the substance of [a new policy], they must do so by amending their complaint and filing a new substantive motion rather than by moving to compel compliance with the Court's Order," explaining that an agency "cannot simply reinstate an unlawful policy under the guise of taking 'new' action and expect the Court to look the other way." *The New York Times Co. v. Dep't of Def.*, 2026 WL 962252, at *4 (D.D.C. Apr. 9, 2026). Defendants contend that the Court "does not have the authority to vacate the memo," ECF 94 at 12, but Plaintiffs do not seek vacatur. Instead, they seek an order to restore the status quo at the time Defendants noticed their appeal and to enforce the preliminary injunction by ordering Defendants not to follow the Memo's probable

cause guidance, which conflicts with the injunction in this District.

It accordingly is irrelevant that Plaintiffs have not brought an independent claim against the Lyons Memo. The Court may order Defendants not to rely on the Memo's probable cause analysis because doing so would "effectuat[e] the underlying purpose of [the] preliminary injunction," which "is one way of 'preserving the status quo.'" *SEC v. Xia*, 2024 WL 3447849, at *7 (E.D.N.Y. July 9, 2024). Rule 62 expressly permits this Court to do so by way of modifying an injunction even while it is pending on appeal. Fed. R. Civ. P. 62(d). "[I]n the kinds of cases," such as this one, "where the court supervises a continuing course of conduct and where as new facts develop additional supervisory action by the court is required, an appeal from the supervisory order does not divest the district court of jurisdiction to continue its supervision, even though in the course of that supervision the court acts upon or modifies the order from which the appeal is taken." *Hoffman for & on Behalf of N.L.R.B. v. Beer Drivers & Salesmen's Loc. Union No. 888, Int'l Bhd. of Teamsters, Chauffeurs, Warehousemen & Helpers of Am.*, 536 F.2d 1268, 1276 (9th Cir. 1976); *see also Sierra Club, Lone Star Chapter v. Cedar Point Oil Co. Inc.*, 73 F.3d 546, 578–79 (5th Cir. 1996) ("The court did not exceed its authority in stepping in to supervise this change [to the ongoing effect of the injunction] through an amendment of its original order."). Here, directing Defendants not to rely on the Lyons Memo's analysis in this District would preserve the status quo because "the core questions on appeal"—here, whether Plaintiffs were entitled to the preliminary injunction—"will remain unchanged by [the proposed] modification." *Xia*, 2024 WL 3447849, at *7 (collecting cases).

Ultimately, Defendants concede that the Court can consider the Lyons Memo to the extent it is "relevant to Defendants' compliance with the preliminary injunction." ECF 94 at 6. That is all Plaintiffs ask.

Defendants also revive their jurisdictional objection under 8 U.S.C. § 1252(b)(9), ECF 94 at 12–13, but this Court has already rejected that argument. *Escobar Molina v. DHS*, 811 F. Supp. 3d 1, 40 (D.D.C. 2025). Defendants again cite *Khalil v. President*, 164 F.4th 259 (3d Cir. 2026), which is not binding on this Court and is the subject of a pending petition for rehearing *en banc*. *See* ECF 83 at 16; Pet. for R'hrg *en banc*, *Khalil v. President*, No. 25-2162 (3d Cir. Mar. 31, 2026), ECF 138. In any event, unlike in *Khalil*, Plaintiffs' policy claims do not challenge the validity of any removal order or the fact of detention; they seek to enjoin and set aside the unlawful policy itself, regardless of any downstream consequences on Plaintiffs' or class members' immigration proceedings. *See Khalil*, 164 F.4th at 276 (holding petitioner could challenge policy through the immigration appeals process in order to invalidate a final order of removal).

Because Defendants fail to raise—and thereby waive—any objection to the substance of Plaintiffs' Revised Proposed Order, and because they agree the Lyons Memo may be considered in assessing Defendants' compliance with the preliminary injunction, Defendants effectively concede there is no bar to ordering the requested relief if Plaintiffs are correct that the Lyons Memo perpetuates the unlawful policy this Court enjoined. Plaintiffs now turn to that remaining issue.

II. The Lyons Memo Violates this Court's Preliminary Injunction, Which Expressly Incorporates and Interprets 8 U.S.C. § 1357(a)(2).

Defendants' contention that the Lyons Memo complies with § 1357(a)(2) fails for two reasons: the Memo's definition of escape risk is inconsistent and on balance incorrect, and the factors the Memo identifies to establish probable cause for escape risk are overbroad or irrelevant. As a result, the Memo violates this Court's preliminary injunction because it continues Defendants' "policy and practice of making warrantless civil immigration arrests without an individualized determination supporting a probable cause finding of escape risk." *Escobar Molina*, 811 F. Supp. 3d at 62.

***First*,** several of Defendants' assertions about the Lyons Memo are unfounded or contradict its plain text. Defendants contend that "[t]he likelihood of escape determination is not limited to the likelihood that the [noncitizen] will remain at the scene of the encounter," ECF 94 at 7, yet they fail to explain why the Lyons Memo twice frames the inquiry as exactly that, saying nothing about whether the person is also unlikely to be located at "another clearly identifiable location." ECF 78-1, Ex. 10 ("Lyons Memo") at 4 (limiting analysis to "[w]hether the [person] is *likely to remain at the scene of the encounter*" (emphasis added)); *id.* at 5 ("[O]fficers should closely consider 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)). Defendants provide no declaration or explanation whatsoever as to this mismatch.

Defendants likewise attempt to obfuscate the Lyons Memo's discussion of escape risk versus flight risk. Plaintiffs do not dispute that, as Defendants stress, agents must assess probable cause as to escape risk "while in the field." ECF 94 at 8. But that is not how "while in the field" appears in the Lyons Memo. Instead, the Memo instructs 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*." Lyons Memo at 6 (emphasis added). The problem, as Plaintiffs explained in their supplemental opening brief, is that the Memo improperly ties escape risk to whether the arresting agent can obtain a warrant at the scene, whereas nothing in this Court's decision or other case law interpreting the escape risk requirement requires the same. ECF 91 at 7–10. The authority Plaintiffs collected, which Defendants do not even acknowledge, demonstrates that the relevant inquiry for probable cause for escape risk is whether a person is likely to be found at a specific location or set of locations in the future such that Defendants can obtain a warrant to arrest the person instead of arresting the person right then and

there without a warrant. *See id.* Under the Memo's framing, an individual's ties to the community would be irrelevant to the escape risk analysis, contrary to this Court's and other courts' holdings. *Escobar Molina*, 811 F. Supp. 3d at 31 (collecting cases); ECF 91 at 7–10.

Nor can Defendants soften or rewrite the Lyons Memo through briefing. The Lyons Memo, not Defendants' supplemental opposition brief, is what was distributed to "All ICE Personnel," Lyons Memo at 2, and is what is relevant to Defendants' policy. Defendants' post hoc explanations cannot cure what the Memo says.

Second, Defendants' arguments about the specific factors the Lyons Memo identifies as establishing probable cause for escape risk lack grounding in any authority and ignore the fundamental problem with these factors: they instruct agents to focus on points that are either irrelevant to escape risk or so broad as to apply to practically anyone, while avoiding any mention of the person's ties to the community, which this Court determined are relevant to the inquiry. ECF 91 at 10–19; *Escobar Molina*, 811 F. Supp. 3d at 47 (the evidence that "in none of these arrests documented in [Plaintiffs'] declarations did the agents ask 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" supported finding that Defendants have a policy of making warrantless civil immigration arrests without probable cause for escape risk).

Defendants focus almost exclusively on Plaintiffs' arguments regarding factors 6 (whether the person entered improperly or reentered after being removed) and 7 (whether the person has complied with registration requirements under the Immigration and Nationality Act ("INA")). ECF 94 at 9–11. As to factor 6, Defendants contend that improper entry or illegal reentry after removal suggest a person is "more likely to be an escape risk" because they have purportedly "'facilitated

his or her unlawful presence in a surreptitious and criminal manner.'" *Id.* (quoting Lyons Memo at 4). But Defendants cite no authority to support such a blanket inference and ignore the fact that many individuals who enter the country improperly do not evince an ability or desire to evade immigration authorities. *See* ECF 91 at 12 (citing cases where asylum seekers who entered without status sought out immigration agents to turn themselves in for immigration processing); ECF 78-18 (I-213 arrest report for Mr. Espinoza Forsith, who presented himself to immigration officials upon entry in April 2023 and was already in asylum proceedings at the time of his warrantless arrest in January 2026). By failing to incorporate any instruction to consider individualized circumstances, even if Defendants could consider certain entry circumstances, the Memo would still permit what the law on probable cause forbids: conclusions based on overbroad assumptions and generalized facts rather than "individualized determination[s] based on knowledge of facts 'particularized with respect to that person.'" *Escobar Molina*, 811 F. Supp. 3d at 30 (quoting *Barham v. Ramsey*, 434 F.3d 565, 573 (D.C. Cir. 2006)).

With regard to factor 7, Defendants similarly surmise—again without any supporting authority—that a person who failed to comply with INA registration or address-notification requirements "is more likely to escape" because the person has "signaled 'an unwillingness to cooperate with an immigration officer's lawful authority to enforce [the immigration] laws.'" ECF 94 at 10 (quoting Lyons Memo at 5). Defendants' conclusion here rests on an unlikely and unsupported inference—that all immigrants would even be *aware* of these registration requirements, whose enforcement was recently resurrected by the current administration. Indeed, the same overbroad inference could be made, however, of nearly any noncompliance with the immigration laws—whether or not inadvertent. This factor therefore sweeps too broadly by permitting reliance on a person's alleged registration status without requiring any further inquiry

into whether it actually shows that the person is likely to escape arrest, and improperly conflates the two prongs of § 1357(a)(2) inquiry—an approach that this Court has already rejected. *See Escobar Molina*, 811 F. Supp. 3d at 31–32. Defendants also fail to respond to Plaintiffs' practical point that "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." ECF 91 at 12 n.1.

Defendants largely ignore the other five factors. They continue to rely on *United States v. Cantu*, 519 F.2d 494 (7th Cir. 1975), to support factor 2 (presence in and continued control over a vehicle), ECF 94 at 5, without engaging Plaintiffs' arguments that *Cantu* does not support Defendants' broad position, ECF 91 at 14. They mention factor 4 only in passing, ECF 94 at 8, and say nothing about factors 1, 3, and 5 in their supplemental opposition brief, failing to dispute Plaintiffs' objections to these factors, ECF 91 at 14–16.

Instead, Defendants attempt once again to cure the gaps in the Lyons Memo through their briefing; in so doing, they merely confirm the infirmities that Plaintiffs have identified without providing any evidence that agents are being trained on what this Court actually required in its injunction. Chiefly, Defendants acknowledge that community ties "could be relevant to whether a[] [person] is likely to escape," ECF 94 at 8, but then offer no persuasive explanation why the Lyons Memo says nothing about ties to one's community, family, home, or work. Defendants contend that "if a[] [person] is able to produce documents showing he or she has a long-term residence and gainful employment, that would weigh against finding that the [person] is likely to escap[e]," *id.*, but that instruction is found nowhere in the Lyons Memo. Moreover, this position impermissibly flips the probable cause burden from the government to the arrestee. *See Hall v. District of Columbia*, 867 F.3d 138, 154 (D.C. Cir. 2017). As the D.C. Circuit has held, "the Fourth

Amendment places a heavy burden on the government," and it cannot "elide that burden by ignoring … explanations" or facts that reduce the likelihood of escape. *United States v. Jackson*, 415 F.3d 88, 95 (D.C. Cir. 2005).

Finally, Defendants try to wave away the problematic factors in the Lyons Memo by invoking its catch-all "not limited to" clause and stressing that the probable cause standard under § 1357(a)(2) requires a totality of circumstances analysis. Plaintiffs do not disagree that probable cause takes into account the totality of circumstances. But the Lyons Memo does not stop at that general principle; it enumerates seven specific factors that purportedly support probable cause that a person is likely to escape, Lyons Memo at 4–5, while omitting mitigating factors such as community, family, and work ties that this Court specifically held were relevant to the analysis. *Escobar Molina*, 811 F. Supp. 3d at 31. Thus, Defendants' appeal to the "totality of circumstances" nature of the probable cause inquiry does not salvage the Lyons Memo's deficiencies in relation to the Court's preliminary injunction order or overcome its focus on specific factors that misinform agents about the applicable standard.

Defendants also suggest that "to the extent that this Court's preliminary injunction order places more restrictions … than the Lyons Memo," their agents "must follow the preliminary injunction." ECF 94 at 12. The declaration submitted by Erik Weiss, ECF 82-10, which Defendants cite, does not address any instruction or training provided to agents on following the Court's preliminary injunction instead of the Lyons Memo in this District. *See generally id.* Indeed, Defendants do not explain how their agents could possibly know to follow the preliminary injunction instead of the Lyons Memo when Defendants maintain that the Memo effectuates the preliminary injunction. ECF 94 at 2.

The Lyons Memo accordingly perpetuates Defendants' policy of making warrantless civil

immigration arrests in this District without a pre-arrest individualized determination of probable cause that the person being arrested is likely to escape because it sets forth a standard for probable cause that contravenes this Court's preliminary injunction decision and § 1357(a)(2). It is therefore well within this Court's jurisdiction to correct Defendants' defiance through appropriately tailored relief to preserve the status quo.

CONCLUSION

The Court should grant Plaintiffs' motion to enforce the preliminary injunction and issue the relief sought in Plaintiffs' Revised Proposed Order, ECF 91-2.

April 17, 2026

Respectfully submitted,

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