UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

EZEQUIEL GONZALEZ, *et al*., *on behalf of themselves and all others similarly situated*, *Plaintiffs*, v. U.S. DEPARTMENT OF HOMELAND SECURITY, *et al.*, *Defendants*.	Case No. 1:26-CV-03564 Judge Carl J. Nichols

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

TABLE OF CONTENTS

INTRODUCTION 1
STATEMENT OF FACTS 3
ARGUMENT 17
I. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS. 18
A. Plaintiffs and the Proposed Class Are Likely to Succeed on Their Fourth Amendment Claim. 18
1. Defendants Have Seized Plaintiffs' Property. 18
2. Defendants' Indefinite Retention of Property Is Unreasonable. 19
B. Plaintiffs and the Proposed Class Are Likely to Succeed on the Merits of Their APA Claims 22
1. The De Facto Policy and Confiscation Directive Are Final Agency Actions. 23
2. ICE's Confiscation Directive and De Facto Policy Violate the APA 24
a) ICE's Retention of Property Violates the Fourth Amendment. 24
b) ICE's Retention Policies Are Arbitrary and Capricious. 26
II. PLAINTIFFS AND THE PROPOSED CLASS WILL SUFFER IRREPARABLE HARM WITHOUT A PRELIMINARY INJUNCTION. 28
A. Defendants' Retention Exposes Plaintiffs and Class Members to Re-Detention. 29
B. Defendants' Retention Exposes Plaintiffs and Class Members to Housing Insecurity 33
C. Defendants' Retention Renders Plaintiffs Unable to Drive and Travel. 36
D. Defendants' Ongoing Deprivation of Plaintiffs' Property Violates Their Constitutional Rights. 39
III. THE BALANCE OF EQUITIES WEIGH IN PLAINTIFFS FAVOR AND AN INJUNCTION SERVES THE PUBLIC INTEREST. 41
IV. PROVISIONAL CLASS CERTIFICATION IS WARRANTED. 42
CONCLUSION 44

TABLE OF AUTHORITIES

Page(s)

Cases

Ahmed v. Noem,
2025 WL 2299447 (D.D.C. Aug. 8, 2025) ..... *passim*

Am. Pub. Health Ass'n v. Nat'l Inst. of Health,
786 F. Supp. 3d 237 (D. Mass. 2025) 26

Aracely, R. v. Nielsen,
319 F. Supp. 3d 110 (D.D.C. 2018) 31

Asinor v. District of Columbia,
111 F. 4th 1249 (D.C. Cir. 2024) ..... *passim*

Bell v. Burson,
402 U.S. 535 (1971) 21

Charles H. v. District of Columbia,
2021 WL 2946127 (D.D.C. June 16, 2021) 43

Citizens for Resp. & Ethics in Washington v. FEC,
2025 WL 833075 (D.D.C. Mar. 17, 2025) 27

City of Los Angeles v. Patel,
576 U.S. 409 (2015) 25

Cogley v. City of Butler,
2026 WL 2253845 (W.D. Pa. Aug. 5, 2026) 20

Coyad Commc'ns Co. v. Bell Atl. Corp.,
407 F.3d 1220 (D.C. Cir. 2025) 10

Ctr. for Taxpayer Rts. v. Internal Revenue Serv.,
2026 WL 2635380 (D.C. Cir. Sep. 8, 2026) 23

Damus v. Nielsen,
313 F. Supp. 3d 317 (D.D.C. 2018) 43

Doe v. Blanche,
2026 WL 1642068 (D.D.C. June 7, 2026) 39

DSE, Inc. v. United States,
169 F.3d 21 (D.C. Cir. 1999) 42

Elrod v. Burns,
427 U.S. 347 (1976) 39

Escobar Molina v. U.S. Dep't of Homeland Sec.,
811 F. Supp. 3d 1 (D.D.C. 2025) ..... *passim*

Etuk v. Slattery,
936 F.2d 1433 (2d Cir. 1991) 21

P.J.E.S. ex rel. Francisco v. Wolf,
502 F. Supp. 3d 492 (D.D.C. 2020), *vacated on other grounds by P.J.E.S. ex rel. Francisco v. Mayorkas*, 2022 WL 17246563 (D.C. Cir. Oct. 17, 2022) 43

Gordon v. Holder,
721 F.3d 638 (D.C. Cir. 2013) 39, 41

Hinton v. District of Columbia,
567 F. Supp. 3d 30 (D.D.C. 2021) 32, 41

Honda Lease Tr. v. Malanga's Auto.,
152 F.4th 477 (3d Cir. 2025) 20

J.G.G. v. Trump,
2025 WL 1577811 (D.D.C. June 4, 2025), *vacated and remanded on other grounds*, 2025 WL 2317650 (D.C. Cir. Aug. 8, 2025) 42

United States v. Jacobsen,
466 U.S. 109 (1984) 20

United States v. Jones,
565 U.S. 400 (2012) 19

Karem v. Trump,
960 F.3d 656 (D.C. Cir. 2020) 39

Khedkar v. U.S. Citizenship & Immigr. Servs.,
552 F. Supp. 3d 1 (D.D.C. 2021) 21

Kirwa v. U.S. Dep't of Def.,
285 F. Supp. 3d 21 (D.D.C. 2017) 43

L.G.M.L. v. Noem,
800 F. Supp. 3d 100 (2025) 43

Lavan v. City of Los Angeles,
693 F.3d 1022 (9th Cir. 2012) 20

League of Women Voters of the U.S. v. Newby,
838 F.3d 1 (D.C. Cir. 2016) 29

Lee v. Christian Coal. of Am., Inc.,
160 F. Supp. 2d 14 (D.D.C. 2001) 36

Mills v. District of Columbia,
571 F.3d 1304 (D.C. Cir. 2009) 39

Motor Vehicle Mfrs. Assoc. of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co.,
463 U.S. 29 (1983) 26

N.S. v. Hughes,
335 F.R.D. 337 (D.D.C. 2020), *injunction vacated on other grounds sub nom. N.S. v. Dixon*, 141 F.4th 279 (D.C. Cir. 2025) 31

Nat'l Mining Ass'n v. Jackson,
768 F. Supp. 2d 34 (D.D.C. 2011) 35

Parham v. District of Columbia,
648 F. Supp. 3d 99 (D.D.C. 2022), *vacated*, 2023 WL 10151420 (D.D.C. May 15, 2023) 38

R.I.L-R v. Johnson,
80 F. Supp. 3d 164 (D.D.C. 2015) 23, 33

Ramirez v. U.S. Immigr. & Customs Enf't,
310 F. Supp. 3d 7 (D.D.C. 2018) 29, 33

Richman v. United States,
350 F.R.D. 401 (D.D.C.), *amended by* 2025 WL 3718712 ..... 19, 20

Rigoberto S. J. v. Bondi,
830 F. Supp. 3d 882 (D. Minn. 2026) 9, 10, 25

Rosemary N.A v. Easterwood,
2026 WL 327903 (D. Minn. Feb. 5, 2026) 9, 10

Ross v. Meese,
818 F.2d 1132 (4th Cir. 1987) 40

Rubinstein v. Brownell,
206 F.2d 449 (D.C. Cir. 1953) 31

Sampson v. Murray,
415 U.S. 61 (1974) 36

Sandoval v. County of Sonoma,
72 F. Supp. 3d 997 (N.D. Cal. 2014) 20

Sherley v. Sebelius,
644 F.3d 388 (D.C. Cir. 2011) 18

Steele v. United States,
159 F. Supp. 3d 73 (D.D.C. 2016) 44

Stinnie v. Holcomb,
355 F. Supp. 3d 514 (W.D. Va. 2018) 21, 39

U.S. Army Corps of Eng'rs v. Hawkes Co.,
578 U.S. 590 (2016) 23

Vegetal v. Duke,
286 F. Supp. 3d 1239 (D.N.M. 2017) 39

Williams v. Walsh,
619 F. Supp. 3d 48 (D.D.C. 2022) 36

Wisc. Gas Co. v. FERC,
758 F.2d 669 (D.C. Cir. 1985) 36

Wright v. Fam. Support Div. of Mo. Dep't of Soc. Servs.,
458 F. Supp. 3d 1098 (E.D. Mo. 2020) 21

Statutes

5 U.S.C. § 702 35
5 U.S.C. § 705 45
5 U.S.C. § 706(2) 23, 26
8 U.S.C. § 1304 30

Other Authorities

90 Fed. Reg. 8443, 8444 30
90 Fed. Reg. 11793, 11794 30
90 Fed. Reg. at 11795 30
Customs Enf't: Enf't & Removal Operations, Policy 1131: Confiscation and Return of Original Documents (Jan. 13, 2023) 1, 8, 45

Rules

Fed. R. Civ. P. 23 ..... 43, 44
Fed. R. Civ. P. 65 42

INTRODUCTION

Plaintiffs and other members of the putative classes are people who were released from immigration detention, but ICE refuses to return the property it seized upon their arrest despite the lack of any legitimate reason for doing so. The property ICE refuses to return includes the documents people need to function in daily life: driver's licenses, passports, and employment authorization documents ("EADs"). By withholding these documents and other property after release, ICE violates the Fourth Amendment and the Administrative Procedure Act ("APA") and inflicts ongoing, irreparable harm on Plaintiffs and other members of the putative classes.

Plaintiffs Ezequiel Gonzalez, Joel Vigil Rodriguez, Rolando Ramirez Fuentes, Enis Suleima Luna Ardila, Alex Estuardo Hernandez Perez, Vladimir Izmailov, and Domingo Tot Quip, on behalf of themselves and others similarly situated, respectfully move for entry of a preliminary injunction against ICE and other Defendants, as well as provisional class certification. Plaintiffs present substantial evidence that ICE has adopted a policy of retaining documents and other property long after release from detention. Plaintiffs refer to this policy as the "De Facto Policy." The De Facto Policy unquestionably exists and may be understood in either of two ways. ***First*****,** the De Facto Policy can be understood as an unwritten ICE policy that exists independent of any written directive. ***Second*****,** it can be understood as ICE's implementation of its 2023 written directive governing the confiscation and return of original documents. This ICE directive is formally known as ICE Policy No. 11311, concerning the "Confiscation and Return of Original Documents" (the "Confiscation Directive"). The Confiscation Directive provides discretion to ICE personnel to retain documents absent any legitimate purpose after a person is released. The Directive provides, "If the noncitizen can legally possess the document, and ICE has no operational need to retain the document, then ICE *can* return the document upon request by the noncitizen or attorney who represents the noncitizen." *Id.* § 5.2 (emphasis added). Under the Confiscation

Directive, people must request ICE return their documents and ICE is permitted to reject or ignore those requests. Since 2025, ICE has operationalized the Confiscation Directive by routinely retaining documents and other property after individuals are released from immigration detention or removed from the country.

ICE's practice and policy of retaining documents and other property after an individual's release are unlawful under both the Fourth Amendment and the APA. The Fourth Amendment requires the government's continued retention of seized property to be "reasonable." *Asinor v. District of Columbia*, 111 F. 4th 1249, 1258 (D.C. Cir. 2024). Yet ICE has not identified, and cannot identify, any legitimate governmental interest that justifies holding Plaintiffs' property indefinitely following release. Accordingly, the De Facto Policy and the Confiscation Directive are contrary to law and arbitrary and capricious in violation of the APA.

Plaintiffs and other members of the putative class face imminent and irreparable harm. Without their IDs, passports, driver's licenses, EADs, and other documents, they cannot obtain new employment, prove their lawful status, drive, board an airplane, secure housing, open a bank account, or access medical care. Many avoid leaving their homes and live in constant fear of re-detention because they lack the documents needed to establish their identity and immigration status. ICE has even failed to return medications. Nor can Plaintiffs obtain replacements. Agencies often require other documents that ICE also retains, charge substantial replacement fees, and impose lengthy processing delays. These are irreparable harms that no later judgment can remedy.

Plaintiffs seek a preliminary injunction requiring Defendants to cease their unlawful retention of property and return seized property that is neither contraband nor reasonably necessary to prove a crime or identity. The balance of equities and the public interest strongly favor this relief. The motion should be granted.

STATEMENT OF FACTS

ICE detained the named Plaintiffs, seized their important documents and property, and then released them without the items they need to work, identify themselves, drive, avoid re-detention, and conduct their affairs. Their experiences follow a nationwide pattern: ICE seized their property when individuals were detained, and when it later released them, ICE retained critically important property after custody-related justifications to withhold the property expired, and failed to provide and lacked any legitimate justification for the continued retention of property.

Plaintiff Ezequiel Gonzalez

Gonzalez came to the United States from Venezuela in 2022, lives in Indianapolis, and worked as a chef. Ex. A, Gonzalez Decl. ¶ 2. Officers detained him on or about September 21, 2025, took his possessions, transported him to a detention center, and routed him into ICE custody. *Id.* ¶¶ 4–5. They seized his Social Security card, EAD, Venezuelan passport, U.S. and Venezuelan driver's licenses, his backpack, phone, wallet, and professional-grade culinary knives. During an ICE transfer between detention facilities, officers confirmed his identity by showing him a clear plastic bag containing his passport, Social Security card, and EAD. *Id.* ¶ 5. When ICE released Gonzalez on March 3, 2026, pursuant to a federal judge's order, it did not return his property. *Id.* ¶ 6. Gonzalez's attorney repeatedly requested that ICE return his client's property, but ICE maintained there were no documents in his file and then stopped responding altogether. *Id.* ¶ 6. ICE has offered no justification for withholding the property, failed to provide Gonzalez with copies of the documents, and he has not been able to replace them. *See id.* ¶¶ 6–7. Without his EAD and other identity documents, Gonzalez has been unable to find employment. *Id.* ¶ 7.

Plaintiff Rolando Ramirez Fuentes

Ramirez came to the United States from Cuba 46 years ago, lives in Tampa, Florida, and has been released on an Order of Supervision since 2004. Ex. B, Ramirez Decl. ¶¶ 2–3. ICE

detained him outside his workplace on July 3, 2025, told him that it was revoking his Order of Supervision, Social Security card, EAD, Florida driver's license, credit and debit cards, and Cuban birth certificate, and held him until a federal judge ordered Exis release on April 28, 2026. *Id.* ¶¶ 4–5. When ICE released him, it kept his Social Security card, EAD, birth certificate, and driver's license. *Id.* ¶ 5. Ramirez asked ICE to return those items, but ICE has not done so and has provided no explanation for its retention of those documents. *Id.* ¶ 5–6. Nor has ICE provided him with copies. *Id.* ¶ 5. Ramirez's work permit expired in detention, and ICE's retention of his documents kept him from obtaining his approved renewal. *Id.* ¶ 6. Without his EAD, Ramirez cannot obtain a new Social Security card or driver's license, cannot work, and cannot drive. *Id.* Because he cannot work, he is homeless and cannot afford treatment for his heart condition. *Id.*

Plaintiff Enis Suleima Luna Ardila

Luna Ardila came to the United States from Colombia in or about January 2021 to seek asylum and lives in Indianapolis. Ex. C, Luna Ardila Decl. ¶ 2. On December 18, 2025, ICE detained her when she appeared for a scheduled check-in at ICE's Indianapolis Sub-Office, and seized her ID, EAD, Colombian passport, Social Security card, and learner's permit. *Id.* ¶¶ 4–5. When ICE released her on February 23, 2026, it gave her a small card with her A-number and name, but returned none of her documents. *Id.* ¶ 6. Despite repeated requests and $200 Luna Ardila paid for help recovering her documents, ICE has not returned them. *Id.* ¶¶ 7–8. ICE has given her no certified copies of the documents it kept and no reason for keeping them. *Id.* ¶¶ 9–10.

Without her documents, Luna Ardila's ability to travel is restricted, and she was forced to turn down about five better-paying jobs, including one that paid double her current wage, and has been denied personal loans while her debts mount. *Id.* ¶¶ 11–17. She also fears that if she encounters ICE again, she will be unable to prove her identity or status and will be detained again.

Id. ¶¶ 17. She cannot readily replace these documents. *Id.* ¶¶ 12, 16.

Plaintiff Alex Estuardo Hernandez Perez

Hernandez came to the United States seeking asylum from Guatemala, after being targeted by a gang that killed his father, and his asylum application is currently on appeal. Ex. D, Hernandez Decl. ¶ 3. He currently lives in Indianapolis with his wife. *Id.* ¶ 2. On February 7, 2026, Hernandez was traveling for work in Bloomington, Indiana, when police officers stopped him for speeding, reviewed his papers, and arrested him because of an outstanding removal order. *Id.* ¶ 4. His ID, EAD, wallet, cash, and phone were seized. *Id.* ¶ 4. ICE took Hernandez to the Indianapolis Sub-Office and then to a detention facility, where he saw officers sort detainees' property into folders and clear bags. *Id.* ¶ 5. About a week later, ICE moved him to a detention center in Owensboro, Kentucky, and his property went with him in a plastic bag. *Id.* ¶ 6. When ICE released Hernandez on or about February 26, 2026, it returned his phone, his wallet, and a debit card loaded with his cash, but did not return his ID and EAD. *Id.* ¶¶ 8–9. The officer had him sign a form to recover the rest of his property, but the form did not say where it was or how to get it. *Id.* ¶ 8.

ICE gave Hernandez no reason for keeping his documents and no copies of them. *Id.* ¶ 11. Despite spending significant time and money, he has not recovered his ID or EAD. *Id.* ¶¶ 11, 13–14. He had just paid about $1,500 for his work permit, and a replacement would cost about $1,000 more, plus legal fees. *Id.* ¶ 13. He lost a higher-paying job he was about to start, and he is afraid to leave his house for fear of being detained again without ID. *Id.* ¶ 14. Replacing his Guatemalan ID would require a trip to the nearest consulate in Ohio, which he fears making without documents and cannot afford to take time off work for. *Id.*

Plaintiff Vladimir Izmailov

Izmailov, a Ukrainian-born Russian citizen seeking asylum, lives in California with his wife and two children and worked as a licensed truck driver. Ex. E, Izmailov Decl. ¶¶ 2, 4. On November 1, 2025, Izmailov was driving through Laredo, Texas for work when ICE detained him. *Id.* ¶ 5. ICE took his driver's license, EAD, wedding band, wallet, and phone at a holding facility. *Id.* ¶ 6. ICE bagged his documents and wedding band with receipts attached and moved him through facilities in Texas, Arizona, and California. *Id.* ¶¶ 6–7. Before one transfer, Izmailov saw all of his belongings in ICE's possession except his wedding ring; later officers told him that his EAD, driver's license, and wedding ring were missing. *Id.* ¶ 8.

When ICE released Izmailov on April 18, 2026, ICE only returned his cell phone. *Id.* ¶¶ 10–11. ICE later told him that it had no record of the wedding band and that his property likely had been destroyed. *Id.* ¶¶ 12–13. ICE has not justified its retention of Izmailov's property. *Id.* ¶¶ 12–13. The loss has caused significant harm. *Id.* ¶¶ 16–20. His wedding ring has irreplaceable sentimental value; without his EAD, he cannot support his family, and he cannot replace his driver's license because the California DMV requires the EAD in ICE's possession. *Id.* ¶¶ 15–18.

Plaintiff Domingo Tot Quip

Tot Quip came to the United States from Guatemala in 2023 and worked as a dishwasher in Portland, Maine. Ex. F, Tot Quip Decl. ¶ 2. On January 21, 2026, two masked ICE agents seized him at a bus stop on his way to work, shackled him, and took him to the Portland ICE Sub-Office. *Id.* ¶ 4. ICE moved him to a detention facility in Burlington, Massachusetts, and on January 23, 2026, transferred him to Louisiana. *Id.* ¶¶ 4–5. ICE seized his Guatemalan passport, New York state ID, wallet, $3,600 in cash, and backpack, with headphones, phone charger, and clothes. *Id.* ¶ 4. On January 28, 2026, ICE deported Tot Quip to Guatemala, even though it had already

received a federal court order granting him habeas relief and barring his removal. *Id.* ¶¶ 5–6.

When Tot Quip arrived in Guatemala, ICE returned his phone and empty wallet but kept his Guatemalan passport, New York ID, $3,600, and other belongings. *Id.* ¶ 7. By February 6, 2026, ICE realized it had wrongly removed Tot Quip but would not bring him home unless he produced the passport ICE itself was keeping. *Id.* ¶ 8. ICE's failure to return his passport delayed his return until he secured a new passport on July 9, 2026. *Id.* ¶ 8. When ICE finally returned him on August 13, 2026, it gave back only $588, keeping the remaining $3,012 along with his other property. *Id.* ¶ 9. ICE left him without funds and basic possessions as he tried to rebuild after his wrongful removal. *Id.* ¶¶ 10–11. ICE has not provided a reason for the retention of his property.

Plaintiff Joel Vigil Rodriguez

Vigil is from El Salvador, came to the United States in 2019, and lives in Maine. Ex. G, Vigil Decl. ¶ 2. On January 20, 2025, ICE agents arrested Vigil outside his workplace on alleged civil immigration violations and seized his Salvadoran driver's licenses, wallet, $1,200 in cash, car keys, phone, AirPods, and coat. *Id.* ¶ 4. ICE transferred him through detention centers in Massachusetts and New Hampshire. *Id.* ¶ 5. When ICE released him on February 13, 2026, it returned his cash but failed to return his licenses and other property. *Id.* ¶ 6. ICE has not provided Vigil copies of the licenses, nor provided any explanation for the retention. *Id.* ¶¶ 6–7. Vigil and his lawyers asked ICE to return the property multiple times, and Congresswoman Chellie Pingree also asked ICE to return his items. *Id.* ¶ 7. ICE told Congresswoman Pingree that all of Vigil's property had been returned, and then said it was conducting a full property audit, but has not returned the property or provided an explanation. *Id.* ¶¶ 7–8. Without his license, Vigil could not commute to his job for weeks and fell behind on rent. *Id.* ¶ 9. He also spent more than $1,000 replacing other property and traveling to the Salvadoran consulate in Boston to obtain new

licenses. *Id.* ¶ 9.

ICE's Confiscation and Detention Directives

Two separate bodies of written ICE directives address what happens to property taken from people held in civil immigration custody. The first, the Confiscation Directive, ICE Policy No. 11311,[1] addresses identity and other government-issued documents. The Confiscation Directive provides ICE's "policy and procedures for confiscating and returning original documents upon initiation of removal proceedings against any noncitizen." Confiscation Directive § 1.1. It defines the relevant documents to include, among others, "passports, driver's licenses, social security cards, permanent resident cards (I-551), birth certificates, foreign identification cards, and school records." *Id.* The Confiscation Directive contemplates that ICE "will generally confiscate any foreign and domestic government-issued documents…in the noncitizen's possession." *Id.* § 2.1. Although the Confiscation Directive states that "[t]he noncitizen shall be provided with a certified copy of their documents with a notation that ICE is in possession of the original," *id.* § 2.2, and suggests that continued retention should be based on a "clearly articulated operational need," *id.* §§ 4.4(3), 5.2, those protections are substantially undermined elsewhere in the Confiscation Directive. Specifically, the Confiscation Directive grants ICE broad discretion to retain documents even absent any operational need and defaults to continued retention unless the owner affirmatively requests their return: "If the noncitizen can legally possess the document, and ICE has no operational need to retain the document, then ICE *can* return the document *upon request* by the noncitizen or attorney who represents the noncitizen." *Id.* § 5.2 (emphasis added).

[1] U.S. Immgr. & Customs Enf't: Enf't & Removal Operations, Policy 1131: Confiscation and Return of Original Documents (Jan. 13, 2023), https://www.ice.gov/doclib/foia/dro_policy_memos/11311_OrgDocConfiscationReturn.pdf.

Non-document property is governed by the detention standards ICE requires immigration detention facilities to follow, including the Performance-Based National Detention Standard, the National Detention Standards, and the Non-Dedicated Intergovernmental Service Detention Standards. Facilities must catalog and protect a person's belongings and return them when detention ends, absent a continuing, legitimate reason. ICE's own guidance provides that ICE is to return seized property once any valid justification has lapsed. But ICE's conduct, the Confiscation Directive, and the De Facto Policy reveal that ICE authorizes its officers to retain property indefinitely, even if ICE lacks a legitimate justification for doing so.

ICE Applies the Confiscation Directive and De Facto Policy Across the Country

Plaintiffs' experiences are not unique or limited geographically but instead reflect that ICE's refusal to return property ensnares people across the country, exposing them to irreparable injury. *See, e.g.*, Ex. H, Diaz Decl. ¶ 9; Ex. A ¶ 5; Ex. B ¶ 5; Ex. C ¶ 4–6; *see* Ex. D ¶¶ 4–6; Ex. E ¶¶ 6–7; Ex. F ¶¶ 4–5; Ex. G ¶ 5; Ex. I, J.L.M.M. Decl. ¶ 10; Ex. J, Soto Medina Decl. ¶ 4–5; Ex. K, Y.I.M. Decl. ¶¶ 3, 5; Ex. L, G.O.O. Decl. ¶¶ 4–5; Ex. M, Ponet Decl. ¶¶ 6–8; Ex. N, Fajardo Medina Decl. ¶ 5; Ex. O, Steinman Decl. ¶¶ 1–4; Ex. P, Yang Decl. ¶¶ 5–6. The evidence reveals that ICE's indefinite retention of property is not random, but rather a pattern of Fourth Amendment violations, evincing the De Facto Policy, as well as implementation of the unlawful portions of the Confiscation Directive, irreparably harm numerous people.

Courts have been forced to address this issue repeatedly in individual cases, including in Minnesota, New York, West Virginia, Texas, and Colorado. *See, e.g.*, *Rosemary N.A v. Easterwood*, 2026 WL 327903, at *2 (D. Minn. Feb. 5, 2026); *Rigoberto S. J. v. Bondi*, 830 F. Supp. 3d 882, 883–85 887 (D. Minn. 2026); *Serna Zarate et al., v. Mason, et al.*, Case No. 26-CV-00069, Dkt. 46 at 2–3 (S.D. W.V. Feb. 18, 2026); *Cadena-Gallegos v. Bondi*, Case No. 26-CV-

00844, Dkt. 10 at (E.D.N.Y. Feb. 14, 2026); *Arnao Linares v. Warden, et al.*, Case No. 26-CV-00340, Dkts. 9, 16 (W.D. Tex. Feb. 18, 2026); *Cortes v. Guadian*, Case No. 26-CV-00294, Dkt. 18 at 1 (D. Colo. Feb. 6, 2026). Courts have resorted to contempt proceedings because ICE failed to return seized property after it became unreasonable to retain it. *J.B.C.O. et al., v. Bondi et al.*, No. 26-CV-00424, Dkt. 32 at 5 (D. Minn. Mar. 6, 2026); *Serna Zarate et al. v. Mason et al.*, No. 26-CV-00069, Dkt. 46 at 2–3 (S.D. W.V. Feb. 18, 2026). Those proceedings reveal that ICE retained, long after any justification for retention expired, EADs, identification documents, driver's licenses, passports, immigration documents, Social Security cards, bank cards, and other personal property.[2] *See e.g.*, *Narvaez Alvarez v. Easterwood*, 2026 WL 327903, at *2 (D. Minn. Feb. 5, 2026); *Rigoberto S. J. v. Bondi*, 830 F. Supp. 3d 882, 887 (D. Minn. 2026); *Cadena-Gallegos v. Bondi*, No. 26-CV-00844, Dkt. 10–12 (E.D.N.Y. Feb. 14, 2026); *Arnao Linares v. Warden, et al.*, No. 26-CV00340, Dkt. 5 (W.D. Tex. Feb. 18, 2026); *Cortes v. Guadian*, No. 26-CV-00294, Dkt 18 at 1 (D. Colo. Feb. 6, 2026). These proceedings underscore that the unlawful conduct is widespread, not isolated, and is the result of the De Facto Policy and implementation of the unlawful provisions of the Confiscation Directive.

Sworn declarations submitted with this Motion highlight ICE's unlawful pattern of property retention in many states across the country.

In Florida, on January 8, 2026, ICE detained Wendy Esther Hernandez Reyes, separated her from her two-year-old U.S.-citizen son, Orlin, despite her pleas that she was his only parent and caregiver, and seized her Honduran passport. Ex. Q, Hernandez Reyes Decl. ¶¶ 3, 7–8. With his mother and aunt both in ICE custody, Orlin was left in the care of his aunt's former partner,

[2] The Court may take judicial notice of facts contained in public records from proceedings in other courts. *Coyad Commc'ns Co. v. Bell Atl. Corp.*, 407 F.3d 1220, 1222 (D.C. Cir. 2025).

Samuel Maldonado Erazo. *Id.* ¶ 9. From detention, Hernandez Reyes repeatedly begged ICE for her passport, or even a copy, which she needed to apply for Orlin's passport, which was necessary to permit her to take Orlin to Honduras with her.

ICE refused to provide her with either her passport or a copy, depriving her of the ability to obtain Orlin's passport. ICE then deported her—without her son and without her passport. *Id.* ¶¶ 11–14; Maria Sacchetti, *She Was Deported Without Her Toddler. Then ICE Blamed Her for His Killing.*, WASH. POST (May 16, 2026) [hereinafter "Sacchetti"]. Stranded in Honduras, she first had to obtain a replacement passport before she could begin Orlin's passport application. Ex. Q ¶¶ 15, 17.

In the five weeks that followed, Orlin suffered horrific abuse—an autopsy found multiple broken bones and signs that his "tiny body had been sexually battered." Sacchetti. Authorities allege that Maldonado repeatedly struck him in the head, stomped on his body, and burned his skin with a lighter, and the bruises on his hands showed that the three-year-old had tried to shield himself from the blows. *Id.* The medical examiner ruled his death a homicide, and a grand jury indicted Maldonado for first-degree felony murder and aggravated child abuse for "depraved" violence inflicted from at least February 1 until Orlin's death. Sacchetti; Ex. Q ¶ 19. Hernandez Reyes's replacement passport was finally issued on March 4, 2026, the very day she learned her son had been killed. Ex. Q ¶ 18. When she was later paroled into the United States to view and bury Orlin, ICE confiscated her passport again. *Id.* ¶ 25.

In Illinois, ICE has deprived people of their passports, state-issued driver's licenses, EADs, and identification cards, as well as wallets, cash, and other personal property for months after they are released from custody. Ex. J ¶¶ 4, 8; Ex. K ¶¶ 4, 6; Ex. R, Rondon Malpica Decl. ¶¶ 4, 11; Ex. N ¶¶ 4, 7–8. Fajardo Medina moved from Venezuela to Chicago, where she lives with her two-

year-old son. Ex. N ¶ 2. Her asylum application is pending. *Id.* ¶ 3. On July 2, ICE detained her, and seized her Oregon driver's license. *Id.* ¶¶ 4–5. On August 11, 2026, she was released on bond, and ICE retained her driver's license and has not returned it. *Id.* ¶ 8–9.

Soto Medina came to the United States from Venezuela, and he lives in Chicago with his wife and daughter. Ex. J ¶ 2. His asylum application is pending. *Id.* ¶ 2. On October 21, 2025, ICE detained him during his routine check-in, and seized his EAD, Venezuelan identification card, driver's license, and passport. *Id.* ¶ 4. A federal judge granted his habeas corpus petition and ordered his release. *Id.* ICE failed to return any of his documents, and he is unable to provide for his family. *Id.* ¶¶ 6, 8.

On October 15, 2025, ICE agents arrested Y.I.M and seized his Illinois driver's license and wallet, which included all of his identification cards. Ex. K ¶¶ 3–4. Approximately six months later, Y.I.M. was released. *Id.* ¶ 6. Although his wallet was returned to him, his documents were all missing. *Id.* Two weeks later, on October 29, 2025, Malpica was arrested and taken to ICE's Broadview facility. Ex. R ¶ 3. ICE seized all of his documents, including his EAD, driver's license, Illinois and Venezuelan IDs, and immigration paperwork. *Id.* ¶ 4. ICE let him keep his Illinois ID and immigration paperwork during his transfer to a Kentucky detention center, then took those when he arrived. *Id.* ¶ 8. On his release, ICE returned only those two items and gave him no copies of the rest. *Id.* ¶¶ 9, 12.

The same conduct has occurred routinely in Michigan. The Resurrection Project, a non-profit which provides free legal services, has had clients released on bond from the North Lake detention center but ICE has retained their documents, for months, without explanation. Ex. H ¶ 13. For example, when Andrey Hursevich arrived at North Lake, the facility's property inventory did not include the bag containing his passport, commercial driver's license, EAD, Social Security

card, and benefits card, and staff told him the documents had remained with ICE. Ex. S, Hursevich Decl. ¶¶ 8–9. ICE released him on November 25, 2025 without those documents. *Id.* ¶ 9. Because ICE never returned his CDL, he was forced to give up his work as a semi-truck driver for lower-paying work. *Id.* ¶¶ 19–24. J.N.S. was likewise released from detention without his identity documents. CBP seized J.N.S.'s wallet, driver's license, and two Kenyan passports, ICE detained him for two months in Michigan, and then released him in November 2025 without his passports or license. Ex. T, J.N.S. Decl. ¶¶ 7–8, 11. Without them he cannot travel to see his family or access a bank account. *Id.* ¶¶ 14, 19–20.

The pattern repeats itself in Kentucky. Ex. H ¶¶ 14–15. ICE has retained passports, identification cards, and other property after Resurrection Project clients were released. *Id.* ¶ 15. Daniel Chin, an attorney at Flora Legal Group, also has had clients detained in Kentucky who have not received their property from ICE post-detention. Ex. U, Chin Decl. ¶¶ 6, 19.

ICE has retained documents in Georgia as well. On March 5, 2026, ICE detained J.L.M.M. near his home in Woodstock, Georgia, and took his driver's license and EAD. Ex. I ¶¶ 7–8. When he was released on March 17, 2026, after a habeas court ordered bond, ICE kept his work permit, Social Security card, and driver's license, and gave him no copies. *Id.* ¶¶ 11–12. Despite repeated visits to ICE's Atlanta field office, he has not gotten them back. *Id.* ¶¶ 13–14. Without his EAD, he struggles to support his wife and three children, and he cannot replace his license without the documents ICE kept. *Id*. ¶ 16

Attorneys in California report the same pattern, with ICE keeping clients' IDs, EADs, medication, wedding rings, and religious items. Ex. V, Upshaw Decl. ¶ 4; Ex. E ¶ 6. Hayley Upshaw, an attorney at the San Francisco Public Defender's Office, has had twelve clients report that their documentation was not returned. *Id.* ¶ 4. For example, one client was detained on

December 8, 2025, and ICE seized their state-issued identification and EAD. *Id.* ¶ 5. After their habeas petition was granted, they were released on March 6, 2026, but ICE retained their documents. *Id.* Likewise, ICE released E.J.M.C. without his EAD, so he had to turn down a promotion and three job offers, and is now out of work, unable to support his family. Ex. W, E.J.M.C. Decl. ¶¶ 6, 9. Without his EAD, he cannot get a driver's license. *Id.* ¶ 10.

Jay Martin Steinman, an accredited representative at the Central American Resource Center of Northern California, reports that ICE regularly confiscates his clients' passports, leaving them without their only form of identification and complicating efforts to obtain driver's licenses. Ex. O ¶¶ 1, 4. One client released in December 2025, under a federal court's preliminary injunction, did not receive his driver's license, EAD, Social Security card, or passport. *Id.* ¶¶ 6–7. Steiman attempted to get his client's documents returned by emailing his client's assigned Deportation Officer and asking for the documents at his client's ICE check-ins, to no avail. *Id.* ¶¶ 8–11. Despite Steinman's repeated attempts to have ICE return his client's property, ICE returned only the passport in October 2026, about 10 months after his release. *Id.* ¶¶ 12–13.

Sarah Houston, the Managing Attorney of the Rapid Response Team at Immigrant Defense Law Center, has similarly observed that people detained by ICE have had their identification documents withheld. Ex. X, Houston Decl. ¶ 1. One of her clients who was released from detention did not initially have his Guatemalan passport returned to him. *Id.* ¶ 9. Without his passport, he was unable to access specialized interim housing. *Id.*

The pattern continues in Arizona. Juan Cuéllar Torres, the Director of Education and Advocacy at the Kino Border Initiative, has received approximately fifteen complaints involving ICE's indefinite retention of personal property, including their identification documents, cell phones, medication, and medical records, among other items. Ex. Y, Torres Decl. ¶ 9.

Attorneys in Missouri report that their clients have not received state-issued identification, EADs, and Social Security cards upon release from ICE custody. Ex. Z, Gavlick Decl. ¶ 5. Remi Gavlick, an attorney at Migrant and Immigrant Community Action Project, has represented multiple clients who have had their property retained indefinitely. *Id.* ¶¶ 1, 4, 5.

ICE has likewise retained property in Minnesota. KaYing Yang, a Senior Consultant at the Southeast Asian Freedom Network, has worked closely with individuals impacted by Operation Metro Surge. Ex. P ¶¶ 1, 4. Yang describes that ICE detained one person, and failed to return her I-94, EAD, I-797, United Nations High Commissioner for Refugees card, Social Security card, and Iris Recognition Immigration System documents upon release. *Id.* ¶ 5.

Claudia Lainez, immigration counsel for the Service Employees International Union ("SEIU"), which represents about two million workers, more than a quarter of them immigrants, saw the same problem during Operation Metro Surge. Ex. AA, Lainez Decl. ¶¶ 2–3, 12. Even after courts granted them habeas relief, many SEIU members went long periods without their licenses, passports, and EADs. *Id.* ¶¶ 14–16. In at least one case, ICE contravened a district court order requiring that documents be returned at the time a person was released by withholding identification documents for weeks. *Id.* ¶ 17. Without their documents, members cannot drive, or lawfully work, and fear being re-detained because they lack identification. *Id.* ¶¶ 19–20.

United Food and Commercial Workers, Local 663 in Brooklyn Center, Minnesota, which represents approximately 14,000 grocery, meatpacking, food processing, and retail workers, has been in contact with approximately four members whom ICE released without their driver's licenses, passports, EADs, wallets, cash, or other property. Ex. BB, Chang Decl. ¶¶ 4, 10–11. ICE released Member I in January 2026 and still has not returned Member I's wallet, driver's license, cards, cash, or foreign identification. *Id*. ¶ 17. Some members have gone two to nine months

without their documents and have struggled to get to work. *Id*. ¶¶ 13–14. Recovery efforts have required repeated contact with ICE, court motions, and private legal fees, and ICE has provided no certified copies. *Id*. ¶ 16. In another Minnesota case, ICE deported Kenis Adalberto Lopez Gonzalez, a Nicaraguan citizen, to the Central African Republic, a country he had never been to, while keeping his passport, leaving him stranded. Ex. CC, Lopez Gonzalez Decl. ¶¶ 9–17.

In Texas, ICE detained G.O.O. and, at an ICE officer's instruction, he had his Kenyan passport mailed to the Eden detention facility. Ex. L ¶¶ 4–8. When ICE removed him to Kenya on May 18, 2026, an officer told him the passport was in his property folder, but it was not. *Id*. ¶¶ 9–11. Despite his repeated emails and ICE's own promises to help, ICE has neither returned the passport nor explained why it kept it. *Id*. ¶¶ 11–17. Without his passport, G.O.O. cannot travel from Kenya to Tanzania to see his family. *Id.* ¶ 18. Nor can he prove his Kenyan citizenship, which bars him from working and other benefits in Kenya. *Id.* ¶ 19. Immigration attorney Branden Ladebush has multiple clients whom ICE released but whose property it never returned. Ex. DD, Ladebush Decl. ¶¶ 1–2. For example, two of his clients, brothers, were detained in New England, and transported to Texas. *Id.* ¶ 10. Upon their release, ICE failed to return to them their property, including their identification documents, wallets, and cell phones. *Id*. They were released in the dark, no documents or resources, and hundreds of miles from home. *Id*.

In Maine, Kate Turrell, a Senior Paralegal with the Immigrant Legal Advocacy Project, a non-profit offering low-cost immigration assistance, has seen dozens of people whose property ICE has kept indefinitely. Ex. EE, Turrell Decl. ¶¶ 1, 2, 5. One client who was released never got back his EAD, and accordingly cannot work, is unable to pay his rent, and faces eviction. *Id.* ¶ 13.

In Maryland, Susanna Booth, a senior attorney at the Amica Center for Immigration Rights, a non-profit providing legal services to indigent noncitizens in immigration detention throughout

the country, reports that many people ICE has released have not gotten their property back. Ex. FF, Booth Decl. ¶¶ 1, 2. One man, for example, was released without his international driver's licenses, passport, or state ID. *Id.* ¶ 8. Without them, he cannot work or drive. *Id.* ¶ 9.

Impacts On People Removed to Third Countries

ICE's retention of passports hits especially hard for people it deports to third countries. Over the past year, Novo Legal Group attorney Alma David has represented mainly people ICE sent to South Sudan, Eswatini, Cameroon, the Democratic Republic of the Congo, Liberia, Sierra Leone, Equatorial Guinea, Burundi, and Rwanda, and in every one of those countries ICE's retention of passports has been a problem. Ex. GG, David Decl. ¶¶ 2–4. Most of these people have been granted withholding of removal, meaning an immigration judge found they would more likely than not face torture or persecution in their home countries. *Id.* ¶ 6. Therefore, ICE deports them to a third country. *Id.* According to David, ICE's express policy is to keep a noncitizen's passport until the person gains permanent status or is removed. When ICE deports someone to a third country, the passport stays with the original ICE office. *Id.* ¶¶ 7, 9. More than 150 people she has represented or advised arrived in a third country with neither their passports nor certified copies. *Id*. ¶ 10. Without identification, they cannot leave their housing without risking arrest, get medical care, or receive money wired by family. *Id*. ¶¶ 13–16. Nor can they leave the third country, leaving many with no option but to return to the very countries where they face torture and persecution. *Id.* ¶ 17. Her efforts to recover clients' passports from ICE have been unsuccessful. *Id.* ¶ 18.

ARGUMENT

Plaintiffs are entitled to a preliminary injunction. To obtain a preliminary injunction, Plaintiffs must demonstrate that: (1) they "are likely to succeed on the merits," (2) they are "likely to suffer irreparable harm in the absence of preliminary relief," (3) "the balance of equities tips in [their] favor, and" (4) "an injunction is in the public interest." *Sherley v. Sebelius*, 644 F.3d 388,

392 (D.C. Cir. 2011) (internal quotations omitted). Plaintiffs satisfy each of the four factors. And because Plaintiffs seek preliminary injunctive relief on behalf of the proposed class, as defined in the Motion for Class Certification, Dkt. No. 19, the Court should provisionally certify the Class.

I. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS.

Plaintiffs seek a preliminary injunction under the Fourth Amendment (Count I) and the APA (Counts II and III).[3] Plaintiffs are likely to succeed on each. Part I.A addresses the Fourth Amendment claim and explains why ICE's indefinite retention of Plaintiffs' property is unreasonable. Part I.B addresses the APA claims, setting out why the Confiscation Directive and the De Facto Policy are final agency actions and are both contrary to the Fourth Amendment, and arbitrary and capricious.

A. Plaintiffs and the Proposed Class Are Likely to Succeed on Their Fourth Amendment Claim.

ICE's retention of Plaintiffs' property violates the Fourth Amendment because ICE has withheld the property for an unreasonable time without any legitimate interest. Such indefinite retention constitutes an unreasonable seizure, forbidden by the Fourth Amendment. *Asinor v. District of Columbia*, 111 F.4th 1249, 1258 (D.C. Cir. 2024) ("[P]rolonged detention *after* the initial arrest" constitutes an unreasonable seizure). To succeed, Plaintiffs must show (1) that the government seized their property and (2) that the seizure was unreasonable. *See id.* at 1252–55.

1. Defendants Have Seized Plaintiffs' Property.

There can be no doubt that ICE seized Plaintiffs' property by continuing its retention. A seizure occurs when there is "some meaningful interference with [a person's] possessory interests in … property." *Id.* at 1254 (quoting *United States v. Jones*, 565 U.S. 400, 408 n.5 (2012)). The

[3] Plaintiffs do not seek preliminary injunctive relief under their *Accardi* claims (Counts IV and V).

government meaningfully interferes with possessory interests when it takes property and keeps it—as long as the government has "control of the property, the plaintiffs [cannot] possess it at all." *Id.* The Fourth Amendment's protections apply irrespective of whether another law enforcement body seized the property at the time of arrest, so long as the property was transferred to and retained by ICE. *See Richman v. United States*, 350 F.R.D. 401, 406–08, 416 (D.D.C.), *amended by* 2025 WL 3718712, at *7 (D.D.C. Dec. 23, 2025). That is exactly what ICE has done here—it has retained personal property seized from Plaintiffs, and others similarly situated, including IDs, passports, driver's licenses, and EADs. For example:

- Gonzalez's EAD, passport, and Social Security card. Ex. A ¶ 5.
- Vigil's Salvadorian motorcycle and trailer driving licenses. Ex. G ¶ 4.
- Ramirez's Cuban birth certificate, Social Security card, EAD, and Florida driver's license. Ex. B ¶ 4.
- Luna Ardila's ID, Colombian passport, Social Security card, EAD, and learner's permit. Ex. C ¶ 5.
- Hernandez's ID and EAD. Ex. D ¶¶ 5–6.
- Izmailov's driver's license, EAD, and wedding ring. Ex. E ¶ 6.
- Tot Quip's passport. Ex F ¶ 4.

Because ICE controlled the Plaintiffs' property, Plaintiffs could not, and cannot, "possess it at all," *Asinor*, 111 F.4th at 1254, such that ICE's ongoing retention of their property qualifies as a seizure.

2. Defendants' Indefinite Retention of Property Is Unreasonable.

ICE's indefinite retention of the property is unreasonable. "[T]he Fourth Amendment requires reasonableness not only at the [time of seizure], but also for the seizure's entire duration." *Asinor*, 111 F.4th at 1256. "[A]ny continued possession of the property must be reasonable." *Id.* at 1252; *see also Richman*, 350 F.R.D. at 414; *Honda Lease Tr. v. Malanga's Auto.*, 152 F.4th 477, 489 (3d Cir. 2025); *Lavan v. City of Los Angeles*, 693 F.3d 1022, 1030–31 (9th Cir. 2012). A seizure becomes unreasonable when its "length unduly intrude[s] upon constitutionally protected

interests." *United States v. Jacobsen*, 466 U.S. 109, 124 n.25 (1984) (citing *United States v. Place*, 462 U.S. 696, 707-09 (1983)).

In *Asinor*, police retained arrestees' phones, cameras, and other effects for about a year without bringing charges. *See, e.g.*, *Asinor* 111 F.4th at 1252. The District of Columbia Circuit explained that this continued retention was unreasonable: "It is one thing not to have access to a cell phone while spending a night in jail. It is quite another not to have access to it for the following year." *Id.* at 1255, 1261. Here, each Plaintiff was released from ICE custody (some pursuant to a court order), yet ICE still retains their property, many months after each Plaintiff was released, even though the property is not contraband and is not reasonably necessary to prove a crime or to prove identity in an immigration proceeding. *See supra* Statement of Facts. ICE's indefinite retention of Plaintiffs' property is unreasonable for the same reasons explained in *Asinor* and is even more problematic here because of the profound hardships it has created. ICE has deprived Plaintiffs of the documents needed to prove their identity and status, work, fly, drive, and open bank accounts. Where the retention of property causes such significant hardships, the ongoing retention is even less reasonable. *See Sandoval v. County of Sonoma*, 72 F. Supp. 3d 997, 1010 (N.D. Cal. 2014) (reasoning that a thirty-day impoundment of a vehicle is unreasonable under the Fourth Amendment because "the use of a car is essential for such necessary activities as getting to work and purchasing food; the loss of a vehicle for thirty days can cause a significant disruption in a person's life"); *Cogley v. City of Butler*, 2026 WL 2253845, at *9–11 (W.D. Pa. Aug. 5, 2026) (reasoning that the prolonged retention of personal and business cellphones for over five months, especially after release from incarceration, is unreasonable under the Fourth Amendment).

ICE routinely retains the types of documents that courts have held owners have a property interest in and the withholding of which deprives the owner of liberty. Regarding driver's licenses,

the Supreme Court has recognized that "[o]nce licenses are issued…their continued possession may become essential in the pursuit of a livelihood." *Bell v. Burson*, 402 U.S. 535, 539 (1971); *see also Wright v. Fam. Support Div. of Mo. Dep't of Soc. Servs.*, 458 F. Supp. 3d 1098, 1112 (E.D. Mo. 2020) ("Plaintiffs have a protected property interest in their continued possession of a driver's license"); *Stinnie v. Holcomb*, 355 F. Supp. 3d 514, 531 (W.D. Va. 2018) (explaining that, in practice, the loss of something as vital as a driver's license "adversely affects people's ability to gain and maintain employment, often resulting in a reduction of income"). ICE routinely retains released individuals' EADs, and this Court has recognized that non-citizens, such as Plaintiffs and the members of the proposed class, "cannot work…without authorization [papers]." *Khedkar v. U.S. Citizenship & Immigr. Servs.*, 552 F. Supp. 3d 1, at *5 (D.D.C. 2021); *see also Etuk v. Slattery*, 936 F.2d 1433, 1436–37 (2d Cir. 1991) (reasoning that "[g]reen cards play a significant role in the day-to-day lives of [lawful permanent residents]," including proving their work eligibility).[4] ICE also routinely fails to return Social Security cards and passports to released individuals and federal courts have warned that without their personal identification documents, non-citizens will be at risk of re-arrest because they cannot prove their identity and will thus fear moving about even in their own communities as well as traveling more broadly. *See, e.g.*, *J.B.C.O.*, 2026 WL 638455, at *5. ICE's indefinite retention of Plaintiffs' and other proposed class members' driver's licenses EADs, Social Security cards, and passports thus violates the Fourth Amendment.

Once ICE released each Plaintiff and proposed class member, whatever reason it had to hold their property ended, absent a specific, legitimate interest in the ongoing retention of the property. *See Asinor*, 111 F.4th at 1256, 1261 (reversing dismissal of plaintiffs' Fourth

[4] Although different, an EAD operates similarly to a Green Card in that it provides a non-citizen temporary authorization to work in the United States.

Amendment claims and holding that plaintiffs stated an unreasonable-seizure claim where their property was kept "for over eight months after their arrests" and the continued seizure allegedly "served no legitimate investigatory or protective purpose"). This holds true even if the initial seizure and retention of Plaintiffs' property was justified. *See id.* ("If the rationales that justified the initial retention of the plaintiffs' effects dissipated, and if no new justification for retaining the effects arose, then the Fourth Amendment obliged the…return [of] plaintiffs' effects."). In the cases of the Plaintiffs and other members of the proposed class, ICE has failed to provide any justification for its ongoing retention of the property and has no legitimate justification and the continued seizure is thus unreasonable.

These are not isolated incidents. Across the country, ICE has violated the Fourth Amendment: ICE takes detainees' property and does not return it after release, and ICE has failed to articulate and does not have any legitimate governmental interest in ongoing property retention. Plaintiffs are therefore likely to succeed on their Fourth Amendment Claim.

B. Plaintiffs and the Proposed Class Are Likely to Succeed on the Merits of Their APA Claims.

Plaintiffs are also likely to succeed on the merits of their APA claims. Both the Confiscation Directive and the De Facto Policy are final agency actions. The Confiscation Directive, by vesting ICE officials with unfettered discretion to withhold property without legitimate justification, and by requiring that released individuals request return of their property, violates the APA because it is both contrary to the Fourth Amendment and arbitrary and capricious. 5 U.S.C. § 706(2)(A–B). In addition, the De Facto Policy violates the APA in that it offends the Fourth Amendment and is arbitrary and capricious. The Court should thus hold unlawful and set aside the unlawful elements of the Confiscation Directive and the entire De Facto Policy.

1. The De Facto Policy and Confiscation Directive Are Final Agency Actions.

The Confiscation Directive and the De Facto Policy satisfy the APA's pragmatic test for finality. Agency action is "'final' under the APA if (1) it 'mark[s] the consummation of the agency's decisionmaking process' and (2) rights or obligations have been determined' by it or 'legal consequences will flow' from it." *Ctr. for Taxpayer Rts. v. Internal Revenue Serv.*, 2026 WL 2635380, at *5 (D.C. Cir. Sep. 8, 2026) (quoting *U.S. Army Corps of Eng'rs v. Hawkes Co.*, 578 U.S. 590, 597 (2016)). Courts apply this test "pragmatically" and consider that "action may be final despite expression in a more informal form." *Escobar Molina v. U.S. Dep't of Homeland Sec.*, 811 F. Supp. 3d 1, 43 (D.D.C. 2025) (cleaned up). An unwritten policy can be final agency action. *See id.; R.I.L-R v. Johnson*, 80 F. Supp. 3d 164, 184 (D.D.C. 2015).

Both the Confiscation Directive and the De Facto Policy are final agency actions. ***First***, both mark the end of ICE's decision-making process. As for the Confiscation Directive, this written policy is a formal agency policy issued with an effective date of January 13, 2023. It sets forth the broad discretion ICE personnel exercise in retaining property without justification, while also requiring people to separately seek return of their property as opposed to requiring ICE personnel to return the property when any justification for keeping it expires. Likewise, the De Facto Policy also marks the end of ICE's decision making. Under the De Facto Policy, ICE has indefinitely retained property nationwide, and its policy is not subject to further decision making. Viewed through either lens, ICE's broad retention of property constitutes final action. Even in the face of stacking court orders to return property, *see supra* Statement of Facts, at 12–13, ICE has continued to retain released people's property, and has not altered or deviated from its policy.

Second, profound legal consequences flow from both the Confiscation Directive and the De Facto Policy. An agency action is final when it has "significant legal consequences for the plaintiff." *See Ahmed v. Noem*, 2025 WL 2299447, at *16 (D.D.C. Aug. 8, 2025). Such significant

legal consequences follow from ICE's decision making—under the Confiscation Directive *and* the De Facto Policy—because the policies deprive Plaintiffs and class members of the documents the law requires them to have to identify themselves, work, and drive. As a direct result of ICE's conduct and decision-making process, Plaintiffs and class members have been deprived of their documents, without which they face real, and dire, legal and practical consequences. *See supra* Statement of Facts. The Confiscation Directive and De Facto Policy are final because they reflect the "consummation" of ICE's decision-making process, and that process and the resulting policies and their operationalization impose profound legal and practical consequences.

2. ICE's Confiscation Directive and De Facto Policy Violate the APA.

The Confiscation Directive and the De Facto Policy give ICE agents discretion to, or require that they retain released individuals' property, for many months if not permanently, absent any legitimate justification, and thus violate the APA. The policies are contrary to the Fourth Amendment and are arbitrary and capricious. The Court should enjoin and set aside the unlawful elements of the Confiscation Directive and the entire De Facto Policy.

a) ICE's Retention of Property Violates the Fourth Amendment.

ICE's practice of baselessly retaining property, under both the Confiscation Directive and the De Facto Policy, directly results in unreasonable continuing seizures in violation of the Fourth Amendment. The Confiscation Directive provides ICE personnel with expansive discretion to retain documents that people are lawfully entitled to possess even though ICE lacks any legitimate interest in withholding those documents. Meanwhile, the Confiscation Directive unlawfully attempts to alleviate ICE of its constitutional *obligation* to return property it has no basis to withhold by requiring people to take the affirmative step of formally requesting that ICE return their documents at its *discretion*—requests ICE typically spurns. Confiscation Directive, § 5.2 ("If the noncitizen can legally possess the document, and ICE has no operational need to retain

the document, then ICE *can* return the document *upon request* by the noncitizen or attorney who represents the noncitizen." (emphasis added) The Confiscation Directive therefore unlawfully provides ICE agents with the option to retain the document even where ICE lacks any legitimate interest in retaining the document and the owner of the document can legally possess it. By forcing people to request the return of their documents, despite their legal rights to them and ICE's lack of interest in keeping them, ICE shifts its burden to return the documents to the people who have been unlawfully harmed by ICE seizure and who, in many cases, fear further contact with ICE and are reluctant to make demands on ICE because of their recent detention. That the Confiscation Directive also permits ICE to withhold documents where it believes it has a "clearly articulated operational need," *Id.* §§ 4.4(3), 5.2, does not ameliorate in any way the problem that the Confiscation Directive grants ICE discretion to withhold documents even when it lacks such a need. It is this latter set of retentions that violate the Fourth Amendment and are the only retentions challenged here. *See City of Los Angeles v. Patel*, 576 U.S. 409, 418 (2015) ("[W]hen addressing a facial challenge" courts do not rely on alleged applications for which the challenged law or order "is irrelevant").

Likewise, and as illustrated above, *supra* Section I.A, ICE maintains a De Facto Policy of retaining property even where it lacks any reasonable or justifiable basis for its ongoing seizure, much less any "operational need." ICE also consistently fails to return property even where property owners have requested the return of their property. In several cases, including *Rigoberto S. J. v. Bondi*, 830 F. Supp. 3d 882, 883–887 (D. Minn. 2026), federal courts have held government officials in contempt for ICE's failing to return property even after a court ordered ICE to do so. The De Facto Policy is thus also contrary to law as it is inconsistent with the Fourth Amendment. *See Asinor*. 111 F.4th at 1256–58. Thus, for these reasons and those stated above in Section I.A,

Plaintiffs are likely to succeed on their claim under 5 U.S.C § 706(2)(B). *See Am. Pub. Health Ass'n v. Nat'l Inst. of Health*, 786 F. Supp. 3d 237, 256 (D. Mass. 2025) ("An analysis of whether agency action violates the APA because it is contrary to constitutional right mirrors the analysis of whether the agency action violates the relevant constitutional provision.").

b) ICE's Retention Policies Are Arbitrary and Capricious.

ICE's policy, both the unlawful elements of the Confiscation Directive and the De Facto Policy, permitting or requiring indefinitely retaining personal property absent a legitimate justification for doing so, is arbitrary and capricious. The APA directs courts to "set aside agency action…found to be…arbitrary [and] capricious." 5 U.S.C. § 706(2)(A). Agency action is arbitrary and capricious when the agency fails to "examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made." *Motor Vehicle Mfrs. Assoc. of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (internal quotations omitted). At the preliminary injunction stage, without any discovery, the arbitrary and capricious analysis "focuses on the rationality of the action taken by the agency." *Ahmed*, 2025 WL 229447, at *17. "The APA requires a rational connection between the facts, the agency's rationale, and the ultimate decision." *Id.* at *18. An action fails that test when the agency "fails to articulate any legitimate basis for its decision." *Id.* (internal quotations omitted). The Confiscation Directive and the De Facto Policy each fail that test in two ways.

First, ICE has given no explanation for permitting or requiring agents to retain papers and other property when there is no legitimate justification for doing so or for requiring that released individuals request return of their property. ICE has failed to provide any legitimate justification when it adopted the policies or when it released the Plaintiffs without returning their property. At no point has ICE provided any form of explanation to Plaintiffs or class members as to why ICE's retention of their personal property was necessary or appropriate. *See id.* (agreeing with plaintiffs

that when an agency "fails to articulate any legitimate basis for its decision, it cannot satisfy even deferential review under the APA"). "Prior cases have held time and again that an agency's failure to offer a satisfactory explanation makes the decision arbitrary or capricious." *Citizens for Resp. & Ethics in Washington v. FEC*, 2025 WL 833075, at *4 (D.D.C. Mar. 17, 2025).

Any p*ost hoc* basis ICE may offer for the ongoing retention of personal property, especially critical identification and permitting documents, will fall short of justifying the challenged policies as the challenge here is limited to retention of papers and other property when they are not contraband and are not reasonably necessary to prove a crime or to prove identity in an immigration proceeding. For example, Luna Ardila has never been convicted of any crime, *see* Ex. C ¶ 3, nor is she aware of any reason as to why her property must be retained. ICE has failed to provide any reason for its ongoing retention. Similarly, ICE never provided Tot Quip with any reason as to why it had to retain his property, which included his passport—*which ICE retained when it unlawfully deported him*. Ex. F ¶¶ 7, 10. Vigil has also not been given any sort of explanation regarding the need to retain his identification. Ex. G ¶ 8. ICE has not provided Gonzalez with any explanation of a law enforcement purpose behind its retention of his Social Security Card and EAD. Ex. A ¶ 6. ICE has not provided any explanation as to why ICE has retained Izmailov's driver's license, EAD, and even his wedding ring. Ex. E ¶ 11. None of these Plaintiffs is subject to any criminal proceeding that could hypothetically justify ICE's ongoing retention of their property, and one of them was already unlawfully deported and ICE was instructed to facilitate his return to the United States, a process made more burdensome because ICE failed to return his passport. Ex. F ¶ 8. The same is true for other class members. *Supra* Statement of Facts.

Second, there is no rational explanation for routinely retaining property nationwide when the property is not contraband and is not reasonably necessary to prove a crime or to prove identity

in an immigration proceeding. *See Ahmed*, 2025 WL 2299447, at *18 (reasoning that the agency's decision to terminate student visa records on a national scale, without individualized review, triggering immigration consequences, is arbitrary and capricious). Plaintiffs and members of the class were held in civil immigration detention. Once ICE released them, the initial reason to seize their EAD, identification documents and other property ended. Yet ICE's policies default to continued retention of property that is not contraband and is not reasonably necessary to prove a crime or to prove identity in an immigration proceeding and ICE has implemented those policies nationwide. ICE has failed to even provide Plaintiff and class members with certified copies of essential papers, as the Confiscation Directive discusses but, apparently, in ICE's view, does not require. This property is not easy or free to replace, and its retention serves no law enforcement or civil immigration enforcement purpose.

ICE's failure to articulate any basis, let alone a legitimate basis, for its policies permitting or requiring indefinite retention of Plaintiffs' personal property when the policies were adopted or at the time individuals are released from custody without their property speaks volumes. ICE's property retention conduct has national reach. *Supra* Statement of Facts at 11–19. Courts across the country have recognized these problems. *Supra* Statement of Facts at 12. They are not isolated. This Court has recognized that agency action taken on "such a massive scale" without making individualized determinations is likely both arbitrary and capricious. *See Ahmed*, 2025 WL 2299447, at *18 (internal quotations omitted). Plaintiffs are therefore likely to prevail on the arbitrary and capricious prong of their APA claims.

II. PLAINTIFFS AND THE PROPOSED CLASS WILL SUFFER IRREPARABLE HARM WITHOUT A PRELIMINARY INJUNCTION.

Plaintiffs and the proposed class will suffer irreparable harm without a preliminary injunction. Every day that ICE retains their identification documents, Plaintiffs live in fear of being

detained again because they cannot prove who they are or that they are lawfully present in this country. Every day ICE keeps the documents, Plaintiffs are exposed to arrest and re-detention, and possibly deportation. They fear leaving their homes and traveling generally. The ongoing deprivation of their property also has harmed Plaintiffs, and threatens imminent future harm, in other profound ways. Without EADs, Plaintiffs have lost, and will continue to lose, the ability to work lawfully and the accompanying wages they need to support themselves and their families and to avoid housing insecurity or homelessness. Without driver's licenses, Plaintiffs cannot lawfully drive. These harms are not theoretical, and they cannot be remedied after a final judgment. They will continue unless Defendants are enjoined from violating the Fourth Amendment and implementing the De Facto Policy and the unlawful elements of the Confiscation Directive.

To establish irreparable harm, Plaintiffs must show that: (1) the injury is "both certain and great" and "actual and not theoretical"; (2) "[t]he injury complained of [is] of such imminence that there is a clear and present need for equitable relief to prevent irreparable harm"; and (3) the injury is "beyond remediation." *Ramirez v. U.S. Immigr. & Customs Enf't*, 310 F. Supp. 3d 7, 31 (D.D.C. 2018) (alterations and emphasis in original) (internal citations and quotations omitted). To prove that an injury is certain, great, and actual, Plaintiffs must demonstrate that the injury is "so imminen[t] that there is a clear and present need for equitable relief to prevent irreparable harm." *League of Women Voters of the U.S. v. Newby*, 838 F.3d 1, 8 (D.C. Cir. 2016) (alterations in original) (internal quotations omitted). Plaintiffs satisfy each requirement.

A. Defendants' Retention Exposes Plaintiffs and Class Members to Re-Detention.

ICE's indefinite retention of Plaintiffs' property causes several ongoing harms. The most serious is the threat to Plaintiffs' liberty. In a cruel Catch-22, ICE has left Plaintiffs exposed to arrest and re-detention for lacking the very documents ICE confiscated. Federal law requires

noncitizens eighteen years of age and over to carry proof of their registration at all times, and failing to do so is punishable by fine and imprisonment. 8 U.S.C. § 1304(e); Alien Registration Form and Evidence of Registration, 90 Fed. Reg. 11793, 11794 (Mar. 12, 2025). The Administration has made enforcing registration requirements a priority. Protecting the American People Against Invasion, 90 Fed. Reg. 8443, 8444 (Jan. 20, 2025); Alien Registration and Evidence of Registration 90 Fed. Reg. at 11795. ICE is acting on that priority. Ex. B ¶ 6.

Yet ICE has confiscated the very documents that constitute evidence of registration, including Plaintiffs' and proposed class members' Permanent Resident Cards and EADs, forcing them out of compliance with federal law. For example, ICE has left Plaintiffs and proposed class members without even a copy of the documents they are required to carry. *See, e.g.*, Ex. G ¶ 6; Ex. B ¶ 6; Ex. E ¶ 11; Ex. F ¶ 7; Ex. R ¶ 12. When an officer asks for their papers, they have nothing to show—not the original, and not the certified copy ICE could have easily given them. They thus cannot, despite their best efforts, comply with the law. ICE's practice of and policies permitting the indefinite withholding of these documents cause serious irreparable harm that cannot be remedied after a final judgement.

The risk of re-detention is not abstract. Hernandez is afraid to leave his house because ICE is highly active in Indianapolis and often asks people for identification, and he has none to show. Ex. D ¶ 12. Luna Ardila and Izmailov fear that, if they encounter ICE again, they will be unable to prove their identity or legal status and will be detained again—and their fears are justified. Ex. C ¶ 17; Ex. E ¶ 20. And in Tot Quip's case, ICE deported him and did not return his passport and, despite a court order barring his deportation and requiring his return, he could not re-enter the country without first obtaining, after delay and expense, a replacement passport. Ex. F ¶¶ 5, 8. Soto Medina spent months afraid to walk outside for the same reason, and his young daughter cries

every time he leaves the house. Ex. J ¶ 8. SEIU members released without their papers report fearing to travel even short distances without identification and worry that ICE will re-detain them if they walk, take the bus, or ride as a passenger in a car without their documents. Ex. AA ¶ 20. For Ramirez, the threat has already materialized: because ICE told him to self-deport or face re-detention when he requested a replacement EAD. Ex. B ¶ 6.

Courts in this District have repeatedly held that this kind of threatened re-arrest and detention causes irreparable harm. Just last year, in granting a preliminary injunction against DHS and ICE, Judge Howell rejected the government's argument that the risk of re-arrest was "merely speculative." The court held that plaintiffs faced irreparable harm because they were "subject to a much heightened risk of such re-arrest." *Escobar Molina*, 811 F. Supp. 3d at 51. "The D.C. Circuit and courts in this District have widely held that an 'irreparable loss of personal liberty…would follow from an arrest.'" *Id.* (quoting *Rubinstein v. Brownell*, 206 F.2d 449, 456 (D.C. Cir. 1953)) (citing *Aracely, R. v. Nielsen*, 319 F. Supp. 3d 110, 155 (D.D.C. 2018) ("Courts in his and other jurisdictions have found that deprivations of physical liberty…are the sort of actual and imminent injuries that constitute irreparable harm.")). "'[B]eing shackled and detained' is so 'serious [an] infringement on one's personal freedoms' that even 'a few hours' of detention has been found to constitute irreparable harm." *Id.* (alterations in original) (quoting *N.S. v. Hughes*, 335 F.R.D. 337, 351–52 (D.D.C. 2020), *injunction vacated on other grounds sub nom. N.S. v. Dixon*, 141 F.4th 279 (D.C. Cir. 2025)).

Plaintiffs' and the proposed class members' risk is equal to, if not greater than, the risk the *Escobar Molina* plaintiffs faced. There, the court found the threat of re-arrest "real and immediate" because the government had a policy authorizing the challenged conduct, the plaintiffs were among those the policy targeted, and they could not "avoid…the quotidian conduct" that puts them

at risk of arrest. *Id.* at 33–34; *see id.* at 33 ("[W]hen the threatened acts that will cause injury are authorized or part of a policy, it is significantly more likely that the injury will occur again." (quoting *Hinton v. District of Columbia*, 567 F. Supp. 3d 30, 49 (D.D.C. 2021)).

The facts here present a high risk of re-arrest. ***First***, ICE's violations of the Fourth Amendment and property retention policies are the reason Plaintiffs lack their papers. Plaintiffs are noncitizens subject to ICE's enforcement, check-ins, and registration requirements. ***Second***, Plaintiffs cannot avoid the ordinary activities—commuting to work, driving, walking outside, appearing at ICE check-ins—that bring them into contact with officers who may demand the very documents ICE kept. *See* Ex. D ¶ 12; Ex. C ¶¶ 4, 17. And ***third*****,** unlike the *Escobar Molina* plaintiffs, who needed to show that agents would *again* disregard the law, Plaintiffs here are exposed to seemingly lawful arrest for an "offense" that ICE itself has forced them to commit by retaining their documents. Courts in this District have recognized irreparable harm where the government strips a noncitizen of a prerequisite document that it will later fault him for lacking. *See Ahmed*, 2025 WL 2299447, at *19 (concluding that "the defendants, by depriving the plaintiff of the very record he needs to demonstrate to potential employers that he falls within the previously noted statutory exemption as an F-1, nonimmigrant student and reapply with USCIS for work reauthorization with an OPT employer, have irreparably harmed for [sic] the plaintiff.").

Defendants will likely argue that Plaintiffs can recover their property, or damages equal to its value, at the end of this case. That misses the harm caused by the fear and real possibility of re-detention. As courts in this District have long recognized, "[u]nlike economic harm, the harm from detention pursuant to an unlawful policy cannot be remediated after the fact." *R.I.L-R*, 80 F. Supp. 3d at 191; *see also Escobar Molina*, 811 F. Supp. 3d at 51. Such "harm from detention surely cannot be remediated after the fact and is a quintessential irreparable harm." *Ramirez*, 310 F. Supp.

3d at 31. Every day ICE keeps Plaintiffs' identity and status documents, Plaintiffs face the fear and risk of re-detention. And they cannot take steps on their own to protect themselves from it, because the only cure is the recovery of the property ICE refuses to return.

Nor can Plaintiffs and proposed class members replace what ICE took. The government agencies that could issue replacements routinely require other documents ICE also kept. Ramirez cannot obtain a new Social Security card or driver's license without a work permit. He cannot obtain a work permit because ICE kept his papers and his new permit was never issued. Ex. B ¶ 6. The California DMV will not issue Izmailov a new license without the EAD ICE kept, and ICE now says that document was "most likely destroyed." Ex. E ¶¶ 15, 16. Luna Ardila cannot upgrade her learner's permit because ICE has the original card, and it is difficult to replace any of her documents without the originals or other identification to cross-reference—which ICE has not returned to her. Ex. C ¶¶ 10, 14. These stories are not isolated. Ex. M ¶¶ 6–8; Ex. F ¶¶ 7–8. The result is a negative feedback loop that dooms Plaintiffs' efforts to recover what has been taken unlawfully from them. In addition, where ICE has retained an EAD, Plaintiffs and other class members often cannot afford to replace it, and without it, cannot earn wages to ultimately pay for a replacement. Moreover, the agencies that issue replacement documents, including EADs, subject applicants to extended delays. As a result, Plaintiffs and other class members cannot gain employment at all. Defendants have trapped Plaintiffs in a quagmire of ICE's own making.

B. Defendants' Retention Exposes Plaintiffs and Class Members to Housing Insecurity.

The violations of the Fourth Amendment and ICE's policies also cost people their homes. Without an EAD, non-citizens cannot work. Without work, they cannot pay rent. Ramirez is now homeless because ICE kept the documents he needs to obtain employment. Ex. B ¶ 7. Izmailov, once a truck driver who supported his wife and two sons, cannot find stable work, and his family

is borrowing money just to afford housing. Ex. E ¶¶ 2, 16. Vigil fell behind on rent during the three weeks he could not get to work without his car keys ICE kept. Ex. G ¶ 9. In Maine, a man whose work permit was valid until 2030 has been unable to work since ICE released him in March without it. He cannot pay rent and faces eviction. Ex. EE ¶ 13. And the loss of housing is not merely because of ICE retaining people's EADs. Indeed, even people who *can* pay are shut out of housing. A person released without a passport, consular ID, or state ID often cannot sign a lease or set up utility service. Ex. U ¶ 13. An Immigrant Defenders Law Center client could not complete intake for interim housing through the Los Angeles Homeless Services Authority without the passport ICE kept. Ex. X ¶ 9. ICE injures these people when they are most vulnerable: at the moment of release, when they usually have no income and are trying to maintain or re-establish housing for themselves and their families. Ex. U ¶ 15.

Defendants also cannot avoid this conclusion by recasting Plaintiffs' lost wages and lost job opportunities as mere economic harm. The "beyond remediation" inquiry asks whether "adequate compensatory or other corrective relief" will be available "at a later date." *Ahmed*, 2025 WL 2299447, at *18 (internal quotations omitted). Although "economic loss does not, in and of itself, constitute irreparable harm," economic harm "may qualify as irreparable … where a plaintiff's alleged damages are unrecoverable." *Id*. (cleaned up). Indeed, "the recoverability of monetary losses can, and should, have some influence on the irreparable harm calculus." *Id*. (quoting *Nat'l Mining Ass'n v. Jackson*, 768 F. Supp. 2d 34, 53 (D.D.C. 2011)). Plaintiffs' losses are unrecoverable as a matter of law. Plaintiffs sue federal agencies under the Constitution and the APA, which waives sovereign immunity only for actions "seeking relief other than money damages." 5 U.S.C. § 702; see *Ahmed*, 2025 WL 2299447, at *14. No later judgment in this case can result in paying Plaintiffs back for the wages they lose, or the jobs they must turn down, while

ICE keeps their EADs. That makes the harm irreparable by definition.

Ahmed is particularly instructive. *See* 2025 WL 2299447, at *20, *22 (finding that "the plaintiff has satisfied his burden to show irreparable harm" and granting a preliminary injunction ordering the government to "immediately and fully reinstate [the plaintiff's] SEVIS record, retroactive to the date of termination") (alterations in original) (internal quotations omitted). There, DHS's termination of an F-1 student's SEVIS record cost him his employment, and he could not "mitigate the financial loss he ha[d] suffered by seeking renewed work authorization" without the record DHS had taken from him. 2025 WL 2299447, at *20. The court held that this rendered "his economic loss irretrievable" and that "adequate compensatory or other corrective relief . . . at a later date" would be "insufficient." *Id.* (internal quotations omitted). Plaintiffs and putative class members are in the same position. Luna Ardila has been forced to turn down five better employment opportunities, because she cannot present the EAD ICE kept. Ex. C ¶¶ 13–14. Gonzalez cannot find work without his EAD. Ex. A ¶ 7. As in *Ahmed*, Plaintiffs and putative class members cannot mitigate these losses, because the only solution is the work authorization documents ICE refuses to return. These losses are also "serious in terms of [their] effect on the plaintiff[s]." *Ahmed*, 2025 WL 2299447, at *18 (internal quotations omitted). ICE's retention of EADs forcing lost wages compounds other harms Plaintiffs and putative class members face. Izmailov's family is borrowing money to afford his rent, and Ramirez is homeless and cannot afford necessary medication for his heart condition. Ex. E ¶¶ 16; Ex. B ¶ 6. This Court has held that where economic loss may lead to housing instability, it can create irreparable harm to support a preliminary injunction. *See, e.g.*, *Lee v. Christian Coal. of Am., Inc*., 160 F. Supp. 2d 14, 31–32 (D.D.C. 2001) (holding plaintiffs were likely to suffer irreparable harm absent an injunction where evidence indicated their reduced income would result in food insecurity, difficulty caring for their

families, and housing instability); *Williams v. Walsh*, 619 F. Supp. 3d 48, 65 (D.D.C. 2022) (*quoting Wisc. Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985)) (downstream effects of economic losses, such as food insecurity and housing instability, may constitute irreparable harm if the plaintiff can support the existence of such circumstances with substantial evidence).

The Supreme Court has recognized that, even if loss of wages does not ordinarily cause irreparable harm, there may be "circumstances surrounding an employee's discharge, together with the resultant effect on the employee, may so far depart from the normal situation that irreparable injury might be found . . . [W]e do not wish to be understood as foreclosing relief in the genuinely extraordinary situation." *Sampson v. Murray*, 415 U.S. 61, 92 n. 68 (1974). The unique circumstances of individuals just released from detention where they were already deprived of wages, who are overwhelmingly low-wage workers and often non-English speakers, and who face other serious obstacles to employment present such an "extraordinary situation."

Because Plaintiffs are barred from ever recovering what they lose economically while this case is pending, and because the unique circumstances of non-citizens recently released from detention result in peculiarly grave harms, those losses are irreparable.

C. Defendants' Retention Renders Plaintiffs Unable to Drive and Travel.

Apart from the risk of re-detention, ICE's retention of passports, licenses, and work permits takes away people's practical ability to reach their destinations.

The seizure of a passport can pose particularly unique harms, especially following removal. By removing an individual to a third country without their passport, ICE essentially strands that individual in a country they have never been in before. Ex. CC ¶¶ 10–17. Even when removal is to an individual's home country, the removed person may not be able to prove they are a citizen without a passport and be prevented from connecting with their family in a neighboring country. Ex. L ¶ 18–19. Even with release without removal, seizure of a passport can prevent individuals

from getting on domestic flights. Ex. T ¶ 19.

The punishment of forced family separation can take a tragic turn. ICE refused Hernandez Reyes's repeated requests for her passport, or even a copy, which she needed to obtain a U.S. passport for her two-year-old son so he could leave with her, and then deported her without it. Ex. Q ¶¶ 11–14. While she worked tirelessly to replace the document ICE kept, her son was beaten, stomped on, burned with a lighter, and sexually battered and he died of multiple blunt force traumas. *Id.* ¶¶ 15, 17; Sacchetti. Her replacement passport was issued the same day she learned he was killed. Ex. Q ¶ 18. As she explains, her passport "was not simply a document that [she] could replace later. It was the identification [she] needed to see [her] son again." *Id.* ¶ 27. There is no remedy for this. No final judgement can return Orlin to his mother. This is irreparable harm in its most tragic form.

The problem compounds itself because state motor-vehicle agencies will not reissue a license without the EAD that ICE also kept. The California DMV refused to issue Izmailov a new license without his work authorization. A man who earned his living as a truck driver can no longer drive at all. Ex. E ¶¶ 2, 16–18. Fajardo Medina also works as a driver. Her local DMV told her it cannot issue a new license without her EAD, and a replacement EAD could take 15 months. In the meantime, she has no way to reach Oregon to bring home her two-year-old son. Ex. N ¶¶ 8–9. An Amica Center client in Maryland likewise is forced to depend on friends and family to drive him where he needs to go. Ex. FF ¶ 9. Local 663 members, who work in jobs requiring valid identification and work authorization, likewise have struggled to reach their worksites without the documents ICE kept. Ex. BB ¶¶ 6, 13

For others, the harm began the moment ICE released them. Y.I.M. was released in Kentucky with no license and no money. As a result of ICE's property retention, he walked roughly

two hours before he found a way back to Illinois. Ex. K ¶ 11. Two brothers were released at night in El Paso, hundreds of miles from home, with no phones, money, or identification. Ex. DD ¶ 10.

Even replacing retained documents requires trips that these people cannot easily make. Luna Ardila can replace her Colombian passport only in Chicago, and she cannot drive there on her learner's permit that she is unable to upgrade because she requires the document ICE confiscated. Ex. C ¶¶ 12, 16. These harms are not abstract. They are measured in missed work shifts, drop offs at school, and doctors' appointments. These harms increase by the day as ICE continues to withhold property.

Accordingly, the loss of an identification document is not an isolated injury. It is the first link in a chain of harms that, taken together, cannot be undone by any later judgment. *See Ahmed*, 2025 WL 2299447, at *19–20 (defendants action left plaintiff unable to "mitigate the financial loss he ha[d] suffered by seeking renewed work authorization," which, combined with his inability to "meet rent and other living expenses," his "ongoing insomnia, anxiety, fear of detention, and emotional distress," and the threatened interruption of his training, rendered "adequate compensatory or other corrective relief…at a later date" insufficient).

Taking Plaintiffs' and other class members' driver's license or passport may cause irreparable harm in the form of the inability to travel. *See Parham v. District of Columbia*, 648 F. Supp. 3d 99, 104 (D.D.C. 2022) (holding that, without a driver's license, "Plaintiffs have shown ongoing harm as it relates to their day-to-day lives. Specifically, Plaintiffs have trouble finding and keeping work, buying groceries, accessing medical care, caring for children and aging parents."), *vacated*, 2023 WL 10151420 (D.D.C. May 15, 2023) (vacating the order at the parties' request after settlement); *Stinnie*, 355 F. Supp. 3d at 532 (holding that plaintiffs suffered irreparable harm when they were deprived of their driver's licenses in the form of difficulty

carrying out everyday tasks, lost time with loved ones, lost employment opportunities, and challenges commuting to work); *O Centro Espirita Beneficente Uniao do Vegetal v. Duke*, 286 F. Supp. 3d 1239, 1265 n.17 (D.N.M. 2017) ("The Court understands that [a plaintiff] may have other irreparable harms, such as being unable to travel domestically due to not having a valid driver's license."). For Plaintiffs and putative class members, the confiscation restricting travel has cascaded into lost jobs, unpaid rent, homelessness, and the inability to replace other documents. As in *Ahmed*, the only way to break that chain is to grant a preliminary injunction requiring return of the document ICE has refused to give back.

D. Defendants' Ongoing Deprivation of Plaintiffs' Property Violates Their Constitutional Rights.

ICE's retention of property also inflicts an ongoing violation of Plaintiffs' constitutional rights, and that violation alone causes irreparable harm. "It has long been established that the loss of constitutional freedoms, 'for even minimal periods of time, unquestionably constitutes irreparable injury.'" *Mills v. District of Columbia*, 571 F.3d 1304, 1312 (D.C. Cir. 2009) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality opinion)); *see also Karem v. Trump*, 960 F.3d 656, 667 (D.C. Cir. 2020) (affirming grant of preliminary injunction in part because "a prospective violation of a constitutional right constitutes irreparable injury for...purposes" of "seeking equitable relief.") (quoting *Gordon v. Holder*, 721 F.3d 638, 653 (D.C. Cir. 2013)); *Doe v. Blanche*, 2026 WL 1642068, at *10 (D.D.C. June 7, 2026) (granting plaintiffs' motion for a preliminary injunction because they had successfully established a likelihood of success on their Eighth Amendment constitutional claims and would therefore "face irreparable harm in the absence of preliminary relief"). That principle applies to the continuing, unreasonable seizure of property. *See Ross v. Meese*, 818 F.2d 1132, 1134–35 (4th Cir. 1987) (finding that if plaintiff can

prove the merits of her case, then the district court had authority to order injunctive relief to remedy violations of the Fourth Amendment.)

ICE has shown no intention of stopping its unconstitutional practices. Luna Ardila's documents remain with ICE more than seven months after her February 2026 release, despite her repeated efforts. Ex. C ¶¶ 7–8. Vigil's property remains with ICE nearly eight months after his release, despite months of inquiries from his congresswoman's office. Ex. G ¶¶ 7–8. ICE told Gonzalez's attorney there were no documents in his file, then stopped responding. Ex. A ¶ 6. ICE has no explanation at all. Ex. G ¶ 6; Ex. B ¶ 6; Ex. F ¶ 10. ICE has ignored even a federal court: After a court ordered ICE to coordinate reissuance of at least one person's work permit, ICE still had not done so. Ex. V ¶ 7. Complaints to DHS oversight offices on behalf of at least 15 people have recovered nothing. Ex. Y ¶ 10. And after a court ordered one person released under a preliminary injunction, ICE took ten months to return even his passport. Ex. O ¶¶ 7, 12–13. Congressional inquiries have also been unsuccessful. Ex. G ¶¶ 7–8.

Plaintiffs' experiences are not isolated. Defendants have retained property without any justification across the country, stripping people of their passports, driver's licenses, EADs, Social Security cards, medication, and other personal property. *See supra* Statement of Facts; Ex. J ¶ 4; Ex. K ¶¶ 3–6; Ex. P ¶¶ 4–11; Ex. M ¶¶ 5–9; Ex. Z ¶¶ 4–5. Unless it is stopped, ICE will do the same to more people, exposing them to re-arrest, cutting off access to medical care, leaving them unable to work, and forcing them to pay for replacements they cannot afford. This is a nation-wide practice implemented pursuant to policy—the threat of continuing harm is imminent. *Escobar Molina*, 811 F. Supp. 3d at 33 ("[W]hen the threatened acts that will cause injury are authorized or part of a policy, it is significantly more likely that the injury will occur again." (quoting *Hinton v. District of Columbia*., 567 F. Supp. 3d 30, 49 (D.D.C. 2021)).

III. THE BALANCE OF EQUITIES WEIGH IN PLAINTIFFS FAVOR AND AN INJUNCTION SERVES THE PUBLIC INTEREST.

The balance of equities weighs in favor of issuing a preliminary injunction, and such an injunction serves the public interest. This Court has recognized that the "enforcement of an unconstitutional law is always contrary to the public interest." *Gordon v. Holder*, 721 F.3d 638, 653 (D.C. Cir. 2013). The indefinite retention of property not only violates the Fourth Amendment and the APA, but it has impacted countless people across the country, subjecting them to harms unjustified by any reasonable governmental interest. Requiring ICE to comply with the Fourth Amendment and the APA is consistent with the public interest, and the equities plainly weigh in favor of Plaintiffs. ICE may invoke a need for retention of identification documents to facilitate removal proceedings, but that rationale would explain, at most, retaining a *single* travel document—and it does not justify ICE's failure to provide certified copies of the documents. Not would it explain indefinitely withholding entire sets of identity papers, depriving people of their EADs so that they cannot work, or holding on to everyday possessions like phones, keys, wallets, and clothing. The requested injunction would require ICE to do only what the law already requires and would in no way interfere with ICE's ability to retain papers or other property when the property is contraband or is reasonably necessary to prove a crime or to prove identity in an immigration proceeding.

Notably, the injunction Plaintiffs seek does not hinder in any way ICE's authority to arrest or detain people, remove noncitizens, seize and inventory property during custody, or retain contraband, or property ICE may need to prove a crime or identity in an immigration proceeding. And compliance with the requested injunction is practical to the extent ICE inventories and tracks the retained property as it should and as other law enforcement agencies

across the country routinely do.[5] To the extent ICE has failed to orderly maintain property to date, ensuring that it maintain seized property and track its whereabouts so that it is able to return it in the future is reasonable and practicable. To the extent Defendants invoke the administrative burden of nationwide relief, that burden is no more than the burden of establishing standard police practices and is of their own making.

Finally, because the entry of an injunction will not harm the Defendants, the security required by Fed. R. Civ. P. 65(c) should be set at $1. *See DSE, Inc. v. United States*, 169 F.3d 21, 33 (D.C. Cir. 1999) ("The language 'in such sum as the court deems proper' has been read to vest broad discretion in the district court to determine the appropriate amount of an injunction bond."); *J.G.G. v. Trump*, 2025 WL 1577811, at *31 (D.D.C. June 4, 2025), *vacated and remanded on other grounds*, 2025 WL 2317650 (D.C. Cir. Aug. 8, 2025) ("In light of the circumstances and nature of this case, [the Court] finds that a nominal amount is proper and exercises its discretion to require Plaintiffs to collectively post $1.00.").

IV. PROVISIONAL CLASS CERTIFICATION IS WARRANTED.

This Court should provisionally certify the following class and subclasses to grant preliminary injunctive relief:

Property Return Class: All persons who have been or will be detained for civil immigration purposes on or after January 20, 2025, whose property ICE obtains in connection with that detention and whose property ICE does not return following the person's release from detention

[5] Plaintiffs only request ICE implement standard practices among law enforcement agencies. *See, e.g.*, Commission on Accreditation for Law Enforcement Agencies, Standards for Law Enforcement Agencies, Sections 84.1.1–8 (Aug. 7, 2026); Council of the District of Columbia, § 41–303. Seizure; pre-seizure hearings for real property, https://code.dccouncil.gov/us/dc/council/code/sections/41-303 (last visited Oct. 17, 2026); New York Police Department, Reclaim Property from NYPD, https://portal.311.nyc.gov/article/?kanumber=KA-03377 (last visited Oct. 27, 2026); Los Angeles Police Department, Los Angeles Police Department Manual, Sections 645.05–30, https://lapdonlinestrgeacc.blob.core.usgovcloudapi.net/lapdonlinemedia/VOLUME_4_Q3_2025_Updates_from_4_1_25_to_9_30_25_.pdf (2025).

(including through removal from the United States), except where the property is contraband or reasonably necessary to prove a crime or identity.

Subclass 1: All persons who have been or will be detained for civil immigration purposes on or after January 20, 2025, whose document or documents ICE obtains in connection with that detention and whose document or documents ICE does not return following the person's release from detention (including through removal from the United States), except where the property is contraband or reasonably necessary to prove a crime or identity.

"Plaintiffs … need only provisional class certification in order for the Court to grant their preliminary injunction." *Damus v. Nielsen*, 313 F. Supp. 3d 317, 329 (D.D.C. 2018). Although "[i]n granting such provisional certification, the Court must still satisfy itself that the requirements of Rule 23 have been met," the Court's "analysis is tempered…by the understanding that such certifications may be altered or amended before the decision on the merits." *Id.* internal citations omitted). This Court repeatedly has provisionally certified class actions for purposes of granting a preliminary injunction. *See, e.g.*, *L.G.M.L. v. Noem*, 800 F. Supp. 3d 100, 134 (2025); *Charles H. v. District of Columbia*, 2021 WL 2946127, at *14 (D.D.C. June 16, 2021); *P.J.E.S. ex rel. Francisco v. Wolf*, 502 F. Supp. 3d 492, 509, 520–21 (D.D.C. 2020), *vacated on other grounds by P.J.E.S. ex rel. Francisco v. Mayorkas*, 2022 WL 17246563, at *1 (D.C. Cir. Oct. 17, 2022); *Damus*, 313 F. Supp. 3d at 343; *Kirwa v. U.S. Dep't of Def.*, 285 F. Supp. 3d 21, 44 (D.D.C. 2017).

Plaintiffs' earlier filed motion for class certification and accompanying exhibits, Dkt. 19, demonstrate that the proposed class and each subclass satisfy the requirements of Rule 23(a) and (b)(2). The class and subclasses are sufficiently numerous, Fed. R. Civ. P. 23(a)(1). *See* Dkt. 19 at 15–18. Joinder is also impracticable because both subclasses include future members, as well as individuals who will be difficult to locate and join. *Id.* The class also satisfies the commonality requirement, Fed. R. Civ. P. 23(a)(2), because the key legal issues in this action, *id.* at 18–20, are "generally applicable to the class." *Steele v. United States*, 159 F. Supp. 3d 73, 79 81 (D.D.C. 2016). These common issues can be resolved as to the class as a whole, without individualized

determinations. Dkt. 19 at 18–20. The class also satisfies the typicality requirement in Rule 23(a)(3). *Id.* at 20–21. Finally, the class satisfies the adequacy requirement in Rule 23(a)(4) because Plaintiffs do not have any interest that is antagonistic to the interests of unnamed members of the subclasses they seek to represent. *Id.* at 21–23. Plaintiffs and putative class members have also suffered the same injury arising from Defendants' De Facto Policy and Confiscation Directive causing ICE to seize property after well after its legitimate interest in it has expired. *Id.*

Provisional class certification under Rule 23(b)(2) is appropriate because Defendants have acted, threatened to act, and—absent the relief requested here—will continue to act on grounds generally applicable to the class and each subclass by failing to return documents and other property seized from people detained for civil immigration purposes despite lacking any legitimate interest in those items, and the injunctive and declaratory relief Plaintiffs seek would benefit the entire class and each subclass. *Id.* at 23–25. Finally, Plaintiffs' counsel are experienced litigators with expertise in federal litigation, including class actions, immigration law, civil rights, and constitutional and administrative law, and are qualified to serve as counsel for the provisionally certified class and subclasses. *Id.* at 25–26.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant this motion and enter the Proposed Order, filed contemporaneously with this motion, which would provide the following relief. First, the Court should provisionally certify two classes, as set forth in Section IV, and appoint Plaintiffs' counsel as class counsel. Second, the Court should order Defendants to return the specifically identified property of each named Plaintiff within 14 days, unless an item is contraband or reasonably necessary to prove a crime or identity in an immigration proceeding. For any property Defendants do not return, they should be required to: (a) file a sworn declaration from the responsible official stating the item's current location, the basis for its retention, and, for

any non-contraband item, when and on what condition it will be released; and (b) give the owner a certified copy of any withheld identity document. Third, the Court should stay the De Facto Policy under 5 U.S.C. § 705 pending the outcome of this litigation. Fourth, the Court should require Defendants to comply with ICE Policy No. 11311 as to all Document Subclass members. Fifth, the Court should stay the provisions of ICE Policy No. 11311 that let ICE officers retain documents that are neither contraband nor reasonably necessary to prove a crime or identity in an immigration proceeding, specifically those provisions in Sections 2.3, 4.4, 5.2, 5.3, 5.5, and 5.8, except that officers may keep the foreign identity documents of individuals under final orders of removal to carry out removal, so long as they return them at the time of removal. Finally, the Court should direct the parties to meet and confer and, within 30 days, file a joint status report proposing (a) a process for returning to all class members, within 60 days of the order, any property retained under the De Facto Policy or ICE Policy No. 11311 that is not contraband or reasonably necessary to prove a crime or identity in an immigration proceeding; and (b) any changes to any policy needed to make ICE's directives on keeping detainees' property constitutional.

Dated: October 30, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 30, 2026, I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the District of Columbia by using the CM/ECF system. Because no counsel has yet appeared for Defendants, I further certify that on the same day I caused a copy of the foregoing, together with the proposed order, to be served on the United States Attorney's Office for the District of Columbia, Civil Division, by e-mail to USADC.ServiceCivil@usdoj.gov, e-mailing courtesy copies to OGC@hq.dhs.gov and OPLAServiceIntake@ice.dhs.gov, in accordance with Federal Rule of Civil Procedure 5(b).

Dated: October 30, 2026

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