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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

CARMEN ARACELY PABLO SEQUEN,
YULISA ALVARADO AMBROCIO,
MARTIN HERNANDEZ TORRES, and
LIGIA GARCIA,

Plaintiffs-Petitioners,

v.

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

Defendants-Respondents.

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

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR STAY OF AGENCY ACTION UNDER 5 U.S.C. § 705; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Date: November 20, 2025
Time: 10:00 a.m.
Courtroom: 8

Trial Date: None Set

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR STAY OF AGENCY ACTION**UNDER 5 U.S.C. § 705**

PLEASE TAKE NOTICE THAT on November 20, 2025, at 10:00 a.m., or as soon thereafter as counsel may be heard, in Courtroom 8 of the United States District Court, Northern District of California, San Jose Division, located at 280 South 1st Street, San Jose, CA 95113, Plaintiffs-Petitioners Carmen Aracely Pablo Sequen, Ligia Garcia, and Yulissa Alvarado Ambrocio ("Plaintiffs"), on behalf of themselves and those similarly situated will and hereby do move this Court under Federal Rule of Civil Procedure 65 and 5 U.S.C. § 705 of the Administrative Procedure Act ("APA") for a stay of final agency action under 5 U.S.C. § 705 to prevent Defendants from causing further irreparable harm to Plaintiffs before the Court can consider the merits of this case. As set forth in the Memorandum of Points and Authorities in support of this motion, Defendants' actions violate the Administrative Procedures Act.

This Motion is made upon the following grounds: (A) Plaintiffs are likely to succeed on the merits of their APA claims, (B) Plaintiffs and the putative class members will suffer irreparable harm absent a stay, and (C) the balance of equities and public interest favor a stay to preserve the status quo.

The Court should therefore order a stay of the application of the ICE Policy Number 11072.3, *Interim Guidance: Civil Immigration Enforcement Actions in or near Courthouses*; ICE Policy Number 11072.4, *Civil Immigration Enforcement Actions In or Near Courthouses*; and the Executive Office for Immigration Review Operating Policies and Procedures Memo 25-06.

This Motion is based on this Notice of Motion, the attached Memorandum of Points and Authorities, the Declarations and Exhibits filed concurrently herewith, all of the pleadings, files, and records in this proceeding, all other matters of which the Court may take judicial notice, and any argument or evidence that may be presented to or considered by the Court prior to its ruling.

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DATED: October 16, 2025

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/s/ Marissa Hatton

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

A fair day in court is a hallmark of the American judicial system. For decades, the federal government ordered noncitizens living in this country to appear in immigration court, and noncitizens relied upon the promise that, no matter their background or resources, they would have an opportunity to be heard in a neutral forum. Within days of the inauguration, however, the government broke that sacrosanct promise. Defendants U.S. Immigration and Customs Enforcement (“ICE”) and the Executive Office for Immigration Review (“EOIR”) both hastily abandoned longstanding practices of abstaining from civil immigration arrests at immigration courthouses—abruptly turning them into unavoidable traps without so much as offering a reasoned explanation for doing so.

Many noncitizens who were ordered to appear in immigration court by the government found themselves inexplicably arrested when they did as they were told. Others faced an impossible choice: either they could adhere to the order to appear, pursue their immigration cases and face arrest and detention, or they could miss their mandatory hearing, forego their immigration cases, and receive an *in absentia* deportation order. Predictably, non-appearances have surged in immigration courts in ICE’s San Francisco Area of Responsibility (“SF AOR”), as individuals make the heart-wrenching decision to abandon their immigration cases to keep their freedom.

Plaintiffs representing a putative class of individuals with hearings on EOIR’s non-detained docket in an immigration court in the SF AOR (“Courthouse Arrest Class”) seek a stay of ICE and EOIR’s courthouse arrest policies because the policies are arbitrary and capricious, in violation of the Administrative Procedures Act.

II. FACTUAL BACKGROUND

A. Courthouse Arrest Policies

For decades, the government refrained from conducting civil immigration arrests at immigration courts. *See, e.g.*, Declaration of Bette Kane Stockton (“Stockton Decl.”) at ¶¶ 10–12 (former immigration judge unaware of any San Francisco immigration courthouse arrests in twenty-one and a half years); Declaration of Shira M. Levine (“Levine Decl.”) at ¶ 4 (former immigration

1 judge unaware of any San Francisco immigration courthouse arrests in ten years prior to May 2025);
 2 Declaration of George Pappas (“Pappas Decl.”) at ¶ 1, 4 (former immigration judge never saw ICE
 3 officers in or around the Chelmsford, Massachusetts Immigration Court between July 2023 and May
 4 2025); Declaration of Milli Atkinson (“Atkinson Decl.”) at ¶ 12 (Attorney of the Day Program
 5 supervisor unaware of any San Francisco immigration courthouse arrests between 2009 and May
 6 2025); Dkt. No. 33–9 (“Zanardi Decl.”) at ¶¶ 7, 11–12 (Attorney of the Day Program supervisor
 7 unaware of any Sacramento immigration courthouse arrests between 2019 and May 2025).

8 The Department of Homeland Security (“DHS”) memorialized its longtime practice of
 9 abstaining from courthouse arrests in 2021. An April 27, 2021 DHS Memorandum precluded ICE
 10 agents from conducting “civil immigration enforcement action . . . in or near a courthouse” except
 11 in limited circumstances, *i.e.*, “a national security threat,” “an imminent risk of death, violence, or
 12 physical harm to any person,” the “hot pursuit of an individual who poses a threat to public safety,”
 13 or the “imminent risk of destruction of evidence material to a criminal case.” Declaration Of David
 14 C. Beach In Support Of Plaintiffs’ Motion For Stay Of Agency Action Under 5 U.S.C. § 705
 15 (“Beach Decl.”), Exh. A (“2021 DHS Memorandum”). In the absence of “hot pursuit,” the policy
 16 permitted ICE to make civil arrests against “an individual who poses a threat to public safety” only
 17 if (1) it was “necessary to take the action in or near the courthouse because a safe alternative location
 18 for such action does not exist or would be too difficult to achieve the enforcement action at such a
 19 location,” *and* (2) “the action [was] approved in advance by a Field Office Director, Special Agent
 20 in Charge, Chief Patrol Agent, or Port Director.” *Id.* at 2. The “core principle[]” underlying the
 21 policy was that “[e]xecuting civil immigration enforcement actions in or near a courthouse may chill
 22 individuals’ access to courthouses, and as a result, impair the fair administration of justice.” *Id.* at
 23 1. DHS therefore limited courthouse arrests “so as not to unnecessarily impinge upon the core
 24 principle of preserving access to justice.” *Id.*

25 On December 11, 2023, EOIR¹ issued Operating Policies and Procedures Memorandum 23-

26
 27 ¹ EOIR is an agency within the Department of Justice responsible for adjudicating immigration cases
 28 through immigration court proceedings, appellate review, and administrative hearings. EOIR was
 created in 1983 through a reorganization that made the immigration courts independent of the

01 which, absent exigent circumstances outlined by DHS, also prohibited civil immigration
 02 enforcement actions in or near an immigration court. Beach Decl., Exh. B (“OPPM 23-01”). In
 03 OPPM 23-01, EOIR articulated four reasons for its policy: (1) that courthouse enforcement actions
 04 would “inevitably produce a ‘chilling effect’ on noncitizens who appear before our immigration
 05 courts;” (2) that such arrests would “disincentivize noncitizens from appearing for their hearings,”
 06 hindering the agency’s efficiency and mission; (3) that such enforcement actions “may create safety
 07 risks for those who may be present during such enforcement actions, including children and adults
 08 appearing for hearings, [Office of the Chief Immigration Judge] employees, and other building or
 09 facilities personnel”; and (4) that a policy against courthouse immigration enforcement would
 10 “reinforce the separate and distinct roles of DHS and [EOIR].” *Id.* at 2.

11 Then, in rapid succession in January 2025, DHS and EOIR abandoned the 2021 DHS
 12 Memorandum and OPPM 23-01 and the decades-long prohibition on arrests at immigration courts
 13 that they reflected. On January 21, 2025, then-acting ICE Director Caleb Vitello issued interim
 14 guidance to ICE that superseded the 2021 DHS Memorandum. Beach Decl., Exh. C (“ICE Interim
 15 Arrest Guidance”). The ICE Interim Arrest Guidance broadly authorized ICE agents to conduct civil
 16 immigration enforcement actions—including arrests, interviews, and searches—in or near
 17 courthouses. *Id.* at 2.

18 The ICE Interim Arrest Guidance listed categories of “target[s],” but expressly stated that
 19 civil immigration enforcement actions are “not limited to” the listed groups. *Id.* The ICE Interim
 20 Arrest Guidance also expressly condoned enforcement against “family members or friends
 21 accompanying the target [noncitizen] to court appearances or serving as a witness in a proceeding.”
 22 *Id.* The ICE Interim Arrest Guidance stated that such arrests should be made “on a case-by-case
 23 basis considering the totality of the circumstances,” but it provided no details as to relevant
 24 considerations. *Id.* This carte blanche authority to arrest witnesses and family members attending
 25 court proceedings constituted a marked reversal of longstanding ICE policies and practices limiting

26 _____
 27 agency charged with enforcement of federal immigration laws. Executive Office of Immigration
 28 Review, *About the Office*, available at <https://www.justice.gov/eoir/about-office> (last visited
 October 14, 2025).

1 such arrests to special circumstances. The ICE Interim Arrest Guidance contained a single
 2 limitation: it suggested that arrests in or near courthouses were not permissible if they were
 3 “precluded by laws imposed by the jurisdiction in which the enforcement action will take place.”
 4 *Id.*

5 On May 27, 2025, Defendant Lyons issued a final version of the ICE Interim Arrest
 6 Guidance, Policy No. 11072.4. Beach Decl., Exh. D (“Final ICE Courthouse Arrest Policy”). The
 7 Final ICE Courthouse Arrest Policy, which is “effective immediately,” is identical to the ICE
 8 Interim Arrest Guidance in almost all material respects; the sole exception is that it removes the
 9 provision of the ICE Interim Arrest Guidance preventing courthouse arrests where such arrests
 10 would violate local law.²

11 On January 28, 2025, one week after ICE issued its Interim Arrest Guidance, Defendant
 12 Owen issued EOIR’s OPPM 25-06, which rescinds EOIR’s OPPM 23-01 regarding immigration
 13 courthouse arrests. Beach Decl., Exh. E (“EOIR Courthouse Arrest Memo” or “OPPM 25-06”). The
 14 EOIR Courthouse Arrest Memo asserts that, because ICE had changed its policy regarding
 15 courthouse arrests, “there is no longer a basis to maintain” the prior EOIR policy limiting
 16 immigration enforcement actions in or near immigration courts. *Id.* at 1.

17 The EOIR Courthouse Arrest Memo summarily dismisses the concern about chilling effect
 18 identified by the prior policy, offering only the cursory assertion that it was “vague,” “unspecified,”
 19 and “contrary to logic.” *Id.* The Memo instead states, with no explanation, that individuals with
 20 valid immigration claims have “no reason to fear any enforcement action by DHS.” *Id.* at 2.

21 **B. Immigration Courthouse Arrests in Northern California**

22 After decades of refraining from conducting courthouse arrests and since the ICE and EOIR
 23 policy reversals, ICE has begun a campaign of arresting scores of noncitizens after their hearings at
 24 immigration courts nationwide, as illustrated by the experience in Northern California. *See, e.g.,*
 25 Zanardi Decl. ¶ 14 (describing at least 39 people arrested at Sacramento immigration court since
 26

27 ² Unless otherwise noted, the ICE Interim Arrest Guidance and Final ICE Courthouse Arrest Policy
 28 will collectively be referred to as the “ICE Courthouse Arrest Policy.”

1 May 2025); Atkinson Decl. ¶ 11 (describing at least 75 people arrested at San Francisco immigration
2 courts since May 2025). Immigration courthouse arrests are not limited to the SF AOR; a recent
3 analysis conservatively estimates that ICE has arrested 2,388 people at immigration courts
4 nationwide from May through July 2025.³

5 The individuals ICE arrests at immigration court are commonly people the government
6 previously released on their own recognizance or on supervised release based on the government's
7 determination that they are not a danger or a flight risk. *See, e.g.*, Dkt. No. 82 ("Malagon Torres
8 Decl.") ¶ 2; Dkt. No. 70 ("Pablo Sequen Decl.") ¶ 2; Dkt. No. 72 ("Mendoza Nunez Decl.") ¶ 2. As
9 this Court has recognized, ICE re-arrests these individuals without a pre-detention hearing, or any
10 evidence that they now pose a danger or a flight risk. Dkt. No. 27 at 14; *Pinchi v. Noem*, No. 5:25-
11 CV-05632-PCP, 2025 WL 2084921, at *5 (N.D. Cal. July 24, 2025). Additionally, ICE arrests these
12 individuals even if the immigration judge has not granted the government's motion to dismiss the
13 individual's immigration proceedings or while immigration proceedings are otherwise still pending.
14 *See, e.g.*, Dkt. No. 76 ("Alvarez Miranda Decl.") ¶ 3; Pablo Sequen Decl. ¶ 3; Dkt. No. 92 ("Colon
15 Solano Decl.") ¶ 3; Zanardi Decl. ¶ 15; Atkinson Decl. ¶ 31; Declaration of Sean Lai McMahon
16 ("McMahon Decl.") at ¶ 17.

17 Many of the individuals arrested at immigration court after Defendants' abrupt about-face
18 previously appeared in immigration court, including as recently as April 2025. *See, e.g.*, Dkt. No.
19 77 ("Garcia Decl.") ¶ 6; Colon Solano Decl. ¶ 12; Malagon Torres Decl. ¶ 11; Pablo Sequen Decl.
20 ¶ 13; Dkt. No. 79 ("Mendez Decl.") ¶ 6. Because they previously attended mandatory immigration
21 hearings without issue, they often are completely surprised to be arrested immediately after their
22 subsequent immigration hearing. *Id.*; *see also* Garcia Decl. ¶ 7; Mendez Decl. ¶¶ 7–8; Mendoza
23 Nunez Decl. ¶ 3; Dkt. No. 75 ("Alva Alva Decl.") ¶¶ 20–21. Others ICE arrestees are attending
24 immigration court for the first time but also are blindsided to be arrested after appearing in court as
25 ordered by the government. *See, e.g.*, Dkt. No. 81 ("Salcedo Aceros Decl.") ¶ 4; Dkt. No. 93

26
27 ³ Gunther, Joseph, *Quantifying Immigration Court Arrests* at 1, Oct. 7, 2025, available at
28 https://josephgunther.me/assets/Gunther_Quantifying_Immigration_Court_Arrests_Oct_7.pdf (last
visited October 14, 2025).

1 (“Caicedo Ruiz Decl.”) ¶¶ 3, 19; Dkt. No. 74 (“Cordero Pelico Decl.”) ¶ 3.

2 As the predictable result of the dramatic change in ICE and EOIR policies, rates of
3 absenteeism and *in absentia* removal orders at Northern California immigration courts have
4 increased sharply. *See, e.g.*, Atkinson Decl. ¶ 43; Zanardi Decl. ¶¶ 23–25; McMahon Decl. ¶ 24;
5 Dkt. No. 33-10 (“De Braemaker Decl.”) at ¶ 18; Dkt. No. 66 (“Ruch Decl.”) ¶ 15; Levine Decl. ¶ 6.
6 For example, in San Francisco immigration court, prior to the courthouse arrests, dockets of 20-30
7 respondents typically had fewer than six *in absentia* removals. Atkinson Decl. ¶ 43. Since the
8 courthouse arrests began, “it is common to have a docket where only 1-2 unrepresented individuals
9 appear” out of 20-30 scheduled, and the majority are ordered removed *in absentia*. *Id.*

10 ICE’s courthouse arrests have turned immigration courts from staid arbiters of cases to sites
11 of chaos and confusion. Immigrants, bystanders, legal services providers, and immigration judges
12 all have been affected by the ensuing turbulence, violence, and chilling effect. *See, e.g.*, Garcia Decl.
13 ¶ 20; Colon Solano Decl. ¶ 12; Malagon Torres Decl. ¶ 11; Pablo Sequen Decl. ¶ 13; Mendez Decl.
14 ¶ 6; Atkinson Decl. ¶ 38; Dkt. No. 33–2 (“Weiner Decl.”) ¶ 23–24; Zanardi Decl. ¶¶ 27–34; Levine
15 Decl. ¶¶ 6–8.

16 **III. LEGAL STANDARD**

17 The Administrative Procedure Act (“APA”) authorizes district courts to review agency
18 actions when they are final, *i.e.*, they are neither “tentative [nor] interlocutory,” and when they will
19 result in “direct and appreciable legal consequences.” *Bennett v. Spear*, 520 U.S. 154, 177–78
20 (1997); 5 U.S.C. § 704. The APA authorizes district courts to stay, or “postpone,” agency actions
21 “to the extent necessary to prevent irreparable injury,” or to otherwise issue a stay “to preserve status
22 or rights pending conclusion of the review proceedings.” 5 U.S.C. § 705. “Courts—including the
23 Supreme Court—routinely stay already-effective agency action under Section 705.” *Texas v. Biden*,
24 646 F. Supp. 3d 753, 770 (N.D. Tex. 2022) (citing, *inter alia*, *West Virginia v. EPA*, 577 U.S. 1126
25 (2016) (mem. op.)).

26 The factors considered in determining whether to postpone agency action under section 705
27 “substantially overlap with the *Winter* factors for a preliminary injunction.” *Immigrant Defs. L. Ctr.*
28 *v. Noem*, 145 F.4th 972, 986 (9th Cir. 2025). A plaintiff seeking such relief “must establish that [1]

1 he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of
 2 preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in
 3 the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). “[I]f a plaintiff
 4 can only show that there are ‘serious questions going to the merits’—a lesser showing than
 5 likelihood of success on the merits—then a preliminary injunction may still issue if the ‘balance of
 6 hardships tips sharply in the plaintiff’s favor and the other two *Winter* factors are satisfied.” *Alliance*
 7 *for the Wild Rockies v. Peña*, 865 F.3d 1211, 1217 (9th Cir. 2017) (citation omitted).

8 **IV. ARGUMENT**

9 This Court should stay the ICE Courthouse Arrest Policy and the EOIR Courthouse Arrest
 10 Memo because (A) Plaintiffs are likely to succeed on the merits of their APA claims; (B) Plaintiffs
 11 and the putative class members will suffer irreparable harm absent a 705 stay; and (C) the balance
 12 of equities and public interest favor a 705 stay to restore the status quo ante.

13 **A. Plaintiffs Are Likely to Succeed in Showing Defendants’ Courthouse Arrest** 14 **Policies Violates the Administrative Procedure Act (Counts One and Two)**

15 Plaintiffs are likely to succeed in showing that both the ICE Courthouse Arrest Policy and
 16 the EOIR Courthouse Arrest Guidance are (1) final agency actions and (2) arbitrary and capricious
 17 in violation of the APA.

18 **1. The ICE Courthouse Arrest Policy is Final Agency Action**

19 The ICE Courthouse Arrest Policy is final agency action under section 704. To constitute
 20 final agency action, two conditions must be satisfied. “First, the action must mark the consummation
 21 of the agency’s decision-making process—it must not be of a merely tentative or interlocutory
 22 nature.” *Bennett*, 520 U.S. at 177–78 (citations and quotations omitted). Second, “the action must
 23 be one by which rights or obligations have been determined, or from which legal consequences will
 24 flow.” *Id.* “In applying this test, we look to factors such as whether the action amounts to a definitive
 25 statement of the agency’s position, whether it has a direct and immediate effect on the day-to-day
 26 operations of the subject party, and if immediate compliance . . . is expected.” *Prutehi Litekyan*:
 27 *Save Ritidian v. United States Dep’t of Airforce*, 128 F.4th 1089, 1108 (9th Cir. 2025) (citation
 28 omitted).

1 Here, the ICE Courthouse Arrest Policy expressly rescinded ICE’s prior policy limiting
 2 courthouse arrests, “effective immediately.” It was a plain, definitive statement of the agency’s new
 3 policy and was neither tentative nor advisory. Moreover, the ICE Courthouse Arrest Policy resulted
 4 in immediate, widespread use of courthouse arrests for the purpose of civil immigration
 5 enforcement. *See, e.g.*, Atkinson Decl. ¶¶ 11, 23–25; Zanardi Decl. ¶¶ 12, 14; McMahon Decl. ¶ 16.
 6 Plainly, these policies resulted in both a “direct and immediate effect” on ICE’s day-to-day
 7 operations and legal consequences for the detainees arrested at courthouses following the policy
 8 change. *See Bennett*, 520 U.S. at 177–78.

9 2. Plaintiffs Are Likely to Show the ICE Courthouse Arrest Policy is 10 Arbitrary and Capricious

11 The APA requires courts to “hold unlawful and set aside agency action, findings, and
 12 conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in
 13 accordance with law.” 5 U.S.C. § 706(2)(A). “[T]he touchstone of arbitrary and capricious review
 14 under the APA is reasoned decisionmaking.” *Altera Corp. & Subsidiaries v. Comm’r of Internal*
 15 *Revenue*, 926 F.3d 1061, 1080 (9th Cir. 2019) (citation omitted). “[A]n agency’s action can only
 16 survive arbitrary or capricious review where it has articulate[d] a satisfactory explanation for its
 17 action including a ‘rational connection between the facts found and the choice made.’” *Alliance for*
 18 *the Wild Rockies v. Petrick*, 68 F.4th 475, 493 (9th Cir. 2023).

19 Further, where an agency changes its previous position—including when it “abandons [a]
 20 decades-old practice” applied in enforcement actions—it must (1) “display awareness that it is
 21 changing position,” (2) “show that there are good reasons for the new policy,” and (3) balance those
 22 good reasons against “engendered serious reliance interests.” *Encino Motorcars, LLC v. Navarro*,
 23 579 U.S. 211, 218, 221–22 (2016); *see also F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502,
 24 515 (2009) (alteration to prior agency position can require “more detailed justification than what
 25 would suffice for a new policy created on a blank slate”); *Am. Wild Horse Pres. Campaign v.*
 26 *Perdue*, 873 F.3d 914, 923 (D.C. Cir. 2017) (“A central principle of administrative law is that, when
 27 an agency decides to depart from decades-long past practices and official policies, the agency must
 28 at a minimum acknowledge the change and offer a reasoned explanation for it.”).

1 Finally, even where an agency has explained its change in position, its action can be arbitrary
2 and capricious when the agency has “entirely failed to consider an important aspect of the problem.”
3 *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (citation
4 omitted). To engage in “reasoned decision-making,” agencies must “look at the costs as well as the
5 benefits” of their actions. *Id.* at 52–54.

6 The ICE Courthouse Arrest Policy is an arbitrary and capricious reversal of position because
7 (i) it lacks a reasoned explanation supporting its dramatic policy and practice change; (ii) did not
8 acknowledge, any previously established reliance interests, let alone balance any purportedly good
9 reasons for the policy change against those interests; (iii) and “entirely failed to consider an
10 important aspect of the problem,” namely the core principle animating the prior policy. *See Encino*
11 *Motorcars*, 579 U.S. at 221–22; *State Farm*, 463 U.S. at 43.

12 **a. The ICE Courthouse Arrest Policy Lacks a Reasoned**
13 **Explanation**

14 Read generously, the ICE Courthouse Arrest Policy offers two justifications for its change
15 in position, crammed into three conclusory sentences. Both are unsupported, unreasoned, and
16 insufficient to justify a reversal in position with such sweeping consequences. First, the ICE
17 Courthouse Arrest Policy claims that courthouse arrests “can reduce safety risks” because
18 “individuals entering courthouses are typically screened by law enforcement personnel for weapons
19 and other contraband.” Beach Decl., Exh. C at 1; Exh. D at 1. But the policy presents no facts or
20 analysis establishing the purported “safety risks” or showing that the changed policy reduces any
21 risks. In fact, the government already has determined that the noncitizens attending immigration
22 court hearings do *not* present a safety threat or flight risk. *See, e.g.,* Malagon Torres Decl. ¶ 2; Pablo
23 Sequen Decl. ¶ 2; Mendoza Nunez Decl. ¶ 2; *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D.
24 Cal. 2017) (“Release reflects a determination by the government that the noncitizen is not a danger
25 to the community or a flight risk.”), *aff’d*, 905 F.3d 1137 (9th Cir. 2018); *see also* 8 C.F.R. §
26 1236.1(c)(8) (requiring noncitizens seeking release to demonstrate they are neither a “danger to
27 property or persons” nor a flight risk).

28 Additionally, the ICE Courthouse Arrest Policy does not explain why ICE cannot screen

1 immigrants subject to civil detention for weapons and contraband in places other than courthouses,
 2 a procedure law enforcement officers commonly undertake incident to arrest. Nor does the policy
 3 present any facts showing any heightened risk attendant to civil detainee arrests. In short, ICE fails
 4 to “articulate[] a satisfactory explanation for its action including a ‘rational connection between the
 5 facts found and the choice made.’” *Alliance for the Wild Rockies*, 68 F.4th at 493.

6 Second, the ICE Courthouse Arrest Policy seeks to justify courthouse enforcement as
 7 “required when in jurisdictions refuse to cooperate with ICE, including when such jurisdictions
 8 refuse to honor immigration detainers and transfer aliens directly to ICE custody.” Beach Decl.,
 9 Exh. C at 1; Exh. D at 1. But the policy is devoid of any explanation for why that is relevant. The
 10 courthouse arrest policy is not targeted at, let alone limited to, noncitizens who would be the subject
 11 of an immigration detainer; individuals arrested at immigration court often have no criminal record
 12 of any kind and were not in criminal detention prior to their arrest. *See, e.g.*, Garcia Decl. ¶ 4; Dkt.
 13 No. 73 (“Valera Chuquillanqui Decl.”) ¶ 4; Mendoza Nunez Decl. ¶ 2; Colon Solano Decl. ¶ 2;
 14 Malagon Torres Decl. ¶ 2; Salcedo Aceros Decl. ¶ 4. Moreover, the policy does not explain why
 15 arrests in non-cooperating jurisdictions should be made at courthouses as opposed to any other
 16 location in the jurisdiction. Instead, it suggests the new policy improperly seeks to punish
 17 *noncitizens* in retaliation against *states* that choose not to enforce federal law using state resources.
 18 *Cf. Washington v. U.S. Dep’t of Homeland Sec.*, 614 F. Supp. 3d 863, 880 (W.D. Wash. 2020)
 19 (“Defendants, however, cite no authority for the proposition that such retaliatory motive constitutes
 20 a factor that Congress intended for them to consider or that such motive would survive constitutional
 21 scrutiny.”). Such misguided frustration, taken out on people who are already complying with DHS’s
 22 mandates, smacks of arbitrary and capricious conduct.

23 Finally, DHS has conceded that the ICE Courthouse Arrest Policy does not mean what it
 24 says or say what it means. Immigration courts like the one located at 630 Sansome do not conduct
 25 criminal proceedings, and thus courthouse arrests at 630 Sansome *should* run afoul of ICE’s
 26 Courthouse Arrest Policy, which states, “ICE Officers and agents should generally avoid
 27 enforcement actions in or near courthouses, or areas within courthouses that are wholly dedicated
 28 to non-criminal proceedings.” Beach Decl., Exh. D at 2. However, contrary to the text of the ICE

1 Courthouse Arrest Policy, at a hearing before the U.S. District Court for the Southern District of
2 New York, the government represented as follows:

3 “The best I can say is that ICE clearly, based on its practices, has construed the
4 noncriminal or specialized courts to refer to family court, small claims court, and
5 something similar. And I cannot explain that, but it does not construe federal
immigration courts to fall within the category of noncriminal or specialized courts
for which additional approvals are operationally needed.”

6 See Beach Decl., Exh. I at 33:4-10 (Transcript of Proceedings in *Afr. Communities Together v.*
7 *Lyons*, No. 25-CV-6366 (PKC), (S.D.N.Y. Sept. 2, 2025)). The government’s concession is notable
8 for two reasons. First, it acknowledges that the true scope of ICE’s policies are informed not only
9 by their text but also by ICE’s practices: “clearly, based on its practices,” ICE now understands its
10 policy to condone mass arrests at *immigration* court—a sea change from its prior policy—as
11 evidenced by its prior practice—of refraining from conducting arrests at immigration courts in
12 nearly any circumstance. Second, since the plain text of the ICE Courthouse Arrest Policy *excludes*
13 immigration courts as specialized noncriminal courts, there necessarily is no reasoned explanation
14 supporting ICE’s mass arrests at immigration courts. Such an extraordinary departure from the prior
15 policy and practice may not be done “sub silentio.” *F.C.C.*, 556 U.S. at 515.

16 **b. The ICE Courthouse Arrest Policy Does Not Consider the Serious**
17 **Reliance Interests Created by DHS’s Prior Position**

18 When changing its position, an agency also must consider any “serious reliance interests” it
19 may have engendered, “determine whether they [are] significant, and weigh [them] against
20 competing policy concerns.” *Thakur v. Trump*, 787 F. Supp. 3d 955, 982 (N.D. Cal. 2025) (*citing*
21 *Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 30 (2020)). In *Department of*
22 *Homeland Security*, the Supreme Court concluded that DHS’s failure to address the reliance
23 interests of DACA recipients, their families, their employers, and the loss of economic activity and
24 tax revenue resulting from rescission of the DACA program made the rescission arbitrary and
25 capricious. *Dep’t of Homeland Sec.*, 591 U.S. at 30–33. Similarly, the ICE Courthouse Arrest
26 Policy’s failure to identify, let alone weigh, the relevant reliance interests renders the policy arbitrary
27 and capricious.

28 Until recently, individuals pursuing relief in immigration court, their counsel, and court

1 officials all shared the expectation that noncitizens could appear in immigration court without the
 2 specter of civil arrest and detention. *See, e.g.*, De Braemaker Decl. ¶¶ 20–21; Zanardi Decl. ¶ 11;
 3 Stockton Decl. ¶ 7. Most noncitizens who appear in immigration court have been released by the
 4 government with an order to appear in immigration court, creating the expectation that they will
 5 have the opportunity to go through a court process. *See, e.g.*, Dkt. No. 24-2 at 2 (Notice to Appear
 6 issued to Plaintiff Pablo Sequen ordering her to appear before an immigration judge); Beach Decl.,
 7 Exh. J (Notice to Appear issued to Plaintiff Alvarado Ambrocio ordering her to appear before an
 8 immigration judge). Some noncitizens who have been arrested at immigration court in recent weeks,
 9 including Plaintiffs Garcia and Pablo Sequen, even previously appeared in court just a few months
 10 ago without being arrested. *See e.g.*, Garcia Decl. ¶ 7; Colon Solano Decl. ¶ 12; Malagon Torres
 11 Decl. ¶ 11; Pablo Sequen Decl. ¶ 13; Mendez Decl. ¶¶ 6–8; Mendoza Nunez Decl. ¶ 3; Alva Alva
 12 Decl. ¶¶ 20–21. Based on the longstanding expectation that they were participating in an ongoing
 13 court process and could safely come home after attending a given court hearing, noncitizens like
 14 Plaintiffs and putative Courthouse Arrest class members typically do not make arrangements for
 15 child or elder care, healthcare, employment, or their car, in the event of arrest. *See, e.g.*, Malagon
 16 Torres Decl. ¶ 11 (planned to go to work after court hearing); Pablo Sequen Decl. ¶ 13 (same);
 17 Mendez Decl. ¶ 7–8 (left crutches and medical boot at home based on past experience at court);
 18 Colon Solano Decl. ¶ 12 (left car parked outside courthouse based on past experience at court);
 19 Atkinson Decl. ¶¶ 38–39. Thus, when ICE suddenly began its unprecedented courthouse arrests, the
 20 consequences were swift and serious. Pablo Sequen Decl. ¶ 13 (missed work as a result of arrest
 21 and detention, putting job at risk); Garcia Decl. ¶ 19 (missed work as a result of arrest and detention);
 22 Colon Solano Decl. ¶ 12–13 (missed work as a result of arrest and detention, lost earnings, and
 23 risked car being ticketed or towed); Malagon Torres Decl. ¶ 11; (missed work as a result of arrest
 24 and detention, lost earnings, incurred parking fees); Mendoza Nunez Decl. ¶ 12 (fired from job after
 25 arrest and detention); Mendez Decl. ¶ 17 (missed medical appointments and lacked access to
 26 medical supplies due to arrest and detention); Salcedo Aceros Decl. ¶ 14–15 (missed regularly
 27 scheduled calls with minor children due to arrest and detention); Alva Alva Decl. ¶ 21 (minor child
 28 became physically ill from the stress of father’s unexpected detention); McMahon Decl. ¶ 26 (family

1 member had to drive approximately 175 miles to pick up car of arrestee).

2 Similarly, attorneys who practice in immigration court have relied upon the expectation that
3 their clients would not be arrested at court. *See, e.g.,* Zanardi Decl. ¶ 26 (“For years, we told our
4 clients that immigration court was a safe place, but we can no longer say that.”). Attorney-of-the-
5 day (AOD) programs, which operate at the immigration court and often are the only source of legal
6 advice for many unrepresented respondents in immigration cases, rely upon noncitizens being able
7 to come to court without fear of arrest; absent that expectation, the attorneys cannot reach the *pro*
8 *per* respondents they seek to serve. *See, e.g.,* De Braemaker Decl. ¶ 25 (“As a result of the courthouse
9 arrests, fewer people are appearing for their immigration hearings which means we can help fewer
10 people with the AOD Program.”); Atkinson Decl. ¶ 6; Ruch Decl. ¶ 16; Dkt. No. 67 (“Arya Decl.”)
11 ¶ 12; *see also* Stockton Decl. ¶ 6. Further, legal services providers also have developed service
12 delivery models based on the expectation that they would have the opportunity to meet in-person
13 with clients before their master calendar hearings to advise them of their rights and options, which
14 ICE’s courthouse arrests now have rendered nearly impossible. *See, e.g.,* McMahon Decl. ¶¶ 25–27
15 (describing effects of courthouse arrests on legal services for pro se respondents); Atkinson Decl.
16 ¶¶ 35–36 (same); Zanardi Decl. ¶¶ 27–34 (same); Weiner Decl. ¶¶ 23–24 (describing impact on
17 ability to provide AOD and changes to legal services offered).

18 Finally, immigration judges have relied on the established expectation created by the prior
19 prohibition on courthouse arrests to manage their dockets, coordinate with legal services providers,
20 and ensure decorum in their courts. *See* Stockton Decl. ¶¶ 6–8; 11–12 (noting that courthouse arrests
21 would have “created a chaotic environment . . . not conducive to either the provision of legal services
22 by [AOD] programs or the fair adjudication of cases”); Levine Decl. ¶¶ 6–9 (“The legal system is
23 supposed to be transparent, consistent, and predictable. Because of the courthouse arrests,
24 immigration judges did not know what would happen to the respondents before us, nor could we
25 explain it to them.”) As one former immigration judge observed, the advisals immigration judges
26 are required to provide to noncitizens at their hearings presuppose that respondents will be returning
27 to court for future hearings; ICE’s courthouse arrests now render those advisals unreliable. Levine
28 Decl. ¶¶ 7–8.

1 The ICE Courthouse Arrest Policy does not even acknowledge these “serious reliance
2 interests,” let alone take them “into account.” *F.C.C.*, 556 U.S. at 515; *see also Nat’l Urb. League*
3 *v. Ross*, 977 F.3d 770, 778 (9th Cir. 2020) (“The August 3 Press Release and the Replan slide deck
4 do not consider reliance interests at all.”). “[B]ecause DHS was ‘not writing on a blank slate,’ it was
5 required to assess whether there were reliance interests, determine whether they were significant,
6 and weigh any such interests against competing policy concerns.” *Dep’t of Homeland Sec.*, 591 U.S.
7 at 33. Instead, almost overnight, Defendants suddenly and inexplicably departed from “decades-
8 long past practices and official policies,” without *any* reference to the significant expectations
9 engendered by their past practices and policies. *See Am. Wild Horse Pres. Campaign*, 873 F.3d at
10 923. This alone renders the policy arbitrary and capricious. *Encino Motorcars*, 579 U.S. at 212.

11 The well-established record of “serious reliance interest[s]” helps distinguish Plaintiffs’
12 showing here from *Afr. Communities Together v. Lyons*, No. 25-CV-6366 (PKC), 2025 WL
13 2633396, at *22 (S.D.N.Y. Sept. 12, 2025). In *Afr. Communities Together*, the district court noted
14 that the plaintiff, in seeking preliminary relief, had not submitted facts from any individual asserting
15 a reliance interest. *Id.* By contrast, there is ample evidence here from noncitizens, including
16 Plaintiffs and putative class members, immigration attorneys, and immigration judges that there are
17 “significant” and “serious” reliance interests that the ICE Courthouse Policy undisputedly failed to
18 weigh when it upended ICE’s prior policy and practice.

19 **c. The ICE Courthouse Arrest Policy Fails to Consider the Chilling**
20 **Effect of Widescale Courthouse Arrests**

21 Finally, the ICE Courthouse Arrest Policy utterly fails to consider the “core principle”
22 animating the prior policy and practice prohibiting courthouse arrests: preserving access to justice.
23 Beach Decl., Exh. A at 1. The prior policy explicitly states that law enforcement has a “special
24 responsibility to ensure [] access to the courthouse,” and cites the chilling effect that courthouse
25 arrests would have on “access to courthouses and . . . the fair administration of justice.”⁴ Beach

26 ⁴ The prohibition on courthouse arrests has deep historical roots in the centuries-old common law
27 privilege against civil arrest, which prohibits civil arrest in court or while a witness or participant is
28 on their way to or from court. The privilege exists both to defend against deterring participation in
court proceedings and to protect the fair administration of justice in courts. William Blackstone,

Decl., Exh. A at 1. However, the ICE Courthouse Arrest Policy is silent on this “important aspect of the problem,” with no consideration for the “costs” courthouse arrests will impose. *See State Farm*, 463 U.S. at 43, 52.

As the prior policy predicted, those costs are substantial. Since Defendants announced and implemented the ICE Courthouse Arrest Policy, absenteeism has surged as a result, with widespread harms to noncitizens, legal service providers, and the court’s operations. *See, e.g.*, Atkinson Decl. ¶¶ 43–44 (describing marked increase in *in absentia* removal orders); McMahon Decl. ¶ 24 (describing marked increase in absenteeism); Zanardi Decl. ¶ 23 (same); Ruch Decl. ¶ 15 (same); De Braemaker Decl. ¶ 25 (describing being unable to assist people due to absenteeism); Arya Decl. ¶ 12 (same); Levine Decl. ¶ 6 (former immigration judge describing “dramatic decline in attendance at master calendar hearings in [her] courtroom.”). Defendants’ complete failure to consider the principal reason for the prior policy is fatal to the ICE Courthouse Arrest Policy.

3. The EOIR Courthouse Arrest Memo is Final Agency Action

The EOIR Courthouse Arrest Memo is final agency action because it plainly represents the “consummation of [EOIR] decision making” on the issue of where and how immigration enforcement activities take place. *See Bennett*, 520 U.S. at 177–78. OPPM 25-06 asserts on behalf of the Department of Justice that “there is no longer a basis to maintain” the prior EOIR policy limiting immigration enforcement actions in or near immigration courts and explicitly rescinds OPPM 23-01. Beach Decl., Exh. E at 1. Because it is “a definitive statement of the agency’s position” that has “a direct and immediate effect on the day-to-day operations,” it is a final agency action. *See Prutehi Litekyan*, 128 F.4th at 1108.

4. Plaintiffs Are Likely to Show the EOIR Courthouse Arrest Memo is Arbitrary and Capricious

A mere week after the abrupt change in ICE’s policy on courthouse arrests, EOIR also rescinded its longstanding restriction on civil immigration enforcement at immigration court.

Commentaries on the Laws of England 766 (1877) (footnote omitted). *Cf. Velazquez-Hernandez v. ICE*, 500 F. Supp. 3d 1132, 1137 (S.D. Cal. 2020) (recognizing common law rule against civil courthouse arrest and granting TRO of DHS courthouse arrest policy).

1 However, unlike ICE, EOIR is *not* immigration enforcement. Created in 1983, EOIR is a “quasi-
 2 judicial” entity housed within the Department of Justice to conduct “immigration judicial review.”⁵
 3 EOIR’s mission is “to adjudicate immigration cases by fairly, expeditiously, and uniformly
 4 interpreting and administering the Nation’s immigration laws.”⁶ OPPM 23-01, EOIR’s prior policy
 5 proscribing courthouse arrests, explicitly recognized “the separate and distinct roles of DHS and
 6 [EOIR].” Beach Decl., Exh. B at 2. That recognition appropriately reflected the sacrosanct American
 7 legal principle that law enforcement agencies “should not be the sole judges of when to utilize
 8 constitutionally sensitive means in pursuing their tasks.” *United States v. U.S. Dist. Court for the E.*
 9 *Dist. of Mich.*, 407 U.S. 297, 317 (1972).

10 Particularly viewed in light of EOIR’s mission and “distinct role[,]” EOIR’s Courthouse
 11 Arrest Memo is arbitrary and capricious because it fails to “provide a reasoned explanation for its
 12 actions,” weigh “serious reliance interests” engendered by the past policy and practice, or consider
 13 “an important aspect of the problem.” *See Encino Motorcars*, 579 U.S. at 221–22; *State Farm*, 463
 14 U.S. at 43; *cf. BNSF Railway Co. v. Federal Railroad Admin.*, 62 F.4th 905, 911 (5th Cir. 2023)
 15 (“The paucity of reasoning is especially glaring in the face of the agency’s statutory mandate.”)
 16 Instead of meeting its obligations under the APA, the EOIR Courthouse Arrest Memo is a series of
 17 conclusory statements and illogical, unsupported assertions.

18 **a. The EOIR Courthouse Arrest Memo Lacks a Reasoned**
 19 **Explanation**

20 First, the EOIR Courthouse Arrest Memo simply relies on the ICE Courthouse Arrest Policy
 21 as the basis for changing its own policy. *See* Beach Decl., Exh. E at 1 (“[The 2021] DHS
 22 Memorandum has been rescinded As such, there is no longer a basis to maintain OPPM 23-

24 ⁵ Board of Immigration Appeals; Immigration Review Function; Editorial Amendments, 48 Fed.
 25 Reg. 8038-40 (Feb. 25, 1983), available at <https://www.justice.gov/sites/default/files/eoir/legacy/2013/10/02/48%20Fed%20Reg%208038%2002251983.pdf> (last visited October 14, 2025). This
 26 was later codified in statute in the Homeland Security Act of 2002. 6 U.S.C. § 521.

27 ⁶ EOIR Policy Manual, *1.1 – Scope of the EOIR Policy Manual* (“EOIR Policy Manual 1.1),
 28 available at <https://www.justice.gov/eoir/eoir-policy-manual/introduction/chapter1-1> (last visited
 October 14, 2025).

01.”). But EOIR failed “to appreciate the full scope of [its] discretion,” which at a minimum “picked up where” DHS’s reasoning “left off.” *Dep’t of Homeland Sec.*, 591 U.S. at 26. As explained above, the ICE Courthouse Arrest Policy says nothing specific to immigration courthouses; it did not consider the negative impacts of enforcement actions on immigration courts. EOIR could and should have considered whether immigration enforcement at *immigration* courthouses would pose problems particular to the functioning of those courts.

Moreover, although it is predicated on the ICE Interim Arrest Guidance (which later became final in nearly identical form), the EOIR Courthouse Arrest Memo actually is in tension with the text of the ICE guidance, which instructs ICE to *avoid* enforcement actions “in or near” courthouses “wholly dedicated to non-criminal proceedings,” unless ICE receives explicit, individualized management approval prior to a particular enforcement action. Beach Decl., Exh. C at 2. Thus, although the ICE guidance as written generally *prohibits* civil immigration enforcement at non-criminal courts like immigration courts, EOIR nevertheless *rescinded* its prior policy prohibiting civil immigration enforcement at immigration court. The Memo offers no explanation for how ICE guidance announcing a change in practices that specifically *excludes* immigration enforcement in non-criminal courts justifies abandoning EOIR’s longstanding prohibition on immigration enforcement *in immigration court*. “An unexplained inconsistency in agency policy is a reason for holding an interpretation to be an arbitrary and capricious change from agency practice.” *Encino Motorcars*, 579 U.S. at 212 (cleaned up).

Second, in rescinding OPPM 23-01, the Memo summarily dismissed the prior policy’s core concern that courthouse arrests would chill the exercise of the right to seek relief in immigration court, offering only this cursory assertion:

OPPM 23-01 suggested that permitting DHS enforcement actions in or near OCIJ space would have some sort of vague, unspecified “chilling effect” on aliens appearing for hearings or would otherwise “disincentivize” them from appearing. OPPM 23-01 provided no data to support these assertions, nor did it explain why, contrary to logic, aliens with valid claims to legal immigration status would be disincentivized from attending their hearings, even though they had no reason to fear any enforcement action by DHS.

Beach Decl., Exh. E at 2 (quotations in original).

Regarding EOIR’s suggestion that the prior policy purportedly lacked data or logical support

1 for its conclusions that arrests near immigration courthouses would have a chilling effect, an
 2 agency’s “reasonable predictive judgment” need not be supported by empirical data to be sound.
 3 *FCC v. Prometheus Radio Project*, 592 U.S. 414, 427 (2021).⁷ Placing quotation marks around a
 4 prior policy’s rationale does not constitute a reasoned explanation for an agency’s change in
 5 position. The conclusory statements that OPPM 23-01 was “vague” or “contrary to logic” are
 6 insufficient to show reasoned decision-making in the same way that an agency “[m]erely saying
 7 something was considered is not enough to show reasoned analysis.” *Immigrant Defs. L. Ctr. v.*
 8 *Noem*, 145 F.4th 972, 992 (9th Cir. 2025) (citing *State v. Biden*, 10 F.4th 538, 555 (5th Cir. 2021));
 9 *see also Encino Motorcars*, 579 U.S. at 224 (“In light of the serious reliance interests at stake, the
 10 Department’s conclusory statements do not suffice to explain its decision.”). EOIR’s Courthouse
 11 Arrest Memo also makes the remarkable claim that immigrants “with valid claims” have “no reason
 12 to fear any enforcement action.” This argument makes no sense for several reasons. First, not all
 13 immigration hearings result in final determinations on the merits; many are akin to status
 14 conferences. Second, an immigrant could not know, prior to their hearing, whether the immigration
 15 judge will find their claim meritorious. Third, ICE makes courthouse arrests before the conclusion
 16 of EOIR proceedings, including prior to an immigration judge even considering the validity of an
 17 immigrant’s claims. *See, e.g.,* Alvarez Miranda Decl. ¶ 3; Pablo Sequen Decl. ¶ 3; Colon Solano
 18 Decl. ¶ 3; Zanardi Decl. ¶ 15; Atkinson Decl. ¶ 31; McMahon Decl. ¶ 17. Thus, this baseless and
 19 illogical assertion does nothing to address the longstanding concern about a chilling effect.

20 The EOIR Courthouse Arrest Memo makes a facile attempt to cite statistics in support of its
 21 change in position, but this attempt falls far short. The Memo claims—without citation—that after
 22 the 2021 DHS Memorandum took effect, over 530,000 immigrants did not attend their scheduled
 23
 24

25 ⁷ Although not cited in the prior policy, both common sense and empirical data support the
 26 proposition that ICE courthouse arrests have a chilling effect on attendance of court proceedings.
 27 *See, e.g.,* Angela Irvine et al., *The Chilling Effect of ICE Courthouse Arrests: How Immigration and*
 28 *Customs Enforcement (ICE) Raids Deter Immigrants from Attending Child Welfare, Domestic*
Violence, Adult Criminal, and Youth Court Hearings (Oct. 2019), [https://www.immigrantdefense](https://www.immigrantdefenseproject.org/wp-content/uploads/ice.report.exec_summ.5nov2019.pdf)
[project.org/wp-content/uploads/ice.report.exec_summ.5nov2019.pdf](https://www.immigrantdefenseproject.org/wp-content/uploads/ice.report.exec_summ.5nov2019.pdf).

1 hearings.⁸ Beach Decl., Exh. E at 2. But the Memo provides no substantiation for that number, and
 2 no analysis about whether the alleged missed hearings were hearings where the immigrant's
 3 presence was required and where the non-appearance was *willful*, as opposed to the result of mistake,
 4 emergency, or rescheduling. Indeed, historically non-appearances often were the result of lack of
 5 notice. *See* Stockton Decl. ¶ 7.

6 More importantly, the Memo's uncited statistic misses the mark. Prior policies against
 7 courthouse arrests did not purport to resolve the problem of all non-appearances; instead, they
 8 recognized that the specter of immigration enforcement at court proceedings would only serve to
 9 *increase* non-appearance rates through a climate of fear. That is precisely what has happened. *See*,
 10 *e.g.*, Atkinson Decl. ¶¶ 43–44; McMahon Decl. ¶ 24; Zanardi Decl. ¶ 23; Levine Decl. ¶ 6. The
 11 Memo does not explain how expanded immigration enforcement against people already cooperating
 12 with the agency would resolve, rather than exacerbate, alleged rates of non-appearance. The EOIR
 13 Courthouse Arrest Memo's cursory reference to the purported total number of non-appearances—
 14 without any substantiation or a clear explanation for the subsequent decision to conduct activities
 15 that would likely only increase non-appearances—falls well short of the reasoned decision making
 16 required by the APA. *Centro Legal de la Raza v. Exec. Off. for Immigr. Rev.*, 524 F. Supp. 3d 919,
 17 963 (N.D. Cal. 2021) (“[A]s a matter of process and reasoned decisionmaking, an ‘agency must
 18 examine the relevant data and articulate a satisfactory explanation for its action including a rational
 19 connection between the facts found and the choice made.’”) (citation omitted).

20 Third, the Memo hastily dismisses the prior explanation that courthouse arrests could create
 21 safety risks by pointing to the prior policy's narrow exception for exigent circumstances. Beach
 22 Decl., Exh. E at 2. But exigent circumstances present “emergencies—situations presenting a
 23 compelling need for official action.” *Lange v. California*, 594 U.S. 295, 301 (2021) (cleaned up).

24
 25 ⁸ Because the Memo offers no citation for this statistic, its source is unknown. But available data
 26 casts doubt on its accuracy. For example, ICE data show that, in fiscal year 2025 (which began on
 27 October 1, 2024) through August 2025, only 1,636 participants in ICE's Alternatives to Detention
 28 Program failed to appear at hearings (1.8%). Detention Statistics, *Detention FY 2025 YTD*,
Alternatives to Detention FY 2025 YTD and Facilities FY 2025 YTD, available at
<https://www.ice.gov/detain/detention-management#stats> (last visited October 14, 2025).

1 Indeed, several of the exigent circumstances in the prior policy are directed at *minimizing* public
 2 safety risks, such as preventing “a threat to national security” or the “imminent risk of death,
 3 violence, or physical harm to any person.” Beach Decl., Exh. B at 2. Naturally, the safety
 4 considerations at play in the presence of exigent circumstances—where “speed” is “essential,”
 5 *Warden, Md. Penitentiary v. Hayden*, 387 U.S. 294, 299 (1967)—involve considerations far
 6 different from routine civil immigration arrests of everyday people, most of whom the government
 7 has previously found not to present a danger or flight risk. Inexplicably, the Memo contends that the
 8 existence of a narrow exigent-circumstances exception warrants jettisoning *any* safety concerns that
 9 widescale arrests pose to people present in court. Beach Decl., Exh. E at 2. Unfortunately, those
 10 safety concerns have been borne out as dozens of arrestees, bystanders, and legal services providers
 11 have experienced or witnessed violence during the arrests. *See, e.g.*, Zanardi Decl. ¶ 20 (describing
 12 witnessing ICE agents throw arrestees against the wall and injure bystanders); De Braemaker Decl.
 13 ¶ 14; Atkinson Decl. ¶ 42.

14 The Memo also casts aspersions on *other* policies as having eroded “EOIR’s integrity and
 15 impartiality,” (Beach Decl., Exh. E at 2), but fails to state, let alone explain, why the agency’s prior
 16 courthouse arrest policy had this purported effect. The prior policy recognized DHS’s authority to
 17 conduct its mission, and included narrow, specific exceptions to the courthouse arrest policy
 18 consistent with that mission. Beach Decl., Exh. B at 2–3. Moreover, EOIR has a separate mission
 19 of adjudicating immigration matters, which does not infringe on DHS’s authority. *See, e.g.*, EOIR
 20 Policy Manual at 1-1; Immigration Court Practice Manual⁹ (“DHS is entirely separate from the
 21 Department of Justice and the Executive Office for Immigration Review.”). The Memo therefore
 22 fails to provide any explanation for abandoning a longstanding policy that reinforced the distinction
 23 between enforcement and adjudication, despite the Memo’s continued acknowledgment that EOIR
 24 and ICE conduct “separate functions.” *Id.*

25

26

27 ⁹ Immigration Court Practice Manual, 1.2 – *Function of the Office of the Chief Immigration Judge*,
 28 available at <https://www.justice.gov/eoir/reference-materials/ic/chapter-1/2> (last visited October 14, 2025).

b. The EOIR Courthouse Arrest Memo Does Not Consider the Serious Reliance Interests Created by EOIR's Prior Position

The Memo fails to identify—let alone weigh—the serious reliance interests engendered by the previous policy and practice. First, the Memo fails to consider the reliance interests of the noncitizens whose cases EOIR is responsible for adjudicating. As noted above, this reliance interest is significant; for years, respondents appeared before EOIR, as the government instructed them to do, with the expectation they would have access to the courts. EOIR's about-face makes no mention of this reliance interest and certainly does not take it “into account.” *F.C.C.*, 556 U.S. at 515.

Second, the Memo also fails to consider the reliance interests of EOIR personnel themselves, particularly immigration judges. The prior policy's reasoning explicitly notes that “permitting enforcement actions in or near” immigration courts would “hinder the ability of [the Office of the Chief Immigration Judge] to carry out the mission of the agency.” Beach Decl., Exh. B at 2. The prior policy further states that prohibiting enforcement actions in or near immigration courts helps “reinforce the separate and distinct roles” of DHS and EOIR. *Id.* Consistent with this reasoning, the prior prohibition on courthouse arrests engendered serious reliance interests for immigration judges, who depended on the predictable appearance of respondents in their courtrooms and the perception of neutrality and independence from immigration enforcement to carry out their mission of fairly adjudicating cases on the merits. Stockton Decl. ¶¶ 8–9; 11–12; Levine Decl. ¶¶ 3, 6–9; EOIR Policy Manual 1-1. The EOIR Courthouse Arrest Memo upended those well-established expectations, with no advance warning to immigration judges, as had historically had been the practice. *Compare* Stockton Decl. ¶¶ 13–14 (describing prior policymaking process which included opportunity for feedback) *with* Levine Decl. ¶ 5 (describing that she and her fellow immigration judges did not receive any advance warning that courthouse arrests would be taking place). Thus, as a result of the Memo, instead of carrying out EOIR's mission based on the established expectation that they could independently adjudicate the cases before them on the merits, immigration judges were thrust into an environment where EOIR and DHS collaborated to short-circuit immigration proceedings and arrest people out of their courtrooms, irrespective of the status or merits of the underlying case. Levine Decl. ¶¶ 5, 7–9; Pappas Decl. ¶¶ 2–5 (“I was instructed by the [Assistant Chief Immigration

1 Judge (“ACIJ”)] to grant the government’s motions to dismiss.”).

2 The Memo’s failure to weigh the serious reliance interests engendered by the prior abstention
3 from arrests at immigration courts—both for respondents and the immigration judges who comprise
4 EOIR—renders the Memo arbitrary and capricious.

5 **c. The EOIR Memo Fails to Consider the Adverse Impact of**
6 **Courthouse Arrests on EOIR’s Mission and Function**

7 Finally, the EOIR Courthouse Arrest Memo does not consider an important aspect of the
8 problem, namely the impact that condoning ICE arrests at immigration courts will have on
9 maintaining EOIR’s “separate and distinct role[] . . . in the eyes of the public.” Beach Decl., Exh. B
10 at 2. As noted above, EOIR’s mission and mandate is the neutral adjudication of immigration cases.
11 Stockton Decl. ¶¶ 8–9; EOIR Policy Manual 1-1. EOIR’s prior policy explicitly identified this
12 important aspect of the problem and concluded that civil immigration enforcement at immigration
13 courthouses would “create inefficiencies” including for the court, and “hinder the ability of OCIJ to
14 carry out the mission of the agency.” Beach Decl., Exh. B at 2. Yet, in falling in lockstep with ICE’s
15 Courthouse Arrest Policy, EOIR’s new policy contains no assessment of the impact that civil
16 immigration enforcement in immigration court will have on *its* mission. Since the Memo was issued
17 eight days into the new presidential administration’s tenure and a week after the ICE Interim Arrest
18 Guidance, it seems evident that there simply was not time to conduct the type of deliberative
19 policymaking EOIR historically engaged in. *See* Stockton Decl. ¶ 14 (“If EOIR was instituting a
20 change to a prior policy, it was presented during such gatherings and all participants were
21 encouraged to state their positions, concerns, or ideas of alternatives.”). The failure to address what
22 EOIR itself previously identified as an important consideration renders the Memo arbitrary and
23 capricious.

24 **B. Plaintiffs and the Putative Class Face Immediate, Irreparable Injury Absent**
25 **Court Intervention**

26 Allowing Defendants’ courthouse arrest policies to proceed will result in irreparable injury.
27 Defendants’ courthouse arrest policies force Plaintiffs and putative class members to choose
28 between accessing immigration courts to pursue immigration relief, at the risk of arrest and
detention, or missing their court hearings, abandoning their immigration cases, and receiving a

1 deportation order. Either of these choices has immediate, devastating, and irreparable consequences.
 2 *See Ng Fung Ho v. White*, 259 U.S. 276, 284 (1922) (explaining that deportation may result in the
 3 loss “of all that makes life worth living”); *Youngberg v. Romeo*, 457 U.S. 307, 316 (1982) (“Liberty
 4 from bodily restraint always has been recognized as the core of the liberty protected by the Due
 5 Process Clause from arbitrary governmental action.”) (cleaned up). “[U]nlike economic harm, the
 6 harm from detention pursuant to an unlawful departure from agency procedure cannot be remediated
 7 after the fact.” *Damus v. Nielsen*, 313 F. Supp. 3d 317, 342 (D.D.C. 2018). Plaintiffs and the putative
 8 class members also have a constitutional right to be free from government restraint without due
 9 process. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Courts repeatedly have found that ICE’s
 10 courthouse arrests likely violate the Due Process Clause. *See, e.g., Hinestroza v. Kaiser*, No. 25-
 11 CV-07559-JD, 2025 WL 2606983, at *2 (N.D. Cal. Sept. 9, 2025) (collecting a “tsunami of similar
 12 cases in this District” where the government contends that arrestees are subject to mandatory
 13 detention, a theory that “has been uniformly rejected by the courts of the District”). “It is well
 14 established that the deprivation of constitutional rights ‘unquestionably constitutes irreparable
 15 injury.’” *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017) (quoting *Melendres v. Arpaio*,
 16 695 F.3d 990, 1002 (9th Cir. 2012)).

17 Countless people already have endured irreparable injury resulting from Defendants’
 18 courthouse arrest policies, either through unlawful arrest and detention or an *in absentia* deportation
 19 order because they feared coming to court. Absent court intervention, courthouse arrests will
 20 continue disrupt Plaintiffs’ and putative class members’ ability to attend and participate in their
 21 immigration legal proceedings, place them at risk of arrest or *in absentia* deportation orders, and
 22 result in the deprivation of their due process rights.

23 C. Both the Balance of Equities and the Public Interest Favor Preliminary Relief

24 The final two *Winter* factors—the balance of equities and public interest—“merge when the
 25 Government is the opposing party.” *Nken v. Holder*, 556 U.S. 418, 435 (2009). These factors weigh
 26 in favor of granting a stay.

27 The public interest is served by preserving courts as a safe haven for the administration of
 28 justice, preventing a culture of fear around immigration court proceedings, and protecting the due

1 process rights of immigrants appearing at immigration courts. “The public has a strong interest in
2 upholding procedural protections against unlawful detention, and the Ninth Circuit has recognized
3 that the costs to the public of immigration detention are staggering.” Dkt. No. 7 at 5 (citation
4 omitted).

5 Defendants will face minimal, if any, hardship from a stay because they would be in the
6 same position they have been in for decades when civil immigration arrests at immigration courts
7 were proscribed, absent narrow exceptions. *See Immigrant Defs. L. Ctr. v. Noem*, 781 F. Supp. 3d
8 1011, 1043 (C.D. Cal. 2025) (“The status quo to be restored is the last peaceable uncontested status
9 existing between the parties *before* the dispute developed.”) (cleaned up) (emphasis in original).
10 Defendants would still be able to carry out their enforcement operations in any legally permissible
11 place other than in or near a courthouse, and would be able to carry out courthouse arrests where
12 certain conditions were met; in other words, a return to the status quo.

13 V. CONCLUSION

14 For the reasons stated above, the Court should issue a stay of the ICE Courthouse Arrest
15 Policy and the EOIR Courthouse Arrest Memo pending resolution of this matter on the merits.

16
17 DATED: October 16, 2025

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SAN FRANCISCO BAY AREA

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19
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DATED: October 16, 2025

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ATTESTATION

I, David C. Beach, am the ECF user whose identification and password are being used to file the PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR STAY OF AGENCY ACTION UNDER 5 U.S.C. § 705; MEMORANDUM OF POINTS IN SUPPORT THEREOF. In compliance with LR 5-1(i)(3), I hereby attest that all parties have concurred in this filing.

DATED: October 16, 2025

COBLENTZ PATCH DUFFY & BASS LLP

By: /s/ David C. Beach

DAVID C. BEACH

Attorneys for Plaintiffs-Petitioners