IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA

WILLY WENDER ACEITUNO, *et al.*, on behalf of themselves and others similarly situated, *Plaintiffs*, v. U.S. DEPARTMENT OF HOMELAND SECURITY, *et al.*, *Defendants*.	Civil Action No. 26-146

PLAINTIFFS' BRIEF IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

Plaintiffs Willy Wender Aceituno, Yoshi Cuenca Villamar, Ruben Arguera Lopez, Edwin Godinez, and Yair Alexander Napoles (collectively, "Plaintiffs") respectfully submit this opposition to the Motion to Dismiss, Doc. No. 24 ("Mot."), filed by Defendants Markwayne Mullin, Rodney S. Scott, Rosario Vasquez, David J. Venturella, Sean Gallagher, U.S. Border Patrol, U.S. Customs and Border Protection ("CBP"), and U.S. Immigrations and Customs Enforcement ("ICE") (collectively, "Defendants").[1]

INTRODUCTION

Plaintiffs allege that Defendants maintain a widespread policy and practice of violating federal law by conducting immigration arrests without first securing probable cause that those detained are removable from this country and that they pose an escape risk. *See* 8 U.S.C. § 1357(a)(2). Defendants make no attempt to defend their policy on the merits, and for good reason: Four of the five Plaintiffs are U.S. citizens, and one holds a valid visa. They have lived in North Carolina for years and are deeply rooted in their communities. Each was arrested without apparent or stated reason, despite putting Defendants' agents on notice of their citizenship or lawful status. And agents gained no information supporting probable cause of escape risk prior to arresting Plaintiffs. Plaintiffs' arrests are just the tip of the iceberg: immigration arrests have significantly increased in North Carolina over the past year, and many have occurred in street-level sweeps targeting individuals who appear Latino. Defendants' policy has wreaked havoc across the state—chilling attendance at schools and places of worship and shuttering local businesses.

Plaintiffs have standing to challenge Defendants' unlawful policy and practice. There is a significant risk that they will again be unlawfully arrested because Defendants' policy is ongoing,

[1] Pursuant to Federal Rule of Civil Procedure 25(d), Defendants Markwayne Mullin, Rosario Vasquez, and David J. Venturella have been automatically substituted for Kristi Noem, Michael W. Banks, and Todd Lyons, respectively.

and because Plaintiffs—who are Latino—are members of the group Defendants are targeting for arrest. Defendants have already subjected each Plaintiff to arrest under Defendants' policy and practice, and Defendants have detained Plaintiff Aceituno *twice*. Plaintiffs also suffer ongoing injuries: Defendants' policy causes Plaintiffs to alter their lives and their movements, infringing on their rights and inflicting distress and fear.

Defendants' other arguments for dismissal fail. Plaintiffs allege both an equitable cause of action and final agency action under the APA, providing this Court with clear bases for review. And 8 U.S.C. § 1252(f)(1) does not apply to the present action because that statutory provision, by its own terms, does not apply to the warrantless arrest statute. Plaintiffs have standing, a cause of action, and a right to seek relief. Defendants' Motion should be dismissed in full.

BACKGROUND

The Fourth Amendment requires probable cause for arrest. *Hupp v. Cook*, 931 F.3d 307, 318 (4th Cir. 2019). For warrantless immigration arrests, 8 U.S.C. § 1357(a)(2) imports that standard by requiring federal agents to have probable cause that the person both is "in the United States in violation of [immigration] law," *and* is "likely to escape before a warrant can be obtained." 8 U.S.C. § 1357(a)(2)*; see, e.g.*, *Au Yi Lau v. INS*, 445 F.2d 217, 222 (D.C. Cir. 1971) (explaining that § 1357(a)(2) "must be read in light of constitutional standards").[2] Defendants are engaged in a systematic policy and practice of flouting these requirements and conducting warrantless arrests of North Carolinians without probable cause of removability or escape risk.

A. Stops and Arrests of Plaintiffs and Class Members

Plaintiffs were each arrested pursuant to Defendants' unlawful warrantless arrest policies. Compl. ¶¶ 53, 70–71, 92, 106–08. Four Plaintiffs are U.S. citizens, and one has a valid U-Visa. *Id.*

[2] *See also* Compl. ¶¶ 28–29; 8 C.F.R. § 287.8(c)(2)(ii); *Morales v. Chadbourne*, 793 F.3d 208, 216 (1st Cir. 2015) (collecting cases).

¶¶ 12–16. Each was carrying identification that readily identified him as having U.S. citizenship or lawful immigration status. *Id.* ¶¶ 43, 48–49, 74–75, 95, 104. In several instances, bystanders vouched for those facts. *Id.* ¶¶ 50, 68, 70. But agents arrested Plaintiffs anyway.

Plaintiff Aceituno was initially detained while awaiting an order from a restaurant. *Id.* ¶ 41. Agents asked for his name and whether he was a citizen, and let him enter the restaurant only when they scanned Mr. Aceituno's license. *Id.* ¶¶ 42–44. After leaving the restaurant, Mr. Aceituno was then arrested by a *second*, different group of federal agents. *Id.* ¶ 45. Despite Mr. Aceituno's protestations that he is a U.S. citizen, agents blocked his truck, smashed his window, threw him on the ground, handcuffed him, and held him until they *again* verified his citizenship. *Id.* ¶¶ 45–56. The other Plaintiffs were subjected to similar arrests: Plaintiff Cuenca was tackled from behind by CBP agents while performing yardwork through his landscaping business, and he was arrested over his brother's shouts that Mr. Cuenca and his brothers are U.S. citizens. *Id.* ¶¶ 64–71. Plaintiffs Arguera Lopez, Godinez, and Napoles were all arrested while driving, *id*. ¶¶ 85, 102: Mr. Arguera Lopez was subjected to an hour of questioning, in handcuffs, despite reiterating that he has a valid visa, *id.* ¶¶ 84–96, and Mr. Godinez and Mr. Napoles were assaulted by agents trying to pull them from their vehicle as they attempted to record their detention *after* they presented valid identification and told officers they are U.S. citizens, *id.* ¶¶ 103–11. None of the agents arresting Plaintiffs identified themselves or presented a warrant. *Id.* ¶¶ 51, 73, 76, 88, 96, 111. Nor did the agents gather any meaningful information informing the escape-risk analysis as required by § 1357(a)(2), *see id.* ¶¶ 53, 72, 111. If they had, agents would have learned that each Plaintiff has longstanding ties to their local communities. *See id.* ¶¶ 12, 41–45 (Mr. Aceituno has lived in North Carolina for twenty-five years, has a U.S. citizen daughter, owns a home, and has a vehicle registered in his name); *id.* ¶ 64 (Mr. Cuenca owns a landscaping business, and lives in North

Carolina alongside seven U.S. citizen siblings); *id.* ¶ 84 (Mr. Arguera Lopez has lived in North Carolina for fifteen years and has two brothers in Charlotte); *id.* ¶ 100 (Mr. Godinez has lived in North Carolina for over twenty-five years and owns a home); *id.* ¶ 101 (Mr. Napoles was born in North Carolina, and lives near his U.S. citizen relatives).

B. Operation Charlotte's Web and DHS's Warrantless Arrest Policy

DHS's warrantless arrests in North Carolina have rapidly increased over the last year. Compl. ¶¶ 33–34. They continue at unprecedented levels as DHS rushes to open new offices and detention centers to expand its operations in North Carolina. *Id.* ¶¶ 148–50.

DHS's pattern of increased enforcement began no later than November 2025, when DHS launched Operation Charlotte's Web in North Carolina. *Id.* ¶¶ 33–35. As part of the Operation, DHS sent hundreds of agents into the state and deployed indiscriminate, street-level sweeps to boost the numbers of people arrested. *Id.* ¶¶ 36–40. Masked agents driving unmarked vehicles and carrying military-style weapons have now carried out hundreds of arrests in Charlotte and other areas across the state. *Id*. ¶¶ 2, 36, 38. Focusing on neighborhoods with high concentrations of Latino residents, they have circled public areas and shopping centers and used violent arrest tactics, including smashing car windows, dragging people from vehicles, storming church property, and seizing workers from workplaces. *Id.* ¶¶ 2, 38–39, 161.

DHS's arbitrary conduct reflects a policy and practice of arrests without probable cause in violation of § 1357(a)(2). Through designated spokespeople and on official platforms, DHS has issued public statements confirming that it authorizes its agents to use a lower, "reasonable suspicion" standard to make arrests, not "probable cause." *Id.* ¶¶ 165–67 (collecting statements). In January, for example, DHS wrote: "Law enforcement uses 'reasonable suspicion' to make arrests, as protected under the Fourth Amendment to the U.S. Constitution"—a statement that

conflicts with the Fourth Amendment and § 1357(a)(2)'s text. *Id.* ¶¶ 164–67. Most recently, *after* Defendants began implementing their policy in North Carolina, then-Acting Director of ICE Todd Lyons issued a memorandum (the "Lyons Memo") that confirms Defendants do not take the likelihood of escape prong of § 1357(a)(2) seriously. The Memo acknowledges that Defendants cannot conduct a warrantless arrest absent probable cause of escape risk, but then enumerates a series of "[p]ossible factors" relevant to escape risk, including, among other things, presence in a car, the individual's age, or their health, *id.* ¶¶ 168–69—factors which risk encompassing virtually anyone detained in a traffic stop or on the street. A DHS spokesperson told multiple news outlets that the Memo was "nothing new" and reiterated the "reasonable suspicion" standard. *See id.* ¶ 170. These statements confirm that DHS agents disregard the probable-cause requirement and arrest individuals without securing any evidence supporting either prong of § 1357(a)(2), much less probable cause.

This pattern continues in North Carolina. *Id.* ¶¶ 145–52. Following Operation Charlotte's Web, a DHS spokesperson confirmed that the "operation [in North Carolina] is not over and it is not ending anytime soon." *Id.* ¶ 145. Federal officials told local law enforcement that enforcement activities would increase in 2026. *Id.* ¶ 146. And public sources post-dating the Complaint report that arrests have "continue[d] at a fast pace," and "intensified" since November.[3] ICE is actively increasing detention capacity in North Carolina, negotiating contracts for a new detention facility

[3] *See* Patricia Ortiz, *ICE Increases Arrests in North Carolina after CBP Operation in Charlotte*, Enlace Latino NC, May 5, 2026, https://perma.cc/9PUJ-BGBY; *see also* Caitlin McGlade, *North Carolinian ICE Arrests Continue at Fast Pace after Border Patrol Surge*, The Charlotte Observer, Apr. 20, 2026, https://perma.cc/6M47-B5T3. In evaluating a motion under Rule 12(b)(1), this court "can take judicial notice and consider other matters outside the pleadings as long as they are presented in an otherwise admissible format." *Nat'l All. for Accessibility, Inc. v. Horne-River Ridge II, LP*, 2011 WL 1103791, at *2 n.2 (W.D.N.C. Mar. 3, 2011), *R&R adopted*, 2011 WL 1060435 (W.D.N.C. Mar. 23, 2011); *see also, e.g.*, *Doe v. Blue Cross & Blue Shield of N.C.*, 2024 WL 3346319, at *1 n.1 (W.D.N.C. July 9, 2024) (taking judicial notice of a newspaper article).

in Winton, considering other facilities in Greensboro and Concord, and proposing new administrative offices in Cary and Charlotte.[4] *Id.* ¶¶ 147–50. DHS has made more than 6,300 documented federal immigration arrests in North Carolina since January 2025, nearly double that of the prior two years.[5] *Id.* ¶¶ 102, 145–52 (describing incidents after the November deployment).

Predictably, DHS's dragnet, indiscriminate arrests have caused significant harm. North Carolinians fear leaving their homes as they face racial profiling and warrantless arrests. *Id.* ¶¶ 6, 63, 124, 134, 136, 140. Local businesses, particularly in Latino neighborhoods, have lost customers and revenue. *Id.* ¶¶ 134–35, 142. And Plaintiffs continue to change their movements and routines because they live in fear of future arrests. *Id.* ¶¶ 60–63, 80–82, 97–99, 113–16.

LEGAL STANDARD

The standard for evaluating a Rule 12(b)(1) motion is the same as under Rule 12(b)(6). *See Evans v. United States*, 105 F.4th 606, 615–16 (4th Cir. 2024). This court "take[s] as true the facts alleged" in the Complaint and "draw[s] all reasonable inferences" in Plaintiffs' favor, *Doe v. Univ. of N.C. Sys.*, 133 F.4th 305, 310 (4th Cir. 2025); *see also Overbey v. Mayor of Balt.*, 930 F.3d 215, 227 (4th Cir. 2019) (explaining the court "analyze[s] the challenge [to standing] differently depending on the stage of litigation at which the challenge is brought and the substance of the defendant's arguments").

ARGUMENT

Defendants' Motion provides no basis for dismissal. The Complaint alleges two injuries-in-fact, either of which is sufficient to confer standing: Plaintiffs face a substantial risk of re-arrest,

[4] Jacob Biba, *Where in North Carolina is ICE Looking to Expand*? NC Local, Mar. 10, 2026, https://perma.cc/QZ7J-VNUS.

[5] Jacob Biba and Lex Clay Alfonso, *New ICE Data Shows More than 6,300 Arrests in NC since Trump Took Office, Nearly Double the Prior Two Years*, WFAE 90.7, Apr. 28, 2026, https://perma.cc/7VHF-8ACU.

and Defendants' continued, unlawful enforcement tactics cause ongoing injuries. Other courts have concluded that plaintiffs asserting substantially similar facts have standing. *See M-J-M-A- v. Hermosillo*, 822 F. Supp. 3d 1147, 1173 (D. Or. 2026); *Escobar Molina v. DHS*, 811 F. Supp. 3d 1, 33 (D.D.C. 2025); *Ramirez Ovando v. Noem*, 810 F. Supp. 3d 1209, 1226 (D. Colo. 2025).

Defendants' other arguments fail. Plaintiffs allege a final agency action under the APA and an equitable cause of action, either of which sustain their claims. And 8 U.S.C. § 1252(f)(1) does not apply to provisions, like 8 U.S.C. § 1357(a)(2), that fall outside of "part IV" of subchapter II of the Immigration and Nationality Act (INA). This Court should deny Defendants' Motion.

I. Plaintiffs Have Standing.

Defendants challenge only the injury-in-fact requirement for standing. *See* Mot. 9. An injury-in-fact justifying prospective relief requires either a "'substantial risk'" of a future harm, *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 159 (2014), *or* "'ongoing'" harm, *Jonathan R. ex rel. Dixon v. Morrisey*, No. 25-1232, 2026 WL 1660492, at *12 (4th Cir. June 8, 2026). Plaintiffs have alleged both: They face a substantial risk of future injury, and they continue to alter their lives to avoid being re-arrested, causing ongoing and concrete psychological distress.

A. Plaintiffs Face a Substantial Risk of Future Injury.

Defendants' actions pose a "substantial risk" of inflicting future injuries on Plaintiffs. *See Susan B. Anthony*, 573 U.S. at 159. The Complaint establishes the concreteness and imminence of this risk in three ways: First, Defendants maintain an ongoing, widespread policy and practice of effectuating warrantless arrests without probable cause of removability or escape risk. Second, Defendants have already arrested each Plaintiff pursuant to that policy—and detained one of them *twice*—underscoring the risk that Plaintiffs will again be subjected to that policy. Finally, Plaintiffs are members of the population targeted under this policy and intend to continue engaging in the type of unavoidable, routine conduct that makes them vulnerable to arrests. Taken together, the

likelihood of another arrest is "real and immediate." *City of Los Angeles v. Lyons*, 461 U.S. 95, 105 (1983).

First, Defendants maintain a policy and practice of exceeding the limited warrantless arrest authority conferred by 8 U.S.C. § 1357(a)(2). "[W]here a policy that produced a plaintiff's prior injuries remains in effect, [t]he prospect of future injury becomes significantly less speculative." *Outdoor Amusement Bus. Ass'n v. DHS*, 983 F.3d 671, 681 (4th Cir. 2020) (citation modified); *see also Susan B. Anthony*, 573 U.S. at 159–60. The arrests detailed in the Complaint establish that Defendants routinely arrest Latino North Carolinians while they are engaged in ordinary daily activities, without probable cause that they are removable and pose an escape risk, as required by § 1357(a)(2). Compl. ¶¶ 4–9, 39–57, 64–78, 83–96, 100–11, 120–44.

Plaintiffs' own arrests are direct evidence of this unlawful policy in action. Each Plaintiff is a U.S. citizen or lawfully in the United States, *id*. ¶¶ 12–16; each was arrested while conducting unavoidable daily activities—working, picking up food, or driving—without apparent or stated reason, *id.* ¶¶ 42, 45–51, 65, 85–87, 102–04; officers arrested them despite indications of their citizenship or lawful status, *id.* ¶¶ 43, 47, 49–50, 68–70, 89, 92–93, 104; and officers failed to gather information supporting probable cause of escape risk prior to their arrests, *id.* ¶¶ 53, 73, 87–88, 111. When officers arrested Mr. Aceituno, for example, they disregarded witnesses stating that Mr. Aceituno is a U.S. citizen whose identification had just been verified by other agents, and Mr. Aceituno's own repeated statements that he is a U.S. citizen, *id.* ¶¶ 53–54. As agents arrested Mr. Cuenca, they similarly ignored protestations from his brother, who informed officers, "we're from here." *Id.* ¶ 68, 70. Agents arrested Mr. Godinez and Mr. Napoles after they provided identification and told agents they are U.S. citizens, *id.* ¶ 104, and they arrested Mr. Arguera Lopez after he indicated he had a valid visa, *id.* ¶¶ 89–92. And no objectively reasonable officer could have found

that any of the Plaintiffs posed a risk of escape, based on the limited information they possessed at the time of each arrest—none attempted to flee, were evasive or dishonest, or provided other indications that they posed escape risks. *Id.* ¶¶ 53, 72, 87–94, 111. Members of the putative class have been subjected to similar treatment. *See id.* ¶ 122–23, 127.

Defendants' own statements and published guidance confirm that Plaintiffs' arrests occurred pursuant to an unlawful policy. *See Escobar Molina*, 811 F. Supp. 3d at 33 (existence of unlawful policy supported "by defendants' own public statements acknowledging the use of a standard lower than probable cause to make warrantless immigration arrests"). Defendants have publicly admitted that they authorize agents to use a lower, "reasonable suspicion" standard for effecting arrests. Compl. ¶¶ 164–67; *Escobar Molina*, 811 F. Supp. 3d at 44–45 (collecting statements). The Lyons Memo confirms that the same violations occur with respect to the escape risk prong of § 1357(a)(2); it provides a "flawed definition of escape risk," improperly instructing officers to focus on whether the individual is likely to leave the location of the stop, rather than whether they could be located again at a clearly identifiable location, and it ignores factors like community ties that should weigh against a finding that a person is unlikely to be located again. *Escobar Molina v. DHS*, 2026 WL 1256234, *17 (D.D.C. May 7, 2026). Defendants' consistent disregard for the legal requirements of § 1357(a)(2) means that Plaintiffs are likely to face implementation of Defendants' unlawful policy and practice again. *See Escobar Molina*, 811 F. Supp. 3d at 33 ("systemic policy and practice of making warrantless arrests without individualized determinations of flight risk" "render[s] the likelihood of another arrest 'real and immediate'"); *see also N.C. State Conf. of NAACP v. N.C. State Bd. of Elections*, 283 F. Supp. 3d 393, 404 (M.D.N.C. 2017) (allegations of pattern and practice of permitting and enabling systemic voter

challenges subjected plaintiffs to imminent risk of purge from voter rolls, a cognizable injury); *Outdoor Amusement*, 983 F.3d at 681; *Kenny v. Wilson*, 885 F.3d 280, 290 (4th Cir. 2018).m

DHS maintains a strong, "continued interest" in these enforcement efforts. *See Bryant v. Woodall*, 1 F.4th 280, 288 (4th Cir. 2021), *as amended* (June 23, 2021) (government's "continued interest" in enforcement of the challenged scheme supports a threat of future enforcement). DHS has been instructed to "sharply increase" arrests and meet target quotas of "3,000 arrests per day,"[6] requiring agents to "cast a broad net in their attempts to drive up arrest numbers in North Carolina" and throughout the country. Compl. ¶ 40; *see Escobar Molina*, 811 F. Supp. 3d at 35 (when an agency's target arrest numbers "remain in place or even rise, so too does the risk [of warrantless arrest]"). Defendants concede that these enforcement activities are ongoing, Mot. 15, public reporting confirms that arrests have continued at a fast pace, *see supra* p. 5–6, and Defendants are adding local detention capacity to accommodate even more arrests moving forward, Compl. ¶¶ 148–50. All of this makes clear that Defendants maintain a strong interest in pursuing the same course of conduct that gave rise to Plaintiffs' unlawful arrests. *Bryant*, 1 F.4th at 288; *Kenny*, 885 F.3d at 289 (finding standing where "defendants [had] not disavowed enforcement if plaintiffs engage in similar conduct in the future").

Defendants have adopted similar policies in other parts of the country. *See* Compl. ¶¶ 2, 153–63. Courts in these jurisdictions have consistently found that Defendants are systematically violating the requirements of 8 U.S.C. § 1357(a)(2). *See UFW v. Noem*, 785 F. Supp. 3d 672, 710 (E.D. Cal. 2025) (government conceding that agents "did not perform required flight risk assessments prior to arrest[]"); *Escobar Molina*, 811 F. Supp. 3d at 49; *Ramirez Ovando*, 810 F.

[6] Ted Hesson and Kristina Cooke, *ICE's Tactics Draw Criticism as it Triples Daily Arrest Targets*, Reuters, June 10, 2025, https://perma.cc/V2QM-M3N2.

Supp. 3d at 1234; *Hussen v. Noem*, 822 F. Supp. 3d 944, 997 (D. Minn. 2026). The same is true here, and Defendants' widespread pattern of unlawful arrests in North Carolina demonstrates that Plaintiffs face a substantial risk of future injury. *See Wiley v. Mayor & City Council of Balt.*, 48 F.3d 773, 775–76 (4th Cir. 1995) (defendants' policy of "requiring officers to take polygraph tests" created sufficient likelihood that "some members" of a police union would "in the future, be affected by th[e] policy"); *see also, e.g., In re Navy Chaplaincy*, 697 F.3d 1171, 1176–77 (D.C. Cir. 2012) ("The prospect of future injury becomes significantly less speculative where [] plaintiffs have identified concrete and consistently-implemented policies claimed to produce such injury."); *Mitchell v. City of Charlotte*, 23-cv-00006, 2024 WL 1509675, at *16 (W.D.N.C. Mar. 1, 2024), *R&R adopted*, 2024 WL 1342612 (W.D.N.C. Mar. 29, 2024) (relying on *Wiley* to partially deny dismissal of injunctive relief where a peaceful protestor sought to enjoin police crowd policies that might subject him to future harm).

Second, Plaintiffs have already been arrested pursuant to Defendants' unlawful practices, and "past injury" constitutes evidence that a "future one is likely to occur." *Wells v. Johnson*, 150 F.4th 289, 300 n.4 (4th Cir. 2025); *Susan B. Anthony*, 573 U.S. at 164. Indeed, Plaintiff Aceituno has already encountered federal agents twice: he was detained once and arrested once on the same day, by two separate groups of DHS agents. Compl. ¶¶ 41–57; *see also id.* ¶¶ 117–19 (describing class member arrested twice over the same weekend). Plaintiffs' arrests and Mr. Aceituno's repeat detentions indicate that the risk of future injury is far from speculative. *See Outdoor Amusement*, 983 F.3d at 682 (evidence of "past injuries from [the challenged] regulations" and "credible allegations" that the plaintiffs would be again subjected to those injuries established standing).

Where an ongoing policy is at issue, the Fourth Circuit does not require a person subjected to the policy to be arrested (or harmed) multiple times before standing is established, setting this

case apart from *Hussen*, 822 F. Supp. 3d at 944. *See, e.g.*, *Kenny*, 885 F.3d at 289. But Plaintiff Aceituno's repeated interactions with DHS agents also distinguish this case from *Hussen*; the court there found the plaintiffs lacked standing in part because none "ha[d] been unlawfully stopped or arrested a second time."[7] *Hussen*, 822 F. Supp. 3d at 999. *Hussen* also found it notable that "no subsequent stop or arrest occurred" following a drawdown of heightened enforcement operations, *see id.* at 982, 999, whereas enforcement activities in North Carolina remain elevated following Operation Charlotte's Web in November, *see* Compl. ¶¶ 39–40. And *Hussen* was decided at the preliminary injunction stage, where the plaintiffs' evidentiary burden to establish standing is higher than that at the pleading stage. *Delmarva Fisheries Ass'n, Inc. v. Atl. States Marine Fisheries Comm'n*, 127 F.4th 509, 514–15 (4th Cir. 2025); *see also Mitchell*, 2024 WL 1509675, at *16. *Hussen* is also an outlier decision: every other court that has considered the circumstances presented here—where a party alleges the government maintains an ongoing practice of conducting race-based, unlawful arrests targeting local communities—has concluded that the individuals subjected to those practices can vindicate their rights and seek relief from that practice in court. *See, e.g.*, *Escobar Molina,* 811 F. Supp. 3d at 33; *Ramirez Ovando*, 810 F. Supp. 3d at 1226; *M-J-M-A-*, 822 F. Supp. 3d at 1173–75.

Third, Plaintiffs are among the population targeted for arrest, Compl. ¶¶ 12–16, making it "more likely" that they will be subjected to another injury. *Kenny*, 885 F.3d at 289; *see also Escobar Molina*, 811 F. Supp. 3d at 33 ("likelihood of imminent harm increases when plaintiffs are among [the group of individuals] targeted by a defendant's policy"). Defendants

[7] *Hussen* itself recognized that it went against significant persuasive authority. *Hussen*, 822 F. Supp. 3d at 1000. Indeed, the cases on which *Hussen* relied did not require a second stop and recognized the salience of other factors, such as numerous stops within the same area. *Thomas v. Cnty. of Los Angeles*, 978 F.2d 504, 507 (9th Cir. 1992); *see also Melendres v. Arpaio*, 695 F.3d 990, 998 (9th Cir. 2012).

overwhelmingly target Latino individuals in their enforcement activities in North Carolina, *see* Compl. ¶¶ 39–40 (describing Defendants "flood[ing] areas with high concentrations of Latino residents"), *id.* ¶¶ 128, 135–137, and they have done the same in other jurisdictions across the country, *id.* ¶¶ 161–63; *see, e.g., Escobar Molina*, 811 F. Supp. 3d at 33 (targeting individuals who "appear Latino"). Where plaintiffs are members of a "discrete and identifiable community," who are "explicitly target[ed]" by defendants' pattern of conduct such that they are "in danger the moment they open their front doors," there is a sufficient likelihood of imminent re-arrest. *M-J-M-A-*, 822 F. Supp. 3d at 1174.

Plaintiffs' arrests indicate that they were each detained based on little more than the way they look. Plaintiffs were engaged in routine, lawful conduct: working, driving, picking up food. DHS agents gave no indication that they knew Plaintiffs' identities. They never produced warrants nor explained why they stopped Plaintiffs. And they asked initial questions suggesting that Plaintiffs were targeted based on their race or perceived ethnicity. *See* Compl. ¶ 42 (approaching Mr. Aceituno and asking for his "last name" and "whether he was a citizen"); *id.* ¶ 70 (asking Mr. Cuenca "whether he spoke English"); *id.* ¶ 87 (after detaining Mr. Arguera Lopez, initially asking him "where he was from," and "how he came to this country"); *id.* ¶ 105 (asking Mr. Godinez and Mr. Napoles "how they got into the United States," despite both having been born in the U.S.). DHS agents' targeting of Latino residents and neighborhoods reinforces a "credible threat" of re-arrest. *Kenny*, 885 F.3d at 289 (holding that plaintiffs' "regular" attendance at schools "where they allege there may be future encounters with school resource officers or other law enforcement" creates a "credible threat" of future arrest).

Plaintiffs also "intend[] to engage in a course of conduct 'arguably' impacted by the challenged conduct." *Davison v. Randall*, 912 F.3d 666, 678 (4th Cir. 2019), *as amended* (Jan. 9,

2019). Plaintiffs are sure to re-engage in the same conduct that gave rise to their initial arrests—picking up food from a restaurant, Compl. ¶¶ 41–49, working, *id.* ¶¶ 64–65, and driving, *id.* ¶¶ 83–85, 102–103. *See Escobar Molina*, 811 F. Supp. 3d at 34 (finding standing where plaintiffs "cannot avoid repeating the quotidian conduct that led to their original arrest"). Such "exposure" to the government's unlawful arrests "while going about one's daily life . . . constitutes ongoing harm and evidence that there is sufficient likelihood that the Plaintiffs' rights will be violated again." *Melendres*, 695 F.3d at 998 (citation modified); *see also Md. State Conf. of NAACP Branches v. Md. Dep't of State Police*, 72 F. Supp. 2d 560 (D. Md. 1999) (holding that plaintiffs had standing where the risk of re-injury "depend[ed] only on their status as a member of a minority group and their need to travel on I-95").

Plaintiffs have thus alleged that Defendants' unlawful policy and practice of violating § 1357(a)(2), Defendants' ongoing and expanding enforcement efforts, Plaintiffs' past arrests, and Defendants' policy and practice of targeting Latino residents and neighborhoods together creates a credible threat of arrest. That is more than enough to plausibly allege standing at this pre-discovery stage. *Kenny*, 885 F.3d at 289; *Davison*, 912 F.3d at 679 (stating that the plaintiff's subjection to "past enforcement" and the defendant's failure to "disavow[] future enforcement" "is sufficient to establish a credible threat of enforcement" under *Kenny*).[8]

City of Los Angeles v. Lyons, 461 U.S. 95 (1983), supports this result. There, the Court suggested that there would be standing where, as here, plaintiffs allege a widespread illegal practice that targets them as they go about their daily lives. *Id*. at 105–06. Two aspects of *Lyons*

[8] Although *Kenny, Jonathan R.*, and *Davison* analyzed standing for claims alleged under the First Amendment, neither *Jonathan R.* nor *Kenny* distinguished the analysis for the plaintiffs' standing for their First Amendment claims from the other claims alleged. And in any event, "the Constitution establishes no hierarchy of constitutional rights" and, as such, "there is of course no 'sliding scale of standing.'" *Suhre v. Haywood Cnty.*, 131 F.3d 1083, 1085–86 (4th Cir. 1997).

make this clear. First, the Court stated that there would have been standing if the plaintiff had alleged—as Plaintiffs do here—that the City had sanctioned the officers' conduct on a broad basis, by "order[ing] or author[izing] police officers to act in such manner." *Id*. Defendants erroneously suggest that the Court assumed there was a policy in *Lyons*, Mot. 16, but the Court said exactly the opposite—that the plaintiff sought prospective relief based *only* on the conduct of a single police officer during a single traffic stop, with no evidence of a pattern of illegal conduct. 461 U.S. at 98, 105–06, 110 n.9; *see Escobar Molina*, 811 F. Supp. 3d at 35; *Kenny,* 885 F.3d at 289. Second, in *Lyons*, claims of potential future injury required that in a future encounter the plaintiff would break the law, resist arrest, and officers would then act contrary to what the Court understood to be city policy. *See* 461 U.S. at 106. In contrast, Plaintiffs here allege a widespread and indiscriminate policy and practice of arresting Latino individuals as they engage in lawful routine activities. *Lyons* thus underscores why Plaintiffs have sufficiently alleged that they face future injuries. *See Escobar Molina*, 811 F. Supp. 3d at 34 (distinguishing *Lyons* where "defendants have likely adopted a policy and practice of warrantless arrests without probable cause, [ ] plaintiffs are likely among those targeted, and [ ] plaintiffs likely cannot avoid repeating the conduct that led to their original injuries").

Defendants point to *Noem v. Vasquez Perdomo*, 146 S. Ct. 1 (2025), Mot. 11, but that was an unsigned order that contained no reasoning or explanation. Such unreasoned orders do not establish precedent. *Cf. Nat'l Insts. of Health v. Am. Pub. Health Ass'n*, 145 S. Ct. 2658 (2025) (Gorsuch, J., concurring in part). Nor does that order have any implication for standing in this case; *Vasquez Perdomo* involved a different policy and a different legal challenge. In cases like this one, courts have rejected the order's relevance to standing. *Escobar Molina*, 811 F. Supp. 3d at 34–37; *UFW v. Noem*, 823 F. Supp. 3d 1112, 1129 (E.D. Cal. 2026).

Defendants next ask this Court to import the standing analysis from a pair of inapposite data privacy cases. *See* Mot. 11–13. In both *Beck v. McDonald*, 848 F.3d 262 (4th Cir. 2017), and *Holmes v. Elephant Ins. Co.*, 156 F.4th 413, 430 (4th Cir. 2025), the plaintiffs' standing relied on attenuated chains of contingencies. In *Beck*, for example, the plaintiffs sued after a hospital laptop and boxes of reports containing patient information went missing, arguing that the stolen items increased the risk of identity theft. 848 F.3d at 267. The Fourth Circuit explained that the plaintiffs' standing was too "attenuated," because any future injury would require (1) "that the thief targeted the stolen items for the personal information they contained," (2) that they would "then select, from thousands of others, the personal information of the named plaintiffs," and (3) that the thieves would then "attempt"—and eventually succeed—in using "that information to steal their identities." 848 F.3d at 275. Likewise, in *Holmes*, the plaintiffs claimed that they had been injured after their driver's license numbers were either accessed by hackers or posted directly on the dark web. 156 F.4th at 425. The court explained that plaintiffs' theory of standing required it to conclude that plaintiffs' information was likely to be purchased from the web, that the information purchased was alone sufficient to enable hackers to materially harm the plaintiffs, and that the hacked information was likely valid and usable at the point of purchase, *see id.* at 431–32—all together, too "speculative" a "chain of possibilities" to find a sufficient risk of future injury. *Id.* at 431.

No such speculation is required here. No actions by any third parties are required for injury to occur.[9] And Plaintiffs allege that they have *already* been arrested under Defendants' practice of

[9] The chains of speculative causation described by *Holmes* and *Beck* and the case to which they cite, *Clapper v. Amnesty International*, 568 U.S. 398 (2013), all relied on the roles and actions of third parties. *Holmes* and *Beck* rested on predictions regarding the actions of "intervening malicious actors," *Holmes*, 156 F.4th at 431; *Beck*, 848 F.3d at 268, and *Clapper* concerned a law that explicitly did not directly regulate the plaintiffs, *see* 568 U.S. at 411 (plaintiffs' theory "necessarily rest[ed] on their assertion that the Government [would] target *other individuals*").

violating § 1357(a)(2), that Defendants maintain the same, ongoing policy that caused their arrests in the first instance, Compl. ¶¶ 41, 117, and that these policies specifically target people like Plaintiffs, *id.* ¶¶ 39–40. *Beck* explicitly contrasted its holding with other data breach cases where "at least one named plaintiff" alleged—as Plaintiffs do here—that they had *already* suffered harm. *See* 848 F.3d at 274; *see also Gordon v. Zeroed-In Tech., LLC,* No. 23-cv-03284, 2025 WL 936415, at *5 (D. Md. Mar. 26, 2025) (following *Beck*, "actual misuse" is the "keystone" of an injury in the data-breach context (citation modified)). Here, Plaintiffs remain subject to DHS policies that have already been applied to them and continue to govern the Government's treatment of them, establishing a concrete threat of re-arrest.

Defendants acknowledge that two other district courts found standing in cases with nearly identical allegations to those here. *See* Mot. 17. Unable to distinguish those cases on the facts or the law, Defendants instead contend that those courts applied "a more relaxed [Article III standing] standard" than the Fourth Circuit, and rely on *Beck* to argue that finding a likelihood of future harm requires meeting a specific risk threshold. Mot. 11, 14–15, 17; *Beck*, 848 F.3d at 275–76 (stating that the plaintiffs' estimation that 33 percent of individuals affected by data breaches would become victims of identity theft fell short of establishing a "substantial risk" of harm). But Defendants' argument mischaracterizes how the Fourth Circuit itself has understood that statement. *Holmes* cautioned that the predictions of injury described in *Beck* may "not extend beyond the context of data breaches and other similar informational injuries." 156 F.4th at 430 n.20. And for good reason: the "substantial risk" requirement has been assessed according to the circumstances and type of injury alleged. *See id.* (stating that substantial risk "might encompass expected value, not just pure probability") (citing *Mountain States Legal Found. v. Glickman*, 92 F.3d 1228, 1234 (D.C. Cir. 1996) ("The more drastic the injury that government action makes more

likely, the lesser the increment in probability necessary to establish standing.")); *see also, e.g., Vill. of Elk Grove Vill. v. Evans*, 997 F.2d 328, 329 (7th Cir. 1993) (stating that "even a small probability of injury is sufficient to create a case or controversy").

Outside the data breach context, the Fourth Circuit has recognized plaintiffs' standing to challenge future injuries without requiring percentage-of-risk calculations.[10] *See, e.g., Kenny*, 885 F.3d at 288 (finding standing to seek injunctive relief for risk of re-arrest, without quantifying risk); *Bryant*, 1 F.4th at 286 (similar). And other courts reviewing similar cases have not required an estimation of percentage of risk. *See, e.g.*, *M-J-M-A-*, 822 F. Supp. 3d at 1175 ("[A]lthough Plaintiffs [cannot] prove a certain statistical likelihood that they will be subject to the same abuse, Defendants' practice of aggressively targeting people on racial lines and conducting unlawful warrantless arrests gives rise to a sufficient likelihood of harm."). As in other substantively identical cases, this Court should conclude that Plaintiffs face a substantial risk of re-injury.

B. Plaintiffs Suffer Ongoing Injuries.

Plaintiffs have also alleged ongoing injuries that independently demonstrate standing to sue. *See, e.g.*, *Abbott v. Pastides*, 900 F.3d 160, 168 (4th Cir. 2018) (plaintiff may seek "prospective relief against ongoing *or* imminent" harms (emphasis added)). Defendants' "uncured systemic policy failures" injure Plaintiffs beyond the risk of a future re-arrest: Plaintiffs have changed their behavior as a result of Defendants' ongoing policy of unlawful arrests, and they suffer ongoing emotional distress caused by the prospect of a future re-arrest. *See Jonathan R.*, 2026 WL 1660492,

[10] Even if this Court were to reduce Plaintiffs' risk of re-injury to a percentage, Defendants' approximation is plainly wrong. Mot. 15 (claiming 0.0025%). Not only is their percentage off by a factor of 100, but Defendants' numerator includes only logged arrests over the course of a single week. *See id.* Defendants' operations have continued and expanded since that week, and their arrest numbers almost certainly omit arrests where detainees are not taken into formal custody, such as wrongful arrests of U.S. citizens and visa-holders like Plaintiffs. In addition, Defendants target Latino communities and neighborhoods, not the entire population of any one city. *See* Compl. ¶¶ 116, 128, 136. The risk Plaintiffs face is thus significantly higher than Defendants claim.

at *13–14 (explaining that "past injuries with ongoing harm, as opposed to threatened future injuries" suffice); *Deal v. Mercer Cnty. Bd. of Educ.*, 911 F.3d 183, 189 (4th Cir. 2018). Each is an independently sufficient, ongoing injury.

First, Plaintiffs allege that Defendants' practices have caused them to alter their lives in painful ways, which constitutes an ongoing injury under *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139 (2010). *Monsanto* held that farmers had standing to challenge an agency's decision to deregulate a strain of genetically engineered alfalfa, because that decision would require them to test their crops for contamination and incur costs in attempting to minimize contamination, "even if their crops [we]re not actually infected" due to the change in policy. *See id.* at 154–55; *see also W. Va. Rivers Coal., Inc. v. Chemours Co. FC*, No. 25-1924, 2026 WL 1579491, at *5 (4th Cir. June 3, 2026) ("[A] plaintiff who reasonably avoids an activity because of the defendant's conduct has suffered an Article III injury."). Plaintiffs have similarly altered their lives in response to Defendants' practices: Mr. Aceituno missed two weeks of work, struggles to watch the news, is afraid to resume normal activities, and plans to retreat into his home if he hears that agents are present in his neighborhood. Compl. ¶¶ 59–63. Mr. Cuenca dreads leaving his home, returning to the work site where he was tackled, is "more alert to his surroundings," and considers avoiding locations where he suspects federal agents may be present. *Id.* ¶¶ 80–82. These effects extend past Plaintiffs—attendance at schools and religious institutions has dropped, *id.* ¶¶ 5, 7, and business owners have experienced a loss in clientele and staff, *see id.* ¶¶ 135, 142–43. The Fourth Circuit has recognized that this kind of regular, ongoing injury suffices for standing. *Deal*, 911 F.3d at 188–89 (avoidance of injury through changed behavior—there, changing schools—formed basis for standing); *see also M-J-M-A*, 822 F. Supp. 3d at 1173 ("[D]aily exposure to Defendants'

immigration enforcement practices employing warrantless arrests without conducting a pre-arrest assessment of someone's likelihood of escape causes significant ongoing harm.").[11]

Second, Plaintiffs experience tangible and "continu[ing] . . . emotional and psychological harm," an independent injury. *See Jonathan R.*, 2026 WL 1660492, at *13. Plaintiffs' emotional injuries are caused by the existence of Defendants' ongoing policies of warrantless arrest without probable cause and the fear that they will be subjected to re-injury. *See, e.g.*, Compl. ¶¶ 58–59 (Mr. Aceituno worries his identification won't protect him from future arrest; has insomnia, anxiety, and flashbacks); *id.* ¶¶ 80–82 (Mr. Cuenca remains traumatized and fears that he will be re-detained); *id.* ¶¶ 97–99 (Mr. Arguera Lopez suffers "significant psychological issues" and feels "anxious and highly aware of his surroundings"); *id.* ¶ 112 (Mr. Napoles "fill[s] with fear" when he sees a car he thinks may be a DHS vehicle); *id.* ¶¶ 113–14 (Mr. Godinez has recurring thoughts and fears of re-arrest). These injuries provide independent reason to award equitable relief. *See, e.g.*, *TransUnion v. Ramirez*, 594 U.S. 413, 436, 441 & n.8 (2021) (upholding appellate court's finding of standing for plaintiff who presented evidence that he was "confused" and "distressed"); *Deal*, 911 F.3d at 188 (recognizing "enduring feelings of marginalization and exclusion resulting" from avoidance of future injury); *Ben-Davies v. Blibaum & Assocs., P.A.*, 695 F. App'x 674, 676–77 (4th Cir. June 1, 2017) ("emotional distress, anger, and frustration . . . sufficiently established the existence of an injury in fact"); *see also Miller v. Dish Network, LLC*, 326 F. Supp. 3d 51, 61 (E.D. Va. 2018) ("emotional distress is a concrete, intangible injury"); *Young v. Capital One Bank*,

[11] This injury is heightened because Defendants' policies have chilled and interfered with at least two Plaintiffs' constitutional rights to travel. Compl. ¶¶ 59–63, 80–82. *See, e.g.*, *Standley v. Woodfin*, 362 N.C. 328, 331 (2008) (North Carolinians have fundamental federal and state constitutional rights to intrastate travel on public streets, "a right we depend on to carry out our daily life activities") (cleaned up); *Johnson v. City of Cincinnati*, 310 F.3d 484, 498 (6th Cir. 2002); *see also Kenny*, 885 F.3d at 289 (chilling of constitutional rights is an ongoing injury).

No. 22-cv-01326, 2024 WL 780415, at *5 (E.D. Va. Feb. 26, 2024) ("fear, worry, anxiety, stress, headaches, fatigue, distraction, and insomnia" sufficient to establish standing).

Defendants' ongoing unlawful behavior has caused Plaintiffs and similarly situated community members to alter their day-to-day life to avoid unconstitutional arrests. Plaintiffs, in turn, suffer from ongoing and concrete psychological symptoms. Compl. ¶¶ 58, 80, 97–99, 112–14. Each of these "'continuing, present adverse effects' from past illegal conduct" suffice to independently establish standing. *See Outdoor Amusement*, 983 F.3d at 680.

II. Plaintiffs Allege Final Agency Action Under the APA.

Defendants challenge Plaintiffs' APA cause of action, arguing that the unlawful warrantless arrest policy is not "final agency action." Mot. 20. Defendants' policy and practice of conducting warrantless immigration arrests without probable cause satisfies both prongs of final agency action: (1) it marks "the consummation of the agency's decisionmaking process," and (2) it is a policy by which "rights or obligations have been determined," or "from which legal consequences will flow." *Bennett v. Spear*, 520 U.S. 154, 178 (1997) (citation modified). At least four other courts have found similar policies to be final agency action.[12] *See M-J-M-A-*, 822 F. Supp. 3d at 1182; *Escobar Molina*, 811 F. Supp. 3d at 43; *Ramirez Ovando*, 810 F. Supp. 3d at 1235; *Castañon Nava v. DHS*, 435 F. Supp. 3d 880, 901 (N.D. Ill. 2020).

To satisfy *Bennett*'s "consummation" requirement, a policy must represent the culmination of the agency's decision-making process, rather than a "tentative" step. *Franklin v. Massachusetts*,

[12] In the event the Court finds there is no agency action, Plaintiffs' claims nonetheless survive under their implied equitable claim. Compl. ¶¶ 189, 198. Defendants do not dispute Plaintiffs' equitable cause of action, *see* Mot. 7 (acknowledging this cause of action), which is independently sufficient for this case to proceed. *See Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 326–27 (2015) ("The ability to sue to enjoin unconstitutional actions by . . . federal officers is the creation of courts of equity, and reflects a long history of judicial review of illegal executive action[.]").

505 U.S. 788, 797 (1992). The challenged agency action need not be a formal action or reduced to writing. *Aracely, R. v. Nielsen*, 319 F. Supp. 3d 110, 138–39 (D.D.C. 2018); *Venetian Casino Resort v. EEOC*, 530 F.3d 925, 929–30 (D.C. Cir. 2008). Plaintiffs have alleged a clear and consistent policy that is in no way tentative. Defendants are routinely disregarding § 1357(a)(2)'s escape risk requirement. And high-level agency officials have publicly confirmed multiple times that, under their policies, DHS officers do *not* need probable cause to arrest. *See supra* p. 4–5; *compare Escobar Molina*, 811 F. Supp. 3d at 43 (expressing "no doubt" "that defendants in practice have consummated a decision-making process that resulted in the implementation of a new policy of conducting warrantless civil immigration arrests based on a lower standard than probable cause"), *with Jake's Fireworks, Inc. v. CPSC*, 105 F.4th 627, 631–32 (4th Cir. 2024) (warning letter in single case sent by subordinate official was not final agency action). Plaintiffs' allegations go far beyond a mere "handful of allegedly bad arrests." Mot. 21.

Here, Plaintiffs allege a specific, discrete agency action—a policy of arresting people without making the two individualized assessments Congress requires. This policy is evidenced by Plaintiffs' and others' arrests, multiple statements by senior DHS officials, and the same pattern in other parts of the country. *See* Compl. ¶¶ 32, 38–40, 41–56, 64–78, 83–96, 100–16. Defendants' reliance on *Widakuswara v. Lake*, No. 25-5144, 2025 WL 1288817, (D.C. Cir. May 3, 2025) is inapposite. There, the plaintiffs alleged that a series of personnel decisions together amounted to a "wholesale" decision to shutter an agency, which the court concluded was a programmatic challenge not subject to APA review. *Id.* at *3. And unlike *Black Lives Matter L.A. v. City of Los Angeles*, 113 F.4th 1249 (9th Cir. 2024), where plaintiffs alleged "a medley of [government] conduct and policies," *id.* at 1263, Plaintiffs here allege a single policy, causing a single species of harm: unlawful arrests and the injuries that predictably flow from those arrests.

Defendants next advance a surprising argument: That the Court should ignore their own public, repeated statements that arrests can be made using the lower "reasonable suspicion" standard, because "reason to believe" in § 1357(a)(2) "sounds sufficiently like" "reasonable suspicion." *See* Mot. 23–24. As *Escobar Molina* recognized, this "remarkable assertion" suggesting that the individuals setting and communicating DHS policy "are ignorant or incompetent, or both," does not undermine the fact that these statements by high-ranking officials are evidence of governmental policy. 811 F. Supp. 3d at 45–46. In any event, Defendants have taken no steps to retract or amend these numerous statements, either in this litigation or in the public sphere. This Court should take these statements at "face value" and treat them as evidence of a broader, underlying policy of ignoring § 1357(a)(2) in effectuating arrests—as other courts have. *See id*. at 47; *see also M.J.M.A.*, 822 F. Supp. 3d at 1181.[13]

Plaintiffs also satisfy the second *Bennett* prong because "the result of [the agency's process] is one that will directly affect the parties." *Golden & Zimmerman, LLC v. Domenech*, 599 F.3d 426, 432 (4th Cir. 2010) (quoting *Franklin*, 505 U.S. at 797). Here, Defendants' policy has *already* impacted Plaintiffs. And the policy will continue to directly impact the legal rights of Plaintiffs and others subject to unlawful arrests. *See M-J-M-A-*, 822 F. Supp. 3d at 1181; *Ramirez Ovando*, 810 F. Supp. 3d at 1237.

Defendants argue that the alleged policy has no legal consequences because it does not bar individual officers from making a probable cause finding. Mot. 24–25. That makes no sense. The

[13] Defendants' other arguments are unavailing. The mere existence of written regulations and policies does not refute or supplant the unlawful final agency action Plaintiffs allege. *See* Mot. 21–22; *Escobar Molina*, 811 F. Supp. 3d at 48–49 ("[O]ne directive from 2022 cannot outweigh the host of more recent evidence indicating that a lower standard than probable cause is being implemented"). And, as discussed *supra* p. 9, the Lyons Memo underscores Plaintiffs' allegations that DHS is systematically violating the law, particularly in interpreting the escape risk requirement. *See* Compl. ¶¶ 168–69.

whole point is that Plaintiffs and countless others would *not* be arrested if Defendants were obeying § 1357(a)(2)'s probable cause requirements. Moreover, Defendants have bound the agency to a particular legal interpretation, authorizing agents to make warrantless arrests using a different—and lower—legal standard than the one specified by statute. *See U.S. Army Corps of Eng'rs v. Hawkes Co.*, 578 U.S. 590, 598 (2016). And they are implementing that policy. These actions have immediate impacts on the rights of every individual DHS agents encounter in North Carolina, because they are no longer protected by the probable-cause standard required by law. This Court should conclude that Plaintiffs have sufficiently alleged final agency action under the APA.

III. Section 1252(f)(1) Does Not Apply.

Defendants assert that Plaintiffs' claims are barred by 8 U.S.C. § 1252(f)(1), which prevents lower courts from issuing classwide relief that "enjoin[s] or restrain[s]" the operation of statutes within "part IV" of a specified subchapter of the INA. The text of section 1252(f)(1) belies Defendants' argument. Section 1357(a)(2)—which provides the basis for Plaintiffs' claims—is not one of the provisions contained within "part IV" of the referenced subchapter. This alone forecloses Defendants' argument. *See, e.g.*, *Texas v. DHS*, 123 F.4th 186, 209–10 (5th Cir. 2024) (collecting cases and rejecting defense because statute at issue was "not one of the statutes referenced in § 1252(f)(1)"); *Florida v. United States*, 660 F. Supp. 3d 1239, 1285 (N.D. Fla. 2023) (same); *O.A. v. Trump*, 404 F. Supp. 3d 109, 158 (D.D.C. 2019) (same); *U.H.A. v. Bondi*, 822 F. Supp. 3d 1007, 1047 & n.36 (D. Minn. 2026) (same); *Doe v. DHS*, No. 25-cv-12245, 2026 WL 880442, at *6 (D. Mass. Mar. 31, 2026) (same). Defendants' argument has been rejected in warrantless arrest cases like this one. *See Escobar Molina*, 811 F. Supp. 3d at 55; *UFW*, 785 F. Supp. 3d at 705–06; *Phil. Yearly Meeting of Religious Soc'y of Friends v. DHS*, 767 F. Supp. 3d 293, 320 (D. Md. 2025).

Defendants nonetheless contend that the relief sought will have collateral effects on "enforcing or implementing detention and the initiation of proceedings." Mot. 26. But courts have been clear that downstream effects are not enough to trigger § 1252(f)(1), given Congress's textual choice to limit the statute's application to "part IV" statutes, and the "presumption favoring interpretations of statutes that allow judicial review of administrative action," *McNary v. Haitian Refugee Ctr., Inc.*, 498 U.S. 479, 496 (1991). For instance, in *Gonzales v. DHS*, the Ninth Circuit held that § 1252(f)(1) was not triggered by an order enjoining a misuse of the adjustment-of-status statute (part V), even though the order explicitly prevented DHS's execution of removal orders (squarely within part IV). 508 F.3d 1227, 1233 (9th Cir. 2007). The Supreme Court expressly declined to disturb that rule in *Garland v. Aleman Gonzalez*. 596 U.S. 543, 553 n.4 (2022), and other courts have followed suit. *See RAICES v. Mullin*, 174 F.4th 81, 118 (D.C. Cir. 2026); *Castanon-Nava v. DHS*, 175 F.4th 828, 838 (7th Cir. 2026).[14] The single case on which Defendants rely, *N.S. v. Dixon*, 141 F.4th 279 (D.C. Cir. 2025), supports Plaintiffs' position. In *N.S.*, the D.C. Circuit reviewed federal actions taken directly under § 1226 (a provision in part IV) and held that § 1252(f)(1) prevented review. *See id.* at 289–90. Here, Plaintiffs do not challenge or seek to enjoin any arrests carried out under § 1226 or any other provision covered by § 1252(f)(1). *See Escobar Molina*, 811 F. Supp. 3d at 56. Defendants' argument fails as a matter of statutory text.

CONCLUSION

For all the reasons stated, this Court should deny Defendants' Motion to Dismiss in full.

[14] Section 1252(f)(1) does not apply for an entirely independent reason: It does not reach the relief sought here, vacatur of existing government policies. *See CASA, Inc. v. Noem*, 792 F. Supp. 3d 576, 596 (D. Md. 2025) (collecting cases).

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AI CERTIFICATION

I hereby certify the following:

1. No artificial intelligence was employed in doing the research for the preparation of this document, with the exception of such artificial intelligence embedded in the standard online legal research sources Westlaw, Lexis, FastCase, and Bloomberg.

2. Every statement and every citation to an authority contained in this document has been checked by an attorney in this case and/or paralegal working at his/her discretion as to the accuracy of the proposition for which it is offered, and the citation to authority provided.

This the 1st day of July 2026.

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