BRETT A. SHUMATE
Assistant Attorney General
Civil Division
DREW C. ENSIGN
Deputy Assistant Attorney General
TIBERIUS DAVIS
SEAN SKEDZIELEWSKI
Counsel to the Assistant Attorney General
JONATHAN K. ROSS
Senior Litigation Counsel
JASON K. ZUBATA
ANIELLO DESIMONE
JACOB A. BASHYROV
STEPHANIE L. GROFF
Trial Attorneys
Office of Immigration Litigation
Civil Division, U.S. Dept. of Justice
P.O. Box 878, Ben Franklin Station
Washington, DC 20044
Tel: (202) 305-5438
Email: Stephanie.L.Groff@usdoj.gov

BILAL A. ESSAYLI
Acting United States Attorney
DAVID M. HARRIS
Assistant United States Attorney
Chief, Civil Division
DANIEL A. BECK
Assistant United States Attorney
Chief, Complex and Defensive Litigation Section
ALEXANDER L. FARRELL (SBN 335008)
PAULINE H. ALARCON (SBN 345785)
Assistant United States Attorneys
Federal Building, Suite 7516
300 North Los Angeles Street
Los Angeles, California 90012
Tel: (213) 894-5557 | 3992
E-mail: Alexander.Farrell@usdoj.gov
Pauline.Alarcon@usdoj.gov

Counsel for Defendants

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

PEDRO VASQUEZ PERDOMO; *et al.*,

Plaintiffs,

v.

KRISTI NOEM, in her official capacity as Secretary of Homeland Security; *et al.*,

Defendants.

No. 2:25-cv-05605-MEMF-SP

DEFENDANTS' MOTION TO DISMISS AND MEMORANDUM IN SUPPORT PURSUANT TO FED. R. CIV. P. 12(b)(1) and (b)(6)

Hearing Date: January 15, 2026
Hearing Time: 10:00 a.m.
Location: First Street Courthouse
350 West First Street
Los Angeles, CA 90012
Courtroom 8B
8th Floor

Hon. Maame Ewusi-Mensah Frimpong
United States District Judge

NOTICE OF MOTION

PLEASE TAKE NOTICE that, on January 15, 2026 at 10:00 a.m., or as soon thereafter as it may be heard, Defendants United States Secretary of Homeland Security Kristi Noem, *et al.*, will, and hereby do, move this Court for dismissal of Plaintiffs' First Amended Complaint ("FAC") in its entirety pursuant to Rules 12(b)(1) and 12(b)(6). This motion will be made before the Honorable Maame Ewusi-Mensah Frimpong, United States District Judge, First Street United States Courthouse, 350 West First Street, Los Angeles, CA 90012, Courtroom 8B, 8th Floor.

DECLARATION OF JONATHAN K. ROSS REGARDING L.R. 7-3 CONFERENCE

I, Jonathan K. Ross, declare as follows:

1. I am counsel for Defendants in this matter. I make this declaration pursuant to Local Rule 7-3 in connection with Defendants' motion to dismiss Plaintiffs' FAC (ECF 16).
2. On September 17, 2025, I conferred with Plaintiffs' counsel by Microsoft Teams regarding the substance of the contemplated motion and the possibility of resolving the issues without the need for Court intervention.
3. During the conference, counsel for Defendants explained that the motion will be based on the following: Plaintiffs' lack of Article III standing to raise their Fourth and Fifth Amendment claims; even assuming standing Plaintiffs have failed to demonstrate a Fourth or Fifth Amendment violation; named Plaintiffs' Fifth Amendment claims are moot; the Court lacks jurisdiction pursuant to 8 U.S.C. § 1252(b)(9); and Plaintiffs fail to allege any Administrative Procedure Act violation.
4. The parties were unable to reach a resolution that would eliminate the necessity of Court intervention.
5. Consistent with the Court's October 23, 2025 request, I conferred with Plaintiffs' counsel on October 28 and 29, 2025, regarding the noticed hearing date for this motion. Defendants also contacted the Courtroom Deputy Clerk to convey their intention to notice the motion for January 15, 2026, or alternatively, another date during the week of January 12.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated: October 29, 2025

Respectfully submitted,

/s/ Jonathan K. Ross
JONATHAN K. ROSS
Senior Litigation Counsel
U.S. Department of Justice

Counsel for Defendants

TABLE OF CONTENTS

I. INTRODUCTION 1

II. FACTUAL BACKGROUND 1

A. Fourth Amendment Stops Allegations 1

1. Consensual Encounters 2

2. Arrests 2

3. Terry Stops with Lawful Justifications 2

4. Self-Initiated Contact with Federal Agents 2

B. Fifth Amendment Access to Counsel Allegations 2

III. LEGAL BACKGROUND 3

A. Reasonable Suspicion to Stop 3

B. Investigations and Warrantless Arrests 4

C. Due Process Protections for Alien Detainees 4

IV. LEGAL STANDARD 5

V. ARGUMENT 6

A. Plaintiffs Lack Standing to Seek the Prospective Equitable Relief in their Complaint 6

B. Plaintiffs' Fifth Amendment Claims are Moot 10

C. This Court Lacks Jurisdiction Under Section 1252. 12

D. Plaintiffs Fail to State a Constitutional Claim 12

E. Plaintiffs Fail to State Any APA Violation 17

V. CONCLUSION 18

L.R. 11-6.2 CERTIFICATE OF COMPLIANCE

TABLE OF AUTHORITIES

CASES

Page(s)

Abel v. United States,
362 U.S. 217 (1960) 3, 7

Alderman v. United States,
394 U.S. 165 (1969) 9

Am. Mfrs. Mut. Ins. Co. v. Sullivan,
526 U.S. 40 (1999) 4, 14

Americans for Immigrant Just. v. Dep't of Homeland Sec.,
No. CV 22-3118, 2023 WL 1438376 (D.D.C. Feb. 1, 2023) 5, 14

B.C. v. Plumas Unified Sch. Dist.,
192 F.3d 1260 (9th Cir. 1999) 6

Bell Atlantic Corp. v. Twombly,
550 U.S. 544 (2007) 5

Bell v. Wolfish,
441 U.S. 520 (1979) 15

Block v. Rutherford,
468 U.S. 576 (1984) 5, 14

Brach v. Newsom,
38 F.4th 6 (9th Cir. 2022) 10, 11

Bull v. City & Cty. of S.F.,
539 F.3d 1193 (9th Cir. 2008) 15

City of Los Angeles v. Lyons,
461 U.S. 95 (1983) 5, 7, 8

Clapper v. Amnesty Int'l USA,
568 U.S. 398 (2013) ..... 6, *passim*

Creech v. Tewalt,
84 F.4th 777 (9th Cir. 2023) 18

Ctr. for Biological Diversity v. Exp.-Import Bank of the United States,
894 F.3d 1005 (9th Cir. 2018) 9

Department of State v. Muñoz,
602 U.S. 899 (2024) 4, 14, 17

Erickson v. HHS,
67 F.3d 859 (9th Cir. 1995) 16

FDA v. All. for Hippocratic Med.,
602 U.S. 367 (2024) 6, 9

Florence v. Bd. of Chosen Freeholders of Cnty. of Burlington,
566 U.S. 318 (2012) 16

Friends of the Earth, Inc. v. Laidlaw Env'l Servs., Inc.,
528 U.S. 167 (2000) 6

Gonzalez v. ICE,
975 F.3d 788 (9th Cir. 2020) 6

Greenwood v. Fed. Aviation Admin.,
28 F.3d 971 (9th Cir. 1994) 18

Grigoryan v. Barr,
959 F.3d 1233 (9th Cir. 2020) 17

Hatim v. Obama,
760 F.3d 54 (D.C. Cir. 2014) 16

Hernandez v. Campbell,
204 F.3d 861 (9th Cir. 2000) 9

Hodgers-Durgin v. De La Vina,
199 F.3d 1037 (9th Cir. 1999) 7

INS v. Delgado,
466 U.S. 210 (1984) 13

J.E.F.M. v. Lynch,
837 F.3d 1026 (9th Cir. 2016) 12

Jenkins v. McKeithen,
395 U.S. 411 (1969) 6

Jennings v. Rodriguez,
583 U.S. 281 (2018) 14

Lata v. INS,
204 F.3d 1241 (9th Cir. 2000) 17

Lewis v. Cont'l Bank Corp.,
494 U.S. 472 (1990) 11

Mathews v. Eldridge,
424 U.S. 319 (1976) 4, 14

Mayfield v. U.S.,
599 F.3d 964 (9th Cir. 2010) 6

Miranda v. Clark County, Nev.,
279 F.3d 1102 (9th Cir. 2002) 6

Noem v. Perdomo,
606 U.S. ___, 2025 WL 2585637 (Sept. 8, 2025) ..... 1, *passim*

Orantes-Hernandez v. Thornburgh,
919 F.2d 549 (9th Cir. 1990) 15, 16

Pub. Util. Comm'n v. FERC,
100 F.3d 1451 (9th Cir. 1996) 11

Rakas v. Illinois,
439 U.S. 128 (1978) 9

Reno v. Flores,
507 U.S. 292 (1993) 17

Steel Co. v. Citizens for a Better Env't,
523 U.S. 83 (1998) 6

Tejeda-Mata v. INS,
626 F.2d 721 (9th Cir. 1980) 4

TransUnion LLC v. Ramirez,
594 U.S. 413 (2021) 9

United States v. Arvizu,
534 U.S. 266 (2002) 13

United States v. Brignoni-Ponce,
422 U.S. 873 (1975) 3, 7, 13

United States v. Montero-Camargo,
208 F.3d 1122 (9th Cir. 2000) 13

United States v. Rocha-Lopez,
527 F.2d 476 (9th Cir. 1975) 13

United States v. Shepherd,
No. 2:24-CR-00083-DJC-1, 2024 WL 4931677 (E.D. Cal. Dec. 2, 2024) 4

United States v. Valdes-Vega,
738 F.3d 1074 (9th Cir. 2013) 3

Washington v. Glucksberg,
521 U.S. 702 (1997) 4, 17

Wolfe v. Strankman,
392 F.3d 358 (9th Cir. 2004) 5

Zadvydas v. Davis,
533 U.S. 678 (2001) 4, 14

STATUTES

Immigration and Nationality Act of 1952, as amended:

5 U.S.C. § 706(2)(A)-(B) 17

8 U.S.C. § 1252 1

8 U.S.C. § 1252(a)(5) 12

8 U.S.C. § 1252(b)(9) 12

8 U.S.C. § 1357 ..... 1, 13

8 U.S.C. § 1357(a)(1) 3, 7

8 U.S.C. § 1357(a)(2) 7

8 U.S.C. § 1357(a)(2) 3, 4

REGULATIONS

8 C.F.R. § 287.5 3

8 C.F.R. § 287.5(a) 7

8 C.F.R. § 287.5(c) 7

8 C.F.R. § 287.8 3

8 C.F.R. § 287.8(b)(2) 4

8 C.F.R. § 287.8(c)(2)(i) 4

8 C.F.R. § 287.8(c)(2)(ii) 4

FEDERAL RULES OF APPELLATE PROCEDURE

Fed. R. Civ. P. 12(b)(1) 1, 5

Fed. R. Civ. P. 12(b)(6) 1, 5

Fed. R. Evid. 201 7

I. INTRODUCTION

This Court should dismiss Plaintiffs' Complaint in its entirety under either Federal Rule of Civil Procedure ("Rule") 12(b)(1), (b)(6), or both. Plaintiffs seek class-wide prospective injunctive and declaratory relief, alleging that a formally sanctioned "pattern of conduct" by the Department of Homeland Security ("DHS"), within the Central District of California constitutes an unlawful policy. *See* ECF 16, First Amended Complaint ("FAC"). Plaintiffs contend that this policy involves stopping and arresting individuals for immigration violations without reasonable suspicion and probable cause respectively, in violation of the Fourth Amendment and 8 U.S.C. § 1357. Plaintiffs' allegations arise from discrete enforcement operations during June 2025, which the Supreme Court has since recognized as lawful exercises of statutory authority. *See Noem v. Perdomo*, 606 U.S. ___, 2025 WL 2585637 (Sept. 8, 2025). Similar to the grounds Justice Kavanaugh provided in his concurrence, *id.* at *1-5, Defendants move for dismissal on the following grounds: (1) Plaintiffs lack standing to seek the prospective relief under longstanding Supreme Court precedent; (2) even had they demonstrated standing, Plaintiffs failed to allege a viable Fourth Amendment claim as they have not identified any unlawful policy or practice satisfying the pleading standards under *Twombly* and *Iqbal*; (3) Plaintiffs' Fifth Amendment claims are moot and jurisdictionally barred by 8 U.S.C. § 1252; and (4) Plaintiffs fail to state any Administrative Procedure Act ("APA") violation.

II. FACTUAL BACKGROUND

A. Fourth Amendment Stops Allegations

Plaintiffs and non-party witnesses allege unlawful immigration operations by Defendants (and their officials) in the Los Angeles area (and surrounding counties) throughout June 2025. *See generally* FAC. Specifically, the FAC alleges that during the month of June, DHS conducted coordinated immigration enforcement operations across the area aimed at public safety and law enforcement. FAC ¶ 5. Plaintiffs' allegations, however, fall into four categories, none of which provide the basis for Fourth Amendment violations: (i) consensual encounters; (ii) arrests; (iii) Terry stops with lawful justification; and (iv) self-initiated contact with federal agents.

1. Consensual Encounters

Plaintiff Hernandez Viramontes, a United States citizen, alleges that DHS agents questioned and arrested workers on various occasions at the car wash where he works in Orange County. FAC ¶¶ 15, 148-56. He was briefly detained for citizenship verification amid a hostile crowd, before being promptly released. *Id.*

2. Arrests

Plaintiffs allege Villegas Molina was arrested on June 18, near Pasadena during a targeted operation and later released on bond. FAC ¶¶ 14, 137-47; ECF 143.

3. Terry Stops with Lawful Justifications

Plaintiffs Vasquez Perdomo and Osorto were apprehended near a donut shop in Pasadena on June 18, 2025, during a targeted enforcement action. FAC ¶¶ 12-16, 111-36. Perdomo and Osorto were later released on bond. ECF 143.

4. Self-Initiated Contact with Federal Agents

Plaintiff Gavidia, a United States citizen, voluntarily interacted with agents on June 12, 2025 at a Montebello tow yard but was restrained briefly for officer safety amid a hostile crowd and was not taken into custody. FAC ¶¶ 16, 157-64.

In sum, as the Supreme Court later explained in granting a stay of the TRO (based on facts largely mirrored in Plaintiffs' FAC), these allegations do not plausibly establish that officers acted without reasonable suspicion. *Perdomo*, 2025 WL 2585637, at *3-5 (Kavanaugh, J., concurring).

B. Fifth Amendment Access to Counsel Allegations

Plaintiffs further allege that DHS is detaining arrested individuals at B-18 and denying legal access. Organizational Plaintiffs allege that detainees held at B-18 are "forced to sleep in" "cramped conditions," as well as deprived of food, necessary medical care, and access to prospective or retained counsel. FAC ¶¶ 78-80. Plaintiffs allege that organizational Plaintiff's legal members attempted to gain access to B-18 on June 6 and 7, 2025 but were not permitted to enter as indicated on a sign posted on the entrance to the facility. *Id.* ¶¶ 82-86. Similarly, on June 16 and 19, 2025, organizational Plaintiff's legal members were allegedly denied access to the facility. *Id.* ¶¶ 90-91. Each closure was predicated on an anticipated riot which required DHS to take precautions to secure human life and property. Plaintiffs

acknowledged that "attorneys and family members have been allowed access" at times but had to wait to see "their clients or loved ones." *Id.* ¶ 87.

Even accepting Plaintiffs' allegations as true, none describe a policy or practice constituting an ongoing violation of either the organizational Plaintiffs' or unnamed detainees' due process rights.

III. LEGAL BACKGROUND

A. Reasonable Suspicion to Stop

Title 8 U.S.C. § 1357(a)(1) and (2) and 8 C.F.R. § 287.5 allow DHS to question and detain individuals for immigration-related administrative violations. *See* 8 U.S.C. § 1357(a)(1)-(2) (allowing officers to interrogate, without a warrant, any person believed to be an alien regarding their right to be or remain in the United States, and to arrest those likely to escape before a warrant is obtained); *Abel v. United States*, 362 U.S. 217, 232-37 (1960) (discussing constitutional validity of administrative arrest procedure in deportation cases). DHS officers are trained on statutory and regulatory provisions of the Immigration and Nationality Act ("INA") and Fourth Amendment case law and standards, including that reasonable suspicion and probable cause are assessed under a totality of the circumstances. *See* 8 U.S.C. § 1357(a)(1)-(2); 8 C.F.R. §§ 287.5, 287.8. Officers focus on targeted arrests of aliens with final removal orders or serious criminal records and use consensual encounters to evaluate reasonable suspicion when encountering non-targets. ECF 170-3, Quinones Decl. ¶¶ 5-7. Officers develop individualized reasonable suspicion based on intelligence, law enforcement and database information, trend analysis, previous encounters at specific locations, and inputs from human sources and confidential informants. *Id.* at ¶ 7; ECF 170-2, Parra Decl. ¶¶ 8-10.

Immigration officers must have reasonable suspicion of an immigration violation before executing a stop. *United States v. Brignoni-Ponce*, 422 U.S. 873, 881-84 (1975). Officers can rely on several factors in assessing reasonable suspicion, including the characteristic appearance of persons who live in Mexico such as the mode of dress and haircut. *Id.* at 885. Officers cannot base a stop on race or proximity to the border alone; they must consider the totality of the circumstances, including their training and experience. *Id.* at 885-86; *United States v. Valdes-Vega*, 738 F.3d 1074, 1080 (9th Cir. 2013). Officers require "far less" information to make a stop based on reasonable suspicion than what is required to arrest an individual based on probable cause. *Valdes-Vega*, 738 F.3d at 1080; *Brignoni-Ponce*, 422

U.S. at 881. Justice Kavanaugh's concurrence reaffirmed that *Brignoni-Ponce* permits reliance on multiple contextual factors—including location, time, and other objective cues—so long as agents consider these factors as part of the totality of the circumstances. *Perdomo*, 2025 WL 2585637, at *2-3 (Kavanaugh, J., concurring).

B. Investigations and Warrantless Arrests

An immigration officer must have reasonable suspicion of an immigration violation before performing a detentive stop without an arrest. 8 C.F.R. § 287.8(b)(2). Under the INA and implementing regulations, immigration officers may conduct warrantless arrests of aliens "if he has *reason to believe* that the alien [is] in violation of [United States] law or regulation and is likely to escape before a warrant can be obtained for his arrest[.]" 8 U.S.C. § 1357(a)(2) (emphasis added); 8 C.F.R. § 287.8(c)(2)(i)-(ii). "Reason to believe" has been equated with the constitutional requirement of probable cause. *Tejeda-Mata v. INS*, 626 F.2d 721, 725 (9th Cir. 1980). Thus, "[t]o justify an arrest [without a warrant], officers must have probable cause based on the facts available to them at that time for the arrest." *United States v. Shepherd*, No. 2:24-CR-00083-DJC-1, 2024 WL 4931677, at *5 (E.D. Cal. Dec. 2, 2024).

C. Due Process Protections for Alien Detainees

The Fifth Amendment's Due Process Clause provides that no person shall "be deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V. The Due Process Clause requires that the Government follow adequate procedures before it can deprive a person of certain liberty or property interests, a protection referred to as "procedural due process." *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976). The Due Process Clause "provides heightened protection against government interference with certain fundamental rights and liberty interests." *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997). With respect to such "fundamental right[s]," the government "can act only by narrowly tailored means that serve a compelling state interest." *Department of State v. Muñoz*, 602 U.S. 899, 909-10 (2024). To demonstrate a due process violation, a plaintiff must establish both the existence of a protected liberty interest and the lack of proper procedures. *See Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 59-60 (1999). Notably, due process protections vary "depending on status and circumstance[s]." *Zadvydas v. Davis*, 533 U.S. 678, 694 (2001). In the detention context, Plaintiffs must show that "the challenged condition, practice, or policy constitutes punishment." *Block v. Rutherford*, 468

U.S. 576, 583-84 (1984). This requires either a "subjective intent to punish" or "that a restriction is unreasonable or excessive relative to the Government's proffered justification." *Americans for Immigrant Just. v. Dep't of Homeland Sec.*, No. CV 22-3118, 2023 WL 1438376, at *11 (D.D.C. Feb. 1, 2023).

Relevant to Plaintiffs' due process claims, B-18 is a temporary holding facility that serves U.S. Immigration and Customs Enforcement's ("ICE") Enforcement and Removal Operations ("ERO") primarily for short-term detention and transfers involving courts, detention centers, or other agencies. ECF 70-1, ("Uyeda Decl.") ¶ 4. The facility provides 24-hour telephone access with no call time limits, free calls to consulates and pro-bono legal organizations, and collect call capability, without requiring prepaid accounts. *Id.* at ¶ 6; ECF 168-2, ("Gudino Decl.") ¶ 5. Detainees may make a free call upon intake and have access to private rooms for confidential attorney communication, with visitation accommodated during scheduled hours and extended if attorneys arrive before closing. Gudino Decl. ¶¶ 7, 9, 20; Uyeda Decl. ¶¶ 8-9. During the June 2025 protests, which Plaintiffs' FAC is focused on, concerns over safety prompted temporary closure and detainee transfers from B-18 between June 6 and June 24. Uyeda Decl. ¶¶ 10-12. Since the Court's issuance of the TRO on July 11, 2025, emergency transfers have occurred only sparingly under exceptional safety or facility conditions, with detainees maintaining 24-hour phone access throughout. Gudino Decl. ¶ 21; Uyeda Decl. ¶ 11.

IV. LEGAL STANDARD

A district court must dismiss an action if it lacks subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1). Because standing is jurisdictional, the court must dismiss when plaintiffs fail to establish an imminent and particularized injury. *City of Los Angeles v. Lyons*, 461 U.S. 95, 101-04, 111 (1983). A Rule 12(b)(1) motion may be facial—confined to the Complaint's allegations—or factual—permitting the court to look beyond the Complaint at extrinsic evidence. *Wolfe v. Strankman*, 392 F.3d 358, 362 (9th Cir. 2004).

Under Rule 12(b)(6), a motion to dismiss should be granted if the complaining party cannot provide "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Under this standard, the Complaint is construed in a light most favorable to the non-moving party and all properly pleaded factual allegations are taken as true and reasonable inferences drawn in their favor. *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969). The court

does not accept as true, however, unreasonable inferences or conclusory legal allegations cast in the form of factual allegations. *Miranda v. Clark County, Nev.*, 279 F.3d 1102, 1106 (9th Cir. 2002) ("conclusory allegations of law and unwarranted inferences will not defeat a [Rule 12(b)(6)] motion to dismiss").

V. ARGUMENT

A. Plaintiffs Lack Standing to Seek the Prospective Equitable Relief in their Complaint.

"Plaintiffs' standing theory largely tracks the theory rejected in *Lyons*." *Perdomo*, 2025 WL 2585637, at *2 (Kavanaugh, J., concurring). Plaintiffs lack standing to pursue prospective equitable relief for both their Fourth and Fifth Amendment claims because they do not, nor could they, demonstrate that past isolated encounters with federal agents are likely to recur, that they will again be subjected to any unlawful conduct, or that organizational Plaintiffs' access to aliens detained at B-18 will be limited in the future.

"A plaintiff must demonstrate standing separately for each form of relief sought." *See Friends of the Earth, Inc. v. Laidlaw Env'l Servs., Inc.*, 528 U.S. 167, 185 (2000). To establish standing, a plaintiff must demonstrate (i) that he has suffered or likely will suffer an injury in fact, (ii) that the injury likely was caused or will be caused by the defendant, and (iii) that the injury likely would be redressed by the requested judicial relief. *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 380 (2024). "[A] plaintiff who has standing to seek damages for a past injury, or injunctive relief for an ongoing injury, does not necessarily have standing to seek prospective relief such as a declaratory judgment." *Mayfield v. U.S.*, 599 F.3d 964, 969 (9th Cir. 2010) (citations omitted). Named plaintiffs need standing to sue if they seek to represent a class seeking such relief. *See B.C. v. Plumas Unified Sch. Dist.*, 192 F.3d 1260, 1264 (9th Cir. 1999). When a plaintiff seeks prospective equitable relief, the standing analysis involves two distinct considerations: (1) the complaint must contain "allegations of future injury [that are] particular and concrete[,]" and past wrongs on their own are insufficient to support standing but they may serve as evidence of a real and immediate threat of repeated injury, *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 109 (1998); *see also Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013) (noting injuries must not be too speculative); and (2) past injury cannot "provide standing to seek prospective injunctive relief 'absent a sufficient likelihood that the plaintiff will again be wronged in a similar way.'" *Gonzalez v. ICE*, 975 F.3d 788, 803 (9th Cir. 2020) (quoting *Lyons*, 461 U.S. at 111) (internal alterations omitted).

In undertaking these two inquiries, courts generally recognize that any alleged injury to unnamed persons "is simply irrelevant to the question whether the named plaintiffs are entitled to the injunctive relief they seek." *Hodgers-Durgin v. De La Vina*, 199 F.3d 1037, 1042 (9th Cir. 1999).

As to their Fourth Amendment claims, neither individual nor organizational Plaintiffs can establish Article III standing. Plaintiffs seek to bar investigative stops based on purportedly prohibited factors alone or in combination, to form reasonable suspicion. Importantly, Justice Kavanaugh's opinion for the Supreme Court's stay of this Court's TRO found that Defendants demonstrated a strong prospect of success for their argument that Plaintiffs likely lack Article III standing under *Lyons* for injunctive relief restricting immigration officers from making investigative stops. *See Perdomo*, 2025 WL 2585637, at *1. To stay the TRO, the Supreme Court necessarily held that Defendants are likely to succeed on the merits of Plaintiffs' TRO claims (which largely mirror those in the FAC), would suffer irreparable harm absent a stay of the TRO, and have equities weighing in favor of the stay. *See id.* at *2-3.

The individual Plaintiffs lack standing because none were stopped based solely on one enumerated factor, as officers are required to rely on a totality-of-the-circumstances standard to assess reasonable suspicion for an investigative stop.[1] Plaintiffs' only evidence to the contrary is baseless speculation. Officers lawfully relied on the totality of objective factors—including location, conduct, and prior intelligence—and no Plaintiff plausibly alleges a stop based solely on ethnicity or language. *See Brignoni-Ponce*, 422 U.S. at 884; *see also Abel*, 362 U.S. at 233 (collecting statutes "authoriz[ing] the arrest of deportable aliens by order of an executive official"); 8 U.S.C. § 1357(a)(1), (2); 8 C.F.R. § 287.5(a), (c) (authorizing immigration officers to interrogate and arrest aliens). Plaintiffs therefore fail to demonstrate they were stopped solely based on one of the enumerated factors at issue, much less that they face any *immediate* and likely risk of being subjected to such a stop in the future. *See Clapper*, 568 U.S. at 412; ECF 128-13 at 15.

The Supreme Court has already rejected a similar "past-is-prologue" theory of standing. Notably, in *Lyons*, the Supreme Court held that a plaintiff previously subjected to a chokehold lacked standing to enjoin future chokeholds absent a concrete, imminent threat that he personally would be choked again; a

[1] Notably, this Court should take judicial notice of ICE Directive 11032.2, detailing the Reasonable Suspicion Standard for federal immigration agents. *See* Fed. R. Evid. 201.

past incident and an alleged departmental practice were not sufficient to demonstrate Article III standing. 461 U.S. at 101-11. Here, individual Plaintiffs' standing theory is a redux of *Lyons*, as Justice Kavanaugh properly recognized in his concurrence supporting a stay of this Court's TRO. *Perdomo*, 2025 WL 2585637, at *2. Justice Kavanaugh explained that Plaintiffs likely lack Article III standing, like in *Lyons*, specifically because Plaintiffs have "no good basis to believe that law enforcement will unlawfully stop *them* in the future based on the prohibited factors—and certainly no good basis for believing that any stop of the plaintiffs is imminent." *Id.* at *2. Plaintiffs posit a speculative claim of future harm, and they cannot show any realistic immediate threat that they will likely be stopped and detained solely based on their claimed purported prohibited factors again. *See Clapper*, 568 U.S. at 401. "Absent a sufficient likelihood that [they] will again be wronged in a similar way," *Lyons*, 461 U.S. at 111, Plaintiffs cannot establish standing to seek an injunction much less irreparable harm.

For example, Plaintiff Gavidia alleges a past Fourth Amendment injury from law enforcement and seeks prospective relief—here, to enjoin DHS from appropriately utilizing a variety of factors to determine reasonable suspicion. And just as in *Lyons*, Plaintiff Gavidia cannot show standing because he has no basis beyond speculation to believe that he will be stopped again without reasonable suspicion based solely on the four factors. "Absent a sufficient likelihood that he will again be wronged in a similar way," he is "no more entitled to an injunction than any other citizen of Los Angeles; and a federal court may not entertain a claim by any or all citizens who no more than assert that certain practices of law enforcement officers are unconstitutional." *Lyons*, 461 U.S. at 111. Similarly, the other individual Plaintiffs even more so lack standing, as they present only unsubstantiated fears that they would be stopped again for what they claim are improper reasons. *See* FAC ¶¶ 12-15. Subjective fear of a future allegedly illegal stop, however, "is not certainly impending" and "cannot manufacture standing." *Clapper*, 568 U.S. at 416.

Moreover, the organizational Plaintiffs also lack standing to pursue prospective injunctive relief as to their Fourth Amendment claims. *See Perdomo*, 2025 WL 2585637, at *2-3. Associational standing requires proof that an organization's "members would otherwise have standing to sue in their own right" and "neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Alliance for Hippocratic Med.*, 602 U.S. at 398 (Thomas, J., concurring; internal quotation

omitted). But just like the individual Plaintiffs, any risk of future harm for the organizations' members is, at most, speculative. *See id.* at 381 (citing *Clapper*, 568 U.S. at 409). Absent any nonspeculative probability of injury to their members, the organizations lack standing. *Id.* And "Fourth Amendment rights are personal rights which . . . may not be vicariously asserted." *Alderman* v. *United States*, 394 U.S. 165, 174 (1969); *see Rakas v. Illinois*, 439 U.S. 128, 133-134 (1978).

As to Plaintiffs' Fifth Amendment claims, Plaintiffs have failed to allege, let alone show, that any of their individual members would independently have standing to bring an access to counsel claim. *See* FAC ¶¶ 72-98. Plaintiffs have failed to provide any evidence of concrete harm to themselves, let alone to individual organizational members. Plaintiffs' FAC seeks to assert a right to access *potential* clients which does not "ha[ve] a close relationship to a harm traditionally recognized as providing a basis for a lawsuit in American courts." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 440 (2021). That inquiry is "[c]entral to assessing concreteness." *Id.* at 417. Plaintiffs must "identif[y] a close historical or common-law analogue for their asserted injury" to demonstrate their asserted injury is concrete. *Id.* at 424. Yet Plaintiffs have not shown how temporary accessibility limits to non-client detainees at B-18 when riots were occurring or impending fits within this framework. Indeed, normal operations at B-18 have resumed. *See* Uyeda Decl. ¶¶ 11-12. Accordingly, organizational Plaintiffs' claims may not be salvaged under an umbrella of associational standing.

Furthermore, the fact this Court previously found that organizational Plaintiffs had standing, ECF 87 at 21, does not make its jurisdictional determination binding law of the case because this Court must ensure that it "possess jurisdiction at every stage of the litigation," including when questions of mootness and standing arise. *See Ctr. for Biological Diversity v. Exp.-Import Bank of the United States*, 894 F.3d 1005, 1011 (9th Cir. 2018) (internal quotation omitted); *Hernandez v. Campbell*, 204 F.3d 861, 865 (9th Cir. 2000) ("Federal courts are always 'under an independent obligation to examine their own jurisdiction[.]'"). Here, organizational Plaintiffs do not meet the Article III requirement of standing. First, this Court has not found and Plaintiffs have not presented evidence of an unlawful policy or practice. This failure is dispositive because, without a concrete finding of a policy or settled practice, Plaintiffs cannot show the "real and immediate" threat of future injury required by *Lyons*. At most, Plaintiffs' evidence consists of isolated anecdotes that do not speak to the likelihood of prospective harm. FAC

¶¶ 72-98. The riots and protests began on June 6, 2025, operations at B-18 largely normalized since June 24, 2025, and, except in limited instances where the government modified the visitation hours in anticipation of impending temporary public unrest or facility repairs, Plaintiffs have not alleged that they have since been unable to access existing or prospective clients at B-18. Indeed, courts have repeatedly held that a chilling effect based on a plaintiff's fear of future injury (like here) is too speculative to confer standing for injunctive relief. *See Clapper*, 568 U.S. at 416 (holding plaintiffs "cannot manufacture standing merely by inflicting harm on themselves based on their fears of hypothetical future harm").

At bottom, the named Plaintiffs have failed to show any real and immediate threat of being harmed again under the Fourth or Fifth Amendment. Without such a showing, their claims lack the necessary foundation, and the FAC should be dismissed in its entirety.

B. Plaintiffs' Fifth Amendment Claims are Moot.

Plaintiffs' B-18 allegations are moot because the challenged conditions were temporary, have ceased, and cannot reasonably be expected to recur. *See Brach v. Newsom*, 38 F.4th 6, 11 (9th Cir. 2022) (en banc) (noting a case is moot when there is no longer a live controversy or effective relief available). For purposes of Plaintiffs' FAC allegations, which only account for closures during the month of June 2025, normal access to B-18 resumed June 24, 2025. As to any short-term modifications to normal operations since the June 2025 riots, they were precipitated by additional riots in the area that required swift action by DHS to maintain the safety and security of detainees and B-18 personnel. *See, e.g.*, ECF 168 at 5 n.5. Plaintiffs cannot demonstrate ongoing harm as their evidence is either outdated, speculative, or both, instead counting on isolated past events that cannot demonstrate that alleged injuries to aliens detained at B-18 will continue to persist.

As a threshold issue, Plaintiffs Perdomo, Osorto, and Molina have been released from custody. ECF 143 at 4. And none of their supporting evidence shows any of the named individual Plaintiffs are currently being held at B-18. Neither do any named individual Plaintiffs allege any current barriers to access of counsel despite previously being held at B-18 (which only further supports the absence of an actionable unlawful policy). *See generally* FAC. As a result, their claims—as well as those of any other individuals no longer held at B-18, *see, e.g.*, ECF 127-4 ¶ 10 (noting alien being transferred to another facility)—are moot. Because these individuals are no longer subject to the challenged access

modifications at B-18, there is no ongoing injury this Court can remedy. Thus, the relief sought cannot apply to the individual Plaintiffs or any similarly situated former detainees. *See Lewis v. Cont'l Bank Corp.,* 494 U.S. 472, 478 (1990) (requiring plaintiffs to "continue to have a 'personal stake in the outcome' of the lawsuit"). Relatedly, the government has and continues to provide B-18 detainees with access to counsel—subject to modifications based on "exigent circumstances requir[ing access] closure for the safety of human life or the protection of property," ECF 87 at 49. Ordering DHS to continue taking actions it already performs is particularly inappropriate where doing so would subject the agency to continuing court jurisdiction and hinder the government's ability to act nimbly when exigent circumstances arise in the future. *See, e.g.*, *Pub. Util. Comm'n v. FERC*, 100 F.3d 1451, 1458 (9th Cir. 1996) (observing that when an agency has performed the action sought by a plaintiff, a federal court "lacks the ability to grant effective relief").

Furthermore, B-18 has returned to normal operations following the end of the June 2025 riots, which form the basis of the FAC's allegations and provide the backdrop against which this Court's TRO was issued, ECF 87 at 1-2 (acknowledging this lawsuit was brought, and the TRO is granted, based on this federal enforcement operation), such that detainees are able to call their attorneys and hold in-person visits. *See* Uyeda Decl. ¶ 12; Gudino Decl. ¶ 21. Plaintiffs are not suffering any harm from the previously imposed modifications to operating hours necessitated by the June riots. There is no evidence in the record to suggest future modifications to the operating schedule at B-18 will occur absent similar riots justifying restrictions. *See also* ECF 87 at 49 (recognizing exigent circumstances may justify closure). Therefore, Plaintiffs' FAC cannot retain the live controversy it alleges because the previously challenged modifications are no longer in force at B-18, and therefore no effective relief can be granted by this Court. *See Brach*, 38 F.4th at 11.

In short, absent similar riots justifying restrictions to B-18 access, there is no reason to expect recurring alterations in the operating hours at B-18, especially given post-June 24, 2025 B-18 conditions have complied with this Court's TRO except some minor delays, *see, e.g.*, ECF 127-3 ¶ 3 (alleging a 20-minute wait in seeing a prospective client), as well as the fact all named individual Plaintiffs have been released on bond, ECF 143, and Plaintiffs fail to identify any current detainees being denied counsel

access or evidence of recurring misconduct since June 2025, beyond reasonable short-term modifications to normal facility operations in response to precipitating riots in the area.

C. This Court Lacks Jurisdiction Under Section 1252.

This Court lacks jurisdiction to grant Plaintiffs' request for Fifth Amendment injunctive relief because Congress "channel[ed] judicial review of all immigration decisions" into the petition-for-review process, 8 U.S.C. § 1252(a)(5), and "[j]udicial review of all questions of law and fact, including interpretation and application of constitutional . . . provisions, arising from any action taken or proceeding brought to remove an alien . . . shall be available only in judicial review of a final order[.]" *Id.* § 1252(b)(9). Indeed, in *J.E.F.M. v. Lynch*, the Ninth Circuit held that right-to-counsel claims are "part and parcel" of removal and therefore must be raised through petitions for review once an order of removal is issued—not in district court, even when framed as a policy-and-practice challenge. 837 F.3d 1026, 1031-36 (9th Cir. 2016) (internal citations omitted).

Plaintiffs' B-18 "access" theory arises from removal-related actions (i.e., initial detention, processing, and charging) and seeks relief that would regulate those proceedings. That places the claim squarely within § 1252(b)(9)'s "breathtaking" sweep. *J.E.F.M.*, 837 F.3d at 1031-35. And channeling these claims through the petition-for-review process preserves meaningful review, as immigration judges and the Board of Immigration Appeals can address attorney-access issues, and courts of appeals can review any due-process errors on a developed record. *Id.* Because § 1252 forecloses its jurisdiction over Plaintiffs' access-to-counsel claim, the Court cannot grant injunctive relief and need not reach the merits.

D. Plaintiffs Fail to State a Constitutional Claim.

Even assuming this Court assured itself of having jurisdiction, despite the relevant jurisdictional bars and Plaintiffs lacking Article III standing to pursue their claims, Plaintiffs' FAC asserts broad violations of the Fourth and Fifth Amendments that fail to pass muster.

Plaintiffs first ask the Court to restrict basic Fourth Amendment principles and common-sense considerations as part of the totality-of-the-circumstances analysis, constituting an unreasonable restriction on DHS's ability to determine reasonable suspicion. Plaintiffs argue that DHS has a policy of stopping and arresting individuals for immigration violations in Los Angeles without reasonable suspicion and probable cause respectively, in violation of the Fourth Amendment and 8 U.S.C. § 1357.

FAC, Counts I-VI. These claims arise from discrete enforcement operations during June 2025, which the Supreme Court in granting Defendants' stay request has since recognized as a lawful exercise of statutory authority. *Perdomo*, 2025 WL 2585637, at *2-5. Plaintiffs' Fourth Amendment challenges do not consider officers' need to consider the totality of the circumstances based on specific and objective evidence underlying the basis for reasonable suspicion, which allows officers to question individuals about their immigration status in the Los Angeles area. *See Brignoni-Ponce*, 422 U.S. at 885 n.10 (noting the reasonable suspicion inquiry is evaluated based on the "totality of particular circumstances" surrounding the stop); *United States v. Arvizu*, 534 U.S. 266, 273 (2002). No single factor, whether related to appearance, behavior, or an officer's experience, is per se irrelevant to the analysis. Indeed, law enforcement may consider multiple contextual factors in forming reasonable suspicion regarding immigration status. *See United States v. Montero-Camargo*, 208 F.3d 1122, 1129 (9th Cir. 2000). The Supreme Court has rejected rigid rules that exclude certain factors from consideration or treat them as carrying no weight. *Arvizu*, 534 U.S. at 273-75.

Immigration stops, like the ones at issue here, raise the same Fourth Amendment considerations as other investigatory stops, requiring a reasonable suspicion inquiry grounded in specific articulable facts. *See United States v. Rocha-Lopez*, 527 F.2d 476, 477 (9th Cir. 1975) (collecting cases). Like other contexts, the limited intrusion of a stop justifies its use when officers possess reasonable suspicion that a person is illegally in the United States. *See INS v. Delgado*, 466 U.S. 210 (1984) (rejecting the claim that immigration "factory surveys" constituted a seizure of the entire workforce in violation of the Fourth Amendment). This principle ensures that investigative stops are supported by individualized, contextualized suspicion in line with constitutional protections. *Id.* at 214. As Justice Kavanaugh recognized in his concurrence, various Supreme Court precedents dictate that courts cannot limit officers to consider only or exclude certain factors in determining reasonable suspicion of illegal presence in the United States. *Perdomo*, 2025 WL 2585637, at *3-4. Ultimately, Plaintiffs cannot establish any violation warranting judicial intervention.

Plaintiffs next seek to impose a wish list of improvements to B-18, in the supposed name of due process under the Fifth Amendment, FAC, Counts V, VII-VIII. But these constitutional claims similarly fall flat, as Plaintiffs identify no cognizable liberty interest left unsatisfied or any prejudice from any

temporary restrictions. The Fifth Amendment's Due Process Clause requires the Government to provide adequate procedures before it can deprive a person of certain liberty or property interests. *Mathews*, 424 U.S. at 332. Importantly, the government's actions must be narrowly tailored to serve a compelling state interest with respect to fundamental rights, *see Muñoz*, 602 U.S. at 909-10, and a plaintiff must establish both a protected liberty and the lack of proper procedures to establish a due process violation, *see Am. Mfrs. Mut. Ins. Co.*, 526 U.S. at 59-60.

Plaintiffs have not established that the process afforded to them at B-18 was insufficient. Notably, here, because only organizational Plaintiffs have arguably live claims as all named individual Plaintiffs are no longer in detention, ECF 143, the organizational Plaintiffs are not entitled to the same due process protections as individuals applying for relief or protection as a part of removal proceedings under INA. Indeed, due process protections vary "depending on status and circumstance[s]." *See Zadvydas*, 533 U.S. at 694; *Jennings v. Rodriguez*, 583 U.S. 281, 314 (2018) (noting that due process claims "call for such protections as the situation demands" (cleaned up)). In the detention context, Plaintiffs must show "the challenged condition, practice, or policy constitutes punishment[,]" *Block*, 468 U.S. at 583-84, which requires either a "subjective intent to punish" or "that a restriction is unreasonable or excessive relative to the Government's proffered justification." *Americans for Immigrant Just.*, 2023 WL 1438376, at *11.

While Plaintiffs allege—on behalf of unnamed aliens detained at some point at B-18—that phone calls at B-18 are "very limited", FAC ¶ 87, the existing record tells a different story. Evidence already before the Court, including Plaintiffs' own declarations submitted in support of their request for injunctive relief, reflects that detainees were able to place calls promptly and on multiple occasions while detained. *See, e.g.*, ECF 38-4 ¶ 8 (detainee contacted a family member the same day she arrived at B-18); ECF 38-7 ¶¶ 10, 12 (another detainee contacted family on at least two separate occasions after arrest).

Moreover, given the "fundamental importance of internal security within a detention facility, 'even when an institutional restriction infringes on a specific constitutional guarantee'", which Plaintiffs have not demonstrated here, "the practice must be evaluated in the light of the central objective of" "safeguarding institutional security." *Bull v. City & Cty. of S.F.*, 539 F.3d 1193, 1202 (9th Cir. 2008) (citing *Bell v. Wolfish*, 441 U.S. 520, 546-48 (1979)). "Courts must accord 'wide-ranging deference' to the judgment of detention facility administrators 'in the adoption and execution of policies and practices

that in their judgment are needed to preserve internal order and discipline and to maintain institutional security.'" *Id.* DHS' practices to secure B-18—made in the furtherance of operational security, public (and detainee) safety, and to mitigate property damage—merit such deference, as the agency is in the best position to assess facts on the ground to discern whether B-18's restricted access or closure is warranted at any given time. *See Id.* (encouraging courts to "defer to [agency's] expert judgment in such matters").

In particular, the Ninth Circuit has upheld mandatory injunctions designed to remedy government practices only when the "cumulative effect" of such practices "was to prevent aliens from contacting counsel and receiving any legal advice." *Orantes-Hernandez v. Thornburgh*, 919 F.2d 549, 565 (9th Cir. 1990). Government practices that effectively deny access to counsel include the detention of aliens far from where potential or existing counsel was located, severely limited attorney visitation hours, a dearth of potential counsel at the new location, inadequate efforts to secure privacy during counsel visits, inadequate notice of counsel arrival, and the processing of aliens at locations where telephones were not available to them. *Id.* at 565-67.

Here, Plaintiffs do not allege any such facts in their FAC that establish punitive or excessive restrictions as to their communication with current and prospective clients. Indeed, the evidence in Plaintiffs' FAC (which fails to allege any ongoing modifications at B-18) shows any alleged changes as to their access to B-18 detainees were limited from June 6 through June 23, when riotous crowds descended upon the facility. Uyeda Decl. ¶¶ 10-11. And even under such conditions, detainees had 24-hour access to telephones whether they were at B-18 or the Santa Ana facility. *Id.* Nothing shows the "cumulative effect" of the government's practices during this volatile period "was to prevent aliens from contacting counsel and receiving any legal advice." *Orantes-Hernandez*, 919 F.2d at 565. Unlike *Orantes-Hernandez*, where cumulative practices prevented any contact with counsel, Plaintiffs allege at most brief delays during unrest. Indeed, named individual Plaintiffs that were detained at B-18 all managed to retain counsel.

Plaintiffs' FAC demonstrates that prior access issues, specifically during the month of June, were limited in duration and tethered to operational security and safety concerns. Plaintiffs provide no evidence of intentional obstruction of detainees' right to access counsel under the Fifth Amendment. Plaintiffs cite only a few isolated and outdated instances of B-18 closures and fail to plausibly allege that detainees

temporarily transferred during those periods were unable to communicate with counsel. FAC ¶¶ 82-86, 90-91. Counsel and their clients can maintain contact from any location that provides telephone or internet access. Temporary modifications to normal operations alone are insufficient to demonstrate an intentional obstruction of detainees' Fifth Amendment rights, particularly where detainees continue to have telephonic access to counsel regardless of the ICE facility in which they are housed. Plaintiffs make no effort to address existing communication resources available to detainees, instead focusing on the few instances they could not physically access a detainee, even during times of violent protest requiring modification to visitation hours.

In short, Defendants have asserted legitimate governmental interests that justify the minimal and temporary modifications of access to organizational Plaintiffs' current and prospective clients during the brief periods in which B-18 access was modified for security reasons. None of those modifications were aimed at preventing detainees from contacting counsel and receiving legal advice; instead, they were responsive to the volatile situation at hand. *See Orantes-Hernandez*, 919 F.2d at 565. Emergency, sudden temporary detainee transfers from B-18 may occur under certain exigent circumstances—where human safety and property are at risk—including but not limited to protests, public safety threats, or facility issues. The modifications of access protocols during those extraordinary times are thus not excessive but rather rationally related to a non-punitive purpose. The government has a reasonable interest in securing detention and military facilities. *See Hatim v. Obama*, 760 F.3d 54, 59 (D.C. Cir. 2014) ("Prison security . . . is beyond cavil a legitimate governmental interest"); *Florence v. Bd. of Chosen Freeholders of Cnty. of Burlington*, 566 U.S. 318, 328 (2012) ("[W]hether a policy is reasonably related to legitimate security interests is peculiarly within the province and professional expertise of corrections officials.").

Moreover, Plaintiffs' due process claim fails for two independent reasons: they do not identify a liberty interest, nor establish error or prejudice. First, a threshold requirement for establishing a due process violation is identifying a liberty interest. *Erickson v. HHS*, 67 F.3d 859, 861 (9th Cir. 1995) (internal citation omitted). The due process clause protects only "those fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition." *Muñoz*, 602 U.S. at 910 (quoting *Glucksberg*, 521 U.S. at 720-21). Thus, this Court's "substantive due process analysis must begin with a careful description of the asserted right." *See Reno v. Flores*, 507 U.S. 292, 302 (1993)

(requiring liberty interests be narrowly defined). While there is no dispute that detainees at B-18 have the right to retain counsel, organizational Plaintiffs fail to identify a qualifying liberty interest as to *their* access to clients and prospective clients that has been unfulfilled or otherwise infringed upon to trigger due process protections under the Fifth Amendment. Plaintiffs merely assume, without support, that they have a liberty interest in contacting existing and prospective clients. But despite organizational Plaintiffs' attempts to conflate their rights with those of the aliens they would like to represent, they have not articulated a right of their own that is "deeply rooted" in the history and tradition of the nation.

Second, Plaintiffs fail to establish the error or prejudice due to the alleged error to sustain a due process claim. *See Grigoryan v. Barr*, 959 F.3d 1233, 1240 (9th Cir. 2020) (requiring plaintiff to show constitutional "error and substantial prejudice"). Plaintiffs fail to demonstrate prejudice where they fail to offer any reason that the outcome might have been different had the government not committed the alleged error. *See Lata v. INS*, 204 F.3d 1241, 1246 (9th Cir. 2000) ("[W]e will not simply presume prejudice."). That is, they have not alleged any harm arising from being unable to speak with clients during the limited window when access was affected. Nor did they allege a different outcome regarding prospective clients; indeed, it appears that they were able to retain prospective clients regardless of the temporary limited access. *See* ECF 38-10 (Attorney Thompson-Lleras was retained by family members of B-18 detainee).

To the extent this Court recognizes a qualifying liberty interest for organizational Plaintiffs, Defendants have provided them with constitutionally appropriate access to their clients and prospective clients. Plaintiffs' constitutional arguments must fail.

E. Plaintiffs Fail to State Any APA Violation.

Moreover, to the extent Plaintiffs base their claims under the APA, they have failed to sufficiently preserve this claim and do not present allegations or any distinct claims that support an inference that Defendants engage in unlawful agency action. *See* FAC ¶ 8; 5 U.S.C. § 706(2)(A)-(B). Plaintiffs fail to support their broad claim of APA jurisdiction with any legal argument and thus, any argument under the APA is waived. *Greenwood v. Fed. Aviation Admin.*, 28 F.3d 971, 977 (9th Cir. 1994) ("We will not manufacture arguments for [a party], and a bare assertion does not preserve a claim, particularly when a host of other issues are presented for review."). Given that Plaintiffs' FAC did not provide *any* allegation

of violations under the APA, unlike Intervenors, ECF 141 at 61-63, this Court should not "manufacture arguments" for Plaintiffs here. *Greenwood*, 28 F.3d at 977.

V. CONCLUSION

For the foregoing reasons, the Court should dismiss Plaintiffs' FAC with prejudice. To the extent Plaintiffs may seek to amend their complaint to evade the Court's dismissal, any attempt would be futile. *See Creech v. Tewalt*, 84 F.4th 777 (9th Cir. 2023).

Dated: October 29, 2025

Respectfully submitted,

BRETT A. SHUMATE
Assistant Attorney General
Civil Division

DREW C. ENSIGN
Deputy Assistant Attorney General

TIBERIUS DAVIS
SEAN SKEDZIELEWSKI
Counsel to the Assistant Attorney General

JONATHAN K. ROSS
Senior Litigation Counsel

JASON K. ZUBATA
ANIELLO DESIMONE
JACOB A. BASHYROV
Trial Attorneys

/s/ Stephanie L. Groff
STEPHANIE L. GROFF
Trial Attorney
Office of Immigration Litigation
U.S. Department of Justice
P.O. Box 878, Ben Franklin Station
Washington, D.C. 20044
Tel: (202) 305-5438
Email: Stephanie.L.Groff@usdoj.gov

Counsel for Defendants

L.R. 11-6.2 CERTIFICATE OF COMPLIANCE

The undersigned counsel of record certifies that this filing is 6,952 words, which complies with L.R. 11-6.1 and this Court's Standing Order, Part VIII.C.

Dated: October 29, 2025

Respectfully submitted,

/s/ Stephanie L. Groff
STEPHANIE L. GROFF
Trial Attorney
Office of Immigration Litigation
U.S. Department of Justice

Counsel for Defendants