



1 *Additional Counsel for Plaintiffs:*

2 LA RAZA CENTRO LEGAL  
3 Stephen A. Rosenbaum (Cal. Bar No. 98634)  
4 srosenbaum@law.berkeley.edu  
5 Jordan Weiner (Cal. Bar No. 356297)  
6 jordan@lrcl.org  
7 474 Valencia Street, Suite 295  
8 San Francisco, CA 94103  
9 Tel: (415) 575-3500

10 PUBLIC COUNSEL  
11 Rebecca Brown (Cal. Bar No. 345805)  
12 rbrown@publiccounsel.org  
13 Kathleen Rivas (Cal. Bar No. 333600)  
14 krivas@publiccounsel.org  
15 610 South Ardmore Ave.  
16 Los Angeles, CA 90005  
17 Tel: (213) 385-2977

18 COALITION FOR HUMANE IMMIGRANT RIGHTS  
19 Carl Bergquist (DC Bar 1720816)\*  
20 cbergquist@chirla.org  
21 2351 Hempstead Road  
22 Ottawa Hills, OH 43606  
23 Tel: (310) 279-6025

24 Adam Reese (Cal. Bar No. 362898)  
25 areese@chirla.org  
26 2533 W 3rd Street, #101  
27 Los Angeles, CA 90057  
28 Tel: (213) 353-1333

\* *Admitted pro hac vice*

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**INTRODUCTION**

1  
2 In opposing preliminary relief, Defendants present a series of strawman  
3 arguments without seriously addressing Plaintiffs’ claims or binding caselaw.

4 First, Defendants assert Organizational Plaintiffs are merely spending their  
5 way into standing, but they explicitly acknowledge that the offending policies  
6 have drained the organizations’ resources, undercutting their own argument. Then  
7 to support their claim that this Court cannot redress Plaintiffs’ injuries, Defendants  
8 conjure up invented relief that Plaintiffs do not seek. Plaintiffs ask this Court to  
9 address three unlawful agency policies that upended decades of balanced  
10 enforcement, and to permit three unlawfully deported Individual Plaintiffs to  
11 return to the U.S. for lawful process. None of these forms of relief seek “absolute  
12 protection from detention and removal,” and, under clear Ninth Circuit and  
13 Supreme Court precedent, none are barred by 8 U.S.C. § 1252(f)(1).

14 Next, Defendants recite a familiar set of jurisdictional booby traps that they  
15 raise in seemingly every case challenging their authority. Because these arguments  
16 are so well-worn, there is ample precedent that forecloses them, which Defendants  
17 conveniently ignore. The Supreme Court and Ninth Circuit have repeatedly held  
18 that 8 U.S.C. § 1252(g) only bars challenges to three discrete discretionary  
19 decisions, none of which is at issue in this case. Similarly, 8 U.S.C. §§ 1252(a)(5),  
20 (b)(9) only impact claims that can be raised in removal proceedings, which clearly  
21 does not apply to Plaintiffs’ challenges to Defendants’ policies.

22 On the merits, Defendants cannot dodge the Administrative Procedures Act  
23 (“APA”) by claiming the 2025 Guidance is not “final agency action” simply  
24 because it has a disclaimer that it may be superseded one day. Courts routinely  
25 approve APA review over similar policies, because an agency cannot excuse itself  
26 from APA review with mere boilerplate. The 2025 Guidance is no exception.

27 Defendants unconvincingly downplay the sea change wrought by the 2025  
28 Guidance, arguing that it merely preserves discretion. This ignores that it capsized

1 decades of prior policy that similarly preserved discretion, but, consistent with  
2 Congressional intent, also required that eligibility for survivor-based benefits be  
3 favorably considered in the discretionary analysis. Whether or not such an about-  
4 face is otherwise permissible, Defendants fail to provide a reasoned explanation  
5 for it, impermissibly providing post-hoc rationalizations and ignoring seminal  
6 cases like *Regents*. Thus, as the District Court for Massachusetts recently held, the  
7 2025 Guidance is arbitrary and capricious. *Oliveira v. Edlow*, No. CV 25-13228-  
8 BEM, 2025 WL 3492110 (D. Mass. Dec. 4, 2025). It is also contrary to law.

9 Defendants dispute the existence of the De Facto Revocation and Blind  
10 Removal policies, but their own admissions belie their claims. By stating that  
11 USCIS granting deferred action creates no legal prohibition on ICE’s enforcement  
12 actions, they effectively concede the existence of the De Facto Revocation Policy.  
13 And by suggesting that ICE agents need not request USCIS adjudication whenever  
14 a U or T visa petitioner requests a stay under 8 U.S.C. § 1227(d), they admit the  
15 existence of the Blind Removal Policy. Meanwhile, Defendants do not bother to  
16 substantively oppose Plaintiffs’ APA and *Accardi* challenges to the De Facto  
17 Revocation Policy, and their opposition to Plaintiffs’ due process claims rests on a  
18 fallacy that immigration court provides sufficient process. Immigration courts  
19 have no authority over deferred action, and enduring months of detention to try to  
20 convince an immigration court otherwise condemns class members to the very  
21 harm they seek to avoid through this action.

22 In sum, Defendants’ briefing demonstrates preliminary relief is warranted.

## 23 ARGUMENT

### 24 I. Plaintiffs Have Standing

#### 25 A. Organizational Plaintiffs demonstrate organizational standing.

26 “Direct organization standing can be satisfied if the organization alleges that  
27 a defendant’s actions ‘affected and interfered with [a plaintiff’s] core business  
28 activities.’” *Immigr. Defs. L. Ctr. v. Noem*, 145 F.4th 972, 987 (9th Cir. 2025)

1 (“*ImmDef*”) (quoting *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 395 (2024)  
2 (“*Hippocratic Med.*”). It also remains the case that “where a defendant’s behavior  
3 has ‘frustrated its mission and caused it to divert resources in response to that  
4 frustration of purpose,’” an organization has standing.<sup>1</sup> *Id.* (citation omitted).

5       1. Reading too much into *Hippocratic Med.*, Defendants mischaracterize  
6 Plaintiffs’ injury by trivializing it as a spending spree to get into court. Defs. Opp’n  
7 to Pltfs.’ Mtn. for Prelim Inj. (“PI Opp.”) at 14, Dkt. 40. But “[u]nlike the plaintiffs  
8 in *Hippocratic Medicine*,” Organizational Plaintiffs are “not ‘asserting standing  
9 simply because’” each “‘objects to the government’s actions.’” *ImmDef*, 145 F.4th  
10 at 988 (quoting *Hippocratic Med.*, 602 U.S. at 394) (brackets omitted). “Rather, to  
11 *continue* advancing” their “core business activities and longstanding mission[s] of  
12 providing direct representation,” and community education to victims of crime,  
13 trafficking, and abuse, each organization has had to pursue several initiatives to  
14 limit the adverse impacts of the 2025 Guidance, De Facto Revocation Policy, and  
15 Blind Removal Policy. *Id.* These include hiring additional staff to examine  
16 immigration court records, strengthening outreach and workshop efforts to counsel  
17 fearful survivors, and devoting more staff time to respond to the increased concerns  
18 of frightened clients and to represent clients fighting removal or attending ICE  
19 check-ins, who ICE would likely excuse from such enforcement under prior  
20 policies. Farb Decl. ¶¶ 22-24, Dkt. 31-2; Weiner Decl. ¶ 16, Dkt. 31-4; Salas Decl.  
21 ¶ 22-23, Dkt. 31-5; Beatty Decl. ¶¶ 20-21, 23. These efforts come at the expense of  
22 representing additional clients, which frustrates their missions and even impacts  
23 some of their funding bottom lines. Farb Decl. ¶¶ 21-22, 24; Weiner Decl. ¶¶ 9-10,  
24 17; Salas Decl. ¶ 24, Dkt. 31-5; Beatty Decl. ¶ 24.

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25  
26 <sup>1</sup> Defendants are wrong that *Hippocratic Med.* held organizations cannot establish  
27 standing “by arguing a policy has ‘impaired’ their ‘ability to provide services and  
28 achieve their organizational missions.’” PI Opp. at 13-14. The Supreme Court  
merely held that the plaintiffs in *Hippocratic Med.* did not meet this standard  
because they failed to demonstrate the challenge policy actually “imposed any...  
impediment to [their] advocacy businesses.” *Hippocratic Med.*, 602 U.S. at 395.

1 This is not Plaintiffs “spend[ing] their way into standing simply by  
2 expending money to gather information and advocate against” the challenged  
3 policies, as in *Hippocratic Med.* PI Opp. at 14. Defendants even acknowledge the  
4 many ways the policies have demanded their resources, *id.* at 13, and agree that a  
5 “drain on the organization’s resources” is sufficient for standing, *id.* at 14, but they  
6 argue this is not enough, begging the question what more Defendants believe is  
7 necessary. Defendants provide no answer, because nothing more is needed.

8 2. Defendants’ traceability arguments unconvincingly seek to minimize the  
9 paradigm shift created by the 2025 Guidance and ascribe the Organizational  
10 Plaintiffs’ injuries to different sources. It strains credulity to argue that 2025  
11 injuries suffered by the organizations are traceable to a “statutory and regulatory  
12 scheme” that has been in place for years. PI Opp. at 15. And Defendants’ attempt  
13 to pin the blame on an Executive Order that does not even mention VAWA, U  
14 visas, or T visas fares no better. PI Opp. at 15. As Plaintiffs noted in their opening  
15 brief, it is readily possible to comply with the Executive Order’s goal of enforcing  
16 immigration laws against “all” removable noncitizens by having USCIS  
17 adjudicate VAWA, U visa, and T visa petitions when seeking to enforce and  
18 enforcing only against those individuals denied relief, as the 2011 Policy and 2021  
19 Directive did. Pltfs’ Mtn. at 21, Dkt. 31. Defendants chose instead to comply with  
20 that order by (1) issuing the 2025 Guidance, (2) detaining and deporting U and T  
21 visa petitioners in deferred action status, and (3) declining to seek prima facie  
22 determinations whenever such petitioners requests stays of removal. Those  
23 choices have caused Organizational Plaintiffs’ injuries.

24 Because the 2025 Guidance eliminates a presumption against removal of  
25 immigrant survivors that existed for decades, the organizations’ staff who advised  
26 clients about those policies have become “not dissimilar to a retailer who sues a  
27 manufacturer for selling defective goods to the retailer.” *Hippocratic Med.*, 602  
28 U.S. at 395 (citation omitted). Thus, they have standing.

1           3. Defendants’ redressability arguments misrepresent the relief sought, as  
2 Plaintiffs clearly do not seek any order eliminating Defendants’ “underlying  
3 discretion,” PI Opp. at 15. The remainder of Defendants’ redressability arguments  
4 focus on 8 U.S.C. § 1252(f)(1). PI Opp. at 15-17. Plaintiffs address that provision at  
5 length in their reply in support of class certification on behalf of the Individual  
6 Plaintiffs and thus do not repeat the arguments here, as the arguments apply equally  
7 to the relief sought by the organizations. In sum, § 1252(f)(1) does not bar the relief  
8 Plaintiffs actually seek in this motion: APA relief and injunctive relief that does not  
9 enjoin the operation of any of the statutes covered by § 1252(f)(1).

10           **B. Plaintiff CHIRLA has Associational Standing.**

11           Plaintiff CHIRLA also has associational standing. To establish associational  
12 standing, an association must show that: “(a) its members would otherwise have  
13 standing to sue in their own right; (b) the interests it seeks to protect are germane to  
14 the organization’s purpose; and (c) neither the claim asserted nor the relief  
15 requested requires the participation of individual members in the lawsuit.” *Students*  
16 *for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181,  
17 199 (2023). Each of those elements is present in this case.

18           First, CHIRLA has U visa petitioner members who would have standing,  
19 including a 17-year-old who has been “scared to leave his home” since February  
20 2025, causing him “to miss a week of school.” Salas Decl. ¶¶ 26, 31, Dkt. 31-5.  
21 Although he received deferred action in August 2025, he remains “fearful” that it  
22 “will not protect them from immigration enforcement.” *Id.* ¶ 30. Another member  
23 “received a motion to reopen her administratively closed” immigration court case  
24 from ICE, because the 2025 Guidance instructs ICE that her pending U visa petition  
25 need not be considered favorably. *Id.* ¶ 33-34. A third member “understands that  
26 now, . . . her U Visa application cannot protect her from detention or deportation,”  
27 though it could have “previously.” *Id.* ¶ 39. Second, CHIRLA “seeks to protect the  
28 constitutional and statutory rights of its immigrant members, including its U-visa

1 applicant members,” which is germane to its mission “to achieve a just society,  
2 fully inclusive of immigrants.” *Id.* ¶¶ 4, 6; *see Vasquez Perdomo v. Noem*, 148  
3 F.4th 656, 677 (9th Cir. 2025) (recognizing CHIRLA’s “institutional goals” and  
4 affirming it had associational standing in challenge to L.A. ICE raids). **Third**,  
5 because CHIRLA “request[s] only injunctive and declaratory relief,” as well as  
6 relief under the APA, “the third prong” is satisfied because “these forms of relief do  
7 not require individualized proof.” *Columbia Basin Apartment Ass’n v. City of*  
8 *Pasco*, 268 F.3d 791, 799 (9th Cir. 2001).

9 **C. Individual Plaintiffs have standing.**

10 Because Defendants challenge the Individual Plaintiffs’ standing for  
11 classwide relief in opposition to class certification, Dkt. 39, Plaintiffs address  
12 those arguments in their reply in support of class certification. For the reasons  
13 articulated there, the Individual Plaintiffs have standing and their class claims are  
14 not moot, pursuant to the relation-back doctrine.<sup>2</sup> *See, e.g., Wade v. Kirkland*, 118  
15 F.3d 667, 670 (9th Cir. 1997).

16 Apart from class claims, Defendants rightly do not challenge the standing of  
17 Lupe A., Carmen F., and Ms. Ruano to seek individualized relief in the form of an  
18 order enjoining Defendants from preventing their return to the United States. The  
19 Court has authority to issue such relief to redress their injuries. *See, e.g., Walters*  
20 *v. Reno*, 145 F.3d 1032 (9th Cir. 1998). And because this relief is not classwide, it  
21 is not barred by § 1252(f)(1), which permits individualized relief.

22 **II. The INA does not strip jurisdiction of this case.**

23 Because “there is a strong presumption favoring judicial review of  
24 administrative action,” “non-reviewability is an exception that must be clearly  
25 evidenced in the statute.” *E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 665  
26 (9th Cir. 2021) (“*EBSC*”). The Court must “resolve any ambiguities in a

27 \_\_\_\_\_  
28 <sup>2</sup> Paulo C.’s request for individualized relief ordering his release is moot, as he was recently released from ICE custody. He therefore withdraws that request.

1 jurisdiction-stripping statute in favor of the narrower interpretation.” *Arce v.*  
2 *United States*, 899 F.3d 796, 801 (9th Cir. 2018).

3 **A. 8 U.S.C. § 1252(g) is inapplicable.**

4 “The Supreme Court has given a ‘narrow reading’ to § 1252(g),” holding  
5 that it “applies only to three discrete actions that the Attorney General may take:  
6 her ‘decision or action’ to ‘commence proceedings, *adjudicate* cases, or *execute*  
7 removal orders.” *Ibarra-Perez v. United States*, 154 F.4th 989, 996 (9th Cir.  
8 2025) (citations omitted). “The Court has characterized § 1252(g) as a ‘discretion-  
9 protecting provision.” *Id.* (citation omitted). Thus, “[i]nstead of sweeping in any  
10 claim that can technically be said to arise from the three listed actions, the  
11 provision refers to just those three specific actions themselves.” *Id.* (cleaned up).

12 Importantly, § 1252(g) does not bar resolution of a “purely legal question,  
13 which does not challenge the Attorney General’s discretionary authority” in  
14 making one of the three types of decisions. *United States v. Hovsepien*, 359 F.3d  
15 1144, 1155 (9th Cir. 2004). This is so “even if the answer to that legal question—a  
16 description of the relevant law—forms the backdrop against which the Attorney  
17 General later will exercise discretionary authority.” *Id.*

18 Under this well-settled precedent, § 1252(g) is plainly inapplicable to  
19 Plaintiffs’ claims here, because Plaintiffs challenge three policies, not any  
20 individual decision to commence proceedings, adjudicate cases, or effect removal  
21 orders. *See Oliveira*, 2025 WL 3492110, at \*9 (holding § 1252(g) does not bar  
22 challenge to 2025 Guidance); *Dep’t of Homeland Sec. v. Regents of the Univ. of*  
23 *Cal.*, 591 U.S. 1, 19 (2020) (“*Regents*”) (holding § 1252(g) does not bar review of  
24 agency memorandum rescinding a deferred action program).

25 Seeking to escape this inevitable result, Defendants resort to inventing  
26 caselaw. Purporting to quote *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525  
27 U.S. 471, 471 (1999), they state, “In *Reno*, 525 U.S. at 471, the Supreme Court  
28 held that broad ‘pattern-or-practice’ challenges to DHS’s discretionary

1 enforcement decisions are foreclosed because Congress ‘barred federal courts  
2 from reviewing broad challenges to immigration enforcement decisions’ under 8  
3 U.S.C. § 1252(g).” PI Opp. at 20-21. The purported quote is found nowhere in  
4 *Reno*, nor are the phrases “pattern or practice,” “broad challenges,” or  
5 “immigration enforcement decisions.” The reason is obvious, because the case  
6 involved a challenge by eight individuals against INS for “selectively enforcing  
7 immigration laws against them,” not any broad pattern-and-practice challenge.  
8 *Reno*, 525 U.S. at 474. That is nothing like the instant case.

9 Defendants also find no comfort in *Rauda v. Jennings*, 55 F.4th 773, 777  
10 (9th Cir. 2022). PI Opp. at 18. There, a habeas petitioner sought to forestall ICE’s  
11 decision to remove him after the Board of Immigration Appeal “refus[ed] to enter  
12 a stay of removal” pending a decision on his motion to reopen, so he challenged  
13 ICE’s “decision to remove him *now*.” *Rauda*, 55 F.4th at 777 (quotations omitted).  
14 Thus, the petitioner did not challenge the BIA’s stay denial as unlawful, but ICE’s  
15 discretionary decision to remove him *after* the stay was denied. Accordingly,  
16 “*Rauda* made no new law” and “fits easily into a long series of decisions in our  
17 circuit.” *Ibarra-Perez*, 154 F.4th at 999. That is unlike Plaintiffs’ challenge to the  
18 Blind Removal Policy here, which raises a purely legal issue whether § 1227(d)  
19 requires prima facie determinations before a stay request is decided.<sup>3</sup>

20 **B. Sections 1252(a)(5) and (b)(9) are inapplicable.**

21 8 U.S.C. §§ 1252 (a)(5) and (b)(9) – which require that “questions of law  
22 and fact ... arising from any action taken or proceeding brought to remove” a  
23 noncitizen be brought through a “petition for review” – do not bar review of

24 \_\_\_\_\_  
25 <sup>3</sup> The result is no different for Ms. Ruano’s or Carmen F’s individualized request to  
26 be permitted to return to the United States. They do not challenge the *discretionary*  
27 *decision* to execute their removal orders, only the legality of executing their orders  
28 without a prima facie determination first. *See Arce*, 899 F.3d at 800 (holding  
§1252(g) does not bar claim challenging removal while a stay of removal was in  
place, because the government “lacked the authority to execute the removal order”).

1 Plaintiffs’ claims. “By virtue of their explicit language, both §§ 1252(a)(5) and  
2 1252(b)(9) apply *only* to those claims seeking judicial review of orders of  
3 removal.” *Singh v. Gonzales*, 499 F.3d 969, 978 (9th Cir. 2007) (emphasis added).  
4 Thus, if the issue cannot be addressed through a petition for review of a final  
5 removal order, such as an issue that is “independent of or collateral to the removal  
6 process,” then the provisions are inapplicable. *Ibarra-Perez*, 154 F.4th at 1000  
7 (citation omitted). Plaintiffs here do not challenge their removal orders.

8 **III. Plaintiffs are likely to succeed on merits.**

9 **A. Plaintiffs are likely to succeed in their challenge to 2025 Guidance.**

10 1. The 2025 Guidance is final agency action.

11 Defendants are wrong that the 2025 Guidance does not constitute “final  
12 agency action” simply because it has disclaimers that it “may be modified.” Opp.  
13 at 23. “The fact that a law may be altered in the future has nothing to do with  
14 whether it is subject to judicial review at the moment.” *Appalachian Power Co. v.*  
15 *EPA*, 208 F.3d 1015, 1022 (D.C. Cir. 2000). The same is necessarily true for  
16 agency “Guidance” that is “subject to change” and contains a “disclaimer.” *Id.* at  
17 1022-23. Indeed, for these very reasons, the court in *Oliveira* recently determined  
18 that the 2025 Guidance is final agency action. *Oliveira*, 2025 WL 3492110, at \*9.

19 “Agency action is ‘final’ under the APA if it ‘amounts to a definitive  
20 statement of the agency’s position,’” or “‘immediate compliance with [its terms] is  
21 expected.’” *Magassa v. Mayorkas*, 52 F.4th 1156, 1165 (9th Cir. 2022) (citations  
22 omitted). Defendants cannot seriously contend that ICE agents were not expected  
23 to immediately comply with the 2025 Guidance, as it states explicitly that it is  
24 “effective immediately and remains in effect until superseded,” and that prior ICE  
25 policies are “now rescinded and superseded.” 2025 Guidance at 1, Dkt. 1-1. A  
26 statement that “guidance [is] effective immediately” demonstrates “there is  
27 nothing ‘tentative’ or ‘interlocutory’ about the Guidelines; rather they ‘mark the  
28 consummation of the agency’s decision-making process.’” *Chiang v. Kempthorne*,

1 503 F.Supp.2d 343, 350 (D.D.C. 2007).

2 Where a policy document “alter[s] the legal regime to which the action  
3 agency is subject,” it constitutes final agency action. *Bennett v. Spear*, 520 U.S.  
4 154, 178 (1997). This is precisely what the 2025 Guidance does, altering the legal  
5 regime to which ICE is subject by rescinding prior policies that required ICE  
6 agents to take certain protective measures for immigrant survivors. Indeed, the  
7 2025 Guidance is not unlike the memoranda in *Regents*, 591 U.S. at 30-31, and in  
8 *Biden v. Texas*, 597 U.S. 785, 808-09 (2022) (holding “October 29 Memoranda”  
9 rescinding “Remain in Mexico” program was “final agency action” because it  
10 “bound DHS staff by forbidding them to continue the program in any way from  
11 that moment on.”). As in *Biden*, the Court should conclude the 2025 Guidance is  
12 final agency action, as courts routinely do for similar immigration policy  
13 guidance.<sup>4</sup> The cases cited by Defendants, PI Opp. 23-24, are not on point.<sup>5</sup>

14 2. The 2025 Guidance is arbitrary and capricious.

15 Defendants cannot save the 2025 Guidance with a strawman argument that  
16 Plaintiffs insist on “absolute immunity from detention and/or removal  
17 proceedings,” PI Opp. at 27, or their thin, post hoc rationalizations for its creation.

18 First, nowhere do Plaintiffs argue for “absolute immunity,” “rigid, irrational  
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20 <sup>4</sup> See, e.g., *Pablo Sequen v. Albarran*, No. 25-CV-06487-PCP, 2025 WL 3724878,  
21 at \*1, 7 (N.D. Cal. Dec. 24, 2025) (“guidance issued by ICE and EOIR” authorizing  
22 immigration court arrests is final agency action because it “‘stat[ed] a definitive  
23 position’, that ICE agents may arrest noncitizens at immigration courthouses at  
24 their discretion”); *Las Americas Immigr. Advoc. Ctr. v. Trump*, 475 F. Supp. 3d  
25 1194, 1216 (D. Or. 2020) (directives imposing deadlines to adjudicate family cases  
26 were final agency action because the “policies change the way immigration judges  
27 run their dockets” and have “practical consequence for parties”); *Washington v.*  
28 *U.S. Dep’t of Homeland Sec.*, 614 F. Supp. 3d 863, 871, 873 (W.D. Wash. 2020)  
 (“Directive No. 11072.1” does not “merely provide[] guidance to agents in  
 exercising their discretion”; it constitutes final agency action because, “in  
 conducting the 65 ‘courthouse arrests’ at issue, ICE agents relied on” it).

<sup>5</sup> *Christensen v. Harris Cnty.*, 529 U.S. 576 (2000) (not an APA case); *Alcaraz v.*  
*I.N.S.*, 384 F.3d 1150, 1152 (9th Cir. 2004) (same); *Perez v. Mortg. Bankers Ass’n*,  
575 U.S. 92, 95 (2015) (notice-and-comment case); *W. Radio Servs. Co. v. Espy*, 79  
F.3d 896, 901 (9th Cir. 1996) (challenged action was final agency action); *Heckler*  
*v. Chaney*, 470 U.S. 821, 823 (1985) (*declining* to act is not final agency action).

1 rules,” or a total “bar [on] detention and/or removal.” PI Opp. at 23, 27, 28. Nor  
2 did prior policies confer anything close to “absolute immunity.” On this claim,  
3 Plaintiffs merely seek to stay the 2025 Guidance while this litigation proceeds.  
4 While doing so may necessarily reinstate 2021 Directive and 2011 Policy, that is  
5 only because they will no longer be rescinded by virtue of the 2025 Guidance  
6 being stayed. Defendants may rescind those policies again, provided they do so in  
7 a sufficiently reasoned manner that is consistent with Congressional intent.

8 Second, Defendants offer that the 2025 Guidance’s “core rationale” was  
9 that the 2021 Directive was too “resource-intensive,” and the 2025 Guidance  
10 represents no more than an “efficiency-and-priority recalibration.” PI Opp. at 27.  
11 But those explanations are found nowhere in the record. Defendants are “limited  
12 to the agency’s original reasons, and [their] explanation must be viewed critically  
13 to ensure that the rescission is not upheld on the basis of impermissible post hoc  
14 rationalization.” *Regents*, 591 U.S. at 21 (citations omitted).

15 Defendants also repeat the stated rationale of the 2025 Guidance that it is  
16 justified by a need for “total and efficient enforcement” of immigration law to  
17 address an “unprecedented flood of illegal immigration.” PI Opp. at 29. However,  
18 like the Executive Order on which they rely, they provide no evidence to support  
19 such claims. The APA requires something more than “because the President said  
20 so.” Nor do Defendants explain how unleashing enforcement on survivors actively  
21 petitioning for *legal* status serves the purpose of stemming *illegal* immigration.  
22 Indeed, Defendants provide no response to Plaintiffs’ argument that “total  
23 enforcement” against “all” removable people can be achieved by promptly  
24 adjudicating the petitions of people they seek to deport. Pltfs’ Mtn at 21. Tellingly,  
25 Defendants also ignore *Regents*, failing to demonstrate that DHS was “cognizant”  
26 of any “serious reliance interests” of trafficked, abused, and victimized  
27 immigrants who came out of the shadows “in reliance on” decades of prior policy  
28 providing protection for immigrant survivors. *Regents*, 591 U.S. at 30-31.

1 As the *Oliveira* court held, Defendants’ actual “stated rationale. . . ignores  
2 congressional findings and closes its eyes to the effects on people like Plaintiffs.”  
3 *Oliveira*, 2025 WL 3492110, at \*11. “Nowhere does DHS seem to recognize, let  
4 alone address, that withdrawing protections might chill non-citizen cooperation  
5 and ‘[weaken] the ability of law enforcement.’ Indeed, DHS seems unaware of the  
6 fact that its actions are plainly in tension, following Congress’s logic, with the  
7 President’s expressed concern for ‘national security and public safety.’” *Id.* at \*10.

8 3. The 2025 Guidance is contrary to law.

9 Defendants argue that the 2025 Guidance is consistent with law because it  
10 has a savings clause stating that ICE “remain bound to adhere to all applicable  
11 statutory and policy requirements.” *Opp.* at 26. But if a statement that a policy is  
12 “‘consistent with law’ precludes a court from examining whether [it] is consistent  
13 with law, judicial review is a meaningless exercise[.]” *City & Cnty. of San*  
14 *Francisco v. Trump*, 897 F.3d 1225, 1240 (9th Cir. 2018).

15 Defendants also make much of the Guidance’s stated compliance with 8  
16 U.S.C. § 1367. *PI Opp.* at 3, 26. But compliance with one information sharing law  
17 does not mean compliance with all laws, much less the many laws, regulations,  
18 and policies Plaintiffs cite that protect VAWA, U visa, and T visa petitioners from  
19 arbitrary removal while their petitions are pending. Perhaps because there is no  
20 disputing the point, Defendants nowhere explain how the 2025 Guidance is  
21 consistent with these decades of consistent legislative history evidencing  
22 Congress’s desire to presumptively protect survivors from removal. Because the  
23 2025 Guidance “conflicts with the plain congressional intent” in the statutes  
24 creating the VAWA, U visa, and T visa programs, it “is therefore ‘not in  
25 accordance with law.’” *EBSC*, 993 F.3d at 671 (quoting 5 U.S.C. § 706(2)(A)).

26 **B. The De Facto Revocation Policy is likely unlawful.**

27 1. Revoking deferred action must comport with due process.

28 Defendants seemingly argue that the De Facto Revocation Policy does not

1 exist, PI Opp. at 29-30, but their own words belie any such claim. By stating that  
2 USCIS “grant[ing] deferred action” presents “no legal prohibition that prevents  
3 ICE from enforcement actions,” they concede its existence. PI Opp. at 22. Perhaps  
4 this is why they do not dispute Plaintiffs’ evidence of dozens of putative Deferred  
5 Action Class members being detained and deported.<sup>6</sup> With their reply in support  
6 of class certification, Plaintiffs submit many more. These declarations and the  
7 many habeas petitions on behalf of people with deferred action referenced herein,  
8 *infra* n. 7, provide more than sufficient evidence of the policy’s existence.

9 By detaining and/or deporting U and T visa petitioners with deferred action,  
10 Defendants effectively revoke their deferred action unilaterally, as the very  
11 premise of deferred action is that DHS will “take[] no action to proceed against” a  
12 recipient. *Barahona-Gomez v. Reno*, 236 F.3d 1115, 1119 n.3 (9th Cir. 2001)  
13 (quotations omitted). Such revocation by fiat violates due process, as a growing  
14 list of courts have held.<sup>7</sup> In opposing Plaintiffs’ due process claims, Defendants  
15 fail even to address *Inland Empire* or the *Matthews* factors. *See Inland Empire—*  
16 *Immigrant Youth Collective v. Nielsen*, Case No. EDCV 17-2048, 2018 WL  
17 4998230, at \*19 (C.D. Cal. Apr. 19, 2018) (“[O]nce [deferred action] is conferred,

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19 <sup>6</sup> Defendants raise (but not through formal objection) hearsay or authentication  
20 concerns regarding class counsel’s authentication of documents sent by Plaintiffs’  
21 immigration attorneys. Opp. at 30. “[G]iven the haste that is often necessary” at the  
22 preliminary injunction stage, the Court may rely on “evidence that is less complete  
23 than in a trial.” *Flathead-Lolo-Bitterroot Citizen Task Force v. Montana*, 98 F.4th  
24 1180, 1189-90 (9th Cir. 2024) (citation omitted); *Republic of the Philippines v.*  
25 *Marcos*, 862 F.2d 1355, 1363 (9th Cir. 1988) (hearsay permitted at preliminary  
26 injunction stage). Nonetheless, Plaintiffs submit with their replies declarations  
27 directly from the immigration lawyers re-authenticating the documents.

28 <sup>7</sup> *See, e.g., Maldonado v. Noem*, No. 25-CV-2541, 2025 WL 1593133 (S.D. Tex.  
June 5, 2025); *Espinoza-Sorto v. Agudelo*, No. 25-23201, 25 WL 3012786 (S.D.  
Fla. Oct. 28, 2025); *Patel v. Hyde*, No. 25-12518, 2025 WL 3169875 (D. Mass.  
Nov. 12, 2025); *Cruz Zafra v. Noem*, No. 25-00541, 2025 WL 3239526 (W.D. Tex.  
Nov. 20, 2025); *B.D.A.A. v. Bostock*, No. 6:25-CV-02062-AA, 2025 WL 3484912  
(D. Or. Dec. 4, 2025); *Aguilar Gama v. Bondi*, 25-01925, 2025 WL 3559942 (W.D.  
Wash. Dec. 12, 2025); *Espinoza Cruz v. English*, No. 3:25-CV-919-CCB-SJF, 2025  
WL 3676992 (N.D. Ind. Dec. 18, 2025); *Nevarez Jurado v. Freden*, No. 25-CV-  
943-LJV, 2025 WL 3687264 (W.D.N.Y. Dec. 19, 2025); *O.A.M.R. v. Wofford*, No.  
1:25-CV-01955-TLN-JDP, 2025 WL 3702171 (E.D. Cal. Dec. 21, 2025).

1 recipients have a protected property interest that requires a fair process before the  
2 government may take that benefit away.”). Instead, Defendants counter that  
3 removal proceedings are sufficient process. PI Opp. at 30. But this misses the  
4 point. An “IJ ha[s] no authority to grant [a petitioner] U visa interim relief.” *Lee v.*  
5 *Holder*, 599 F.3d 973, 974 (9th Cir. 2010); 8 C.F.R. § 214.14(c)(1) (USCIS has  
6 sole jurisdiction over U visas); 8 U.S.C. § 1227(d) (conferring authority solely to  
7 the “Secretary of Homeland Security”). Further, relief in immigration court occurs  
8 only *after* the injury Plaintiffs seek to avoid. For instance, an immigration judge  
9 may have terminated Ms. Merlos’s immigration case, PI Opp. at 30, but not until  
10 after she endured four agonizing months in DHS custody, during which she lost  
11 her business and her children were traumatized. Merlos Decl. ¶¶ 33-45, 47-53,  
12 Dkt. 23-6. This is precisely why Plaintiffs argue a pre-deprivation hearing is  
13 required before detaining someone in deferred action status.

14 2. Plaintiffs are likely to prevail on their APA and *Accardi* claims.

15 Notably, Defendants do not challenge Plaintiffs’ claims that the De Facto  
16 Revocation Policy violates the APA and *Accardi* doctrine, thereby waiving any  
17 such arguments. Even if not waived, the evidence clearly establishes that  
18 Defendants are not complying with their own policies for revoking deferred  
19 action, and that this failure is arbitrary and capricious because it has no connection  
20 to the goals of the VAWA, U visa, and T visa programs. Pltfs’ Mtn. at 31-35.

21 **C. The Blind Removal Policy is unlawful.**

22 Defendants allege the Blind Removal Policy “is a fiction.” Opp. at 26. Yet  
23 again, Defendants concede the policy’s existence with their own words. Plaintiffs  
24 argue 8 U.S.C. § 1227(d) requires Defendants to determine a U or T visa  
25 petitioner’s prima facie eligibility for the benefit *whenever* such a petitioner  
26 requests a stay. And Defendants’ position is that “expedited adjudication requests  
27 to USCIS may still be made ‘subject to a case-by-case determination that it is in  
28 ICE’s best interests.’” PI Opp. at 28 (quoting 2025 Guidance at 1-3). This position

1 reveals the policy is no fiction at all: by asserting that obtaining such a  
2 determination is *optional* in the discretion of ICE on a case-by-case basis,  
3 Defendants reveal their policy is that they do not believe it is *required* whenever a  
4 U or T visa petitioner request a stay and that they are free to remove such  
5 petitioners, willfully blind to their prima facie eligibility. This is unlawful.  
6 *Jimenez v. Dep't of Homeland Sec.*, No. 222CV00967SSSJPRX, 2022 WL  
7 19410308, at \*3 (C.D. Cal. Nov. 14, 2022).

8 This policy is further confirmed by attorneys attesting that stays of removal,  
9 once routinely granted to U and T visa petitioners, are no longer considered. *See*,  
10 *e.g.*, Decl. of Marguerite Marty ¶ 12 (“[B]efore February 2025, ICE routinely  
11 granted stays of removal for clients with pending U visa applications,” describing  
12 a client whose stay request for a stay was summarily denied).

13 **IV. The balance of hardships and public interest favor preliminary relief.**

14 Without a hint of irony, Defendants assert that the requested preliminary  
15 relief will compromise enforcement of immigration laws. But Plaintiffs explicitly  
16 seek *compliance* with the immigration laws, including 8 U.S.C. § 1227(d). The  
17 requested relief would merely stay novel and aggressive policies that upended  
18 decades of prior policy, under which there remained consistent enforcement of  
19 immigration laws. “The public interest is served by compliance with the APA”  
20 and “preserving congressional intent.” *EBSC*, 993 F.3d at 678.

21 Finally, as explained in Plaintiffs’ reply in support of class certification,  
22 *Trump v. CASA, Inc.*, 606 U.S. 839 (2025) does not render the requested relief  
23 inappropriate or tip the balance of hardships, because it explicitly left in place the  
24 availability of nationwide relief for certified classes and says nothing about  
25 classwide APA relief to stay offending agency action under 5 U.S.C. § 705.

26 **CONCLUSION**

27 For the foregoing reasons, Plaintiffs respectfully request that the Court grant  
28 this motion.

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Dated: January 12, 2026

Respectfully submitted,

/s/ Bardis Vakili

Bardis Vakili

CENTER FOR HUMAN RIGHTS &  
CONSTITUTIONAL LAW

Bardis Vakili

Sarah E. Kahn

Erika Cervantes

LA RAZA CENTRO LEGAL

Stephen A. Rosenbaum

Jordan Weiner

PUBLIC COUNSEL

Rebecca Brown

Kathleen Rivas

COALITION FOR HUMANE

IMMIGRANT RIGHTS

Carl Bergquist

Adam Reese