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 A. ROBBINS
Assistant Director
JASON K. ZUBATA
NANCY N. SAFAVI
ANIELLO DESIMONE
TOLA M. MYCZKOWSKA
JACOB A. BASHYROV
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) 305-8275
Email: Jonathan.A.Robbins@usdoj.gov

Counsel for Defendants

TODD BLANCHE
Deputy Attorney General
BILAL A. ESSAYLI
First Assistant 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' OPPOSITION TO PLAINTIFFS' MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT

Hearing Date: April 9, 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

Referred to Hon. Sheri Pym
United States Magistrate Judge

I. INTRODUCTION

Defendants respectfully oppose Plaintiffs' motion for leave to file a Second Amended Complaint ("2AC"). While the Court has broad discretion to grant leave to amend the operative complaint, as the Ninth Circuit has recognized, "late amendments to assert new theories are not reviewed favorably when the facts and the theory have been known to the party seeking amendment since the inception of the cause of action." *Acri v. Int'l Asso. of Machinists & Aerospace Workers*, 781 F.2d 1393, 1398 (9th Cir. 1986). Plaintiffs' allegation of "developments in expedited discovery" that prompted their request for leave to amend their Complaint a second time is misleading, ECF No. 436 ("Mot.") at 1, and directly undermines the Ninth Circuit's cautionary tale against late amendments, as Plaintiffs themselves concede that "[t]he proposed amendments are predicated on the same set of facts underlying Plaintiffs' existing stop/arrest causes of actions in the 1AC." Plaintiffs already substantially altered the nature of their case through the filing of their First Amended Complaint, which allowed them to convert a simple habeas petition into a large-scale civil action and presumptive class action lawsuit. *Compare* ECF No. 1 *with* ECF No. 16. Yet, Plaintiffs now seek to amend once again to add novel legal arguments which, contrary to Plaintiffs' assertions, were readily apparent at the time they filed their First Amended Complaint and, if interested in pursuing, should have been raised at that time. Plaintiffs fail to explain why these claims could not be raised previously and, given the prejudice to Defendants, the Court should deny their motion.

Nevertheless, even if the Court were inclined to consider Plaintiffs request, their proposed amendments would be futile as they raise claims that are jurisdictionally deficient (as were Plaintiffs' previous claims) and/or fail to plausibly state a claim. To be sure, the Supreme Court has given strong indication that Defendants are likely to win on the merits of this case, and Defendants will be prejudiced by allowing Plaintiffs to substantially alter their case after significant discovery efforts to date. Accordingly, the Court should deny Plaintiffs' motion for leave to file their proposed 2AC.

II. LEGAL STANDARD

After a party has amended a pleading once as a matter of course, they may only amend further after obtaining leave of the court, or by consent of the adverse party. Fed. R. Civ. P. 15(a). Specifically as to the former, courts look at five "*Foman* factors" to decide whether amendment should be granted: (1) undue delay; (2) bad faith or dilatory motive; (3) repeated failure to cure deficiencies by amendments previously permitted; (4) undue prejudice to the opposing party; or (5) futility of amendment. *Eminence Capital, LLC v. Aspeon, Inc.* 316 F.3d 1048, 1052 (9th Cir. 2003) (citing *Foman v. Davis*, 371 U.S. 178, 182 (1962)). Of these factors, "prejudice to the opposing party carries the most weight." *Brown v. Stored Value Cards, Inc.*, 953 F.3d 567, 574 (9th Cir. 2020); *see also Eminence Capital, LLC.* 315 F.3d at 1052 (same).

While courts have broad discretion to grant leave to amend under Federal Rule of Civil Procedure ("Rule") 15(a), courts do not look favorably, and may deny requests for leave to amend, when "the facts and the theory [underlying a late amendment were] known to the party seeking amendment since the inception of the cause of action." *Acri*, 781 F.2d at 1398 (citing *M/V Am. Queen v. San Diego Marine Constr. Corp.*, 708 F.2d 1483, 1492 (9th Cir. 1983) and *Stein v. United Artists Corp.*, 691 F.2d 885, 898 (9th Cir. 1982)). Further, "[f]utility of amendment can, by itself, justify the denial of a motion for leave to amend." *Bonin v. Calderon*, 59 F.3d 815, 845 (9th Cir. 1995). Futility arises when the amendment is legally insufficient, *Missouri ex rel. Koster v. Harris*, 847 F.3d 646, 656 (9th Cir. 2017), or where the amended complaint would be subject to dismissal. *Platt Elec. Supply, Inc. v. EOFF Elec., Inc.*, 522 F.3d 1049, 1060 (9th Cir. 2008).

III. ARGUMENT

Plaintiffs seek to amend their Complaint to introduce two new causes of action—an additional Fourth Amendment claim and an equal protection claim—which could have been (but were not) previously raised. Not only would allowing amendment be futile, but allowing it at this time would prejudice Defendants.

A. Plaintiffs' Proposed Fourth Amendment Cause of Action is Jurisdictionally Deficient and Thus Futile.

First, Plaintiffs seek to introduce a new cause of action under the Fourth Amendment, alleging Defendants' conduct during stops exceed the reasonable bounds of a *Terry* stop. *See* 2AC ¶¶ 300-07. But such an amendment would be futile because, just as with Plaintiffs' other Fourth Amendment causes of action, this claim would be subject to dismissal for lack of jurisdiction under Rule 12(b)(1).

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 lacks jurisdiction to adjudicate claims where plaintiffs fail to establish an imminent and particularized injury. *City of Los Angeles v. Lyons*, 461 U.S. 95, 101-04, 111 (1983). Here, the Supreme Court has already held that Defendants are likely to prevail on the merits, and in a concurrence, indicated that "Plaintiffs' standing theory largely tracks the theory rejected in *Lyons*." *Noem v. Vasquez Perdomo*, 146 S. Ct. 1, 2 (2025) (Kavanaugh, J., concurring). Plaintiffs lack standing to pursue prospective equitable relief for their new Fourth Amendment claim —just as they lack standing with respect to their other Fourth Amendment claims[1]— because they do not, and cannot, demonstrate that past isolated encounters with federal agents are likely to recur, or they will again be subjected to any purported unlawful conduct.

"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,

[1] Defendants recognize that this Court previously rejected Defendants' standing arguments in its denial of Defendants' Motion to Dismiss the Plaintiffs' First Amended Complaint. *See* ECF 419. Notwithstanding this Court's ongoing duty to ensure it retains jurisdiction throughout the litigation, *R.W. v. Columbia Basin Coll.*, 77 F.4th 1214, 1220-21 (9th Cir. 2023) (citing *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 95 (1998)), Defendants maintain that Plaintiffs lack standing as to their Fourth Amendment claims, having failed to demonstrate that they are likely to be subjected to the purported unlawful conduct at issue here. Defendants respectfully note that Plaintiffs' lacking injury only becomes more apparent over time as the named Plaintiffs have not shown any additional encounters with immigration authorities.

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 new Fourth Amendment claim, neither individual nor organizational Plaintiffs can establish Article III standing. Plaintiffs seek to bar investigative stops based on purportedly overly intrusive tactics employed by agents. Importantly, in staying the initial injunctive relief in this case, the Supreme Court necessarily held that Defendants are likely to succeed on the merits of Plaintiffs' TRO claims, would suffer irreparable harm absent a stay of the TRO, and have equities weighing in favor of the stay. *See Perdomo*, 146 S. Ct. at 2-3. Justice Kavanaugh's concurring opinion only further supports the Supreme Court's conclusion, while providing additional grounds for Defendants'

likely success—specifically that Plaintiffs likely lack Article III standing under *Lyons* for injunctive relief restricting immigration officers from making investigative stops where they cannot demonstrate that it is likely, as opposed to merely plausible, that they will be subjected to the purportedly unlawful conduct. *See Perdomo*, 146 S. Ct. at 1.

Even if they could show that immigration authorities had, in a particular instance, conducted an unreasonable stop, the Supreme Court has already rejected a "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 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. *Perdomo*, 146 S. Ct. at *2. In particular, Justice Kavanaugh likened Plaintiffs' claims to those rejected 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 continue to posit a speculative claim of future harm, and they cannot show any realistic immediate threat that they will likely be stopped and detained, in general or specifically in a manner which unreasonably exceeds the bounds of a *Terry* stop. *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.

Even if any of the named Plaintiffs could show an instance where they were subject to an unreasonable stop, "[a]bsent 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. In the nine months since this litigation began, Plaintiffs have only

presented unsubstantiated fears that they will be stopped in a manner that would be unreasonable for a particular set of unknown future circumstances. Plaintiffs have not reported additional encounters, which only contribute to the speculative nature of their claims; and subjective fear of a future allegedly illegal stop "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*, 146 S. Ct. at 2-3. As a threshold issue, their claim of standing falls flat as constitutional rights are personal and may not be asserted vicariously. *Lyons*, 461 U.S. at101-11; *Alderman v. United States*, 394 U.S. 165, 174 (1969). Nevertheless, to prevail on associational standing, organizational Plaintiffs must demonstrate their "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 best, speculative. *See id.* at 381 (citing *Clapper*, 568 U.S. at 409). Absent any nonspeculative probability of injury to their members, Plaintiffs lack standing for this Court to consider their new (equally fatal) claim. *Id.*

There is further support for Defendants' argument for futility in a decision issued by the United States District Court for the District of Minnesota, just days ago. *Hussen, et al. v. Noem, et al.*, No. 26-cv-324, Docket No. 191. In that case, Plaintiffs, like here, alleged unlawful activities include racial profiling, detaining Plaintiffs without reasonable suspicion of immigration law violations, and arresting them without probable cause of immigration law violations, and sought class certification in much the same manner as Plaintiffs here. The Court denied Plaintiffs' motions for a preliminary injunction and provisional class certification, finding "[a] plaintiff lacks Article III standing to seek forward-looking injunctive relief unless he can show that he faces a "certainly impending" future injury (of the sort he seeks to have enjoined) . . . Plaintiffs have not made this

showing." Accordingly, the weight of authority in favor of Defendants' standing argument continues to expand, and allowing amendment here would be futile.

B. Plaintiffs' Proposed Equal Protection Claim Would Be Similarly Futile.

Plaintiffs also seek to add a cause of action stemming from a purported violation of the Fifth Amendment Due Process Clause's guarantee of equal protection. Mot. at 2 (alleging Defendants' conduct "violates the Constitution's guarantee of equal protection under the law."). But the Supreme Court has already rejected this cause of action under similar facts, such that this Court should not entertain this claim now, especially where it could have been raised when Plaintiffs first amended their Complaint.

To the extent Plaintiffs' proposed equal protection claim rests on the notion that immigration authorities are targeting them for enforcement due to their Latino ethnicity, such claim is not cognizable. To properly plead an equal protection claim, a plaintiff must raise a plausible inference that an "invidious discriminatory purpose was a motivating factor" in the relevant decision. *Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 266 (1977). But Plaintiffs merely establish that Defendants are interested in lawfully enforcing immigration law, in locations where there is known to be a larger proportion of individuals with no lawful status to be in the country. That, alone, is insufficient to state an equal protection claim. An equal protection claim premised on the enforcement of immigration laws is inherently paradoxical where the challenged conduct consists of enforcing statutes that regulate immigration status, not race or ethnicity. Whether the alleged injury (which here is speculative at best) arises from enforcement of immigration laws, which necessarily draw distinctions based on citizenship and legal status, the mere fact that many individuals affected may be Latino does not transform lawful immigration enforcement into unconstitutional discrimination. Otherwise, any enforcement action in an area where a particular demographic group is statistically represented would itself become suspect.

To that point, in *DHS v. Regents of the University of California*, the Supreme Court rejected an equal protection claim that similarly relied on alleged disparate impact upon

Latinos in the immigration context. 591 U.S. 1, 34-35 (2020). The Court reasoned that "because Latinos make up a large share of the unauthorized alien population, one would expect them to make up an outsized share of recipients of any cross-cutting immigration relief program." *Id.* at 34. Albeit in the context of immigration benefits, the Court cautioned against entertaining equal protection claims in this context because if such disparate impact were sufficient to state a claim, "virtually any generally applicable immigration policy could be challenged on equal protection grounds." *Id.* That reasoning applies with full force here and therefore makes this claim futile.

C. The Other *Foman* Factors Weigh Against Granting Leave To Amend

Finally, Defendants will certainly be prejudiced if the Court allows Plaintiffs to amend their complaint at this juncture, Plaintiffs have moved to amend with undue delay, and this is not Plaintiffs' first time seeking to amend their complaint. The parties have already engaged in substantial discovery for the purpose of establishing a record for assessing the merits of a forthcoming motion for preliminary injunction. Plaintiffs claim they have discovered the facts supporting their new claims in limited discovery, but the record instead reflects they have challenged immigration enforcement tactics and race-based motivations since their First Amended Complaint, which only supports Defendants' argument that Plaintiffs could have brought their 'new' claims months ago. *See, e.g.*, ECF No. 16 ¶¶ 12-16 (alleging each named Plaintiff was stopped and fear another encounter because of their "Latino ethnicity"), 36 (alleging "stops and interrogations based on nothing but broad profiles, including on the basis of apparent race and ethnicity."), 52-53 (alleging agents have been using "a grossly disproportionate display of force" and that "seizures look less like lawful arrests and more like brazen, midday kidnappings."). Plaintiffs offer no explanation as to why the facts in their First Amended Complaint were not sufficient to develop their "new" claims at an earlier, pre-discovery posture in this case. *Allen v. City of Beverly Hills*, 911 F.2d 367, 374 (9th Cir.1990) (recognizing courts have discretion in denying a motion to amend where the movant presents no new facts but only new theories and provides no satisfactory explanation for his failure to fully develop

his contentions originally). Plaintiffs have been able to engage in discovery to date with the knowledge that they would bring these new purely-legal claims and conduct depositions and discovery requests in a manner anticipating as much, while the government had no knowledge of any specific legal claim now raised for the first time. Plaintiffs correctly assert that plenary discovery in this case has only begun, Mot. at 3, but neglect to acknowledge that this disparity in limited discovery could affect the basis for a possible grant of their requested preliminary injunction. Accordingly, the Court should reject Plaintiffs' tactic of raising new claims at this late juncture, when they could easily have brought them before limited discovery was imposed, and could also have raised them before the Court adjudicated the initial motion to dismiss in this case. *Jackson v. Bank of Hawaii*, 902 F.2d 1385, 1388 (9th Cir. 1990) (undue delay results when "the moving party knew or should have known the facts and theories raised by the amendment in the original pleading.").

III. CONCLUSION

For the foregoing reasons, the motion for leave to file a Second Amended Complaint should be denied.

//

//

Dated: March 12, 2026

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

JASON K. ZUBATA
NANCY N. SAFAVI
ANIELLO DESIMONE
JACOB A. BASHYROV
TOLA M. MYCZKOWSKA
Trial Attorneys

/s/ Jonathan A. Robbins
JONATHAN A. ROBBINS
Assistant Director
Office of Immigration Litigation
U.S. Department of Justice
P.O. Box 878, Ben Franklin Station
Washington, D.C. 20044
Tel: (202) 305-8275
Email: Jonathan.A.Robbins@usdoj.gov

Counsel for Defendants

L.R. 11-6.2 CERTIFICATE OF COMPLIANCE

The undersigned counsel of record certifies that this filing is 3,502 words, which complies with L.R. 11-6.1 and this Court's Standing Order, Part VIII.C.

Dated: March 12, 2026

Respectfully submitted,

/s/ Jonathan A. Robbins
JONATHAN A. ROBBINS
Assistant Director
Office of Immigration Litigation
U.S. Department of Justice

Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on March 12, 2026, I served the foregoing pleading on all counsel of record by means of the Court's CM/ECF electronic filing system.

/s/ Jonathan A. Robbins
JONATHAN A. ROBBINS
Assistant Director
Office of Immigration Litigation
Counsel for Defendants