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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

Immigration Center for Women and
Children, et. al.,

Plaintiffs,

v.

Markwayne Mullin, et. al,
Defendants.

Case No.: 2:25-cv-09848-AB-AS

**PLAINTIFFS' RESPONSE IN OPPOSITION
TO DEFENDANTS' MOTION TO DISMISS**

Hearing Date: October 9, 2026

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Courtroom: 7B

Hon. Andre Birotte Jr.

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INTRODUCTION

In their futile effort to dismiss this action “in its entirety,” Defendants muster only recycled arguments regarding the insufficiency of claims that this Court has already held likely to succeed, attacks founded in mischaracterizations of the pleadings, and invented legal standards. Defendants’ Notice of Motion and Motion to Dismiss the Complaint at 2, Dkt. 98 (“MTD”). The Court should deny their motion.

First, the Court has already held that Plaintiffs are likely to succeed on their arguments that 8 U.S.C. §§ 1252(a)(5), (b)(9), and (g) do not bar Plaintiffs’ claims and that Plaintiffs have standing. Applying the proper standards, all Plaintiffs have standing, though the Court need only find one Plaintiff has standing to bring each claim to deny a motion to dismiss. Finally, the Court has subject matter jurisdiction over Plaintiffs’ claims. 8 U.S.C. § 1252(f)(1) does not warrant dismissal of the Complaint, because it only reaches, at most, the Court’s power to grant certain non-individualized *injunctions*, but not all relief Plaintiffs seek. In any event, the class-wide injunctions Plaintiffs do seek do not fall within § 1252(f)’s limited scope.

Second, the fact that Plaintiffs’ claims incorporate by reference previous paragraphs of the Complaint is a standard feature of notice pleading, not per se evidence of a so-called “shotgun pleading.” MTD at 11. The Complaint clearly alleges specific facts in support of each claim sufficient to put Defendants on notice.

Third, with the exception of the Fourth Amendment claim, the Court has already addressed the sufficiency of Plaintiffs’ claims, correctly holding that Plaintiffs are likely to succeed on each of them. “[T]o the extent [this Court] previously found that certain claims survived the heightened preliminary injunction standard, [it may] rely on that analysis in concluding that plaintiffs’ [complaint] is adequately pleaded,” because Defendants’ “suggest[ions] otherwise” lack merit. *City & Cnty. of San Francisco v. Trump*, 816 F. Supp. 3d 1017, 1026 fn. 3 (N.D. Cal. 2026) (internal citations omitted).

1 Regarding the only claim on which the Court has not yet ruled, Plaintiffs have
2 plausibly pled a Fourth Amendment claim, and Defendants’ arguments to the
3 contrary ignore the legal standard by disputing facts pled in the Complaint.

4 In sum, Defendants offer nothing to warrant this Court holding that it lacks
5 jurisdiction over claims this Court already held are likely to succeed or that they are
6 implausible on their face. If the Court finds any merit in Defendants’ chaotic maze
7 of attacks, any alleged flaws are curable, warranting leave to amend. *Nat’l Council*
8 *of La Raza v. Cegavske*, 800 F.3d 1032, 1041 (9th Cir. 2015).

9 **RELEVANT FACTUAL AND PROCEDURAL BACKGROUND**

10 Plaintiffs challenge Immigration and Customs Enforcement (“ICE”) Policy
11 No. 11005.4, *Interim Guidance on Civil Immigration Enforcement Actions Involving*
12 *Current or Potential Beneficiaries of Victim-Based Immigration Benefits* (Jan. 30,
13 2025) (“2025 Guidance”), which they allege allowed, for the first time in decades,
14 ICE to ignore the protections Congress created for immigrant survivors of crime and
15 trafficking. Complaint ¶¶ 2, 82-86, Dkt. 1 (“Compl.”). Plaintiffs also challenge two
16 policies and practices that they allege emerged from the 2025 Guidance: (1) a “De
17 Facto Revocation Policy,” pursuant to which ICE unilaterally revokes deferred action
18 status issued by United States Citizenship and Immigration Service (“USCIS”) to
19 petitioners for U and T visas, by arresting, detaining, and/or removing such
20 petitioners without notice or opportunity to be heard regarding such revocation, and
21 (2) a “Blind Removal Policy,” pursuant to which ICE removes U and T visa
22 petitioners who have requested stays of removal without any determination of their
23 prima facie eligibility for the visas for which they applied. *Id.* ¶¶ 3, 89.

24 Plaintiffs are four organizations who routinely represent individuals applying
25 for legal status through the Violence Against Women Act (“VAWA”), U visas, or T
26 visas, as well as eight individuals with pending petitions for such relief. *Id.* ¶¶ 15-26.
27 Each provides detailed allegations regarding how the challenged policies have
28 harmed them. *Id.* ¶¶ 101-169.

1 On October 14, 2025, Plaintiffs filed their Complaint, Dkt. 1. On October 30,
2 2025, Plaintiffs filed a Motion for Class Certification, Dkt. 23. On November 14,
3 2025, Plaintiffs filed a Motion for APA § 705 Relief and Individual and Classwide
4 Preliminary Injunction, Dkt. 31. On May 20, 2026, this Court issued an order
5 Granting Plaintiffs’ Motion for Class Certification [Dkt. No. 23] and Granting in Part
6 and Denying in Part Plaintiffs’ Motion for Preliminary Injunction [Dkt. No. 31], Dkt.
7 57 (“May 20 Order”).¹

8 LEGAL STANDARD

9 Motions to dismiss under Federal Rule of Civil Procedure 12(b)(1) may
10 challenge subject-matter jurisdiction on facial or factual grounds. Fed. R. Civ. P.
11 12(b)(1); *White v. Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000). Where, as here, the
12 defendant brings a facial challenge, the Court must accept all allegations as true and
13 draw any reasonable inferences in the plaintiff’s favor. *See id.*

14 Motions under Rule 12(b)(6) are brought for failure to state a claim upon which
15 relief can be granted. Fed. R. Civ. P. 12(b)(6). For purposes of assessing such
16 motions, courts “accept factual allegations in the complaint as true and construe the
17 pleadings in the light most favorable to the nonmoving party.” *Manzarek v. St. Paul*
18 *Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). “A claim has facial
19 plausibility when the plaintiff pleads factual content that allows the court to draw the
20 reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft*
21 *v. Iqbal*, 556 U.S. 662, 678 (2009). Leave to amend must be granted unless
22 amendment is futile. *Nat’l Council of La Raza*, 800 F.3d at 1041.

23 ARGUMENT

24 I. The Court has subject matter jurisdiction.

25 This Court has already held that Plaintiffs have standing and explained why
26 Defendants’ §§ 1252(a)(5), (b)(9), and (g) arguments fail. Further, dismissal based
27

28 ¹ Subsequent procedural steps are largely immaterial to Defendants’ motion.

1 on § 1252(f)(1) is inappropriate because that provision limits certain types of
2 injunctions, not subject matter jurisdiction, and Plaintiffs’ requests for classwide
3 injunctive relief do not fall within § 1252(f)(1)’s limitations in any event.

4 **A. Plaintiffs have sufficiently pled standing.**

5 Defendants’ standing arguments are meritless for several reasons, particularly
6 in light of the May 20 Order. May 20 Order at 27-28 (reciting relevant standards).

7 First, in a suit for equitable relief, “the general rule applicable to federal court
8 suits with multiple plaintiffs is that once the court determines that one of the plaintiffs
9 has standing, it need not decide the standing of the others.” *Melendres v. Arpaio*, 695
10 F.3d 990, 999 (9th Cir. 2012) (quoting *Leonard v. Clark*, 12 F.3d 885, 888 (9th
11 Cir.1993)). Thus, Defendants’ claim that all “[t]welve plaintiffs must each” establish
12 standing, MTD at 8, misstates the standard for equitable relief at the pleadings stage,
13 citing a *damages* case involving whether “[e]very class member” established
14 standing *at trial* “to recover individual damages.” *TransUnion LLC v. Ramirez*, 594
15 U.S. 413, 431 (2021) (quotations and citations omitted). After thorough analysis, this
16 Court has already found that Organizational Plaintiffs are likely to establish each
17 element of standing. May 20 Order at 27-32. Indeed, Defendants do not challenge
18 the organizational standing of any of the Organizational Plaintiffs.² This alone is
19 enough to prevent dismissal, because Organizational Plaintiffs bring each claim.
20 *Rumsfeld v. F. for Acad. & Institutional Rts., Inc.*, 547 U.S. 47, 52 n. 2 (2006)
21 (limiting discussion to organizational plaintiff because “the presence of one party
22 with standing is sufficient to satisfy Article III’s case-or-controversy requirement”).

23 Second, Defendants’ arguments regarding the Individual Plaintiffs are
24 contrary to this Court’s holdings, confuse the facts, and invent standards. Standing
25 requires plaintiffs to show three elements: injury in fact; traceability; and

26 ² Defendants’ challenge CHIRLA’s standing on their “associational theory,” but not
27 their distinct organizational standing theory. MTD at 10-11. Because resolving the
28 associational standing inquiry is unnecessary if CHIRLA has organizational
standing, the Court need not address it. *See* May 20 Order at 32 n.12.

1 redressability. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992).

2 As to injury, Defendants ignore this Court’s holding that the removed Plaintiffs
3 “made a clear showing that they are suffering an injury-in-fact.” May 20 Order at 33.
4 Defendants misunderstand the harm Plaintiffs allege by claiming they face no injury
5 from their removals because they can continue to wait for adjudication of their visas
6 from outside the country. MTD at 9-10. Plaintiffs do not limit their injuries to
7 ultimate ineligibility for any visa, but the loss of their *interim* benefits, unlawful
8 detention, and removal. Compl. ¶¶ 109, 116, 118, 125-126, 131-134, 140-141, 146-
9 148, 156, 164.³ Further, unlawful removal is not an injury in the “past,” MTD at 9,
10 but an ongoing injury with present consequences.⁴ See *Zegarra-Gomez v. I.N.S.*, 314
11 F.3d 1124, 1127 (9th Cir. 2003).

12 Regarding traceability, this Court has already found that “Plaintiffs have
13 presented substantial evidence showing that prior to the 2025 Guidance, Defendants
14 . . . honored USCIS grants of deferred action, requested USCIS to perform expedited
15 prima facie determinations, and granted requests for stay of removal based on
16 positive USCIS prima facie determinations, whereas now such persons are routinely
17 detained and deported.” May 20 Order at 33-34.⁵ What Plaintiffs have already proven
18 is also alleged in the Complaint. Compl. ¶¶ 70-95. To avoid the same result,
19 Defendants invent a “reliance” element of standing, but once again cite no precedent

20 ³ Even as to ultimate eligibility, contrary to Defendants’ arguments, removed T visa
21 petitioners do lose their opportunity for a visa because they are not present in the
22 United States. 8 C.F.R. § 214.207(a). Speculating, beyond the pleadings, that DHS
23 might obviate this ineligibility by one day inviting some T visa petitioners back to
the United States for “participation in . . . judicial processes associated with [the]
trafficking” does not alter the analysis. MTD at 10 n. 4.

24 ⁴ Defendants properly do not attempt to argue that detention is not an injury-in-fact.
See, e.g., *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017).

25 ⁵ Defendants misconstrue Luna E.’s claims. First, they argue that because she has
26 been detained since 2023, the 2021 Directive does not “hold[] up as the guarantor
of her liberty.” MTD at 8. Plaintiffs nowhere argue that setting aside the 2025
27 Guidance will guarantee the liberty of all petitioners. Rather, had ICE acted
lawfully, Luna E. should have received consideration for release *after* being granted
28 a bona fide determination on February 24, 2025, but, when the Complaint was filed,
she did not receive such consideration under the 2025 Guidance. Compl. ¶ 140.

1 supporting their theory that reliance is an element of standing. MTD at 8. It is not.

2 As to redressability, Defendants' audacious claim that "not one injury" of
3 Plaintiffs is "redressable," MTD at 9, is belied by the fact that this Court has granted
4 preliminary relief under the APA to the classes and redressed the injuries of three
5 individual Plaintiffs in its May 20 Order, ordering that Lupe. A., Carmen F., and
6 Yessenia Ruano be permitted to the United States. This alone is sufficient to preclude
7 dismissal of the Plaintiffs' claims.⁶ The requested relief will remedy the injuries of
8 countless other class members and the Organizational Plaintiffs.

9 **B. Defendants' § 1252(a)(5), (b)(9), and (g) arguments already failed.**

10 This Court has already found Plaintiffs are likely to succeed on their arguments
11 that 8 U.S.C. §§ 1252(a)(5), (b)(9), and (g) do not bar Plaintiffs' claims nor the relief
12 they seek. May 20 Order at 24-27. Far from giving the Court reason to revisit its prior
13 order, Defendants make no effort to separate or clarify the standards for (a)(5), (b)(9),
14 and (g), and their confused read of each directly contradicts controlling precedent.

15 First, Plaintiffs' claims are not barred by 8 U.S.C. §§ 1252(a)(5) or (b)(9), the
16 "zipper clauses" that channel claims "arising from any action taken or proceeding
17 brought to remove" a noncitizen into the circuit courts through a petition for a review
18 of removal orders, because Plaintiffs cannot bring their claims through a petition for
19 review of their removal orders. *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525
20 U.S. 471, 481, 483 (1999). They do not challenge their removal orders at all, as this
21 Court properly acknowledged. May 20 Order at 26-27 (holding Plaintiffs "challenge
22 [ICE's policies]," they do "not challenge the removal proceedings themselves but
23 instead concern matters collateral to removal proceedings"). "[C]laims that are

24 ⁶ Defendants are correct that Camila B. was released on bond before Plaintiffs filed
25 the Complaint. MTD at 2. She "remain[ed] subject to onerous reporting
26 requirements, including answering ICE's calls 'right away' or she may be re-
27 detained." May 20 Order at 41. Courts have found such "supervisory conditions . . .
28 custodial," and detention is an injury-in-fact. *Garro Pinchi v. Albarran*, No. 25-CV-
10831-PCP, 2026 WL 1975598, at *3 (N.D. Cal. July 8, 2026). This Court's final
order may redress her injury by ending such onerous supervision and protecting her
from redetention.

1 independent of or collateral to the removal process do not fall within the scope of
2 1252(b)(9).” *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1032 (9th Cir. 2016).⁷ Indeed,
3 immigration judges cannot adjudicate the merits of Plaintiffs’ challenge. *See Lee v.*
4 *Holder*, 599 F.3d 973, 975 (9th Cir. 2010).

5 It is immaterial that the Ninth Circuit in *J.E.F.M.* applied (b)(9) to claims for
6 appointment of counsel to represent children *in removal proceedings*, because, unlike
7 the *J.E.F.M.* plaintiffs, Plaintiffs here challenge no aspect of their removal
8 proceedings.⁸ Defendants assert Plaintiffs challenge ICE’s decision “against whom
9 [to] commence[] proceedings,” MTD at 6, but the cited paragraphs do not mention
10 removal proceedings at all. Compl. ¶¶ 89, 242. Further, “a challenge to whom ICE
11 detains,” MTD at 6, has nothing to do with (a)(5) or (b)(9), as the Supreme Court has
12 clearly held that detention is collateral to removal proceedings. *Jennings v.*
13 *Rodriguez*, 583 U.S. 281, 294 (2018).

14 Second, 8 U.S.C. § 1252(g) is inapplicable because it “applies only to three
15 discrete actions that the Attorney General may take: her ‘decision or action’ to
16 ‘commence proceedings, adjudicate cases, or execute removal orders.’” *Ibarra-Perez*
17 *v. United States*, 154 F.4th 989, 996 (9th Cir. 2025) (citing *Reno*, 525 U.S. at 482).
18 As the Court held, “Individual Plaintiffs’ claims ‘arise’ not from ICE’s decisions to
19 commence proceedings, adjudicate cases, or execute removal orders, but from ICE’s
20 decisions to ignore prior grants of deferred action and their statutory obligation to
21 seek prima facie determinations.” May 20 Order at 24-25.

22 Defendants’ only semblance of a 1252(g) argument is a footnote citation to
23

24 ⁷ Defendants exaggerate the reach of *J.E.F.M.*, as “[t]he Supreme Court has since
25 instructed that § 1252 (b)(9) is a ‘targeted’ and ‘narrow’ provision that ‘is certainly
26 not a bar where, as here, the parties are not challenging any removal proceedings.’”
Gonzalez v. United States Immigr. & Customs Enft., 975 F.3d 788, 810 (9th Cir.
2020) (citations omitted).

27 ⁸ Defendants’ extended discussion of “policies-and-practices challenges,” MTD at
28 6, is therefore immaterial. It is not the policies and practice nature of the challenge
that renders (b)(9) inapplicable, it is the fact that Plaintiffs do not challenge any part
of their removal proceedings.

1 *Rivas-Melendrez v. Napolitano*, an out-of-circuit decision in which the Seventh
2 Circuit held that § 1252(g) barred a habeas petitioner’s claim challenging “both the
3 removal order and the ICE agents’ execution of that order.” MTD at 6 n.3 (citing 689
4 F.3d 732, 736 (7th Cir. 2012)). First, the Court need not consider this argument, as it
5 has already admonished Defendants not to “relegate[] several substantive arguments
6 and extensive citations to footnotes.” May 20 Order at 5 fn. 3 (citing Standing Order
7 at 6:18, Dkt. 10). Second, the argument, which is apparently tied to Plaintiffs’
8 challenge to the Blind Removal Policy, fails. The petitioner in *Rivas-Melendrez*
9 challenged the adequacy of his removal proceedings but sought to avoid the
10 channeling provisions of 8 U.S.C. § 1252(a)(5) and (b)(9) by “now attempt[ing] to
11 characterize his habeas suit as a challenge to the *execution* of his removal order.”
12 *Rivas-Melendrez*, 689 F.3d. at 738. This characterization ran afoul of § 1252(g). But
13 Plaintiffs’ claims do not challenge “the procedural adequacy of [their] removal
14 proceedings,” MTD at 7 n. 3, or any discretionary decision to execute their removal
15 orders. Rather, they “center on . . . allegations of affirmative government
16 misconduct,” a failure to comply with their nondiscretionary statutory duty to
17 consider applicants’ prima facie eligibility, which is “collateral to the issues to be
18 presented in any future removal proceedings.” *B.P. v. Bostock*, No. C23-0890-KKE,
19 2024 WL 2959550, at *7 (W.D. Wash. June 12, 2024) (distinguishing *Rivas-*
20 *Melendrez*). Accordingly, § 1252(a)(5), (b)(9) and (g) do not “Channel Plaintiffs’
21 Claims Out of Here.” MTD at 5.

22 **C. Defendants’ § 1252(f)(1) arguments fail.**

23
24 1. Section 1252(f)(1) is a limitation on remedy, not subject matter
25 jurisdiction, and thus does not warrant dismissal.

26 Defendants argue for dismissal under Rule 12(b)(1) on the ground that certain
27 remedies Plaintiffs seek are barred by 8 U.S.C. § 1252(f)(1). MTD at 3. But Rule
28 12(b)(1) only permits dismissal for lack of subject-matter jurisdiction, and, whatever

1 the reach of § 1252(f)(1), it indisputably “does not deprive the lower courts of all
2 subject matter jurisdiction over claims” that fall within its reach. *Biden v. Texas*, 597
3 U.S. 785, 798 (2022).

4 “By its plain terms, and even by its title, [§ 1252(f)(1)] is nothing more or less
5 than a limit on injunctive relief.” *Reno*, 525 U.S. at 481. The “question whether a
6 court has jurisdiction to grant a particular remedy is different from the question
7 whether it has subject matter jurisdiction over a particular class of claims.” *Biden*,
8 597 U.S. at 801. Thus, § 1252(f)(1) does not require dismissal under Rule 12(b)(1)
9 of claims that also seek individualized relief, declaratory relief, or vacatur of unlawful
10 agency action under the APA.⁹

11 2. Plaintiffs’ claims are not barred by 1252(f)(1) because Plaintiffs also
12 seek APA relief and declaratory judgment.

13 As this Court has already recognized, the Ninth Circuit has foreclosed
14 Defendants’ arguments that § 1252(f)(1) restricts the Court’s authority to issue
15 declaratory or APA relief. May 20 Order at 37. Defendants’ attempts to paint such
16 relief as injunctive are unavailing.

17 The Ninth Circuit has unequivocally held that “1252(f)(1) does not prohibit
18 relief in the form of a stay or postponement [] under the APA.” *Nat’l TPS All. v.*
19 *Noem*, 150 F.4th 1000, 1018 (9th Cir. 2025). Similarly, § 1252(f)(1) “does not affect
20 classwide declaratory relief.” *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018).
21 This Court properly applied this precedent, stating, “that § 1252(f)(1) bars some relief
22 that Plaintiffs seek does not render Plaintiffs’ claims unredressable because they also
23 seek a stay under APA § 705 and declaratory relief.”¹⁰ May 20 Order at 37.

24 ⁹ Defendants argue only that §1252(f) bars the “Classwide Relief Plaintiffs Seek,”
25 MTD at 3, but not injunctive relief for the Organizational Plaintiffs. Thus, they
26 have waived any such argument on reply. *Castañon-Nava v. DHS*, 175 F.4th 828,
838 (7th Cir. 2026) (“[W]e conclude that any objection based on § 1252(f)(1) is
waivable, and Defendants did so here.”).

27 ¹⁰ Defendants appropriately do not argue that § 1252(f)(1) warrants dismissal under
28 Rule 12(b)(6). “As potential remedies, and not standalone claims, Plaintiffs’
requests for injunctive and declaratory relief are not subject to dismissal under Rule

1 Seeking once again to avoid this binding precedent, Defendants argue that the
2 Court’s stay relief was an injunction masquerading by another name because it may
3 have “spawn[ed] injunctions.” MTD at 5 n. 2 (citing *Osorio Gonzalez v. Wesling*,
4 No. 26-cv-231-JJM-AEM, 2026 WL 1765871, at *10 (D.R.I. June 19, 2026)). But
5 the injunction in *Osorio Gonzalez* is precisely the kind of individualized “[one] case
6 at a time” injunction that Defendants concede § 1252(f) permits. MTD at 5. This
7 Court’s May 20 Order stayed three unlawful policies. When ICE detained a class
8 member pursuant to one of the stayed policies, he sought an individual injunction in
9 an appropriate district court, which reviewed the individual facts and merits of his
10 case. *Osorio Gonzalez*, 2026 WL 1765871, at *4-8. To the extent it enjoined ICE
11 from “the operation of” any statute, it did so only “with respect to the application of
12 such provisions to an individual . . . against whom” immigration proceedings had
13 “been initiated,” as explicitly authorized by 8 U.S.C. § 1252(f)(1). MTD at 5 (quoting
14 8 U.S.C. § 1252(f)(1)).

15 Unsurprisingly, Defendants find no precedent to support their “spawn” theory
16 that § 1252(f) bars any non-injunctive ruling on which another court might rely.
17 Instead, they again turn to Supreme Court concurrences that did not garner the
18 support of a majority, a case that does not even analyze 1252(f)(1), and, in a bizarre
19 form of bootstrapping, their own prior failed arguments as “establishing” a legal rule
20 that they clearly did not establish. MTD at 4 & n.2 (citing *Mullin v. Al Otro Lado*,
21 146 S. Ct. 2079, 2097-98 (2026) (Thomas, J., concurring); *United States v. Texas*,
22 599 U.S. 670, 690, 693 (2023) (Gorsuch, J. concurring, joined by Justices Thomas
23 and Barrett); *Mullin v. Doe*, 146 S. Ct. 2121, (2026) (analyzing the Temporary
24 Protected Status (“TPS”) statute—not § 1252(f)(1)); Dkt 72, 88. These cases do not
25 disturb clear, binding Ninth Circuit precedent.

26 12(b)(6).” *Segura v. City of La Mesa*, 647 F. Supp. 3d 926, 942 (S.D. Cal. 2022);
27 *Com. Point Cap., Inc. v. First Data Corp.*, No. 19-CV-556-W (LL), 2019 WL
28 7020057, at *10 (S.D. Cal. Dec. 20, 2019) (“[A] 12(b)(6) motion to dismiss... is
not the proper mechanism to challenge a prayer for relief.”); *Andrawes v. Flora
Media, Inc.*, 2018 WL 1942197, *2 (C.D. Cal. March 16, 2018).

1 This Court has already rejected Defendants’ argument that the APA relief
2 Plaintiffs seek is “functionally an injunction.” Order Denying Defendants’ Ex Parte
3 Application for a Stay Pending Appeal Authorization [Dkt. No. 72] at 2, Dkt. 96
4 (“[R]elying on binding Ninth Circuit authority distinguishing between injunctions
5 and APA stays, the Order determined that § 1252(f)(1) barred classwide injunctive
6 relief, not classwide APA stays.”). It should do so again.

7 3. The classwide injunctive relief sought is not barred by 1252(f)(1).

8 Though the Court need not examine the classwide injunctive relief Plaintiffs
9 seek to deny Defendants’ motion, § 1252(f)(1) does not bar such relief because
10 Plaintiffs do not ask the Court to restrain or enjoin the operation of any provisions
11 that fall within that section’s reach.

12 Section 1252(f)(1) only bars injunctions against “the operation of the
13 provisions of Part IV” of the INA “*as amended by the Illegal Immigration Reform*
14 *Act [“IIRIRA”] of 1996*”. 8 U.S.C. § 1252(f)(1) (emphasis and bracketed term
15 added). “[T]he reference in § 1252(f)(1) to ‘the provisions of part IV of this
16 subchapter’ appears to refer to 8 U.S.C. §§ 1221–1232,” but the Ninth Circuit has
17 noted an important exception to this generalization. *Galvez v. Jaddou*, 52 F.4th 821,
18 830 (9th Cir. 2022). Statutes that, though they are now codified in that statutory
19 range, were enacted *after* IIRIRA, could not have been “amended by” IIRIRA and
20 therefore do not fall within § 1252(f)(1)’s reach. *Id.* at 829-31. Specifically, the Ninth
21 Circuit held that provisions of the 2008 Trafficking Victims Protection
22 Reauthorization Act (“TVPRA”) do not fall within §1252(f)(1)’s reach because,
23 although some of its provisions were ultimately codified in 8 U.S.C. §§ 1221–1232,
24 “[t]he TVPRA was enacted in 2008,” and therefore “it could not have enacted a law
25 that was amended by the IIRIRA of 1996.” *Id.* at 831.

26 *Galvez* controls the inquiry here. The U and T visa programs are not found in
27 Part IV of the INA or 8 U.S.C. §§ 1221-1232. *See* 8 U.S.C. §§ 1101(a)(15)(T)-(U);
28 §§ 1184(o)-(p). They were also created *after* IIRIRA of 1996. *See* Compl. ¶¶39, 42

1 (noting U visa was created by the Violence against Women Act of 2000); *id.* ¶¶ 60-
2 61 (noting T visa was created by the Trafficking Victims Protection Act of 2000).
3 The 2025 Guidance is inarguably not part of Part IV of the INA. Therefore, enjoining
4 “Defendants from implementing it or any other policy that fails to consider eligibility
5 for VAWA, U visa, and T visa relief,” which fall outside of Part IV of the INA, “as
6 a positive factor weighing against imposition of civil immigration enforcement,” has,
7 at most, only a collateral impact on Part IV. Compl., Request for Relief No. 3.c.

8 Furthermore, the TVPRA also created eligibility for work authorization, thus
9 authorizing deferred action, for bona fide U visa petitioners. Compl. ¶¶ 44-48. This
10 provision was ultimately codified at 8 U.S.C. § 1184(p)(6), *id.*, which is *outside* the
11 statutory range covered by § 1252(f)(1), and deferred action is never referenced in
12 the covered provisions. Thus, “[p]reliminarily and permanently enjoining” the De
13 Facto Revocation Policy and “enjoin[ing] ICE from ignoring or overriding deferred
14 action granted by USCIS based on a U or T visa petition,” would merely result in
15 Defendants comporting with USCIS policy, the APA, and Due Process when seeking
16 to rescind deferred action. *Id.*, Request for Relief Nos. 4.e, 6. While following such
17 processes *might* temporarily postpone a detention or removal, “such an effect is
18 collateral” at best. *Al Otro Lado v. Exec. Off. for Immigr. Rev.*, 138 F.4th 1102, 1126
19 (9th Cir. 2025); *Gonzales v. DHS*, 508 F.3d 1227, 1233 (9th Cir. 2007).

20 Similarly, 8 U.S.C. § 1227(d)(1)—the provision at the heart of Plaintiffs’
21 challenge to the Blind Removal Policy—was created by the TVPRA, just like the
22 provision at issue in *Galvez*. Compl. ¶ 43. Thus, like the provision in *Galvez*, it falls
23 outside § 1252(f)(1)’s reach, even though it was ultimately codified in the range of 8
24 U.S.C. §§ 1221-1232. Plaintiffs merely ask this Court to require Defendants to
25 properly apply § 1227(d)(1) by “preliminarily and permanently enjoin Defendants
26 from removing U or T visa petitioner who request a stay without first determining
27 whether they are prima facie eligible for relief.” *Id.*, Request for Relief No. 9.b. To
28

1 the extent requiring compliance with 8 U.S.C. § 1227(d) impacts any statute covered
2 by 8 U.S.C. § 1252(f)(1), it only does so collaterally.

3 Moreover, § 1252(f)(1) is inapplicable for the additional reason that the Ninth
4 Circuit has held that 1252(f)(1) does not bar a district court from enjoining, on a
5 classwide basis, the Department of Homeland Security (“DHS”) from applying
6 unlawful policies that result in denying or rescinding affirmative relief, even though
7 such an injunction may have a collateral effect of preventing removal or detention.
8 *Gonzales* 508 F.3d at 1233 (holding 1252(f)(1) did not bar an injunction that “directly
9 implicates the adjustment of status provision which falls under part V of subchapter
10 II, notwithstanding that a reinstatement proceeding,” which falls under Part IV of the
11 INA, “may be a collateral consequence of an unsuccessful adjustment application.”);
12 *Al Otro Lado*, 138 F.4th at 1126 (“Even though asylum eligibility may change the
13 outcome of a removal proceeding under a covered provision, such an effect is
14 collateral under our precedents.”), *rev’d and remanded on other grounds sub nom.*
15 *Mullin v. Al Otro Lado*, 146 S. Ct. 2079 (2026); *Perez-Funez v. DHS*, No. CV 81-
16 01457-MWF (EX), 2026 WL 982623, at *9-10 (C.D. Cal. Apr. 6, 2026) (injunction
17 requiring government to protect rights of children to knowing and voluntary decision
18 regarding voluntary departure not barred by 1252(f)(1) because, “to the extent the
19 Injunction compels the Government to take certain procedural steps when processing
20 UAC, it does so with respect to the TVPRA’s requirements,” notwithstanding that
21 the “TVPRA cross-references the covered provisions”).

22 “[T]he responsibilities of immigration officers when they encounter
23 [survivors] are dictated by the” VAWA, U, and T programs and interim protections,
24 “not by the covered provisions of the IIRAIRA.” *Perez-Funez*, 2026 WL 982623 at
25 *10. A “policy that permits ICE to disregard USCIS grants of deferred action” and
26 remove petitioners before USCIS has a chance to conduct prima facie review of their
27 petition, May 20 Order at 26-27, “constitutes at least the partial rescission of the U
28

1 visa interim relief system,” *Oliveira v. Edlow*, No. CV 25-13228-BEM, 2025 WL
2 3492110, at *8 (D. Mass. Dec. 4, 2025). The Court may enjoin Defendants’ unlawful
3 rescission of a program of affirmative protections even if that has some collateral
4 effect on Part IV of the INA.

5 **II. The Complaint satisfies Rule 8.**

6 Plaintiffs clearly allege sufficient details in each of their claims to satisfy the
7 notice pleading standards of Rule 8. Incorporation-by-reference paragraphs of the
8 kind Defendants criticize are a standard feature of federal pleading, not ipso facto
9 proof of an impermissible “shotgun pleading.” MTD at 11. The Complaint
10 adequately places Defendants on notice because Plaintiffs do not rely solely on this
11 incorporation; they carefully identify the specific facts on which each claim is based.

12 A shotgun pleading that fails to meet Rule 8’s requirements is one where “a
13 party indiscriminately incorporates assertions from one count to another,” requiring
14 the district court to “cull through the allegations, identify the claims, and, as to each
15 claim identified, select the allegations that appear to be germane to the claim.”
16 *Gibson v. City of Portland*, 165 F.4th 1265, 1288-89 (9th Cir. 2026) (internal citation
17 omitted). That is hardly the case here. In their Complaint, Plaintiffs incorporated
18 paragraphs from previous counts, but each claim in the Complaint clearly includes
19 sufficient allegations to put Defendants on notice of the basis of each claim.

20 Defendants once again invent standards that they complain Plaintiffs have
21 failed to meet, arguing that Organizational Plaintiffs cannot bring Counts 3 through
22 7 because the Organizations do not have deferred action. MTD at 11. An organization
23 need not suffer the precise harm borne by its clients to state their own claim.¹¹ *See*
24 *Immigr. Defs. L. Ctr. v. Noem*, 145 F.4th 972, 987 (9th Cir. 2025); *see also* May 20
25

26
27 ¹¹ Counts 8 and 9 include an inadvertent scrivener’s error; they are meant to be
28 brought on behalf of Carmen F., Ms. Ruano, the Stay of Removal Class, and “All
Organizational Plaintiffs,” not “All Plaintiffs.”

1 Order at 32 (“Organizational Plaintiffs have [] made a clear showing of a concrete
2 and demonstrable injury to their core activities.”).

3 Next, Defendants propose that Plaintiffs’ references to multiple parties as
4 “Defendants” defeats notice. MTD at 12. Where defendants are alleged to be “related
5 entities” who acted in concert “it is entirely possible that the allegations of
6 wrongdoing are intended to include each and every entity defendant.” *Tivoli LLC v.*
7 *Sankey*, 2015 WL 12683801, at *4 (C.D. Cal. Feb. 3, 2015). That Plaintiffs allege
8 DHS and its subcomponents USCIS and ICE may coordinate to conduct the unlawful
9 acts Plaintiffs challenge does not mean the Complaint fails to place them on notice.
10 Defendants cherry-pick phrases at random, conjuring insufficiencies from them,
11 MTD at 12, yet they can identify no legitimate question about which party engaged
12 in what conduct.

13 Further, even ignoring the detailed, incorporated allegations preceding their
14 Claims for Relief, Plaintiffs plainly identify in those claims the actions they allege
15 support liability. *See, e.g.*, Compl. ¶¶ 181-194 (Claim One), 196-199 (Claim Two),
16 201-209 (Claim Three), 211-214 (Claim Four), 216-222 (Claim Five), 224-233
17 (Claim Six), 235-237 (Claim Seven), 239-244 (Claim Eight), 246-247 (Claim
18 Nine).¹²

19 **III. Claims 1-6 and 8-9, which the Court has found likely to succeed, are**
20 **facially plausible.**

21 In its May 20 Order, this Court already ruled that Plaintiffs’ claims are likely
22 to succeed. Defendants now seek to dismiss the same claims as legally insufficient.
23 They cannot meet the standard for dismissal.

24
25 ¹² Defendants tack on brief arguments that joinder and venue are improper. MTD at
26 13. But this class action is not a joinder case, and venue is proper because at least
27 one Plaintiff resides and/or has its principal place of business in this district and
28 each Defendant is an agency of the United States or an officer of the United States
sued in his or her official capacity. Compl. ¶¶ 14, 16, 23-24 (noting ICWC has “its
principal place of business” in Los Angeles, CHIRLA is headquartered in Los
Angeles; and Lupe A. and Camila B. live in Los Angeles).

A. The May 20, 2026 Order forecloses Defendants’ arguments.

Defendants claim that the May 20 Order “does not foreclose dismissal” because it “rest[s] on a likelihood-of-success standard, not on the legal sufficiency of the Complaint.” MTD at 3 fn. 1. But “this conclusion [is] erroneous, as it [would] result[] in the district court” holding that claims that survived “the more burdensome likelihood-of-success standard used for motions for preliminary injunctions” should be dismissed as legally insufficient.¹³ *Tohono O’odham Nation v. United States Dep’t of the Interior*, 138 F.4th 1189, 1202 (9th Cir. 2025); see *Iqbal*, 556 U.S. at 678 (“The plausibility standard [for a motion to dismiss] is not akin to a probability requirement.”) (cleaned up).

“[T]he ‘standard for demonstrating a likelihood of success on the merits, let alone a clear or substantial showing of such entitlement, is far more demanding than the plausibility standard applied to survive dismissal for the failure to state a claim at the pleading stage.’” *City & Cnty. of San Francisco*, 816 F. Supp. 3d at 1026 fn. 3 (internal citations omitted). “Accordingly, to the extent [this Court] previously found that certain claims survived the heightened preliminary injunction standard, [it may] rely on that analysis in concluding that plaintiffs’ [complaint] is adequately pleaded, unless defendants provide an argument that suggests otherwise.” *Id.* Defendants’ arguments offer nothing to disturb the Court’s analysis that Plaintiffs’ claims are not only plausible but likely to succeed.

B. The 2025 Guidance is final agency action.

Defendants argue that the self-serving boilerplate language appended to the 2025 Guidance, stating that it “is not intended to, does not, and may not be relied upon to create any right or benefit,” 2025 Guidance at 4, proves that the Guidance “binds no one, confers nothing, and may vanish tomorrow,” MTD at 14. But the

¹³ *Univ. of Tex. v. Camenisch*, 451 U.S. 390 (1981) is inapposite. MTD at 3 n.1. That case involved whether a preliminary injunction was binding “at trial on the merits,” under a standard *higher* than that required for a preliminary injunction.

1 Guidance also states that it is “effective immediately and remains in effect until
2 superseded,” and that prior ICE policies are “now rescinded and superseded.” 2025
3 Guidance at 1. Plaintiffs’ “rights” and Defendants’ “obligations have been
4 determined” by the Guidance, and “legal consequences [] flow” from it. *Bennett v.*
5 *Spear*, 520 U.S. 154, 177–78 (1997) (citations omitted). That is final agency action,
6 as this Court already held. May 20 Order at 66-67.

7 **C. Plaintiffs’ APA claims should not be dismissed because the challenged**
8 **policies are not committed to agency discretion by law.**

9 Plaintiffs allege sufficient facts to support a ruling that the three challenged
10 policies are unlawful under the APA, INA, and Constitution. Compl. ¶¶ 181-194,
11 196-199. Obviously, an agency does not have discretion to enact policy that violates
12 the law. *Planned Parenthood of Greater Wash. and N. Idaho v. HHS*, 946 F.3d 1100,
13 1112 (9th Cir. 2020). Thus, Defendants’ arguments that Plaintiffs’ APA claims
14 (Claims 1-3 and 9) should be dismissed because their “enforcement choices” are
15 committed to agency discretion necessarily fail. MTD at 16.

16 Defendants misrepresent decades of policy protecting immigrant survivors as
17 a matter of unreviewable enforcement priorities. MTD at 16. As Plaintiffs allege,
18 protections for VAWA, U visa, and T visa petitioners are more than discretionary
19 non-enforcement; they are “a program for conferring affirmative immigration relief”
20 while petitions are pending, which offers the “types of benefits . . . ‘courts are often
21 called upon to protect.’” *DHS v. Regents of the Univ. of California*, 591 U.S. 1, 18-
22 19 (2020) (“*Regents*”) (citations omitted). “The Ninth Circuit has repeatedly found
23 that APA jurisdiction exists where ‘discretion has been legally circumscribed by
24 various memoranda.’” *Inland Empire - Immigrant Youth Collective v. Nielsen*, No.
25 ED-CV-172048PSGSHKX, 2018 WL 4998230, at *16 (C.D. Cal. Apr. 19, 2018)
26 (quoting *Alcaraz v. I.N.S.*, 384 F.3d 1150, 1161 (9th Cir. 2004)); Compl. ¶¶ 37-38,
27 50-59.

1 Further, Defendants are wrong that there is “no law to apply to ICE’s
2 enforcement priorities.” MTD at 17 (internal citation omitted). Both Congress and
3 DHS created “statutes, regulations, [and] established agency policies . . . that provide
4 a meaningful standard against which to assess” the agency’s actions. *Mendez–*
5 *Gutierrez v. Ashcroft*, 340 F.3d 865, 868 (9th Cir. 2003); Compl. ¶ 70-81. For
6 instance, Congress created the opportunity for work authorization and protection
7 from removal for U visa petitioners through 8 U.S.C. § 1184(p)(6). Compl. ¶ 51.
8 Defendants created T and U visa regulations governing BFD or waiting list decisions
9 that result in deferred action. 8 C.F.R. § 214.14(d)(2); 8 C.F.R. § 214.205. Section
10 1227(d)(1) requires consideration of prima facie eligibility when reviewing a stay
11 request from a U or T visa petitioner. The USCIS Policy Manual prescribes criteria
12 and processes for granting and revoking VAWA, U, and T interim benefits, including
13 deferred action. USCIS Policy Manual Vol. 3, Pts. B chap. 6, C chap. 5, D chap. 5.¹⁴
14 Thus, there is “law to apply” to Plaintiffs’ APA challenges to Defendants’ policies.

15 *Heckler v. Chaney* is inapposite. MTD at 16-17. There, the Supreme Court
16 applied a presumption of unreviewability regarding an agency’s individual decision
17 not to pursue enforcement in a particular case, but that presumption does not bar a
18 challenge to a general policy that purports to govern those individual decisions
19 agency-wide. 470 U.S. 821, 830–33 (1985). Thus, *Heckler* preserves review where
20 an agency has “consciously and expressly adopted a general policy” that amounts to
21 an abdication of its statutory responsibilities. *Id.* at 833 fn.4. Plaintiffs plausibly
22 allege that Defendants have adopted three such general policies. Compl. ¶ 82-95.

23
24
25
26 ¹⁴ Defendants present a strawman argument that “the USCIS Policy Manual” cannot
27 be “the governing standard” for ICE’s enforcement. MTD at 16-17 (citing
28 Complaint ¶ 213). Plaintiffs merely allege that the Manual governs the grant and
revocation of deferred action, which is solely in USCIS’s authority. Compl. ¶ 213.
Thus, the Manual provides sufficient law to apply to any agency within DHS
seeking to usurp USCIS’s deferred action authority, including ICE.

D. Plaintiffs state claims that the 2025 Guidance is arbitrary and capricious and contrary to law.

Defendants’ arguments that Plaintiffs fail to state APA claims regarding the 2025 Guidance because they present merely “harsh criticism” fail. MTD at 18-19. For the reasons this Court articulated, Plaintiffs adequately state that the 2025 Guidance is arbitrary and capricious and contrary to law.

This Court held that Plaintiffs are likely to “show that the 2025 Guidance is arbitrary and capricious” because it “reverses decades of policy (1) without a sufficiently-reasoned explanation for disregarding the concerns underlying that prior policy, (2) without considering the reliance interests of persons who have acted in reliance on those policies, and (3) without considering serious aspects of the problem.” May 20 Order at 69. The Court also held that Plaintiffs are likely to show that the 2025 Guidance is “contrary to law” because it “undermines the legislative scheme Congress designed to protect” immigrant survivors. *Id.* at 74. Claims that are likely to succeed cannot fail to state a claim on which relief can be granted. *Tohono O’odham Nation*, 138 F.4th at 1202. Nothing Defendants regurgitate in their Motion to Dismiss disturbs this Court’s well-reasoned analysis.

E. Plaintiffs plead sufficient facts to support a finding that Deferred Action Class members have a due process interest in their deferred action status.

Plaintiffs state a claim for a due process violation in Claims Five and Six. Defendants’ argument that deferred action is a “revocable act of grace” in which Plaintiffs have no protected due process interest, MTD at 20, ignores settled law. Binding precedent, which Defendants continue to ignore, holds that a recipient’s interest in maintaining their current, valid deferred action status is a protected interest for purposes of due process and forecloses Defendants’ arguments.

Each Plaintiff seeking to represent the Deferred Action Class alleges that, at the time of the Complaint, they had deferred action status. Compl. ¶¶ 102, 110, 119,

1 128. They also allege, and the Supreme Court has recognized, that “[a]pproval of
2 deferred action status means that. . . no action will thereafter be taken to proceed
3 against an apparently deportable [non-citizen], even on grounds normally regarded
4 as aggravated.” *Reno*, 525 U.S. at 484. Further, Plaintiffs allege that deferred action
5 is granted for a prescribed period, representing a promise that a recipient can rely on
6 its protection until the date it expires. *See, e.g.*, Compl. ¶ 102 (Lupe A.’s deferred
7 action as “valid until October 2026”). Therefore, deferred action represents a promise
8 not to detain or remove for a prescribed period, and “it is beyond dispute that” a
9 person with deferred action “has a protected interest in his freedom,” which Plaintiffs
10 allege that Defendants deprive through revocation-by-arrest. *F.R.P. v. Wamsley*, No.
11 3:25-CV-01917-AN, 2025 WL 3037858, at *4 (D. Or. Oct. 30, 2025) (holding
12 VAWA petitioner with deferred action was likely to succeed on merits of claim that
13 his detention violated due process); May 20 Order at 82 (“Plaintiffs are likely to
14 establish that they have a protected liberty interest in their continued deferred action”
15 because “a person with deferred action should neither be removed nor detained.”).

16 In addition to the liberty interest that deferred action status confers, Plaintiffs
17 also allege that deferred action creates protected property interests, including
18 eligibility for work authorization and other federal benefits, integral to their day-to-
19 day livelihood. Compl. ¶ 217. They allege they have obtained jobs with deferred
20 action work authorization, built homes, had children, and established communities in
21 reliance on the benefits conferred by deferred action. *See, e.g.*, Compl. ¶¶ 102, 110,
22 119, 128. Where “continued possession” of benefits has “become essential in the
23 pursuit of a livelihood,” and revocation of those benefits “involves state action that
24 adjudicates important interests,” they “are not to be taken away without [] procedural
25 due process.” *Bell v. Burson*, 402 U.S. 535, 539 (1971).

26 In support of their argument that Plaintiffs have “no cognizable due process
27 interests” in protecting their deferred action status, Defendants provide a list of
28 inapposite cases in which the plaintiffs failed to establish protected liberty interest in

1 an *initial* grant of a benefit or a renewal *after* its expiration, because there was no
2 reasonable expectation that such benefits would be granted or renewed in their cases.
3 MTD at 20 & fn. 6 (citing *Tovar-Landin v. Ashcroft*, 361 F.3d 1164 (9th Cir. 2004)
4 (no protected interest in being permitted to voluntarily depart); *Regents of the Univ.*
5 *of California v. DHS*, 908 F.3d 476, 515 (9th Cir. 2018) (discussing whether DACA
6 recipients had a protected property interest in “renew[ing] their benefits and
7 protection on an ongoing basis” warranting continuation of “the DACA program
8 *itself*,” not in the deferred action status they currently had) (rev’d in part by *Regents*);
9 *Munoz v. Ashcroft*, 339 F.3d 950, 954 (9th Cir. 2003) (no property interest in
10 cancellation of removal that was never granted); *Romeiro de Silva v. Smith*, 773 F.2d
11 1021, 1023 (9th Cir. 1985) (not a due process case, but affirming dismissal for lack
12 of jurisdiction to review discretionary denial of initial request for deferred action that
13 was never granted). These cases have no bearing on whether a due process right exists
14 to protect a *currently* valid benefit against arbitrary deprivation. “[E]ven absent a
15 claim of entitlement to an important benefit, once [deferred action] is conferred,
16 recipients have a protected property interest that requires a fair process before the
17 government may take that benefit away.” *Inland Empire*, 2018 WL 4998230 at *19.

18 Plaintiffs therefore plausibly allege protected due process interests in their
19 currently valid deferred action status and a violation of their due process rights
20 through ICE’s alleged De Facto Revocation policy, which provides them no process
21 at all. Neither Defendants’ cursory *Matthews* analysis, which improperly considers
22 an individuals’ initial eligibility for deferred action, nor its strawman argument that
23 “a pending petition,” rather than deferred action status, has no effect on ICE’s
24 authority to effect a removal order, counsel otherwise. MTD at 21-22. Again, on these
25 matters, the Court has already spoken regarding the legal sufficiency of Plaintiffs’
26 claims. May 20 Order at 82-84.

F. Defendants (again) misread the Blind Removal Policy claims.

Defendants again erroneously assert that “Counts 8 and 9 read a mandate” into 8 U.S.C. § 1227(d)(1) that fails to “treat[] the stay power as discretionary.” MTD 23-24. As Plaintiffs and this Court have repeatedly articulated, Plaintiffs allege in Counts Eight and Nine that § 1227(d) requires that, when U or T visa petitioners request a stay, “the Secretary of Homeland Security” must first “determine[]” whether their petitions “set[] forth a prima facie case for approval” before deciding whether to grant or deny the stay request. 8 U.S.C. § 1227(d)(1); Compl. ¶¶ 240-241. They do not ask the Court to dictate the outcome of any stay request.

Defendants also object that “Count 8 is captioned as a freestanding INA violation and invokes no APA provision” and therefore fails for want of a “private right[] of action.” MTD at 24. However, the Court may adjudicate this claim as an equitable cause of action because “non-statutory review of unlawful executive action existed long before the APA was enacted, and ‘[n]othing in the subsequent enactment of the APA altered’ the understanding that, ‘[w]hen an executive acts *ultra vires*, courts are normally available to reestablish the limits on his authority.’” *Refugee & Immigrant Ctr. for Educ. & Legal Servs. v. Noem*, No. CV 25-306 (RDM), 2025 WL 1825431, at *30 (D.D.C. July 2, 2025) (citation omitted). *Alexander v. Sandoval*, which considered only “whether there is a private cause of action to enforce [a] regulation,” does not hold otherwise. MTD at 24; 532 U.S. 275, 279 (2001) (emphasis added). This is because, in Count Eight, Plaintiffs do not seek to “enforce federal law,” MTD at 24 (quoting *Alexander*), they seek to prevent Defendants from acting outside the bounds of federal law.

Defendants then inexplicably argue that Count Nine should be dismissed because it “repleads the identical theory under § 706 and adds nothing.” MTD at 24. But Count Nine adds what Defendants say Count Eight is missing – a request for review under the APA and that the case meets the necessary APA requirements.

Thus, Plaintiffs have adequately pled their Ninth Claim.¹⁵

G. The *Accardi* claim clearly articulates the policies and regulations which ICE violates.

Defendants’ arguments that Plaintiffs’ *Accardi* claims fail because they “never identify” “a binding norm” and because the USCIS Policy Manual cannot provide a meaningful standard for ICE’s conduct both lack merit. MTD at 24-25. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954).

First, Plaintiffs identify a clear and binding norm: “Defendants’ longstanding policies and operating procedures require that USCIS, not ICE, has exclusive authority over deferred action determinations in the U and T visa contexts.” Compl. ¶ 213. This norm appears in both regulation and the USCIS Policy Manual. *Id.* (citing 8 C.F.R. §§ 214.14(d)(3), 214.205; and PM vol. 3, pt. B, ch. 6.D.3. n.18). ICE cannot usurp USCIS’s exclusive power to revoke deferred action and then claim that USCIS’s Policy Manual prescribing the process for revocation does not apply to it.

Second, the Ninth Circuit has clearly held the *Accardi* doctrine extends beyond formal “regulations” to include, e.g., “internal operating procedures,” “handbook[s],” “policy statements,” and other materials that document an agency’s “usual practice.” Compl. ¶ 211 (quoting *Alcaraz*, 384 F.3d at 1162. Defendants find no comfort in *United States v. Lee*, which was grounded in the principle that “that the *Accardi* doctrine has not been applied to *criminal* law enforcement” due to the “special nature of prosecution.” 274 F.3d 485, 493 (8th Cir. 2001) (emphasis added). Their reliance

¹⁵ Defendants misinterpret Plaintiffs’ factual allegations in a desperate effort to lend strength to their faulty arguments. MTD at 24. That ICE granted Carmen F. a stay under the 2021 Directive in November 2024, *before* her U visa was prepared, Compl. ¶ 145, does not implicate 1227(d) at all, which only applies to individuals with pending petitions. Nor does it call into question her claim that in 2025, when her application *was* pending, Defendants applied their Blind Removal Policy pursuant to the 2025 Guidance, unlawfully removing her with her son without a *prima facie* determination, after she requested another stay. Compl. ¶ 147. Similarly, that ICE denied Ms. Ruano’s two stay requests without a *prima facie* determination only supports her claim. MTD at 24; Compl. ¶¶ 154-55. Their allegations regarding the post-filing removal of Daniel H. go beyond what is alleged in the Complaint and are inappropriate for a Rule 12(b)(6) motion.

1 on *Caceres* is misplaced for similar reasons. That case involved a “criminal
2 prosecution” and was “not an APA case,” which the Supreme Court stated *would*
3 permit a claim for “agency violations of their own regulations,” without naming the
4 *Accardi* doctrine specifically. *United States v. Caceres*, 440 U.S. 741, 754 (1979).
5 *Carranza v. I.N.S.*, also cited by Defendants, MTD at 25, did not address an *Accardi*
6 claim at all, discussing *Accardi* for other reasons. 277 F.3d 65, 72 (1st Cir. 2002).
7 Plaintiffs state an *Accardi* doctrine claim.

8 **IV. Plaintiffs’ Seventh Claim states a Fourth Amendment claim upon**
9 **which relief can be granted.**

10 Count Seven is the only claim on which this Court has not already ruled,
11 because Plaintiffs did not present a Fourth Amendment claim in their motion for
12 preliminary relief. However, Plaintiffs asserting that claim also plausibly plead a
13 Fourth Amendment claim.

14 “In the immigration context, ‘[t]he Fourth Amendment requires probable cause
15 to seize or detain an individual for a civil immigration offense.’” Compl. ¶ 236
16 (quoting *Gonzalez*, 975 F.3d at 798. A warrantless immigration arrest requires both
17 probable cause to believe a noncitizen is removable and an individualized assessment
18 of the person's flight risk. *See id*; *Mountain High Knitting, Inc. v. Reno*, 51 F.3d 216,
19 218 (9th Cir. 1995); 8 U.S.C. § 1357(a)(2).

20 Here, Plaintiffs allege ample facts that support the claim that Defendants arrest
21 individuals in valid deferred action status, without a warrant, probable cause, or a
22 flight risk assessment. Compl. ¶ 15 (ICE “arrested [Lupe A.] outside her home . . .
23 [a]lthough her attorney alerted ICE to her deferred action status”); Compl. ¶ 16
24 (“while Camila was working at her tamales business, unidentified agents
25 apprehended her during DHS’s indiscriminate immigration raids across Los
26 Angeles.”); Compl. ¶ 17 (“after a traffic stop, ICE took [Paulo C.] into custody
27 without probable cause to believe he had violated the terms of his deferred action
28

1 status”).¹⁶ Indeed, DHS considers deferred action “recipients not to be unlawfully
2 present in the United States because their deferred action is a period of stay
3 authorized by the Attorney General.” *Arizona Dream Act Coal. v. Brewer*, 757 F.3d
4 1053, 1059 (9th Cir. 2014). Thus, these Plaintiffs’ allegations of their arrests without
5 a warrant or probable cause are sufficient to plead a Fourth Amendment claim.

6 Defendants quibble that the claim fails because it “never engages the statutory
7 arrest authority,” alleging these arrests occur pursuant to 8 U.S.C. § 1226, which
8 permits arrests with an administrative (not judicial) warrant, rather than the
9 warrantless arrest statute, 8 U.S.C. § 1357. MTD at 23. “A party need not plead
10 specific legal theories in the complaint, so long as the other side receives notice as to
11 what is at issue in the case.” *Pac. Coast Fed’n of Fishermen’s Ass’ns v. Glaser*, 945
12 F.3d 1076, 1086 (9th Cir. 2019) (citation omitted). In any event, should Defendants
13 assert these arrests happened pursuant to a warrant sufficient to satisfy the Fourth
14 Amendment, they are welcome to prove so through discovery. At this stage of the
15 case, the Court must take Plaintiffs’ allegations of warrantless arrests as true.

16 CONCLUSION

17 For the foregoing reasons, this Court should deny Defendants’ Motion to
18 Dismiss. In the alternative, should the Court grant any portion of Defendants’ motion,
19 Plaintiffs respectfully request leave to amend.

20 Dated: August 28, 2026

Respectfully submitted,

21 /s/ Sarah Kahn

22 Sarah Kahn

23 CENTER FOR HUMAN RIGHTS &

24 CONSTITUTIONAL LAW

25 Bardis Vakili

26 Monika Y. Langerica

Sarah E. Kahn

27 ¹⁶ Defendants note that CBP arrested Ms. Merlos. MTD at 8. Ms. Merlos withdraws
28 her claim for a Fourth Amendment violation. She maintains Claims 1 – 6 alongside
all other Pending Petition and Deferred Action Class members.

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CERTIFICATE OF COMPLIANCE WITH L.R. 11-6.2

The undersigned, counsel of record for Plaintiffs, certifies that this memorandum of points and authorities contains 25 pages, which complies with the limit set by the Court. Standing Order, Dkt. 10 at 6.

Dated: August 28, 2026

/s/ Sarah Kahn

Sarah Kahn