UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IMMIGRANT ADVOCATES RESPONSE COLLABORATIVE, et al.,

Plaintiffs,

v.

DEPARTMENT OF JUSTICE, et al.,

Defendants.

Civil Action No. 25-2279 (TNM)

MOTION TO DISMISS AND
MEMORANDUM IN SUPPORT THEREOF

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Defendants respectfully move to dismiss Plaintiffs' complaint (ECF No. 1) under Federal Rules of Civil Procedure ("Rules") 12(b)(1) and 12(b)(6).

INTRODUCTION

Through this action, Plaintiffs seek to collaterally challenge decisions of immigration courts, review the government's discretionary prosecutorial decisions to terminate immigration proceedings, and contest matters pertaining to expedited removal proceedings. Often Plaintiffs offer no more than mere speculation that the policies they purport to challenge even exist. For a host of reasons, Plaintiffs claims fail.

This case is one of many filed in this district challenging allegedly new or different immigration policies or initiatives promulgated by the government in the last few months. Many are ripe for appellate consideration on requests for provisional relief or the merits. *See, e.g.*, *Make the Road N.Y. v. Noem*, Civ. A. No. 25-0190 (JMC), 2025 WL 2494908 (D.D.C. Aug. 29, 2025), *appeal filed* No. 25-5320 (D.C. Cir.) (challenge to use of expedited removal of aliens residing in the interior of the country; provisional stay granted by district court; motion for a stay pending appeal pending); *Coal. for Humane Immigrant Rts. v. Noem*, Civ. A. No. 25-0872 (JMC), 2025 WL 2192986 (D.D.C. Aug. 1, 2025), *appeal filed*, No. 25-5289 (D.C. Cir.) (challenge to the use of expedited removal to parolees; provisional stay granted by district court; motion for a stay pending denied); *Refugee & Immigrant Ctr. for Educ. v. Noem*, Civ. A. No. 25-306 (RDM), 2025 WL 1825431 (D.D.C. July 2, 2025), *appeal filed*, No. 25-5243 (D.C. Cir) (challenge to presidential proclamation that, in part, provided expedited means of removing and denying asylum to aliens who cross the southern border without inspection); *Las Americas Immigrant Advoc. Ctr. v. Dep't of Homeland Sec.*, 783 F. Supp. 3d 200, 206 (D.D.C. 2025) (Contreras, J.), *appeal filed*, No. 25-5313 (D.C. Cir.) (challenge to rule that limits ability of aliens to seek asylum who enter without inspection). While the D.C. Circuit's eventual decisions in these matters may impact the

Court's consideration of certain dispositive arguments advanced by the government, there are also many well-settled grounds on which the Court should dismiss this suit. Indeed, the bases for dismissing this suit include the Organizational Plaintiffs' lack of standing, the failure to plead plausibly certain claims, and the unavailability of review under the Administrative Procedure Act ("APA"), including due to the jurisdiction stripping provisions of the Immigration and Nationality Act ("INA").

For the reasons discussed below, none of which rely on an administrative record, the Court should dismiss this suit at the threshold.

BACKGROUND

Plaintiffs filed this case on July 16, 2025, Compl. (ECF No. 1). Plaintiffs consist of two organizations—Immigrant Advocates Response Collaborative ("Immigrant Advocates") and American Gateways (the "Organizational Plaintiffs")—and twelve individuals (the "Individual Plaintiffs"). *See id.* at 1–2. In their complaint, Plaintiffs purport to challenge numerous policy decisions, including:

1. a policy of the Executive Office of Immigration Review ("EOIR") allegedly promulgated on January 28, 2025, permitting courthouse arrests, which Plaintiffs call the "EOIR Policy Permitting Courthouse Arrests," *see* Compl. (ECF No. 1) ¶¶ 58, 129–34 (count I);

2. policies of Immigration and Customs Enforcement ("ICE") allegedly promulgated on (a) January 21, 2025, and (b) May 28, 2025, authorizing courthouse arrests, which Plaintiffs call the "ICE Policies Authorizing Courthouse Arrests," *see id.* ¶¶ 53, 59, 135–40 (count II);

3. guidance from EOIR allegedly promulgated on May 30, 2025, providing information to Immigration Judges on dismissals of "full" removal proceedings, which Plaintiffs call the "EOIR Dismissal Guidance," *see id.* ¶¶ 61, 141–46 (count III), 147–52 (count IV) 164–68 (count VII);

4. guidance from the Department of Homeland Security ("DHS") allegedly promulgated, on "information and belief," on May 20, 2025, providing information to ICE counsel representing the government in removal proceedings, which

Plaintiffs call the "DHS Dismissal Guidance," *see id.* ¶¶ 60, 153–58 (count V), 159–63 (count VI), 164–68 (count VII);

5. DHS guidance promulgated, on "information and belief," on May 20, 2025, containing a "new position" on the interpretation of the expedited removal statute, which Plaintiffs call the "DHS Policy Expanding Expedited Removal Beyond 2-Year Statutory Limit," *see id.* ¶¶ 99–101, 169–77 (count VIII), 178–82 (count IX); and

6. a supposed DHS supplemental policy promulgated, on "information and belief," after EOIR and DHS guidance on dismissing full removal proceedings that instructs the government to proceed with expedited removal proceedings before final dismissal orders in full removal proceedings, which Plaintiffs call the "Concurrent Proceedings Guidance," *see id.* ¶¶ 66–67, 183–89 (count X), 190–97 (count XI).

Plaintiffs purport to bring all claims on behalf of putative classes except for their challenge to the supposed DHS Policy Expanding Expedited Removal Beyond 2-Year Statutory Limit. *See id.* at 39–50. In so doing, Plaintiffs seek to represent two putative classes (A) an "Arrest Class," consisting of "noncitizens who were arrested, or are arrested in the future, by Defendants in a civil immigration enforcement action at or near an immigration courthouse on the day of their hearing in a removal proceeding under 8 U.S.C. § 1229a on or after January 21, 2025[;] *id.* ¶ 122; and (B) a "Dismissal Class," consisting of "noncitizens whose removal proceedings under 8 U.S.C. § 1229a were dismissed by Defendants, or are dismissed in the future, without the noncitizen's consent, on or after May 20, 2025[,]" *id.*

As discussed below, none of Plaintiffs' challenges to these policies are viable.

LEGAL STANDARDS

"'Federal courts are courts of limited jurisdiction,' which 'possess only that power authorized by Constitution and statute.'" *Patel v. Ambit Grp.*, Civ. A. No. 18-2985 (RDM), 2019 WL 4472124, at *4 (D.D.C. Sept. 17, 2019) (dismissing claims for lack of jurisdiction; quoting *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994)). "A plaintiff bears the burden of establishing that the court has subject-matter jurisdiction." *Patel*, 2019 WL 4472124,

at *2 (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992)). In considering its jurisdiction, a court may consider materials outside the pleadings. *See Jerome Stevens Pharm., Inc. v. FDA*, 402 F.3d 1249, 1253-54 (D.C. Cir. 2005). "Because subject-matter jurisdiction focuses on the Court's power to adjudicate the plaintiff's claim, a Rule 12(b)(1) motion imposes on the Court an affirmative obligation to ensure that it is acting within the scope of its jurisdictional authority." *Patel*, 2019 WL 4472124, at *2 (cleaned up).

Under Rule 12(b)(6), the Court may dismiss a Complaint where a plaintiff fails to state a claim upon which relief can be granted. To survive a Rule 12(b)(6) motion to dismiss, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). When resolving a motion to dismiss pursuant to Rule 12(b)(6), the pleadings are construed broadly so that all facts pleaded therein are accepted as true, and all inferences are viewed in a light most favorable to the plaintiff. *See Iqbal*, 556 U.S. at 678. A court, however, is not required to accept conclusory allegations or unwarranted factual deductions as true. *Id.* "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.* Likewise, a court need not "accept as true a legal conclusion couched as a factual allegation." *Papasan v. Allain*, 478 U.S. 265, 286 (1986). Ultimately, the focus is on the language in the complaint and whether that sets forth sufficient factual allegations to support a plaintiff's claims for relief.

ARGUMENT

I. The Organizational Plaintiffs Lack Standing.

Neither Immigrant Advocates nor American Gateways has standing in this action. Accordingly, the Court should dismiss them and their broad claims for relief from this suit.

A. Immigrant Advocates and American Gateways Lack Organizational Standing.

Immigrant Advocates and American Gateways claim they, themselves, have been harmed by the challenged policies as organizations. Compl. (ECF No. 1) ¶¶ 110–120. But neither Plaintiff alleges a sufficiently direct injury to sustain their burden of demonstrating organizational standing in this action.

Alleging organizational standing is both similar to and distinct from establishing individual standing. "[L]ike an individual plaintiff," an organization must "show actual or threatened injury in fact that is fairly traceable to the alleged illegal action and likely to be redressed by a favorable court decision." *Food & Water Watch, Inc. v. Vilsack*, 808 F.3d 905, 919 (D.C. Cir. 2015). But entities must also satisfy the additional requirements of organizational standing, specifically that (1) the challenged conduct "injured the [organization's] interest" and (2) the organization "used its resources to counteract that harm." *People for the Ethical Treatment of Animals v. Dep't of Agric.*, 797 F.3d 1087, 1093 (D.C. Cir. 2015) (quoting *Equal Rts. Ctr. v. Post Props., Inc.*, 633 F.3d 1136, 1140 (D.C. Cir. 2011)). Importantly, to establish an injury to an organization's interest, an organization must show that the challenged conduct "perceptibly impair[s] the organization's ability to provide services" or causes an "inhibition of [its] daily operations." *Food & Water Watch*, 808 F.3d at 919.

It is not enough to show that the organization's objectives or mission has been frustrated. *Id.* Indeed, to establish organizational standing, the plaintiff must show more than a mere setback to the organization's abstract social interests, *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982), a self-inflicted budgetary choice, *Am. Soc. for Prevention of Cruelty to Animals v. Feld Ent., Inc.*, 659 F.3d 13, 25 (D.C. Cir. 2011), or an effect on the organization's lobbying activities, *Ctr. for L. & Educ. v. Dep't of Educ.*, 396 F.3d 1152, 1161 (D.C. Cir. 2005). Rather, an

organizational plaintiff must show that the challenged action "directly affected and interfered" its "core business activities[.]" *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 395 (2024)

"Government regulations that require or forbid some action by the plaintiff almost invariably satisfy both the injury in fact and causation requirements" for standing. *All. for Hippocratic Med.*, 602 U.S. at 382. But, as here, when an organization "challenges the government's unlawful regulation (or lack of regulation) of someone else, standing is not precluded, but it is ordinarily substantially more difficult to establish." *Id.* (citation modified). "When the plaintiff is an unregulated party, causation ordinarily hinges on the response of the regulated (or regulable) third party to the government action or inaction—and perhaps on the response of others as well." *Id.* (citation modified).

Neither Organizational Plaintiff here satisfies this demanding standard.

1. Immigrant Advocates Cannot Demonstrate Organizational Standing.

Immigrant Advocates claims to be "a nonprofit organization dedicated to increasing access to justice and access to counsel for all immigrant New Yorkers." Compl. (ECF No. 1) ¶ 28. It claims to run a "friend of the court" program "at immigration courts in New York City, where [the group's] staff and volunteers assist pro se respondents appearing before immigration judges." *Id.* It continues by alleging that the changes caused by the challenged policies has forced the group to modify its "programming on a daily basis to attempt to provide more accurate and useful information to pro se respondents[,]" which modifications require its staff and volunteers to take more time with each alien they assist, depriving the group from conducting trainings and other activities. *Id.* ¶¶ 112-13. Immigrant Advocates also claims that the number of noncitizens seeking its assistance has decreased due to "fear in the immigrant community[.]" *Id.* ¶¶ 111, 114. None of these allegations support Immigrant Advocates having organizational standing.

First, Immigrant Advocates fails to link its supposed harms (the need to spend more time with its clients and a reduction in the number of its clients) to the specific policies at issue in this suit. Indeed, Immigrant Advocates contends its decrease in clients is due to "significant fear in the immigrant community," not any specific government policy. Compl. (ECF No. 1) ¶ 114. Similarly, Immigrant Advocates does not explain why it takes materially more time now to advise its pro bono clients on the possibility of detention and expedited removal. The INA has consistently made those authorities available to the government. *See* 8 U.S.C. §§ 1225(b)(1), 1226(a). The failure to link either of these supposed harms to the specific policies at issue dooms Immigrant Advocates' standing on the causation prong.

Second, Immigrant Advocates' claim of increased time to advise clients is undermined by its own description of the services it provides through its "friend of the court" program. On its website, the group describes its program in modest terms: "volunteers assist pro se respondents and conduct a brief screening, assist with change of address forms, answer questions respondents may have, and stand with them during their initial hearing to help resolve any administrative issues preventing the case from moving forward." Immigrant Advocates, Friend of the Court Program, available at: https://www.immigrantarc.org/friend-of-the-court (last visited Sept. 21, 2025). Indeed, the group makes clear that it does not provide legal representation to aliens in removal proceedings. *Id.* (describing the program as: "a great way to be exposed to immigration court without the responsibility of taking on a case"). Because the group only provides basic information to aliens and merely accompanies them to hearings, it is unclear how Immigrant Advocates could plausibly establish a strain on its resources due to the specific policies challenged in this suit.

Third, Immigrant Advocates' entire mission appears to be to provide basic information about immigration processes. While it obviously must tailor its provision of that information to

the current state of immigration proceedings and procedures, it is unclear how any change in policy (let alone the ones claimed in this suit) frustrates that purpose. *See Turlock Irrigation Dist. v. Fed. Energy Regul. Comm'n*, 786 F.3d 18, 24 (D.C. Cir. 2015) ("The mere fact that an organization redirects some of its resources to litigation and legal counseling in response to actions or inactions of another party is insufficient to impart standing upon the organization."). To hold otherwise would enable Immigrant Advocates to have standing to challenge any change in any policy touching upon the immigration courts with which it disagreed. *See All. for Hippocratic Med.*, 602 U.S. at 395 (rejecting the theory that anytime a group diverts resources in response to a government policy entitles them to standing; "that theory would mean that all the organizations in America would have standing to challenge almost every federal policy that they dislike, provided they spend a single dollar opposing those policies"). That broad grant of standing is wholly inconsistent with the narrow pathway to standing available to organizations that are not being directly regulated by the policies they seek to challenge. *See generally All. for Hippocratic Med.*, 602 U.S. at 383 (a non-regulated organization must "thread [a] causation needle" to establish standing).

2. American Gateways Cannot Demonstrate Organizational Standing.

American Gateways faces similar insurmountable obstacles to establish organizational standing in this case. While American Gateways, unlike Immigrant Advocates, does represent aliens in the immigration court and before the Board of Immigration Appeals, Compl. (ECF No. 1) ¶ 115, that difference does not change the calculus. The most American Gateways adds beyond the insufficient showing of Immigrant Advocates is alleged harms stemming from representing aliens in removal proceedings—e.g., a supposed increase in the time it takes it to represent its clients. *Compare id.* ¶¶ 111-14 (Immigrant Advocates alleged harms), *with id.* ¶¶ 115-20. But again, that is not enough.

"The mere fact that an organization redirects some of its resources to litigation and legal counseling in response to actions or inactions of another party is insufficient to impart standing upon the organization." *Turlock Irrigation Dist.*, 786 F.3d at 24. To hold otherwise, would allow every law firm and provider of legal services to have standing to challenge the harms faced by their clients. That derivative form of injury is not one on which organizational standing may rest. *Cf. All. for Hippocratic Med.*, 602 U.S. at 394 ("[A]n organization that has not suffered a concrete injury caused by a defendant's action cannot spend its way into standing simply by expending money to gather information and advocate against the defendant's action. An organization cannot manufacture its own standing in that way."); *see also Am. Immigr. Laws. Ass'n v. Reno*, 18 F. Supp. 2d 38, 50 (D.D.C. 1998) (Sullivan, J.) (organizations whose mission was to assist aliens in seeking asylum and to ensure that they received fair asylum hearings lacked organizational standing to challenge new asylum provisions; rejecting diversion of resources and diminution in clients as basis for standing; also holding that "granting the requested relief is not likely to redress the injury as the organizational plaintiffs cannot establish that, if, for example, additional information were provided to aliens, the aliens would turn to *plaintiffs'* particular organizations, as opposed to other organizations, friends, or even family, for assistance" (emphasis in original)), *aff'd*, 199 F.3d 1352 (D.C. Cir. 2000).

Moreover, it is unclear how vacating the supposed policies in this case will alleviate any of the harms identified by American Gateways. For example, if the challenged dismissal guidance is vacated, it will not change the authority of the government to seek and immigration judges to consider the dismissal of removal proceedings—that regulatory authority remains. 8 C.F.R. § 239.2(c). And contesting those dismissal requests for clients will continue to burden American Gateways in the same manner. Similarly, enjoining arrests at immigration courthouses will not

stop immigration arrests—that statutory authority remains. 8 U.S.C. § 1226. Ultimately, the core of American Gateways' claim is its general distaste for the government using its available regulatory and statutory tools in an increased manner to police the Nation's immigration laws. *See* Compl. (ECF No. 1) ¶ 1; *Fair Emp. Council of Greater Wash., Inc. v. BMC Mktg. Corp.*, 28 F.3d 1268, 1277 (D.C. Cir. 1994) (organization lacked standing; group's drain on resources "apparently sprang from the organization's need to 'counteract' the defendants' assertedly illegal practices, and thus was simply another manifestation of the injury that those practices had inflicted upon the organization's noneconomic interest in encouraging open housing"). While American Gateways has every right to disagree with that policy choice, it has no basis to enjoin it, and it has failed to make a plausible showing that vacating the policies identified in this suit will decrease its workload or the complexity of its work—the fundamental injuries it claims here.

B. Immigrant Advocates and American Gateways Lack Associational Standing.

It is unclear whether the Organizational Plaintiffs also attempt to justify their participation in this action through associational standing. If they do, any such attempt would fail.

To plead representative or associational standing, a plaintiff must plausibly allege that (1) the plaintiff has at least one member who "would otherwise have standing to sue in [her] own right," (2) "the interests" the association "seeks to protect are germane to [its] purpose," and (3) "neither the claim asserted nor the relief requested required the participation of [the] individual members in the lawsuit." *Pub. Citizen, Inc. v. Trump*, 297 F. Supp. 3d 6, 17 (D.D.C. 2018) (Moss, J.) (quoting *Hunt v. Wash. State Apple Adver. Comm'n*, 432 U.S. 333, 343 (1977)). While associational standing presently remains a valid method to establish a justiciable case or controversy, judges have recently questioned whether the doctrine is consistent with Article III. *See, e.g., Indus. Energy Consumers of Am. v. Fed. Energy Regul. Comm'n*, 125 F.4th 1156, 1167

(D.C. Cir. 2025) (Henderson, J., concurring) ("there is good reason to believe that associational standing does not meet at least two Article III requisites").

Here, the Organizational Plaintiffs identify no members that would have standing to bring this suit, which dooms any claim to associational standing. *See generally* Comp. (ECF No. 1). Indeed, Immigrant Advocates claims its members are "legal services providers in New York State," not any aliens that would be directly affected by the policies it purports to challenge in this action. Compl. (ECF No. 1) ¶ 28. For its part, American Gateways pleads nothing whatsoever about its membership, let alone identify any specific member that has suffered a direct harm from the challenged policies. *See id.* ¶ 29. Accordingly, to the extent Immigrant Advocates and American Gateways attempt to maintain this suit under an associational standing theory, that attempt fails.

II. Certain Individual Plaintiffs Lack Standing for Certain Claims.

Certain Individual Plaintiffs also lack standing to advance certain claims.

First, according to the Complaint, R.A. has already been removed from the United States. Compl. (ECF No. 1) ¶ 26. Thus, there is no basis to find that vacating the challenged policies or enjoining the government from using them will abate any injury suffered by R.A. At the time of filing, he was no longer in proceedings, and thus, no order of this Court can redress his alleged harms (i.e., injuries stemming from dismissing his proceedings, arresting him, and placing him in expedited removal proceedings). *Cf. Morales-Morales v. Barr*, 933 F.3d 456, 462 (5th Cir. 2019) ("Because [the alien] is no longer detained and has already been deported, her challenge to her detention is moot.").

Second, Plaintiffs allege that while M.S.'s removal proceedings were dismissed, he was not detained and has not been subjected to expedited removal proceedings at present. Compl. (ECF No. 1) ¶ 17. Nonetheless, M.S. is included as a plaintiff in challenges to the alleged arrest,

expedited removal, and concurrent proceedings policies challenged in this suit. *Id.* at counts I, II, VIII, IX, X, XI. Indeed, M.S. purports to challenge the identified immigration courthouse arrest policies despite not having been arrested at immigration court when his removal proceedings were dismissed. *Id.* ¶ 17, counts I, II. M.S.'s fear of being detained as an alien without current legal status in the United States does not give him standing to challenge specific policies from which he has suffered no injury. Accordingly, the Court should dismiss M.S.'s claims about the alleged arrest, expedited removal, and concurrent proceedings policies.

Third, J.L. (or J.M.)[1] claims to have been arrested at an immigration courthouse, but he alleges his removal proceedings have not been dismissed, and he does not allege that he has been placed into expedited removal proceedings. Compl. (ECF No. 1) ¶¶ 27, 68. Nonetheless, Plaintiffs again include J.L. as a plaintiff on claims challenging alleged dismissal, expedited removal, and concurrent proceedings policies based on fears that he might be subjected to them. *See id.* Speculative fear is not enough, and the Court should dismiss J.L.'s claims about the dismissal, expedited removal, and concurrent proceedings policies.

III. Plaintiffs' Challenges to the So-Called EOIR Policy Permitting Courthouse Arrests (Count I) and the ICE Policies Authorizing Courthouse Arrests (Count II) Fail.

As noted above, Plaintiffs challenge policies they have described as (1) the EOIR Policy Permitting Courthouse Arrests dated January 28, 2025, (2) ICE Interim Arrest Guidance dated January 21, 2015, and (3) the Final ICE Arrest Memorandum dated May 28, 2025. *See supra* at Background. In sum, Plaintiffs allege that such policies direct the government to arrest aliens for expedited removal proceedings at immigration courthouses. Compl. (ECF No. 1) ¶¶ 2, 8, 100. Plaintiffs contend those directions should be set aside as arbitrary and capricious under the APA

[1] Plaintiffs refer to this alien inconsistently as J.L. or J.M. *See* Compl. (ECF No. 1) ¶ 27.

because they run counter to evidence before the agency and fail to account for aliens' reliance interests. *Id.* ¶¶ 132-33, 13839. Plaintiffs' challenges to these arrest policies fail at the threshold for many reasons.

A. The INA Expressly Limits Judicial Review of Matters Concerning Expedited Removal.

8 U.S.C. § 1226 describes the government's discretionary authorities to arrest and detain aliens pending removal proceedings. In subsection (e) of that section, the INA expressly precludes judicial review of those discretionary decisions:

> The Attorney General's discretionary judgment regarding the application of this section shall not be subject to review. No court may set aside any action or decision by the Attorney General under this section regarding the detention of any alien or the revocation or denial of bond or parole.

8 U.S.C. § 1226(e). Similarly, 8 U.S.C. § 1225(b)(1)(B)(iii)(IV) directs the government to detain aliens in expedited removal proceedings, and 8 U.S.C. § 1252(a)(2)(A) provides:

> Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to review
>
> (i) except as provided in subsection (e), any individual determination or to entertain any other cause or claim arising from or relating to the implementation or operation of an order of removal pursuant to section 1225(b)(1) of this title,
>
> (ii) except as provided in subsection (e), a decision by the Attorney General to invoke the provisions of such section,
>
> (iii) the application of such section to individual aliens, including the determination made under section 1225(b)(1)(B) of this title, or
>
> (iv) except as provided in subsection (e), procedures and policies adopted by the Attorney General to implement the provisions of section 1225(b)(1) of this title.

8 U.S.C. § 1252(a)(2)(A).

In turn, 8 U.S.C. § 1252(e) affords a narrow pathway for reviews of decisions in expedited removal proceedings. For example, that subsection allows for habeas review, 8 U.S.C. § 1252(e)(2), but only in certain circumstances. *See id.* That subsection also allows for narrow review of regulations and policies pertaining to expedited removal:

> Judicial review of determinations under section 1225(b) of this title and its implementation is available in an action instituted in the United States District Court for the District of Columbia, but shall be limited to determinations of—
>
> (i) whether such section, or any regulation issued to implement such section, is constitutional; or
>
> (ii) whether such a regulation, or a written policy directive, written policy guideline, or written procedure issued by or under the authority of the Attorney General to implement such section, is not consistent with applicable provisions of this subchapter or is otherwise in violation of law.

8 U.S.C. § 1252(e)(3)(A). Importantly, this narrow review mechanism is further circumscribed by other provisions of section 1252. For example, section 1252(e)(3)(B) sets a firm deadline to challenge any "section, regulation, directive, guideline, or procedure" of 60 days after its first implementation. 8 U.S.C. § 1252(e)(3)(B). Additionally, section 1252(e)(1)(B) prevents a court from certifying a class regarding any such challenge, 8 U.S.C. § 1252(e)(1)(B), and section 1252(f) limits injunctive relief (outside of the Supreme Court itself) only as to the application of the challenged provision "to an individual alien against whom proceedings under such part have been initiated[,]" 8 U.S.C. § 1252(f). Just this summer, the D.C. Circuit confirmed that the limitations of 8 U.S.C. § 1252(f)(1) prohibit class-wide injunctive relief as to immigration arrests and detentions in courthouses. *N.S. v. Dixon*, 141 F.4th 279, 290 (D.C. Cir. 2025).

These provisions pose numerous insurmountable obstacles for Plaintiffs on their arrest policy claims.

B. Plaintiffs' Arbitrary and Capricious Challenges to the Courthouse Arrest Policies Are Barred by the INA.

The first obstacle posed by the INA's jurisdiction stripping provisions is that the INA does not permit arbitrary and capricious challenges to policies or guidelines pertaining to expedited removal. As noted above, section 1252(e)(3)(A) limits review to (i) whether a statutory section or regulation violates the Constitution; or (ii) whether a regulation, policy directive, guideline, or procedure is contrary to law. 8 U.S.C. § 1252(e)(3)(A)(ii). Noticeably absent from this stripping provision is any suggestion that typical arbitrary and capricious review is available under section 706(2)(A) of the APA. *See id.* Indeed, the language of 1252(e)(3)(A)(ii) that permits review of policies "in violation of the law" tracks the distinct cause of action under the APA to set aside agency action that is "not in accordance with law[.]" *Compare* 8 U.S.C. § 1252(e)(3)(A)(ii), *with* 5 U.S.C. § 706(2)(A). Notably, Plaintiffs themselves recognize the distinction in the forms of review available under the APA, pressing certain claims on an "arbitrary and capricious" theory and others as "contrary to law." *Compare* Compl. (ECF No. 1) at count III ("EOIR Dismissal Guidance Is Contrary to Law"), *with id.* at count IV ("EOIR Dismissal Guidance is Arbitrary and Capricious"). Accordingly, at the threshold, Plaintiffs cannot maintain an arbitrary and capricious challenge to the courthouse arrest policies. *But see Las Americas*, 783 F. Supp. 3d at 222 (D.D.C. 2025) (Contreras, J.) (holding opposite), *on appeal*, No. 25-5313 (D.C. Cir. filed Aug. 28, 2025).

C. Most of Plaintiffs' Challenges to the Courthouse Arrest Policies Are Time-Barred.

Even were Plaintiffs' arbitrary and capricious challenges not barred at the threshold, all but their challenge to the Final ICE Arrest Memorandum dated May 28, 2025, are time-barred. As discussed above, one of the ways that section 1252(e) confines review of matters related to expedited removal is limiting the time that litigants may challenge such matters. Section 1252(e)(3)(B) prescribes that any such allegation "must be filed no later than 60 days after

the date the challenged section, regulation, directive, guideline, or procedure . . . is first implemented." 8 U.S.C. § 1252(e)(3)(B). "[T]he 60-day requirement is jurisdictional rather than a traditional limitations period." *Am. Immigr. Laws. Ass'n*, 18 F. Supp. 2d at 47. Here, that means Plaintiffs are foreclosed from challenging the so-called the EOIR Policy Permitting Courthouse Arrests dated January 28, 2025, and the ICE Interim Arrest Guidance dated January 21, 2015. Plaintiffs filed suit on July 16, 2025, more than 60 days after those policies were first implemented. *See* Compl. (ECF No. 1).

D. The Only Permissible Claims Belong to the Individual Plaintiffs, and Their Challenges to the Arrest Policy Sound in Habeas.

Even were any portion of Plaintiffs' claims to survive the above dispositive arguments, the Court should still dismiss them because the INA does not permit any claim here. Specifically, the INA prohibits any class relief, the Organizational Plaintiffs can obtain no relief, and the INA prohibits Individual Plaintiffs from either challenging their detentions during expedited removal proceedings or challenging their detentions outside of habeas.

First, as discussed above, in two separate provisions, section 1252 prevents the Court from considering any class claim challenging the courthouse arrest policies identified by Plaintiffs. First, section 1252(e)(1)(B) expressly provides that "[w]ithout regard to the nature of the action or claim and without regard to the identity of the party or parties bringing the action, no court may . . . certify a class under Rule 23 of the Federal Rules of Civil Procedure in any action for which judicial review is authorized under a subsequent paragraph of this subsection." 8 U.S.C. § 1252(e)(1)(B). This provision alone precludes any class relief as to the courthouse arrest

policies.[2] Second, section 1252(f)(1) prohibits class relief as it confines injunctive or restraining relief[3] "[r]egardless of the nature of the action or claim" only "to an individual alien against whom" expedited removal proceedings "have been initiated." 8 U.S.C. § 1252(f)(1). Considering a similar challenge brought by an Individual Plaintiff and a class of aliens subject to immigration arrest at a courthouse, the D.C. Circuit held that class injunctive relief was unavailable under section 1252(f)(1). *N.S.*, 141 F.4th at 290. Accordingly, Plaintiffs' class claim challenging the alleged courthouse arrest policies fails.

Second, the same goes for the Organizational Plaintiffs' claims. Even were they to have standing, which they do not, section 1252(f)(1) prevents the Court from awarding Immigrant Advocates or American Gateways any injunctive relief—be it an injunction or vacatur.[4] Again, the statutory text only permits injunctive relief of the form sought here "to an individual alien against whom" expedited removal proceedings "have been initiated." 8 U.S.C. § 1252(f)(1). Because neither Immigrant Advocates nor American Gateways represents any individual alien in this action, they cannot obtain the injunctive relief that they seek in this suit.

Third, the Individual Plaintiffs similarly cannot obtain the relief they seek. The exception in section 1252(e) to the general bar against any judicial review in matters relating to expedited removal set forth in section 1252(a)(2)(A) does not apply to arrest and detention decisions

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[2] Plainly, if judicial review is not authorized under any provision of section 1252(e), there exists no judicial review at all—section 1252(a)(2)(A) proscribes all such review "except as provided in subsection (e)[.]" 8 U.S.C. § 1252(a)(2)(A)

[3] Vacatur is, of course, a form of injunctive relief. *See, e.g.*, *Dine Citizens Against Ruining Our Env't v. Haaland*, 59 F.4th 1016, 1048 (10th Cir. 2023) ("vacatur of agency action is a common, and often appropriate form of injunctive relief granted by district courts" (citation modified)).

[4] Plaintiffs also seek declaratory relief, but the organizational plaintiffs fail to explain how any declaratory relief would remedy their supposed harms. *See supra*.

prefatory to a final order of expedited removal. As discussed above, section 1252(a)(2)(A) precludes a laundry list of expedited removal decision that the section places beyond judicial review. It provides in subsections (i), (ii), and (v) that challenges "relating to the implementation or operation of an order of removal" under the expedited removal provisions, "a decision by the Attorney General to invoke" the expedited removal provision, or the "procedures and policies adopted by the Attorney General to implement the" expedited removal provisions are subject to the narrow judicial review provisions of section 1252(e). 8 U.S.C. § 1252(a)(2)(A)(i), (ii), (iv). That said, the exception in section 1252(e) does not apply to challenges regarding "the application of" the INA's expedited removal provisions "to individual aliens, including the determination made under section 1225(b)(1)(B)[.]" 8 U.S.C. § 1252(a)(2)(A)(iii). And section 1225(b)(1)(B) includes subsection (iii)(IV), entitled "[m]andatory detention," which commands the government to detain all aliens in expedited removal proceedings unless and until they are removed or a positive credible fear determination is made. 8 U.S.C. § 1225(b)(1)(B)(iii)(IV); *see also Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 111 (2020) ("Whether an applicant who raises an asylum claim receives full or only expedited review, the applicant is not entitled to immediate release."); *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018) ("Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until certain proceedings have concluded."). The upshot of these provisions means that individual aliens may not challenge their arrest or detention pending expedited removal proceedings. But that is exactly what the Individual Plaintiffs challenge here. Indeed, Plaintiffs expressly ask the Court to restore them "to the procedural posture that they enjoyed prior to Defendants' unlawful actions." Compl. (ECF No. 1) at 52, ¶ s.

But even were the section 1252(e) exceptions available to the Individual Plaintiffs, their courthouse arrest claims necessarily sound in habeas and cannot be brought here. This Court does not have habeas jurisdiction over the Individual Plaintiffs who are detained outside of this district. Undoubtedly, by challenging their arrests, Plaintiffs are challenging the government's authority to detain them. That is the core of a habeas claim. *Trump v. J.G.G.*, 604 U.S. 670, 672 (2025) ("Regardless of whether the detainees formally request release from confinement, because their claims for relief necessarily imply the invalidity of their confinement and removal under the [Alien Enemies Act], their claims fall within the 'core' of the writ of habeas corpus and thus must be brought in habeas."). And "[f]or core habeas petitions, jurisdiction lies in only one district: the district of confinement." *Id.* As such, were the Individual Plaintiffs able to challenge their detention pending expedited removal (including how they initially came to be detained), that claim necessarily sounds in habeas and must be brought under the INA provision authorizing that claim (8 U.S.C. § 1252(e)(2)) where the Individual Plaintiffs are currently being detained.[5]

IV. Plaintiffs' Claims Challenging the Use of Expedited Removal for Aliens Who Have Been Here for More than Two Years (Counts VIII and IX) Fail.

Plaintiffs continue their attacks on the government's use of expedited removal by challenging a supposed policy permitting the use expedited removal for aliens "who have been in the country for more than two years in expedited removal if the noncitizen received [a notice to appear] within two years after they arrived in the United States." Compl. (ECF No. 1) ¶ 175. Recognizing that there can be no class claims or relief for challenges to expedited removal policies

[5] Were the Court to peer forward into the merits of Plaintiffs' courthouse arrest claims, they would fail as the court in *African Communities Together v. Lyons*, Civ. A. No. 25-6366, 2025 WL 2633396, at *22 (S.D.N.Y. Sept. 12, 2025), recently concluded when denying a provisional stay of these policies in a similar suit.

or decisions,[6] only the Organizational Plaintiffs and six Individual Plaintiffs press these claims. *Id.* at counts VIII, IX. While Plaintiffs' pleading of these counts is more limited, it is no more successful.

First, Plaintiffs do not plausibly plead these claims. The entire premise of these claims is speculation that someone in the Department of Homeland Security issued some written guidance "on or about May 20, 2025, instructing DHS agents to pursue expedited removal for people who have been present in the United States for more than two years without having received a 'determination of inadmissibility[.]'" Compl. (ECF No. 1) ¶¶ 99, 180. Plaintiffs plead no facts making this conclusion plausible on its face. They cite no public reporting describing such guidance, and they plead no facts suggesting the guidance even exists. Instead, Plaintiffs speculate "on information and belief" that there exists such guidance. But again, Plaintiffs fail to plead what "information" they rely on to "believe" such guidance exists. A such, Plaintiffs come nowhere close to a sufficient pleading under *Twombly* and *Iqbal*.

While some non-controlling decisions have permitted allegations "on information and belief" under the *Twombly* and *Iqbal* standard, *see, e.g.*, *Hedgeye Risk Mgmt., LLC v. Heldman*, 271 F. Supp. 3d 181, 189 (D.D.C. 2017) (Moss, J.), none endorsed the use of this pleading mechanic to avoid pleading facts making a plaintiff's claim plausible on its face—after all that was the core holding of *Twombly* and *Iqbal*. *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570). As one court put it, "the phrase 'information and belief' does not excuse pure speculation[.]" *Lavigne v. Great Salt Bay Cmty. Sch. Bd.*, 146 F.4th 115, 127 (1st Cir. 2025)

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[6] While Plaintiffs recognize that class relief is precluded for these claims, they nonetheless pursue class claims for their other expedited removal challenges, including arrests at courthouses of aliens facing expedited removal and the institution of expedited removal proceedings when full removal proceedings remain pending. *Compare* Compl. (ECF No. 1) at Counts VIII, IX, *with id.* at Counts I, II, X, XI.

(complaint challenging a supposed school policy was not plausibly pled when existence of policy was pled "on information and belief" without factual support (quoting *Menard v. CSX Transp., Inc.*, 698 F.3d 40, 45 (1st Cir. 2012) ("assertions nominally cast in factual terms but so general and conclusory as to amount merely to an assertion that unspecified facts exist to conform to the legal blueprint" are insufficient))). Because Plaintiffs plead no allegations elucidating the facts driving their "information and belief" of an unidentified policy, they have failed to plausibly plead challenges to that supposed policy.

Second, as above, the INA prevents the Organizational Plaintiffs from bringing these challenges. Even were they to have standing, which they do not, section 1252(f)(1) prevents the Court from awarding Immigrant Advocates or American Gateways any injunctive relief. Again, the statutory text only permits injunctive relief of the form sought here "to an individual alien against whom" expedited removal proceedings "have been initiated." 8 U.S.C. § 1252(f)(1). Because neither Immigrant Advocates nor American Gateways represents any individual alien in this action, they cannot obtain the injunctive relief they seek in this suit.

Third, as above, the Individual Plaintiffs' claims sound in habeas. *See supra* § III.D. Again, the Individual Plaintiffs ask to be returned to "the procedural posture they enjoyed prior to Defendants' [ ] actions," i.e., on the non-detained, full removal docket. Compl. (ECF No. 1) at 52. That again is core habeas relief, and this Court lacks jurisdiction as the Individual Plaintiffs are not detained here.

Fourth, the arbitrary and capricious claim challenging the supposed "DHS Policy Expanding Expedited Removal Beyond 2-Year Statutory" cannot be maintained as the INA does not permit that form of review. *See supra* § III.B.

For these reasons, the Court should dismiss counts VIII and IX.

V. Plaintiffs' Claims Based on So-Called Concurrent Proceedings Guidance Fails (Counts X and XI).

Plaintiffs next challenge a supposed policy permitting the initiation and use of expedited removal proceedings while full removal proceedings remain pending. Plaintiffs dub this unidentified policy the "Concurrent Proceedings Guidance." These claims also fail.

First, as with their challenge to the supposed "DHS Policy Expanding Expedited Removal Beyond 2-Year Statutory," Plaintiffs fail to plausibly plead their "Concurrent Proceedings Guidance" claims. Plaintiffs' allegations regarding this latter policy are even more scant than their insufficient allegations about the former. The sum total of the allegations that Plaintiffs rely upon to claim that such a policy even exist are:

> On information and belief, at some point after the issuance of the DHS and EOIR Dismissal Guidance, Defendants issued supplemental policy documents, referred to here as Concurrent Proceedings Guidance, instructing DHS to pursue expedited removal concurrently with the process for seeking dismissal of full removal proceedings. On information and belief, this Concurrent Proceedings Guidance instructs DHS to proceed with the expedited removal process (including the credible fear interview) without waiting for the dismissal of full removal proceedings to become final, either by order of the immigration judge or—if the noncitizen appeals—affirmance of such an order by the BIA.

Compl. (ECF No. 1) ¶ 66. This rank speculation is insufficient to state a claim. *See supra* § IV.

Second, none of the Individual Plaintiffs claim to have been subjected to the supposed Concurrent Proceedings Guidance. Indeed, one of Plaintiffs' principal gripes in this case is that the government dismissed their full removal proceedings in favor of the expedited path. Compl. (ECF No. 1) ¶¶ 3-4. Plainly, because no plaintiff has been subjected to any concurrent full and expedited removal proceedings, no plaintiff has any injury from any supposed policy regarding the same.

Third, the same arguments regarding the INA's stripping provisions noted above (a) preclude the Organizational Plaintiffs from pursuing these claims (even if they have standing,

which they do not), (b) preclude a class action on these claims, (c) preclude arbitrary and capricious review, and (d) require any affected individual defendant to pursue a claim in habeas. *See supra* § III.B, D.

Fourth, to the extent Plaintiffs suggest that the unidentified policy is unwritten, that does not permit jurisdiction under 28 U.S.C. § 1331. Compl. (ECF No. 1) ¶ 189. Just the opposite, if there is no written policy, review is fully barred under 8 U.S.C. § 1252(a)(2)(A)(ii), which bars review of decisions to invoke expedited removal except as permitted in section 1252(e), and 8 U.S.C. § 1252(g), which precludes review of any decision to commence immigration proceedings. Plainly, the decision to commence expedited removal proceedings while full removal proceedings remain ongoing is both a decision to invoke the INA's expedited removal provisions and a decision to commence a particular form of immigration proceedings. The INA does not permit judicial review of those decisions beyond the limited carveouts in section 1252(e).

VI. The Court Should Dismiss Plaintiffs' Challenges to the Government's Dismissal Guidance (Counts III to VII).

In addition to the expedited-removal related challenges described above, Plaintiffs challenge the government's exercise of prosecutorial discretion to dismiss full proceedings and collaterally challenge dismissal decisions of immigration courts. Once again, the law precludes these claims, and Plaintiffs have failed to plausibly allege them.

A. The INA Precludes Review in This Court of Questions Arising from Removal Proceedings (Counts III to VII).

As discussed above, section 1252(e) permits a few, narrow exceptions to the otherwise flat bar on judicial review of matters connected with expedited removal proceedings. Section 1252, however, includes no such exceptions (narrow or not) to challenges arising from full removal proceedings. Section 1252(b)(9), often described as a zipper clause, states:

> Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter shall be available only in judicial review of a final order under this section. Except as otherwise provided in this section, no court shall have jurisdiction, by habeas corpus under section 2241 of title 28 or any other habeas corpus provision, by section 1361 or 1651 of such title, or by any other provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact.

8 U.S.C. § 1252(b)(9); *see also Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) (section 1252(b)(9) contains an "unmistakable 'zipper' clause" that "channels judicial review of *all*" decisions and actions made in removal proceedings (emphasis in original)). Were that not enough section 1252(g) states:

> Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.

8 U.S.C. § 1252(g). These provisions make clear that the discretion of the government to prosecute (or not prosecute) removal proceedings and the decisions of immigration courts to dismiss (or not dismiss) full removal proceedings are not reviewable in court outside of the petition for review process. *See Reno*, 525 U.S. at 484 (included in the scope of section 1252(g) are the government's "discrete acts of commencing proceedings, adjudicating cases, and executing removal orders—which represent the initiation or prosecution of various stages in the deportation process. At each stage the Executive has discretion to abandon the endeavor, and" the government has routinely been "exercising that discretion for humanitarian reasons or simply for its own convenience.").

Here, Plaintiffs clearly challenge decisions of the government to cease pursuing full removal proceedings and of the immigration courts to dismiss suits. That Plaintiffs seek to challenge guidance seeking to promote consistency in seeking and granting the dismissal of

removal proceedings, does not make that challenge actionable. Again, the INA is clear "all questions of law and fact . . . arising from any action taken or proceeding brought to remove an alien from the United States" are subject to the immigration court process and not susceptible to review in district court. 8 U.S.C. § 1252(b)(9). The questions of law posed by Plaintiffs' claims—whether the so-called EOIR Dismissal Guidance and supposed "DHS Dismissal Guidance" are contrary to law, arbitrary and capricious, or violate the Fifth Amendment—plainly fall within the ambit of this jurisdiction stripping provision. *See, e.g.*, *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (finding section 1252(b)(9) precluded plaintiffs challenge to a policy regarding alien children's right-to-counsel; "Section 1252(b)(9) is, as the First Circuit noted, 'breathtaking' in scope and 'vise-like' in grip and therefore swallows up virtually all claims that are tied to removal proceedings." (quoting *Aguilar v. ICE*, 510 F.3d 1, 9 (1st Cir. 2007)).

Notably, many individual defendants appear to recognize the proper pathway to challenge the dismissal of their proceedings is administratively through the Board of Immigration Appeals, Compl. (ECF No. 1) ¶¶ 16, 22, 24 (noting pending appeals), and Plaintiffs appear to allege it was a mistake for one Individual Plaintiff not to do so. *Id.* ¶ 18. While challenges unrelated to the core of removal proceedings may escape the barring provisions of section 1252(b)(9)—e.g., where a plaintiff challenges an immigration court's compliance with environmental laws that "technically" arise from a removal proceeding, *Mass. Coal. for Immigr. Reform v. Dep't of Homeland Sec.*, 621 F. Supp. 3d 84, 99 (D.D.C. 2022) (McFadden, J.)—here, the claim falls squarely in the core of those proceedings. At bottom, Plaintiffs challenge the dismissal of removal proceedings—i.e., the final decision in those proceedings. Nothing in section 1252(b)(9) or the rest of the INA suggests that a district court has the authority to review such decisions.

B. Plaintiffs' Challenges to the EOIR Dismissal Guidance (Which is Really Just an Informative Email) Fail (Counts III and IV).

1. The EOIR Dismissal Guidance, Nay Email, is Not a Final Agency Action.

Assuming the INA does not strip this Court of jurisdiction, Plaintiffs' APA challenges to the EOIR Dismissal Guidance nonetheless fail because that guidance is not a final agency action. "Section 704 of the APA permits review of 'final agency action.'" *Mass. Coal.*, 621 F. Supp. 3d at 95. "Agency action is final if it is the consummation of the agency's decisionmaking process, rather than a tentative or interlocutory decision, and if it determines rights and obligations or imposes legal consequences. Each of these requirements must be satisfied independently for agency action to be final." *Id.* (citation modified; quoting *Bennett v. Spear*, 520 U.S. 154, 177 (1997), and *Soundboard Ass'n v. FTC*, 888 F.3d 1261, 1267 (D.C. Cir. 2018)).

Here, the EOIR Dismissal Guidance is not the "last word" on anything. The guidance (contained in a short email) merely purports to inform immigration judges that government attorneys may be seeking to dismiss full removal proceedings via oral motions. Email, *African Cmtys. Together v. Lyons*, Civ. A. No. 25-6366 (S.D.N.Y. Aug. 11, 2025), ECF No. 23-2 at 10 (screenshot of alleged guidance).[7] Specifically, the email reads "[t]he following information regarding DHS Motions to Dismiss may be generally helpful." *Id.* It then provides citations to and paraphrases relevant regulatory provisions, concluding: "Generally, if DHS has met the regulatory burden, the oral motion to dismiss may be granted. A 10-day response period is not required." *Id.* Nothing about this text, which is twice couched in "general" terms, dictates the

[7] The Court may consider the text of this alleged guidance in reviewing this motion to dismiss as it is plainly incorporated into Plaintiffs' pleading. *See, e.g.*, *Marshall v. Honeywell Tech. Sols., Inc.*, 536 F. Supp. 2d 59, 65 (D.D.C. 2008) ("[W]here a document is referred to in the complaint and is central to the plaintiff's claim, such a document attached to the motion papers may be considered without converting the motion [to dismiss] to one for summary judgment." (citation modified)).

outcome of any specific decision made in any particular case. Rather, it is meant to assist immigration judges to make decisions. Accordingly, it is not a final agency decision susceptible to APA review. *Mass. Coal.*, 621 F. Supp. 3d at 95 (agency instruction manual on compliance with environmental law was not a final agency action capable of APA review, "the Manual helps DHS's components make NEPA decisions; it does not tell them how—or when—they must do so"). Because the so-called "EOIR Dismissal Guidance" is really just an email providing general education to immigration judges and is not a final agency decision, Plaintiffs' APA challenges of it cannot proceed.

2. The EOIR Dismissal Guidance is Neither Arbitrary, Nor Capricious, Nor Contrary to Law

Even were the EOIR Dismissal Guidance email a final agency action, its text pertaining to dismissals of removal proceedings is not contrary to law nor do Plaintiffs plausibly plead that sending such an informational email is arbitrary and capricious.

First, the email by its terms does not purport to create any new standards, let alone ones that conflict with existing laws. To the contrary, it cites to and merely paraphrases existing regulations and notes, correctly, that if the government "has met the regulatory burden" associated with the cited regulations, "the oral motion to dismiss may be granted." Email, *African Cmtys.*, *supra*, ECF No. 23-2 at 10. Plaintiffs plead no source of law that conflicts with this generalized statement regarding motions to dismiss in removal proceedings. True, the email continues by noting that "[a] 10-day response period is not required." *Id.* But again, that is fully consistent with the governing regulations. 8 C.F.R. § 1003.23(a) expressly authorizes immigration judges to permit exceptions to the general practice of making motions in writing and expressly authorizes an immigration judge to set periods for responding to motions.

Second, Plaintiffs contend that the government sending the EOIR Dismissal Guidance email was somehow arbitrary and capricious. Specifically, Plaintiffs argue that the Immigration Court Practice Manual "instructs parties to file motions in advance of a hearing and allows the nonmoving party an opportunity to respond" and that the email somehow implements a change to existing policies. Compl. (ECF No. 1) ¶¶ 149–51 (citing Immigr. Ct. Prac. Man § 3.1(b)(1)(A), (B), available at: https://www.justice.gov/eoir/reference-materials/ic/chapter-3/1). As to the latter, it is unclear how Plaintiffs could contend the email changes anything as it cites directly to the regulations containing the rules for dismissing cases. As to the former, the email is entirely consistent with the Manual. As with the governing regulations, the Manual provides default timing rules for filings (including motions). *Id.* But as with the governing regulations, the Manual authorizes immigration judges to depart from those rules in their discretion. *Id.* § 3.1(b) ("Deadlines for filings submitted while proceedings are pending before the Immigration Court . . . are as specified in subsections (1), (2), and (3), below, *unless otherwise specified by the Immigration Judge.*" (emphasis added)). Accordingly, the email's notation that a "10-day response period is not required" is a fully accurate statement of the law. It is neither arbitrary nor capricious.

C. Plaintiffs' Challenges to the Supposed DHS Dismissal Guidance Also Fail (Counts V to VII).

Plaintiffs' claims seeking to attack the supposed DHS Dismissal Guidance fail for many of the same reasons as Plaintiffs' other claims.

First, Plaintiffs do not plausibly plead the existence or contours of any such guidance. As with many of their challenges, Plaintiffs plead the existence of this policy guidance merely on information and belief. Compl. (ECF No. 1) ¶ 60. In so doing, Plaintiffs cite a N.Y. Times article in support. *See id.* (citing Hamed Aleaziz, How ICE Is Seeking to Ramp Up Deportations Through

Courthouse Arrests, N.Y. Times (May 30, 2025), https://perma.cc/TN6V-GKAE). But that article makes no mention of any particular policy and does not purport to quote from the policy, though Plaintiffs quote from the article as if it did. Compl. (ECF No. 1) ¶ 60. Accordingly, Plaintiffs have not plausibly pled any challenge to the supposed DHS Dismissal Guidance.

Second, by its very nature any DHS Dismissal Guidance cannot be a final agency action. Plaintiffs contend the policy instructs government attorneys to seek the dismissal of immigration proceedings to allow for expedited removals. Compl. (ECF No. 1) ¶ 60. But an instruction to seek a dismissal in an immigration proceeding is hardly the culmination of a decisionmaking process. *See supra* § VI.B.2.

Third, whether and under what conditions the government seeks to dismiss removal proceedings is an exercise of unreviewable prosecutorial discretion. As the Supreme Court in *Reno*, 525 U.S. at 484, noted "[a]t each stage" of the removal process "the Executive has discretion to abandon the endeavor[.]" *Id.* And the INA prohibits review of discretionary actions made under its provisions. 8 U.S.C. § 1252(a)(2)(B)(ii). This is fully consistent with separation of powers principles and the general lack of judicial review over matters involving prosecutorial discretion.

But even were discretionary decisions not specifically exempted by the INA, Plaintiffs could still not challenge the exercise of prosecutorial discretion embodied in the DHS Dismissal Guidance. The APA itself does not permit such review as courts have repeatedly held. 5 U.S.C. § 701(a)(2). For example, in *Citizens for Responsibility & Ethics in Washington ("CREW") v. Federal Election Commission*, 993 F.3d 880 (D.C. Cir. 2021), the Circuit considered whether a private party could challenge a nonenforcement decision by the Commission under a particular statute that appeared to authorize such a challenge. It ruled in the negative, finding "[d]espite the authority to review a nonenforcement decision to determine whether it is 'contrary to law,' we

recently held that a Commission decision based even in part on prosecutorial discretion is not reviewable." *Id.* at 882. In so doing, it noted that declining to review exercises of prosecutorial discretion is "supported by longstanding precedent." *Id.* at 887 (quoting *Heckler v. Chaney*, 470 U.S. 821, 832 (1985) (decisions not to take enforcement action have "traditionally been 'committed to agency discretion,' and we believe that the Congress enacting the APA did not intend to alter that tradition")). "The general principle that an agency's exercise of enforcement discretion is unreviewable follows from tradition, case law, and sound reasoning, as well as protection for a core executive power. The vesting of all executive power in the President as well as his constitutional obligation to take Care that the Laws be faithfully executed has been understood to leave enforcement and nonenforcement decisions exclusively with the Executive Branch." *CREW*, 993 F.3d at 888.

Ultimately, through their challenge to the supposed DHS Dismissal Guidance, Plaintiffs collaterally seek to preclude the government from making certain arguments in removal proceedings. But the place to contest those arguments (i.e., the government's requests for dismissal) are in the immigration courts where those matters are presented. An alien faced with a motion to dismiss can oppose it, and if unsuccessful, attempt to appeal that dismissal to the Board of Immigration Appeals. This Court having no role in that process, lacks the authority to cabin the government's prosecutorial discretion in asking an immigration court to dismiss a proceeding.

D. Plaintiffs' Fifth Amendment Claim Is Meritless (Count VII).

Lastly, Plaintiffs claim that the EOIR Dismissal Guidance and the supposed DHS Dismissal Guidance somehow violate their Fifth Amendment due process rights. Compl. (ECF No. 1) at count VII. Specifically, Plaintiffs argue that permitting the government to orally move to dismiss removal proceedings and granting those motions deprives aliens notice and an opportunity to be heard. *Id.* ¶ 167. This claim also fails for many reasons.

First, as noted above, the INA's zipper clause in section 1252(b)(9) prevents this Court from entertaining Plaintiffs' claim. Plaintiffs are free to raise the same argument in immigration proceedings and before the Board of Immigration Appeals, but this Court lacks the authority to collaterally review those bodies' decisions.

Second, the Supreme Court has made clear that aliens who are subject to expedited removal have no due process rights beyond those that the INA provides. That was the express holding of the Court in *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 139, (2020). Indeed, the Court rejected Plaintiffs' suggestion that "[t]he due process clause extends to all people, regardless of their citizenship status." Compl. (ECF No. 1) ¶ 167. Instead, it held that aliens paroled into the country and those that enter without inspection are "treated for due process purposes as if stopped at the border." *Thuraissigiam*, 591 U.S. at 139 (citation modified). Here, each Individual Plaintiff meets that description—i.e., they either entered without inspection (L.H., E.P., D.C., E.C., P.D., K.M., M.K., J.L.) or were paroled into the United States (M.S., E.M., M.D., R.A.). Compl. (ECF No. 1) ¶¶ 16-27. As such, these aliens have "only those rights regarding admission that Congress has provided by statute[.]. . . [T]he Due Process Clause provides nothing more[.]" *Thuraissigiam*, 591 U.S. at 140.

Third, the Organizational Plaintiffs plainly have no Fifth Amendment claim. Even were they to have standing (which they do not), they identify no liberty or property interest of theirs that is being infringed by the challenged policies. Instead, the claim pled by Plaintiffs is based on a deprivation of aliens' Fifth Amendment rights, not any right held by the Organizational Plaintiffs. Plainly the Organizational Plaintiffs cannot assert a third-party due process interest in an alien's immigration proceedings. *Cf. Dep't of State v. Muñoz*, 602 U.S. 899, 919 (2024) (the Court's

precedent "does not hold that a citizen's independent constitutional right . . . gives that citizen a procedural due process right . . . for why some else's visa was denied").

CONCLUSION

For these reasons, the Court should dismiss this case. A proposed order is enclosed herewith.

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Respectfully submitted,

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