IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IMMIGRANT ADVOCATES RESPONSE COLLABORATIVE, et al., *Plaintiffs*, vs. UNITED STATES DEPARTMENT OF JUSTICE, et al., *Defendants*.	Case No. 25-cv-2279 Hon. Trevor N. McFadden

PLAINTIFFS' MEMORANDUM IN OPPOSITION
TO DEFENDANTS' MOTION TO DISMISS

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES iii

INTRODUCTION 1

BACKGROUND 3

A. Overview of Full and Expedited Removal Proceedings 3

B. The Courthouse Arrest Memoranda 6

C. The Dismissal Guidance 8

D. Changes to Expedited Removal and the Use of Concurrent Proceedings 9

E. The Plaintiffs 10

ARGUMENT 12

I. Plaintiffs Have Article III Standing to Challenge Defendants' Policies. 12

A. Organizational Plaintiffs Have Standing 12

B. Individual Plaintiffs Have Standing. 18

II. Section 1252 Does Not Strip This Court of Jurisdiction Over Plaintiffs' Claims. 20

A. Section 1252(e)(3) Does Not Bar Any of Plaintiffs' Claims. 21

B. Neither Section 1252(b)(9) Nor 1252(g) Bars Plaintiffs' Challenges to the Dismissal Guidance 23

III. Plaintiffs Properly Seek Vacatur and Declaratory Relief as Remedies for Their Claims in This Suit 26

A. Declaratory Relief and Vacatur Are Available Remedies. 26

B. The Individual Plaintiffs Have Available Remedies That Need Not Be Sought Through Habeas 28

IV. Plaintiffs Have Adequately Pleaded a Claim Against the Dismissal Policies. 30

A. The Complaint States APA Claims Against the EOIR Dismissal Guidance. 30

B. The Complaint States APA Claims Against the DHS Dismissal Guidance. 35

C. The Complaint States Viable Due Process Claims. 38

V. Plaintiffs Have Stated a Viable Challenge to the Expansion of Expedited Removal. 40

VI. Plaintiffs Have Adequately Pleaded a Claim Against the Concurrent Proceedings Guidance 43

CONCLUSION 45

TABLE OF AUTHORITIES

Page(s)

CASES

Action on Smoking & Health v. C.A.B., 713 F.2d 795 (D.C. Cir. 1983) 17

African Cmtys. Together v. Lyons, No. 25-cv-6366, 2025 WL 2633396 (S.D.N.Y. Sept. 12, 2025) 28, 31, 35

Aguilar v. ICE, 510 F.3d 1 (1st Cir. 2007) 24

Alaska v. USDA, 17 F.4th 1224 (D.C. Cir. 2021) 35

Anatol Zukerman & Charles Krause Reporting, LLC v. USPS, 64 F.4th 1354 (D.C. Cir. 2023) 17

Appalachian Power Co. v. EPA, 208 F.3d 1015 (D.C. Cir. 2000) 37

Aracely, R. v. Nielsen, 319 F. Supp. 3d 110 (D.D.C. 2018) 37

Ashcroft v. Iqbal, 556 U.S. 662 (2009) 41

Ass'n v. Reno, 199 F.3d 1352 (D.C. Cir. 2000) 18

Barrick Goldstrike Mines Inc. v. Browner, 215 F.3d 45 (D.C. Cir. 2000) 32

Bell Atl. Corp. v. Twombly, 550 U.S. 544 (2007) 36, 41

Biden v. Nebraska, 600 U.S. 477 (2023) 12

Biden v. Texas, 597 U.S. 785 (2022) 36

Cap. Area Immigrants' Rts. Coal. v. Trump, 471 F. Supp. 3d 25 (D.D.C. 2020) 15, 22, 24

Chafin v. Chafin, 568 U.S. 165 (2013) 19

CHIRLA v. Noem, 2025 No. 25-cv-872 (D.D.C. filed 2025) 9

Citizens for Resp. & Ethics in Wash. v. FEC, 993 F.3d 880 (D.C. Cir. 2021) 38

City of Mesquite v. Aladdin's Castle, Inc., 455 U.S. 283 (1982) 34

Clean Air Council v. Pruitt, 862 F.3d 1 (D.C. Cir. 2017) 33

CLINIC v. EOIR, 513 F. Supp. 3d 154 (D.D.C. 2021) 25

Coal. for Humane Immigrant Rts. v. Noem, No. 25-cv-872, 2025 WL 2192986 (D.D.C. Aug. 1, 2025) 27

Demore v. Kim, 538 U.S. 510 (2003) 22

DHS v. Regents of the Univ. of California, 140 S. Ct. 1891 (2020) 25

DHS v. Thuraissigiam, 591 U.S. 103 (2020) 39, 40

Diamond Alt. Energy, LLC v. EPA, 145 S. Ct. 2121 (2025) 13, 14, 18

Does I Through III v. District of Columbia, 216 F.R.D. 5 (D.D.C. 2003) 20

Duron v. Johnson, 898 F.3d 644 (5th Cir. 2018) 24

Encino Motorcars, LLC v. Navarro, 579 U.S. 211 (2016) 34

Evangelou v. District of Columbia, 901 F. Supp. 2d 159 (D.D.C. 2012) 41

FBI v. Fikre, 601 U.S. 234 (2024) 35

FDA v. All. for Hippocratic Med., 602 U.S. 367 (2024) 13, 14, 15, 16

Friends of Animals v. Bernhardt, 961 F.3d 1197 (D.C. Cir. 2020) 15

Garland v. Aleman Gonzalez, 596 U.S. 543 (2022) 27

Gen. Elec. Co. v. EPA, 290 F.3d 377 (D.C. Cir. 2002) 32

Gomez v. Trump, No. 20-cv-1419, 1419, 2020 WL 12919371 (D.D.C. Aug. 13, 2020) 33

Grace v. Barr, 965 F.3d 883 (D.C. Cir. 2020) 21, 23, 29

Guardian Fed. Sav. & Loan Ass'n v. Fed. Sav. & Loan Ins. Corp., 589 F.2d 658 (D.C. Cir. 1978) 32

Guitierrez v. Saenz, 145 S. Ct. 2258 (2025) 17

Havens Realty Corp. v. Coleman, 455 U.S. 363 (1982) 13, 15

Heckler v. Chaney, 470 U.S. 821 (1985) 38

Hedgeye Risk Mgmt., LLC v. Heldman, 271 F. Supp. 3d 181 (D.D.C. 2017) 36, 41, 43

Her Majesty the Queen in Right of Ontario v. EPA, 912 F.2d 1525 (D.C. Cir. 1990) 32

Hinton v. District of Columbia, 567 F. Supp. 3d 30 (D.D.C. 2021) 20

Immigrant Advoc. Ctr. v. DHS, 783 F. Supp. 3d 200 (2025) 19

Immigrant Defs. L. Ctr. v. Noem, 145 F.4th 972 (9th Cir. 2025) 16, 27

INS v. St. Cyr, 533 U.S. 289 (2001) 23

J.E.F.M. v. Lynch, 837 F.3d 1026 (9th Cir. 2016) 24

Jennings v. Rodriguez, 583 U.S. 281 (2018) 24

Jibril v. Mayorkas, 20 F.4th 804 (D.C. Cir. 2021) 19

Kareem v. Haspel, 986 F.3d 859 (D.C. Cir. 2021) 41

Kelleher v. Dream Catcher, LLC, 263 F. Supp. 3d 322 (D.D.C. 2017) 42

Kiakombua v. Wolf, 498 F. Supp. 3d 1 (D.D.C. 2020) 18, 19

Kucana v. Holder, 558 U.S. 233 (2010) 37

Larsen v. U.S. Navy, 525 F.3d 1 (D.C. Cir. 2008) 35

Las Ams. Immigrant Advoc. Ctr. v. DHS, 783 F. Supp. 3d 200 (D.D.C. 2025) 19, 23

Lavigne v. Great Salt Bay Cmty. Sch. Bd., 146 F.4th 115 (1st Cir. 2025) 42

League of Women Voters of U.S. v. Newby, 838 F.3d 1 (D.C. Cir. 2016) 15

Lujan v. Defs. of Wildlife, 504 U.S. 555 (1992) 13

Make the Rd. N.Y. v. Noem, 2025 No. 25-cv-00190 (D.D.C. filed 2025) 9

Make The Rd. N.Y. v. Wolf, 962 F.3d 612 (D.C. Cir. 2020) 5, 21, 29, 37

Maldonado-Perez v. INS, 865 F.2d 328 (D.C. Cir. 1989) 40

Mass. Coal. for Immigr. Reform v. DHS, 621 F. Supp. 3d 84 (D.D.C. 2022) 24

McNary v. Haitian Refugee Ctr., 498 U.S. 479 (1991) 25

Menard v. CSX Transp., Inc., 698 F.3d 40 (1st Cir. 2012) 42

Mendoza v. Perez, 754 F.3d 1002 (D.C. Cir. 2014) 18

Monsanto Co. v. Geertson Seed Farms, 561 U.S. 139 (2010) 27

Morales-Morales v. Barr, 933 F.3d 456 (5th Cir. 2019) 19

N. Am.'s Bldg. Trades Unions v. DOD, 783 F. Supp. 3d 290 (D.D.C. 2025) 37

N.S. v. Dixon, 141 F.4th 279 (D.C. Cir. 2025) 28

Nasrallah v. Barr, 590 U.S. 573 (2020) 23

Nat'l TPS Alliance v. Noem, No. 25-cv-01766, 2025 WL 957677 (N.D. Cal. Mar. 31, 2025) 27

In re Navy Chaplaincy, 697 F.3d 1171 (D.C. Cir. 2012) 18

Nat'l Env't Dev. Ass'n's Clean Air Proj. v. EPA, 752 F.3d 999 (D.C. Cir. 2014) 31

Nora v. Wolf, No. 20-cv-0993, 2020 WL 3469670 (D.D.C. June 25, 2020) 37

NRDC v. EPA, 643 F.3d 311 (D.C. Cir. 2011) 32, 36

NRDC v. Thomas, 845 F.2d 1088 (D.C. Cir. 1988) 31

O.A. v. Trump, 404 F. Supp. 3d 109 (D.D.C. 2019) 22, 25

Özturk v. Hyde, 136 F.4th 382 (2d Cir. 2025) 23

People for the Ethical Treatment of Animals v. USDA, 797 F.3d 1087 (D.C. Cir. 2015) 15

POET Biorefining, LLC v. EPA, 970 F.3d 392 (D.C. Cir. 2020) 31

Preiser v. Rodriguez, 411 U.S. 475 (1973) 29

R.I.L-R v. Johnson, 80 F. Supp. 3d 164 (D.D.C. 2015) 22

Refugee & Immigrant Ctr. for Educ. & Legal Servs. v. Noem, No. 25-cv-306, 2025 WL 1825431 (D.D.C. July 2, 2025) 27

Reno v. Am.-Arab Anti-Discrim. Comm., 525 U.S. 471 (1999) 25, 27

Reno v. Flores, 507 U.S. 292 (1993) 40

Safari Club Int'l v. Jewell, 842 F.3d 1280 (D.C. Cir. 2016) 32

Scenic Am., Inc. v. DOT, 836 F.3d 42 (D.C. Cir. 2016) 31

Sec'y of Lab. v. Twentymile Coal Co., 456 F.3d 151 (D.C. Cir. 2006) 38

Shaughnessy v. United States ex rel. Mezei, 345 U.S. 206 (1953) 40

Steffel v. Thompson, 415 U.S. 452 (1974) 27

Texas v. United States, 40 F.4th 205 (5th Cir. 2022) 28

Texas v. United States, 809 F.3d 134 (5th Cir. 2015) 26

TransUnion, Inc. v. Ramirez, 594 U.S. 413 (2021) 19

Trump v. J.G G., 604 U.S. 670 (2025) 29, 40

Turlock Irrigation District v. FERC, 786 F.3d 18 (D.C. Cir. 2015) 16, 17

U.S. Army Corps of Eng'rs v. Hawkes Co., 578 U.S. 590 (2016) 30

United States ex rel. Accardi v. Shaughnessy, 347 U.S. 260 (1954) 34

United States ex rel. Jenkins v. Sanford Cap., LLC, No. 17-cv-239, 2020 WL 5440551 (D.D.C. Sept. 10, 2020) 41

United States v. All Assets Held at Credit Suisse (Guernsey) Ltd., 45 F.4th 426 (D.C. Cir. 2022) 28

Uzuegbunam v. Preczewski, 592 U.S. 279 (2021) 17

Whitman v. Am. Trucking Ass'n, 531 U.S. 457 (2001) 30

Wilkinson v. Dotson, 544 U.S. 74 (2005) 29

Yamataya v. Fisher, 189 U.S. 86 (1903) 40

Zadvydas v. Davis, 533 U.S. 678 (2001) 40

STATUTES

5 U.S.C.
§ 551(4) 30
§ 701(a)(2) 38
§ 706(2) 23

8 U.S.C.
§ 122 ..... 4, 5, 11, 44
§ 122(1)(B)(v) 5

§ 1101(a)(47)(B)(ii) 4, 10
§ 1225 22
§ 1225(b)(1)(A) 2, 5, 41
§ 1225(b)(1)(B) 5, 29
§ 1226(e) 22
§ 1229 4
§ 1229a(a)(3) 4, 44
§ 1231(a)(5) 19
§ 1252(3) 29
§ 1252(3)(A) 21
§ 1252(a) 4
§ 1252(a)(2)(A) 20, 21
§ 1252(a)(2)(A)(iv) 22
§ 1252(a)(2)(B)(ii) 37
§ 1252(a)(5) 24
§ 1252(b) 23
§ 1252(b)(9) 20
§ 1252(e)(1)(B) 21
§ 1252(e)(2) 29
§ 1252(e)(3)(A) 23
§ 1252(e)(3)(ii) 23
§ 1252(f)(1) 27
§ 1252(g) 25

28 U.S.C.
§ 1331 22

REGULATIONS

8 C.F.R.
§ 208.30(e)(2) 5
§ 235.3(b)(2) 6, 6
§ 239.2(a) 4
§ 239.2(a)(1) 4
§ 239.2(a)(7) 34
§ 1003.12 4
§ 1003.39 44
§ 1208.30 5
§ 1239.2(7) 33
§ 1239.2(c) 33, 38
§ 1240.8 4

69 Fed. Reg. 48,877 (Aug. 11, 2004) 9

90 Fed. Reg. 8139 (Jan. 24, 2025) 9, 41

OTHER AUTHORITIES

Am. Immigr. Laws. Ass'n, *Practice Alert: EOIR Guidance to Immigration Judges on Dismissals and Other Adjudications* (June 12, 2025), https://perma.cc/J84U-WCRP 8, 30

ARC, *Friend of the Court Program*, https://perma.cc/KC7K-757L 14

Black's Law Dictionary (12th ed. 2024) 26

Webster's New World College Dictionary (3d ed. 1997) 26

INTRODUCTION

In recent months, the U.S. Departments of Justice (DOJ) and Homeland Security (DHS) and their subagencies have adopted several policies designed to deny access to the immigration courts and unlawfully accelerate the removal of noncitizens without meaningful legal process. Noncitizens who attend mandated immigration court hearings, as instructed by the Defendants, arrive only to have their cases dismissed and to then be arrested in the very courthouses where they were supposed to receive an impartial hearing. Many are then unlawfully thrust into a cursory, alternative process known as expedited removal, which does not provide the procedural protections available in full removal proceedings in immigration court.

This suit has been brought by a group of individuals who have been subjected to these unlawful policies and two legal services organizations, Immigrant Advocates Response Collaborative (I-ARC) and American Gateways, that have experienced substantial, adverse effects to their core operations as a result of those policies. Plaintiffs seek vacatur and declaratory relief against four sets of policy changes that are responsible for the ongoing denial of access to meaningful process in immigration court. Individual Plaintiffs also relief against the application of the policies in their own cases.

First, both DHS and DOJ's Executive Office for Immigration Review (EOIR) rescinded policies that had limited civil immigration-related arrests in immigration courthouses. The rescinded policies had recognized that such arrests hamper the fair administration of the immigration process and create a palpable fear that disincentivizes people from appearing for their hearings, chilling their ability to exercise their rights under the Immigration and Naturalization Act (INA). DHS's and EOIR's abrupt decisions to broadly authorize courthouse arrests fail to grapple with these important considerations and lack indicia of reasoned decisionmaking. *See* Compl. ¶¶ 129-40 (Counts I-II).

Second, DHS and EOIR have adopted policies authorizing and encouraging surprise dismissal of pending cases. DHS has instructed its attorneys to orally seek dismissals at immigration hearings and EOIR has directed immigration judges to consider these motions favorably, even when DHS attorneys fail to offer a reason for their motion, much less one that is rooted in the regulatory requirements. As a result, without prior notice or a meaningful opportunity to respond, noncitizens lose the opportunity to receive a full hearing. These dismissal policies are unlawful, arbitrary and capricious, and they violate due process. *See* Compl. ¶¶ 141-68 (Counts III-VII).

Third, DHS has correspondingly expanded its use of expedited removal, an alternative removal process that denies noncitizens the substantive and procedural protections available in immigration court. In particular, DHS has adopted a policy of initiating expedited removal proceedings even against individuals who have been continuously present in the United States for more than two years. This policy is both unlawful and arbitrary and capricious because, by statute, DHS may not use expedited removal against persons with such established ties to the United States. *See* 8 U.S.C. § 1225(b)(1)(A)(iii)(II). *See* Compl. ¶¶ 169-82 (Counts VIII-IX).

And *fourth*, in its zeal to pursue expedited removal, DHS has adopted a new policy of initiating expedited removal proceedings even against noncitizens who concurrently have claims still pending in immigration court. This policy of subjecting individuals to simultaneous proceedings under two separate removal regimes is both unlawful and arbitrary and capricious. Compl. ¶¶ 183-97 (Counts X-XI).

Defendants seek dismissal of the Complaint but offer no substantive defense of the legality of these policies. They argue instead that certain plaintiffs lack standing to bring some or all of their claims. But even setting aside the fact that these assertions are wrong, Defendants appear to

recognize that at least one plaintiff has standing to maintain each count of the Complaint, which eliminates the need for this Court to engage with those arguments.

Defendants also assert an array of inapplicable limits on review. And they hide behind the fact that some of the challenged policies were implemented through non-public internal policy directives, arguing that they need not even produce a record confirming the policies' existence and justification, notwithstanding the fact that the challenged polices are described in public media reports and evidenced by the pattern of agency conduct that Plaintiffs experienced. None of these defenses provides a valid basis for dismissing even one, let alone all, of Plaintiffs' claims. Defendants' efforts to circumvent the immigration-court process are not beyond judicial scrutiny.

BACKGROUND

For decades, noncitizens in removal proceedings in immigration court were given an opportunity to apply for asylum or other relief before an immigration judge and were ordered removed if they did not qualify. They were given warnings about failure to attend hearings and about their obligation to keep track of the process by providing an up-to-date address. And once they were in immigration court, their right to establish defenses against removal was protected by procedures that limited the grounds for premature dismissal of their proceedings; they would not be taken out of full removal proceedings and placed into truncated, expedited removal proceedings generally reserved for people newly present in the United States.

All of that changed in May 2025. Now, noncitizens arriving in immigration court have had their cases suddenly dismissed for no reason, been arrested before leaving the courthouse, and then been subjected to expedited removal, often while their full removal cases remained ongoing.

A. Overview of Full and Expedited Removal Proceedings

1. Full removal proceedings are, unless otherwise specified in the INA, "the sole and exclusive procedure for determining whether [a noncitizen] may be admitted to the United States

or, if the [noncitizen] has been so admitted, removed from the United States." 8 U.S.C. § 1229a(a)(3). Such proceedings begin when DHS issues a Notice to Appear in immigration court, which contains an allegation of inadmissibility or deportability that the noncitizen may dispute. *See id.* § 1229(a) (addressing the requirements of a Notice to Appear); 8 C.F.R. § 1240.8. The case is then heard by an immigration judge, whose decision can be appealed to the Board of Immigration Appeals (BIA). The case becomes administratively final following either a decision by the BIA or "the expiration of the period in which the [noncitizen] is permitted to seek [BIA] review," whichever comes first. 8 U.S.C. § 1101(a)(47)(B)(ii).

Noncitizens placed in full removal proceedings receive significant procedural protections. They have rights to counsel, to present evidence, to examine the government's evidence and witnesses, and to appeal to both the BIA and a federal court of appeals. 8 U.S.C. §§ 1229, 1229a, 1252(a)-(b); 8 C.F.R. §§ 1003.12-1003.47. They also have time to gather evidence, consult with counsel and experts, and to develop arguments.

Once a full removal proceeding is pending in immigration court, it can be dismissed only "on the grounds set out" in 8 C.F.R. § 239.2(a). That regulation permits dismissal only if the person in proceedings is a U.S. citizen, is not removable, has died, is not in the United States, or has cured the basis for the notice to appear; if the notice to appear "was improvidently issued"; or if "[c]ircumstances of the case have changed after the notice to appear was issued to such an extent that continuation is no longer in the best interest of the government." 8 C.F.R. § 239.2(a)(1)-(7). Motions to dismiss proceedings, like all "motions submitted prior to the final order of [the] immigration judge," must "be in writing and . . . state, with particularity the grounds therefor, the relief sought, and the jurisdiction," except when "otherwise permitted by the immigration judge." *Id.* § 1003.23(a); *see also* Immigration Court Practice Manual § 3.1(b)(1)(A)-(B) (requiring

motions for which a ruling will be sought at a hearing to be submitted in writing no less than 15 days before the hearing and providing a 10-day response period).

2. In 1996, Congress created expedited removal as an alternative removal procedure. It did so to "substantially shorten and speed up the removal process" for certain noncitizens arriving without valid immigration documents. *Make The Rd. N.Y. v. Wolf*, 962 F.3d 612, 618 (D.C. Cir. 2020). The process "lives up to its name." *Id.* at 619. Absent an indication of fear of persecution, a noncitizen placed in expedited removal may be removed almost immediately. *Id.* Noncitizens in expedited removal who express a fear of removal or an intention to apply for asylum are given a credible fear interview with an asylum officer. 8 U.S.C. § 1225(b)(1)(B). If a noncitizen demonstrates a "significant possibility" that they "could establish eligibility for asylum," they must be taken out of the expedited removal process and placed in full removal proceedings under 8 U.S.C. § 1229a, in which they can pursue asylum and other forms of protection. *See id.* § 1225(b)(1)(B)(v); *see also* 8 C.F.R. § 208.30(e)(2)-(3) (credible fear interview also includes screening for protection under the Convention Against Torture). But a negative finding by the asylum officer is reviewable only by an immigration judge in a summary proceeding held within one week after the credible fear interview; further review is not available. 8 U.S.C. §§ 1225(b)(1)(B)(iii), 1252(a)(2)(A) & (e)(2); 8 C.F.R. § 1208.30.

Congress placed statutory limits on the extent to which the Executive Branch can authorize the use of expedited removal. At its maximum, the statute's authorization of expedited removal encompasses noncitizens who were not lawfully admitted or paroled into the country and not continuously physically present for at least two years "immediately prior to the date of the *determination of inadmissibility under this subparagraph*." 8 U.S.C. § 1225(b)(1)(A)(iii)(II) (emphasis added). Regulations dictate steps that DHS "shall" take "[i]n every case in which the

expedited removal provisions will be applied." 8 C.F.R. § 235.3(b)(2). Those steps include, among other things, an interview; a recording of a "sworn statement"; issuance of Form I-860, Notice of Determination of Expedited Removal; and an opportunity for a credible fear interview. *Id.; see also* Customs and Border Protection Inspector's Field Manual, Chapter 17.15 (Feb. 10, 2006).

From the time Congress created expedited removal in 1996 until shortly before Plaintiffs filed their Complaint, DHS applied expedited removal only to noncitizens who had not yet been placed in removal proceedings. *See* Compl. ¶ 67.

B. The Courthouse Arrest Memoranda

The government has long recognized the importance of avoiding civil immigration arrests at courthouses because of their chilling effect on access to courts and their disruption to judicial operations. DHS codified this decades-long position in a 2021 memorandum that permitted ICE enforcement actions in or near courthouses only in exigent circumstances posing imminent safety risks or when there was no other feasible location and the arrest had been "approved in advance" by a supervisor. *Civil Immigration Enforcement Actions in or near Courthouses* 2 (Apr. 27, 2021) (2021 DHS Memorandum); *see* Compl. ¶¶ 42-44. In 2023, EOIR adopted a policy that recognized additional reasons to minimize courthouse arrests—the safety risks for everyone present, the fact that disincentivizing court appearances would impair EOIR's efficiency and mission, and the desire to reinforce that DHS and EOIR have "separate and distinct roles." Operating Policies and Procedures Memorandum (OPPM) 23-01 at 2-3 (Dec. 11, 2023); *see* Compl. ¶¶ 45-50.

Earlier this year, DHS and EOIR rescinded these policies in memoranda that allowed ICE agents to freely arrest and detain any noncitizen present in an immigration or other courthouse. Caleb Vitello, Acting Director, U.S. Immigration & Customs Enforcement, Policy Number 11072.3, *Interim Guidance: Civil Immigration Enforcement Actions in or near Courthouses* (Interim DHS Arrest Guidance); Sirce E. Owen, Acting Director, EOIR, OPPM 25-06,

Cancellation of Operating Policies and Procedures Memorandum 23-01 (Jan. 28, 2025) (EOIR Courthouse Arrest Memo); Todd M. Lyons, Acting Director, U.S. Immigration & Customs Enforcement, Policy Number 11072.4, *Civil Immigration Enforcement Actions In or Near Courthouses* (May 27, 2025) (Final DHS Arrest Guidance);[1] *see* Compl. ¶¶ 51-59. DHS's new guidance states that such arrests should be made "on a case-by-case basis considering the totality of the circumstances" but provides no details as to relevant considerations. Interim DHS Arrest Guidance at 2; *see also* Final DHS Arrest Guidance at 2; Compl. ¶¶ 55, 59. This new guidance claims that courthouse enforcement actions "can reduce safety risks" because individuals are screened for weapons and other contraband upon entry, but it does not address DHS's prior concern about the chilling effect of courthouse arrests on the fair administration of justice. Interim DHS Arrest Guidance at 1-2, *see* Compl. ¶¶ 57, 59.

Soon after DHS's initial policy change, EOIR likewise rescinded its prior policy to allow arrests in its courthouses. EOIR Courthouse Arrest Memo; *see* Compl. ¶ 58. As justification for the switch, EOIR noted that DHS's new guidance no longer "imposed a blanket restriction" and stated that EOIR "lacks the authority to prohibit DHS from conducting any action it is otherwise lawfully authorized to take." EOIR Courthouse Memo at 1-2. The EOIR guidance also summarily dismisses the agency's prior concerns as "unpersuasive," "pretextual," "unsubstantiated," "vague," "unspecified," "incoherent," and "disingenuous." *Id.* The memorandum makes no effort to explain the basis for this belittling treatment of EOIR's own prior policy beyond the bare statement that noncitizens "with valid claims" have "no reason to fear" courthouse arrests. *Id.*; *see* Compl. ¶ 58.

[1] These Guidance documents can be found at: https://perma.cc/AGN9-24UK (Interim DHS Guidance); https://perma.cc/S9CB-FP96 (EOIR Courthouse Arrest Memo); and https://perma.cc/94F8-QGXG (Final DHS Guidance).

C. The Dismissal Guidance

Shortly after issuing the courthouse arrests memoranda, both EOIR and DHS issued guidance expanding the situations in which full removal proceedings in immigration court could be dismissed. The Complaint alleges based on publicly available information that DHS instructed its attorneys to move to dismiss full removal proceedings to facilitate the arrest of noncitizens and their later placement in expedited removal. Compl. ¶ 60 (citing Hamed Aleaziz et al., *How ICE Is Seeking to Ramp Up Deportations Through Courthouse Arrests*, N.Y. Times (May 30, 2025)). DHS further instructed its attorneys to give two days' notice to ICE before filing dismissal motions and one day's notice to EOIR. *Id.* On the information publicly available, it appears that DHS did not require its attorneys to provide notice to the affected noncitizens. Rather, it encouraged dismissals to "accelerate [the] deportations of more people." *Id.*

Two Acting Regional Deputy Chief Immigration Judges issued corresponding guidance to immigration judges across the country. Despite regulations and court rules stating that motions are to be made in advance and in writing, their guidance stated that DHS's motions to dismiss (and no other motions) could be made "orally" without advance notice and immediately "decided from the bench." Am. Immigr. Laws. Ass'n, *Practice Alert: EOIR Guidance to Immigration Judges on Dismissals and Other Adjudications* (June 12, 2025), https://perma.cc/J84U-WCRP (EOIR Dismissal Guidance); *see* Compl. ¶¶ 61-65. The same guidance stated that dismissal was proper in any kind of changed circumstance, not just the changed circumstances "of the case" contemplated by regulation. *See id.* The Guidance contains no justifications for these policies beyond an unrelated statement that EOIR's detained caseload had "greatly increased." *Id.*

On September 23, 2025—after this lawsuit was filed and after another court had already found the EOIR Dismissal Guidance to be unlawful—the Acting Deputy Director of EOIR withdrew the EOIR Dismissal Guidance, acknowledging that the guidance had been "poorly

drafted." *See* Dkt. No. 35-1, at 2. That recission, however, did not require the reinstatement of immigration proceedings that were wrongfully dismissed while the Guidance was in force.

D. Changes to Expedited Removal and the Use of Concurrent Proceedings

In the same period, DHS also expanded expedited removal. While expedited removal historically had been reserved for newly arriving immigrants, in January 2025, DHS attempted to expand it to cover noncitizens nationwide "who have been continuously present in the United States for less than two years." *See* 69 Fed. Reg. 48,877, 48,880 (Aug. 11, 2004); 90 Fed. Reg. 8139, 8139-40 (Jan. 24, 2025); *see also* Compl. ¶¶ 87, 96. That expansion is being challenged in other cases in this district. *See Make the Rd. N.Y. v. Noem*, No. 25-cv-00190 (D.D.C. filed Jan. 22, 2025); *CHIRLA v. Noem*, No. 25-cv-872 (D.D.C. filed Mar. 24, 2025); Compl. ¶ 87.

Then, in May 2025—around the same time it issued the Dismissal Guidance and perhaps in the same document—DHS expanded its interpretation of expedited removal. For the first time, DHS interpreted expedited removal as applying to any noncitizen who has been present in the United States *for any amount of time* so long as DHS had alleged within two years of the noncitizen's entry that they entered the United States without valid entry documents. *See* Compl. ¶¶ 91, 99. Under Defendants' new theory, individuals can be subject to expedited removal if they experienced an initial encounter with immigration authorities within two years of entry. It does not matter if, during that encounter, the person did not receive a "determination of inadmissibility" as the statute requires and was not issued Form I-860, the Notice and Determination of Expedited Removal required by regulation. *See id.* ¶¶ 93-99. DHS relied on this interpretation to place five Individual Plaintiffs, and many other noncitizens, into expedited removal. *See id.* ¶ 100.

Shortly before Plaintiffs filed the Complaint, Defendants expanded expedited removal another way. Previously, DHS had applied expedited removal only to noncitizens who were not in full removal proceedings. Defendants abruptly changed course, placing nine Individual Plaintiffs

and countless others into expedited removal even though they were in full removal proceedings that remained ongoing either because the applicant had appealed the dismissal of proceedings or because the time to do so had not yet lapsed. *See id.* ¶¶ 76, 101; 8 U.S.C. § 1101(a)(47)(B)(ii).

E. The Plaintiffs

Plaintiffs are individuals who have been harmed by Defendants' policies and organizations whose ability to serve noncitizens has been compromised by those policies.[2] To remedy their injuries, Plaintiffs seek vacatur of the policies and declaratory relief. Where appropriate, Individual Plaintiffs also seek individualized relief to return them to the status quo ante.

1. The Individual Plaintiffs have suffered direct and significant harms resulting from Defendants' changed policies. All Individual Plaintiffs arrived at hearings in immigration court, as instructed by Defendants, and DHS made previously unannounced oral motions to dismiss in each of their cases. Compl. ¶¶ 16-27. For most of them (everyone except M.S.), an immigration judge abruptly granted the motion and dismissed the proceedings, usually with no reasoning. *Id.* Most of them[3](everyone except M.S. and K.M.) were then arrested and detained by ICE at the immigration courthouse. *Id.* And most (everyone except R.A. and D.C.) had filed asylum applications prior to the dismissal of their removal proceedings and their subsequent arrests. *Id.*

Plaintiff R.A, meanwhile, brought his completed asylum form with him to his first immigration court hearing, but the judge granted DHS's motion to dismiss over his pleas for the judge to allow him to file his application. *Id.* ¶ 26. R.A. was then arrested, and he was deported less than 30 days after his proceedings were dismissed, during the window in which the dismissal was not yet final and he could timely appeal. *Id.* ¶ 26, 101. He is now living in hiding in Ecuador.

---

[2] The circumstances of J.L.'s case have changed, and Plaintiffs will be filing a notice voluntarily dismissing him from this case.

[3] K.M. was initially arrested but released after she experienced serious medical distress.

Id. ¶ 26. And many Individual Plaintiffs, including L.H., D.C., K.M., E.M., and M.K. filed appeals of their dismissed removal proceedings but were placed into expedited removal while that appeal or the window to file was pending. *Id.* ¶¶ 16, 19, 22-24.

These sudden events significantly harmed the Individual Plaintiffs. The confusion and trauma caused by the unexpected dismissals and arrests caused both K.M., a woman fleeing [redacted] and M.K., a woman who endured [redacted] to collapse and require medical care. *Id.* ¶¶ 22, 24, 106. Other Individual Plaintiffs were separated from children and other family members and shuttled between multiple detention centers across the country, in some cases thousands of miles away from counsel and family, including U.S. citizen spouses. *Id.* ¶¶ 104, 107, 109.

2. The core business activities of Organizational Plaintiffs include providing legal services to low-income immigrants in removal proceedings under 8 U.S.C. § 1229a. Defendants' policy changes have directly impaired their ability to conduct these activities by forcing Organizational Plaintiffs to serve fewer clients and overhaul their operations. *See id.* ¶¶ 28-29, 110-120.

Immigrant Advocates Response Collaborative (I-ARC) is dedicated to assisting all immigrant New Yorkers in immigration court proceedings. I-ARC's core services include a Friend of the Court program through which it has assisted more than 3,000 pro se noncitizens. *Id.* ¶ 111. The chaos and fear caused by the possibility of dismissals, courthouse arrests, and after-the-fact placement into expedited removal have led to "a stark decrease in the number of" noncitizens I-ARC can assist. *Id.* ¶¶ 111-14. And Defendants' policies have impaired I-ARC's "ability to provide accurate, effective, and tailored" services to those it can still assist. *Id.* ¶ 112.

The core services of American Gateways include both representation in removal proceedings and assistance to pro se noncitizens. *Id.* ¶ 115. Each of the challenged policies has the

effect of funneling noncitizens out of full removal proceedings or into expedited removal proceedings, where American Gateways' ability to provide services is severely limited. *Id.* ¶ 116. The policies have caused American Gateways, like I-ARC, to be able to serve fewer clients, both because it can no longer reach pro se individuals at the courthouse it serves and because it must expend significant work to help existing clients countermand the harms caused by these policies. *Id.* ¶ 117-18. When cases are dismissed and noncitizens are arrested, American Gateways loses its ability to assist the affected noncitizens almost entirely. *Id.* ¶ 119.

ARGUMENT

I. Plaintiffs Have Article III Standing to Challenge Defendants' Policies.

As the Complaint sets forth in detail, the Organizational and Individual Plaintiffs are suffering acute, ongoing harm from each of the policy changes at issue that supports Article III standing. Even Defendants appear to acknowledge that at least one plaintiff has standing to bring each claim in the complaint. *See* MTD 4-12 (arguing only that certain plaintiffs lack standing). As a result, there is no need to evaluate "other theories of standing" at this juncture because the suit may proceed with even a single plaintiff who has standing. *Biden v. Nebraska*, 600 U.S. 477, 489 (2023). In any event, Defendants are wrong that any plaintiff lacks Article III standing.

A. Organizational Plaintiffs Have Standing.

Both I-ARC and American Gateways have organizational standing to challenge the policies at issue.[4] They each provide services to immigrants appearing in immigration court and have had those operations impeded by the challenged policies. That direct burden on their core activities readily suffices to establish standing.

[4] The complaint does not assert an associational standing theory, so Defendants' arguments on that score (MTD10-11) are irrelevant. Plaintiffs reserve the right to amend the complaint to add that theory if further factual development regarding the as-yet undisclosed policies warrant.

Organizations can "'sue on their own behalf for injuries they have sustained'" by meeting "the usual standards for injury in fact, causation, and redressability." *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 393–94 (2024) ("*Alliance*") (quoting *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 n.19 (1982)). And "[a]t the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice, for on a motion to dismiss we presume that general allegations embrace those specific facts that are necessary to support the claim." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992) (internal quotation marks and alteration omitted). Here, the challenged policies have "directly affected and interfered with" the organizations' "core business activities." *Alliance*, 602 U.S. at 395; *see* Compl. ¶¶ 110-120 (alleging harms to the organizations' core work). That constitutes an injury in fact that is traceable to Defendants' actions and redressable by vacating the illegal policies. Defendants' contrary arguments fail.

I-ARC. Defendants first suggest that I-ARC's harms are not caused by the policies at issue. MTD 7. That is refuted by the very paragraph they quote, which alleges that "Defendants' policies have caused significant fear in the immigrant community," resulting in "fewer pro se respondents [] appearing for their scheduled hearings" and fewer clients for I-ARC to serve. Compl. ¶ 114. Indeed, it is an entirely "predictable, commonsense inference[]" that policies expanding arrests at immigration courts and closing off pathways for relief through immigration court proceedings would result in fewer noncitizens attending those proceedings. *See Diamond Alt. Energy, LLC v. EPA*, 145 S.Ct. 2121, 2136 (2025). Similarly, the Complaint explains that each legal orientation it conducts now takes longer because of the policy changes at issue, which means I-ARC can assist fewer individuals. Compl. ¶ 113. Particularly at the pleading stage, where all inferences must be drawn in Plaintiffs' favor, the Complaint's allegations establish causation.

Defendants next argue that I-ARC's core business activities are more limited than the Complaint alleges, so it could not suffer an injury from the increased time necessary to advise its clients. *See* MTD 7. There is no basis for rejecting the Complaint's well-pleaded allegations setting forth I-ARC's business activities, which explain that the organization "has provided legal orientations and know your rights counseling to [immigration court] respondents that provided an overview of the court procedure and what they could expect" during immigration court proceedings. Compl. ¶ 112. Defendants seek to narrow those allegations by citing I-ARC's description of its activities on its website. MTD 7. But that description supports the allegations in the Complaint. *See*, I-ARC, *Friend of the Court Program*, https://perma.cc/KC7K-757L (last visited Oct. 17, 2025) (The program "ensures newcomers will have access to legal help, orientation, and referrals at the moment they need it most" and "help[s] respondents better understand court proceedings."). The Court should reject Defendants' crabbed understanding of I-ARC's business.

Finally, Defendants implausibly suggest that I-ARC suffers no harm from policy changes that require it to modify its programming and diminish its ability to serve clients. MTD 7-8. If a government regulation made it more onerous for a business to provide its services, resulting in fewer customers served, there would be little question that the business had standing. *See Diamond Alt. Energy*, 145 S.Ct. at 2135–36; *see also Alliance*, 602 U.S. at 395 (comparing a cognizable organizational injury to a cognizable business injury). So too here. The challenged policies have forced I-ARC to modify its programming in ways that make it take longer to provide services, resulting in being able to serve fewer clients. Compl. ¶ 112. In turn, that negatively impacts other aspects of its business. *Id.* ¶ 113. And the fact that fewer noncitizens appear at immigration court means that I-ARC has diminished access to clients. *See id.* ¶ 114. In sum, the evident effect of the

challenged policies is to reduce I-ARC's ability to carry out its core activity of serving noncitizens appearing at immigration court both by reducing its access to those clients and by making each consultation more resource-intensive. Those two effects "perceptibly impair[]" I-ARC's ability to provide services to its clients. *Alliance*, 602 U.S. at 395 (quoting *Havens*, 455 U.S. at 379).

None of those harms is a mere ideological objection to or disagreement with the challenged policies, as Defendants suggest. *See* MTD 8. The harms to I-ARC instead fit comfortably within the parameters the D.C. Circuit and this Court have recognized for organizational injuries. *See, e.g.*, *Friends of Animals v. Bernhardt*, 961 F.3d 1197, 1208 (D.C. Cir. 2020) (crediting plaintiff's allegations of increased expenditures to gather additional information for and to update educational materials because "'it is critical' to the organization's educational work 'to have up-to-date information' on the [agency's] policies"); *League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 9 (D.C. Cir. 2016) (crediting the plaintiff organizations' assertions that "new obstacles unquestionably make it more difficult for the Leagues to accomplish their primary mission of registering voters"); *People for the Ethical Treatment of Animals v. USDA*, 797 F.3d 1087, 1094 (D.C. Cir. 2015) (crediting an "alleged inhibition of their daily operations" as "an injury both concrete and specific to the work in which they are engaged"); *Cap. Area Immigrants' Rts. Coal. v. Trump*, 471 F. Supp. 3d 25, 38–39 (D.D.C. 2020) (*CAIR Coal.*) (holding that organizations had standing to challenge a rule that "w[ould] frustrate their ability to provide legal services directly to asylum applicants, a core component of their respective missions"). And it is a far cry from the theory rejected in *Alliance*, which explained that an organization "cannot spend its way into standing" by "expending money to . . . advocate against the defendant's action." 602 U.S. at 394–95. I-ARC's programming is not advocacy for or against the challenged policies; rather its core

business—assistance to noncitizens in immigration court proceedings—is what is made more difficult to provide by the policies.

American Gateways. Defendants' arguments fare no better as to American Gateways. The challenged actions directly impede American Gateways' core business activities, including representing noncitizens in removal proceedings and assisting pro se respondents in the San Antonio immigration court. Compl. ¶ 115. By reducing American Gateways' access to clients—its customers—and increasing the difficulty of serving them consistent with professional obligations, *id.* ¶¶ 116-120, Defendants have "directly affected and interfered with" the organization's "core business activities." *Alliance*, 602 U.S. at 395; *see also, e.g.*, *Immigrant Defs. L. Ctr. v. Noem*, 145 F.4th 972, 988 (9th Cir. 2025) (holding that an organization had standing to challenge an immigration policy that required it to "expend resources" on work "to continue carrying out its core business activities and longstanding mission" of "providing direct representation, counseling, and legal assistance to noncitizens in removal proceedings").

That is not a "derivative form of injury," as Defendants suggest. MTD 9. Nor is the alleged harm "expending money to . . . advocate against the defendant's action." *Id.* (quoting *Alliance*, 602 U.S. at 394). American Gateways has not alleged that its standing arises from expenditures to advocate against the challenged policies, but rather from the effect those policies have on the representation American Gateways has provided to noncitizens both before and after Defendants changed their policies. For the same reason, Defendants' citation to *Turlock Irrigation District v. FERC*, 786 F.3d 18 (D.C. Cir. 2015), is misplaced. That case explains that "expenditure of resources on advocacy" regarding the challenged policy is not enough to confer standing, whether such "advocacy takes place through litigation or administrative proceedings." *Id.* at 24. Again, that

is not the harm alleged by American Gateways. The organization "allege[s] impairment of its ability to provide services," to clients and pro se Respondents and thus suffers an injury in fact. *Id.*

Second, Defendants assert that vacating the challenged policies will not necessarily alleviate American Gateways' injuries because Defendants could still move to dismiss some removal proceedings or conduct some arrests of noncitizens. MTD 9-10. But prior to Defendants' implementation of the challenged policies, both DOJ and DHS had policies that limited the bases for a motion to dismiss, provided an opportunity to respond to a motion to dismiss, and curtailed the circumstances in which courthouse arrests were permitted. Vacating the challenged policies would "ha[ve] the effect of reinstating the rules previously in force," *Action on Smoking & Health v. C.A.B.*, 713 F.2d 795, 797 (D.C. Cir. 1983) (per curiam), thereby reducing the burdens on American Gateways arising from the increase in motions to dismiss and courthouse arrests. That suffices to demonstrate redressability. Plaintiffs need not show that the requested remedy would provide "full redress" because even a "partial remedy satisfies the redressability requirement." *Uzuegbunam v. Preczewski*, 592 U.S. 279, 291 (2021) (internal quotation marks omitted).

Declaratory Relief. In a footnote devoid of argument or citation to legal authority, Defendants suggest that declaratory relief is insufficient to remedy the Organizational Plaintiffs' harms. MTD 17 n.4. This is difficult to understand, as declaratory relief is not "illusory." *Anatol Zukerman & Charles Krause Reporting, LLC v. USPS*, 64 F.4th 1354, 1366 (D.C. Cir. 2023). Among other things, a declaratory judgment would clarify the legal relationships between the Organizational Plaintiffs and the government by establishing that the challenged policy changes were unlawful, which would have res judicata effect. *See id.* Nothing more is required to demonstrate redressability. *See Guitierrez v. Saenz*, 145 S.Ct. 2258, 2266 (2025) (holding that a declaratory judgment would redress constitutional injury by "ordering a change in the legal status

of the parties" (internal quotation marks & brackets omitted)). In any event, the Organizational Plaintiffs also seek vacatur of the challenged policies, which would redress their harms.

B. Individual Plaintiffs Have Standing.

Because each of the Individual Plaintiffs has been subject to one or more of the challenged policies, they have standing to contest those policies' legality. *See Diamond Alt. Energy*, 145 S.Ct. at 2134 ("Importantly, if a plaintiff is an object of the action (or forgone action) at issue, then there is ordinarily little question that the action or inaction has caused him injury, and that a judgment preventing or requiring the action will redress it." (internal quotation marks omitted)). It is therefore no surprise that Defendants do not contest most of the Individual Plaintiffs' standing. The presence of a single plaintiff with standing allows the suit to proceed, *Mendoza v. Perez*, 754 F.3d 1002, 1010 (D.C. Cir. 2014), so there is "no need to consider" Defendants' other standing arguments, *In re Navy Chaplaincy*, 697 F.3d 1171, 1178 (D.C. Cir. 2012). In any event, Defendants' standing arguments as to particular Individual Plaintiffs fail.

R.A. Defendants first argue that R.A. cannot receive any redress because he has already been deported. MTD 11. That is inconsistent with D.C. Circuit precedent, which has permitted similar challenges to proceed even after a noncitizen's removal. *See Am. Immigr. Laws. Ass'n v. Reno*, 199 F.3d 1352, 1363 (D.C. Cir. 2000) (holding that, "[w]hen a[noncitizen] returned to his native country, nothing prevented him from bringing suit here" under section 1252(e)(3)); *Kiakombua v. Wolf*, 498 F. Supp. 3d 1, 29 (D.D.C. 2020) ("The D.C. Circuit permits the continuation of similar challenges by noncitizens whom the government has already removed."). And there is "little doubt" that this Court can grant relief to individuals "notwithstanding the fact that they have been returned to their home countries," including by returning unlawfully deported plaintiffs to the United States to provide them with proceedings "consistent with the immigration laws." *Kiakombua*, 498 F. Supp. 3d at 29. The unlawful dismissal of R.A.'s removal proceedings,

his arrest in immigration court and placement into expedited removal, and his deportation to a country where he fears persecution under an expedited removal order are therefore harms that are redressable by this Court.[5]

In addition, if R.A. were to try to return to the United States and seek asylum again, he would be subject to reinstatement of his prior removal order under 8 U.S.C. § 1231(a)(5). A declaration from this Court that that order was obtained unlawfully would prevent it from being used as a bar to asylum in a future proceeding. That, too, offers an avenue for effective redress. *See Las Ams. Immigrant Advoc. Ctr. v. DHS*, 783 F. Supp. 3d 200, 234–35 (D.D.C. 2025) (declining to order parole of removed plaintiffs but nonetheless ordering vacatur of their removal orders), *appeal pending*, No. 25-52123 (D.C. Cir.).

M.S. Defendants also contend that M.S.—whose immigration-court proceedings were dismissed and who Defendants seem to acknowledge has standing to contest the dismissal policies—cannot challenge the courthouse arrest, expedited removal, and concurrent proceedings policies because he has not yet been detained or placed in expedited removal proceedings. But it is well-settled that a plaintiff can pursue "forward-looking, injunctive relief" to prevent a threatened harm from occurring, "so long as the risk of harm is sufficiently imminent and substantial." *Jibril v. Mayorkas*, 20 F.4th 804, 817 (D.C. Cir. 2021) (quoting *TransUnion, Inc. v. Ramirez*, 594 U.S. 413, 435 (2021)). Where "the threatened acts that will cause injury are

[5] To the extent that Defendants contend this Court lacks authority to issue the requested relief, such an argument "'confuses mootness with the merits.'" *Kiakombua*, 498 F. Supp. 3d at 29 (noting that "[t]he scope of relief 'goes to the meaning of the [applicable statute] and the legal availability of a certain kind of relief[,]'" and that the "Court's alleged lack of authority to issue the requested relief does not render a legal claim moot") (quoting *Chafin v. Chafin*, 568 U.S. 165, 174 (2013)). The one out-of-circuit case that Defendants cite, *Morales-Morales v. Barr*, 933 F.3d 456, 462 (5th Cir. 2019), held only that a challenge to a noncitizen's *detention* was rendered moot by her release through deportation. The Fifth Circuit went on to consider her other claims on their merits and rule for petitioner, showing that even if that case controlled it would not render R.A.'s claims moot.

authorized or part of a policy," it is "significantly more likely that the injury will occur again"—particularly where other plaintiffs have already been subjected to the policy. *Hinton v. District of Columbia*, 567 F. Supp. 3d 30, 49 (D.D.C. 2021) (quoting *Does I Through III v. District of Columbia*, 216 F.R.D. 5, 11 (D.D.C. 2003)); *see also id.* at 49 n.9 (plaintiff's standing would be "better settled" if she had joined other plaintiffs who were subjected to the challenged policy).

Here, M.S. fears imminent placement into expedited removal because DHS has sought to dismiss his full removal proceedings on the basis that he is "amenable to" expedited removal. Compl. ¶¶ 17, 60. And as soon as M.S. reenters full removal proceedings after receiving a credible fear interview, *id.* ¶ 60, he faces likely arrest pursuant to the courthouse arrest policy. These threats are sufficiently imminent to establish M.S.'s standing.[6]

II. Section 1252 Does Not Strip This Court of Jurisdiction Over Plaintiffs' Claims.

Having failed to show that any claim should be dismissed for lack of standing, Defendants invoke several jurisdictional provisions of the INA with respect to some claims. These arguments lack merit. First, 8 U.S.C. § 1252(a)(2)(A) and (e)(3) expressly channel Plaintiffs' claims related to expedited removal to this Court and give it jurisdiction to review the legality of the expedited-removal policies challenged here. Second, the provisions relating to whether and how a final order of removal may be challenged, 8 U.S.C. § 1252(b)(9), and precluding review over certain actions taken in removal proceedings, *id.* § 1252(g), are inapplicable. Nothing in the Complaint arises from a final order of removal or relates to those actions, so those provisions have no bearing here.

[6] Defendants make similar arguments as to J.L. Those arguments fail for similar reasons, but intervening events in J.L.'s case substantially changed his situation such that J.L. will be voluntarily dismissing his claims against Defendants. Specifically, J.L. has been released from detention and ICE has stipulated to a grant of protection in his case.

A. Section 1252(e)(3) Does Not Bar Any of Plaintiffs' Claims.

Defendants invoke two provisions regarding whether and how challenges to expedited removal procedures may be brought. It is important to understand how these provisions work in tandem. The first provision, 8 U.S.C. § 1252(a)(2)(A), generally precludes review of claims relating to expedited removal, "except as provided in subsection (e)." In turn, that subsection explicitly authorizes challenges to actions taken to implement the expedited-removal system. Specifically, this Court may review whether "a written policy directive, written policy guideline, or written procedure" issued to implement the expedited-removal scheme "is not consistent with applicable provisions of this subchapter or is otherwise in violation of law." *Id.* § 1252(e)(3)(A)(ii). Thus, Congress has provided for "more traditional judicial review of 'challenges on validity of the [expedited removal] system,'" as long as the claims are timely brought. *Grace v. Barr*, 965 F.3d 883, 891 (D.C. Cir. 2020) (quoting *Make the Rd.*, 962 F.3d at 625). Claims brought under this subsection are not amenable to class certification. 8 U.S.C. § 1252(e)(1)(B).

Defendants' reliance on these provisions is misplaced for two reasons. First, many of Plaintiffs' claims have nothing to do with expedited removal. As to those claims, Section 1252(a) and (e) have no application. Second, the subset of claims that do related to expedited removal are all timely brought pursuant to Section 1252(e)(3), which confers jurisdiction on this Court.

1. Plaintiffs' challenges to the Courthouse Arrest Guidance (Counts I and II) and the Dismissal Guidance (Counts III through VII) are not subject to Section 1252(a) and (e) because they do not implicate the implementation of expedited removal.

The Dismissal Guidance instructs immigration judges and DHS attorneys about how to act with respect to *full* removal proceedings in immigration courts, not how to implement expedited removal. This is particularly evident given that some Individual Plaintiffs have had their

immigration court cases dismissed under these policies but have *not* been referred for expedited removal processing. Compl. ¶ 105.

Similarly, the challenges to the Courthouse Arrest Guidance are not subject to Section 1252(e). Although Defendants quote the statute at length, they never explain how the Courthouse Arrest Guidance could be viewed as implementing the expedited removal scheme. *See* MTD 13-14. Nor could they. None of the memoranda so much as mentions 8 U.S.C. § 1225 or expedited removal. *See supra,* Interim DHS Arrest Guidance; Final DHS Arrest Guidance; EOIR Courthouse Arrest Memo. That omission is unsurprising. These memoranda apply to arrests at immigration courts and other courthouses. And the noncitizens arrested at immigration court have been present for full removal proceedings, not for expedited removal proceedings. *See* Compl. ¶ 60. Far from "implement[ing]" the expedited removal statute, 8 U.S.C. § 1252(a)(2)(A)(iv), then, the Courthouse Arrest Guidance does not implicate expedited removal at all.

The result is that those challenges are not subject Section 1252(a) and (e). Rather, this Court has jurisdiction over those claims, like most APA claims, under 28 U.S.C. § 1331. *See, e.g.*, *CAIR Coal.*, 471 F. Supp. 3d at 39–40; *O.A. v. Trump*, 404 F. Supp. 3d 109, 140–41 (D.D.C. 2019). As a result, the claims are subject to neither the 60-day limitations period nor the bar on class actions applicable to claims brought pursuant to Section 1252(e).[7]

2. By contrast, Plaintiffs' claims concerning the Expansion of Expedited Removal (Counts VIII and IX) and the Concurrent Proceedings Guidance (Counts X and XI) do concern expedited

[7] Defendants also cite 8 U.S.C. § 1226(e), though they do not base any arguments on it. MTD 13. That provision cannot bar the courthouse-arrest claims, because it bars review only of "a 'discretionary judgment' by the Attorney General or a 'decision' that the Attorney General has made regarding [a noncitizen's] detention or release." *Demore v. Kim*, 538 U.S. 510, 516 (2003) (quoting 8 U.S.C. § 1226(e)). It does not bar review of systemic policy challenges like those asserted here. *See, e.g., id.* at 517; *R.I.L-R v. Johnson*, 80 F. Supp. 3d 164, 176–77 (D.D.C. 2015).

removal. But those claims are properly brought in this Court under Section 1252(e)(3), and Defendants never contend otherwise. They are challenges to written policies implementing the expedited-removal statute brought within 60 days of the policies' first implementation and not on a class-wide basis. *See* 8 U.S.C. § 1252(e)(3)(A)-(B); Compl. ¶ ¶ 177, 182, 188, 196.

Defendants instead attempt to limit the scope of this Court's review by suggesting that Section 1252(e)(3) does not authorize arbitrary and capricious review. MTD 15. They are wrong. The D.C. Circuit has expressly vacated policies challenged under (e)(3) as arbitrary and capricious, *see Grace*, 965 F.3d at 900, 903, 908, a disposition inconsistent with Defendants' argument. That is no surprise: Congress authorized this Court to review whether expedited-removal policies are "in violation of law," 8 U.S.C. § 1252(e)(3)(ii), and the APA makes arbitrary or capricious agency action "unlawful," 5 U.S.C. § 706(2). The plain text of the APA thus forecloses Defendants' argument, as another court in this District recently held. *See Las Americas*, 783 F. Supp. 3d at 222.

B. Neither Section 1252(b)(9) Nor 1252(g) Bars Plaintiffs' Challenges to the Dismissal Guidance.

Defendants also argue that two other provisions, Section 1252(b)(9) and Section 1252(g), bar the claims concerning the Dismissal Guidance. These arguments are meritless.

Section 1252(b)(9). Section 1252(b)(9). The INA channels challenges to final orders of removal into a single proceeding before the relevant court of appeals. *See* 8 U.S.C. § 1252(b). But all of Section 1252(b), including the subsection on which Defendants rely (Section 1252(b)(9)), expressly "sets out requirements only '[w]ith respect to review of an order of removal.'" *Özturk v. Hyde*, 136 F.4th 382, 399 (2d Cir. 2025) (quoting 8 U.S.C. § 1252(b)). This text, which Defendants tellingly ignore, means that although § 1252(b)(9) channels review of issues into a single judicial proceeding, it does so only with respect to issues "arising from a final order of removal." *Nasrallah v. Barr*, 590 U.S. 573, 580 (2020); *see, e.g., INS v. St. Cyr*, 533 U.S. 289, 313 (2001) (Section

1252(b)(9) applicable "only with respect to review of an order of removal") (internal quotation marks omitted). This Court has expressly recognized as much. *See Mass. Coal. for Immigr. Reform v. DHS*, 621 F. Supp. 3d 84, 98 (D.D.C. 2022) (McFadden, J.) (quoting *St. Cyr*). This limit makes sense. Because 8 U.S.C. § 1252(a)(5) confers jurisdiction on the courts of appeals only to "review . . . an order of removal," claims that *do not* "arise from" an order of removal "cannot effectively be handled" in the petition for review process. *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007); *accord Duron v. Johnson*, 898 F.3d 644, 647 (5th Cir. 2018).

Defendants cannot rely on this provision to foreclose district-court review of Plaintiffs' challenge to the Dismissal Guidance. *See* MTD 23-25. The statutory language limiting the scope of § 1252(b)(9) to situations in which there is a final order of removal forecloses Defendants' argument. If removal proceedings are dismissed (for any reason), then those proceedings will not result in a final order of removal. Similarly, the Organizational Plaintiffs will never be subject to a final order of removal, so the implication of Defendants' argument appears to be that they could never challenge the Dismissal Guidance. That is not the law. *See CAIR Coal.*, 471 F. Supp. 3d at 39–40 (rejecting argument that Section 1252(b)(9) "preclude[s] an organization from challenging an immigration-related rule under the APA as a matter of law"); *id.* at 60 n.29 ("The Court sees no reason why the relief available to the Organizational Plaintiffs would be governed by Section 1252."). The Supreme Court has rejected expansive interpretations of Section 1252(b)(9) that would lead to such "staggering results." *Jennings v. Rodriguez*, 583 U.S. 281, 849 (2018).

Indeed, even the cases on which Defendants rely recognize that "any claim that does not arise from removal proceedings" is not subject to Section 1252(b)(9). *See J.E.F.M. v. Lynch*, 837 F.3d 1026, 1032 (9th Cir. 2016); *see also Aguilar*, 510 F.3d at 11 (recognizing that the statute does not cover "claims that are independent of, or wholly collateral to, the removal process"). At

bottom, "Plaintiffs' legal challenges to the" Dismissal Guidance "originate in an . . . agency action" that is "entirely separate" from removal proceedings: the promulgation of policy memoranda "of general applicability" by DHS and DOJ. *CLINIC v. EOIR*, 513 F. Supp. 3d 154, 168 (D.D.C. 2021); *accord O.A.*, 404 F. Supp. 3d at 134; *see also McNary v. Haitian Refugee Ctr.*, 498 U.S. 479, 492 (1991) (exempting policy and practice challenges from the scope of a similar statute). As a result, nothing requires the claims to be channeled into a petition for review arising from a final order of removal.

Section 1252(g). Defendants fall back on another provision precluding review of claims "by or on behalf of any [noncitizen] arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders." 8 U.S.C. § 1252(g). The Supreme Court has explained that this provision is "narrow" and does not "cover[] 'all claims arising from deportation proceedings' or impose[] 'a general jurisdictional limitation.'" *DHS v. Regents of the Univ. of California*, 140 S.Ct. 1891, 1907 (2020) (quoting *Reno v. Am.-Arab Anti-Discrim. Comm.*, 525 U.S. 471, 482 (1999) ("*AADC*")). Instead, it "applies only to three discrete actions the Attorney General may take: her 'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.'" *AADC*, 525 U.S. at 482 (quoting 8 U.S.C. § 1252(g)) (emphasis in original).

Defendants make no attempt to explain how any of those three actions encompasses challenges to the Dismissal Guidance. None does. It goes without saying that Dismissal Guidance has nothing to do with either the "commencement" of proceedings or the "execution" of a removal order. The Guidance itself also does not represent any attempt to adjudicate cases but instead sets policy for immigration judges and DHS attorneys. And to the extent that Defendants argue for the first time on reply that a dismissal is an "adjudication," that claim would fail. The term adjudication

refers to "[t]he legal process of resolving a dispute" or of "judicially deciding a case." Black's Law Dictionary (12th ed. 2024); *accord* Webster's New World College Dictionary 17 (3d ed. 1997) ("the act of adjudicating," with "adjudicate" meaning "to hear and decide"). But dismissal does not "resolve" or "hear and decide" the issues in a removal proceeding: It leaves open the question whether a person is removable. It also does not resolve an asylum application (or any other application for relief), does not prevent a noncitizen from applying for relief again, and has no bearing on any subsequent application for relief. When dismissing cases pursuant to the Guidance, therefore, immigration judges *give up* their authority to adjudicate cases. Challenges to the dismissal memoranda, therefore, are not barred by § 1252(g).

The application of Section 1252(g) is particularly improper as to the Organizational Plaintiffs. The plain text of that provision addresses only claims brought "by or on behalf of" a noncitizen. The Organizational Plaintiffs press their own claims. Thus, even if dismissals were a discrete action covered by Section 1252(g), that provision would still not bar their claims. *See, e.g.*, *Texas v. United States*, 809 F.3d 134, 164 (5th Cir. 2015).

III. Plaintiffs Properly Seek Vacatur and Declaratory Relief as Remedies for Their Claims in This Suit.

Defendants next offer a series of arguments that generally seek to demonstrate that the relief Plaintiffs seek in this suit is unavailable. These arguments are premised on inapplicable provisions and misunderstand the process the INA establishes for presenting systematic challenges to the implementation of expedited removal.

A. Declaratory Relief and Vacatur Are Available Remedies.

Contrary to Defendants' assertions, all Plaintiffs can obtain both a declaratory judgment that the challenged policies are unlawful and vacatur of those policies, including on a class-wide

basis against some of the policies.[8] Defendants rely (MTD 17, 21) on a statutory provision entitled "Limit on injunctive relief," which prohibits courts "other than the Supreme Court" from "enjoin[ing] or restrain[ing] the operation" of certain parts of the INA. 8 U.S.C. § 1252(f)(1). "By its plain terms," that provision "is nothing more or less than a limit on *injunctive* relief." *AADC*, 525 U.S. at 481 (emphasis added); *see also Biden v. Texas*, 597 U.S. 785, 798 (2022) (Section 1252(f)'s title "makes clear the narrowness of its scope."). Thus, where it applies, Section 1252(f)(1) simply "prohibits lower courts from *entering injunctions*." *Garland v. Aleman Gonzalez*, 596 U.S. 543, 550 (2022) (emphasis added). It imposes no limits on either declaratory relief or vacatur, which are separate equitable remedies. *See Steffel v. Thompson*, 415 U.S. 452, 466 (1974) (contrasting a declaratory judgment with an injunction); *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 166 (2010) (contrasting vacatur with an injunction).

Unsurprisingly, "all courts that have addressed the issue"—including the Fifth and Ninth Circuits and numerous courts in this District—"have rejected the government's construction" and found that section § 1252(f)(1) does not bar vacatur under the APA. *Nat'l TPS Alliance v. Noem*, No. 25-cv-01766, 2025 WL 957677, at *12 (N.D. Cal. Mar. 31, 2025); *see, e.g., Immigrant Defs. L. Ctr. v. Noem*, 145 F.4th 972, 990 (9th Cir. 2025); *Texas v. United States*, 40 F.4th 205, 219 (5th Cir. 2022); *Coal. for Humane Immigrant Rts. v. Noem*, No. 25-cv-872, 2025 WL 2192986, at *13 (D.D.C. Aug. 1, 2025), *appeal filed*, No. 25-5289 (D.C. Cir.); *Refugee & Immigrant Ctr. for Educ. & Legal Servs. v. Noem*, No. 25-cv-306, 2025 WL 1825431, at *19 (D.D.C. July 2, 2025), *appeal filed*, No. 25-5243 (D.C. Cir.).

[8] As discussed above, the Complaint does not include class claims or seek class relief for policies subject to Section 1252(e)(3) (Counts VIII-XI). *See supra* p. 23.

Defendants repeatedly invoke *N.S. v. Dixon*, 141 F.4th 279 (D.C. Cir. 2025), but that case expressly supports the relief Plaintiffs seek. MTD 14, 17. In *N.S.*, the D.C. Circuit reversed a class-wide injunction enjoining U.S. Marshals from arresting and detaining any criminal defendant suspected of a civil immigration violation in D.C. Superior Court. 141 F.4th at 290. In so holding, the court of appeals confirmed that Section 1252(f)(1) "does not proscribe issuance of a declaratory judgment," and it further observed that "[a]t least one court of appeals has held § 1252(f)(1) does not bar vacatur under the APA." *Id.* at 290 n.7 (citing *Texas*, 40 F.4th 205).

B. The Individual Plaintiffs Have Available Remedies That Need Not Be Sought Through Habeas.

Defendants unsuccessfully attempt to demonstrate that the Individual Plaintiffs cannot obtain relief with respect to the Courthouse Arrest Guidance and the expansion of expedited removal for people present two years. MTD 17-19, 21 23. The argument appears to be that the INA does not authorize challenges to "arrest and detention" policies and that, if any challenge may be brought at all, it must be in habeas. That argument is wrong.

First, the claims concerning the Courthouse Arrest Guidance do not implicate expedited removal and so do not fall within the ambit of Section 1252(e)(3). *See supra* p. 22. As a result, Defendants' arguments about how that provision interacts with various other provisions concerning judicial review are entirely beside the point.[9]

---

[9] In a cursory footnote, Defendants suggest that Plaintiffs' claims concerning the Courthouse Arrest Guidance fail on the merits. MTD 19 n.5. That is insufficient to preserve the argument. *See United States v. All Assets Held at Credit Suisse (Guernsey) Ltd.*, 45 F.4th 426, 434 (D.C. Cir. 2022). In any event, the one out-of-circuit case Defendants cite did not involve a challenge to the EOIR Courthouse Arrest Memo, and the claim regarding the DHS Courthouse Arrest Memoranda principally relied on a different legal theory regarding a common-law privilege. *African Cmtys. Together v. Lyons*, No. 25-cv-6366, 2025 WL 2633396, at *12-14 (S.D.N.Y. Sept. 12, 2025). And while that court declined to stay the DHS Courthouse Arrest Memoranda as arbitrary and capricious, it did not dismiss the claim—instead, it ordered DHS to produce the administrative record. *See id.* at *23. This Court should do the same.

Second, with respect to the expansion of expedited removal, Plaintiffs' claims are pleaded exactly as contemplated by Section 1252(e)(3). That provision establishes two tracks for judicial review: habeas petitions and challenges to the validity of the system. *Compare* 8 U.S.C. § 1252(e)(2), *with id.* § 1252(e)(3). Plaintiffs' claims fall within the latter provision. After all, Individual Plaintiffs are challenging the "validity of the system" and "its implementation." If Congress had wanted such challenges to be brought in habeas, it would not have set up a parallel review provision for systemic challenges and channeled those challenges to this Court. Indeed, the D.C. Circuit has long recognized that individuals may bring litigation under Section 1252(e)(3) in precisely this manner. *See, e.g.*, *Grace*, 965 F.3d at 883; *Make the Rd.*, 962 F.3d at 628.

It is true that, if Plaintiffs prevail on the claims related to expedited removal, Defendants might not be able to rely on certain statutory provisions as a basis for detaining Plaintiffs. *See* 8 U.S.C. § 1225(b)(1)(B)(iii)(IV) (providing for detention related to expedited removal). But that possibility does not transform Plaintiffs' APA case into a core habeas challenge that must be brought in the district of confinement. MTD 19. A core habeas claim (1) "goes directly to the constitutionality of physical confinement itself" and (2) "seeks either immediate release from that confinement or the shortening of its duration." *Preiser v. Rodriguez*, 411 U.S. 475, 489 (1973). The challenges to the courthouse arrests policies as arbitrary and capricious are not core habeas challenges, as these claims "do not necessarily imply the invalidity of [Plaintiffs'] confinement," *Trump v. J.G.G.*, 604 U.S. 670, 672 (2025) (cleaned up). And Plaintiffs' Prayer for Relief does not seek release, or the shortening of detention. Moreover, the Supreme Court has held that challenges to procedures that, if successful, may *lead* to release are not core habeas claims. *See, e.g.*, *Wilkinson v. Dotson*, 544 U.S. 74, 82 (2005) (holding that challenges to parole procedures were not core habeas claims and were not required to be raised in habeas because they were challenging

invalid state procedures used to deny access to parole). Defendants' arguments that Individual Plaintiffs must bring habeas cases where they are detained are therefore misplaced.

IV. Plaintiffs Have Adequately Pleaded a Claim Against the Dismissal Policies.

A. The Complaint States APA Claims Against the EOIR Dismissal Guidance.

The Complaint states valid claims that the EOIR Dismissal Guidance is contrary to law and arbitrary and capricious. *See* Compl. ¶¶ 141-52 (Counts III and IV). The Guidance is final agency action reviewable under the APA; its plain language is inconsistent with regulations and agency procedures; EOIR offered no explanation for this deviation; and withdrawal of the Guidance does not moot the claim given the ongoing adverse effects from the Guidance.

1. The Complaint plausibly alleges that the EOIR Dismissal Guidance qualifies as final agency action. To be final, an agency action must "mark the consummation of the agency's decisionmaking process" and "be one by which rights or obligations have been determined, or from which legal consequences will flow." *U.S. Army Corps of Eng'rs v. Hawkes Co.*, 578 U.S. 590, 597 (2016). That test reflects a "pragmatic approach" to finality. *Id.* at 599. Both of its prongs are readily satisfied.[10]

First, the Guidance reflects the consummation of EOIR's decisionmaking on how immigration judges should handle "significant changes in [their] caseload" to prioritize the "expeditious adjudication of cases." *See* EOIR, *Guidance on Case Adjudication* (May 30, 2025).[11]

---

[10] EOIR apparently also disputes whether the Guidance qualifies as "agency action" at all. *See* Dkt. No. 35-1, at 3 n.7. But the motion to dismiss understandably makes no such argument. After all, that phrase "cover[s] comprehensively every manner in which an agency may exercise its power." *Whitman v. Am. Trucking Ass'n*, 531 U.S. 457, 478 (2001). More specifically, the Guidance qualifies as a "rule" because, at a minimum, it purports to "implement, interpret, or prescribe law or policy or describe the organization, procedure, or practice requirements of" immigration courts. 5 U.S.C. § 551(4).

[11] An unofficial copy of the Guidance is available online. *See* Am. Immigr. Laws. Ass'n, *Practice Alert: EOIR Guidance to Immigration Judges on Dismissals and Other Adjudications* (June 12,

For example, it directs that, in certain circumstances, oral decisions "must" be completed within a specific time. *Id.* Most importantly here, it also directs immigration judges to grant DHS's oral motions to dismiss without requiring a particularized showing of "changed circumstances" and without awaiting a noncitizen's response, *see id.*—all in contravention of the relevant regulations and the Immigration Court Practice Manual, *see* Compl. ¶¶ 62-64.

Moreover, those instructions were issued by two Regional Deputy Chief Immigration Judges, who "are responsible for daily supervision of the Assistant Chief Immigration Judges," who in turn "oversee the operations of specific immigration courts." Immigration Court Practice Manual § 1.3(a)(3), (4). The Regional Deputy Chief Immigration Judges are "no mere subordinate[s]" within the agency but instead have significant power to direct the functioning of immigration courts. *POET Biorefining, LLC v. EPA*, 970 F.3d 392, 404 (D.C. Cir. 2020). The text and context of the Guidance thus indicate that "subordinate employees of the agency . . . would be justified in construing the memorandum to be their marching orders." *NRDC v. Thomas*, 845 F.2d 1088, 1094 (D.C. Cir. 1988). Indeed, it is hard to read the email any other way, as another district court recently concluded. *See African Cmtys. Together*, 2025 WL 2633396, at *13-14.

Second, the Guidance carries legal consequences because it provides "firm guidance" to immigration judges about how to handle particular decisions. *Nat'l Env't Dev. Ass'n's Clean Air Proj. v. EPA*, 752 F.3d 999, 1007 (D.C. Cir. 2014). In doing so, it "withdraws some of the discretion" that immigration judges "previously held" to require a written motion and 10-day response period. *Scenic Am., Inc. v. DOT*, 836 F.3d 42, 56 (D.C. Cir. 2016). It also "altered the

---

2025), https://perma.cc/J84U-WCRP. Plaintiffs respectfully refer the Court to that version because Defendants have refused to make available an official copy of the relevant document.

legal regime by resolving the question" what constitutes "changed circumstances" sufficient to justify a motion to dismiss. *NRDC v. EPA*, 643 F.3d 311, 320 (D.C. Cir. 2011).

That is both the plain import of the Guidance and how immigration judges have interpreted it. *See Gen. Elec. Co. v. EPA*, 290 F.3d 377, 383 (D.C. Cir. 2002) ("[A]n agency pronouncement will be considered binding as a practical matter if it either appears on its face to be binding or is applied by the agency in a way that indicates it is binding." (citation omitted)). Since Defendants issued the Guidance, immigration courts have broken from past practice and granted oral motions to dismiss without requiring DHS to articulate changed circumstances particular to the affected noncitizen's case and without awaiting a response. *See* Compl. ¶¶ 16-26, 61, 143, 150. The "purpose" and "likely effect" of the Guidance is thus to "limit[] administrative discretion" in requiring DHS to conform to previously binding regulations and policies. *Guardian Fed. Sav. & Loan Ass'n v. Fed. Sav. & Loan Ins. Corp.*, 589 F.2d 658, 666–67 (D.C. Cir. 1978).

Defendants do not engage squarely with either prong of the finality test. Instead, their main argument appears to be that the Guidance was too informal to qualify as a final agency action. *See* MTD 26-27. They emphasize that the Guidance was disseminated as an "email." *Id.* But the D.C. Circuit has "rejected the proposition that if an agency labels its action an 'informal' guideline it may thereby escape judicial review under the APA." *Barrick Goldstrike Mines Inc. v. Browner*, 215 F.3d 45, 48 (D.C. Cir. 2000); *see also Safari Club Int'l v. Jewell*, 842 F.3d 1280 (D.C. Cir. 2016) (concluding that a "press release" reflected final agency action). Nor does it matter whether the Guidance "dictates the outcome" of a particular case. MTD 26-27. The Guidance changes how immigration judges decide motions to dismiss, which is a final decision with respect to what process the agency must provide. *See Her Majesty the Queen in Right of Ontario v. EPA*, 912 F.2d

1525, 1531 (D.C. Cir. 1990) (concluding that agency action was final where it rejected one possible process for obtaining relief, even though it did not resolve the substance of the request).

If the Court has any doubt about whether the Guidance constitutes final agency action, it should defer a decision until after Defendants produce the administrative record. *See, e.g.*, *Gomez v. Trump*, No. 20-cv-1419, 2020 WL 12919371, at *1 (D.D.C. Aug. 13, 2020) ("Defendants appear poised to argue that Plaintiffs have identified no final agency action, and the court cannot resolve any such challenge without an administrative record." (citation omitted)). The record will illuminate the decision-making process that produced the Guidance and clarify whether it was intended to and likely to curtail immigration judges' discretion.

2. The EOIR Dismissal Guidance is both contrary to law and arbitrary and capricious. *Contra* MTD 27-28. After all, an agency action that makes demonstrably "inaccurate" statements is necessarily "unreasonable." *Clean Air Council v. Pruitt*, 862 F.3d 1, 10 (D.C. Cir. 2017). And although Defendants strive to portray the Guidance as consistent with the governing regulations, those attempts fail. Indeed, EOIR itself all but admits the Guidance is inaccurate. *See* Dkt. No. 35-1, at 2 (calling the Guidance's "attempt to paraphrase relevant law . . . poorly drafted").

Under the relevant regulations, a motion to dismiss in formal removal proceedings may only be made on specific grounds. 8 C.F.R. § 1239.2(c). As relevant here, those include if the "[c]ircumstances *of the case* have changed after the notice to appear was issued to such an extent that continuation is no longer in the best interest of the government." *Id.* § 239.2(a)(7) (emphasis added). Moreover, "motions submitted prior to the final order of an immigration judge shall be in writing and shall state with particularity the grounds therefor," except when "otherwise permitted by the immigration judge." *Id.* § 1003.23(a). The Immigration Court Practice Manual reinforces those principles by requiring motions for which a ruling will be sought at a hearing to be submitted

in writing no less than 15 days before the hearing (for non-detained cases). *See* Immigration Court Practice Manual § 3.1(b)(1)(A)-(B). The Manual also requires that the non-moving party be given ten days to respond. *See id.*

The Guidance directs immigration judges to disregard those limitations. It instructs immigration judges to entertain "oral[]" motions to dismiss without "additional documentation or briefing." *See* EOIR Dismissal Guidance. It indicates that noncitizens need not be afforded response time. *Id.* And it suggests that a motion to dismiss is sufficient if it avers generally that "circumstances have changed to such an extent that continuation is no longer in the best interest of the government," *id.* (emphasis omitted), without requiring any showing that those circumstances be particular to the case. *Contra* 8 C.F.R. § 239.2(a)(7). Rather than paraphrasing the relevant requirements, it effectively superseded them—all without justification for the change or consideration of the reliance interests in the prior policy. Compl. ¶ 151. That is contrary to law and arbitrary and capricious. *See Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016); *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954).

3. The purported "withdrawal" of the EOIR Dismissal Guidance does not moot Plaintiffs' claims. *Contra* Dkt. 35, at 1. Even crediting Defendants' assertions that the Dismissal Guidance has been withdrawn, that would show only voluntary cessation of the challenged conduct. *See City of Mesquite v. Aladdin's Castle, Inc.*, 455 U.S. 283, 289 & n.10 (1982) (holding that a city's repeal of a challenged ordinance did not moot case because it was "[m]ere voluntary cessation"). When the government claims mootness because of a voluntary change in policy, it bears a "formidable burden" to "prove no reasonable expectation remains that it will return to its old ways." *FBI v. Fikre*, 601 U.S. 234, 241 (2024) (internal quotation marks & brackets omitted).

Defendants cannot meet that burden. The purported withdrawal memorandum makes clear that the agency "act[ed] in order to avoid litigation." *Alaska v. USDA*, 17 F.4th 1224, 1239 (D.C. Cir. 2021) (internal quotation marks omitted). That memorandum extensively discusses—and criticizes—an adverse district court decision staying in part the challenged Guidance. *See* Dkt. No. 35-1, at 3 (discussing *African Cmtys. Together*, 2025 WL 2633396). The purported withdrawal thus appears to be an effort "to erase an unfavorable decision from the books" and avoid further judicial scrutiny of the Guidance. *Alaska*, 17 F.4th at 1230. Defendants cannot engage in such "strategies" that leave them free to "win dismissal[] and later pick up where [they] left off." *Fikre*, 601 U.S. at 241. Tellingly, Defendants offer no "assurance" regarding whether EOIR intends to issue additional instructions to immigration judges regarding motions to dismiss. *Id.* at 243.

That aside, voluntary cessation moots a claim only if "interim relief or events have completely and irrevocably eradicated the effects of the alleged violation." *Larsen v. U.S. Navy*, 525 F.3d 1, 4 (D.C. Cir. 2008). Defendants make no effort to show that that is the case. Nor could they. Many Individual Plaintiffs' formal removal proceedings remain dismissed under decisions made by immigration judges acting pursuant to the illegal Guidance. The purported withdrawal takes no steps to undo those decisions, so it has not eradicated the Guidance's adverse effects. That defeats any suggestion of mootness here with respect to the Individual Plaintiffs' claims.

B. The Complaint States APA Claims Against the DHS Dismissal Guidance.

Plaintiffs likewise have valid claims that the DHS Dismissal Guidance is contrary to law and arbitrary and capricious. None of Defendants' contrary arguments has merit. *See* MTD 28-30.

First, Defendants—without denying that the DHS Dismissal Guidance exists—argue that Plaintiffs have not plausibly pleaded its existence because some of the allegations are based "on information and belief." *See* MTD 28. But as discussed further below, *see infra* pp. 41-42, allegations based "on information and belief" are permitted when Defendants control necessary

information or where the belief is based on factual information that makes the inference of culpability plausible. Here, the written DHS Dismissal Guidance is in Defendants' control.

Moreover, the claims in Counts V and VI are supported by specific factual allegations, including information from a New York Times article. Despite Defendants' statement to the contrary, *see* MTD 28-29, the article refers to a specific "new policy" that ICE "had circulated [in] an internal memo" on May 20. The article describes multiple aspects of the new policy and includes at least one direct citation from the policy. *See* Compl. ¶ 60; Hamed Aleaziz, *How ICE Is Seeking to Ramp Up Deportations Through Courthouse Arrests*, N.Y. Times (May 30, 2025), https://perma.cc/TN6V-GKAE ("Prosecutors were also instructed to give deportation officers 'the exact location of the courtroom at which the alien's hearing is being held and an estimate of the time frame for the hearing,' the memo said.").

The existence of a final policy is also supported by factual allegations of the Plaintiffs who were directly affected by the DHS Dismissal Guidance when DHS suddenly moved to dismiss their removal proceedings. *See* Compl. ¶¶ 16-26, 122. Those experiences corroborate the reporting on the existence of this policy. Nothing more is required to clear "the modest hurdle of alleging sufficient facts to 'state a claim to relief that is plausible on its face.'" *Hedgeye Risk Mgmt., LLC v. Heldman*, 271 F. Supp. 3d 181, 189 (D.D.C. 2017) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

Second, Defendants argue that the DHS Dismissal Guidance is not final agency action for purposes of APA review. *See* MTD 29. As explained above, a guidance memorandum can be final agency action if it meets both prongs of the *Bennett* test. *See, e.g.*, *Biden*, 597 U.S. at 809 (concluding that DHS memoranda terminating Migration Protection Protocols were final agency actions); *NRDC v. EPA*, 643 F.3d at 320 (holding that an EPA guidance document that bound

officials to a specific approach qualified as final agency action); *N. Am.'s Bldg. Trades Unions v. DOD*, 783 F. Supp. 3d 290, 308 (D.D.C. 2025) (determining that GSA memoranda "announc[ing] a categorical policy shift" constituted final agency action).

Plaintiffs allege (and Defendants do not dispute, *see* MTD 29) that the DHS Dismissal Guidance "*instructed* DHS attorneys to move to dismiss full removal proceedings." Compl. ¶ 155 (emphasis added). Agency guidance that "commands," bears the hallmark of final agency action. *Appalachian Power Co. v. EPA*, 208 F.3d 1015, 1023 (D.C. Cir. 2000)). It is certainly plausible an agency-wide policy change that instructs its attorneys to take certain actions and announces a new interpretation of the governing regulations, *see* Compl. ¶¶ 60, 63, will be considered final agency action—and no more is required at the pleading stage. But if the Court were to conclude it needs additional information to determine whether the DHS Dismissal Guidance is sufficiently final, it should direct the production of the administrative record.

Finally, Defendants point to prosecutorial discretion as a reason to dismiss these claims. *See* MTD 29-30. But prosecutorial discretion is inapplicable because Plaintiffs do not challenge individual agency decisions but instead challenge an agency-wide policy. Defendants suggest that 8 U.S.C. § 1252(a)(2)(B)(ii), which addresses certain discretionary "decision[s] or action[s]," bars judicial review of the DHS Dismissal Guidance. But § 1252(a)(2)(B)(ii) is focused on review of orders denying "individualized forms of discretionary relief from removal or exclusion" and does not bar review of "generally applicable" policies "governing removal *procedures*." *Make the Rd.*, 962 F.3d at 630; *accord Aracely, R. v. Nielsen*, 319 F. Supp. 3d 110, 135 (D.D.C. 2018); *Nora v. Wolf*, No. 20-cv-0993, 2020 WL 3469670, at *7 (D.D.C. June 25, 2020). In any event, § 1252(a)(2)(B)(ii) only bars review of certain decisions "made discretionary by statute," *Kucana v. Holder*, 558 U.S. 233, 248 (2010), and Plaintiffs challenge no such decisions.

Defendants also point to general principles of prosecutorial discretion, citing to *Citizens for Resp. & Ethics in Washington v. FEC*, 993 F.3d 880 (D.C. Cir. 2021) ("*CREW*"). *See* MTD 29-30. But *CREW* and the cases it cites are inapplicable because they apply specifically to prosecutorial discretion in the context of analyzing whether an agency's refusal to take a specific enforcement action is "committed to agency discretion by law," 5 U.S.C. § 701(a)(2), and thus unreviewable under the APA. *See CREW*, 993 F.3d at 882 ("[A]n agency's decision not to enforce the law is an exercise of executive discretion and therefore generally unreviewable by the courts."); *Heckler v. Chaney*, 470 U.S. 821, 831 (1985) (noting that in the case of an agency's "refusal[] to take enforcement steps . . . the presumption is that judicial review is not available" under Section 701(a)(2) of the APA).

Defendants may not rely on Section 701(a)(2), because under that provision, an agency's action is considered "committed to agency discretion by law" and thus unreviewable only when a "statute is drawn so that a court would have no meaningful standard against which to judge the agency's exercise of discretion." *Id.* at 830. "[J]udicially manageable standards" that take an action outside of § 701(a)(2) "may be found in formal and informal policy statements and regulations as well as in statutes." *Sec'y of Lab. v. Twentymile Coal Co.*, 456 F.3d 151, 158–59 (D.C. Cir. 2006) (citations omitted). In the case of the DHS Dismissal Guidance, § 701(a)(2) does not commit the decision to seek dismissal to agency discretion because regulations provide clear guidelines for when DHS may move to dismiss removal proceedings. *See* 8 C.F.R. § 1239.2(c); *id.* § 239.2(a). As a result, agency documents instructing subordinates to deviate from those binding regulations would not be committed to agency discretion.

C. The Complaint States Viable Due Process Claims.

Finally, Individual Plaintiffs have alleged a plausible claim that the Dismissal Guidance violates the Due Process Clause. *See* Compl. ¶¶ 164-168 (Count VII). Defendants do not, and could

not, dispute that due process requires proper notice and a meaningful opportunity to be heard. *See* MTD 31-32. Nor do they dispute that the Complaint plausibly alleges that the EOIR Dismissal Guidance and the DHS Dismissal Guidance deprive noncitizens of adequate notice and an opportunity to be heard by preventing them from pressing their claims in immigration court. *See id.* The arguments that they do make lack merit.[12]

First, Defendants contend that judicial review is barred under Section 1252(b)(9). That argument fails for the reasons discussed in Part II.B above.

Second, Defendants incorrectly rely on *DHS v. Thuraissigiam*, 591 U.S. 103 (2020), to suggest that Individual Plaintiffs have no due process rights if they are "subject to expedited removal." MTD 31. In *Thuraissigiam*, the Supreme Court held that a noncitizen who was apprehended "25 yards into U.S. territory" and placed into expedited removal proceedings did not have a due process right to challenge the constitutionality of a statute "precluding judicial review of his allegedly flawed credible-fear proceeding." *Thuraissigiam*, 591 U.S. at 138. The Court held that a noncitizen "in [that] respondent's position has only those rights regarding admission that Congress has provided by statute." *Id.* at 140. That holding is inapposite because it involved a challenge by a person seeking *more* process at initial entry into the country than Congress provided. *Id.* at 107. Here, Plaintiffs seek to *enforce* statutory processes by vacating executive branch policies designed to circumvent them. Nothing in Count VII seeks relief expanding rights beyond what Congress has provided. *See* Compl. ¶ 166.

Thuraissigiam, moreover, does not disturb the Supreme Court's longstanding recognition that noncitizens are entitled to due process protections regardless of whether their presence in this

[12] The Organizational Plaintiffs do not intend to assert a due process claim, so Plaintiffs do not further address Defendants' arguments as to them. *See* MTD 31-32.

country is lawful. *See Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) ("[T]he Due Process Clause applies to all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent."); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) ("It is true that [noncitizens] who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law."); *Yamataya v. Fisher*, 189 U.S. 86, 101 (1903) (holding that noncitizens "alleged to be illegally here" enjoy due-process protections); *see also Trump v. J.G.G.*, 604 U.S. 670, 673 (2025) ("'It is well established that the Fifth Amendment entitles aliens to due process of law' in the context of removal proceedings.") (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). Individual Plaintiffs—all of whom were previously served with a Notice to Appear in full removal proceedings and released into the interior of the United States—are not similarly situated to the noncitizen in *Thuraissigiam*, who was immediately detained at the border and processed through expedited removal. *See* 591 U.S. at 107 (reiterating that noncitizens "who have established connections in this country have due process rights in deportation proceedings"). As a result, Individual Plaintiffs can assert due process claims against the agencies' Dismissal Guidance, which closes the doors of immigration courts as a forum to press their entitlement to immigration relief. *See, e.g.*, *Maldonado-Perez v. INS*, 865 F.2d 328, 332 (D.C. Cir. 1989) (recognizing that a noncitizen "who has unlawfully entered the United States has a Fifth Amendment procedural due process right to petition the government for political asylum" and considering "what process is due").

V. Plaintiffs Have Stated a Viable Challenge to the Expansion of Expedited Removal.

The Complaint alleges that Defendants have unlawfully expanded the use of expedited removal beyond what Congress has authorized. *See* Compl. ¶¶ 169-182. Defendants do not offer any defense of this policy on the merits. *See* MTD 19-21. Nor could they, as the statute

unambiguously prohibits placing individuals continuously present in the United States for more than two years into expedited removal as Defendants themselves acknowledged in January 2025. 8 U.S.C. § 1225(b)(1)(A)(iii); *see* 90 Fed. Reg. 8139, 8139-40 (Jan. 24, 2025).

Defendants instead contend that Plaintiffs do not plausibly plead the claims relating to the expansion of expedited removal. *See* MTD 20. Under the *Twombly* and *Iqbal* pleading standard, the 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 *Twombly*, 550 U.S. at 570). A court assumes that "the complaint's factual allegations are true and construes them liberally in the plaintiff's favor when considering a motion to dismiss, provided that they are sufficiently detailed." *United States ex rel. Jenkins v. Sanford Cap., LLC*, No. 17-cv-239, 2020 WL 5440551, at *5 (D.D.C. Sept. 10, 2020) (citation omitted). Plaintiffs' allegations easily meet the *Twombly* and *Iqbal* standard.

Defendants make much of the fact that some of Plaintiffs' allegations are based "'on information and belief'," *see* MTD 20, including that DHS issued relevant written guidance on or around May 20, 2025. The Complaint alleges that this guidance took the position that a noncitizen can be subjected to expedited removal at any time so long as DHS issued a Notice to Appear within two years of the person's arrival in the United States. Compl. ¶ 99. But pleadings based on information and belief are permitted "where the facts are peculiarly within the possession and control of the defendant, or where the belief is based on factual information that makes the inference of culpability plausible." *Hedgeye*, 271 F. Supp. 3d at 189 (quoting *Evangelou v. District of Columbia*, 901 F. Supp. 2d 159, 170 (D.D.C. 2012)); *accord Kareem v. Haspel*, 986 F.3d 859, 866 (D.C. Cir. 2021); *Kelleher v. Dream Catcher, LLC*, 263 F. Supp. 3d 322, 325 (D.D.C. 2017). Guidance expanding expedited removal itself, which Defendants do not deny exists, is a prime

example of information in the possession and control of the government that Plaintiffs "simply ha[ve] no way to access, without the benefit of [production of an administrative record]." *Kelleher*, 263 F. Supp. 3d at 326.[13]

That the written guidance is in the possession and control of Defendants should end the inquiry. But Plaintiffs' claims in Counts VIII and IX are also supported by specific factual allegations. *See Hedgeye*, 271 F. Supp. 3d at 189 (allegations supported "by specific—albeit inconclusive—factual allegations" cleared "the modest hurdle of alleging sufficient facts to state a claim to relief that is plausible on its face") (internal citation omitted). The Complaint contains specific details about the expansion of expedited removal to people present more than two years. Guidance—that it was issued on or about May 20, 2025, and that it takes the position that a person can be subjected to expedited removal at any time so long as DHS alleged inadmissibility within two years after a noncitizen arrives in the United States. *See* Compl. ¶ 99.

Moreover, the allegations related to five Plaintiffs—arrested at courthouses across the country after initially being released with a Notice to Appear—demonstrate implementation of the policy. Despite being in the United States for over two years at the time of their courthouse arrests by ICE in 2025, Plaintiffs L.H., E.P., D.C., E.C., and P.D. received expedited removal orders. *See* Compl. ¶¶ 16, 18-21, 100. In contrast, the two out-of-circuit cases that Defendants cite involved allegations based "on information and belief" that lacked "factual support" or any "basis to infer the existence of" the alleged facts. *See Lavigne v. Great Salt Bay Cmty. Sch. Bd.*, 146 F.4th 115, 127 (1st Cir. 2025) (finding pleadings insufficient where the complaint includes statements that "belie the suggestion of" the fact alleged "on . . . information and belief"); *Menard v. CSX Transp.*,

[13] This is precisely why Plaintiffs moved to expedite production of the administrative records. *See* ECF No. 8-1, at 10-11. Yet Defendants opposed the motion, claiming production of an administrative record was unnecessary. *See* ECF No. 16.

Inc., 698 F.3d 40, 44 (1st Cir. 2012) (noting the plaintiff did not provide "any facts to support [an] assertion" he made based on "information and belief"); MTD 20-21. Neither of these cases is an APA case about when the existence of a policy can be inferred from conduct consistent with the alleged policy.[14]

VI. Plaintiffs Have Adequately Pleaded a Claim Against the Concurrent Proceedings Guidance.

Similarly, Defendants argue that Plaintiffs' claims regarding the Concurrent Proceedings Guidance fail because Plaintiffs' allegations are "speculation" and because they did not plead that any Plaintiffs are subjected to the Guidance. MTD 22. Defendants are wrong on both fronts.

First, as explained above, pleadings based on information and belief are routinely permitted "where the facts are peculiarly within the possession and control of the defendant, or where the belief is based on factual information that makes the inference of culpability plausible." *Hedgeye*, 271 F. Supp.3d at 189 (internal quotation marks omitted). Only Defendants have the Guidance, and they never deny its existence. Second, the Complaint did allege that Individual Plaintiffs have been subjected to the Concurrent Proceedings Guidance. *See* Compl. ¶ 101 ("Defendants have recently issued the Concurrent Proceedings Guidance, which expands their understanding of the scope of expedited removal to include people who remain in pending full removal proceedings, as was the case for L.H., M.S., E.P., D.C., P.D., K.M., E.M., M.K., M.D., and R.A.").[15] For example, plaintiff L.H. pleaded that, at the time of filing, she was "awaiting immigration judge review of the negative finding in her credible fear interview" and that she had also "separately appealed the

[14] Defendants also offer a handful of procedural objections to Plaintiffs' claims that merely repeat erroneous arguments refuted above. *See supra* Part I.A (organizational standing); Part II.A (reliance on § 1252(e)(3)); Part III.B (claims sounding in habeas). Those arguments are no more availing in this context than elsewhere.

[15] Some Individual Plaintiffs are no longer in concurrent proceedings due to intervening developments. That casts no doubt on the Complaint's allegations that they previously were subject to concurrent proceedings, which supports the existence of a policy.

dismissal of her immigration court case to the BIA." Compl. ¶ 16; *see also, e.g.*, *id.* ¶ 19 ("D.C. plans to appeal his dismissal, and is still within the 30-day appeal window to do so. He is awaiting a credible fear interview."); *id.* ¶ 22 ("K.M. received an expedited removal order and is waiting for a credible fear interview. Her appeal from the dismissal of her immigration court case is pending with the BIA."). Plaintiffs' allegations regarding their own experience therefore illustrate that the Concurrent Proceedings Guidance exists.

Notably, Defendants do not appear to contest Plaintiffs' argument that a person who has appealed the dismissal of their removal proceedings or who is in the 30-day time-period to do so is still in full removal proceedings under 8 U.S.C. § 1229a. With good reason: such an argument would be contrary to statutory provision making full removal proceedings the "sole and exclusive" avenue for removal proceedings in most cases and both statutory and regulatory provisions that explain that full removal proceedings remain pending while an appeal to the BIA is pending or when such an appeal can still be timely filed. *See* 8 U.S.C. §§ 1229a(a)(3); 1101(a)(47)(B); 8 C.F.R. § 1003.39. It follows, then, that a person whose proceedings under § 1229a remain ongoing who *also* is in the credible fear process at the same time, is facing concurrent removal proceedings. Defendants do not seem to contest this understanding.

Next, Defendants briefly rehash arguments refuted above. As discussed, the INA does not preclude Organizational Plaintiffs from pursuing their claims, preclude a class action, preclude arbitrary and capricious review, or require affected individuals to pursue their claim in habeas.

Lastly, Defendants argue that to the extent the Concurrent Proceedings Guidance is unwritten, Plaintiffs may not challenge it under § 1252(e)(3). MTD 23. But Plaintiffs all around the country have been thrust into expedited removal proceedings while their regular removal proceedings remain pending. Compl. ¶¶ 16-26, 101. And besides, Plaintiffs have plausibly alleged

the existence of a written policy. Compl. ¶¶ 6, 66-67. And as Defendants concede, if the Guidance is in writing and related to expedited removal, Plaintiffs may challenge it under § 1252(e)(3). In the absence of the administrative record that Defendants have declined to produce, any speculative arguments about the availability of challenges to unwritten policies are, at best, premature.

CONCLUSION

For all these reasons, the Court should deny Defendants' motion to dismiss.

Dated: October 20, 2025

Respectfully Submitted,

s/ Joshua M. Salzman

Elena Goldstein (D.C. Bar No. 90034087)
Jeffrey B. Dubner (D.C. Bar No. 1013399)
Joshua M. Salzman (D.C. Bar No. 982239)
Simon C. Brewer (D.D.C. Bar No. CT0027)*
Democracy Forward Foundation
P.O. Box 34553
Washington, DC 20043
T: (202) 448-9090
egoldstein@democracyforward.org
jdubner@democracyforward.org
jsalzman@democracyforward.org
sbrewer@democracyforward.org

Jordan Wells** (Cal. Bar No. 326491)
Lawyers' Committee for Civil Rights of the San Francisco Bay Area
131 Steuart Street # 400
San Francisco, CA 94105
T: (415) 543-9444
jwells@lccrsf.org

Keren Zwick (D.D.C. Bar. No. IL0055)
Mark Fleming
Mark Feldman (D.D.C. Bar No. CA00234)
Mary Georgevich
Colleen Cowgill
National Immigrant Justice Center
111 W. Jackson Blvd., Suite 800
Chicago, IL 60604
T: 312-660-1370
kzwick@immigrantjustice.org
mfleming@immigrantjustice.org
mfeldman@immgrantjustice.org
mgeorgevich@immigrantjustice.org
ccowgill@immigrantjustice.org

Richard Caldarone (D.C. Bar No. 989575)
Refugee & Immigrant Center for Education & Legal Services (RAICES)
P.O. Bo. 786100
San Antonio, TX 78278
T: (210) 960-3206
richard.caldarone@raicestexas.org

* Not admitted in D.C.; practicing under the supervision of Democracy Forward lawyers who are members of the D.C. Bar.

** Application for pro bono admission forthcoming.