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' RESPONSE TO DEFENDANTS' NOTICE OF SUPPLEMENTAL AUTHORITY

Plaintiffs respectfully write in response to Defendants' notice of supplemental authority (Dkt. 48) regarding *Khalil v. President, United States*, 164 F.4th 259 (3d Cir. 2026). *Khalil* addressed circumstances that bear no resemblance to the facts of this case, and that decision provides no support for Defendants' motion to dismiss.

In *Khalil*, the Third Circuit was confronted with claims brought by an individual noncitizen who, the majority concluded, was attempting to "collaterally attack (challenge) ongoing immigration proceedings through habeas." 164 F.4th at 273. Although the noncitizen alleged that he was experiencing immediate irreparable injuries that could not be remedied by backend judicial review at the conclusion of his immigration proceeding, a divided panel concluded that "8 U.S.C. § 1252(b)(9) strip[ped] the District Court of jurisdiction, requiring Khalil to wait to raise his claims until he files a petition for review (PFR) of a final order of removal." *Id.* Because the noncitizen had asserted only "now-or-never" *injuries*, he could not circumvent the PFR process by asking a district court to adjudicate *claims* that "would require

deciding whether removing Khalil would be unlawful—the very issue decided through the PFR process." *Id.* at 276. The Third Circuit emphasized, however, that Section 1252(b)(9) does not preclude review of "now-or-never claim[s]" that "do not fit within" the PFR process. *Id.* at 274.

That decision lends no support for Defendants' argument here that Section 1252(b)(9) precludes review of Plaintiffs' challenge to a policy specifically designed to prevent noncitizens from completing regular immigration proceedings and obtaining a final decision that could be reviewed through the PFR process. As Plaintiffs' memorandum explained (Dkt. 38, at 24), the Individual Plaintiffs cannot petition for review of an order dismissing removal proceedings, and the Organizational Plaintiffs cannot bring their claims via petition for review. Because "a court of appeals will not later be able to review meaningfully" these claims via a PFR, 164 F.4th at 274–75, they properly belong in district court. *See also, e.g.*, *Cap. Area Immigrants' Rts. Coal. v. Trump*, 471 F. Supp. 3d 25, 40 (D.D.C. 2020) (recognizing "the text of Section 1252 provides no support for the proposition that organizations may not facially challenge under the APA immigration-related regulations that harm their own interests").

Defendants also contend that *Khalil* supports their motion to dismiss because, in their view, "[t]he Third Circuit also read § 1252(b)(9) to apply to policy-and-practice challenges." Dkt. 48, at 1. In fact, the court observed that "the structure of the immigration-court system is ill-suited to developing pattern-and-practice challenges." 164 F.4th at 280 (citing *McNary v. Haitian Refugee Ctr., Inc.*, 498 U.S. 479, 497 (1991)). Given that observation, the court explained that procedural mechanisms were available to develop a factual record as necessary to review legal questions properly presented via PFR. *Id.* at 280–81. The Third Circuit did not remotely suggest that all challenges to policy memoranda must proceed via PFR.

Finally, it bears mention that *Khalil* is a divided panel decision that expressly split with

decisions of other circuits. *See* 164 F.4th at 279 ("[W]e respectfully disagree with the Second and Fourth Circuits."). Accordingly, even if this Court agrees with *Khalil* on its own facts, there is considerable reason for hesitation before extending its reasoning to the very different circumstances of this case.

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Respectfully Submitted,
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