UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IMMIGRANT ADVOCATES RESPONSE COLLABORATIVE, et al.,

Plaintiffs,

v.

DEPARTMENT OF JUSTICE, et al.,

Defendants.

Civil Action No. 25-2279 (TNM)

DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND COMBINED CROSS-MOTION TO DISMISS AND FOR SUMMARY JUDGMENT

TABLE OF CONTENTS

Table of Contents i

Table of Authorities iii

Introduction 1

Background 3

I. Legal Background 3

A. Expedited Removal 3

B. Removal Proceedings 5

II. The Guidance Documents at Issue 6

A. Expedited Removal 7

B. Plaintiffs' Purported Dismissal "Guidance" 9

C. Plaintiffs' Purported "Concurrent Proceedings Guidance" 11

III. The Plaintiffs and this Case 11

Legal Standards 13

I. Rule 12(h)(3) 13

II. Rule 56 13

Argument 14

I. The Court Lacks Jurisdiction. 14

A. Plaintiffs Lack Standing. 14

B. Plaintiffs' Challenge to EOIR's Dismissal Guidance in Moot (Counts III, IV, VII). 22

C. 8 U.S.C. § 1252(g) Bars Review of the Organizational Plaintiffs' Challenge to the Dismissal Guidance and Concurrent Proceedings Guidance (Counts III, IV, VII, X, XI). 29

D. Plaintiffs' Dismissal Challenges May Be Raised Through a Petition for Review and Are Therefore Barred by 8 U.S.C. § 1252(b)(9) (Counts III, IV, V, VI, VII). 31

E. Section 1252(a)(2)(A)(ii) and 1252(a)(2)(A)(iii) Bar Review 35

F. Section 1252(e)(3) Bars Review of Plaintiffs' Challenge to the May 20 Broadcast (Counts VIII, IX). 36

G. Section 1252(f)(1) Bars Relief, Including Vacatur. 36

II. There is No So-Called "Concurrent Guidance" Policy (Counts X, XI). 37

III. Plaintiffs' APA Claims Are Not Reviewable. 41

A. There is No Discrete Dismissal or "Concurrent Proceedings" Policy (Counts III, IV, V, VI, X, XI). 42

B. An Alternative Adequate Remedial Scheme May Foreclose APA Review of the Dismissal Guidance and Concurrent Proceedings Guidance Claims (Counts III, IV, VII, X, XI). 44

C. Section 1252(b)(9) Forecloses Review for Plaintiffs Who Obtain a Final Order of Removal (Counts III, IV, V, VI, X, XI). 45

D. The APA Does Not Permit Review of the Dismissal Guidance, the Purported Concurrent Proceeding Guidance, Nor the Expansion of Expedited Removal. 46

E. The Guidance Documents Are Not Final Agency Actions (Counts III, IV, V, VI, VII, VIII, IX, X, XI). 51

IV. Defendants' Prevail on the Merits of All Claims 55

A. Dismissal Guidance is Lawful (Counts III, IV, VII, X, XI). 55

B. The Decision to Implement Expedited Removal Pursuant to Statute is Lawful (Counts VIII, IX). 58

C. Plaintiffs Have Forfeited Their Fifth Amendment Theory (Count VII). .. 62

V. The Court Should Order Separate Briefing on Remedy. 63

VI. Any Relief Should Be Limited to the Plaintiffs Before the Court. 63

Conclusion 65

TABLE OF AUTHORITIES

Page(s)

Cases

Abdulrahman v. Ashcroft,
330 F.3d 587 (3d Cir. 2003) 38

Aetna Life Ins. Co. of Hartford v. Haworth,
300 U.S. 227 (1937) 24

Akiachak Native Cmty. v. Dep't of Interior,
827 F.3d 100 (D.C. Cir. 2016) 25, 26

Al-Tamimi v. Adelson,
916 F.3d 1 (D.C. Cir. 2019) 62

Am. Soc. for Prevention of Cruelty to Animals v. Feld Ent., Inc.,
659 F.3d 13 (D.C. Cir. 2011) 15, 16, 17

Amgen, Inc. v. Smith,
357 F.3d 103 (D.C. Cir. 2004) 45, 48

Amoco Prod. Co. v. Gambell,
480 U.S. 531 (1987) 64

Anderson v. Liberty Lobby, Inc.,
477 U.S. 242 (1986) 13

Angelica S. v. HHS,
786 F. Supp. 3d 158 (D.D.C. 2026) 17

Appalachian Power Co. v. EPA,
135 F.3d 791 (D.C. Cir. 1998) 47

Architects & Eng'rs for 9/11 Truth v. Raimondo,
Civ. A. 21-02365 (TNM), 2022 WL 30442181 (D.D.C. Aug. 2, 2022) 22

Arteaga-Ramirez v. Barr,
954 F.3d 812 (5th Cir. 2020) 38, 57

Ass'n of Flight Attendants-CWA, AFL-CIO v. Huerta,
785 F.3d 710 (D.C. Cir. 2015) 55

Assoc. for Ed. Finance & Policy, Inc. v. McMahon,
786 F. Supp. 3d 13 (D.D.C. 2025) 42

AT&T Co. v. EEOC,
270 F.3d 973 (D.C. Cir. 2001) 53

Avagyam v. Blinken,
Civ. A. No. 22-2643 (CRC), 2022 WL 19762411 (D.D.C. Sept. 29, 2022) 54

Bennett v. Spear,
520 U.S. 154 (1997) 51

Biden v. Texas,
599 U.S. 670 (2023) 19

Bonhometre v. Gonzales,
414 F.3d 442 (3d Cir. 2005) 31

Bouarfa v. Mayorkas,
604 U.S. 6 (2024) 39

Bowen v. Massachusetts,
487 U.S. 879 (1988) 44

Bukhari v. Piedmont Reg'l Jail Auth.,
2010 WL 3385179 (E.D. Va. Aug. 20, 2010) 59

Cap. Area Immigrants' Rts. Coal. v. Trump,
471 F. Supp. 3d 25 (D.D.C. 2020) 17

Castro v. Dep't of Homeland Sec.,
835 F.3d 422 (3d Cir. 2016) 35

Chafin v. Chafin,
568 U.S. 165 (2013) 24

Church of Scientology v. United States,
506 U.S. 9 (1992) 24

Citizens to Preserve Overton Park, Inc. v. Volpe,
401 U.S. 402 (1971) 46

Citizens for Resp. & Ethics in Wash. v. Dep't of Justice,
846 F.3d 1235 (D.C. Cir. 2017) 44

Citizens for Responsibility & Ethics in Washington v. Federal Election Commission,
993 F.3d 880 (D.C. Cir. 2021) 49, 50

City of Los Angeles v. Lyons,
461 U.S. 95 (1983) 27

Clarke v. United States,
915 F.2d 699 (D.C. Cir. 1990) 26, 27

Climate United Fund v. Citibank, N.A.,
154 F.4th 809 (D.C. Cir. 2025) 65

Coalition for Humane Rights v. Mullin,
185 F.4th 1275 (D.C. Cir. 2026) 18

Cobell v. Kempthorne,
455 F.3d 301 (D.C. Cir. 2006) 42

Colorado River Indian Tribes v. Nat'l Indian Gaming Comm'n,
466 F.3d 134 (D.C. Cir. 2006) 47

Cruz v. Kelly,
241 F. Supp. 3d 107 (D.D.C. 2017) 62

Ctr. for Biological Diversity v. Trump,
453 F. Supp. 3d 11 (D.D.C. 2020) 41

Ctr. for L. & Educ. v. Dep't of Educ.,
396 F.3d 1152 (D.C. Cir. 2005) 15, 25

DCH Reg'l Med. Ctr. v. Azar,
925 F.3d 503 (D.C. Cir. 2019) 45, 48

Delaware Valley Reg'l Ctr., LLC v. DHS,
678 F. Supp. 3d 73 (D.D.C. 2023) 54

Delaware Valley Reg'l Ctr., LLC v. DHS,
106 F.4th 1195 (D.C. Cir. 2024) 54

Dep't of Homeland Sec. v. Regents of the Univ. of California,
591 U.S. 1 (2020) 40, 41

Doe v. Trump,
142 F.4th 109 (1st Cir. 2025) 64

Drake v. FAA,
291 F.3d 59 (D.C. Cir. 2002) 46

Drummond Coal Co. v. Hodel,
796 F.2d 503 (D.C. Cir. 1986) 59

E.F.L. v. Prim,
986 F.3d 959 (7th Cir. 2021) 29

E.O.H.C. v. Sec'y, U.S. Dep't of Homeland Sec.,
950 F.3d 177 (3d Cir. 2020) 32

Earle v. Atkins,
Civ. A. No. 19-1419 (CKK/GMH), 2026 WL 1261082 (D.D.C. May 8, 2026) 62

Edwards v. Dist. Of Columbia,
755 F.3d 996 (D.C. Cir. 2014) 51

Entergy Arkansas, LLC v. FERC,
134 F.4th 576 (D.C. Cir. 2025) 20

Episcopal Hosp. v. Shalala,
994 F.2d 879 (D.C. Cir. 1993) 59

Equal Rts. Ctr. v. Post Props., Inc.,
633 F.3d 1136 (D.C. Cir. 2011) 15

FBI v. Fikre,
601 U.S. 234 (2024) 28

FDA v. All. for Hippocratic Med.,
602 U.S. 367 (2024) 16, 17

FDA v. Wages & White Lion Invs.,
604 U.S. 542 (2025) 40

Flores v. Garland,
72 F.4th 85 (5th Cir. 2023) 51

Food & Water Watch, Inc. v. Vilsack,
808 F.3d 905 (D.C. Cir. 2015) 15, 17

Fore River Residents Against the Compressor Station v. FERC,
77 F.4th 882 (D.C. Cir. 2023) 23

Foretich v. United States,
351 F.3d 1198 (D.C. Cir. 2003) 23

Friends of Animals v. Bernhardt,
961 F.3d 1197 (D.C. Cir. 2020) 24, 25

Friends of the Earth, Inc. v. Laidlaw Env't Servs.,
528 U.S. 167 (2000) 26

Garcia v. Vilsack,
563 F.3d 519 (D.C. Cir. 2009) 44

Global Health Council v. Trump,
153 F.4th 1 (D.C. Cir. 2025) 65

Gov't of Manitoba v. Bernhardt,
923 F.3d 173 (D.C. Cir. 2019) 62

Greene v. Dalton,
164 F.3d 671 (D.C. Cir. 1999) 13

Guerrero-Lasprilla v. Barr,
589 U.S. 221 (2020) 39

Gun Ho Chung v. Lynch,
620 F. App'x 637 (9th Cir. 2015) 57

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

Hecht Co. v. Bowles,
321 U.S. 321 (1944) 63, 64

Heckler v. Chaney,
470 U.S. 821 (1985) 50

Hines Immigr. L., PLLC v. Exec. Off. for Immigr.Rev.,
Civ. A. No. 26-1018 (CJN), 2026 WL 969020, (D.D.C. Apr. 10, 2026) ..... passim

Holder v. Humanitarian Law Project,
561 U.S. 1 (2010) 59

Huron v. Cobert,
809 F.3d 1274 (D.C. Cir. 2016) 20

Immigrant Defs. L. Ctr. v. Noem,
145 F.4th 972 (9th Cir. 2025) 64

In re: Emerson Huaytalla-Cisneros,
2010 WL 915655 (BIA 2010) 38

In Re: Esmeralda Perez Valdovinos Jesus Alberto Rogel Perez,
2017 WL 1508880 (BIA Mar. 24, 2017) 49

In Re: Jesus Olmedo Montealegre De Los Rios,
2017 WL 7660475 (BIA Oct. 26, 2017) 55

In Re: Jose De Jesus Garcia-Rodriguez,
2012 WL 1495509 (BIA Mar. 13, 2012) 38, 50

In Re: Zayuri Lopez-Perez Itzi Yanely Valdovinos-Lopez Isis Mariela Valdovinos-Lopez Samuel Efrain Valdovinos-Lopez,
2016 WL 2848950 (BIA Apr. 27, 2016) 50

INS v. St Cyr,
533 U.S. 289 33

Islamic Am. Relief Agency v. Gonzales,
477 F.3d 728 (D.C. Cir. 2007) 59

Ivanov v. Trump,
Civ. A. No. 26-915 (RJL), 2026 WL 2494805 (D.D.C. Aug. 25, 2026) 65

J.E.F.M. v. Lynch,
837 F.3d 1026 (9th Cir. 2016) 31

Jibril v. Mayorkas,
20 F.4th 804 (D.C. Cir. 2021) 21

Kewayfati v. Bondi,
165 F.4th 342 (5th Cir. 2026) 54

Khalil v. President, United States,
164 F.4th 259 (3d Cir. 2026) 32, 34, 45

Khan v. Meissner,
921 F. Supp. 2 (D.D.C. 1995) 45

Kinney-Coastal Oil Co. v. Kieffer,
277 U.S. 488 (1928) 63

Kisser v. Cisneros,
14 F.3d 615 (D.C. Cir. 1994) 51

Mwani v. bin Laden,
417 F.3d 1 (D.C. Cir. 2005) 13

LaRoque v. Holder,
650 F.3d 777 (D.C. Cir. 2011) 64

Lawyers' Comm. for 9/11 Inquiry v. Wray,
848 F. App'x 428 (D.C. Cir. 2021) 22

League of United Latin Am. Citizens,
780 F. Supp. 3d 17

Leslie v. Att'y Gen.,
611 F.3d 171 (3d Cir. 2010) 37, 57

Lujan v. Defenders of Wildlife,
504 U.S. 555 (1992) 13, 14

Lujan v. Nat'l Wildlife Foundation
497 U.S. 871 (1990) 42, 43

Lykins v. Rose,
608 F. Supp. 693 (D.D.C. 1984) 48

M.M.V. v. Garland,
1 F.4th 1100 (D.C. Cir. 2021) 36

Mahdawi v. Trump,
183 F.4th 103 (2d Cir. 2026) 34

Make the Rd. N.Y. v. Noem,
No. 25-5320, 2025 WL 3563313 (D.C. Cir. Nov. 22, 2025) 40, 41

Make the Rd. N.Y. v. *Wolf*,
962 F.3d 612 (D.C. Cir. 2020) ..... passim

Make the Rd. New York v. Mullin,
179 F.4th 16 (D.C. Cir. 2026) ..... passim

Marquez v. Pompeo,
Civ. A. No. 20-3225 (TSC), 2022 WL 43492 (D.D.C. Jan. 5, 2022) 44

Mass. Coal. for Immigr. Reform v.,
Dep't of Homeland Sec., 621 F. Supp. 3d 84 (D.D.C. 2022) 33

Massachusetts v. EPA,
549 U.S. 497 (2007) 43

Matter of C-I-G-M,
29 I. & N. Dec. 2914 (BIA 2025) 56

Matter of E-A-R-M-,
29 I. & N. Dec. 746 (BIA 2026) 56

Matter of E-R-M- & L-R-M-,
25 I. & N. Dec. 520 (BIA 2011) 39, 49

Matter of W-Y-C- & H-O-B-,
27 I. & N. Dec. 189 (BIA 2018) 37, 57

Midwest Ozone Grp. v. EPA,
61 F.4th 187 (D.C. Cir. 2023) 47

Mills v. Green,
159 U.S. 651 (1895) 24

Miot v. Trump,
No. 26-5050, 2026 WL 659420 (D.C. Cir. Mar. 6, 2026) 65

Mogenhan v. Napolitano,
613 F.3d 1162 (D.C. Cir. 2010) 13

Moharam v. Transp. Sec. Admin.,
134 F.4th 598 (D.C. Cir. 2025) 23, 28

Moini v. Granberg,
No. 22-7101, 2024 WL 2106214 (D.C. Cir. May 1, 2024) 27, 28

Morris v. Blanche,
179 F.4th 489 (6th Cir. 2026) 32

Morris v. McCarthy,
825 F.3d 658 (D.C. Cir. 2010) 14

Morrison v. Fed. Bureau of Prisons,
Civ. A. No. 21-2860 (BAH), 2023 WL 172202 (D.D.C. Jan. 12, 2023) 27

Mullin v. Al Otro Lado,
146 S. Ct. 2079 (2026) 20, 61

Mullin v. Doe,
146 S. Ct. 2121 (2026) 30, 45, 48, 60

RAICES v. Mullin,
174 F.4th 81 (D.C. Cir. 2026) 37, 64

Murthy v. Missouri,
603 U.S. 43 (2024) 18, 21

N.S. v. Dixon,
141 F.4th 279 (D.C. Cir. 2025) 37

N.Y. State Rifle & Pistol v. City of N.Y., N.Y.,
590 U.S. 336 (2020) 24

Nat'l Ass'n of Broads. v. FCC,
39 F.4th 817 (2022) 47

Nat'l Black Police Ass'n v. District of Columbia,
108 F.3d 346 (D.C. Cir. 1997) 24, 26

Nat'l Min. Ass'n v. Dep't of Interior,
251 F.3d 1007 (D.C. Cir. 2001) 28

New Mexico v. Musk,
824 F. Supp. 3d 80 (D.D.C. 2026) 21

Nat'l Immigr. Project of Nat'l Laws. Guild v.Exec. Off. of Immigr. Rev.,
456 F. Supp. 3d 16 (D.D.C. 2020) 33, 53

Nken v. Holder,
556 U.S. 418 (2009) 31, 64

RAICES v. Noem,
793 F. Supp. 3d 19 (D.D.C. 2025) 20

Norton v. Southern Utah Wilderness All.,
542 U.S. 55 (2004) 42, 43

Nyunt v. Chairman, Broad. Bd. of Governors,
589 F.3d 445 (D.C. Cir. 2009) 46

O.A. v. Trump,
404 F. Supp. 3d 109 (D.D.C. 2019) 33

Olenga v. Gacki,
507 F. Supp. 3d 260 (D.D.C. 2020) 59

People for the Ethical Treatment of Animals v. Dep't of Agric.,
797 F.3d 1087 (D.C. Cir. 2015) 15

PETA, Inc. v. Fish & Wildlife Serv.,
59 F. Supp. 3d 91 (D.D.C. 2014) 23

Phillips v. McLaughlin,
854 F.2d 673 (4th Cir. 1988) 26

Pub. Citizen, Inc. v. Fed. Energy Regul. Comm'n,
92 F.4th 1124 (D.C. Cir. 2024) 23

Rauda v. Jennings,
55 F.4th 773 (9th Cir. 2022) 30

RCM Techs., Inc. v. DHS,
614 F. Supp. 2d 39 (D.D.C. 2009) 54

Renal Physicians Ass'n v. HHS,
489 F.3d 1267 (D.C. Cir. 2007) 18

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

Riley v. Bondi,
606 U.S. 259 (2025) 37

Robert F. Kennedy Human Rights v. Dept' of State,
Civ. A. No. 25-1774 (JEB), 2026 WL 820811 (D.D.C. Mar. 25, 2026) 19

Safari Club Intern. v. Salazar,
281 F.R.D. 32 (D.D.C. 2012) 20

McNary v. Haitian Refugee Ctr., Inc.,
498 U.S. 479 (1991) 35

Scenic America, Inc. v. Dep't of Transp.,
836 F.3d 42 (D.C. Cir. 2016) 14, 20

Schmidt v. United States,
749 F.3d 1064 (D.C. Cir. 2014) 23

Sierra Club v. Jackson,
648 F.3d 848 (D.C. Cir. 2011) 23

Sissoko v. Rocha,
509 F.3d 947 (9th Cir. 2007) 59

Sprint Corp. v. FCC,
151 F.4th 347 (D.C. Cir. 2025) 40, 47

Starbucks Corp. v. McKinney,
602 U.S. 339 (2024) 63, 64

Swanson Grp. Mfg. LLC v. Jewell,
790 F.3d 235 (D.C. Cir. 2015) 14, 22

Tate v. Nat'l Postal Mail Handlers Union Local 305,
Civ. A. No. 16-2021 (DLF), 2018 WL 2538445 (D.D.C. Apr. 12, 2018) 13

Tazu v. Att'y Gen.,
975 F.3d 292 (3d Cir. 2020) 29, 30, 31, 34

Transactive Corp. v. United States,
91 F.3d 232 (D.C. Cir. 1996) 41

True the Vote, Inc. v. IRS,
831 F.3d 551 (D.C. Cir. 2016) 26

Trump v. CASA, Inc.,
606 U.S. 831 (2025) 21, 63, 64

Trump v. Hawaii,
585 U.S. 667 (2018) 59

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

U.S. Army Corps of Eng'rs v. Hawkes Co., Inc.,
578 U.S. 590 (2016) 41

U.S. Bancorp Mortg. Co. v. Bonner Mall P'ship,
513 U.S. 18 (1994) 24

Ukeiley v. EPA,
896 F.3d 1158 (10th Cir. 2018) 58

United States v. Concentrated Phosphate Exp. Ass'n,
393 U.S. 199 (1968) 26

United States v. Oakland Cannabis Buyers' Coop.,
532 U.S. 483 (2001) 64

United States v. Philip Morris USA Inc.,
566 F.3d 1095 (D.C. Cir. 2009) 23

United States v. Sineneng-Smith,
590 U.S. 371 (2020) 27

Valero Energy Corp. v. Env't Prot. Agency,
927 F.3d 532 (D.C. Cir. 2019) 54

Vill. of Bald Head Island v. U.S. Army Corps. of Eng'rs,
714 F.3d 186 (4th Cir. 2013) 42

Wang v. Att'y Gen. U.S.,
423 F.3d 260 (3d Cir. 2005) 38, 57

Ward v. McDonald,
762 F.3d 24 (D.C. Cir. 2014) 13

Weinberger v. Romero-Barcelo,
456 U.S. 305 (1982) 64

West Virginia v. EPA,
597 U.S. 697 (2022) 23

Wild Fish Conservancy v. Jewell,
730 F.3d 791 (9th Cir. 2013) 43

Youngstown Sheet & Tube Co. v. Sawyer,
343 U.S. 579 (1952) 59

Zhu v. Gonzales,
411 F.3d 292 (D.C. Cir. 2005) 51

Statutes

5 U.S.C. § 701(a)(1) 45, 48

5 U.S.C. § 702 41

5 U.S.C. § 704 41

5 U.S.C. § 705 27

8 U.S.C. § 1101(a)(47)(A) 39

8 U.S.C. § 1182(a)(6)(C) 7, 8, 9, 10

8 U.S.C. § 1225(a)(1) 3, 61

8 U.S.C. § 1225(b)(1) 3

8 U.S.C. § 1229 6

8 U.S.C. § 1229a 1, 49

8 U.S.C. § 1229(a)(1) 62

8 U.S.C. § 1229a(a)(3) 5

8 U.S.C. § 1252(a)(2)(A) 5

8 U.S.C. § 1252(b)(9) ..... passim

8 U.S.C. § 1252(e)(3)(A) 5, 12, 13, 29

8 U.S.C. § 1252(e)(3)(B) 36

8 U.S.C. § 1252(e)(4) 5

8 U.S.C. § 1252(f)(1) 37

8 U.S.C. § 1252(g) ..... i, 12, 29, 60

8 U.S.C. § 1252(a)(5) 31

Rules

Fed. R. Civ. P. 7(b)(1)(A) 57

Fed. R. Civ. P. 23(b)(2) 64

Fed. R. Civ. P. 56(a) 13

Regulations

8 C.F.R. § 1.2 ..... 3, 4

8 C.F.R. § 208.30(f) 5

8 C.F.R. § 235.3(b)(1)(i) 4

8 C.F.R. § 235.3(b)(1)(ii) 60

8 C.F.R. § 239.2(a) 52, 55

8 C.F.R. § 239.2(a)(2) 61

8 C.F.R. § 239.2(a)(7) ..... passim

8 C.F.R. § 239.2(c) 6

8 C.F.R. § 1003.0 6

8 C.F.R. § 1003.14 6

8 C.F.R. § 1003.23 56

8 C.F.R. § 1003.6(a) 39

8 C.F.R. § 1239.2(b) 6, 56

8 C.F.R. § 1239.2(c) 6

8 C.F.R. § 1240.2 6

8 C.F.R. § 1240.8(d) 38

8 C.F.R. § 208.2(b) 39, 40

8 C.F.R. § 1003.02(c) 52

Other Authorities

62 Fed. Reg. 10,312 (Mar. 6, 1997) 3

90 Fed. Reg. 8139 (Jan. 24, 2025) 4, 7

Executive Order 14159 7

Defendants the Department of Justice, the Executive Office for Immigration Review ("EOIR"), Todd Blanche, in his official capacity as Attorney General, Sirce Owen, in her official capacity as Acting Director of EOIR, Kevin Riley, in his official capacity as acting Regional Deputy Chief Immigration Judge of EOIR, Phillip Taylor, in his official capacity as acting Regional Deputy Chief Immigration Judge of EOIR, the Department of Homeland Security, U.S. Immigration and Customs Enforcement, Markwayne Mullin in his official capacity as Secretary of Homeland Security ("the Secretary"), and David Venturella, in his official capacity as Senior Official who is performing the duties of the Director, respectfully submit this combined opposition to Plaintiffs' motion for summary judgment and cross-motion to dismiss and for summary judgment.

INTRODUCTION

Two organizations ("Organizational Plaintiffs") and eleven remaining individual plaintiffs ("Individual Plaintiffs") (collectively, "Plaintiffs") raise multiple challenges to immigration decisions that Congress left to the discretion of the Executive Branch. But the Executive enjoys a great deal of discretion over immigration matters. Whether to subject aliens to removal proceedings is an exercise of prosecutorial discretion, which courts may not review. That exercise of discretion may sometimes cut the other way and permit the Executive to dismiss removal proceedings against certain aliens. The type of proceedings pursued enjoy the same discretion.

Some aliens may have benefited from a favorable discretionary decision in the form of being placed into removal proceedings under 8 U.S.C. § 1229a, permitting them to make their cases before immigration judges. But discretion is undoubtedly a two-way street: the same discretion that permitted the Executive to seek removal through one form of proceedings permits the Executive to dismiss those proceedings and seek expedited removal for aliens who fall within Congress's ambit of the provision. The Secretary has unfettered discretion to fully extend the

expedited removal statute permitted by the Congress. While certain aliens may be impacted by the change in discretionary decision making and enforcement priorities, that change does not automatically make decisions reviewable.

Plaintiffs resist these basic principles and invite this Court to look behind various discretionary decisions. The Court should decline. This case suffers from multiple threshold flaws. First, all the plaintiffs lack standing to bring this case. While the Organizational Plaintiffs originally survived the minimal threshold for a motion to dismiss, they fail to meet the summary judgment standard for standing. The Individual Plaintiffs continue to rely on outdated declarations and without anything more, they too have failed to demonstrate standing. Even if the Court disagrees and finds Plaintiffs confer standing, their challenges run into numerous jurisdictional bars that prohibit review into the merits; therefore, the Court is limited in the relief that it can order.

Though the entire challenge is brought under the Administrative Procedure Act, the presumption of judicial review falls away here. Plaintiffs cannot seek wholesale change of agency action by cobbling together a policy of their own making. Nor can Plaintiffs seek review of claims for which an alternative adequate remedy exists to obtain review. Not to mention, Plaintiffs seek review of unreviewable agency decisions grounded in agency discretion. Plaintiffs' policy challenges are non-final agency actions, which is yet another bar on review.

Finally, Defendants prevail on the merits of all of Plaintiffs' claims. The Executive Branch has legal authority to decide how to exercise its prosecutorial discretion, including dismissing and initiating immigration proceedings of different kinds. Congress delegated authority to the Secretary to implement the expedited removal statute to the fullest extent he deems appropriate at the time he deems appropriate. There is nothing unlawful about these actions, and Plaintiffs' arguments fail to carry the day.

The Court should grant summary judgment to Defendants on all counts.

BACKGROUND

I. Legal Background

The Immigration and Nationality Act ("INA") generally sets forth two basic forms of proceedings when the government seeks to remove an alien from the United States: expedited removal proceedings and non-expedited removal proceedings ("removal proceedings"). A basic understanding between the two is imperative to understanding the issues in this case.

A. Expedited Removal

In 1996, Congress created expedited removal, a streamlined procedure for the removal of certain inadmissible aliens who lack valid documentation or who make a material misrepresentation. 8 U.S.C. § 1225(b)(1); *see also id.* § 1182(a)(6)(C), (7). Congress also defined a new category of aliens, known as "applicants for admission." 8 U.S.C. § 1225(a)(1) (deeming "[a]n alien present in the United States who has not been admitted or who arrives in the United States" applicants for admission).

Expedited removal specifically applies to certain applicants for admission. *See* 8 U.S.C. § 1225(b)(1) (describing "inspection of applicants for admission"). Within that broader category, two groups of aliens are subject to expedited removal under § 1225(b)(1), while other applicants for admission are subject to the procedures of § 1225(b)(2). The first group of aliens subject to expedited removal encompasses aliens "arriving in" the United States, *id.* § 1225(b)(1)(A)(i). The statute does not define "arriving in." A regulation promulgated in 1997 defines an "[a]rriving alien" as "an applicant for admission coming or attempting to come into the United States at a port-of-entry." 8 C.F.R. § 1.2; *see* 62 Fed. Reg. 10,312, 10,312-13 (Mar. 6, 1997). That same regulation provides that "[a]n arriving alien remains an arriving alien even if paroled" into the

country, "and even after any such parole is terminated or revoked." 8 C.F.R. § 1.2. "Arriving aliens, as defined in 8 CFR 1.2," are subject to expedited removal. 8 C.F.R. § 235.3(b)(1)(i).

Aliens designated by the Secretary within certain statutory limits constitute the second group of those subject to expedited removal. *See* 8 U.S.C. § 1225(b)(1)(A)(iii). The designation is limited to: "An alien. . . who has not been admitted or paroled into the United States, and who has not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility." 8 U.S.C. § 1225(b)(1)(A)(iii)(II). But the Secretary "may … designate[]" certain classes of inadmissible aliens who have not been admitted or paroled and who have not "been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility" as subject to expedited removal, and that designation "shall be in the sole and unreviewable discretion of the [Secretary] and may be modified at any time." 8 U.S.C. § 1225(b)(1)(A)(iii). The most recent designation restored the scope of expedited removal to "the fullest extent authorized by Congress." 90 Fed. Reg. 8139 (Jan. 24, 2025).

"The expedited-removal process begins with an inspection by an immigration officer." *Make the Rd. New York v. Mullin* ("*Make the Rd. II*"), 179 F.4th 16, 21 (D.C. Cir. 2026). If the immigration officer concludes that the alien is inadmissible and there are no exceptions, then the officer orders removal. *See id.* (citing 8 U.S.C. § 1225(b)(1)(A)(i)). If an alien expresses a fear of torture or persecution, or indicates that he intends to apply for asylum, then he is referred for a credible fear interview; there, an asylum officer determines whether the alien can establish the requisite possibility of eligibility for asylum or other related protections from removal. *See id.* A positive credible fear finding results in the alien's detention pending consideration of the asylum

application or any other form of protection. *See* 8 U.S.C. § 1225(b)(1)(B)(ii). U.S. Citizenship and Immigration Services ("USCIS") may elect to issue a notice to appear so that an immigration judge ("IJ") may fully consider all forms of relief or protection from removal, or it may retain jurisdiction over the asylum application. *See* 8 C.F.R. § 208.30(f); *accord Make the Rd. II*, 179 F.4th at 21.

If the asylum officer makes a negative credible fear determination, the alien can obtain *de novo* review by an IJ. *Make the Rd. II*, 179 F.4th at 21. If the alien does not request IJ review or the IJ determines that there is no credible fear, then the expedited removal order becomes final. *Id.* There is limited review of expedited removal orders, which can occur through a petition for habeas corpus, in which the court's review is statutorily restricted to whether the petitioner is an alien; whether an expedited removal order was issued; and whether the alien is a lawful permanent resident, asylee, or refugee. 8 U.S.C. § 1252(a)(2)(A), (e)(2). A favorable decision from the habeas court only results in referral to the IJ for removal proceedings. 8 U.S.C. § 1252(e)(4).

The cases challenging the validity of the expedited removal system must brought within sixty days of the date of the challenged action in the United States District Court for the District of Columbia, and the court's determinations are limited whether the statute or any regulation implementing the statute is constitutional; or whether any regulation, written policy directive, written policy guidance, or written procedure implementing the statute is inconsistent with other relevant provisions of the INA or is otherwise in violation of law. 8 U.S.C. § 1252(e)(3)(A), (B).

B. Removal Proceedings

Absent expedited removal and other limited forms of proceedings, removal proceedings are the "sole and exclusive procedure for determining whether an alien may be admitted to the United States, or if the alien has been so admitted, removed from the United States." 8 U.S.C. § 1229a(a)(3). To initiate removal proceedings, the government issues a notice to appear, which provides the alien notice and information set out by statute and file that notice with the immigration

court. *See* 8 U.S.C. § 1229; 8 C.F.R. § 1003.14. Department of Homeland Security ("DHS") attorneys present "evidence material to the issues of deportability or inadmissibility and any other issues that may require disposition" of the case. 8 C.F.R. § 1240.2. The IJ "receive[s] and consider[s] material and relevant evidence, rule[s] upon objections, and otherwise regulate[s] the course of the hearing." *Id.* § 1240.1(c).

IJs exercise "independent judgment and discretion" and "may take any action consistent with their authorities under the Act and regulations that is necessary or appropriate for the disposition or alternative resolution" of removal proceedings. 8 C.F.R. § 1003.0. The initiation of removal proceedings is an exercise of pure prosecutorial discretion, one that "the Executive has discretion to abandon" at any time. *Reno v. Am.-Arab Anti-Discrim. Comm.*("*AADC*"), 525 U.S. 471, 483-84 (1999). The government is permitted to move to dismiss pending removal proceedings for a variety of reasons. *See* 8 C.F.R. § 239.2(c). Those reasons include if a notice to appear was "improvidently issued" or if circumstances "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)(6), (7); 8 C.F.R. § 1239.2(c). The IJ may dismiss the action pursuant to an order. 8 C.F.R. § 1239.2(b). If the government moves to dismiss proceedings that are outside of the reasons listed in the relevant regulation, then the IJ is to deem the government's filing as a motion to terminate and adjudicate it accordingly. *See* 8 C.F.R. § 1239.2(b) (requiring an IJ to adjudicate the motion pursuant to 8 C.F.R. § 1003.18(d)).

II. The Guidance Documents at Issue

The Court dismissed with prejudice Plaintiffs' claims related to what had been deemed the "Courthouse Arrest Policy." *See* Min. Order (July 16, 2026) (dismissing Counts I and II).

Therefore, only Counts III, IV, V, VI, VII, VIII, IX, X, and X remain.[1] Defendants only recount the guidance documents that are relevant to the live counts.

A. Expedited Removal

On January 20, 2025, President Trump issued Executive Order 14159, *Protecting the American People Against Invasion*, which directed the Secretary to "take all appropriate action" to apply expedited removal authorities. BroadcastAR_006. Following the issuance of the Executive Order, the Acting Secretary published a Federal Register notice restoring the expedited removal scope to "the fullest extent authorized by Congress." *Designating Aliens for Expedited Removal*, 90 Fed. Reg. 8139 (Jan. 24, 2025); *see also* BroadcastAR_014-019. The notice enabled DHS "to place in expedited removal, with limited exceptions, aliens determined to be inadmissible under [8 U.S.C. § 1182(a)(6)(C) or (a)(7)] who have not been admitted or paroled into the United States and who have not affirmatively shown, to the satisfaction of an immigration officer, that they have been physically present in the United States continuously for the two-year period immediately preceding the date of the determination of inadmissibility," who were not covered by prior designations. BroadcastAR_017-018.

The restoration of expedited removal to its full scope was meant to "enhance national security and public safety—while reducing government costs—by facilitating prompt immigration determinations" and would "enable DHS to address more effectively and efficiently the large volume of aliens who are present in the United States unlawfully … and ensure the prompt removal from the United States of those not entitled to enter, remain, or be provided relief or protection from removal." BroadcastAR_016. On January 23, 2025, the then-Acting Secretary published an

---

[1] The Court dismissed Counts III through VII as brought by individual plaintiffs. *See* Mem. Order at 20.

internal memorandum entitled, "Guidance Regarding How to Exercise Enforcement Discretion," ("Huffman Memo") explaining "how to exercise enforcement discretion in implementing these policies." BroadcastAR_012-13. The Huffman Memo instructs immigration enforcement to take "all steps necessary to review [an] alien's case" to evaluate and consider whether individuals should be placed into expedited removal. BroadcastAR_013. Moreover, the memo prompts consideration of, *inter alia*, "aliens eligible for expedited removal who failed to apply for asylum within the statutory deadline." *Id.* (citations omitted).

On January 31, 2025, the Acting Principal Legal Advisor sent a nationwide email to the field offices of the Office of the Principal Legal Advisor ("OPLA"). BroadcastAR_020-21. The email reiterated the Federal Register Notice and the Huffman Memo. *See* BroadcastAR_020. It also instructed OPLA attorneys to "review each case they encounter on the detained docket and determine on a case-by-case basis whether the alien is amenable to [expedited removal]." BroadcastAR_021. The email also reminded attorneys to consider whether the alien had failed to file a timely asylum application. *See id.*

One month later, the Acting Director for Immigration and Customs Enforcement ("ICE") issued a memorandum titled "Implementation Guidance for January 2025 Federal Register Notice, Designating Aliens for Expedited Removal" ("February 2025 Memo"). BroadcastAR_022. In it, he recounted the Federal Register Notice and went on to inform ICE immigration officers of the "broad discretion" they enjoy in determining "whether to apply expedited removal in individual cases" amongst other decisions. BroadcastAR_023. ICE officers would apply the full force of expedited removal to aliens who cannot establish that they were physically present in the United States continuously for the two-year period immediately prior to the date of the inadmissibility determination along with others who fell within the definition. *See id.* But nevertheless, officers

were reminded to consider a variety of factors as to whether the alien should be subject to expedited removal. *See* BroadcastAR_024. The Acting Director provided a nonexhaustive list of evidence that officers could review to confirm that an alien has met his burden in establishing that he was physically present in the United States for a two-year period prior to the inadmissibility determination. *See id.* While the alien may not necessarily have evidence on his person or at the time of encounter, the February 2025 Memo provides for "a reasonable opportunity" for the alien to obtain the evidence. *Id.*

On March 5, 2025, the Acting Principal Legal Advisor sent a nationwide email to OPLA personnel ("March 2025 Email"), which served as the companion to the February 2025 Memo. BroadcastAR_026-27. The email reminded OPLA personnel that attorneys had to review cases individually and determine whether to pursue expedited removal. *See* BroadcastAR_027. On May 20, 2025, the Principal Legal Advisor sent an email blast ("May 20 Broadcast") with the subject line "Broadcast Message: Referring Non-Detained Cases to ERO for Arrest". BroadcastAR_001. Though the focus of the May 20 Broadcast was detention-related issues, the Principal Legal Advisor reminded OPLA personnel of the Acting Secretary's expedited removal notice and guidance. *See* BroadcastAR_001-002. He also reminded OPLA personnel that they were to review detained and non-detained cases and decide whether the individual was amenable to expedited removal and to consider the necessary discretionary factors. *See* BroadcastAR_002.

B. Plaintiffs' Purported Dismissal "Guidance"

1. May 20 Broadcast

In the May 20 Broadcast, the Principal Legal Advisor informed OPLA personnel that the attorneys should consult with the Field Office's Chief Counsel, ERO or HSI, on whether removal proceedings should be dismissed so that the government can pursue expedited removal instead. *See* BroadcastAR_002. There is no command in the May 20 Broadcast that removal proceedings

must be dismissed. *See* BroadcastAR_002. That is entirely consistent with earlier messages. In his January 31, 2025 email, then-Acting Principal Legal Advisor advised OPLA field offices that attorneys and ERO should work together to determine whether the government should dismiss removal proceedings so that the alien may be placed into expedited removal instead. BroadcastAR_021. The February 2025 Memo informs ICE officers that they should consider whether to take steps in terminating ongoing removal proceedings. *See* BroadcastAR_024. However, it noted that ICE officers themselves could not terminate proceedings if a notice of appear had already been filed in immigration court; rather, OPLA attorneys appearing in immigration court could move to dismiss proceedings for the appropriate regulatory reason. *See id.* n. 8 (citing 8 C.F.R. § 239.2(a)(7)). In the March 2025 email, the Acting Principal Legal Advisor reiterated that the decision to dismiss removal proceedings should be made on a case-by-case basis. BroadcastAR_027.

2. EOIR's Dismissal "Guidance"

On May 30, 2025, two Regional Deputy Chief IJs circulated guidance about case adjudications ("EOIR's May 30 Email"). *See* EOIR-AR-015-016. They recounted the "significant changes" in caseloads and therefore "re-emphasized goals for detained dockets" while addressing staffing for nondetained dockets. *See* EOIR-AR-015. EOIR's May 30 Email reminded IJs that they must issue written decisions if they do not issue an oral decision on the same day that the testimony and the hearing concluded. EOIR-AR-015-016. It also informed IJs that DHS may move to dismiss proceedings orally and that those decisions could be made from the bench. EOIR-AR-016.

EOIR's May 30 Email was eventually withdrawn by a policy memo issued on September 23, 2025 ("EOIR's September 23 Memo"). *See* EOIR-AR-011. The memo recounts the May 30 email and confirms that it never "constituted an agency policy or otherwise represented a binding directive to IJs to decide cases a particular way" because it was never in the agency's policy manual

nor could it direct or bind IJs from making specific decisions in particular cases in predetermined ways. *See id.* Rather, EOIR's May 30 Email was an admittedly "poorly drafted" "attempt to paraphrase relevant law," which is entirely rooted in regulation. EOIR-AR-012. While the Acting Deputy Director of EOIR recounted that no IJ should have relied on EOIR's May 30 Email as a legal directive to decide a case a specific way, EOIR's September 23 Memo was issued "to eliminate any remaining uncertainty" and to confirm that no IJ should "rely on it in adjudicating cases." EOIR-AR-013.

C. Plaintiffs' Purported "Concurrent Proceedings Guidance"

Plaintiffs cobbled together various emails and statements to Frankenstein a concurrent proceedings guidance. *See* Pls' Mot. at 13-14. Indeed, they concede that the May 20 Broadcast, which is the basis for their challenge to this supposed Concurrent Proceedings guidance, "does not expressly mention 'concurrent proceedings.'" Pls' Mot. at 33.

III. The Plaintiffs and this Case

Plaintiffs filed this case on July 16, 2025. *See* Compl. (ECF No. 1) at 1–2. The complaint challenges numerous policy decisions. Following the Court's dismissal of Counts I and II, *see* Min. Order (July 16, 2026), the following remain:

1. EOIR's May 30 Guidance, which provides information to [IJ] on dismissals of "full" removal proceedings, which Plaintiffs deemed the "EOIR Dismissal Guidance." *See* Compl. ¶¶ 61, 141-46 (Count III), 147-52 (Count IV), and 164-68 (Count VII);

2. The May 20 Broadcast, which provided ICE counsel information on how to represent the government in removal proceedings and that which Plaintiffs have deemed the "DHS Dismissal Guidance." *See id.* ¶¶ 60, 153-58 (Count V), 159-63 (Count VI); and 164-68 (Count VII);

3. The May 20 Broadcast and proposing a "new position" in the interpretation of the expedited removal statute, which Plaintiffs call "DHS Policy Expanding Expedited Removal Beyond 2-Year Statutory Limit," *see id.* ¶¶ 99-101, 169-77 (Count VIII), 178–82 (Count IX); and

4. The "Concurrent Proceedings Guidance," which Plaintiffs allege instructed the government to proceed with expedited removal proceedings before final dismissal orders. *See id.* ¶¶ 66-67, 183-89 (Count X), 190-97 (Count XI).

The Court dismissed Counts III through VII for Individual Plaintiffs under 8 U.S.C. § 1252(g) but permitted the remainder of the claims to proceed to summary judgment. *See* Mem. Order (ECF No. 50) at 10, 20. The Court declined to apply the same jurisdictional bar to the Organizational Plaintiffs' claims because they were asserting "injuries to their own operations, rather than bringing claims on behalf of any alien they serve." *Id.* at 10. The Court was also unpersuaded by Defendants' channeling argument, holding that § 1252(b)(9) did not bar review of the Organizational Plaintiffs' claims because they were not challenging final removal orders. *See id.* at 11. The Court also concluded that the Organizational Plaintiffs, by way of American Gateways, had their low burden to plausibly allege standing to survive a motion to dismiss. *See id.* at 11-13; *see id.* at 13 n.4. The Court however expressed concerns about the "staff-diversion" theory being advanced to support the injury-in-fact prong but reserved the question for summary judgment given the procedural posture of the case. *See id.* at 12.

Defendants had sought dismissal of claims related to EOIR's May 30 Email, because EOIR withdrew the email that serves as Plaintiffs' hook for their policy claim. *See id.* The Court declined to dismiss because Defendants had not met its high burden to establish mootness. *See id.* The Court then reserved the remaining arguments related to the dismissal policies "for another day" because it determined those arguments could not be addressed without the administrative records. *See id.*

Turning to the purported expanded use of expedited removal and the "Concurrent Proceedings" issues, the Court similarly declined to dismiss the claims at that specific stage of the litigation. As it had done with other claims, the Court declined dismiss the Individual Plaintiffs' claims related to the "Concurrent Proceedings Guidance" because some had plausibly alleged

injury, causation, and redressability. *See id.* at 15. The Court also rebuffed Defendants' INA-jurisdiction stripping arguments under § 1252(e) and declined dismiss the allegations that were rooted upon "information and belief." *See id.* at 16-17. Again, the Court decided that these issues would be resolved on summary judgment. *See id.*

LEGAL STANDARDS

I. Rule 12(h)(3)

Under Rule 12(h)(3), the Court must dismiss the suit regardless of the stage of litigation. *See Mwani v. bin Laden*, 417 F.3d 1, 11 (D.C. Cir. 2005); *see also Tate v. Nat'l Postal Mail Handlers Union Local 305*, Civ. A. No. 16-2021 (DLF), 2018 WL 2538445, at *2 (D.D.C. Apr. 12, 2018). A plaintiff bears the burden of establishing jurisdiction by a preponderance of the evidence. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992).

II. Rule 56

Pursuant to Rule 56, a court may grant summary judgment when "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A "material" fact is one capable of affecting the substantive outcome of the litigation. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). "By its very terms, the [summary judgment] standard provides that the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of material fact." *Id.* at 247-48 (emphasis in original); *see Greene v. Dalton*, 164 F.3d 671, 675 (D.C. Cir. 1999) (stating that conclusory assertions offered without any evidentiary support do not establish a genuine issue for trial). "A dispute about a material fact is not 'genuine' unless 'the evidence is such that a reasonable jury could return a verdict for the nonmoving party.'" *Ward v. McDonald*, 762 F.3d 24, 31 (D.C. Cir. 2014) (quoting *Mogenhan v. Napolitano*, 613 F.3d 1162, 1165 (D.C. Cir. 2010)).

Mere speculation is insufficient to defeat summary judgment. *Morris v. McCarthy*, 825 F.3d 658, 674 (D.C. Cir. 2010).

ARGUMENT

I. The Court Lacks Jurisdiction.

A. Plaintiffs Lack Standing.

The Organizational Plaintiffs failed to establish standing. The Individual Plaintiffs mirror that failure. The Court should grant summary judgment on all claims for that reason.

A federal court's jurisdiction is limited only to "Cases" and "Controversies." U.S. Const. art. III, § 2. A case or controversy exists only if a plaintiff meets the "three elements" of "the irreducible constitutional minimum of standing": (1) "the plaintiff must have suffered an injury in fact"; (2) "there must be a causal connection between the injury and the conduct complained of—the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court"; and (3) "it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Lujan*, 504 U.S. at 560-61 (citation modified). Plaintiffs bear the burden to establish standing. *Scenic America, Inc. v. Dep't of Transp.*, 836 F.3d 42, 48-49 (D.C. Cir. 2016). They cannot rely on the motion-to-dismiss standard when it comes to establishing standing at the summary judgment stage. *See Swanson Grp. Mfg. LLC v. Jewell*, 790 F.3d 235, 240 (D.C. Cir. 2015) ("At the summary judgment stage of the proceedings, the companies 'can no longer rest on ... mere allegations, but must set forth by affidavit or other evidence specific facts, which for purposes of the summary judgment motion will be taken to be true.'" (citation modified) (quoting *Lujan*, 504 U.S. at 561)). This Court cannot "presume the missing facts necessary to establish an element of standing." *Id.*

1. IARC and American Gateways

Neither Organizational Plaintiff can establish standing at the summary judgment stage. First, the Organizational Plaintiffs have not met their heightened burden and established that they suffer a concrete injury. Second, the Organizational Plaintiffs bring claims that pose redressability problems, as the D.C. Circuit just recently held. Either way, the outcome is the same: judgment in favor of Defendants on all claims due to Plaintiffs' lack of standing.

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

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

activities[.]" *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 395 (2024) "Government regulations that require or forbid some action by the plaintiff almost invariably satisfy both the injury in fact and causation requirements" for standing. *Id.* at 382. But, as here, when an organization "challenges the government's unlawful regulation (or lack of regulation) of someone else, standing is not precluded, but it is ordinarily substantially more difficult to establish." *Id.* (citation modified). "When the plaintiff is an unregulated party, causation ordinarily hinges on the response of the regulated (or regulable) third party to the government action or inaction—and perhaps on the response of others as well." *Id.* (citation modified).

Both Organizational Plaintiffs fail to establish their standing here. American Gateways asserts standing because their "core business activities, including representing noncitizens in removal proceedings and assisting pro se noncitizens in the San Antonio immigration court" have been impeded. Pls' Mot. at 14. Their theory is that the challenged policies have complicated advising pro se individuals and require more time than before. *See id.* at 21-22 (arguing a seven-hour differential per client for dismissal issues and a five-hour differential for expedited removal issues). IARC asserts standing because the EOIR Dismissal Guidance and the May 20 Broadcast "directly impede [its] core business activity of assisting pro se respondents in the New York immigration court through its 'Friend of the Court' program." Pls' Mot. at 16. Like its co-plaintiff, IARC reflects on the loss of hours and monetary expenditure. *See id.* at 23.

None of those contentions shows a "direct conflict" between Defendants' conduct and the organizations' missions. *See Am. Soc. For Prevention of Cruelty to Animals*, 659 F.3d at 25. Rather, the Organizational Plaintiffs made deliberate choices on how to proceed in light of a change in immigration enforcement; that led to staffing decisions, which is the basis for their standing arguments. *See* Declaration of Edna Yang ("Yang Decl.") (ECF No. 69-2) ¶¶ 29-37;

Declaration of Gillian Rowland-Kain ("Rowland-Kain Decl.") ¶¶ 24-45. But that cannot establish organizational standing here. *See Am. Soc. For Prevention of Cruelty to Animals*, 659 F.3d at 25.

"[A]n organization does not suffer an injury in fact where it expends resources to educate its members and others unless doing so subjects the organization to 'operational costs beyond those normally expended.'" *Food & Water*, 808 F.3d at 920 (citation modified). And while a frustrated ability to provide legal services could result in standing, *see Cap. Area Immigrants' Rts. Coal. v. Trump*, 471 F. Supp. 3d 25, 38-39 (D.D.C. 2020), "[t]he mere fact that an organization redirects some of its resources to litigation and legal counseling in response to actions or inactions of another party is insufficient to impart standing upon the organization," *Turlock Irrigation Dist. v. FERC*, 786 F.3d 18, 24 (D.C. Cir. 2015); *see also Food & Water*, 808 F.3d at 919 ("an organization's use of resources for litigation, investigation in anticipation of litigation, or advocacy is not sufficient to give rise to an Article III injury."). That is why both American Gateways and IARC get nowhere by discussing how many individuals they can now assist. *See* Pls' Mot. at 21, 23. Nor can increased expenses confer standing. *See All. for Hippocratic Med.*, 602 U.S. at 395; *see also League of United Latin Am. Citizens*, 780 F. Supp. 3d at 180.

These deficiencies are precisely why another court rejected the "staff-diversion theory," *see* Mem. Order at 12, and focused on the organizational plaintiff's failure to allege any specific actions taken against it. *See Angelica S. v. HHS*, 786 F. Supp. 3d 158, 172 (D.D.C. 2026). Because the organizational plaintiff could still "perform its fundamental purposes by representing unaccompanied minors through the sponsorship and release process," its complaint really boiled down to an objection that the "ultimate goal has been made more difficult." *Id.* (citation modified). So too here with both Organizational Plaintiffs, who fail to establish a cognizable injury for standing purposes.

Most fundamentally, the Organizational Plaintiffs cannot establish redressability. They only offer a perfunctory argument to this end, contending that vacatur of the challenged policies would simply revert to the status quo ante, meaning that injuries are redressable. *See* Pls' Mot. at 24. But the D.C. Circuit in *Coalition for Humane Rights v. Mullin* addressed and rejected a similar theory in which an organization argued that "a drop in expedited removal rates" would be the hook for redressability. 185 F.4th 1275, 1282 (D.C. Cir. 2026). There, the "fatal redressability problem" was that "getting rid of the [Huffman] Memorandum and Email" did not mean that there would be reversal in the trend of expedited removals. *Id.* Here, Organizational Plaintiffs commit the same error as in *Coalition for Humane Rights*. They do not show that vacatur of the policies would redress their purported injuries. *See id.*

Vacating the May 20 Broadcast and EOIR's May 30 Email would not prohibit Defendants from dismissing removal proceedings, which are entirely within the discretion of the Executive. *See AADC*, 525 U.S. at 483-84. Nor does the vacatur of the expansion of expedited removal mean that Defendants cannot pursue expedited removal proceedings at all. *See Make the Rd. N.Y. v. Wolf* ("*Make the Rd. I*"), 962 F.3d 612, 632 (D.C. Cir. 2020) (acknowledging that the Secretary can modify the bounds of the expedited removal statute "at any time"). Therefore, Defendants would remain free to pursue dismissal of removal proceedings and modify the expedited removal bounds as they deem necessary; and Organizational Plaintiffs "give no basis for thinking" that that would change. *Coalition for Humane Rights*, 185 F.4th at 1283. Put differently, Organizational Plaintiffs ask this Court to assume—without evidence—that things would change; that is insufficient. *See Renal Physicians Ass'n v. HHS*, 489 F.3d 1267, 1278 (D.C. Cir. 2007) (holding that "the undoing of the governmental action" here "will not undo the harm, because the new status quo is held in place by other forces"); *see also Murthy v. Missouri*, 603 U.S. 43, 73-74, 74 n.11 (2024) (holding

that even if the challenged policies were "tainted by initial governmental" illegality, the plaintiff failed to establish redressability because the critical actor "remain[ed] free to enforce, or not to enforce" the precise same harmful "policies").

Factually, neither Organizational Plaintiff meets its heightened injury burden at this stage in the litigation. Indeed, neither of the submitted declarations attest to how relief from this Court would redress the injuries that each Organizational Plaintiff alleges. *See generally* Yang Decl.; Rowland-Kain Decl. That is a failure to provide any factual evidence on how the Court will redress the injury.

Hines Immigr. L., PLLC v. Exec. Off. for Immigr. Rev. ("*Hines*"), Civ. A. No. 26-1018 (CJN), 2026 WL 969020, (D.D.C. Apr. 10, 2026), is instructive. The plaintiffs were a Minnesota immigration law firm and a nonprofit organization who provided immigration-related legal services in removal proceedings. *Hines*, 2026 WL 969020, at *2. The *Hines* court held the organizational plaintiffs had likely failed to establish redressability because staying the purported policy would do nothing to "'require federal officials to change how they exercise that discretion in the policy's absence.'" *Id.* at *6 (citation modified, quoting *Biden v. Texas*, 599 U.S. 670, 691 (2023)); *see also Robert F. Kennedy Human Rights v. Dept' of State*, Civ. A. No. 25-1774 (JEB), 2026 WL 820811, at *14 (D.D.C. Mar. 25, 2026) (vacatur of nonbinding policies posed redressability problems).

Organizational Plaintiffs have thus failed to satisfy their Article III requirements.

2. Individual Plaintiffs

The Court should not rely on Individual Plaintiffs' outdated declarations as a source of establishing Article III standing at this juncture in the litigation.

Fundamentally, all Individual Plaintiffs fail to establish the most basic fact necessary to establish their standing—that they remain in the United States. If they are not, then they cannot

establish an injury related to expedited removal, asylum, or any other removal-related issues because they are not in the United States. *Cf. Mullin v. Al Otro Lado*, 146 S. Ct. 2079, 2090, 2095 (2026) (discussing how an alien must be physically in the United States to seek asylum and that the INA does not require an alien to apply or for an immigration officer to inspect an alien when outside of the country); *see also RAICES v. Noem*, 793 F. Supp. 3d 19, 60 (D.D.C. 2025) (recounting declarations submitted by individuals in the United States who continued to seek asylum). Without establishing presence in the United States, Individual Plaintiffs cannot show that they are indeed subject to the country's laws. Nor should the Court rely on Individual Plaintiffs' stale declarations, which are devoid of any updates on their proceedings or whether they remain subject to the purported challenged policies, to establish standing. *See Safari Club Intern. v. Salazar*, 281 F.R.D. 32, 41-42 (D.D.C. 2012). Moreover, they also suffer from the same redressability problem as Organizational Plaintiffs. *See supra* at § I.A.1.

Certain Individual Plaintiffs do not assert that they individually have standing. But a plaintiff must make an "evidentiary presentation on standing no later than when it files the opening brief." *Entergy Arkansas, LLC v. FERC*, 134 F.4th 576, 581 (D.C. Cir. 2025). Though *Entergy* is a petition-for-review matter, its reasoning applies equally to district court motion practice, because the principles arise from an issue of fairness in litigation proceedings. *See id.* The D.C. Circuit has recognized that "[a]lthough a party cannot forfeit a claim that we lack jurisdiction, it can forfeit a claim that we possess jurisdiction." *Scenic Am., Inc.*, 836 F.3d at 53 (citing *Huron v. Cobert*, 809 F.3d 1274, 1279-80 (D.C. Cir. 2016). Therefore, the following Individual Plaintiffs: E.C., K.M., E.M., M.K., and M.D, should be dismissed.

Turning to the Individual Plaintiffs who raise standing arguments in their opening papers:

M.S. –M.S. and his claims should be dismissed. *See* Defs' Mot. at 18-19; Defs' Reply at 12. M.S. repeats the mistake of his fellow Individual Plaintiffs and relies on his original declaration. *See* Pls' Mot. at 19-20. M.S. cannot meet the requisite higher burden at the summary judgment stage and establish his standing. Therefore, his claims should be dismissed.

L.H. – She contends that she has standing because of the Court's prior conclusion, and it is her standing that confers standing on all other plaintiffs. *See* Pls' Mot. at 18. That misstates the Court's holding, which was limited to the motion to dismiss stage and the lower burden placed on plaintiffs at that stage of the proceedings. *See* Mem. Order at 15. The plausibility standard is inapplicable at the summary judgment stage. *See supra*. Moreover, L.H.'s individual standing does not automatically confer standing to all plaintiffs at the summary judgment stage. *See New Mexico v. Musk*, 824 F. Supp. 3d 80, 95 (D.D.C. 2026) (acknowledging that "standing is not dispensed in gross" and holding that each plaintiff "must establish their own standing" following the Supreme Court's decision in *Trump v. CASA, Inc.*, 606 U.S. 831 (2025) (citation modified)).

R.A. – R.A. too lacks standing to bring his claims. *See* Defs' Mot. at 18; Defs' Reply at 10-12. R.A. relies on his original declaration to establish that he has standing, but it fails for the same reasons articulated already. More tellingly, R.A. does not establish that he has returned to the United States somehow or that he would be subject to any of the challenged government action again. Therefore, there is no basis for him to bring this case. *See Murthy*, 603 U.S. at 45 ("[T]o obtain forward-looking relief," plaintiffs "must establish a substantial risk of future injury that is traceable to the Government defendants and likely to be redressed by an injunction against them."); *Jibril v. Mayorkas*, 20 F.4th 804, 812 (D.C. Cir. 2021) ("[B]ecause the Jibrils do not plausibly allege that these alleged violations will recur, Appellants fail to establish any imminent injuries with respect to these purported policy violations.").

D.C. - D.C.'s standing cannot hold at this juncture. He relies on his original declaration to establish standing because an IJ had dismissed his removal proceedings and he had been placed into expedited removal. *See* Pls' Mot. at 19 ("At the time Plaintiffs filed the Complaint, D.C. was waiting for his credible fear interview and planned to file a timely appeal from the dismissal of his case."). D.C. asks this Court to find standing without him providing any updates as to whether he continues to be harmed by any of the purported policies. He is seeking vacatur of various purported governmental policies, but he does not establish that he is still subject to harm under these policies, which would warrant the forward-looking relief he seeks. *See Swanson*, 790 F.3d at 243.

E.P. – E.P. lacks standing, as well. He too relies on his original declaration to argue that the government "could place [him] in expedited removal." *See* Pls' Mot. at 19. More than one year has passed since E.P. filed the complaint and all he has is the continued speculation that he may be subject to expedited removal at some point. Standing cannot be dependent on "layers of speculation." *Lawyers' Comm. for 9/11 Inquiry v. Wray*, 848 F. App'x 428, 431 (D.C. Cir. 2021); *see also Architects & Eng'rs for 9/11 Truth v. Raimondo*, Civ. A. 21-02365 (TNM), 2022 WL 30442181, at *6 (D.D.C. Aug. 2, 2022).

P.D. – P.D. was waiting for his credible fear interview and does not inform the Court of where things now stand. *See* Pls' Mot. at 19 (indicating that he was waiting for his credible fear interview). P.D. fails to show that he is harmed by the purported policies being challenged.

B. Plaintiffs' Challenge to EOIR's Dismissal Guidance in Moot (Counts III, IV, VII).

The Court previously rejected Defendants' request to dismiss this claim as moot. *See* Mem. Order at 13. On a summary judgment record, the Court should now dismiss the claim because EOIR rescinded the email in question.

Article III requires plaintiffs to show that they "(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Fore River Residents Against the Compressor Station v. FERC*, 77 F.4th 882, 888 (D.C. Cir. 2023) (citation modified). This limitation "gives rise to the doctrines of standing and mootness." *Foretich v. United States*, 351 F.3d 1198, 1210 (D.C. Cir. 2003); *see also Sierra Club v. Jackson*, 648 F.3d 848, 852 (D.C. Cir. 2011).

"A case is moot if a decision will neither presently affect the parties' rights nor have a more-than-speculative chance of affecting them in the future." *Pub. Citizen, Inc. v. Fed. Energy Regul. Comm'n*, 92 F.4th 1124, 1128 (D.C. Cir. 2024) (citation modified). "This occurs when, among other things, the court can provide no effective remedy because a party has already obtained all the relief that it has sought." *Schmidt v. United States*, 749 F.3d 1064, 1068 (D.C. Cir. 2014) (citation modified). Meaning, "[a] case is moot when the challenged conduct ceases such that there is no reasonable expectation that the wrong will be repeated in circumstances where it becomes impossible for the court to grant any effectual relief whatever to the prevailing party." *United States v. Philip Morris USA Inc.*, 566 F.3d 1095, 1135 (D.C. Cir. 2009) (citation modified). "[T]he Government, not petitioners, bears the burden to establish that a once-live case has become moot." *West Virginia v. EPA*, 597 U.S. 697, 719 (2022); *see also PETA, Inc. v. Fish & Wildlife Serv.*, 59 F. Supp. 3d 91, 95 (D.D.C. 2014) ("If events outrun the controversy such that the court can grant no meaningful relief[,] the case must be dismissed as moot." (citation modified)).

EOIR withdrew the May 30 Email. *See* EOIR-AR-011-014. Meaning, to the extent that Plaintiffs were injured by EOIR's May 30 Email, those effects have since been "eradicated." *Moharam v. Transp. Sec. Admin.*, 134 F.4th 598, 610 (D.C. Cir. 2025). Maintaining a challenge to EOIR's May 30 Email would effectively require this Court to decide "the merits of a legal question

not posed in an Article III case or controversy." *U.S. Bancorp Mortg. Co. v. Bonner Mall P'ship*, 513 U.S. 18, 21 (1994). A federal court has no authority "to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it." *Church of Scientology v. United States*, 506 U.S. 9, 12 (1992) (quoting *Mills v. Green*, 159 U.S. 651, 653 (1895)). There is "no case or controversy, and a suit becomes moot, when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome." *Chafin v. Chafin*, 568 U.S. 165, 172 (2013) (citation modified); *see also N.Y. State Rifle & Pistol v. City of N.Y., N.Y.*, 590 U.S. 336, 337 (2020) (declaring claim for declaratory and injunctive relief against "old" municipal firearms transport rule moot after the municipality amended its rule and the state amended underlying statute after Supreme Court granted review).

Prospective relief such as "declaratory and injunctive relief would no longer be appropriate if intervening events have provided the relief sought by the plaintiff against the defendant." *Nat'l Black Police Ass'n v. District of Columbia*, 108 F.3d 346, 350 (D.C. Cir. 1997). To grant declaratory relief, there must be a dispute which "calls, not for an advisory opinion upon a hypothetical basis, but for an adjudication of [a] present right upon established facts." *Aetna Life Ins. Co. of Hartford v. Haworth*, 300 U.S. 227, 242 (1937). As held more recently, "the government's abandonment of a challenged regulation is just the sort of development that can moot an issue." *Friends of Animals v. Bernhardt*, 961 F.3d 1197, 1203 (D.C. Cir. 2020).

Instructive here, the *Friends of Animals* plaintiffs challenged certain "findings" of the U.S. Fish and Wildlife Service that would allow sport-hunted animal "trophies" to be imported into the United States. 961 F.3d at 1200. The regulation at issue governed importation of the dead bodies (or parts of dead bodies) ("trophies") of sport-hunted animals whose species are endangered or threatened with extinction. *Id.* at 1201. Importation of sport-hunted trophies of threatened species

is banned subject to species-specific exceptions. *Id.* The species-specific exceptions hinge on the Fish and Wildlife Service making certain "findings" regarding the impact the killing of an animal will have on the species' survival. *Id.* The plaintiffs challenged Fish and Wildlife Service's finding, made in 2017, that killing lions and elephants in Zimbabwe during the years 2016 to 2018 would enhance the species' survival. *Id.* After similar "findings" for different years were struck down by the D.C. Circuit because they were legislative rules illegally issued without notice and comment, the Department of Interior withdrew the 2017 findings that were challenged in *Friends of Animals* and announced that it would proceed by informal adjudication. *Id.*

The D.C. Circuit held that the case was moot. *Id.* at 1203. The court noted that the government had withdrawn the challenged findings, thereby eliminating their legal effect and leaving nothing for the court to adjudicate. *Id.* Despite the Fish and Wildlife Service stating that it would use the findings in its informal adjudications, the findings themselves no longer had legal effect and were therefore "classically moot." *Id.*; *Akiachak Native Cmty. v. Dep't of Interior*, 827 F.3d 100, 105-06 (D.C. Cir. 2016) (where "[e]ach cause of action challenged the validity of" a regulatory exception and "that regulation no longer exists, we can do nothing to affect [challenger's] rights relative to it, thus making this case classically moot for lack of a live controversy").

As another example, the D.C. Circuit held in *Center for Science in the Public Interest ("CSPI") v. Regan*, that an intervening change moots a challenge to the prior rule. The agency in that case "was legitimately empowered to initiate further rulemaking to correct the deficiencies that the district court found in [the prior rule]." Because the prior rule that was allegedly the source of the harm had been superseded, the court concluded that "[a]ny appellate pronouncement on the validity of that rule would be meaningless," and dismissed the appeal. *Id.* at 1165.

So too here; EOIR's May 30 Email has been rescinded. In said rescission, EOIR's Acting Deputy Director made clear that "[n]o individual in EOIR leadership, including an [Regional Deputy Chief IJ], may direct an [IJ] to decide a case in a particular way."). EOIR-AR-011-12. Like the disputed findings in *Friends of Animals*, or the disputed regulation in *CSPI*, a decision on the merits of the allegations in the complaint regarding the now-rescinded EOIR's May 30 Email would be an impermissible advisory opinion. *See, e.g.*, *Nat'l Black Police Ass'n*, 108 F.3d at 351, 354; *Akiachak Native Cmty.*, 827 F.3d at 106; *Phillips v. McLaughlin*, 854 F.2d 673, 674-75 (4th Cir. 1988) ("A request for prospective relief alone, founded on a challenge to a regulation which no longer applies to plaintiffs, does not present an actual case or controversy.").

Plaintiffs resist this precedent and instead invoke the voluntary cessation exception to mootness. *See* Pls' Mot. at 28-29. Although "a defendant's voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice," *Friends of the Earth, Inc. v. Laidlaw Env't Servs.*, 528 U.S. 167, 189 (2000), "[a] case might become moot if subsequent events made it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur," *United States v. Concentrated Phosphate Exp. Ass'n*, 393 U.S. 199, 203 (1968). So, a case is moot if: (1) the conduct is not reasonably likely to recur; and (2) interim events have "completely and irrevocably eradicated the effects of the alleged violation." *True the Vote, Inc. v. IRS*, 831 F.3d 551, 561 (D.C. Cir. 2016) (citation omitted).

First, there is no reasonable expectation that the conduct will recur. Core to this inquiry "is the task of defining the wrong that the defendant is alleged to have inflicted." *Clarke v. United States*, 915 F.2d 699, 703 (D.C. Cir. 1990) (en banc). The challenged decision at issue is EOIR's May 30 Email. That guidance was unequivocally withdrawn. The May 30 Email "was not incorporated into the EOIR Policy Manual nor otherwise disseminated publicly." EOIR-AR-011.

EOIR's May 30 Email was also never "an agency policy or otherwise represented a binding directive to IJs to decide cases a particular way." *Id.*

Plaintiffs offer a nonsensical answer that the challenge cannot be moot because the withdrawal does not correct alleged past harms. *See* Pls' Mot. at 29. That sounds in a forward-looking injunction, which would present basic threshold problems. *See City of Los Angeles v. Lyons*, 461 U.S. 95, 104 (1983) ("[P]ast wrongs do not in themselves amount to that real and immediate threat of injury necessary to make out a case or controversy."); *Morrison v. Fed. Bureau of Prisons*, Civ. A. No. 21-2860 (BAH), 2023 WL 172202, at *4 (D.D.C. Jan. 12, 2023) ("The violations alleged by plaintiff simply cannot recur as to plaintiff and his standing to raise his claims therefore depends on whether he somehow (1) finds himself back in the custody of the BOP, and (2) personally faces the alleged hardships upon reincarceration. This is an 'untenable' hypothetical."). But the Court need not tangle with that issue because Plaintiffs seem to forget their own complaint and the relief that they seek. *See* Compl. Prayer for Relief, ¶¶ g, h (seeking relief in the form of declaratory relief and vacatur of the purported policies).[2] Plaintiffs cannot now seek retrospective relief. *See United States v. Sineneng-Smith*, 590 U.S. 371, 376 (2020) ("courts [remain] essentially passive instruments of government"; "do not . . . sally forth each day looking for wrongs to right"; and instead "wait for cases to come to them" and "decide only questions presented by the parties" (citation modified)); *see also Moini v. Granberg*, No. 22-7101, 2024 WL 2106214, at *4 (D.C. Cir. May 1, 2024) (recognizing that courts cannot "supply a cause of action that the plaintiff did not plead").

---

[2] Plaintiffs also pled and sought relief under 5 U.S.C. § 705, but they never moved for such relief. Therefore, the Court need not consider that now.

Indeed, this case closely tracks *Moharam* where the D.C. Circuit recently found that an agency's recission of a previous adverse decision mooted the matter. The *Moharam* plaintiff complained about his listing on a no-fly list. *Id.* at 601. After the plaintiff sought judicial review, the agency informed him "that he was no longer on the No Fly List and would not be relisted based on the currently available information." *Id.* The Circuit concluded that this mooted the plaintiff's claim—his "removal from the No Fly List deprives us of jurisdiction over his Petitions for Review." *Id.* The court rejected the plaintiff's attempt to resort to voluntary cessation or capable of repetition doctrines to save his claims. As to the former, the court reasoned that the voluntary cessation doctrine did not apply because the agency made clear it would not take the same action again based on the same information as before. *Id.* at 608–09. As to the latter, the court similarly reasoned that the plaintiff's "challenge is to the since-eradicated effects of procedures and outcomes of a particular agency action. That challenge is incapable of repetition in light of the Government's representations." *Id.* at 610. This reasoning fits like a glove to the facts presented here. EOIR "has set aside its determination that current information warranted" its May 30 Guidance. *Moharam*, 134 F.4th at 609. Therefore, "[a]ny opinion regarding the [propriety of the former record termination] would be merely advisory." *Nat'l Min. Ass'n v. Dep't of Interior*, 251 F.3d 1007, 1011 (D.C. Cir. 2001).

The Court previously declined to dismiss this claim earlier, but the government has met its "formidable burden." Mem. Order at 13. EOIR withdrew the May 30 Guidance to "eliminate any remaining uncertainty." EOIR-AR-013. And IJs were instructed to "continue to not rely on it in adjudicating cases." *Id.* Put differently, EOIR not only repudiated the May 30 Email but took the affirmative step to say that it will not be used again. *See FBI v. Fikre*, 601 U.S. 234, 244 (2024) ("What matters is not whether a defendant repudiates its past actions, but what repudiation can

prove about its future conduct."). Most telling about its repudiation of past conduct is the fact that Plaintiffs have submitted *no* evidence to even suggest that the May 30 Email has been applied in removal proceedings since September 23, 2025. What is left is for Defendants to prove a negative of a purported final agency action or policy that was never meant to be a policy. *See* EOIR-AR-011. That simply begs the question of what more is required for this claim to be deemed moot.

C. 8 U.S.C. § 1252(g) Bars Review of the Organizational Plaintiffs' Challenge to the Dismissal Guidance and Concurrent Proceedings Guidance (Counts III, IV, VII, X, XI).

Section 1252(g) specifically deprives courts of jurisdiction, including habeas corpus jurisdiction, to review "any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to [1] commence proceedings, [2] adjudicate cases, or [3] execute removal orders against any alien under this chapter." 8 U.S.C. § 1252(g). Section 1252(g) eliminates jurisdiction "[e]xcept as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory)." *Id.* This Court previously rejected Defendants' argument and the application of this jurisdictional bar to the Organizational Plaintiffs' claims because they are asserting injuries to their own operations and not bringing them on behalf of aliens, *see* Mem. Order (ECF No. 50) at 10, but was respectfully an error and should be revisited.

Though § 1252(g) "does not sweep broadly," *Tazu v. Att'y Gen.*, 975 F.3d 292, 296 (3d Cir. 2020), its "narrow sweep is firm," *E.F.L. v. Prim*, 986 F.3d 959, 964-65 (7th Cir. 2021). Except as provided by § 1252, courts "cannot entertain challenges to the enumerated executive branch decisions or actions." *Id.* Importantly, § 1252(g) was "directed against a particular evil: attempts to impose judicial constraints upon prosecutorial discretion," to protect "no deferred action decisions and similar discretionary decisions." *Tazu*, 975 F.3d at 297 (citation modified). This limitation exists for "good reason: so "[a]t each stage the Executive has discretion to abandon the endeavor." *AADC*, 525 U.S. at 483-84. In addition, through § 1252(g) and other provisions of the

INA, Congress "aimed to prevent removal proceedings from becoming 'fragment[ed], and hence prolong[ed].'" *Tazu*, 975 F.3d at 296 (alterations in original) (quoting *AADC*, 525 U.S. at 487); *see Rauda v. Jennings*, 55 F.4th 773, 777-78 (9th Cir. 2022) ("Limiting federal jurisdiction in this way is understandable because Congress wanted to streamline immigration proceedings by limiting judicial review to final orders, litigated in the context of petitions for review.").

The Organizational Plaintiffs' challenge goes to the very heart of prosecutorial discretion. They are challenging the government's decisions to dismiss removal proceedings, and their entire theory of standing rests on the notion alleged effect of the purported Dismissal Policy with whom they have an attorney-client relationship. *See* Pls' Mot. at 21-23. That theory cannot be characterized as anything but bringing this suit "on behalf of" their clients who are aliens. *See, e.g.*, *Zeledon-Lovato v. Blanche*, No. 26-60282 (5th Cir.) (listing American Gateways as attorney of record for petitioner's counsel); *R. v. Blanche*, No. 26-60582 (5th Cir.) (same); *see also* Declaration of Edna Yang ("Yang Decl.") (ECF No. 69-2) ¶ 34.c ("ICE however does not allow attorneys to express that fear on behalf of our clients." Thus we must make sure our clients know to shout their fear to anyone who will listen."); *id.* ("as such, we spend time working with our clients to make such requests known clearly and to document the requests being made."); *id.* ¶ 34.d ("Our clients who have had their cases dismissed have faced varying standards for demonstrating a credible fear of persecution or torture."); Rowland-Kain Decl. ¶ 24 (discussing "our respondents"); *id.* ¶ 27 (talking about to advise the respondents in light of governmental action); *id.* ¶ 31 ("our pro se clients"). Congress did not intend to bar aliens from bringing certain challenges but then permit their legal representatives to circumvent those jurisdictional bars by the very nature of the relationship. *Cf. Mullin v. Doe*, 146 S. Ct. 2121, 2136 (2026) (cautioning courts

from reading judicial-review bars in a way that would invite "creative pleading or clever lawyering").

D. Plaintiffs' Dismissal Challenges May Be Raised Through a Petition for Review and Are Therefore Barred by 8 U.S.C. § 1252(b)(9) (Counts III, IV, V, VI, VII).

Congress's reticulated scheme governs how aliens can challenge actions and decisions that arise from their removal proceedings, and that path is a petition for review to the appropriate court of appeals. *See Tazu*, 975 F.3d at 294 ("In law, as in life, the path often matters as much as the destination. For an alien challenging his removal, that path begins with a petition for review of his removal order, not a habeas petition."); *see also* 8 U.S.C. §§ 1252(a)(5), (b)(9) (channeling "[j]udicial review of *all* questions of law and fact" that "aris[e] from any action taken or proceeding brought to remove an alien" into a challenge to a final order of removal, which is the "sole and exclusive means for judicial review[]"). Respectfully, this Court previously erred in rejecting this argument; that the organizations are challenging "policies resulting in case dismissals, not final orders of removal," Mem. Order (ECF No. 50) at 11, still invites fragmented proceedings, precisely what Congress sought to avoid.

Section 1252(b)(9) is an "unmistakable 'zipper' clause" that "channels judicial review of *all*" claims arising from removal proceedings to a court of appeals in the first instance. *AADC*, 525 U.S. at 483. "Taken together, §[§] 1252(a)(5) and [(b)(9)] mean that *any* issue—whether legal or factual—arising from *any* removal-related activity can be reviewed *only* through the [petition for review] process." *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016); *see also Bonhometre v. Gonzales*, 414 F.3d 442, 446 (3d Cir. 2005) (highlighting Congress's "clear intent to have all challenges to removal orders heard in a single forum (the courts of appeals)"). Meaning, "all challenges to a removal order into a single proceeding" are "streamlined" into the petition for review process. *Nken v. Holder*, 556 U.S. 418, 424 (2009).

The Organizational Plaintiffs cannot avoid the reach of § 1252(b)(9) only because they challenge policies rather than final orders of removal. First, textually, the distinction is nonsensical. Section 1252(b)(9) demands that "all questions that of law and fact" that "aris[e] from any action taken or proceeding brought to remove an alien" must be brought through a petition for review. Whether the government dismisses § 1229a removal proceedings to institute expedited removal proceedings is an action that arises from both the action and the proceeding brought to remove an individual. Start with "arise from." The question is "[i]f not now, when. If the answer would otherwise be never, then § 1252(b)(9) poses no jurisdictional bar." *Khalil v. President, United States*, 164 F.4th 259, 273-74 (3d Cir. 2026) (citing *E.O.H.C. v. Sec'y, U.S. Dep't of Homeland Sec.*, 950 F.3d 177, 186 (3d Cir. 2020)). But when the alien can obtain review later "—by litigating before an IJ, the Board of Immigration Appeals, and then by way of a PFR to a court of appeals—they must do so." *Id.* at 274 (citation modified).

There is no question that individual aliens could obtain review if they received a final order of removal. *See* Pls' Mot. at 26 (citing *Morris v. Blanche*, 179 F.4th 489 (6th Cir. 2026)). In *Morris*, the Sixth Circuit reviewed the government's decision to reopen and dismiss the removal proceedings. *See Morris*, 179 F.4th at 501. There, the court found it had jurisdiction to review the decision and ruled in favor of the government on the merits. *See id.* at 501-03. That a court of appeals reviewed the decision to dismiss proceedings confirms that the appropriate path to raise these claims is through a petition for review.

The Organizational Plaintiffs also cannot avoid the ambit of § 1252(b)(9) simply because they are organizations and therefore not challenging final orders of removal. *See* Mem. Order at 11. Although "[r]ead literally, that language might dispose of [the Government's] § 1252(b)(9) defense" because Plaintiffs "do not seek review of 'an order of removal,'" a literal "reading of the

statute proves too much and would, among other things, render § 1252(b)(9) meaningless." *O.A. v. Trump*, 404 F. Supp. 3d 109, 130 (D.D.C. 2019) (quoting *INS v. St Cyr*, 533 U.S. 289, 332 (Scalia, J., dissenting)). "That is, if § 1252(b)(9) applies only to the review of final orders of removal, what work is done by its channeling of 'all questions of law and fact ... arising from any action taken or proceeding brought to remove an alien' into review of the 'final order' of removal?" *Id.* (quoting 8 U.S.C. § 1252(b)(9)). "The answer … is that § 1252(b)(9) has a broader reach: It means that "all claims—whether statutory or constitutional—that 'aris[e] from' immigration removal proceedings can only be brought through the petition for review process in federal courts of appeals." *Hines*, 2026 WL 969020, at *8 (quoting *Nat'l Immigr. Project of Nat'l Laws. Guild v. Exec. Off. of Immigr. Rev.* ("*NIP*"), 456 F. Supp. 3d 16, 29 (D.D.C. 2020)).

Hines is indistinguishable from the case at hand. The plaintiffs there were a Minnesota immigration law firm and a nonprofit organization who provided immigration-related legal services in removal proceedings. 2026 WL 969020, at *2. Despite being organizational plaintiffs, the *Hines* court nevertheless held that § 1252(b)(9) likely divested it of jurisdiction to hear the claims. Indeed, the court reiterated its prior conclusion that § 1252(b)(9) "bars 'claims challenging policies-and-practices that are applied during the course of removal proceedings.'" *Id.* at *9 (quoting *NIP*, 456 F. Supp. 3d at 29). This Court's reliance on *Mass. Coal. for Immigr. Reform v. Dep't of Homeland Sec.*, 621 F. Supp. 3d 84 (D.D.C. 2022) was therefore misplaced. *Compare* Mem. Order at 11, *with Hines*, 2026 WL 969020, at *9. But *Mass. Coal. for Immigr. Reform* is also distinguishable. There, the court specifically concluded that § 1252(b)(9) did not bar review because there was no other way that the plaintiffs "could challenge the lack of environmental analysis before the Attorney General's reinstatement of administrative closure." 621 F. Supp. 3d at 91. That limitation does not exist to the case at hand. A ruling against Defendants here may

conflict with one of the Individual Plaintiffs who may file a petition for review (and that the Individual Plaintiffs have not provided the Court with updated information about their removal proceedings certainly poses the threshold standing concern, *see supra*), and then the government will be in a position to determine which court order should be followed. Put differently, not applying § 1252(b)(9) invites the very "fragmented" proceedings that the INA was "aimed to prevent." *Tazu*, 975 F.3d at 296 (quoting *AADC*, 525 U.S. at 487).

Nor can Organizational Plaintiffs avoid the scope of § 1252(b)(9) simply because they raise a policy challenge. As two circuit courts have recently agreed, policy challenges are covered by the ambit of § 1252(b)(9). First, the Third Circuit was asked to review a habeas petition in which the individual alleged that "the government had adopted an unlawful policy of targeting immigrants for pro-Palestinian speech" *Khalil*, 164 F.4th at 267. The court held that the petitioner could "litigate [that challenge] on a [petition for review]" following a decision from the Board of Immigration Appeals. *Id.* at 276. The appropriate court of appeals "will be able to review those legal challenges once the Board enters a final order of removal." *Id.* at 276-77 (citation modified). The Second Circuit reviewed a nearly identical challenge in which the petitioner had alleged that government had adopted a policy of targeting aliens based on pro-Palestinian speech. *Mahdawi v. Trump*, 183 F.4th 103, 110 (2d Cir. 2026). The *Mahdawi* court held exactly as the *Khalil* court had: the legal questions arise from issues related to removal and therefore were barred by § 1252(b)(9). *See id.* at 118, 122.

These decisions confirm that Congress meant what it said when it explicitly channeled "all questions of law and fact" into a petition for review. 8 U.S.C. § 1252(b)(9). The language tracks specifically from *McNary v. Haitian Refugee Ctr., Inc.*, which involved an organizational plaintiff and a constitutional pattern-and-practice challenge to the INS's administration of a temporary

residence program for special agricultural workers ("SAW"). 498 U.S. 479, 483 (1991). The statute at issue contained a judicial review provision which channeled review "of a determination respecting an application" for SAW status into the courts of appeal, but it did not refer to a "group of decisions or a practice or procedure employed in making decisions." *Id.* at 492. Because the plaintiffs' constitutional pattern-and-practice claims required "factfinding and record-developing capabilities" that the statute would have barred if it applied, the Court concluded that Congress had not intended with that statutory language to bar district court review of such claims. *Id.* at 492, 496-97. In particular, the Court reasoned that Congress "easily could have used broader statutory language" if it had "intended the limited review provisions [at issue] to encompass challenges to INS procedures and practices." *Id.* at 494. The Court also provided two examples of what might constitute language "expansive" enough to remove jurisdiction over SAW status claims: language channeling (1) "all causes … arising under any of the provisions" of the SAW program, or (2) "all questions of law and fact" arising from the program. *Id.* at 494 (emphasis added).

Congress listened to the Supreme Court's instructions when it enacted § 1252(b)(9) on how to ensure that the statutory language was clear and sufficient to strip courts of jurisdiction and channel them through the courts of appeal. The Organizational Plaintiffs cannot circumvent that.

E. Section 1252(a)(2)(A)(ii) and 1252(a)(2)(A)(iii) Bar Review.

Plaintiffs cannot challenge Defendants' invocation of the expedited removal procedures, nor can they challenge how the section has been applied to Individual Plaintiffs. *See* Pls' Mot. at 25-26, 33-42. Congress specifically barred these challenges from review. *See* 8 U.S.C. § 1252(a)(2)(A)(ii), (iii). Section 1252(a)(2)(A) is "abundantly clear" in eliminating jurisdiction over "any claim related to an expedited removal order." *Castro v. Dep't of Homeland Sec.*, 835 F.3d 422, 430 (3d Cir. 2016); *Make the Rd. I*, 962 F.3d at 626 (similar). If jurisdiction exists, "it exists only under subsection (e) of the statute," which restores limited jurisdiction over individual

habeas and systemic challenges to expedited removal procedures. *Id.* Accordingly, to the extent that any challenges implicate these provisions, they are plainly barred.

F. Section 1252(e)(3) Bars Review of Plaintiffs' Challenge to the May 20 Broadcast (Counts VIII, IX).

Section 1252(e)(3) does not permit review of Plaintiffs' challenge to the May 20 Broadcast. *See* Pls' Mot. at 35-36. Congress set forth a clear time limit to bring such challenges. *See* 8 U.S.C. § 1252(e)(3)(B) (setting sixty days from written policy or directive). The sixty-day deadline is jurisdictional. *See M.M.V. v. Garland*, 1 F.4th 1100, 1109 (D.C. Cir. 2021). In calculating compliance with the time requirement, courts must look to when "the challenged" directive or procedure was "first implemented." *Id.* at 1108. Here, Plaintiffs challenge the May 20 Broadcast, but that is not when the expedited removal expansion was first instituted. Rather, the Designation "was implemented on January 21, 2025; the Huffman Memorandum was implemented on January 23, 2025." *Make the Rd. II*, 179 F.4th at 28. Plaintiffs did not file their complaint until July 16, 2025, which is more than sixty days after the implementation.

Plaintiffs cannot creatively plead around the jurisdictional bar by challenging the May 20 Broadcast. *See* Pls' Mot. at 35-36. Indeed, the May 20 Broadcast is a reminder for OPLA attorneys to consider and review individual cases to determine whether aliens would be amenable to expedited removal consistent with the Acting Secretary's expedited removal designation. *See* BroadcastAR_002. Indeed, the February 2025 Memo informs ICE personnel that expedited removal considerations would also need to include the "determination of inadmissibility." BroadcastAR_024. Therefore, nothing in the May 20 Broadcast constitutes a new policy.

G. Section 1252(f)(1) Bars Relief, Including Vacatur.

Section 1252(f)(1) bars vacatur of any of the policies because such relief would enjoin or restrain the operation of the expedited removal provisions, which is part of chapter 4 of Title II of

the INA. But this Court is bound by D.C. Circuit precedent. *See RAICES v. Mullin*, 174 F.4th 81, 120 (D.C. Cir. 2026) (holding that § 1252(f)(1) does not bar courts from holding agency actions unlawful, setting them aside, or vacating them). *RAICES* is distinguishable, *see infra* § VI, but if not, Defendants preserve this argument for purposes of appellate review. Section 1252(f)(1) certainly bars the Court from issuing injunctive relief in the form of reinstating the Individual Plaintiffs' removal proceedings. *Compare* Compl., Prayer for Relief, ¶ s, *with* 8 U.S.C. § 1252(f)(1); *N.S. v. Dixon*, 141 F.4th 279, 290 (D.C. Cir. 2025). But to the extent that Plaintiffs seek more than that, Defendants request supplemental briefing. *See infra* at § V.

II. There is No So-Called "Concurrent Guidance" Policy (Counts X, XI).

Plaintiffs concocted an unlawful "Concurrent Proceedings Policy," and now argue that policy is both contrary to law and arbitrary and capricious. *See* Pls' Mot. at 39-42. The problem with Plaintiffs' argument is simple: the purported policy is not one of Defendants' making but rather one that occurs by operation of law by way of aliens challenging IJs' decisions. Therefore, there is no policy, and therefore, no plaintiff has standing to challenge it. And even if there were a "policy" as Plaintiffs allege, it can hardly be unlawful when it simply follows legal procedures.

None of the administrative records mention "concurrent proceedings." Pls' Mot. at 39. That is because Plaintiffs are challenging the operation of law and procedure as individual aliens utilize and avail themselves of their right to appeal to the BIA. As the Supreme Court recently held, aliens have an obligation to preserve their appeal rights in anticipation of a potential petition for review. *See Riley v. Bondi*, 606 U.S. 259, 271-72 (2025). The alien and the government share the burden to develop a proper record. *See Matter of W-Y-C- & H-O-B-*, 27 I. & N. Dec. 189, 190 (BIA 2018) ("It is therefore imperative that the parties fully develop the record before the [IJ]."). Indeed, the outcome of an immigration court proceeding may be reversed as fundamentally unfair if the alien is prevented from reasonably presenting his case. *See, e.g.*, *Leslie v. Att'y Gen.*, 611 F.3d 171, 180

(3d Cir. 2010). Hence, an IJ must act as a neutral factfinder and act impartially in developing the record. *See Arteaga-Ramirez v. Barr*, 954 F.3d 812, 813 (5th Cir. 2020) (noting that the IJ "does not have a duty to act as an advocate"); *Wang v. Att'y Gen. U.S.*, 423 F.3d 260, 267-69 (3d Cir. 2005) (an IJ's statements and behavior could rise to the level of a due process violation when the IJ abandons her role as a neutral factfinder); *Abdulrahman v. Ashcroft*, 330 F.3d 587, 596 (3d Cir. 2003).

This is not a situation about the "Concurrent Proceedings" policy being in procedural posture has not previously been seen, *see* Pls' Mot. at 39-40, but rather that the procedural posture is a result of aliens availing themselves of their rights to seek administrative review. *See, e.g., In re: Emerson Huaytalla-Cisneros*, 2010 WL 915655 (BIA 2010). Moreover, the aliens are developing their record for potential further review. *See, e.g.*, 8 C.F.R. § 1240.8(d) (explaining that the alien bears the burden of proof to demonstrate eligibility for immigration benefits and show that any grounds for mandatory denial of immigration benefits do not apply). For the aliens to ensure that they obtain review of the dismissal on a petition for review, they need to appeal the dismissal order itself since that would be subsumed into the challenge for the final removal order.[3] Plaintiffs cannot seek refuge in the notion that their removal proceedings are prematurely dismissed in exchange for expedited removal. *See* Pls' Mot. at 40 (indicating that the government's arguments that an individual cannot be subject to two removal proceedings simultaneously). The BIA has routinely noted that dismissal is appropriate when it becomes clear that an alien should not have been subject to removal proceedings in the first place. *See, e.g., In Re: Jose De Jesus*

---

[3] Now, that dismissal order may be ultimately obviated if the alien obtains a favorable credible fear finding and ends up back before an IJ for the purposes of removal proceedings. *See Make the Rd. II*, 179 F.4th at 21 (recounting that a positive credible fear finding could result in the IJ presiding over proceedings, in which the alien could seek other forms of relief or protection from removal).

Garcia-Rodriguez, 2012 WL 1495509, at *1-2 (BIA Mar. 13, 2012) (affirming dismissal of removal proceedings because the alien was subject to reinstatement order of removal and rejecting the unlawfulness of dismissing proceedings prior to reinstatement of the removal order).

To the extent that the Court entertains a challenge to Plaintiffs' "Concurrent Proceedings Policy," DHS retains tremendous discretion in deciding whether to commence removal proceedings against aliens who would otherwise be subject to expedited removal. *See Matter of E-R-M- & L-R-M-*, 25 I. & N. Dec. 520, 523 (BIA 2011). If DHS retains discretion to do one, it certainly retains discretion to reverse course because "discretion is a two-way street." *Bouarfa v. Mayorkas*, 604 U.S. 6, 15 (2024).

Plaintiffs seem to believe that this "Concurrent Proceedings Policy" is unlawful because they cannot be removed until after the BIA affirms the dismissal of the removal proceedings. *See* Pls' Mot. at 40-41. But that misunderstands the law. An order of removal is one that concludes that the alien is removable or one that orders removal. 8 U.S.C. § 1101(a)(47)(A). The order dismissing removal proceedings does not result in a final removal order by itself because it is not an order that concludes the alien is deportable or inadmissible. *See Riley*, 606 U.S. at 268; *see also Guerrero-Lasprilla v. Barr*, 589 U.S. 221, 582-83 (2020). Defendants are not arguing that an expedited removal order supersedes the procedures of removal proceedings, *see* Pls' Mot. at 40-41; *Make the Rd. II*, 179 F.4th at 21.

Moreover, the government cannot execute removal orders while removal proceedings remain pending; but the government does not act unlawfully by acting lawfully. When an alien appeals an IJ's order dismissing removal proceedings, the dismissal order is stayed. *See* 8 C.F.R. § 1003.6(a). As those removal proceedings remain pending, USCIS is unable to conduct a credible fear interview, and DHS is unable to execute a removal order. *See* 8 C.F.R. §§ 208.2(b) (providing

that IJs "shall have exclusive jurisdiction over the asylum applications" of aliens issued Notices to Appear), 1003.14(b) (providing that when an IJ has jurisdiction over removal proceedings, the IJ has sole jurisdiction over applications for asylum).

Plaintiffs cannot succeed on their arbitrary-and-capricious theory either. *See* Pls' Mot. at 41-42. Defendants are not under a requirement to notify aliens of the possibility that they may be litigating their removal proceedings and expedited removal simultaneously because the aliens have abled counsel, like the Organizational Plaintiffs, who have the role of playing advocate. *See supra* at § I.C (arguing that the Organizational Plaintiffs bring claims on behalf of aliens). Additionally, Plaintiffs' theory cannot prevail because the government is not required "to give advance warning of a statute's *every possible* application." *Sprint Corp. v. FCC*, 151 F.4th 347, 367 (D.C. Cir. 2025) (relying on *FDA v. Wages & White Lion Invs.*, 604 U.S. 542 (2025)).

Plaintiffs chastise Defendants for not considering reliance interests, *see* Pls' Mot. at 41, but the argument fails for four reasons. First, Defendants reassert that the May 20 Broadcast is not a final agency action that is subject to APA review, *see infra* at § III.E, and therefore, there is no need to consider the reliance interests, *see Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 20-33 (2020) (analyzing agency decision because it was a final agency action under the APA). Second, those present in the United States who are not admitted do not "develop [] reasonable expectations or reliance interests based on their continued presence." *Make the Rd. N.Y. v. Noem*, No. 25-5320, 2025 WL 3563313, at *23 (D.C. Cir. Nov. 22, 2025) (citing Supreme Court cases).

Third, Plaintiffs offer a perfunctory identification of what the reliance interest would be, the outcome of removal proceedings. *See* Pls' Mot. at 41-42. But the Huffman Memo explicitly mentions "legitimate reliance interests" and asks that the exercise of discretion consider such

factors. *See* BroadcastAR_013. Indeed, the Huffman Memo goes to contemplate that the expedited removal process was "sufficient to protect the reliance interests of any alien who has applied for asylum or planned to do so in a timely manner." *Id.* Moreover, Plaintiffs cannot argue that they have reliance interests in forbearance and benefits," because Individual Plaintiffs were subject to removal proceedings already; those were then dismissed so that expedited removal may be pursued. There was no forbearance. Finally, Plaintiffs' proffered reliance interests are leagues different from the reliance interests at issue in *Regents*, in which recipients of deferred action under the Deferred Action of Childhood Arrivals policy. *See Regents*, 591 U.S. at 31-33.

Plaintiffs' reliance interest argument is not wrong on the law but wrong on the facts.

III. Plaintiffs' APA Claims Are Not Reviewable.

Under the APA, "[a] person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof." 5 U.S.C. § 702. The APA, however, limits judicial review to "final agency action for which there is no other adequate remedy in a court." 5 U.S.C. § 704; *U.S. Army Corps of Eng'rs v. Hawkes Co., Inc.*, 578 U.S. 590, 597 (2016). Although the APA presumptively provides judicial review of agency action, the statute by its clear terms does not allow for review when: (1) another statute precludes review; (2) the agency action is committed to discretion by law; or (3) the action is not final. *Ctr. for Biological Diversity v. Trump*, 453 F. Supp. 3d 11, 36 (D.D.C. 2020) (citing *Transactive Corp. v. United States*, 91 F.3d 232, 236 (D.C. Cir. 1996)).

Defendants are entitled to judgment on Plaintiffs' APA claims because they fail as a matter of law for four reasons. First, Plaintiffs have not identified a discrete "Dismissal" or "Concurrent Proceedings" policy. Second, an adequate alternative remedy can provide review of the policy challenges that they raise. Third, § 1252(b)(9) may channel the challenges into individual petitions for review from final orders of removal, and that would prohibit the Court from reviewing the

same claims. Fourth, Plaintiffs are challenging decisions that are committed to agency discretion. Fifth, Plaintiffs are challenging decisions that do not constitute final agency actions and therefore are not reviewable under the APA.

A. There is No Discrete Dismissal or "Concurrent Proceedings" Policy (Counts III, IV, V, VI, X, XI).

"The APA authorizes suit by a person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute." *Norton v. Southern Utah Wilderness All.*, 542 U.S. 55, 61 (2004) (citation modified). "'Agency action' is defined in § 551(13) to include 'the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act.'" *Id.* at 62 (citation modified). These are "circumscribed, discrete agency actions, as their definitions make clear." *Id.* But the APA does not provide for "general judicial review of [an agency's] day-to-day operations," *Lujan v. Nat'l Wildlife Foundation*, 497 U.S. 871, 899 (1990), like "constructing a building, operating a program, or performing a contract," *Vill. of Bald Head Island v. U.S. Army Corps. of Eng'rs*, 714 F.3d 186, 193 (4th Cir. 2013). "Because an on-going program or policy is not, in itself, a final agency action under the APA, [a court's] jurisdiction does not extend to reviewing generalized complaints about agency behavior." *Cobell v. Kempthorne*, 455 F.3d 301 307 (D.C. Cir. 2006) (citation modified).

Plaintiffs here have cobbled together various memos, communications, and governmental actions to obtain APA review. Their efforts seek "'wholesale' improvement to agency operations under the APA by bundling together a collection of discrete actions, presenting them as facets of a single event, and then challenging that event instead of the individual actions." *Assoc. for Ed. Finance & Policy, Inc. v. McMahon*, 786 F. Supp. 3d 13, 23 (D.D.C. 2025) (citation modified). The "Dismissal Guidance" and "Concurrent Proceedings Guidance" as Plaintiffs describe it are not a "circumscribed, discrete" agency actions. *Norton*, 542 U.S. at 62.

Indeed, the administrative records conclude that there is no discrete policy. The May 20 Broadcast explicitly requires OPLA attorneys to review each case and "determine, on a case-by-case basis, whether the alien is amenable to ER." BroadcastAR_002. It also informs OPLA attorneys to "decide *whether* dismissal is appropriate to allow the alien to be processed for ER." *Id.* (emphasis added). ICE personnel are asked to "review the alien's case and consider, in exercising your enforcement discretion, whether to apply expedited removal." BroadcastAR_023-24. That requires an "individual assessment of each case and consider[ation of] relevant factors[.]" BroadcastAR_024. EOIR's May 30 Email fares no better. *See* EOIR-AR-0015 (mentioning that motions to dismiss "may be made orally and decided from the bench"). No language in either of the challenged records commands any specific outcome or action on behalf of the agency.

The various guidance and policies as labeled by Plaintiffs is "simply the name by which" Plaintiffs "refer[] to the continuing (and thus constantly changing) operations of" DHS and EOIR. *Lujan*, 497 U.S. at 890. They are no more identifiable actions "much less a 'final agency action'—than a 'weapons procurement program' of the Department of Defense or a 'drug interdiction program' of the Drug Enforcement Administration." *Id.*; *see, e.g.*, *Wild Fish Conservancy v. Jewell*, 730 F.3d 791, 801 (9th Cir. 2013) (government's operation of dams "in a manner that obstructs fish passage" is "not ... a discrete 'agency action'"). The Supreme Court "ha[s] repeated time and again" that when faced with competing obligations, "an agency has broad discretion to choose how best to marshal its limited resources and personnel to carry out its delegated responsibilities." *Massachusetts v. EPA*, 549 U.S. 497, 527 (2007). Plaintiffs are arguing against this precedent.

B. An Alternative Adequate Remedial Scheme May Foreclose APA Review of the Dismissal Guidance and Concurrent Proceedings Guidance Claims (Counts III, IV, VII, X, XI).

"[T]he Supreme Court interpreted § 704 as precluding APA review where Congress has otherwise provided a special and adequate review procedure." *Garcia v. Vilsack*, 563 F.3d 519, 522 (D.C. Cir. 2009); *Bowen v. Massachusetts*, 487 U.S. 879, 903 (1988). "The alternative remedy need not provide relief identical to relief under the APA, so long as it offers relief of the same genre." *Garcia*, 563 F.3d at 522 (citation modified). "Relief will be deemed adequate where a statute affords an opportunity for de novo district-court review of the agency action." *Id.* at 522–23 (citation modified). This is because "Congress did not intend to permit a litigant challenging an administrative denial . . . to utilize simultaneously both [the review provision] and the APA." *Id.*

An adequate remedy exists when "Congress has provided 'an independent cause of action or an alternative review procedure.'" *Marquez v. Pompeo*, Civ. A. No. 20-3225 (TSC), 2022 WL 43492, at *3 (D.D.C. Jan. 5, 2022) (quoting *Citizens for Resp. & Ethics in Wash. v. Dep't of Justice* ("CREW"), 846 F.3d 1235, 1245 (D.C. Cir. 2017)). So long as there is "clear and convincing evidence of legislative intent to create a special alternative remedy," APA claims are foreclosed. *Id.* (citing *CREW*, 846 F.3d at 1244).

A petition for review can be the appropriate mechanism by which aliens can challenge the dismissal of their proceedings if they receive a reviewable final order of removal. *See supra* at § I.D. Congress set up a reticulated scheme for aliens to channel "[j]udicial review of all questions of law and fact" that arise "from any action taken or proceeding brought to remove an alien from the United States" must be brought through a final order of removal. 8 U.S.C. § 1252(b)(9). Indeed, Plaintiffs indeed acknowledge the same. *See* Pls' Mot. at 39 ("[IJ]s do not have the final word in removal proceedings; an appeal to the BIA is available.").

Plaintiffs are likely to argue that a petition for review is not possible from the dismissal order because it is not by itself a final removal order. That would fail to capture a full understanding of removal proceedings. While the dismissal order by itself cannot be reviewed by the appropriate court of appeals, it may be reviewed when subsumed into the challenge to a final order of removal. *See Khalil*, 164 F.4th at 281 (requiring aliens "to wait to seek relief for allegedly unlawful government conduct" to ensure that INA's scheme is honored). Therefore, aliens who obtain final orders of removal by way of removal proceedings would be able to obtain review. Now, Individual Plaintiffs have not informed the Court of any developments regarding their proceedings, but to the extent that they are subject to § 1229a proceedings that result in a final order of removal, they may obtain review. Tying these processes and various forms of review together may seem "draconian," but that is not for this Court to rectify. *Khan v. Meissner*, 921 F. Supp. 2, 4 (D.D.C. 1995).

C. Section 1252(b)(9) Forecloses Review for Plaintiffs Who Obtain a Final Order of Removal (Counts III, IV, V, VI, X, XI).

Just this term, the Supreme Court unequivocally held, in APA cases, "[i]f the final agency action is unreviewable, then so too are subsidiary determinations" because those "subsidiary decisions merge into the final agency action," which would be the subject of review. *Doe*, 146 S. Ct. at 2136. Therefore, "[i]f a no-review provision shields particular types of administrative action, a court may not inquire whether a challenged agency decision is arbitrary, capricious, or procedurally defective." *Amgen, Inc. v. Smith*, 357 F.3d 103, 113 (D.C. Cir. 2004); 5 U.S.C. § 701(a)(1). Allowing Plaintiffs to plead around this would effectively "eviscerate the statutory bar" and allow anyone to "recast" challenges to the "underlying methodology." *DCH Reg'l Med. Ctr. v. Azar*, 925 F.3d 503, 505-507 (D.C. Cir. 2019). Plaintiffs' challenges are nothing more than: (1) an attempt to review decisions to dismiss removals proceedings, which is jurisdictionally barred; and (2) an attempt to cast a procedural challenge to expedited removal orders or what would

ultimately be final removal orders, which would be subject to channeling. *See supra* at §§ I.C, I.D. Defendants do not understand that Individual Plaintiffs are challenging their expedited removal orders, to the extent that they still have them, because that would run afoul of § 1252(a)(2)(A). *See* § I.E.

D. The APA Does Not Permit Review of the Dismissal Guidance, the Purported Concurrent Proceeding Guidance, Nor the Expansion of Expedited Removal.

The APA bars review of agency action that "when the matter in dispute has been 'committed to agency discretion by law.'" *Drake v. FAA*, 291 F.3d 59, 70 (D.C. Cir. 2002) (quoting 5 U.S.C. § 701(a)(2)). The discretionary bar applies when the statute in question is "drawn in 'such broad terms that in a given case there is no law to apply.'" *Id.* (quoting *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 410 (1971)). The court's inquiry is whether there is a "judicially manageable standard," and if one cannot be discerned, then the APA bars review. *See id.*

1. Expedited Removal (Counts VIII, IX)

The D.C. Circuit was clear: "[T]here is no cause of action under the APA to scrutinize the Secretary's designation decision so long as it falls within statutory and constitutional bounds." *Make the Rd. I*, 962 F.3d at 635. Plaintiffs challenge the expansion of the Secretary's expedited removal designation to encompass the full statutory provision, which would include aliens who cannot establish two years of continuous physical presence prior to the date of the determination of inadmissibility. *See* Pls' Mot. at 34-35. That is not a challenge to the statutory bounds of the expedited removal statute, and therefore, this decision falls within the Secretary's unfettered and unreviewable discretion. *See Make the Rd. I*, 962 F.3d at 633 ("Neither the statutory text nor the structure provides any other legal standards constraining the Secretary's discretionary judgment.").

Plaintiffs seek to recast this discretionary decision by calling it a "different interpretation" of the expedited removal statute. Pls' Mot. at 28. But that is not an *ultra vires* claim. *See Nyunt v.*

Chairman, Broad. Bd. of Governors, 589 F.3d 445, 449 (D.C. Cir. 2009) (defining such a claim as being in "excess of its delegated powers and contrary to a specific prohibition in the statute that is clear and mandatory" (citation modified)). It is well-established that agencies "must abide 'not only by the ultimate purposes Congress has selected, but by the means it has deemed appropriate, and prescribed, for the pursuit of those purposes.'" *Nat'l Ass'n of Broads. v. FCC*, 39 F.4th 817, 820 (2022) (quoting *Colorado River Indian Tribes v. Nat'l Indian Gaming Comm'n*, 466 F.3d 134, 139-40 (D.C. Cir. 2006)). Additionally, the government is not required "to give advance warning of a statute's *every possible* application." *Sprint Corp.*, 151 F.4th at 367. When the Secretary acts within his delegated statutory authority, the Court should pay due deference and not interfere with the Secretary's conclusion. *See Midwest Ozone Grp. v. EPA*, 61 F.4th 187, 193 (D.C. Cir. 2023) (applying principle in EPA context) (citing *Appalachian Power Co. v. EPA*, 135 F.3d 791, 802 (D.C. Cir. 1998)).

Plaintiffs seem to presume that their challenge is reviewable because there is jurisdiction. *See* Pls' Mot. at 35-36. Putting aside the circular logic, they fail to address the discretionary nature of the May 20 Broadcast, which simply reiterates that DHS maintains discretion to determine whether to subject certain aliens to expedited removal to the extent that it is consistent with the Acting Secretary's designation. *See* BroadcastAR_002. Therefore, Plaintiffs are challenging the discretionary decision that extends from the preliminary discretionary decision; discretion flows all the way down through this decision-making process. Even with the understanding that the May 20 Broadcast is a written policy directive that is challengeable, it gets Plaintiffs nowhere.[4]

---

[4] Plaintiffs ask the Court to now consider completeness of the administrative record. *See* Pls' Mot. at 36 n.4. The Court should reject this belated request, because Plaintiffs had an opportunity to challenge this during the litigation and failed to do so. Indeed, Plaintiffs litigated completeness over the record, and this Court considered those arguments on an expedited basis and ordered Defendants to produce other records that they had withheld. *See* Min. Order (June 16, 2026). Not

Plaintiffs seek to bypass the discretionary judgment to challenge the process by which the government makes a "determination of inadmissibility." *See* Pls' Mot. at 36-37. Put differently, Plaintiffs request judicial review of a nonreviewable decision by challenging the process by which the decision is made. But the Supreme Court unequivocally held, in APA cases, "[i]f the final agency action is unreviewable, then so too are subsidiary determinations" because those "subsidiary decisions merge into the final agency action," which would be the subject of review. *Doe*, 146 S. Ct. at 2136. Therefore, "[i]f a no-review provision shields particular types of administrative action, a court may not inquire whether a challenged agency decision is arbitrary, capricious, or procedurally defective." *Amgen, Inc.*, 357 F.3d at 113; 5 U.S.C. § 701(a)(1). Allowing Plaintiffs to plead around this would effectively "eviscerate the statutory bar" and allow anyone to "recast" challenges to the "underlying methodology." *DCH Reg'l Med. Ctr.*, 925 F.3d at 505-507.

2. Dismissal Guidance and Concurrent Proceedings Guidance (Counts III, IV, VII, X, XI)

Plaintiffs challenge Defendants' Guidance as they pertain to dismissing removal proceedings and pursuing expedited removal instead. *See* Pls' Mot. at 24-33; *id.* at 39-42. This is no more than a naked attempt to review decisions related to prosecutorial discretion. Those are agency actions committed to agency discretion by law and are therefore unreviewable under the APA.

"There was good reason for Congress to focus special attention upon, and make special provision for, judicial review of the Attorney General's discrete acts of commencing proceedings,

---

once did Plaintiffs mention this issue then nor have ever raised it to Defendants or counsel. The Court should not reward Plaintiffs' piecemeal litigation tactics, nor their inability to make their record at this juncture of the proceedings. *See Lykins v. Rose*, 608 F. Supp. 693, 696 (D.D.C. 1984) (acknowledging that "litigation strategy and judgment" may have consequences").

adjudicating cases, and executing removal orders—which represent the initiation or prosecution of various stages in the deportation process." *AADC*, 525 U.S. at 483. "At each stage the Executive has discretion to abandon the endeavor[.]" *Id.* Plaintiffs ask that this Court step into the Executive's shoes when it comes to exercising prosecutorial discretion. That is simply inconsistent with separation of powers principles and the general lack of judicial review over matters involving prosecutorial discretion.

The Dismissal Guidance is the epitome of prosecutorial discretion. The dismissal of removal proceedings is a governmental decision of nonenforcement in and of itself and therefore are unreviewable. The Concurrent Proceeding Guidance is nothing more than a combination of the decisions to dismiss removal proceedings against aliens and the decisions to initiate expedited removal proceedings against those very aliens. Both are discretionary. *See In Re: Esmeralda Perez Valdovinos Jesus Alberto Rogel Perez*, 2017 WL 1508880, at *1 (BIA Mar. 24, 2017) ("Moreover, we concluded in *Matter of E-R-M- & L-R-M-*, 25 I&N Dec. 520 (BIA 2011), that the DHS possesses prosecutorial discretion to place arriving aliens in expedited removal proceedings or to initiate removal proceedings under section 240 of the Act, 8 U.S.C. § 1229a."). A combination of two discretionary decisions does not make them somehow reviewable.

While the Court was previously unconvinced, *Citizens for Responsibility & Ethics in Washington ("CREW") v. Federal Election Commission*, 993 F.3d 880 (D.C. Cir. 2021) is instructive to this point. The *CREW* court considered whether a private party could challenge a nonenforcement decision by the Commission under a particular statute that appeared to authorize such a challenge. It ruled in the negative, finding "[d]espite the authority to review a nonenforcement decision to determine whether it is 'contrary to law,' we recently held that a Commission decision based even in part on prosecutorial discretion is not reviewable." *Id.* at 882.

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

While that decision is "outside the immigration context," Mem. Order at 14, the same principles apply to immigration proceedings. *See, e.g.*, *In Re: Zayuri Lopez-Perez Itzi Yanely Valdovinos-Lopez Isis Mariela Valdovinos-Lopez Samuel Efrain Valdovinos-Lopez*, 2016 WL 2848950, at *2 (BIA Apr. 27, 2016) (labeling as an exercise of "prosecutorial discretion" to place an alien into removal proceedings, whether that be under § 1229a or expedited removal); *In Re: Jose De Jesus Garcia-Rodriguez*, 2012 WL 1495509, at *1 (BIA Mar. 13, 2012) ("The DHS is afforded broad prosecutorial discretion to initiate removal proceedings, to cancel a Notice to Appear prior to jurisdiction vesting with the IJ, and to seek dismissal after jurisdiction has vested."). And for good reason. The Court must create a discernable and articulable standard that Defendants must follow when deciding whether to dismiss removal proceedings or initiate expedited removal proceedings. *Heckler*, 470 U.S. at 830 ("if no judicially manageable standards are available for judging how and when an agency should exercise its discretion, then it is impossible to evaluate agency action for 'abuse of discretion'"). There are no regulations that govern *whether* to place an alien into expedited removal proceedings, and that is silence should be

dispositive. *See Kisser v. Cisneros*, 14 F.3d 615, 621 (D.C. Cir. 1994) (holding that the decision to initiate debarment proceedings is discretion because there is no "procedural step at the initiation of the debarment process which would provide a focus for judicial review of [the agency's] nonenforcement decisions.").

Nor is there any articulable standard governing "circumstances 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)(7). What constitutes the best interest for the government is analogous to considerations of "national interest" that numerous courts, including the D.C. Circuit, have held are barred from review. *See, e.g.*, *Zhu v. Gonzales*, 411 F.3d 292, 295 (D.C. Cir. 2005) (holding that § 1252(a)(2)(B)(ii) bars review of the denial of a national-interest waiver); *Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (same). These are value judgments that do not make themselves amenable to judicial standards and empirical evidence. *Cf. Edwards v. Dist. Of Columbia*, 755 F.3d 996, 362-63 (D.C. Cir. 2014).

E. The Guidance Documents Are Not Final Agency Actions (Counts III, IV, V, VI, VII, VIII, IX, X, XI).

Neither the Dismissal nor the Concurrent Proceeding Guidance nor the May 20 Broadcast constitute final agency actions for the purposes of APA review, and therefore, the Court should grant judgment in favor of Defendants.

An agency action is final only if it (1) marks the "consummation" of the agency's decisionmaking process and (2) is one "by which rights or obligations have been determined, or from which legal consequences will flow." *Bennett v. Spear*, 520 U.S. 154, 177-78 (1997). Under *Bennett*, the critical question is whether the challenged action itself fixes rights or obligations. 520 U.S. at 177-78. And finality exists where the agency action "alter[s] the legal regime" to which the plaintiff is subject and produces binding legal effects. *Id.* at 178.

Neither the Dismissal Guidance nor the Concurrent Proceeding Guidance nor the May 20 Broadcast meet these requirements. Starting with the Dismissal Guidance, there is nothing that "alters the legal regime" of removal proceedings. DHS attorneys retain discretion to determine whether to seek expedited removal against an alien. *See Matter of E-R-M- & L-R-M-*, 25 I. & N. at 522 (holding that § 1225(b)(1)(A)(i) does not limit discretion to place aliens who could be subject to expedited removal into full removal proceedings under § 1229a). DHS attorneys may seek dismissal "on the grounds set out under 8 CFR 239.2(a)," which includes "[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)(7), 1239.2(c). IJs retain their discretion to dismiss cases as they see fit. *See* EOIR-AR-011-12 ("No individual in EOIR leadership, including the [Regional Deputy Chief IJ], may direct an [IJ] to decide a case in a particular way." (citing 8 C.F.R. §§ 1003.02(c), 1003.9(c), PM-25-42, all of which reaffirm that IJs retain discretion on how to proceed in individualized removal proceedings)). Even EOIR's May 30 Email is devoid of any mandatory language requiring IJs to adjudicate cases with a certain outcome in mind. *See* EOIR-AR-016 (stating that motions to dismiss may be "decided from the bench"). This action is entirely consistent with regulation. *See* 8 C.F.R. § 1003.18(d)(2)(ii). That is dispositive for purposes of final agency action. *See Hines*, 2026 WL 969020, at *11 ("But Plaintiffs have not shown that individual IJs have lost the capacity to manage their dockets."). To the extent that the Court believes that the Concurrent Proceedings Guidance is an independent agency action, *contra* § II, the same arguments apply because such guidance is just combination of two non-final agency actions, from which Plaintiffs seek to sew together a final action to challenge.

But it is also incorrect. The May 20 Broadcast, as it pertains to the expedited removal component specifically, is not a final agency action amenable to APA review. Similar to the concerns related to the Dismissal and Concurrent Proceedings Guidance, nothing in the May 20 Broadcast requires DHS to place an individual alien into expedited removal proceedings. *See* BroadcastAR_002 (informing OPLA attorneys to "determine, on a case-by-case, basis whether the alien is amenable to ER" and reminding attorneys to "consider the discretionary factors" articulated in the February 2025 Memo); *see also* BroadcastAR_024 (setting forth non-exhaustive list of considerations when determining whether to subject an alien to expedited removal). Put differently, these documents are not the driving force in whether an alien is subject to expedited removal; rather, that determination is based entirely on the alien and the manner and timing of entry and inadmissibility determination. Meaning, the aliens could be placed into expedited removal proceedings regardless of these documents. Therefore, the May 20 Broadcast confirms that it is nothing more than "merely [] expressing [the agencies'] views of the law." *AT&T Co. v. EEOC*, 270 F.3d 973, 976 (D.C. Cir. 2001).

Several other courts have reviewed actions like those challenged here and determined that plaintiffs did not challenge a final agency action. For instance, in *NIP*, the court held that agency policies "do not constitute final agency action because they do not determine any rights or obligations, nor do legal consequences flow from those policies." 456 F. Supp. 3d at 31. "Instead, legal consequences flow (and rights and obligations are determined) only form the particular decision of an [IJ] implementing [the Agency's] policies in a specific case." *Id.* In *Hines*, the plaintiffs had alleged that the government had instituted a "fast-track policy" that sped up the scheduling of removal proceedings for Somalian nationals. *See Hines*, 2026 WL 969020, at *2.

The court concluded that the agency action was likely not final because it did not alter IJs' abilities to set their own schedules. *Id.* at *11.

Delaware Valley Reg'l Ctr., LLC v. DHS likewise is instructive. 106 F.4th 1195 (D.C. Cir. 2024) ("*DVRC*"). There, the court considered whether statements in a USCIS policy manual, which the agency described as "contain[ing] the official policies of USICS" and "to be followed by all USCIS officers in the performance of their duties," constituted final agency action. *Id.* at 1201 n.3. The court held that they did not, reasoning that the statements did "not impose any new 'concrete consequences' . . . when considered within the context of 'the specific statute[] and regulations that govern.'" *Id.* at 1204-05. Finally, in *Avagyam v. Blinken*, the court found that modifications to the FAM did not constitute final agency action. Civ. A. No. 22-2643 (CRC), 2022 WL 19762411, at *6 (D.D.C. Sept. 29, 2022). Despite the FAM "contain[ing] directives" and "outlining specific policies . . . regarding the issuance of visas," the Court found that the Manual "merely clarifie[d] . . . existing duties under the [statute]" and did not "bind [State] to a particular decision." *Id.*; *see also Kewayfati v. Bondi*, 165 F.4th 342, 346 (5th Cir. 2026) (asylum application denials, alleged by plaintiffs to be "an amorphous place holder," were not final agency actions, as they merely kept the "status quo [in place] for the time being—even if for a prolonged period" and thus were not decisions "from which legal consequences . . . flow"); *RCM Techs., Inc. v. DHS*, 614 F. Supp. 2d 39, 46 (D.D.C. 2009) (policy permitting adjudicators to impose extra-statutory requirements was not final agency action, as adjudicators retained discretion under the policy).

These Guidance Documents do not "create[] binding legal duties separate from, or on top of," those already in the INA itself. *Delaware Valley Reg'l Ctr., LLC v. DHS*, 678 F. Supp. 3d 73, 83 (D.D.C. 2023). The documents impose "no obligations, prohibitions, or restrictions; it "compels action by neither the recipient nor the agency." *Valero Energy Corp. v. Env't Prot. Agency*, 927

F.3d 532, 536 (D.C. Cir. 2019) (citation modified). Indeed, each of the questioned documents explicitly note that the documents are not intended nor create a right or benefit nor does they mandate any certain outcomes in individual cases. *See* EOIR-AR-014, BroadcastAR_002, BroadcastAR_025. Existing as such, the purported policies reflect "nothing more than a statement of agency policy" that advises officers on implementation of INA requirements. *Ass'n of Flight Attendants-CWA, AFL-CIO v. Huerta*, 785 F.3d 710, 717 (D.C. Cir. 2015).

IV. Defendants' Prevail on the Merits of All Claims.

The Court should not drive past the various threshold potholes in Plaintiffs' challenges; but if it is determined to look at the merits of their claims, Defendants prevail.

A. Dismissal Guidance is Lawful (Counts III, IV, VII, X, XI).

Neither EOIR's Dismissal Guidance nor the May 20 Broadcast are contrary to law nor are they arbitrary and capricious. *See* Pls' Mot. at 24-33. DHS is permitted to seek dismissal of removal proceedings for various reasons after a notice to appear has been filed and jurisdiction has vested with an IJ. *See* 8 C.F.R. §§ 239.2(a) (setting out grounds for dismissal prior to jurisdiction vesting with the IJ), 1239.2(c) (incorporating the same grounds for dismissal once jurisdiction has vested). Relevant here, DHS may seek to dismiss removal proceedings when "[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)(7). Pursuing expedited removal instead of removal proceedings for an alien amenable to expedited removal is considered to satisfy this regulatory ground for dismissal. *See In Re: Jesus Olmedo Montealegre De Los Rios*, 2017 WL 7660475, at *2 (BIA Oct. 26, 2017) (upholding termination of proceedings when the alien was subject to an expedited removal order).

Plaintiffs would get nowhere by arguing that DHS should terminate proceedings rather than dismiss them. The IJ may either dismiss or terminate proceedings when DHS moves to

dismiss. *See* 8 C.F.R. § 1239.2(b), (c). Meaning, a motion to dismiss that is not based on regulatory grounds will be deemed a motion to terminate and can still be decided. 8 C.F.R. §§ 1239.2(b) 1003.18(d). Whether the proceeding is dismissed or terminated may have legal implications, but there is no practical difference—because the outcome is that removal proceedings are over.

EOIR's September 23 Memo by itself exudes deference to IJs and their continued ability to adjudicate the cases before them. *See* EOIR-AR-011-13 (recounting the authority that IJs retain to entertain and rule on oral motions to dismiss and reiterating the IJs' independence in ruling on each case). Although Defendants maintain that the EOIR's May 30 Email has been withdrawn, to the extent that the Court disagree, that too confirms that there are no predetermined outcomes for motions to dismiss. *See* EOIR-AR-015-16 (notable absence of any language dictating any specific outcomes).

Plaintiffs fight the deference on the grounds that EOIR's May 30 Email permits oral motions to dismiss rather than requiring such motions be submitted in writing. *See* Pls' Mot. at 27. Plaintiffs rely on 8 C.F.R. § 1003.23, which governs motions for reopening and reconsideration. Nothing in the regulation can be construed as governing motions to dismiss. Rather, DHS may make, and IJs may consider, oral motions because nothing prohibits such action, and Plaintiffs do not point to any legal authority saying otherwise. That is because IJs routinely review and entertain oral motions. *See* Immigration Court Practice Manual, § 3.14(m)(2) (allowing waiver of the respondent's appearance at a master calendar hearing by either oral or written motion), (n) (allowing either type of motion for appearance by telephone), (o)(1) (allowing either type of motion for request for interpreter). Indeed, the decision by IJs to rule on oral motions has been upheld routinely. *See Matter of E-A-R-M-*, 29 I. & N. Dec. 746 (BIA 2026) (finding oral motions to pretermit relief sufficient notice of third country removal); *Matter of C-I-G-M-*, 29 I. & N. Dec.

291, 294 (BIA 2025) (stating that "[i]f a respondent seeking asylum is subject to the terms of an [asylum cooperative agreement], DHS must provide *oral or written notice* that it intends to remove the respondent to the relevant third country for consideration of his or her asylum claim" (emphasis added)).

Plaintiffs' notice argument is baffling. *See* Pls' Mot. at 28. They have not alleged that they are not present in court when DHS makes oral motions to dismiss. Therefore, they receive notice when the motion is made. And they are permitted to make a record. *See Matter of W-Y-C- & H-O-B-*, 27 I. & N. Dec. 189, 190 (BIA 2018) ("It is therefore imperative that the parties fully develop the record before the [IJ]."). *Leslie*, 611 F.3d at 180 (addressing unfair proceeding); *Arteaga-Ramirez* , 954 F.3d at 813; *Wang*, 423 F.3d at 267-69.

Also, to draw the analogy to general civil practice in courts within the district, the Federal Rules of Civil Procedure provide that motions must be made in writing unless they are made at a hearing or trial. *See* Fed. R. Civ. P. 7(b)(1)(A). Local Rules require that each motion be made with "a statement of the specific law and authority to support such motion" and places time limitations to respond to said motions. *See* LCvR7(a), (b), (d). District courts do not act unlawfully when they hear oral motions and then require the opposing party to respond to said motion at the hearing. Those are actions left to the courts' discretion in managing their dockets. Immigration courts are administrative courts but courts, nonetheless.

Plaintiffs presuppose that the Immigration Court Practice Manual is "binding policy" but provide zero legal support for such an imperative piece of their legal puzzle. Pls' Mot. at 27. Because it is unsupported. *See Gun Ho Chung v. Lynch*, 620 F. App'x 637, 638 (9th Cir. 2015) ("Chung's reliance on Rules 3.3(g) and 4.15 of the Immigration Court Practice Manual is also

misplaced, because these rules are not binding where the [IJ] directs otherwise."). Nor do Plaintiffs get any on their reliance interests arguments here. *See supra* § II.

B. The Decision to Implement Expedited Removal Pursuant to Statute is Lawful (Counts VIII, IX).

Plaintiffs challenge the May 20 Broadcast as expanding the use of expedited removal such that aliens who have been present in the United States for more than two years but have not been subject to an admissibility determination. *See* Pls' Mot. at 33-39. But the statute defines aliens as being subject to expedited removal if they have "not been admitted or paroled into the United States" and "not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility under this subparagraph." 8 U.S.C. § 1225(b)(1)(A)(iii)(II). Put differently, Plaintiffs' challenge is that Defendants have followed the law and fully implemented expedited removal that Congress provided. Acting within the confines of the statute is not unlawful.

Congress empowered the Secretary of Homeland Security "to decide the extent to which expedited removal will operate within statutory bounds[.]" *Make the Rd. I*, 962 F.3d at 631. That designation "'may be modified at any time.'" *Id.* at 632 (quoting 8 U.S.C. § 1225(b)(1)(A)(iii)(I)). The Acting Secretary decided to designate for expedited removal those aliens who fell within the exact definition of the statute. *See* BroadcastAR_017-18. That included placing the burden on the alien to affirmatively "show to the satisfaction of an immigration officer that the alien has been present in the United States continuously for the relevant period." BroadcastAR_018. Because the statute permits the Secretary to condition the two-year-continuous-period determination to the date of a determination of inadmissibility, *see* 8 U.S.C. § 1225(b)(1)(A)(iii)(II), the Acting Secretary acted with the statutory bounds of the delegated authority. *See, e.g.*, *Ukeiley v. EPA*, 896 F.3d

1158, 1165 (10th Cir. 2018) ("[S]ince the EPA's Rule complies with the statute's plain meaning, we cannot find its application here arbitrary and capricious."); *see also Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585-88 (1952) (recognizing that the Executive must act with authority conferred by Congress). There is no change in the statutory interpretation of the language either. *See Drummond Coal Co. v. Hodel*, 796 F.2d 503, 508 (D.C. Cir. 1986).

Putting aside the reviewability concerns raised previously, *see supra* at § III.C.1, Plaintiffs are asking for this Court to draw its own inferences on questions related to foreign policy and national security, where "'the lack of competence on the part of the courts is marked.'" *Trump v. Hawaii*, 585 U.S. 667, 704 (2018) (quoting *Holder v. Humanitarian Law Project*, 561 U.S. 1, 34 (2010)); *see AADC*, 525 U.S. at 491 (noting that courts are "ill equipped" to review evidence related to "foreign-policy objectives"). Plaintiffs' request for review is an invitation for this Court to impermissibly "interfere with the policy decisions of an agency." *Episcopal Hosp. v. Shalala*, 994 F.2d 879, 884 (D.C. Cir. 1993). But worse, they are asking for this Court to substitute its judgment on foreign policy and national security considerations, where the utmost deference is required. *See Islamic Am. Relief Agency v. Gonzales*, 477 F.3d 728, 734 (D.C. Cir. 2007) (confirming that "extreme" deferential review is required "in an area at the intersection of national security, foreign policy, and administrative law"); *Olenga v. Gacki*, 507 F. Supp. 3d 260, 280 (D.D.C. 2020) ("The Court's review is even more deferential where matters of foreign policy and national security are concerned.").

Plaintiffs seek to avoid these concerns with their theories because Defendants have supposedly changed practice by treating a notice to appear as a determination of inadmissibility under the statute. *See* Pls' Mot. at 34-35. Courts have determined that challenge to be jurisdictionally barred. *See Sissoko v. Rocha*, 509 F.3d 947, 948-49 (9th Cir. 2007); *Bukhari v.*

Piedmont Reg'l Jail Auth., 2010 WL 3385179, at *3 (E.D. Va. Aug. 20, 2010). But Plaintiffs' theory also fails because they seek to challenge a predicate step for a nonreviewable decision. *See Doe*, 146 S. Ct. at 2136. To challenge the determination of inadmissibility as Plaintiffs have framed it is really challenging to the notice to appear and its substance, which is a challenge to the commencement of expedited removal proceedings. *See* 8 U.S.C. § 1252(g). For Individual Plaintiffs at the very least, they challenge individualized determinations that arise and relate to the implementation and operation of the expedited removal statute, and a decision to invoke the provisions of the expedited removal statute, and a challenge to the procedures and policies adopted to implement the expedited removal statute, which are all barred from judicial review. *See* 8 U.S.C. § 1225(a)(2)(A)(i), (ii), (iv).

Even on the merits, Plaintiffs' arguments fail. With respect to continuous presence, the guidance is materially identical to the 2019 guidance ICE issued the last time expedited removal was expanded to the full statutory allowance. *See Implementation of July 2019 Designation of Aliens Subject to Expedited Removal* (July 24, 2019) ("2019 Guidance"); *Make the Road v. McAleenan*, 1:19-cv- 02369 (D.D.C. Aug. 28, 2019), ECF No. 25-1. Moreover, determination is synonymous with decision and can also mean "the chain of events leading up to a decision." *Doe*, 146 S. Ct. at 2133; *contra* Pls' Mot. at 37-38 (defining determination of inadmissibility). "Determination of inadmissibility" should be read to apply to determination made by an immigration officer that ends up in immigration court and meaning that the determination must be made at individual encounters because even the slightest absence from the United States would break the continuous-physical-presence requirement. *See* 8 C.F.R. § 235.3(b)(1)(ii). Logic commands that Defendants be able to question the physical presence requirement at the time of encounter to ensure that the alien is amenable to expedited removal because an alien is deemed an

applicant for admission when he arrives in the United States. *See Al Otro Lado*, 146 S. Ct. at 2087. Each time an alien departs and reenters the United States without any inspection, he is deemed an applicant for admission. *See* 8 U.S.C. § 1225(a)(1) (defining "applicant for admission" as "[a]n alien present in the United States who has not been admitted . . . "); *see also Al Otro Lado*, 146 S. Ct. at 2087 ("The Government correspondingly must inspect an alien who arrives in the United States."). Therefore, Defendants must have the authority to inquire whether an alien, at the time of that encounter or interaction, may have previously departed the United States and subsequently entered. Any other decision would effectively permit aliens to leave the country, reenter in circumvention of the law, only then to argue that they cannot then be subject to expedited removal.

This is precisely why Plaintiffs cannot seek refuge in various statutory and regulatory hooks that they believe constrains the expedited removal statute and that the May 20 Broadcast violates those regulations and statutes. *See* Pls' Mot. at 36-38. But additionally, nothing in Plaintiffs' arguments shows a violation of law. The immigration officer who issues a notice to appear must make an inadmissibility determination as a threshold matter because otherwise the notice of appear would be cancelled. *See* 8 C.F.R. § 239.2(a)(2). Plaintiffs' proposed reading of the procedures is that a notice to appear is issued without consideration and regard as to whether the individual is an alien. That is nonsensical. Under Plaintiffs' reading of Defendants' obligations to issue a notice to appear, the immigration officer must have conclusive evidence that they are subject to expedited removal. *See* Pls' Mot. at 38. If that was the case, then Plaintiffs have no leg to stand on when arguing that Defendants could not dismiss removal proceedings to pursue expedited removal instead. That there may not be a "sworn statement" with the notice to appear does not change anything. *See* Pls' Mot. at 38. The notice to appear must specify the legal authority under which proceedings are being conducted and the charges giving rise to the removal

proceedings. *See* 8 U.S.C. § 1229(a)(1). Meaning, there must be a basis for inadmissibility or deportability for the notice to appear to be issued in the first place.

Plaintiffs' "form over function" argument is meritless.

C. Plaintiffs Have Forfeited Their Fifth Amendment Theory (Count VII).

Plaintiffs originally pled a cause of action and claim that the EOIR's and DHS's Dismissal Guidance were contrary to law because they violated the Fifth Amendment. *See* Compl. ¶¶ 164-68. The Court did not address Defendants' arguments for dismissal. *Compare* Mem. Order (ECF No. 50), *with* Defs' Mot. to Dismiss at 37-39. But now at summary judgment, it is quite possible that Plaintiffs are declining to advance this theory given the recent D.C. Circuit decision in *Make the Rd. II*. 179 F.4th at 33-38 (holding that the 2025 expansion of expedited removal and 2025 Huffman memorandum did not violate due process). Regardless, Plaintiffs do not advance a constitutional theory at summary judgment. Neither the word "fifth" nor "amendment" appear in Plaintiffs' summary judgment motion. *See generally* Pls' Mot. The only derivative of "Constitution" appears once, and it is only in the context of quoting a different case. *See* Pls' Mot. at 35. This is the epitome of forfeiture. *See Gov't of Manitoba v. Bernhardt*, 923 F.3d 173, 179 (D.C. Cir. 2019) ("A party forfeits an argument by mentioning it only in the most skeletal way, leaving the court to do counsel's work, create the ossature for the argument, and put flesh on its bones.") (citation modified); *Al-Tamimi v. Adelson*, 916 F.3d 1, 6 (D.C. Cir. 2019) ("An argument left so naked 'is tantamount to failing to raise it."). The Court should deem it so and grant judgment in favor of Defendants on Count VII. *See Earle v. Atkins*, Civ. A. No. 19-1419 (CKK/GMH), 2026 WL 1261082, at *12 (D.D.C. May 8, 2026); *Cruz v. Kelly*, 241 F. Supp. 3d 107, 113 n.4 (D.D.C. 2017), *aff'd in part, rev'd in part and remanded sub nom. Cruz v. McAleenan*, 931 F.3d 1186 (D.C. Cir. 2019).

V. The Court Should Order Separate Briefing on Remedy.

As the parties' briefing makes clear, this case presents complicated factual and legal issues for the Court to resolve on summary judgment. While Defendants strongly contend that summary judgment should be granted in their favor on all claims and counts, a decision the other way will necessarily impact the remedy that the Court may order. For instance, Plaintiffs pled and requested injunctive relief that would reinstate removal proceedings for all class members. *See* Compl. Prayer for Relief, ¶ t. While the Court dismissed the Individual Plaintiffs' claims as they pertained to the Dismissal Policies, it remains unclear whether Organizational Plaintiffs intend to seek such relief as part of their claims now. Given the complexities involved, Defendants request that the Court reserve a ruling on remedies until the appropriate time. *See Al Otro Lado v. Mcaleenan*, Civ. A. No. 17-2366, Order (Sept. 2, 2021), ECF No. 742, at 44-45 (ordering the parties to submit supplemental briefing on appropriate remedies).

VI. Any Relief Should Be Limited to the Plaintiffs Before the Court.

If the Court grants the relief sought, it should be strictly limited to those plaintiffs in this matter. That is because the Supreme Court has ruled that a "universal injunction . . . falls outside the bounds of a federal court's equitable authority under the Judiciary Act." *Trump v. CASA*, Inc., 606 U.S. 831, 847 (2025). At most, a court "may administer complete relief between the parties" and should not go beyond that to enjoin action or implementation more broadly. *Id.* at 851 (quoting *Kinney-Coastal Oil Co. v. Kieffer*, 277 U.S. 488, 507 (1928)).

Congress legislates against the backdrop of "established principles" of equity. *Starbucks Corp. v. McKinney*, 602 U.S. 339, 346 (2024). Departing "from traditional equity practice" requires Congress to "make its desire plain." *Hecht Co. v. Bowles*, 321 U.S. 321, 330 (1944) (citation modified). The presumption there is that a statute adheres to longstanding equitable principles "absent a clear command" to the contrary. *McKinney*, 602 U.S. at 346. The Supreme

Court has "consistently employed this presumption when interpreting a wide variety of statutes." *Id.*; *see, e.g.*, *Nken*, 556 U.S. at 433-36; *United States v. Oakland Cannabis Buyers' Coop.*, 532 U.S. 483, 496 (2001); *Amoco Prod. Co. v. Gambell*, 480 U.S. 531, 542-544 (1987); *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 313 (1982) Plaintiffs point to no statute containing a clear statement displacing "the party-specific principles that permeate our understanding of equity." *CASA*, 606 U.S. at 844.

Vacatur under the APA does not save Plaintiffs' claims or the scope of relief. Defendants recognize that the D.C. Circuit recently reiterated that vacatur and injunctions are two different forms of relief with different considerations. *See RAICES*, 174 F.4th at 119. But it is important to note that the Court applied that principle in the context of a class action in which the class had been certified and requires that the relief sought would be applicable to the class. *See* Fed. R. Civ. P. 23(b)(2). But no class has been certified here. In fact, the vacatur of the guidance documents would prohibit the government from applying lawful procedures to aliens subject to expedited removal who have not raised any claims before the Court. In other words, the Court would be risking "the adjudication of rights which those not before the Court may not wish to assert" or to choose "the most effective advocate of the rights at issue is present to champion them." *LaRoque v. Holder*, 650 F.3d 777, 782-83 (D.C. Cir. 2011).

That *CASA* arose under the Judiciary Act is of no moment because Congress enacted the APA against a background rule that statutory remedies should be construed in accordance with "traditions of equity practice." *Hecht Co.*, 321 U.S. at 329. "*CASA* provides fresh guidance regarding the equitable powers of federal courts." *Doe v. Trump*, 142 F.4th 109, 112 (1st Cir. 2025); *see also Immigrant Defs. L. Ctr. v. Noem*, 145 F.4th 972, 995 (9th Cir. 2025) ("Though the Supreme Court's recent *Trump v. CASA*, Inc. decision explicitly declined to extend its holding to

the APA context, its complete-relief principle for crafting injunctive relief provides some useful guidance for crafting interim equitable relief in this [APA] case." (citation modified)). And the D.C. Circuit recently applied *CASA's* limiting principle in APA cases. *See Climate United Fund v. Citibank, N.A.*, 154 F.4th 809, 830 (D.C. Cir. 2025), *reh'g en banc granted, opinion vacated*, No. 25-5122, 2025 WL 3663661 (D.C. Cir. Dec. 17, 2025), and *on reh'g en banc*, No. 25-5122, 2026 WL 2235002 (D.C. Cir. Aug. 4, 2026); *Global Health Council v. Trump*, 153 F.4th 1, 46 n.10 (D.C. Cir. 2025) (Pan, J., dissenting) (citing *CASA* to agree that an injunction may not be "broader than necessary to provide complete relief to the plaintiff"); *Miot v. Trump*, No. 26-5050, 2026 WL 659420, at *4 (D.C. Cir. Mar. 6, 2026) (Walker, J., dissenting).

Therefore, to the extent that relief is granted, although Defendants maintain it should not be, the Court should tailor any relief narrowly and have it cover only the named plaintiffs before the Court. *See Ivanov v. Trump*, Civ. A. No. 26-915 (RJL), 2026 WL 2494805, at *16 (D.D.C. Aug. 25, 2026) (limiting vacatur on diversity-visa and 75-country pauses to the plaintiffs only).

* * *

Plaintiffs seek to nitpick every aspect of Defendants' decisions related to expedited removal; the goal is clear – avoid removal proceedings, regardless of the kind, by restricting the government's ability to exercise its discretion. Our immigration laws cannot work in such a manner.

CONCLUSION

For these reasons, the Court should grant Defendants' motion and either dismiss the case or grant summary judgment in Defendants' favor.

Dated: September 28, 2026

Respectfully submitted,

JEANINE FERRIS PIRRO
United States Attorney

By: *s/ Dhruman Y. Sampat*
DHRUMAN Y. SAMPAT
Assistant United States Attorney
601 D Street, NW
Washington, DC 20530
(202) 252-2525

Attorneys for the United States of America

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IMMIGRANT ADVOCATES RESPONSE COLLABORATIVE, et al.,

Plaintiffs,

v.

DEPARTMENT OF JUSTICE, et al.,

Defendants.

Civil Action No. 25-2279 (TNM)

[PROPOSED] ORDER

UPON CONSIDERATION of Defendants' combined motion to dismiss and for summary judgment, Plaintiffs' motion for summary judgment, and the entire record herein, it is hereby

ORDERED that Plaintiffs' motion is DENIED, and it is further

ORDERED that Defendants' motion is GRANTED; and it is further

ORDERED that judgment be entered in favor of Defendants on all claims and counts.

SO ORDERED:

_____
Date

_____
TREVOR N. McFADDEN
United States District Judge