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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

Eugene Division

M-J-M-A-; VICTOR CRUZ GAMEZ,
Plaintiffs,

v.

JULIO HERNANDEZ, Seattle Field Office Director, Immigration and Customs Enforcement and Removal Operations ("ICE/ERO"); TODD LYONS, Acting Director of Immigration Customs Enforcement ("ICE"); U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; MARKWAYNE MULLIN, Secretary of the Department of Homeland Security ("DHS"); U.S. DEPARTMENT OF HOMELAND SECURITY; and TODD BLANCHE, Attorney General of the United States,
Defendants.

Case No. 6:25-cv-02011-MTK

PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS COUNTS 7-9

INTRODUCTION

Defendants have moved to "protectively to preserve their threshold objections" to this case by filing yet another motion to dismiss. ECF 110 at 1. Their motion is dilatory and meritless. The Court should deny it with prejudice and order the Defendants to immediately answer the supplemental complaint.

BACKGROUND

Starting in the fall of 2025, Defendants embraced a policy and practice of "arrest first, ask later," where masked, unidentified, and heavily armed DHS agents driving unmarked vehicles, targeted entire communities for immigration enforcement. They stopped, arrested and detained Oregonians – citizen and immigrants alike– on their way to work, to study, buy groceries, or doing any activities in the course of normal life, based on their perceived race and origin, without probable cause and without assessing immigration status or flight risk as required by law. ECF 59 at 2; ECF 88 at 5-8. Defendants implemented this practice in order to comply with arrest quotas and without any regards to existing law. Additionally, Defendants failed to make individualized custody determinations, effectively prohibiting an individual's release once they were caught in the dragnet. ECF 59 at 3.

On October 30, 2025, Plaintiff M-J-M-A- was arrested in such a fashion. Masked, armed agents stopped the vehicle in which she was traveling to work and arrested everyone in the van without even knowing their identities. ECF 88 at 9. Agents immediately took them to a different location to finalize their identification and then transported them to the Portland ICE facility, swiftly processed them, and transferred them out of Oregon, without providing most of them the opportunity to meet with an attorney. ECF 88 at 11-18.

Similarly, Victor Cruz Gamez was arrested while driving home from work on October 14, 2025. ECF 59 at 4. Mr. Cruz Gamez was arrested despite having deferred action status derived from a bona fide determination on his U-nonimmigrant status application. *Id.* at 10. He was transported to the Northwest ICE Processing Center in Tacoma, WA, where he remained for around three weeks and was almost illegally deported. Id. at 11; ECF 84 at 34-35.

Plaintiffs' arrests are not isolated or unique incidents. Through months spanning the implementation of "Operation Black Rose," thousands of Oregonians were detained in a similar fashion following Defendants' pattern and practice of arresting individuals without a warrant, not knowing their identity, without probable cause of an immigration violation and without an individualized determination of flight risk. *See* ECF 59 at 11-14 (describing eight different instances of warrantless arrests brought before the courts in District of Oregon, finding that the arrests were unlawful).

The harms of this operation were felt at a larger scale, not just at the individual level: communities across the state were placed in fear of being targeted by an unlawful arrest because of their mere existence and presence in the United States. *See* ECF 88 at 48 ("Significant portions of our Oregon community are living each day with anxiety and fear of opening their front door, shopping for groceries, or attending school, due in significant part to Defendants' unlawful practices."). These operations resulted in seven cities and numerous counties in Oregon declaring a state of emergency because of the widespread immigration operations from Defendants. *See* ECF 59 at 15-17.

PROCEDURAL HISTORY

I. Petitioner's petition for habeas corpus.

Petitioner-Plaintiff M-J-M-A filed her initial habeas petition on October 30, 2025. ECF 1. This Court ordered discovery and set an evidentiary hearing for December 2, 2026. In light of the numerous and constant unlawful arrests that were committed by Defendants which closely resembled that of M-J-M-A, Plaintiffs related to Defendants and the Court their intent to supplement the initial habeas petition to include additional claims and class action allegations. ECF 55 at 22-44; ECF 57 at 446-460. The need for this supplementation became even clearer after Defendants' agents testified about the policies and practices followed during their deployment in the on-going "Operation Black Rose." ECF 56 at 347-56 (referencing Operation Black Rose for the first time in the two-day hearing).

On December 5, 2025, two days after the hearing and after the Court took the parties' requests and evidence under advisement, the Court issued an order advising the parties it was inclined to receive and consider the Plaintiff's Motion to Amend the Petition and for Class Certification, and ordered Defendants to file an advisory brief explaining their position by December 10, 2025. ECF 51. Defendants requested an extension of at least 14 days after Plaintiffs filed their motions to submit their advisory brief; the motion was granted. ECF 53.

II. Plaintiffs' Supplemental Complaint

On January 9, 2026, Plaintiffs timely filed their Motion to Supplement, a Motion for Class Certification and a Motion for a Preliminary Injunction[1]. ECFs 59-64. Along with these motions, Plaintiffs also requested that the Court reset the briefing schedule, ECF 65, and the Court set a scheduling conference for January 12, 2026. At that hearing, new deadlines regarding the briefing were ordered and the Court set a Preliminary Injunction Hearing for February 4, 2026. ECF 67. On January 23, 2026, Defendants filed their Response in Opposition to the Plaintiffs Motion for Preliminary Injunction. ECF 70.

On February 4, 2026, the Court held an evidentiary hearing on Plaintiffs' Motion for a Preliminary Injunction and granted the injunction. ECF 80, 82. In both their written response to

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[1] Defendants note that the Supplemental Complaint, ECF 68, does not comport to LR 15-1(a)(3). ECF 110 at 11. While this oversight from Plaintiffs has not affected the course of the briefing, should the Court indicate the need for a corrected pleading, Plaintiffs will promptly request leave from the court to do so.

the Motion for Preliminary Injunction and during oral argument at the hearing, Defendants presented argument challenging whether there was final agency action, specifically whether a warrantless arrest policy and practice existed, argued the Nava Broadcast Policy was inapplicable to this case, argued that Plaintiffs lacked standing, and challenged Plaintiffs' past and future injuries. *See generally* ECF 70; ECF 84. Defendants also moved orally to stay the Motion for Preliminary Injunction and Provisional Class Certification; the Court denied both motions. ECF 84 at 138-39.

On February 20, 2026, Defendants filed their opposition to the Motion for Class Certification, ECF 85, and Plaintiffs filed their reply on March 6, 2026, ECF 89. On June 5, 2026, during a status conference, Defendants represented they were unable to meet discovery or other additional briefing deadlines due to lack of staffing in their counsel office and requested a stay on briefing while the preliminary injunction was pending. Tr. at 8-12 (June 5, 2026) The Court denied their request. ECF 98. On June 24, 2026, the Court granted Plaintiffs' Motion for Class Certification. ECF 103.

III. Defendants' First and Second Motions to Dismiss and Motion to Stay.

On June 12, 2026, Defendants filed their first Motion to Dismiss, attacking counts one through six set forth in Petitioner M-J-M-A-'s habeas petition. ECF 100. On June 25, 2026, during a status conference, the Defendants yet again requested that the Court stay the proceedings; the Court declined to do so and adopted Plaintiffs' proposed briefing schedule. ECF 98.

On July 6, 2026, Plaintiffs filed their opposition to Defendants' first Motion to Dismiss. ECF 106. That same day, Defendants formally moved for a stay of their briefing deadlines and discovery obligations, ECF 108, and filed a notice of appeal of the class certification order. ECF 107. On July 16, 2026, Defendants filed their second Motion to Dismiss, this time attacking counts seven through nine.

LEGAL STANDARD

A motion to dismiss under Rule 12(b)(1) for lack of subject matter jurisdiction may be either "facial or factual." *See Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). A facial attack on subject matter jurisdiction is based on the assertion that the allegations contained in the complaint are insufficient to invoke federal jurisdiction. *Id.* "A jurisdictional challenge is factual where 'the challenger disputes the truth of the allegations that, by themselves, would otherwise invoke federal jurisdiction.'" *Pride v. Correa*, 719 F.3d 1130, 1133 n.6 (9th Cir. 2013) (quoting *Safe Air for Everyone*, 373 F.3d at 1039). When a party factually challenges the assertion of jurisdiction, a court does not presume the truthfulness of the petitioner's allegations and may consider evidence extrinsic to the complaint. *See Terenkian v. Republic of Iraq*, 694 F.3d 1122, 1131 (9th Cir. 2012); *Safe Air for Everyone*, 373 F.3d at 1039. A factual challenge "can attack the substance of a complaint's jurisdictional allegations despite their formal sufficiency." *Dreier v. United States*, 106 F.3d 844, 847 (9th Cir. 1996) (citation omitted).

A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) tests the legal sufficiency of the claims. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). When evaluating the sufficiency of a complaint's factual allegations, the court must accept all material facts alleged in the complaint as true and construe them in the light most favorable to the non-moving party. *Wilson v. Hewlett-Packard Co.*, 668 F.3d 1136, 1140 (9th Cir. 2012).

ARGUMENT

I. The supplemental complaint sufficiently pleads standing.

Defendants' Rule 12(b)(1) attack on Plaintiffs' standing fails because the supplemental complaint sets forth ample allegations that adequately describe a cause of action. Notably, the Defendants' argument in the instant motion is virtually identical to the standing argument

Defendants raised in their opposition to Plaintiffs' motion for a preliminary injunction. *See* Response in Opposition to Motion for Preliminary Injunction, ECF 70 at 13-17. To support their renewed standing argument, Defendants cite to just two cases, *City of Los Angeles v. Lyons*, 461 U.S. 95 (1983) and *Clapper v. Amnesty Int'l USA*, 568 U.S. 398 (2013), and present no new authority or argument. *Compare* ECF 110 at 8-10 *with* ECF 70 at 13-17. There is little reason for the Court to linger over their argument here because the issue was already decided by this Court. *See* Opinion and Order, ECF 88 at 30-32; *see also* Plaintiffs' Motion for a Preliminary Injunction, ECF 61 at 21-24; Plaintiffs' Reply ISO Motion for Preliminary Injunction, ECF 73 at 4-5. This Court has already considered Defendants' standing argument and concluded that Plaintiffs have sufficiently alleged an imminent threat of future unlawful arrest pursuant to Defendants' unlawful warrantless arrest policy:

> Plaintiffs present[ed] evidence of Defendants' targeted pattern and practice of violating Plaintiffs' constitutional rights, and Plaintiffs are vulnerable to that practice simply by their presence in the United States. Further, Plaintiffs' daily exposure to Defendants' immigration enforcement practices employing warrantless arrests without conducting a pre-arrest assessment of someone's likelihood of escape causes significant ongoing harm.

ECF 88 at 31-32. In so finding, the Court properly distinguished this case from *Lyons*, ECF 88 at 30, and concluded that Ninth Circuit precedent forecloses Defendants' standing argument. *Id.* at 31 (citing *Melendres v. Arpaio*, 695 F.3d 990, 994 (9th Cir. 2012)). As Defendants raise no new argument or legal authority and this Court has already determined that Defendants' standing argument is foreclosed by Ninth Circuit precedent, Defendants' renewed standing argument necessarily fails. *Accord Escobar Molina v. U.S. Dep't of Homeland Sec.*, 811 F. Supp. 3d. 1, 40-41 (D.D.C. 2025) (finding, in a similar challenge to warrantless arrests in Washington D.C., that the case "differs materially from the facts of *Lyons* on . . . three considerations . . . namely, that defendants have likely adopted a policy and practice of warrantless arrests without probable cause, that plaintiffs are likely among those targeted, and that plaintiffs likely cannot avoid repeating the conduct that led to their original injuries"); *Ramirez Ovando v. Noem*, 810 F. Supp. 3d 1209 (D.D.C. 2025), *appeal filed, Ramirez Ovando v. Mullins*, No. 26-1027 (10th Cir. Jan. 26, 2026) (in a similar case in Colorado, finding "[t]his case is not *Lyons* . . . Here by, contrast, plaintiffs' injuries are not past- they are present.").

Moreover, while Defendants broadly assert, without legal or factual support, that "Plaintiffs cannot establish Article III jurisdiction by assuming that future arrests of unidentified class members will occur, will be warrantless, will lack the required individualized determinations, and will result from the alleged policy or practice rather than case-specific facts" ECF 110 at 17, the opposite is true, as is clear from the supplemental pleadings in this case, which must be taken as true for the purposes of 12(b)(6) motion and a facial Rule 12(b)(1) challenge. *See Wilson*, 668 F.3d at 1140 (standard for 12(b)(6) motions); *see also Safe Air*, 373 F.3d at 1039 (standard for 12(b)(1) motions). Indeed, the allegations in the supplemental pleadings document in specific and alarming detail Defendants' pattern and practice in Oregon of targeting immigrant communities, violently arresting Oregonians without a warrant and regardless of their immigration status while ignoring the law's clear requirement to assess both immigration status and flight risk before making a warrantless arrest, and then disappearing those arrested into the Executive's vast deportation machine. *See* Petitioner and Plaintiffs' Supplemental Pleading, ECF 68 at 2-14. This risk of future injury is as concrete for the named Plaintiffs as it is for class members; the named Plaintiffs thus *do* present a live case or controversy that this Court can adjudicate. *Accord United Farm Workers v. Noem*, 785 F.Supp.3d 672, 710 (E.D. Cal. 2025) (finding named plaintiff farmworkers whose rights were violated under the Border Patrol's "Operation Return to Sender" had standing to seek declaratory and injunctive relief on behalf of a class at risk of suffering similar injuries in the future), *appeal filed*, No. 25-4047 (9th Cir. June 30, 2025). The allegations in the supplemental pleading further allege the very real and imminent risk of harm Plaintiffs and members of the class face as a direct result of Defendants' unlawful conduct. *Id.* at 14-24. Defendants' unsupported statement to the contrary fails entirely to grapple with the facts alleged in this case, and for this additional reason, Defendants' argument necessarily fails.

Finally, in a last-ditch effort, Defendants attack Plaintiffs' standing by arguing without support, legal or otherwise, that Plaintiffs' requested remedies would not redress Plaintiffs' injuries. *See* ECF 110 at 17. Defendants present no counter authority or even baseline reasoning for this assertion. ECF 110 at 17-18. There is exactly *zero* citation to any authority in this portion of the Defendants' argument. *Id.* The court can strike it or consider it waived because it has been inadequately briefed. *See United Nurses Ass'ns of Calif. v. Nat'l Labor Relations Bd.*, 871 F.3d 767, 780 (9th Cir. 2017) (a "perfunctory argument" that is "inadequately briefed" is waived).

Moreover, Defendants' argument is wrong on the merits because the remedy resolves the illegal conduct. First, the remedy stops the illegal conduct by vacating the "Arrest First, Justify Later" policy or practice. ECF 68 at 23. Second, it returns those harmed by the policy to the status quo, in part, by expunging the information and derivative obtained from the illegal conduct. *Id.*; *Mayfield v. United States*, 599 F.3d 964, 970-71 (9th Cir. 2010); *Pettibone v. Biden*, No. 3:20-cv-1464-YY, 2024 WL 4433038, *3-*5 (D. Or. Oct. 7, 2024) (finding expungement is an available remedy for illegal arrests). "When the government has unlawfully arrested someone or 'engaged in any sort of misconduct', extraordinary circumstances exist that permit a court to order expungement to vindicate substantial rights." *Id.* at *5 (quoting *United States v. Smith*, 940 F.2d 395, 396 (9th Cir. 1991)). *Accord Ramirez Ovando*, 810 F. Supp. 3d at 1227 (the requested remedy of "an injunction to hold ICE to the law and their own procedures" by requiring use of a warrant or compliance with § 1357(a)(2)'s flight risk inquiry "would directly redress the harm plaintiffs have suffered"); *United Farm Workers*, 785 F.Supp.3d at 710, 743 (finding the injuries of the Suspicionless Stop and Warrantless Arrest Classes would be remedied by the "declaratory and injunctive relief" sought, and granting relief similar to that requested in this case).

II. The INA does not bar jurisdiction.

Section 1252(g) of Title 8 U.S.C. does not preclude the Plaintiffs' challenge to the agency practice of unlawful immigration arrests. Congress has channeled jurisdiction or precluded jurisdiction of federal court review of certain, limited types of decisions made in furtherance of removal orders. In particular, section 1252(g) limits federal court jurisdiction over claims "arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders." But "[f]rom the beginning" the Ninth Circuit has "been clear that § 1252(g) does not prohibit challenges to unlawful practices merely because they are in some fashion connected to removal orders." *Ibarra-Perez v. United States*, 154 F.4th 989, 997 (9th Cir. 2025). It is instead a "narrow" provision that limits review of a set of discrete decisions. *See Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 487 (1999) (hereinafter "*AADC*"). Far from barring "all claims relating in any way to deportation proceedings," *Catholic Social Services, Inc. v. INS*, 232 F.3d 1139, 1150 (9th Cir. 2000), section 1252(g) simply limits review of three discrete, enumerated acts: namely, DHS's discretionary decisions "to commence proceedings, adjudicate cases, or execute removal orders." 8 U.S.C. § 1252(g); *accord AADC*, 525 U.S. at 482-83.[1]

None of those three discretionary decisions are challenged here. Thus, section 1252(g) is simply inapplicable. *Accord Escobar Molina*, 811 F. Supp. 3d. at 40-41 (section 1252(g) does not bar jurisdiction where "plaintiffs challenge their warrantless arrests, not any of the three enumerated actions"); *Kong v. United States*, 62 F.4th 608, 617 (1st Cir. 2023) (section 1252(g) did not bar judicial review of challenges to unlawful detention); *see also Ramirez Ovando v. Noem*, 810 F. Supp. 3d at 1225-27 (finding federal court jurisdiction over a similar challenge to Respondents' warrantless arrests policy in Colorado).

Defendants contend that immigration arrests "arise from" DHS's decision to commence removal proceedings, and point to the availability of suppression in removal proceedings as an alternative pathway. ECF 110 at 19. [2]But the initiation of removal proceedings in no way *requires* Respondents to detain someone, as shown by the existence of 8 U.S.C. § 1357 (requiring "reason to believe" both that someone is in the country unlawfully *and* that they are "likely to escape" in order to effectuate an immigration arrest) and by the three million-plus cases pending before the country's non-detained immigration courts. *Compare* TRAC Immigration Court Quick Facts, https://tracreports.org/immigration/quickfacts/eoir.html (listing 3,195,137 cases in the immigration court backlog) (last accessed July 30, 2026) *with* TRAC Immigration Detention Quick Facts https://tracreports.org/immigration/quickfacts/detention.html (listing 65,765 people in immigration detention as of July 11, 2026) (last accessed July 30, 2026). Moreover, this case itself disproves the Defendants' proposition because neither named Plaintiff is *in* removal proceedings, making this argument a red herring.[3]

For similar reasons, *Khalil v. President, United States* is inapplicable and unpersuasive here. First, *Khalil* rests on an entirely different statutory provision, 8 U.S.C. § 1252(b)(9), a jurisdictional bar Defendants do not raise here. *Compare* ECF 110 (not raising 1252(b)(9)) *with* 164 F.4th 259, 273 (3d Cir. 2026) (declining to reach the government's 1252(g) argument). Second,

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[3] Respondents' arguments regarding standing and ripeness have been thoroughly responded to in Plaintiffs' response to their motion to dismiss Counts 1-6; ECF 106 at 15-21; 29-32; see *supra* Section I for a response to the standing arguments raised in their second motion to dismiss.

the *Khalil* court expressly found that "[e]ach of the legal questions Khalil raises in his petition can be decided later, on a PFR" and that addressing "any of [his] claims would require deciding whether *removing* [him] would be unlawful." 164 F.4th at 276 (emphasis added). Here, in contrast, Plaintiffs raise claims purely related to their arrests (and subsequent detentions) and do not challenge decisions regarding their removability or their government's authority and discretion to initiate removal proceedings against them. *See* ECF 1 at 12-19 (challenging M-J-M-A-'s unreasonable seizure, detentive stop, and warrantless arrest on statutory and Constitutional grounds); ECF 68 at 20-22 (same, on behalf of the putative class). The other two cases they cite are similarly irrelevant, as they merely affirm the undisputed principal that the Attorney General has discretion over the decision to initiate of removal proceedings. *See Cortez-Felipe v. INS*, 245 F.3d 1054 (9th Cir. 2001) (holding that Petitioner could not challenge the legacy INS's decision to file her NTA after the effective date of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996); *Jimenez-Angeles v. Ashcroft*, 291 F.3d 594, 599 (9th Cir. 2002) (finding section 1252(g)'s bar to extend to decisions on *when* to initiate removal proceedings, in a similar challenge to that brought in *Cortez-Felipe*).

III. The supplemental complaint sufficiently pleads final agency action.

This Court has already considered and rejected Defendants' arguments regarding final agency action. *See* ECF 88 at 36-44. "Courts have consistently held that an agency policy of effecting warrantless immigration arrests under § 1357(a)(2) without regard for individualized flight risk" amounts to final agency action. *Ramirez Ovando*, 810 F. Supp. 3d at 1235 (citing *Moreno v. Napolitano*, 213 F. Supp. 3d 999, 1008-09 (N.D. Ill. 2016)); *Roy v. Cnty. Of Los Angeles*, No. CV 12-09012-AB (FFMx), 2018 WL 914773, at *21 (C.D. Cal. Feb. 7, 2018); *Creedle v. Miami-Dade Cnty.*, 349 F. Supp. 3d 1276, 1295 (S.D. Fla. 2018); *see also e.g., Escobar Molina*, 811 F.Supp.3d at 43; *Castañon Nava v. Dep't Homeland Sec.*, 435 F.Supp.3d 880, 903 (N.D. Ill. 2020); *United Farm Workers*, 785 F.Supp.3d at 723. Defendants do not cite to any new authorities impacting the Court's prior ruling that "Defendants' pattern and practice of arresting people without a warrant and without the required probable cause determinations amounts to final agency action because it is affecting fundamental individual rights in real time." ECF 88 at 44.

Defendants mischaracterize counts 7 through 8 in the complaint as challenging individualized arrest determinations, ECF 110 at 24-28, but the action Plaintiffs challenge is Defendants' warrantless arrests policy and practice, which is reviewable under the APA as final agency action. *See Ctr. for Biological Diversity v. Haaland,* 58 F.4th 412, 417 (9th Cir. 2023). The individualized inquiry Defendants describe is what is required by § 1357(a)(2); counts 7 and 8 rely on Defendants' policy and practice, which fail to meet the requirements under § 1357(a)(2). Plaintiffs do not seek review of individualized arrest determinations. On the contrary, Plaintiffs allege that Defendants' policy and practice fail to make individualized arrest determinations. *See* ECF 68 at 3.

Defendants' arguments, ECF 110 at 20-28, entirely ignore the Court's prior final agency action ruling. They also fail to acknowledge Ninth Circuit precedent, *see e.g., Ecology Ctr., Inc. v. U.S. Forest Serv.*, 192 F.3d 922, 924-26 (9th Cir. 1999), holding that an agency's policy, pattern, or practice may be considered when determining whether its conduct amounts to final agency action. *See also R.I.L.-R. v. Johnson,* 80 F. Supp. 3d 164, 184-85 (D. D.C. 2015) (holding that the fact that a policy, pattern, or practice is not committed to writing is not dispositive). Plaintiffs have satisfied the requirements for stating a judicially reviewable claim under § 706(2) of the APA. *See* ECF 68 at 11-17.

IV. Defendants' actions are in violation of the *Accardi* doctrine and, as such, are subject to review under the APA.

Defendants wrongly assert that because Plaintiffs are not part of the settlement agreement of the *Castanon Nava* case, their non-compliance with the terms of the Nava Settlement Broadcast cannot be brought in an action before the Court. It is well established that agencies are required to abide by their internal policies. "Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures … [t]his is so even where the internal procedures are possibly more rigorous than otherwise would be required." *Alcaraz v. I.N.S.*, 384 F.3d 1150, 1162 (9th Cir. 2004) (citing *Morton v. Ruiz*, 415 U.S. 199, 235, 94 S.Ct. 1055, 39 L.Ed.2d 270 (1974)). More recently, courts in this circuit have similarly recognized the application of the *Accardi* doctrine in a variety of contexts and found that the doctrine requires an agency to adhere to regulations, internal procedures, handbooks and other evidence of the agency's usual practice. *Immigr. Ctr. for Women & Child. v. Noem*, No. 2:25-CV-09848-AB-AS, 2026 WL 1455004, at *39 (C.D. Cal. May 20, 2026) (granting a class certification and granting in part a preliminary injunction against ICE finding they are likely violation the *Accardi* doctrine).

On February 17, 2026, the Northern District Court of Illinois ordered DHS to re-circulate the Nava Broadcast Policy nationwide to all ICE's officers.[4] *Castañon Nava et al. v. Dep't of Homeland Sec.*, No. 18-cv-3757, Dkt. 301 at 3 (ordered February 17, 2026, N.D. Ill.). Pursuant to this policy, ICE officers across the country are required to consider a delineated set of factors before effectuating a warrantless arrest. *See* Settlement Agreement, *Castañon Nava*, Dkt. 155-1.

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[4] On October 7, 2025, a district court judge in the Northern District of Illinois issued an order extending the consent decree in *Castañon Nava* until February 2, 2026. However, the court also explained that it retained jurisdiction and the decree is still in force while there are pending motions to enforce by class members. *Castañon Nava,* Dkt. 214.

Plaintiffs have amply alleged that Defendants implemented a policy and practice of performing warrantless arrests without consideration of the factors required by the *Nava* Broadcast Policy. *See* ECF 61 at 27-29; 68 at 20-21. Defendants' actions are violation of the *Accardi* doctrine and the APA as arbitrary and capricious. *See Accardi*, 347 U.S. at 266-268; 5 U.S.C. § 706(2)(A).

V. Plaintiffs' Requested Remedies are Within the Court's Authority.

Defendants make broad assertions regarding the APA, the INA, and Fed. R. Civ. P. 65; their arguments are not supported by any specific legal precedent. *See* ECF 110 at 32-35. Defendants' arguments also ignore the Court's prior rulings on Plaintiffs' motion for preliminary injunction. ECF 88 at 37-49. But Defendants are wrong because Plaintiffs are entitled to the remedies they request in their complaint, including vacatur, and declaratory and injunctive relief. *See* ECF 68 at 23.

First, the Court has the authority to "hold unlawful and set aside agency action" that is arbitrary, capricious, contrary to law, or otherwise defective under 5 U.S.C. § 706(2). If a court holds that an agency action is unlawful, vacatur and remand is the default remedy under the APA. *See Montana Wildlife Fed'n v. Haaland*, 127 F.4th 1, 50 (9th Cir. 2025). Defendants' vacatur argument, ECF 110 at 32-35, is that there is no final agency to set aside, but this Court has already considered and rejected that argument, ECF 88 at 36-44.

Second, the Court also has authority to provide declaratory relief. *See* 28 U.S.C. § 2201(a). Under the Declaratory Judgment Act, a court may "declare the rights and other legal relations of any interested party seeking such declaration." *Id.* Declaratory relief is appropriate "(1) when the judgment will serve a useful purpose in clarifying and settling the legal relations in issue, and (2) when it will terminate and afford relief from the uncertainty, insecurity, and controversy giving rise to the proceeding." *Eureka Fed. Sav. & Loan Ass'n v. Am. Cas. Co.*, 873 F.2d 229, 231 (9th Cir. 1989). Declaratory relief is appropriate here because it will clarify the legality of Defendants' immigration enforcement actions and resolve ongoing uncertainty and insecurity for plaintiffs and class members.

Defendants do not specify whether their injunction arguments pertain to Plaintiffs' request for a preliminary or permanent injunction, or both. *See* ECF 110 at 33-34. Defendants' arguments regarding the permissibility of a preliminary injunction are no longer at issue because Defendants have already briefed this issue, ECF 70, the Court has ruled on it, ECF 80; 88, and there is a pending interlocutory appeal. *See Cruz Gamez, et al. v. Lyons, et al.*, No. 26-2090 (9th Cir. 2026).

Federal Rule of Civil Procedure 65(d)(1) requires that any injunction be "specific in terms" and "describe in reasonable detail—and not by reference to the complaint or other document—the act or acts sought to be restrained." *See Vasquez Perdomo v. Noem*, 148 F.4th 656, 679 (9th Cir. 2025). The Court's Preliminary Injunction Order, ECF 80, provides specific terms and describes in detail the actions that Defendants and their officers are enjoined from making. Were the Court to grant a permanent injunction, it would similarly comply with these requirements and others, and that would take place after a final merits determination either on summary judgment or after trial. *See United States v. W.T. Grant Co.,* 345 U.S. 629, 633 (1953). Thus, at this juncture, defendants' injunction arguments have either been already decided or are premature.

Plaintiffs and class members are entitled to expungement relief; Defendants do not cite any authority as to why expungement is not proper relief. *See* ECF 110 at 34. The Court has inherent equitable authority and could fashion equitable relief that would redress the concrete legal disadvantages of having to report a prior immigration arrest. *See Pettibone v. Biden*, 2024 WL 4433038, *3-5 (D.Or. 2024) (finding expungement is an available remedy for illegal arrests).

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court deny Defendants' motion to dismiss counts seven through nine.

Dated: July 30, 2026.

Respectfully submitted,

/s/ Jordan Cunnings

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