

BREE BERNWANGER - # 331731
bbernwanger@aclunc.org
MICHELLE (MINJU) Y. CHO - # 321939
mcho@aclunc.org
LAUREN DAVIS - # 357292
ldavis@aclunc.org
SHILPI AGARWAL - # 270749
sagarwal@aclunc.org
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF NORTHERN
CALIFORNIA
39 Drumm Street
San Francisco, CA 94111
Telephone: (415) 621-2493

MAYRA JOACHIN - # 306065
mjoachin@aclusocal.org
EVA BITRAN - # 302081
ebitrان@aclusocal.org
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF SOUTHERN
CALIFORNIA
1313 West 8th Street
Los Angeles, CA 90017
Telephone: (213) 977-5000

BRISA VELAZQUEZ OATIS - # 339132
bvoatis@aclu-sdic.org
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF SAN DIEGO &
IMPERIAL COUNTIES
P.O. Box 87131
San Diego, CA 92138-7131
Telephone: (619) 398-4199

Attorneys for Plaintiffs

AJAY S. KRISHNAN - # 222476
akrishnan@keker.com
JASON GEORGE - # 307707
jgeorge@keker.com
JULIA L. GREENBERG - # 333864
jgreenberg@keker.com
REAGHAN E. BRAUN - # 340526
rbraun@keker.com
Keker, Van Nest & Peters LLP
633 Battery Street
San Francisco, CA 94111-1809
Telephone: 415 391 5400
Facsimile: 415 397 7188

Attorneys for Plaintiffs

MARIO MARTINEZ - # 200721
mmartinez@farmworkerlaw.com
EDGAR IVAN AGUILASOCHO - # 285567
eaguilascho@farmworkerlaw.com
MARTINEZ AGUILASOCHO LAW, INC.
900 Truxtun Avenue, Suite 300
Bakersfield, CA 93301
Telephone: (661) 859-1174
Facsimile: (661) 840-6154

Attorneys for Plaintiff United Farm Workers

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

UNITED FARM WORKERS, et al.,

Plaintiffs,

v.

KRISTI NOEM, IN HER OFFICIAL
CAPACITY AS SECRETARY OF THE
DEPARTMENT OF HOMELAND
SECURITY; et al.,

Defendants.

Case No. 1:25-cv-00246-JLT-CDB

**PLAINTIFFS' SUR-REPLY IN SUPPORT
OF OPPOSITION TO DEFENDANTS'
MOTION TO DISMISS**

Dept.: Courtroom 4, 7th Floor
Judge: Hon. Jennifer L. Thurston
Trial Date: None set

1 Plaintiffs respectfully submit this Sur-Reply to address mischaracterizations of law in
 2 Defendants’ Reply in support of their Motion to Dismiss (“Motion”). In their Reply, Defendants’
 3 new, primary argument is that Plaintiffs lack standing based on an unsigned, unreasoned, and
 4 nonprecedential interim stay order from the Supreme Court in a distinct case, *Noem v. Vasquez*
 5 *Perdomo*, 606 U.S. ___, 2025 WL 2585637 (Sept. 8, 2025). *See* Dkt. 102 at 1–6 (repeatedly citing
 6 nonbinding single-justice concurrence). Defendants’ reliance on the *Vasquez Perdomo* stay order
 7 is misplaced: it has no precedential effect and provides ***no majority opinion on standing law***
 8 ***whatsoever***. The Ninth Circuit’s longstanding precedent continues to control and establishes that
 9 Plaintiffs have standing, as this Court previously held in its preliminary injunction order. *See* Dkt.
 10 47 at 39–41. The Court should thus deny Defendants’ motion as detailed below.

11 ***First***, the Supreme Court’s stay order in *Vasquez Perdomo*—a distinct case in a different
 12 posture—is not precedential. The *Vasquez Perdomo* interim order stayed a temporary restraining
 13 order entered by the Central District of California while appellate proceedings were pending in
 14 that case. 2025 WL 2585637, at *1. Such an interim stay order is not a binding opinion for a
 15 separate case—and certainly not governing law on a motion to dismiss. *See Trump v. Boyle*, 145
 16 S. Ct. 2653, 2653–54 (2025) (“[I]nterim orders are not conclusive as to the merits”); *see, e.g.,*
 17 *Merrill v. Milligan*, 142 S. Ct. 879, 879 (2022) (Kavanaugh, J., concurring) (explaining “[a] stay
 18 order d[id] not make or signal any change to . . . [the at-issue] law” and was not “a ruling on the
 19 merits”); *see also Vasquez Perdomo v. Noem*, Case No. 2:25-cv-05605-MEMF-SP (C.D. Cal.
 20 Oct. 10, 2025), Dkt. 220 at 2, 6, 12 (denying government’s request to stay case in its entirety,
 21 because Supreme Court stay “says nothing about whether the Defendants have a likelihood of
 22 success *on the merits of the underlying case*”). Moreover, the majority opinion in *Vasquez*
 23 *Perdomo* is one paragraph long, provides no explanation of the legal basis for the stay, and does
 24 not address standing at all. 2025 WL 2585637, at *1.

25 Ignoring this reality, Defendants readily cite Justice Kavanaugh’s unjoined concurrence to
 26 support their standing argument as if it were controlling authority. *See* Dkt. 102 at 1–6. To be
 27 clear, no other justice endorsed this concurrence: Justice Kavanaugh’s writings were ***not*** the
 28 opinion of the Supreme Court. *See United States v. Hansen*, 40 F.4th 1049, 1057 (9th Cir. 2022)

(Gould, J., concurring) (“To state the obvious, a concurrence by a single justice does not make precedent for the Supreme Court or for inferior courts like the Ninth Circuit.”); *see also, e.g., United States v. Whitelaw*, 245 F.3d 791 (5th Cir. 2000) (“[I]t is clear that a single-Justice opinion is not binding precedent.”). The only thing we know with certainty is that the other four justices in the majority did **not** agree to join Justice Kavanaugh’s writing. Defendants’ reliance on the single Justice’s nonprecedential concurrence is misplaced and should be ignored.¹

Second, Ninth Circuit law unequivocally governs and is dispositive. Under well-established Ninth Circuit precedent, a plaintiff has standing for prospective injunctive relief where harm suffered “is part of a pattern of officially sanctioned . . . behavior, violative of [his] federal rights.” *Melendres v. Arpaio*, 695 F.3d 990, 995, 998–99 (9th Cir. 2012) (finding stops of five individuals was enough to establish “pattern or practice” for standing).² The existence of a pattern or practice makes future injury “sufficiently likely,” even if the likelihood of “a particular individual plaintiff” being subjected to a future violation is not itself “high.” *Id.* (finding sufficient for standing that plaintiffs were stopped once each pursuant to challenged policy).³

Here, Defendants are also wrong that Plaintiffs “cannot demonstrate an imminent threat of future injury.” Dkt. 102 at 1. Plaintiffs easily satisfy this standard, as explained in their

¹ In addition, Justice Kavanaugh’s concurrence provides different lines of reasoning, including “two alternative grounds” that, in his view, show “a fair prospect of reversal of the District Court’s injunction.” *Vasquez Perdomo*, 2025 WL 2585637, at *2. But, given the majority provides no reasoning for its grant of the stay application, it is simply impossible to know which, *if any*, of Justice Kavanaugh’s different lines of reasonings other justices might support. There’s simply no indication that the majority agreed with Justice Kavanaugh’s standing analysis when the majority is silent on the issue (and Justice Kavanaugh himself apparently viewed it necessary to provide alternative grounds, despite standing being a jurisdictional requirement).

² This Ninth Circuit precedent also expressly distinguishes *Los Angeles v. Lyons*, 461 U.S. 95, 103 (1983). *See, e.g., Index Newspapers LLC v. United States Marshals Service*, 977 F.3d 817, 826 (9th Cir. 2020) (finding injunctive relief standing where pattern of unconstitutional conduct alleged, distinguishing *Lyons*); *Thomas v. County of Los Angeles*, 978 F.2d 504, 508 (9th Cir. 1992) (holding “numerous instances of police misconduct” “purposefully aimed at minorities” that was “condoned and tacitly authorized” provided standing, distinguishing *Lyons*). But in referencing *Lyons*, Justice Kavanaugh does not address this Ninth Circuit precedent.

³ *See also, e.g., Kariye v. Mayorkas*, No. 23-55790, 2024 WL 4403870, at *2 (9th Cir. Oct. 4, 2024) (finding injunctive relief standing where plaintiffs described “ten incidents” of defendants’ unconstitutional conduct, which “plausibly allege[s] an unwritten, official sanction pattern or practice”); *B.K. ex rel. Tinsley v. Snyder*, 922 F.3d 957, 974 (9th Cir. 2019) (finding five incidents of challenged conduct enough to establish standing); *LaDuke v. Nelson*, 762 F.2d 1318, 1324 (9th Cir. 1985), amended 796 F.2d 309 (9th Cir. 1986) (holding “pattern” of conducting searches without proper consent supported standing).

1 Opposition: Plaintiffs have extensively alleged a pattern or practice of unlawful detentions,
 2 warrantless arrests, and illegal forced departures, which establishes standing in the Ninth Circuit
 3 because the alleged injuries are likely to recur. *See* Dkt. 74 at 8–14.⁴ Nothing in the *Vasquez*
 4 *Perdomo* majority opinion changes the Ninth Circuit’s well-settled law concerning an imminent
 5 threat of future injury.⁵ Nor does the *Vasquez Perdomo* stay alter this Court’s analysis on
 6 associational standing, which is wholly unaddressed by the majority, concurrence, and dissent in
 7 the Supreme Court’s order. *See generally Vasquez Perdomo*, 2025 WL 2585637, at *1–15.

8 At bottom, Defendants are attempting to shield their unlawful pattern and practice of
 9 indiscriminately targeting Latinos and violating their legal rights behind the writings of a single
 10 Justice. They cannot do so under binding precedent. Accordingly, the Court should reject
 11 Defendants’ arguments regarding the *Vasquez Perdomo* interim stay order and deny Defendants’
 12 Motion for all the reasons previously articulated in Plaintiffs’ Opposition.

13
 14 Respectfully submitted,

15 Dated: October 17, 2025

16 AMERICAN CIVIL LIBERTIES UNION
 17 FOUNDATION OF NORTHERN
 18 CALIFORNIA

19 By: /s/ Bree Bernwanger (as authorized on
October 17, 2025)

20 BREE BERNWANGER
 21 MICHELLE (MINJU) Y. CHO
 22 LAUREN DAVIS
 23 SHILPI AGARWAL

24 ⁴ Moreover, unlike the one-time chokehold in *Lyons*, Plaintiffs—including provisional class
 25 members and organization UFW, which has many members in this District—allege a sufficient
 26 likelihood of being repeated targets of Defendants’ unlawful stops and arrests, given allegations
 27 of a pattern and practice of targeting Latinos in specific places in the District, like Home Depot
 28 parking lots, and on their way to or from work. *See, e.g.*, Dkt. 1, ¶¶ 49–58, 72–74, 77, 87, 196–98,
 222–27 (describing unlawful stops at Home Depot or on way to or from work).

⁵ *See Melendres*, 695 F.3d at 997 (standing for injunctive relief can be shown by a pattern or
 practice of officially sanctioned behavior that violates plaintiffs’ federal rights); *Kariye*, 2024 WL
 4403870, at *2 (same); *Index Newspapers*, 977 F.3d at 826 (same); *Snyder*, 922 F.3d at 974
 (same); *LaDuke*, 762 F.2d at 1324 (same).

1 Dated: October 17, 2025

2 By: AMERICAN CIVIL LIBERTIES UNION
3 FOUNDATION OF SOUTHERN
4 CALIFORNIA

5 */s/ Mayra Joachin* (as authorized on
6 October 17, 2025)

7 MAYRA JOACHIN
8 EVA BITRAN

9 Dated: October 17, 2025

10 By: AMERICAN CIVIL LIBERTIES UNION
11 FOUNDATION OF SAN DIEGO &
12 IMPERIAL COUNTIES

13 */s/ Brisa Velazquez Oatis* (as authorized on
14 October 17, 2025)

15 BRISA VELAZQUEZ OATIS

16 Dated: October 17, 2025

17 KEKER, VAN NEST & PETERS LLP

18 By: */s/ Julia L. Greenberg*

19 AJAY S. KRISHNAN
20 JASON GEORGE
21 JULIA L. GREENBERG
22 REAGHAN E. BRAUN

23 *Attorneys for Plaintiffs*

24 Dated: October 17, 2025

25 By: MARTINEZ AGUILASOCHO LAW,
26 INC.

27 */s/ Edgar Ivan Aguila-socho* (as authorized
28 on October 17, 2025)

MARIO MARTINEZ
EDGAR IVÁN AGUILASOCHO

*Attorneys for Plaintiff United Farm
Workers*