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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED FARM WORKERS, et al.,

Plaintiffs,

v.

KRISTI NOEM, SECRETARY OF
HOMELAND SECURITY, et al.,

Defendants.

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

**DEFENDANTS' OPPOSITION TO
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

Scheduled Hearing: April 28, 2025, at 1:30 p.m.,
Courtroom 4, before Hon. Jennifer L. Thurston

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INTRODUCTION

Named Plaintiffs, Oscar Morales Cisneros, Wilder Munguia Esquivel, and Yolanda Aguilera Martinez, in the instant putative class action, move the Court to enjoin the United States Border Patrol (“USBP”) from conducting unlawful stops and arrests in the Eastern District of California. The Court should deny their motion. First and foremost, Plaintiffs cannot show a likelihood of success on the merits because the Court lacks jurisdiction to consider Plaintiffs’ claims and, moreover, lacks jurisdiction to enter a class-wide injunction restraining USBP’s enforcement operations. Second, the claims subject of Plaintiffs’ motion for preliminary injunction have, in any event, been resolved. Plaintiffs allege that in an operation conducted between January 7, 2025, and January 9, 2025, in the Eastern District of California, USBP violated the Fourth Amendment and the statutory requirements of 8 U.S.C. § 1357(a)(2). Complaint at ¶¶ 1-3, 326-45. On April 4, 2025, USBP’s El Centro Sector issued policy and guidance (termed a “Muster”) and committed to providing training thereon. Exhibit A (Muster); Exhibit B (Declaration of Sergio Guzman). The Muster is materially identical to DHS’s “Broadcast Statement of Policy.” *See* Plaintiffs’ Proposed Order (requesting the Court enjoin USBP from stops in violation of the Fourth Amendment and arrests in violation of 8 U.S.C. § 1357(a)(2) and to order USBP to comply with DHS’s “Broadcast Statement of Policy”); Complaint Appendix A. Accordingly, USBP’s prompt, responsive, and demonstrated commitment to forestalling similar alleged violations in the future renders an injunction inappropriate, either as a matter of mootness or lack of a cognizable continued and future irreparable injury.¹

¹ Plaintiffs also allege that USBP engaged in a pattern or practice of coercing detained individuals into accepting voluntary departure, but this is not part of their motion for preliminary injunction. Complaint at ¶¶ 4, 272-75, 346-50 (Claim IV).

BACKGROUND

I. Procedural History

On February 26, 2025, Plaintiffs filed a complaint for declaratory and injunctive relief alleging that, in an operation conducted between January 7, 2025, and January 9, 2025, USBP violated the Fourth Amendment and the statutory requirements of 8 U.S.C. § 1357(a)(2). Complaint at ¶¶ 1-3, 326-45 (Claims I, II, and III). Specifically, Plaintiffs allege that USBP agents engaged in a pattern and practice of warrantless race-based stops, and a pattern or practice of warrantless arrests without assessing flight risk. Complaint at ¶¶ 3, 236, 239; Memorandum of Points and Authorities in Support of Motion for Preliminary Injunction (“Memo”) at 1-2. Plaintiffs also claim to represent two classes under Federal Rules of Civil Procedure 23(b)(2). Complaint at ¶¶ 17, 312-18. On March 7, 2025, Plaintiffs filed a motion for preliminary injunction and a motion to provisionally certify a Suspicionless Stop Class and a Warrantless Arrest Class.

II. Factual Background²

A. Named Plaintiffs’ Allegations

On January 7, 2025, named Plaintiff Oscar Morales Cisneros left work to head home, parking outside of a liquor store to fill up empty water jugs. Cisneros Declaration at ¶ 4. He was about to reverse out of his parking spot when an unmarked Chevrolet Tahoe pulled up behind his truck and blocked him in. *Id.* Cisneros put his truck back in park and lowered his driver’s side window. *Id.* Two men in Border Patrol uniforms approached his window and one of the men asked Cisneros if he had papers and was here legally. *Id.* at ¶¶ 4-5. Cisneros did not answer. *Id.* at ¶ 5. Cisneros provided his driver’s license when asked for it and one of the officers walked back to the Tahoe with the license. *Id.* When the agent returned, he told Cisneros he was in the United States illegally and arrested him. *Id.* at ¶

² Facts in this section are as alleged by named Plaintiffs in their declarations. Defendants do not concede these allegations.

1 5-6. Cisneros was transported to a detention facility in El Centro and, on January 10, 2025, provided
2 with a monitoring device and released. *Id.* at ¶¶ 9, 18-19. It is undisputed Cisneros lacks status in the
3 United States.

4 On January 7, 2025, around noon, named Plaintiff Wilder Munguia Esquivel was outside a
5 Home Depot in Bakersfield, standing with a group of other day laborers, when several unmarked
6 vehicles pulled up and at least ten plain-clothed men, most wearing masks covering all but their eyes,
7 exited the vehicles and aggressively “swarmed around us.” Esquivel Declaration at ¶¶ 4-5. One of the
8 men asked Esquivel about his status – “Do you have papers? Do you have identification? Where are you
9 from?” *Id.* at ¶5. When Esquivel did not answer, the man asked again, but louder, and then asked again,
10 louder still. *Id.* Esquivel turned away from the man and walked away. *Id.* The man followed Esquivel,
11 continuing to ask Esquivel questions. *Id.* Esquivel did not respond, and the man ordered Esquivel to
12 stop. *Id.* Esquivel realized the man was a federal immigration agent and stopped, telling the agent “I
13 have the right to remain silent.” *Id.* at ¶¶ 5-6. The agent asked Esquivel for identification and ordered
14 Esquivel to take out his wallet. *Id.* at ¶ 6. Before Esquivel could comply, the agent removed the wallet
15 from Esquivel’s back pocket, looked through it, and arrested him. *Id.* at ¶¶ 7-9. It is undisputed that
16 Esquivel lacks status in the United States.

17 On January 8, 2025, at around 4:30 pm, named Plaintiff Yolanda Aguilera Martinez was driving
18 in a vehicle when she saw two vehicles, one with flashing police lights, pulled over to the right side of
19 the road with three men standing near the vehicles. Martinez Declaration at ¶¶ 4-5. The men were in
20 plain-clothes, but with holstered firearms, and one of the men raised his hand and flagged Martinez to
21 pull over her vehicle. *Id.* Once she pulled over, the man who flagged Martinez down approached her
22 window and asked about her immigration status. *Id.* at ¶ 6. Martinez produced a driver’s license, but
23 the man questioned its authenticity. *Id.* at ¶6. The man told Martinez to exit the vehicle. *Id.* at ¶ 7. She
24 exited, the man pushed her to the ground, placed handcuffs on her, then placed her in the back of his
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1 vehicle. *Id.* Martinez requested an opportunity to use her phone to obtain a photograph of her
 2 permanent resident card. *Id.* at ¶ 10. The man agreed, she obtained her phone from her vehicle, showed
 3 the agent a photograph of her permanent resident card, and she was released from custody. *Id.*

4 **B. USBP Guidance and Training**

5 On April 4, 2025, the El Centro Sector of Border Patrol issued a “Muster.” Exhibit (“Ex”) A.
 6 The Muster contains guidance on the requirement for reasonable suspicion for traffic stops conducted
 7 throughout the Eastern District of California, guidance on assessing flight risk using factors such as
 8 “family, home, or employment” (that is, community ties), and guidance on documenting the facts and
 9 circumstances surrounding a warrantless arrest in an alien’s Form I-213 as soon as practicable. *See* Ex.
 10 A. USBP El Centro Sector plans to conduct training sessions to ensure compliance with the Muster
 11 within 60 days for the more than 900 El Centro Sector Border Patrol Agents, supervisors, and command
 12 staff on report writing, compliance with the Fourth Amendment and 8 U.S.C. § 1357, and compliance
 13 with Supreme Court and Ninth Circuit law on conducting vehicle stops, consensual encounters, and
 14 warrantless arrests.³ Ex. B (Declaration of Sergio Guzman) at ¶¶ 10-16.

17 **III. Statutory and Regulatory Background**

18 Under the INA, immigration officials are authorized to perform the warrantless arrest of:

19 [A]ny alien in the United States, if he has reason to believe that the alien so arrested
 20 is in the United States in violation of any such law or regulation and is likely to
 21 escape before a warrant can be obtained for his arrest, but the alien arrestee shall be taken
 22 without unnecessary delay . . . before an officer of the Service having authority to examine aliens
 as to their right to enter or remain in the United States.

23 8 U.S.C. § 1357(a)(2); *see Abel v. United States*, 362 U.S. 217, 232-37 (1960) (discussing longstanding
 24 administrative arrest procedures in deportation cases). “Reason to believe” has been equated with the
 25 constitutional requirement of probable cause. *Tejeda-Mata v. I.N.S.*, 626 F.2d 721, 725 (9th Cir. 1980)

27 _____
 28 ³ El Centro Sector will endeavor to train all such employees within 60 days. However, it may not be
 practicable to do so because of, for example, employees being on detail or extended leave.

1 (internal citations omitted).

2 The regulations implementing this statute require that “[w]ith respect to an alien arrested and
3 administratively charged with being in the United States in violation of law, the arresting officer shall
4 adhere to the procedures set forth in 8 C.F.R. § 287.3 if the arrest is made without a warrant.” 8 C.F.R.
5 § 287.8(c)(2)(iv). That regulation provides that “an alien arrested without a warrant of arrest . . . will be
6 examined by an officer other than the arresting officer.” 8 C.F.R. § 287.3(a). “If no other qualified
7 officer is readily available and the taking of the alien before another officer would entail unnecessary
8 delay, the arresting officer, if the conduct of such examination is a part of the duties assigned to him or
9 her, may examine the alien.” *Id.* “If the examining officer is satisfied that there is prima facie evidence
10 that the arrested alien . . . is present in the United States in violation of the immigration laws, the officer
11 will either refer the case to an immigration judge for further inquiry . . . , order the alien removed . . . , or
12 take whatever other action may be appropriate or required under the laws or regulations applicable to the
13 particular case. *Id.* at § 287.3(b). DHS ordinarily will make an initial determination within 48 hours of
14 the apprehension whether the alien will remain in custody, be paroled, be released on bond or be
15 released on recognizance. 8 C.F.R. § 287.3(d). In addition, DHS will decide whether to issue a notice
16 to appear and arrest warrant. *Id.*

17 The general detention authority for aliens in removal proceedings is governed by 8 U.S.C. §
18 1226(a). Under this section, “an alien may be arrested and detained,” on issuance of a warrant, “pending
19 a decision on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a). After a
20 removal becomes final, 8 U.S.C. § 1231(a) authorizes detention.
21

22 **STANDARDS OF REVIEW**

23 A preliminary injunction is “an extraordinary and drastic remedy, one that should not be granted
24 unless the movant, by a clear showing, carries the burden of persuasion.” *Loper v. Brewer*, 680 F.3d
25 1068, 1072 (9th Cir. 2012). This is a “heavy” burden. *Earth Island Inst. v. Carlton*, 626 F.3d 462, 469
26

(9th Cir. 2010) (internal quotation omitted). “A plaintiff seeking a preliminary injunction must show that: (1) she is likely to succeed on the merits, (2) she is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in her favor, and (4) an injunction is in the public interest.” *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (internal quotation omitted). The court evaluates “these factors on a sliding scale, such that a stronger showing of one element may offset a weaker showing of another.” *Recycle for Change v. City of Oakland*, 856 F.3d 666, 669 (9th Cir. 2017) (internal citations omitted). When the balance of equities “tips sharply in the plaintiff’s favor,” the plaintiff must raise only “serious questions” on the merits - a lesser showing than likelihood of success. *See All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir. 2011). Mandatory injunctions, which order a party to take action, are “particularly disfavored,” *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 879 (9th Cir. 2009), and should be denied “unless the facts and law clearly favor the moving party,” *Stanley v. University of S. Cal.*, 13 F.3d 1313, 1320 (9th Cir. 1994) (internal citations omitted).

ARGUMENT

I. Plaintiffs Fail to Establish a Likelihood of Success on Merits

A. The Court Lacks Jurisdiction to Review Plaintiffs’ Claims Under 8 U.S.C. § 1252(a)(5) and (b)(9)

Pursuant to 8 U.S.C. § 1252(b)(9), “[j]udicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provision, arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter shall be available only in judicial review of a final [removal] order.” And a petition for review filed in the appropriate court of appeals is the sole and exclusive means for judicial review of a final removal order. *See* 8 U.S.C. § 1252(a)(5). In other words, if a claim challenges a “decision to detain [an alien] in the first place or seek removal,” a district court lacks jurisdiction to consider that claim and it instead must be reviewed through the administrative process. *Jennings v. Rodriguez*, 138 S. Ct. 830, 841 (2018).

1 The stops and detentions that Plaintiffs challenge were actions taken to remove them from the
 2 United States, that is, to “detain [them] in the first place and seek their removal.” *Jennings*, 138 S. Ct. at
 3 841. Plaintiffs challenge the questions of law and fact behind these actions, specifically, whether USBP
 4 had reasonable suspicion for the stops and probable cause for the arrests. Because Plaintiffs challenge
 5 questions of law and fact arising from these actions taken to remove them, 8 U.S.C. § 1252(a)(5) &
 6 (b)(9) require that they bring these claims in petitions for review in the court of appeals. Indeed,
 7 petitions for review commonly consider challenges related to whether immigration authorities had
 8 reasonable suspicion to stop, or probable cause to arrest, an alien. *Sanchez v. Sessions*, 904 F.3d 643
 9 (9th Cir. 2018); *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1033 (9th Cir. 2016) (8 U.S.C. § 1252(a)(5) and
 10 (b)(9) bars district courts from reviewing legal questions “routinely raised in petitions for review”). And
 11 these same legal questions are commonly raised by aliens in removal proceedings asking administrative
 12 and federal courts of appeal to suppress evidence of their removability due to Fourth Amendment or
 13 regulatory violations, or terminate proceedings due to the same. *Sanchez*, 904 F.3d at 653-54 (alleged
 14 race-based stop by Coast Guard challenged in removal proceedings) (citing *Rajah v. Mukasey*, 544 F.3d
 15 427, 446-47 (2d Cir. 2008)); *Leal-Burboa v. Garland*, No. 21-70279, 2022 WL 17547799 (9th Cir.
 16 2022) (alleged race-based stop challenged in removal proceedings). If the legal remedy for unlawful
 17 stops and arrests is provided in removal proceedings, ipso facto these challenges are part of the decision
 18 to remove an alien. It does not matter that a class remedy “might be more efficient than requiring each
 19 applicant to file a PFR,” or preferred as a method to challenge “policy and practice,” as 8 U.S.C. §
 20 1252(b)(9) plainly precludes “all district court review of any issue raised in a removal proceeding.”
 21 *J.E.F.M.*, F.3d at 837 at 1034-35, 1038; *Nava*, 435 F.Supp.3d at 894 (rejecting application of 8 U.S.C. §
 22 1252(b)(9) because removal proceedings “are not structured to provide . . . system-wide reforms”).
 23

24 Defendants acknowledge that in *Nava v. Department of Homeland Security*, 435 F.Supp.3d 880
 25 (N.D. Ill. 2020), a case relied upon by Plaintiffs as similar litigation, the court rejected an argument that
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8 U.S.C. § 1252(a)(9) precluded it from reviewing a class challenge to alleged unlawful stops and arrests by Immigration and Customs Enforcement (“ICE”). Complaint at ¶¶ 280-83; Memo at 16. This is a single district court case that is not remotely binding on this Court. It is also not persuasive. First, the district court incorrectly interpreted the Supreme Court’s decision in *Jennings* as holding that 8 U.S.C. § 1252(a)(9) applied only to reviewing “lawful” actions taken to remove an alien from the United States. *Id.* at 890-91. The Supreme Court did nothing of the sort. Indeed, many challenges brought by aliens in a petition for review allege some variation of the claim that the decision to remove them is unlawful. This is particularly true for aliens charged with deportability under 8 U.S.C. § 1227 (describing the grounds for deportation), but even when aliens concede removability, they often allege that the denial of relief was unlawful. The district court ignored that the precise claims Plaintiffs raise here – Fourth Amendment challenges to their original arrest – may be reviewed in a petition for review. Holding that § 1252(b)(9) only applies to “lawful” actions would lead to absurd results and claim splitting wherein aliens could challenge their arrest in several Article III forums. Further, since the district court’s decision in *Nava*, the Supreme Court rejected a related argument with regard to § 1252(f)(1). *See Garland v. Aleman Gonzalez*, 596 U.S. 543, 552-54 (2022) (rejecting an argument that 8 U.S.C. § 1252(f)(1) applies only to the operation of “properly interpreted” statutory provisions, noting that statutes can be operated “unlawfully” or “improperly”).

Second, the *Nava* court held that, in any event, the plaintiffs’ factual and legal challenges to their stops and arrests of aliens were “too remote” from “the removal process,” citing *Jennings*, 138 S. Ct. at 840 & 841 n.3. 435 F.Supp.3d at 891-92. First, this analysis plainly contradicts the analysis in *J.E.F.M.*, 837 F.3d at 1033, in which the Ninth Circuit held that the test for whether § 1252(b)(9) applies is whether the claims are “routinely raised in petitions for review” – a test Defendants can easily demonstrate. *See supra* at 7. Regardless, the “remote,” collateral challenges described in *Jennings*, however, were challenges to injuries entirely unrelated to the decision to detain or remove an alien –

conditions of confinement, assault by a detention guard or fellow detainee, a car crash, or prolonged detention. *Jennings*, 138 S. Ct at 840. It was too “expansive” to “cram[]” these actions into action “arising from a decision to remove an alien.” *Id.* But the stop and arrest of an alien is directly, linearly part of the process to remove an alien – the stops occurred to investigate immigration status rendering an alien removable, and the arrests because of probable cause of removability. The “legal questions” in this case challenging the stops and arrests are directly part of the removal process. *Jennings*, 138 S. Ct. at 841 n.3; Complaint at ¶¶ 3, 7. Accordingly, the Court lacks jurisdiction pursuant to 8 U.S.C. § 1252(a)(5) and (b)(9).⁴

B. This Court Lacks Jurisdiction to Issue an Injunction to Anyone Other Than the Named Plaintiffs

That these claims must be brought in petitions for review underscores, moreover, that a class wide injunction is inappropriate. But 8 U.S.C. § 1252(f)(1), in any event, bars the court from granting Plaintiffs’ request to preliminarily enjoin USBP’s detention and removal operations. In *Aleman Gonzalez*, 596 U.S. at 544, the Supreme Court held that 8 U.S.C. § 1252(f)(1) “generally prohibits lower courts from entering injunctions that order federal officials to take or to refrain from taking actions to enforce, implement, or otherwise carry out the specified statutory provisions.” The specified statutory provisions are 8 U.S.C. §§ 1221-1232, as amended by the Immigration and Nationality Act. *See Al Otro Lado v. Exec. Office of Immigr. Rev.*, 120 F.4th 606, 627 n.16 (9th Cir. 2024). 8 U.S.C. § 1226, a covered statute, concerns the apprehension and detention of aliens. 8 U.S.C. § 1229, another covered statute, concerns the initiation of removal proceedings against an alien. Enjoining these provisions is barred even if a court determines that the agency’s “operation” of a covered provision is unlawful or incorrect. *Aleman Gonzalez*, 596 U.S. at 552-54. To the extent Plaintiffs allege they are seeking to enjoin 8 U.S.C. § 1357, the actions under this statute cannot be untangled from apprehension and

⁴ To the extent Plaintiffs argue 8 U.S.C. § 1252(b)(9) does not apply to aliens not in removal proceedings, this is a problem with their class.

removal operations. Consequently, Plaintiffs' request to restrain USBP's allegedly unlawful detention and removal operations necessarily seeks to enjoin operation of provisions covered by 8 U.S.C. § 1252(f)(1). A class-wide injunction is, therefore, prohibited and any injunctive remedy must be individualized to named Plaintiffs.

C. The Plaintiffs' Claims Are Moot

Plaintiffs' claims are moot in light of new guidance issued by USBP providing nearly all the relief Plaintiffs seek in their motion. Plaintiffs allege that, in an operation conducted between January 7, 2025, and January 9, 2025, USBP violated the Fourth Amendment and the statutory requirements of 8 U.S.C. § 1357(a)(2). Complaint at ¶¶ 1-3, 326-45. Plaintiffs seek declaratory and injunctive relief claiming Border Patrol will replicate these alleged unlawful acts because the agency lacks policy and guidance for ensuring compliance with the Fourth Amendment and 8 U.S.C. § 1357(a)(2). Complaint at ¶¶ 249-50, 276-77, 329-30, 336, 340. Pointing to an example of sufficient guidance issued by DHS (the "Broadcast"), Plaintiffs move the Court to enjoin USBP from conducting warrantless stops and arrests in the Eastern District of California that do not comply with the DHS Broadcast, and order USBP to develop guidance similar to the Broadcast and conduct training thereon. PI Motion at 1-2; Memo at 16, 19, 23; Complaint at ¶¶ 278-83, Prayer for Relief ¶¶ 4-5, 8-10, Appendix A. In the meantime, Plaintiffs continue, they will suffer "continued and future irreparable injury." Complaint at ¶¶ 333, 339, 345.

However, on April 4, 2025, the El Centro Sector USBP issued a "Muster" to all Sector employees that is in all material respects identical to the Broadcast issued in *Castanon Nava*. Compare El Centro Muster, Exhibit ("Ex.") A, with Complaint Appendix A. The Muster contains guidance on the requirement for reasonable suspicion for traffic stops conducted throughout the Eastern District of California, guidance on assessing flight risk using factors such as "family, home, or employment" (that is, community ties), and guidance on documenting the facts and circumstances surrounding a warrantless arrest in an alien's Form I-213 as soon as practicable. See Ex. A; Complaint at ¶ 278

(stating USBP should provide its officers guidance on the requirement for reasonable suspicion for traffic stops in the interior, away from the border, and guidance on assessing flight risk using factors such as “family, home, or employment,” that is, community ties). El Centro Sector USBP is moreover taking steps to implement training on the Muster. Ex. B. USBP will conduct training sessions to ensure compliance with the Muster within 60 days for the more than 900 El Centro Sector Border Patrol Agents, supervisors, and command staff on report writing, compliance with the Fourth Amendment and 8 U.S.C. § 1357, and compliance with Supreme Court and Ninth Circuit law on conducting vehicle stops, consensual encounters, and warrantless arrests. Ex. B. at ¶¶ 10-16.

USBP’s issuance of guidance and commitment to training thereon constitutes a change in circumstances forestalling a “substantial controversy . . . of sufficient immediacy and reality.” *Preiser v. Newkirk*, 422 U.S. 395, 402 (1975); *Friends of the Earth, Inc. v. Laidlaw Env’t Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000) (the party asserting mootness bears the burden of showing subsequent events have “made it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur”). This is “more than a mere voluntary cessation of allegedly illegal conduct where [USBP is] . . . free to return to [their] old ways.” *Preiser*, 422 U.S. at 402. Pursuant to the Muster, Border Patrol agents “may stop a vehicle to enforce civil immigration laws only if they are aware of specific, articulable facts that reasonably warrant suspicion that the vehicle contains alien(s) who may be illegally in the country” and, “[i]n considering ‘likelihood of escape’ . . . [,] must consider the totality of the circumstances known to the agent before making the arrest.” Ex. A. Further, Border Patrols agents “must document the facts and circumstances surrounding the vehicle stop” and “the facts and circumstances surrounding th[e] warrantless arrest” in the narrative section of the alien’s I-213 as soon as practicable. *Id.* “[W]hile there is always the possibility that [USBP] might disregard the [Muster and training thereon], such speculative contingencies afford no basis for [the court] passing on the substantive issues [Plaintiffs] would have [the court] decide.” *Preiser*, 422 U.S. at 403 (internal

1 citations omitted). Indeed, USBP’s prompt and responsive actions in light of Plaintiffs’ complaint
 2 forcefully demonstrates its commitment to forestall similar alleged violations in the future. “[T]here is
 3 now no reasonable expectation that the [alleged] wrong will be repeated,” *Preiser*, 422 U.S. at 402, and,
 4 again, this is the relief Plaintiff’s requested, *see* PI Motion at 1-2; Memo at 16, 19, 23; Complaint at ¶¶
 5 278-83, Prayer for Relief ¶¶ 4-5, 8-10, Appendix A. Plaintiffs, therefore, lack a continuing interest in
 6 pursuing their motion and, consequently, the Court lacks a controversy to adjudicate. Individual
 7 allegedly aggrieved aliens can seek remedies through the administrative process described in Part I.A.

9 **II. Plaintiffs Cannot Meet Their Burden to Show They Would be Irreparably Harmed Absent** 10 **the Prospective Injunction They Seek**

11 To the extent the Court has jurisdiction, and Plaintiffs claims are not moot, Plaintiffs nonetheless
 12 cannot demonstrate that they will be irreparably harmed absent a preliminary injunction in light of
 13 USBP’s issuance of new guidance providing nearly all the relief Plaintiffs seek in their motion and
 14 rendering any alleged future harm unlikely. “The purpose of an injunction is to prevent future
 15 violations” and, therefore, requires the movant establish a “cognizable danger of recurrent violation” and
 16 not just “the mere possibility” of future harm. *U.S. v. W. T. Grant Co.*, 345 U.S. 629, 633 (1953).
 17 Where the defendants proffer a “bona fide[] . . . expressed intent to comply” with plaintiffs’ request and
 18 “discontinue” the alleged past violations, plaintiffs no longer possess a cognizable danger of recurrent
 19 violation. *Id.* By issuing the Muster and committing to training thereon, USBP has provided the remedy
 20 Plaintiffs requested for alleged past violations. *See* Ex. A; Ex. B. There has meanwhile been no
 21 “intransigence,” or “following one adjudicated violation with others,” which might serve to undermine
 22 the bona fides of USBP’s expressed commitments. *W.T. Grant Co.*, 345 U.S. at 634. On the contrary,
 23 USBP addressed the complaint promptly, responsively, and with demonstrated commitment to forestall
 24 “similar [alleged] violations in the future.” *W.T. Grant Co.*, 345 U.S. at 634; *Kansas v. Nebraska*, 574
 25 U.S. 445, 466 (2015) (defendant’s “new compliance measures, so long as followed,” and which were
 26 “implemented in good faith,” preclude a “cognizable danger of recurrent violation”) (citing *W.T. Grant*
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Co., 345 U.S. at 633). Accordingly, Plaintiffs cannot establish a cognizable “continued and future irreparable injury” absent an injunction. Complaint at ¶¶ 333, 339, 345.

III. The Balance of Equities and the Public Interest Favor the Denial of Preliminary Relief

When the Government is a party, the balancing of equities and public interest merge. *See Nken v. Holder*, 556 U.S. 418, 435 (2009). The equities do not favor granting Plaintiffs’ motion because, again, their claims have been resolved. Indeed, the public interest should favor an agency taking prompt, responsive action in light of a complaint against it. This is a favorable result and granting a preliminary injunction despite such actions would provide little incentive for agencies to take prompt, responsive actions in the future. Meanwhile, it is undisputed that two of the three named plaintiffs (Cisneros and Esquivel) are illegally present in the United States. An alien’s unlawful presence in the United States is a continuing violation of the law and the government has a legitimate and significant interest in ensuring that immigration laws are enforced. *See INS v. Lopez-Mendoza*, 468 U.S. 1032, 1047 (1984) (discussing that “a person whose unregistered presence in this country, without more, constitutes a crime” and while “[t]he constable’s blunder may allow the criminal to go free, [] we have never suggested that it allows the criminal to continue in the commission of an ongoing crime”). And this public interest is served by allowing USBP to continue to conduct its operations without premature intervention by the Court. Accordingly, the balance of the hardships and the public interest weigh against granting Plaintiffs’ motion.

CONCLUSION

The Court should, accordingly, dismiss Plaintiffs’ motion for lack of jurisdiction or, alternatively, to the extent the Court finds jurisdiction, it should deny the instant motion because Plaintiffs cannot meet the standard for a preliminary injunction.

DATED: April 7, 2025

Respectfully submitted

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Exhibit A

El Centro Sector Muster

This Muster states the underlying laws and policies applicable to all arrests effected by El Centro Sector Border Patrol Agents under 8 U.S.C. § 1357(a)(2) / INA § 287(a)(2) in the Eastern District of California and is to be interpreted consistent with all implementing regulations and controlling Supreme Court and Ninth Circuit case law.

A. Warrantless Arrests

Under 8 U.S.C. § 1357(a)(2) / INA § 287(a)(2), U.S. Border Patrol (USBP) Agents may conduct warrantless arrests if there is “reason to believe that the alien [] [to be] arrested is [present] in the United States in violation of any [U.S. immigration] law and is likely to escape before a warrant can be obtained for [the] arrest.” The “reason to believe” standard requires USBP Agents to have probable cause that an individual is in the United States in violation of U.S. immigration laws and probable cause that the individual is likely to escape before a warrant can be obtained for the arrest.

In considering “likelihood of escape,” a USBP Agent must consider the totality of circumstances known to the agent before making the arrest. While there is no exhaustive list of factors that should be considered in determining whether an individual is “likely to escape before a warrant can be obtained” under 8 U.S.C. § 1357(a) / INA § 287(a), factors relevant to the determination may include the USBP Agent’s ability to determine the individual’s identity, knowledge of that individual’s prior escapes or evasions of immigration authorities, attempted flight from a USBP Agent, ties to the community (such as a family, home, or employment) or lack thereof, or other specific circumstances that weigh in favor or

against a reasonable belief that the subject is likely to abscond. The particular circumstances before the USBP Agent are not to be viewed singly; rather, they must be considered as a whole. However, mere presence within the United States in violation of U.S. immigration law is not, by itself, sufficient to conclude that an alien is likely to escape before a warrant for arrest can be *obtained*.

When conducting enforcement actions, USBP Agents shall, at the time of arrest or as soon as it is practical and safe to do so, identify themselves as immigration officers in accordance with 8 C.F.R. § 287.8(c)(2)(iii).

After having made an arrest under 8 U.S.C. § 1357(a)(2) / INA § 287(a)(2), a USBP Agent should document the facts and circumstances surrounding that warrantless arrest in the narrative section of the alien's I-213 as soon as practicable. This documentation should include: (1) that the alien was arrested without a warrant; (2) the location of the arrest and whether this location was a place of business, residence, vehicle, or a public area; (3) whether the alien is an employee of the business, if arrested at a place of business, or whether the alien is a resident of the residence, if arrested at a residential location; (4) the alien's ties to the community, if known at the time of arrest, including family, home, or employment (**Note:** Information learned post-arrest relevant to custody determination should be documented separately from the information relevant to likelihood of escape known at the time of the warrantless arrest.); (5) the specific, particularized facts supporting the conclusion that the alien was likely to escape before a warrant could be obtained; and (6) a statement of how "at the time of arrest, the designated immigration officer [did], as soon as it [wa]s practical and safe to do so, identify himself or herself as an immigration officer who is authorized to execute an arrest; and state[d] that the person is under arrest and the reason for the arrest."

B. Vehicle Stops

The policy above applies to all warrantless arrests under 8 U.S.C. § 1357(a)(2) / INA § 287(a)(2), including warrantless arrests resulting from vehicle stops.

USBP agents may stop a vehicle to enforce civil immigration laws only if they are aware of specific, articulable facts that reasonably warrant suspicion that the vehicle contains an alien(s) who may be illegally in the country.

As soon as practicable after making an arrest under 8 U.S.C. § 1357(a)(2) / INA § 287(a)(2) pursuant to a vehicle stop, in addition to the documentation requirements for warrantless arrests described above, the USBP agent also must document the facts and circumstances surrounding the vehicle stop that resulted in a warrantless arrest in the narrative section of the alien's I-213. This documentation should include the specific, articulable facts that formed the basis for the USBP Agent's reasonable suspicion that an alien in the vehicle stopped was present within the United States in violation of U.S. immigration law.

Exhibit B

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

United Farm Workers, *et al.*,

Plaintiffs,

vs.

KRISTI NOEM, Secretary of the United States
Department of Homeland Security, *et al.*,

Defendants.

Case No. 25-cv-00246-JLT-BAM

DECLARATION OF
SERGIO GUZMAN

I, Sergio Guzman, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am the Acting Executive Officer (XO), El Centro Sector (ELC), U.S. Border Patrol (USBP), U.S. Customs and Border Protection (CBP), U.S. Department of Homeland Security (DHS). I have held this position since November 18, 2024.

2. In my position as the XO, I serve directly under the Division Chief of Operations (DCO). The DCO has direct oversight of El Centro, Calexico, and Indio stations, Sector Intelligence Unit, Special Operations Detachment, and Foreign Operations Branch. I assist the DCO with both administrative and operational functions that have direct impact with the stations and other departments. I remain up to date with any critical incidents or operations occurring within the sector. I brief the Chief Patrol Agent and Deputy Chief Patrol Agent on significant matters related to the Operations Division. I also serve as a primary point of contact between USBP Headquarters (HQ) and ELC.

3. As the XO, I was involved with the various phases (planning, execution, and after action) of Operation Return to Sender.

4. When not serving as the XO, I am a permanent Deputy Patrol Agent in Charge at the Calexico Station (CAX). I have held that position since March 2022. I oversee and run the operational component of the station. I make all station-wide decisions in the absence of the Patrol Agent in Charge. I have three GS-14 Watch Commanders and one Special Operations Supervisor under my direct supervision. I provide guidance and mentorship to them along with

1 the 46 first-line supervisors assigned to CAX. I have briefed congressional visitors and
2 uniformed/non-uniformed personnel from USBP HQ on the operational challenges at CAX. I
3 support CAX agents with the resources, infrastructure, technology, and knowledge that could
4 assist them to perform their job at a higher level and in a safe manner.

5 5. I am submitting this declaration in support of Defendants' Opposition to Plaintiffs'
6 Motion for Preliminary Injunction (PI). This declaration is based on my personal knowledge,
7 information made known to me from official records reasonably relied upon, and information
8 conveyed to me by my staff and other knowledgeable CBP personnel in the course of my official
9 duties.

10 6. ELC is situated within the Imperial Valley of Southern California. The ELC area
11 of responsibility (AOR) spans 70 linear miles along the U.S. and Mexico border from the Jacumba
12 Mountains in the west to the Imperial Sand Dunes in the east. ELC's AOR also includes inland
13 areas of California extending all the way to the Oregon State Line, including Bakersfield,
14 California.

15 7. ELC is staffed by 975 Border Patrol Agents and 149 support personnel. Staffing is
16 assigned to ELC HQ and the three patrol stations: El Centro, Calexico, and Indio.

17 8. ELC is committed to conducting enforcement operations within the Eastern District
18 of California in compliance with the Fourth Amendment, 8 U.S.C. § 1357, and Supreme Court and
19 Ninth Circuit case law.

20 9. In furtherance of this commitment, ELC issued a muster to all ELC employees on
21 Friday, April 4, 2025, attached at Exhibit A. The muster includes the underlying laws and policies
22 applicable to all warrantless arrests effected by El Centro Sector Border Patrol under 8 U.S.C. §
23 1357(a)(2) in the Eastern District of California.

24 10. ELC will endeavor to conduct refresher training sessions to ensure compliance with
25 the muster within 60 Days for all ELC Border Patrol Agents (BPAs), supervisors, and Command
26 Staff.¹ The trainings will include instruction on report writing and compliance with the Fourth
27 Amendment, 8 U.S.C. § 1357, and Supreme Court and Ninth Circuit case law pertaining to vehicle
28 stops, consensual encounters, and warrantless arrests.

11. The training sessions will cover topics such as:

¹ It may not be practicable to train all such ELC employees within 60 days due to, for example, employees being on detail or extended leave.

- a. ELC BPAs' authority to effect warrantless arrests within the Eastern District of California pursuant to 8 U.S.C. § 1357 including factors relevant to determining "reason to believe" an alien is in the United States in violation of law or regulation and the alien's likelihood of escape before a warrant can be obtained;
- b. ELC BPAs' authority to effect vehicle stops within the Eastern District of California upon establishment of reasonable suspicion of a violation of law or regulation in compliance with the Fourth Amendment, Supreme Court, and Ninth Circuit case law.
- c. ELC BPAs' authority to effect consensual encounters within the Eastern District of California in compliance with the Fourth Amendment, Supreme Court, and Ninth Circuit case law;
- d. Report writing requirements including documentation of the facts and circumstances pertaining to warrantless arrests in the narrative section of an alien arrestee's Record of Deportable/Inadmissible Alien ("Form I-213")²; and
- e. Report writing requirements including documentation of the facts and circumstances pertaining to vehicle stops resulting in warrantless arrests in the narrative section of the alien arrestee's Form I-213.

12. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on April 7, 2025, at El Centro, California.

SERGIO
GUZMAN

Digitally signed by
SERGIO GUZMAN
Date: 2025.04.07
19:40:16 -07'00'

Sergio Guzman
Acting Executive Officer
El Centro Sector
U.S. Border Patrol

² A Form I-213 or DHS "Record of Deportable/Inadmissible Alien," is an official record which includes information about an alien's immigration status and the basis and key facts to support the alien's removal from the United States.