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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' REPLY ISO MOTION FOR
PRELIMINARY INJUNCTION**

Date: April 28, 2025
Time: 1:30 p.m.
Dept.: Courtroom 4, 7th Floor
Judge: Hon. Jennifer L. Thurston

Date Filed: February 26, 2025

Trial Date: None set

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1 **I. INTRODUCTION**

2 The facts underlying this motion are not in dispute. Defendants do not dispute they
 3 conducted widespread detentive stops without reasonable suspicion. Defendants do not dispute they
 4 arrested dozens of people without warrants and without any individualized consideration of flight
 5 risk. Defendants do not dispute their practices irreparably harmed Plaintiffs and the proposed class.
 6 And Defendants do not contest Plaintiffs' legal claims that these practices are illegal, running
 7 roughshod over the Fourth Amendment and 8 U.S.C. § 1357.

8 Effectively conceding they have engaged in arrest and detention practices that violated long-
 9 settled law and targeted individuals based on the color of their skin, Defendants attempt to evade
 10 this Court's review. Defendants ask the Court to simply trust that they will not do it again, pointing
 11 to a non-binding, revocable, unenforceable "Muster" issued one business day before Defendants'
 12 opposition deadline. But the Muster does not address most of the unlawful conduct Plaintiffs
 13 challenge. This is fatal to any mootness argument. Even if the Muster addressed all unlawful
 14 conduct at issue, Defendants' purported commitment to changing their practices is belied by their
 15 refusal to make the Muster binding and enforceable after Plaintiffs asked them to enter into a
 16 stipulation. Defendants' representations concerning the Muster cannot be taken at face value given
 17 they previously publicized "Operation Return to Sender" as a targeted mission to capture drug
 18 traffickers and members of Transnational Criminal Organizations. *See* Dkt. 15-2 at 72, 14, 26, 68,
 19 74, 92. Yet we now know Border Patrol's own data confirms Border Patrol did not know whether
 20 **anyone** arrested in "Operation Return to Sender" had **any** criminal history at the time it made the
 21 arrests. Declaration of Julia L. Greenberg ("Greenberg Decl.") ¶ 2, Ex. 1. Defendants have not
 22 come close to mooted Plaintiffs' claims.

23 Defendants also assert that this Court is deprived of jurisdiction by provisions of the
 24 Immigration and Nationality Act ("INA"), 8 U.S.C. §§ 1252(a)(5) and (b)(9), that govern
 25 challenges to administrative removal proceedings and removal orders. But Plaintiffs are not
 26 challenging removal proceedings or removal orders, so these provisions do not apply to their
 27 claims. Nor does 8 U.S.C. § 1252(f)(1), the INA's bar on certain classwide injunctions, apply here.

28 Lastly, this Court should decline to consider Immigration Law Reform Institute's ("ILRI")

improper arguments raised for the first time in its amicus briefs. But in any event, Plaintiffs have clearly established standing and a right to the relief they seek.

The Court should grant the requested preliminary injunction in its entirety.¹

II. ARGUMENT IN RESPONSE TO DEFENDANTS' OPPOSITION

A. Defendants have not mooted Plaintiffs' claims.

Through sworn declarations, Plaintiffs provided nearly a dozen accounts of flagrant violations of the Fourth Amendment and 8 U.S.C. § 1357. These declarations show repeated instances where residents of this district were improperly stopped without any reasonable suspicion of an immigration offense and arrested without a warrant or any assessment of flight risk. *See* Mot. 2-7, 9-13, 17-19; Dkt. 15-4 to 15-11. In response, Defendants do not offer a *single* piece of evidence or any substantive argument disputing these accounts.

Instead, Defendants argue Plaintiffs' claims are moot because El Centro Border Patrol issued a "Muster" that purportedly provides "nearly all" the relief Plaintiffs seek. Opp. 10; Dkt. 31-2 ¶ 10. A party asserting that a case has become moot "bears the burden of establishing that there is no effective relief that the court can provide." *Forest Guardians v. Johanns*, 450 F.3d 455, 461 (9th Cir. 2006); *see also* *L.A. Cnty. v. Davis*, 440 U.S. 625, 631 (1979) ("A case [becomes] moot when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome.").² The voluntary cessation of challenged conduct "does not ordinarily render a case moot." *Bell v. City of Boise*, 709 F.3d 890, 898 (9th Cir. 2013). Defendants have a "heavy burden" under a "stringent" standard to demonstrate that it is "absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur." *Id.* The government must demonstrate that (1) "the new policy addressed *all* of the objectionable measures the [government] officials took against the plaintiffs," *id.* at 900, and (2) the "change in its behavior is entrenched or permanent," including that "procedural safeguards insulat[e] the new state of affairs from arbitrary reversal,"

¹ Regardless of whether the Court provisionally certifies the proposed class, the Court should grant the requested injunction because Plaintiff United Farm Workers, which has members throughout this district, "would not receive the complete relief to which [it is] entitled without [district-wide] application of the injunction." *Easyriders Freedom F.I.G.H.T. v. Hannigan*, 92 F.3d 1486, 1502 (9th Cir. 1996). UFW's standing to sue on behalf of its members is not in dispute.

² Unless otherwise indicated, internal punctuation, footnotes, and citations were omitted from, and any emphases were added to, quotations.

1 *Fikre v. FBI*, 904 F.3d 1033, 1039 (9th Cir. 2018); *see also A. O. v. Cuccinelli*, 457 F. Supp. 3d
2 777, 788 (N.D. Cal. 2020). Defendants fail to carry this heavy burden.

3 As a threshold matter, the Muster does not address most of the unlawful conduct on which
4 Plaintiffs seek relief. For example, by its own terms, the Muster addresses only “arrests effected
5 by” Border Patrol agents and “Vehicle Stops.” Doc. 31-1 at 2. It provides no guidance for agents
6 to assess whether reasonable suspicion exists to support any detentive stop (including of a vehicle),
7 and it fails altogether to address detentive stops of pedestrians. The Muster further fails to mention
8 the constitutional prohibitions on stopping people based on “Hispanic appearance” or a refusal to
9 consent to questioning. *See U.S. v. Montero-Camargo*, 208 F.3d 1122, 1135, 1138 (9th Cir. 2000)
10 (en banc); *Florida v. Bostick*, 501 U.S. 429, 437 (1991). For the limited conduct the Muster does
11 address, Defendants relaxed the mandatory requirements applicable to ICE—that all agents “must”
12 document the “facts and circumstances” of warrantless arrests, Dkt. 15-2 at 112—to a suggestion
13 that Border Patrol agents “should” create such documentation, Dkt. 31-1 at 3. These unaddressed
14 issues remain “live” and require injunctive relief. *Forest Guardians*, 450 F.3d at 461.

15 Defendants also make no commitment to keep the Muster in place for any duration and
16 point to no “procedural safeguards” that would prevent its withdrawal, revision, or a lack of
17 enforcement. *Fikre*, 904 F.3d at 1039; *see also Bell*, 709 F.3d at 900 (holding that the “ease with
18 which” an order can be altered “counsels against a finding of mootness”). After El Centro Border
19 Patrol issued the Muster, Plaintiffs’ counsel asked Defendants to stipulate to an order keeping the
20 Muster in place until Plaintiffs’ detentive stop and warrantless arrest claims are finally resolved.
21 Defendants refused, suggesting the Muster is not long-term. *See Greenberg Decl.* ¶¶ 3-4, Ex. 2.

22 Moreover, unlike in cases where a changed policy had been in place for a “long time”
23 sufficient for it to be “entrenched,” *see, e.g., White v. Lee*, 227 F.3d 1214, 1243 & n.25 (9th Cir.
24 2000) (five years), El Centro Border Patrol issued the Muster just one business day before
25 Defendants filed their opposition. *See ArcBest II, Inc. v. Oliver*, 593 F. Supp. 3d 957, 966 (E.D.
26 Cal. 2022) (change less than one year prior had “not been in place long”); *A. O.*, 457 F. Supp. 3d
27 at 789 (policy established for six months “not entrenched”). Defendants’ “strategic timing” merits
28 skepticism from the Court. *R.W. v. Columbia Basin Coll.*, 77 F.4th 1214, 1226 (9th Cir. 2023).

Finally, Defendants offer no evidence the Muster will cause a change in conduct. “Operation Return to Sender” illustrated Border Patrol’s adoption of practices that blatantly disregard well-defined legal requirements. The Muster’s unenforceable and partial restatement of some of those requirements does not ensure Border Patrol honors them. Indeed, Defendants have refused Plaintiffs’ request to periodically provide documentation showing bases for their detentive stops and warrantless arrests—documentation that should be noncontroversial if they intended to meet legal requirements.³ Likewise, Defendants’ general promise to “endeavor to conduct refresher training sessions,” Dkt. 31-2 ¶ 10, is insufficient when their prior trainings on the same issues apparently failed to prevent El Centro Border Patrol from engaging in these blatantly unlawful practices. Defendants have not come close to demonstrating that Plaintiffs’ claims are moot.⁴

B. Defendants do not meaningfully dispute that Plaintiffs will suffer irreparable harm absent injunctive relief.

Defendants do not rebut Plaintiffs’ evidence that Border Patrol’s illegal practices are causing and will continue to cause Plaintiffs and the proposed class irreparable harm. The “deprivation of constitutional rights,” standing alone, is irreparable harm. *See Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012). And El Centro Border Patrol’s constant refrain that there is “more to come” including “return to sender round 2” in Fresno, Sacramento, and in Bakersfield, demonstrates their plans to continue to deploy unlawful practices in this district. *See* Mot. 22. In the meantime, ample and undisputed evidence shows that Plaintiffs, regardless of their immigration status, are irreparably suffering emotional distress due to fear that they will again be subjected to Border Patrol’s lawless practices. *See* Mot. 20-22.

Defendants suggest the Muster and their vague promise of a single set of “refresher training[s]” undermines this clear showing of irreparable harm. They are wrong. Where a party facing an injunction claims to have changed course, courts will evaluate “all the circumstances,” including “the bona fides of the expressed intent to comply, the effectiveness of the discontinuance

³ Defendants likewise have refused Plaintiffs’ request to schedule a Rule 26(f) conference, obstructing Plaintiffs’ ability to take discovery on Border Patrol’s supposed policy change. Greenberg Decl. Ex. 3.

⁴ Defendants cite to *Preiser v. Newkirk* for the proposition that there is “no reasonable expectation that the wrong will be repeated.” 422 U.S. 395, 402 (1975). But *Preiser* concerned the government returning an inmate to a medium-security prison after he had been improperly transferred to maximum security. *Preiser* does not establish that an incomplete and seemingly revocable “Muster” moots a policy challenge.

and, in some cases, the character of the past violations.” *U.S. v. W. T. Grant Co.*, 345 U.S. 629, 633 (1953); *see also S.E.C. v. Murphy*, 626 F.2d 633, 655 (9th Cir. 1980) (holding “recognition of the wrongful nature of [past] conduct” relevant). Here, Defendants have done nothing to explicitly recognize “the wrongful nature” of their practices, and there has been no bona fide change in policy. The “character of their past violations” was egregious: Border Patrol agents stopped U.S. citizens and lawful permanent residents seemingly based on nothing more than their skin color, and then slashed tires and smashed windows when someone remained silent or asked why they had been stopped. Mot. 3, 4; *see also Index Newspapers LLC v. City of Portland*, 480 F. Supp. 3d 1120, 1153 (D. Or. 2020) (“egregious” violations support injunctive relief). The Muster does not cover *any* of this conduct. And this Court has every reason to doubt the “bona fides” of Border Patrol’s “expressed intent to comply,” given its history of false statements about “Operation Return to Sender.” *See* Greenberg Decl. ¶ 2, Ex. 1. The Muster does not prevent the ongoing irreparable harm.

C. The balance of the equities favors Plaintiffs and the proposed class.

“[I]t is always in the public interest to prevent the violation of a party’s constitutional rights.” *Melendres*, 695 F.3d at 1002. The narrowly tailored preliminary relief Plaintiffs request here—requiring compliance with the law and monitoring of that compliance—is standard and necessary in cases like this one. Mot. 23–24 (collecting cases). Defendants, meanwhile, will suffer no material harm from being ordered to comply with the law. *See Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983) (an agency “cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from constitutional violations”).

Defendants argue that the equities favor them because they purport to be in compliance with the law after issuing the Muster. Opp. 13. This argument fails due to the Muster’s various deficiencies, discussed above. Moreover, Defendants’ cynical suggestion that an injunction should be denied because two named plaintiffs are allegedly undocumented immigrants—and thus should have no recourse to challenge unlawful stops and arrests—demonstrates exactly why preliminary injunctive relief is needed to prevent further violations of the law.⁵ *Cf. Zadvydas v. Davis*, 533 U.S.

⁵ Defendants’ reliance on *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1047 (1984), is misplaced. That case addressed the applicability of the exclusionary rule in deportation proceedings. It does not entitle Border Patrol to target communities with unlawful racial profiling practices.

678, 679 (2001) (“[T]he Due Process Clause applies to all persons within the United States, including [noncitizens], whether their presence is lawful, unlawful, temporary, or permanent.”)

Given that Defendants purport to be “committed to conducting enforcement operations . . . in compliance with the Fourth Amendment, 8 U.S.C. § 1357, and Supreme Court and Ninth Circuit case law,” Dkt. 31-2 at 3, the requested injunction should not burden them. *See Buchanan Bros Inc. v. A2Z Xtreme Airgun LLC*, 2023 WL 6038159, at *3 (D. Ariz. Sept. 15, 2023) (expressed “interest[] in . . . voluntary cessation . . . suggests that Defendants would not suffer significant harm”); *cf. Pinocci v. Flynn*, 729 F. Supp. 3d 1060, 1068 (D. Mont. 2024) (“Considering that Flynn . . . suspended the behavior at issue the hardship imposed by issuing an injunction is minimal.”).

D. This Court has jurisdiction to adjudicate Plaintiffs’ claims and order classwide relief.

This Court should reject Defendants’ jurisdictional arguments, which rely on interpretations of two INA provisions the Supreme Court has repeatedly rejected. The provisions Defendants cite, 8 U.S.C. §§ 1252(a)(5) and (b)(9), consolidate “a noncitizen’s various challenges arising from [a] removal proceeding” that has resulted in a final order of removal. *Nasrallah v. Barr*, 590 U.S. 573, 580 (2020).⁶ Section 1252(a)(5) confers exclusive jurisdiction to review removal orders in the courts of appeals, and § 1252(b)(9) channels “[j]udicial review of all questions of law and fact . . . arising from any action taken or proceeding brought to remove [a noncitizen]” into that review. The limited scope of these provisions is well-settled: they “apply *only* to . . . claims seeking judicial review of orders of removal.” *Singh v. Gonzales*, 499 F.3d 969, 978 (9th Cir. 2007). “[W]here, as here, the parties are not challenging any removal proceedings,” district courts have jurisdiction. *Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 19 (2020) (“*Regents*”).

Defendants’ arguments to the contrary misconstrue Plaintiffs’ claims and controlling law. Citing *Jennings v. Rodriguez*, 583 U.S. 281 (2018), Defendants argue that because Plaintiffs challenge stops and detentions intended to remove purported noncitizens, § 1252(b)(9) bars jurisdiction because they are “actions taken to remove them.” Opp. 6-7. But Plaintiffs challenge

⁶ Removal proceedings are administrative proceedings governed by the INA that determine whether a particular noncitizen is removable, inadmissible, or eligible for certain forms of immigration status under the INA. 8 U.S.C. § 1229(a); 8 C.F.R. § 1240.1 (limiting immigration judges’ authority).

Defendants’ unlawful stop and arrest *practices*, not individual “actions taken.” Compl. ¶¶ 234-39, 276-83. *Jennings* did not hold that the INA bars review of such practices: Justice Alito, writing for three justices, rejected the argument that § 1252(b)(9) stripped the Supreme Court of jurisdiction. *Jennings*, 583 U.S. at 293-94. He explained that an “expansive interpretation of § 1252(b)(9)” as applying broadly to “any claim” that “technically can be said to” “arise from actions taken to remove” noncitizens would lead to “absurd” “results that no sensible person could have intended.” *Id.* Two years later, in *Regents*—which Defendants ignore—a majority of the Court resolved any post-*Jennings* ambiguity about § 1252(b)(9)’s ambit, holding that it “certainly” “does not present a jurisdictional bar” to claims that “are not challenging any removal proceedings.” 591 U.S. at 19.

In any event, Plaintiffs’ claims do not even “technically” arise from removal proceedings, because Plaintiffs challenge conduct that occurs before removal proceedings begin, and regardless of whether removal proceedings ever follow. Defendants entirely fail to address the holding in *Nava v. Department of Homeland Security* that unlawful stops and arrests executed “before the government has any legitimate reason to believe that the subject is removable cannot be” actions “taken . . . to remove” the noncitizens. 435 F. Supp. 3d 880, 891-92 (N.D. Ill 2020). That is precisely the conduct at issue here: Plaintiffs challenge unlawful detentive stops and arrests occurring before the Border Patrol agents “had any reason to believe” Plaintiffs and proposed class members “had violated an immigration law.” *Id.* at 891. Such practices “cannot be said to have a close relation to removal proceedings.” *Id.*; see also *Regents* 591 U.S. at 19.

For the same reasons, Defendants’ reliance on the Ninth Circuit’s decision in *J.E.F.M. v. Lynch* (which predates *Jennings* and *Regents*) is misplaced. Opp. 7–8. Plaintiffs in *J.E.F.M.* alleged that a statute denying appointed counsel to children in removal proceedings violated due process. Defendants point to dicta—the panel’s statement that access to counsel claims are “routinely raised in petitions for review”—and try to recast it as a “test” for whether § 1252(b)(9) applies. Opp. 7. But *J.E.F.M.* never endorsed such a “test”; the panel was clear that “claims that are independent of or collateral to the removal process do not fall within the scope of § 1252(b)(9).” *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1032 (9th Cir. 2016); see *Cancino-Castellar v. Nielsen*, 338 F. Supp. 3d 1107, 1114 (S.D. Cal. 2018) (“*J.E.F.M.* may treat § 1252(b)(9) too broadly in light of *Jennings*”).

Many courts have held that claims like those asserted by Plaintiffs, which challenge Defendants’ conduct *before* removal proceedings begin, are collateral to the removal process and reviewable in district court. *See, e.g., Nava*, 435 F. Supp. 3d at 892; *Roy v. Cnty. of L.A.*, 2018 WL 914773, at *18 (C.D. Cal. Feb. 7, 2018); *Medina v. U.S. Dep’t of Homeland Sec.*, 2017 WL 2954719, at *11 (W.D. Wash. Mar. 14, 2017). Indeed, removal proceedings do not begin until the Government files a “notice to appear,” the charging document for alleged violations of civil immigration law, in immigration court. 8 C.F.R. § 1239.1(a). Because Defendants’ unlawful practices sweep in citizens and noncitizens alike, their stops and arrests do not necessarily result in removal proceedings at all. And unlike the string of decisions on petitions for review Defendants cite, *Opp. 7*, Plaintiffs do not ask this Court to review an order of removal, opine on any person’s removability, or decide what evidence can be used in removal proceedings.

Defendants’ argument that Plaintiffs must bring their claims in a petition for review of a final removal order fails to acknowledge this is not actually possible. Plaintiff Yolanda Aguilera Martinez is a lawful permanent resident. Dkt. 15-11 ¶ 2. She is not in removal proceedings. She does not have a removal order. Plaintiff United Farm Workers is a labor union. It cannot be placed in removal proceedings or ordered removed. And Plaintiffs Wilder Munguia Esquivel and Oscar Morales Cisneros, though in removal proceedings, do not have removal orders, and “it is possible that no such order would ever be entered.” *Jennings*, 583 U.S. at 293. Yet all Plaintiffs and proposed class members—citizens and noncitizens alike—risk being swept into Defendants’ dragnet, stopped without reasonable suspicion, and arrested without evaluation of flight risk. Requiring Plaintiffs to raise claims through petitions for review of removal orders that do not exist would “deprive [Plaintiffs] of any meaningful chance for judicial review.” *Id.*

The INA also does not bar classwide relief for warrantless arrests. 8 U.S.C. § 1252(f)(1) prohibits lower courts from issuing classwide injunctions that restrain the operation of a limited subset of INA provisions, codified at 8 U.S.C. §§ 1221-1232.⁷ *See Gonzalez v. U.S. Immigr. & Customs Enf’t*, 975 F.3d 788, 813 (9th Cir. 2020) (§ 1252(f)(1)’s “limitations on injunctive relief

⁷ § 1252(f)(1) is a limitation on remedies a court can order, not on a court’s subject matter jurisdiction. *Biden v. Texas*, 597 U.S. 785, 801 (2022).

do not apply to other provisions of the INA”). Plaintiffs’ claims arise under § 1357, Compl. ¶¶ 326-45, which is not a covered provision. *See Gonzalez*, 975 F.3d at 814. Defendants argue Plaintiffs’ claims cannot be “untangled” from covered provisions, Opp. 9-10, but the Ninth Circuit rejected a nearly identical argument, holding that § 1252(f)(1) does not “categorically insulate immigration enforcement” from classwide injunctions. *Id.* at 812. And § 1252(f)(1) *permits* classwide injunctions with a “collateral effect” on covered statutes. *Garland v. Aleman Gonzalez*, 596 U.S. 543, 553 & n.4 (2022); *accord Al Otro Lado v. Exec. Office for Immigr. Rev.*, 120 F.4th 606, 627-28 (9th Cir. 2024). Even if Plaintiffs’ claims somehow affected Defendants’ ability to make arrests “on a warrant” under § 1226 or serve notices to appear in immigration court under § 1229, § 1252(f)(1) would not apply.

III. IRLI’S AMICUS BRIEF IS NOT PERSUASIVE

IRLI’s “amicus” brief is improper as it raises merits issues that Defendants did not raise. Generally, “arguments not raised in a party’s opening brief are deemed waived,” and “the court will not consider arguments raised only in amicus briefs.” *U.S. v. Wahchumwah*, 710 F.3d 862, 868 (9th Cir. 2013). If the Court considers IRLI’s arguments, they fail on the merits.

A. Plaintiffs have standing to pursue injunctive relief.

To have standing to assert a claim for injunctive relief, a plaintiff must demonstrate “that he is realistically threatened by a repetition of [the violation].” *City of Los Angeles v. Lyons*, 461 U.S. 95, 109 (1983). A plaintiff can demonstrate such injury is likely to recur when the harm is part of a “pattern of officially sanctioned . . . behavior, violative of the plaintiffs’ [federal] rights.” *Melendres*, 695 F.3d at 997-98. IRLI, like Defendants, does not dispute that Border Patrol has an unlawful practice of violating the Fourth Amendment and § 1357. The existence of this practice makes future injury “sufficiently likely” for standing, even if the likelihood of “a particular individual plaintiff” being subjected to a future violation is not itself “high.”⁸ *Melendres*, 695 F.3d at 998 (finding three incidents of challenged conduct enough to establish “pattern or practice”); *B.K. ex rel. Tinsley v. Snyder*, 922 F.3d 957, 974 (9th Cir. 2019) (finding five occasions of

⁸ The Muster does not bear on Plaintiffs’ standing because “[i]t is the doctrine of *mootness*, not standing, that addresses whether an intervening circumstance has deprived the plaintiff of a personal stake in the outcome of the lawsuit.” *W. Virginia v. Env’t Prot. Agency*, 597 U.S. 697, 719 (2022).

1 challenged conduct enough to establish standing). Plaintiffs’ sworn declarations detail nearly a
 2 dozen unlawful stops, during which Border Patrol indiscriminately detained and arrested people of
 3 color in agricultural areas and Latino neighborhoods. Mot. 1, 3; *see also* Dkts.15-2 through 15-11.

4 Plaintiffs’ undisputed evidence establishes that Defendants intend to replicate “Operation
 5 Return to Sender” throughout this District. For example, El Centro Border Patrol has announced
 6 plans to conduct operations in “other locals [sic] such as Fresno and especially Sacramento,” as
 7 well as a return to Bakerfield. Mot. 6-7 (citing Braun Decl. Exs. 3, 10, 17); *see id* at 22 (Chief
 8 Bovino and El Centro Border Patrol’s promises to “catch even more people next time” and “pump
 9 those numbers up”). Border Patrol has publicly condoned the operation, declaring it a “success
 10 from day one.” *See* Mot. 1; *Doe v. Hagee*, 473 F. Supp. 2d 989, 997 (N.D. Cal. 2007)
 11 (distinguishing *Lyons* because plaintiffs’ alleged likelihood of encounter with Marines recruiter and
 12 Marines “condoned” the challenged “practice”); *see also LaDuke v. Nelson*, 762 F.2d 1318, 1324
 13 (9th Cir. 1985) (distinguishing *Lyons* because of the absence “of any written or oral
 14 pronouncements by the [*Lyons* defendant] sanctioning” the unlawful conduct).⁹

15 **B. Plaintiffs and the proposed class are entitled to the relief requested.**

16 IRLI also argues that Plaintiffs’ requested relief “has no basis in law.” IRLI Br. 6-7. Not so.
 17 The requested injunctive relief—including that Defendants provide documentation that they are
 18 following the Constitution, well-established law, and their own purported policies—is standard in
 19 cases like this one. *Unknown Parties v. Johnson*, 2016 WL 8188563 (D. Ariz. Jan. 3, 2017)
 20 (granting preliminary injunction requiring quarterly production of Border Patrol data related to
 21 injunction’s terms); *see also* Mot. 23-24 (collecting cases). There is no risk of “running afoul of
 22 separation of powers principles,” IRLI Br. 6, because “the executive branch has no discretion with
 23 which to violate constitutional rights.” *See LaDuke*, 762 F.2d at 1325.

24 **IV. CONCLUSION**

25 For the foregoing reasons, the Court should grant Plaintiffs’ motion.

26
 27 ⁹ *Hodgers–Durgin v. de la Vina*, 199 F.3d 1037 (9th Cir. 1999) is easily distinguishable: in that case,
 28 plaintiffs drove weekly on a route where Border Patrol agents were present “nearly every day,” but had
 only been stopped once in ten years. *Id.* at 1042-44. Here, Plaintiffs allege ongoing fear of performing
 daily activities in their home communities because of Border Patrol’s unlawful practices.

1 Dated: April 17, 2025

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF NORTHERN
CALIFORNIA

3
4 By: /s/ Bree Bernwanger (as authorized April 17, 2025)

BREE BERNWANGER
MICHELLE (MINJU) Y. CHO
LAUREN DAVIS
SHILPI AGARWAL

8 Dated: April 17, 2025

By: AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF SOUTHERN
CALIFORNIA

10
11 /s/ Mayra Joachin (as authorized April 17, 2025)

MAYRA JOACHIN
EVA BITRAN
OLIVER MA

14 Dated: April 17, 2025

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

16
17 /s/ Brisa Velazquez Oatis (as authorized April 17, 2025)

BRISA VELAZQUEZ OATIS

Attorneys for Plaintiffs

20 Dated: April 17, 2025

KEKER, VAN NEST & PETERS LLP

21
22 By: /s/ Ajay S. Krishnan (as authorized April 17, 2025)

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FRANCO MUZZIO
ZAINAB O. RAMAHI
JULIA GREENBERG

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Attorneys For Plaintiff Oscar Morales Cisneros

**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-BAM

**DECLARATION OF JULIA L.
GREENBERG IN SUPPORT OF
PLAINTIFFS' REPLY ISO MOTION FOR
PRELIMINARY INJUNCTION**

Judge: Hon. Jennifer L. Thurston

Date: April 28, 2025

Time: 1:30 p.m.

Place: Courtroom 4

Complaint Filed: February 26, 2025

1 I, Julia L. Greenberg, declare as follows:

2 1. I am an attorney at law duly licensed and entitled to practice in the State of
3 California. I am an associate at Kecker, Van Nest and Peters LLP, counsel of record in this action.
4 I make this declaration in support of Plaintiffs' Reply in Support of Motion for Preliminary
5 Injunction. I have personal knowledge of the following facts and, if called as a witness, I could
6 and would testify competently thereto.

7 2. Attached to this declaration as **Exhibit 1** is a true and correct PDF copy of a
8 spreadsheet posted on the official government website of US Customs and Border Protection,
9 dated March 17, 2025, titled *USBP Operation Return to Sender Arrests in January 2025*, which is
10 also available at: [https://www.cbp.gov/document/foia-record/customs-and-border-protection-](https://www.cbp.gov/document/foia-record/customs-and-border-protection-border-patrol-statistics)
11 [border-patrol-statistics](https://www.cbp.gov/document/foia-record/customs-and-border-protection-border-patrol-statistics).

12 3. On April 10, 2025, I requested, on behalf of Plaintiffs, that Defendants stipulate to
13 a Court order requiring Defendants to keep the April 4, 2025, Muster issued by the El Centro
14 Sector of U.S. Border Patrol in place until the final resolution of Plaintiffs' unlawful detentive
15 stop and warrantless arrest claims. Defendants' counsel responded on April 15, 2025, refusing to
16 do so.

17 4. Attached to this declaration as **Exhibit 2** is a true and correct copy of the email
18 exchange between Mary L. Larakers, counsel for Defendants, and me, dated April 10, 2025, and
19 April 15, 2025.

20 5. On March 19, 2025, my colleague, Zainab Ramahi, on behalf of Plaintiffs,
21 requested that Defendants' counsel provide availability to hold a Rule 26(f) conference on March
22 26, 27, or 30. On March 21, 2025, Defendants' counsel responded, refusing to do so and stating
23 that "a conference is not practicable at this time." On March 27, 2025, Ms. Ramanhi, on behalf of
24 Plaintiffs, responded to Defendants' counsel stating that "Plaintiffs need to initiate discovery as
25 soon as possible given the irreparable harm they are facing" and asked for availability on April 8,
26 9, 10, or 11 for a Rule 26(f) conference. Defendants' counsel did not respond to Ms. Ramanhi's
27 March 27, 2025 correspondence.
28

1 6. Attached to this declaration as **Exhibit 3** is a true and correct copy of the email
2 exchange between Zainab Ramahi, counsel for Plaintiffs, and Samuel Go, counsel for
3 Defendants, concerning setting a Rule 26(f) conference.

4 I declare under penalty of perjury that the foregoing is true and correct, and that this
5 declaration was executed on April 17, 2025, in San Francisco, California.

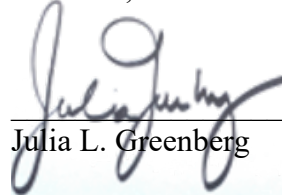
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8 _____
9 Julia L. Greenberg
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Exhibit 1

Exhibit 2

From: [Larakers, Mary L. \(CIV\)](#)
To: [Julia L. Greenberg](#)
Cc: [Go, Samuel \(CIV\)](#); [Ramnitz, Tim \(CIV\)](#); [Kuchins, Olga Y. \(CIV\)](#); [Dillard, Carolyn D. \(CIV\)](#); [Bree Bernwanger](#); [Minju Cho](#); [Mayra Joachin](#); [Brisa Velazquez Oatis](#); [RAIDS](#)
Subject: Re: [EXTERNAL] United Farm Workers, et al. v. Noem, et al., 1:25-cv-00246
Date: Tuesday, April 15, 2025 6:53:06 PM

[EXTERNAL]



Hi Julia,

While Defendants intend to keep the Muster in place without revision, Defendants will not agree to stipulate to a court order at this time.

Thanks,
Mary

On Apr 10, 2025, at 3:04 PM, Julia L. Greenberg <JGreenberg@keker.com> wrote:

Counsel,

Defendants contend in opposition to plaintiffs' motion for a preliminary injunction that plaintiffs' claims are moot in light of the April 4, 2025 "Muster" issued by the El Centro Sector of U.S. Border Patrol and suggest the Muster provides "nearly all the relief Plaintiffs seek in their motion."

Plaintiffs' motion requests preliminary injunctive relief that will remain in place while this litigation remains pending. Please confirm by the close of business on Tuesday, April 15, whether defendants will stipulate to a Court order that requires them, until the final resolution of plaintiffs' unlawful detentive stop and warrantless arrest claims, to (1) keep the Muster in place and not rescind, revoke, withdraw, or otherwise render it ineffective, and (2) refrain from revising the Muster without the written consent of plaintiffs' counsel or an order from the Court. For avoidance of doubt, a dismissal without prejudice would not be final resolution while plaintiffs maintain leave to amend.

Regards,
Julia

Julia L. Greenberg
Keker, Van Nest & Peters LLP
633 Battery Street

San Francisco, CA 94111-1809
415 773 6690 direct | 415 391 5400 main
jgreenberg@keker.com | keker.com

Exhibit 3

From: [Zainab O. Ramahi](#)
To: [Go, Samuel \(CIV\)](#); [Larakers, Mary L. \(CIV\)](#); [Kuchins, Olga Y. \(CIV\)](#); [Ramnitz, Tim \(CIV\)](#)
Cc: [Mayra Joachin](#); [Franco Muzzio](#); [Bree Bernwanger](#); [Oliver Ma](#)
Subject: RE: United Farm Workers, et al v. Noem, et al., 1:25-cv-00246
Date: Thursday, March 27, 2025 11:36:04 AM

Samuel,

Plaintiffs need to initiate discovery as soon as possible given the irreparable harm they are facing. In light of your position, please provide us with times during April 8-11 when you can participate in the Rule 26(f) conference.

Regards,
Zainab

Zainab O. Ramahi (she/her)
Keker, Van Nest & Peters LLP
633 Battery Street
San Francisco, CA 94111-1890
415 962 8898 direct | 415 391 5400 main
zramahi@keker.com | keker.com

From: Go, Samuel (CIV) <Samuel.Go@usdoj.gov>
Sent: Friday, March 21, 2025 9:13 PM
To: Zainab O. Ramahi <ZRamahi@keker.com>; Larakers, Mary L. (CIV) <Mary.L.Larakers@usdoj.gov>; Kuchins, Olga Y. (CIV) <Olga.Y.Kuchins@usdoj.gov>; Ramnitz, Tim (CIV) <Tim.Ramnitz@usdoj.gov>
Cc: Mayra Joachin <MJoachin@aclusocal.org>; Franco Muzzio <FMuzzio@keker.com>; Bree Bernwanger <BBernwanger@aclunc.org>; Oliver Ma <oma@aclusocal.org>
Subject: RE: United Farm Workers, et al v. Noem, et al., 1:25-cv-00246

[EXTERNAL]

Counsel,

Thank you for your email. As Defendants have yet to respond to the complaint and are working on responding to Plaintiffs' preliminary injunction and class certification motions, a conference is not practicable at this time.

Best,

Samuel P. Go
Assistant Director
United States Department of Justice
Office of Immigration Litigation

Post Office Box 878 | Ben Franklin Station | Washington, D.C. 20044

☎ 202-353-9923 | 🖨 202-616-4950 | ✉ samuel.go@usdoj.gov



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From: Zainab O. Ramahi <ZRamahi@keker.com>

Sent: Wednesday, March 19, 2025 1:46 PM

To: Flentje, August (CIV) <August.Flentje@usdoj.gov>; MaryL.Larakers@usdoj.gov; Go, Samuel (CIV) <Samuel.Go@usdoj.gov>; Kuchins, Olga Y. (CIV) <Olga.Y.Kuchins@usdoj.gov>; Ramnitz, Tim (CIV) <Tim.Ramnitz@usdoj.gov>

Cc: Mayra Joachin <MJoachin@aclusocal.org>; Franco Muzzio <FMuzzio@keker.com>; Bree Bernwanger <BBernwanger@aclunc.org>; Oliver Ma <oma@aclusocal.org>

Subject: [EXTERNAL] United Farm Workers, et al v. Noem, et al., 1:25-cv-00246

Counsel,

Please advise as to your availability next week to hold our Rule 26(f) conference. We are available at the days and times listed below:

- Wednesday (3/26): 1-2pm PT, after 4pm
- Thursday (3/27): 10-11am, 12-2pm
- Friday (3/30): 9am-4pm

Thank you,

Zainab

Zainab O. Ramahi (she/her)
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San Francisco, CA 94111-1890
415 962 8898 direct | 415 391 5400 main
zramahi@keker.com | keker.com