

No. 25-4047

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED FARM WORKERS OF AMERICA, et al.,

Plaintiffs-Appellees,

v.

KRISTI NOEM, et al.,

Defendants-Appellants.

On Appeal from an Interlocutory Order Issued by the U.S. District Court for
the Eastern District of California (Civil Action No. 1:25-cv-00246-JLT-CDB)

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I. INTRODUCTION

In January 2025, U.S. Border Patrol agents traveled hundreds of miles inland to indiscriminately stop and arrest Latinos, farmworkers, and day laborers in and around Kern County, California, as a trial run for the unlawful immigration raids that Defendants have since deployed across the United States.

Border Patrol made these detentions and arrests—including of U.S. citizens and lawful permanent residents—without the individualized assessments that the Constitution and federal law require. Defendants do not contest that these practices are unlawful. Rather, Defendants hailed this program, known as “Operation Return to Sender,” as a “success from day one,” publicly stating that they “plan[ned] to come back” and expand throughout the Eastern District of California in “round 2.”

After Plaintiffs submitted uncontested, extensive firsthand accounts documenting the unlawful nature of these raids—and Defendants’ vowed intent to continue them—the District Court found two unlawful patterns and practices: (1) detentive stops without reasonable suspicion in violation of the Fourth Amendment, and (2) warrantless immigration arrests without establishing probable cause of flight risk in violation of 8 U.S.C. § 1357(a)(2). The District Court issued a preliminary injunction, enjoining these practices in the Eastern District.

On appeal, Defendants do not challenge the District Court’s findings that these practices exist. Nor do they challenge the District Court’s conclusion that

Plaintiffs are likely to succeed on the merits of their claims. Instead, they attack standing, mootness, and the injunction's scope. Those arguments fail.

Defendants primarily argue that Plaintiffs lack standing because they have not adequately alleged an imminent risk of future harm under *City of Los Angeles v. Lyons*, 461 U.S. 95 (1983). But Defendants ignore the uncontested findings of Border Patrol's ongoing practices of targeting Latinos, farmworkers, and day laborers in dragnet sweeps of areas where those individuals live, work, and travel. Thus, Plaintiffs face a realistic threat that their rights will again be violated—with practices Defendants publicly vowed to continue—because they live, work, and travel in the Latino neighborhoods, agricultural areas, and common roadways these practices target. That is more than sufficient to establish standing under controlling precedent. Further, absent an injunction, Plaintiffs will also suffer from ongoing injuries in that they are deterred from engaging in their daily activities within their own neighborhoods.

Defendants also argue that Border Patrol has mooted Plaintiffs' claims by issuing "muster" policy documents. But most of the evidence Defendants cite demonstrates only half-hearted compliance with the preliminary injunction. And, in any event, the "musters" cannot meet the extraordinarily high bar to moot Plaintiffs' claims because they do not adequately address the challenged conduct and can be revoked at any time. This is not a hypothetical: notwithstanding the

“musters,” Border Patrol has continued its unlawful practices in the Eastern District. Defendants also raise various other procedural challenges that are easily dismissed.

Because the District Court did not abuse its discretion in enjoining Defendants’ unlawful practices in the District, this Court should affirm the order.

II. FACTUAL BACKGROUND

In January, Border Patrol agents travelled hundreds of miles from the border to engage in “Operation Return to Sender,” a coordinated, nearly weeklong “pilot” campaign, in which agents unlawfully stopped and arrested Latino residents, farmworkers, and day laborers in indiscriminate and sweeping raids. With tactics now familiar to the people of Sacramento, Chicago, Colorado, Washington, D.C., and beyond, the Kern County residents going about their daily routines in Latino neighborhoods, common roadways, and agricultural areas were suddenly detained, berated, and handcuffed regardless of immigration status.

Plaintiff Yolanda Aguilera Martinez, a lawful permanent resident who has lived in Kern County for 45 years, is one such example. Ms. Martinez was driving within the speed limit in a registered vehicle, going to a doctor’s appointment, when agents in unmarked vehicles signaled for her to pull over. 2-ER-355. A man demanded to see her “papers,” rejected her valid license as “fake,” and ordered her out of the car. *Id.* He then shoved her to the ground and handcuffed her. 2-ER-356.

Similarly, Plaintiff Wilder Munguia Esquivel, a longtime Bakersfield resident with a U.S. citizen family, pending immigration petition, and no criminal history, was standing outside a Home Depot when masked men in civilian clothing swarmed, and demanded to see his papers. 2-ER-348. He tried to walk away but an agent forcefully grabbed and handcuffed him. 2-ER-348-49. His sister-in-law came to the parking lot to pick up his truck and explained his pending petition, but agents said they would take him anyway. *Id.* Agents then held him for days. 2-ER-349-52.

Members of Plaintiff United Farm Workers (“UFW”) were targeted as well. For instance, agents stopped UFW members, Alicia and her husband Benjamin,¹ without having committed a traffic violation, while they commuted home from work, on a common route for farm workers. 2-ER-309-10. After asking them for their papers, agents handcuffed them and detained them for hours while their children waited at daycare with no one to pick them up. *Id.* Alicia was eventually released, but Benjamin was transported miles away, where he was held in a cold, windowless cell. *Id.*

¹ To protect the privacy and security of members, UFW’s National Vice President, Elizabeth Strater, submitted a declaration below describing specific members’ experiences using pseudonyms to identify them. 2-ER-309 n.1; *see Speech First, Inc. v. Shrum*, 92 F.4th 947, 951 (10th Cir. 2024) (“organizational standing is proper even when the qualifying member of the plaintiff organization is anonymous” or uses a pseudonym).

Following these unlawful stops and arrests, Ms. Aguilera Martinez, Mr. Munguia Esquivel, named Plaintiffs, and class members remained in Kern County and the surrounding area and live in constant fear that they will be subjected to additional indiscriminate and unlawful stops and arrests simply by continuing to perform day-to-day activities, like commuting to work or taking children to school. *See, e.g.*, 2-ER-308-09, 2-ER-311-13; 2-ER-352; 2-ER-356-57.

These experiences above are just a few examples of the unlawful stops and arrests made during “Operation Return to Sender.”

A. Defendants conducted sweeping immigration raids in Kern County pursuant to two unlawful practices: (1) stopping without reasonable suspicion, and (2) arresting without probable cause of flight risk.

The Fourth Amendment prohibits Border Patrol agents from stopping individuals away from the border unless they have “reasonable suspicion” based on “specific articulable facts” that the person is a noncitizen “illegally in the country.” *United States v. Brignoni-Ponce*, 422 U.S. 873, 884 (1975).² In making these stops, agents may not rely on “broad profiles which cast suspicion on entire categories of people.” *United States v. Rodriguez Sanchez*, 23 F.3d 1488, 1492 (9th Cir. 1994). This includes Hispanic appearance, which “may not be considered as a relevant factor” in heavily Latino areas like Kern County. 3-ER-405; 2-ER-197, ¶ 26; 2-

² Unless otherwise indicated, internal punctuations, footnotes, emphases, and citations were omitted and emphases were added.

ER-296; *United States v. Montero-Camargo*, 208 F.3d 1122, 1135 (9th Cir. 2000) (en banc). Border Patrol agents are also barred from making warrantless arrests unless the agent has “reason to believe” that (a) the person being arrested “is in the United States in violation of any [immigration] law or regulation” and (b) the person “is likely to escape before a warrant can be obtained for his arrest.” 8 U.S.C. § 1357(a)(2).

Based on the uncontested evidence, the District Court found that “Operation Return to Sender” involved two practices that likely violated these well-established legal requirements. 1-ER-054-62; 1-ER-077.³ *First*, as the District Court found, the evidence “establishes a pattern and practice of agents performing detentive stops without reasonable suspicion in this District.” 1-ER-059; 1-ER-077. For each encounter Plaintiffs have documented, the incident started with a detentive stop without reasonable suspicion that the person stopped was unlawfully in the country. *See* 1-ER-054-59 (summarizing evidence). Instead, as the District Court found, Border Patrol conducted these stops indiscriminately, targeting areas that are heavily Latino populated. *Id.*; *see* 1-SER-037-38 at 35:25-36:7.

For example, Border Patrol conducted vehicle stops during the raids,

³ The District Court made the pattern and practice findings when assessing (1) commonality for class certification and (2) likelihood of success on the merits. Defendants do not challenge the rulings on either issue. These findings are relevant to standing, an issue Defendants did not raise below.

targeting Latino neighborhoods and farm roads in agricultural areas, indiscriminately pulling over cars with non-white drivers and passengers. *See, e.g.*, 3-ER-377-78, 3-ER-384-85, 3-ER-390-91, 3-ER-395, 3-ER-398; 3-ER-334, 3-ER-338; 3-ER-324; 3-ER-309, 3-ER-312; 3-ER-316, 3-ER-318; 2-ER-316; 2-ER-324; 2-ER-334; 2-ER-355; 2-ER-309, 2-ER-312. In each instance, Border Patrol agents stopped vehicles that were properly registered, driving well within the speed limit, and obeying traffic laws. *See, e.g.*, 3-ER-384-400; 2-ER-316; 2-ER-324; 2-ER-334; 2-ER-355; 2-ER-309, 2-ER-312.

Similarly, Border Patrol agents targeted the parking lots for businesses in Latino neighborhoods and those that serve farm workers and day laborers. *See* 3-ER-404-05. There, agents approached and surrounded non-white people without warrants and questioned them about their immigration status. *See, e.g.*, 3-ER-377, 3-ER-381, 3-ER-399, 3-ER-403; 2-ER-320 (Home Depot parking lot); 2-ER-348-49 (same); 2-ER-331 (same); 2-ER-341 (water refill station in Latino neighborhood). Agents provided no explanation for their stops except to demand “papers” or identification. *See id.* And when asked for justification for the stop, Border Patrol agents were unable to provide one. *See, e.g.*, 3-ER-384-86; 2-ER-316-17; 2-ER-325; ER-348-49; 2-ER-355-56.

Second, the evidence “shows a pattern and practice of warrantless arrests without Border Patrol agents performing individualized flight risk assessments to

have probable cause” that a person was “likely to escape,” as required by 8 U.S.C. § 1357(a)(2). 1-ER-077; 3-ER-365, 3-ER-405, 3-ER-408, 3-ER-416, 3-ER-426; 2-ER-310-13; 2-ER-316-17; 2-ER-320; 2-ER-324-25; 2-ER-331; 2-ER-335; 2-ER-342; 2-ER-349; 2-ER-355-56. As the District Court found, the documented arrests followed a clear pattern: residents were stopped, asked for their “papers,” and almost immediately arrested without any assessment of factors that would have affected whether they were considered a flight risk, such as their history in the community, occupation, and other family ties. 1-ER-059-63; 1-ER-077. None of the arrested declarants or UFW members conceivably posed a flight risk—each of them had families, jobs, and residences in the community for which they were financially responsible. *See, e.g.*, 2-ER-310-13; 2-ER-316; 2-ER-320; 2-ER-324-25; 2-ER-331; 2-ER-334; 2-ER-341; 2-ER-348; 2-ER-355; 3-ER-369-71; 1-ER-061-62 (summarizing evidence). And Defendants—to this day—do not contend otherwise. *See, e.g.*, Opening Brief (“OB”) 4-5 (admitting lawful resident, Plaintiff Martinez, was arrested after showing valid ID and before having the chance to present green card). Instead of performing the requisite individualized inquiry, Border Patrol indiscriminately arrested 78 individuals; 77 for whom the “[c]riminal and/or immigration history was not known prior to the encounter.” 1-SER-101-02 (Official CBP Published Statistics).

B. Prior to the preliminary injunction, Defendants announced their plan to continue suspicionless stops and mass arrests targeting Latinos, farm workers, and day laborers in the Eastern District.

Shortly after the January raids, Border Patrol made public its plans to continue these practices in the Eastern District. On January 9, 2025, the El Centro Sector publicly stated that it “continue[s] to field dozens of Border Patrol Agents in Kern County and surrounding area *looking for more of the same.*” 2-ER-220.

Later that day, the Sector stated on an official social media page: “We are planning operations for other locals such as Fresno and especially Sacramento.” 2-ER-218.

On January 12, 2025, in response to a social media comment stating, “Here in Bakersfield, you guys forgot to raid some people,” the Sector stated, “We plan on coming back!!” 2-ER-204.

These public statements continued. Later in January, an individual commented on social media, “*Return to sender round 2,*” to which the Sector replied, “You bet!” 2-ER-200. Again, on January 29, 2025, the Sector stated that Border Patrol would go “wherever the threats and crime take us, whether that’s #SanBernardino #LosAngeles #Riverside #Barstow #Bakersfield or beyond.” 2-ER-202. El Centro Border Patrol’s Chief Patrol Agent, Defendant Gregory K. Bovino, likewise responded to multiple social media posts indicating there would be “more to come.” 2-ER-222; 2-ER-224.

In public statements, the Sector also doubled down on continuing the

practice of arresting without individualized flight risk assessments. 1-ER-084-85.

In early January, Defendant Bovino stated in a social media post: “Undocumented means just that. I recommend returning to the country of origin, obtaining proper documents, and doing it the right way. If not, *we will arrest.*” 2-ER-224. Later in January, the Sector stated in a post that “*anyone* we encounter who doesn’t have the legal right to be in or remain in the U.S. *will be arrested.*” 2-ER-200.

Border Patrol also declared an intention to increase the scope of its unlawful stops and arrests. In response to a Facebook post about “Operation Return to Sender,” the El Centro Sector account stated it “will try and catch even more people next time.” 2-ER-226. Defendant Bovino publicly committed to increasing the volume of arrests in Border Patrol’s sweeps too, proclaiming that “Operation Return to Sender[’s]” arrests were “rookie numbers” and vowed to “pump those numbers up.” *Id.*

C. Individual Plaintiffs and UFW Members suffer ongoing harms.

Defendants’ unlawful stop and arrest practices had significant consequences. Individual Plaintiffs, UFW members, and class members were engaged in routine, lawful activities when Border Patrol “aggressively swarmed” or “surrounded” them in parking lots; pulled them over while driving registered, law-abiding vehicles; “broke” their car windows “with baton-like sticks;” “slashed” their tires with knives; physically “grabbed,” “pushed,” “dragged,” and “yanked” them; and

forcibly handcuffed them—all without reasonable suspicion of illegal status. *See, e.g.*, 2-ER-348-49; 2-ER-320-21; 2-ER-309-10, 2-ER-312; 2-ER-355-56; 2-ER-316-17; 2-ER-324-25.

Many of those stopped and arrested were then transported 300 miles south to the El Centro Station, held in windowless, cold cells without beds or warm blankets, access to showers, hygienic products, or sufficient food; deprived of sleep, access to daylight or any way to tell time—all while their requests to make phone calls or speak with attorneys were ignored. *See, e.g.*, 2-ER-326-27; 2-ER-336-37; 2-ER-310, *see also* 2-ER-350-51; 2-ER-343-44.

The individual Plaintiffs, UFW members, and class members that remain in the United States have suffered and continue to suffer, severe, irreparable harm. UFW members who are parents of school aged children have kept their kids home from school and are reluctant to attend school meetings in case of an indiscriminate raid, hindering their participation in their children's education. *See, e.g.*, 2-ER-308. Community and UFW members are now afraid to leave their homes, limiting daily activities that they previously enjoyed and refraining from returning to locations that they once frequented, paralyzed by fear that they will be targeted by future raids due solely to their occupation or skin color. *See, e.g.*, 2-ER-307; 2-ER-345; 2-ER-352; 2-ER-356. Indeed, UFW members have changed jobs and commutes, avoided going to doctor's appointments, and stopped running basic daily errands.

2-ER-307-08.

Defendants' unlawful raids thus left communities throughout the Eastern District in states of perpetual terror, deterring them from living full and free lives.

Id.

III. PROCEDURAL HISTORY

In February 2025, Plaintiffs sued Defendants over their practices of conducting stops without reasonable suspicion in violation of the Fourth Amendment; conducting warrantless arrests without probable cause of flight risk in violation of § 1357(a)(2); and coercing voluntary departure in violation of the Fifth Amendment. 3-ER-426-30. Less than one week later, Plaintiffs moved for a preliminary injunction and provisional class certification regarding the Fourth Amendment and § 1357(a)(2) claims, supported by a robust record detailing Defendants' practices and the experiences of the individual Plaintiffs, UFW members, and other impacted community members. *See* 2-ER-157-360; *see also* 1-SER-069-96 (Plaintiffs submitted additional evidence of further raids in Pomona days before PI hearing). In opposition, Defendants did not challenge the merits of Plaintiffs' claims or the sufficiency of Plaintiffs' evidence, nor did they offer rebuttal evidence. 2-ER-130-156; 1-ER-003 n.1.

In late April 2025, the District Court granted Plaintiffs' motions. *See, generally*, 1-ER-002. In addition to finding that Defendants have two unlawful

practices, it also found that the evidence established “imminent, irreparable harm” in light of the Defendants’ publicly stated intent to continue their unlawful operations in the Eastern District. 1-ER-077; 1-ER-083-85.

The District Court also rejected Defendants’ argument that the case was moot based on a “muster” policy document—issued by Border Patrol mere days before Defendants’ opposition to Plaintiffs’ motion was due—that purported to address warrantless arrests and vehicle stops (the “First Muster” or “Warrantless Arrest Muster”) (see 2-ER-150-52). 1-ER-077-83. Based on several factors discussed below, the District Court found that “Defendants fail[ed] to meet their ‘heavy burden’ to establish ‘it is *absolutely* clear that the allegedly wrongful behavior could not reasonably be expected to recur.’” 1-ER-082-83 (quoting *Adarand Constructors, Inc. v. Slater*, 528 U.S. 216, 222 (2000)) (emphasis in original).

The District Court issued an injunction requiring that Border Patrol (1) cease its practices that violate the Fourth Amendment and § 1357(a)(2); (2) issue guidance regarding how to determine reasonable suspicion to Border Patrol agents in the Eastern District; (3) train Border Patrol agents who will conduct such operations in the Eastern District; (4) document all detentive stops and warrantless arrests in the Eastern District; and (5) provide that documentation to Plaintiffs. 1-ER-086-88.

IV. SUMMARY OF THE ARGUMENT

The District Court did not abuse its discretion in enjoining Defendants' unlawful stop and arrest practices in the Eastern District. Defendants do not contest the District Court's findings or Plaintiffs' evidence. Nor do they challenge the District Court's conclusion that Plaintiffs are likely to succeed on the merits of their claims. Instead, Defendants raise procedural challenges. Each fails.

First, Plaintiffs have prospective relief standing; they face a realistic threat that their rights will again be violated—with practices Defendants publicly vowed to continue—because they live, work, and travel in the Latino neighborhoods, agricultural areas, and common roadways Defendants' unlawful practices target. Further, absent an injunction, Plaintiffs will also suffer from ongoing injuries in that they have been deterred from engaging in their daily activities within their own neighborhoods. For the same reasons, Defendants cannot demonstrate that the District Court abused its discretion in finding that Plaintiffs face irreparable harm.

Second, Plaintiffs' claims are not mooted by Defendants' "muster" policy documents. Most of the evidence Defendants cite show steps Defendants were *compelled* to take *pursuant* to the PI Order (which they now seek to reverse). And the "musters" cannot meet the extraordinarily high bar to moot Plaintiffs' claims because they do not adequately address the challenged conduct, can be revoked at any time, and they have not stopped Defendants from continuing their unlawful

practices in the Eastern District.

Third, Defendants raise other issues that are easily dismissed. Defendants argue that the injunction violates Federal Rule of Civil Procedure 65(d)'s requirement that injunctions specify the prohibited conduct, but that challenge is forfeited because it was never raised below. The argument is also wrong on the merits given the District Court issued a specific injunction grounded in detailed factual and legal conclusions that provide Defendants sufficient notice to understand its requirements. Defendants also wrongly argue that 8 U.S.C. § 1252(f) bars any injunction that would require compliance with § 1357(a)(2) due to collateral impacts on Border Patrol's enforcement authority, an argument that conflicts with binding case law.

This Court should affirm the District Court's order.

V. STANDARD OF REVIEW

The issuance and scope of a preliminary injunction is reviewed for abuse of discretion. *Pimentel v. Dreyfus*, 670 F.3d 1096, 1105 (9th Cir. 2012). In determining whether the District Court abused its discretion, this Court applies a two-part test. First, the Court “determine[s] de novo whether the trial court identified the correct legal rule to apply to the relief requested.” *Id.* Second, the Court determines “if the district court’s application of the correct legal standard was (1) illogical, (2) implausible, or (3) without support in inferences that may be

drawn from the facts in the record.” *Id.*

“Although questions of [Article III] standing are reviewed de novo, [the Court] will affirm a district court’s ruling on standing when the court has determined that the alleged threatened injury is sufficiently likely to occur, unless that determination is clearly erroneous or incorrect as a matter of law.” *Melendres v. Arpaio*, 695 F.3d 990, 997 (9th Cir. 2012). “At this very preliminary stage of the litigation, [Plaintiffs] may rely on the allegations in their Complaint and whatever other evidence they submitted in support of their [preliminary injunction] to meet their burden” to show they have standing. *Washington v. Trump*, 847 F.3d 1151, 1159 (9th Cir. 2017) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992)).⁴

While legal conclusions regarding mootness are reviewed de novo, the District Court’s factual determinations underlying the mootness determination are reviewed for clear error. *Rosebrock v. Mathis*, 745 F.3d 963, 970 n.8 (9th Cir. 2014).

VI. ARGUMENT

A. Plaintiffs have established Article III standing.

Defendants did not contest standing before the District Court, so their

⁴ As Defendants acknowledge, standing is assessed by the facts at the time of the filing of the Complaint. *See* OB 14; *Lujan*, 504 U.S. at 569 n.4.

accusation that the court “miss[ed] the issue entirely” rings hollow. OB 13. In any event, the District Court did assess standing, 1-ER-040-41, and also made factual findings based on the uncontested record that directly support the propriety of prospective as well as standing. *See* 1-ER-083-85; *see also* 1-ER-050-63, 1-ER-077.⁵

The individual Plaintiffs and UFW have standing for two independent reasons. **First**, Defendants have two unlawful practices—that they publicly vowed to continue—which show that the individual Plaintiffs and UFW members face a realistic threat of recurring violations of their civil and constitutional rights. 1-ER-083-85; 1-ER-050-63; 1-ER-077; 3-ER-364-65. This threat of recurrence is particularly likely for Plaintiffs, because Defendants indiscriminately target people who look like them in Latino neighborhoods, on common roadways, and in agricultural areas. *See e.g.*, 3-ER-384-400; 2-ER-316; 2-ER-324; 2-ER-334; 2-ER-355; 2-ER-309, 2-ER-312; 2-ER-320; 2-ER-348-349; 2-ER-331.⁶ **Second**, the evidence also shows that Defendants’ unlawful practices have resulted in an

⁵ Defendants challenge only whether Plaintiffs have established an “injury-in-fact.”

⁶ Defendants contend that the District Court’s finding of an unlawful pattern and practice was “under a preponderance of the evidence standard,” rather than “clear showing” standard. OB 25. But Defendants do not make any argument to suggest that Plaintiffs’ evidence is insufficient to establish an unlawful practice under the “clear showing” standard. Nor could they for the first time on appeal given that they did not even contest the evidence Plaintiffs submitted on this issue below. 1-ER-003 n.1.

ongoing injury by creating a reasonable and persistent fear of further harm in individual Plaintiffs and UFW members, deterring them from engaging in routine activities in their lives. *See, e.g.*, 3-ER-367; 2-ER-307-08; 2-ER-345.

1. Absent the District Court’s preliminary injunction, Plaintiffs face real threats of future violations to their federal rights.

a. Plaintiffs face real threats of harm because Defendants vowed to continue indiscriminately targeting Latinos, farm workers, and day laborers in their neighborhoods.

“To establish standing for prospective relief, [a plaintiff] must show [that] there is a sufficient likelihood that he will again be wronged in a similar way.” *Sterling v. Feek*, 150 F.4th 1235, 1246 (9th Cir. 2025) (citing *Lyons*, 461 U.S. at 103). “To meet this requirement, a plaintiff generally must show that the threat of injury is actual and imminent, not conjectural or hypothetical.” *Id.* Where, as here, “the plaintiff was injured by an alleged violation that occurred in the past, he must demonstrate that he is realistically threatened by a repetition of the violation.” *Id.* The likelihood of repetition need not be “high.” *Id.*

One way that a plaintiff can show he is “realistically threatened by a repetition of the violation” is where the harm suffered “is part of a pattern of officially sanctioned . . . behavior[.]” *Melendres*, 695 F.3d at 997-8 (quoting *LaDuke v. Nelson*, 762 F.2d 1318, 1323 (9th Cir. 1985)); *see also Kariye v. Mayorkas*, No. 23-55790, 2024 WL 4403870, at *2 (9th Cir. Oct. 4, 2024) (finding standing where plaintiffs described “ten incidents” of unconstitutional conduct,

which “plausibly” established an “unwritten, officially sanctioned pattern or practice”); *Index Newspapers LLC v. United States Marshals Service*, 977 F.3d 817, 826 (9th Cir. 2020) (finding standing where pattern of unconstitutional conduct alleged); *Thomas v. County of Los Angeles*, 978 F.2d 504, 508 (9th Cir. 1992) (finding standing where pattern of “misconduct is purposefully aimed at minorities and that such misconduct was . . . tacitly authorized”).

Melendres is instructive. There, the plaintiffs alleged that the defendants had a “custom, policy and practice of racial profiling toward Latino persons,” including “stopping Latino drivers and passengers pretextually and without individualized suspicion[.]” 695 F.3d at 994. Plaintiffs also presented evidence that Defendants engaged in “‘saturation patrols’ or ‘sweeps’ targeting Latinos.” *Id.* at 998. In these sweeps, “five named plaintiffs [were] stopped by defendant officers during one of three traffic incidents.” *Id.* at 995. Each plaintiff was only stopped once. *Id.* Although defendants argued the plaintiffs failed to establish “a ‘credible’ and ‘genuine’ threat of future traffic stop[s],” this Court disagreed. *Id.* at 997. While “the likelihood of a future stop of a particular individual plaintiff may not be ‘high,’” this Court determined that the “future injury was nevertheless ‘sufficiently likely’ given the [d]efendants’ stated policy and practice.” *Id.* at 998. In addition, this Court acknowledged that exposure to the indiscriminate sweeps “while going about one’s daily life” can “constitute[] ongoing harm and evidence that there is

sufficient likelihood that the Plaintiffs' rights will be violated again." *Id.*

Like in *Melendres*, individual plaintiffs and UFW members here face a realistic threat that, absent the preliminary injunction, their rights will continue to be violated by Defendants. **First**, the District Court here specifically found that Plaintiffs' "evidence establishes a pattern and practice of agents performing detentive stops without reasonable suspicion in th[e] [Eastern] District." 1-ER-077. It also found Plaintiffs' "evidence shows a pattern and practice of warrantless arrests without Border Patrol agents performing individualized flight risk assessments to have probable cause for the arrest as required." *Id.* These findings are supported by the detailed and uncontested record considered by the District Court. *See, supra*, Section II.A; *see also Melendres*, 695 F.3d at 998 (prospective relief standing where sheriff's office "engaged in a pattern or practice of conducting traffic stops as part of 'saturation patrols' or sweeps").

Defendants suggest, however, that "a handful of unlawful stops and arrests isolated to a single 3-day period" does not "realistically support a finding of a general and ongoing pattern or practice." OB 25. But Defendants do not contest that Plaintiffs' evidence depicts (nearly a dozen) unlawful stops and arrests. *See, supra*, Section II.A They also identify no law to suggest that a three-day operation involving nearly 80 total arrests and about 200 stops is insufficient to show a pattern or practice. *See* 3-ER-364 (local reports suggesting 200 stops); 1-SER-101-

02 (Official CBP Published Statistics showing 77 arrests from “Operation Return to Sender” where immigration status was unknown prior to arrest); *see also Melendres*, 695 F.3d at 998 (finding “three traffic incidents” of challenged conduct enough to establish “pattern or practice”).

Second, Plaintiffs’ evidence also shows—and Defendants largely ignore—that Defendants publicly expressed an intent to replicate their unlawful sweeps in this District (and, in fact, did in Sacramento in July 2025). *See* 3-ER-407-410; 2-ER-204; 2-ER-218; 2-ER-260; 3-ER-407-10; *see also, infra*, Section VI.C.2.⁷ As the District Court found, “[t]he uncontroverted evidence shows the El Centro Sector repeatedly expressed an intent to perform additional operations in the Eastern District . . . , including Bakersfield, Fresno, and Sacramento.” 1-ER-084; 2-ER-218. As described above, *see, supra*, Section II.A, Defendants made repeated public statements, like, “We plan on coming back!!” 1-ER-084; 2-ER-204, and confirmed they would soon carry out “Return to sender round 2.” 1-ER-084; 2-ER-200. Defendant Bovino did not mince words: he called the operation “an

⁷ Without citing any authority, Defendants also contend that social media posts are not demonstrative of an official policy or practice. As the District Court found, the public statements of named Defendants—including Defendant Bovino—taken together with the sweeping raids indicate an intent to *continue* the practices they exhibited in “Operation Return to Sender,” *i.e.*, of unlawfully stopping and arresting Plaintiffs, UFW members, and class members. Defendants fail to explain why their own official statements to the public should not be considered persuasive evidence of future intent.

overwhelming success from day one.” 3-ER-407.

Third, the very nature of Defendants’ practices—indiscriminate dragnet sweeps in Latino neighborhoods, agricultural areas, and on common roadways used by Latinos, day laborers, and farmworkers—targeted individual Plaintiffs and class members performing daily activities where they live, work, and travel. *See supra*, Section II.A; *see also Melendres*, 695 F.3d at 998. Plaintiffs must continue to commute to work, bring their children to school, attend doctor appointments, go to school events, and run errands in the same areas where operations occurred—and where Defendants expressed intent to continue them. *See, e.g.*, 2-ER-308-09. For example, Latina UFW member Alicia continues to work as a farmworker in the Kern County area, and cannot commute to work without passing through the highways targeted by Border Patrol. 2-ER-311. Similarly, another Latina UFW member, Gabriela, a grandmother who helps her daughter with childcare, must travel through areas targeted by Border Patrol to commute to work. 2-ER-313. And so too with class member Campos Gutierrez who frequently travels around areas targeted by Border Patrol in Bakersfield for daily activities. *See* 2-ER-318. Absent the preliminary injunction, Plaintiffs would have little choice but to expose themselves to a substantial likelihood of harm from Defendants’ practices simply by continuing to live their day-to-day lives. Thus, like in *Melendres*, Plaintiffs face a realistic threat of future violations of their rights.

b. This case is not *Lyons*.

Defendants primarily argue that “Plaintiffs’ [theory of] standing is a redux of *Lyons*,” OB 17, ignoring the longstanding Ninth Circuit precedent that applies *Lyons* to pattern-and-practice cases like this one. In *Lyons*, a single plaintiff was “stopped by the defendant officers for a traffic or vehicle code violation,” “seized,” and put in a “chokehold” position. 461 U.S. at 97. The Supreme Court determined he could not pursue injunctive relief, because he had not “credibly allege[d] that he faced a realistic threat” of future application of the policy. *Id.* at 106. But *Lyons* noted as meaningful the absence of “any [record] evidence showing a pattern of police behavior that would indicate” an official policy sanctioning ***unconstitutional*** chokeholds. *Id.* at 110 n.9; *see LaDuke*, 762 F.2d at 1324 (noting reasoning).

This case is not *Lyons* for several reasons. For one, in *Lyons*, the city chokehold policy did not expressly sanction unconstitutional police enforcement activity; rather, a more general, neutral policy had been applied to *Lyons* in an unconstitutional way. 461 U.S. at 97. Here, the facts are different: the District Court found that Defendants have specific practices—which were officially sanctioned by Defendant Bovino and others—to violate the Fourth Amendment and § 1357(a)(2). 1-ER-077; *see LaDuke*, 762 F.2d at 1324 (“The Supreme Court has repeatedly upheld the appropriateness of federal injunctive relief to combat a

‘pattern’ of illicit law enforcement behavior.”).

This Court has regularly found standing in similar circumstances, and in each case distinguished *Lyons*. In *Thomas v. County of Los Angeles*, for example, this Court held that plaintiffs had prospective relief standing where they alleged minorities were “repeatedly subject to police brutality and harassment” “on account of their race.” 978 F.2d at 507. Similarly, in *LaDuke v. Nelson*, this Court held that plaintiffs had prospective relief standing where they alleged Border Patrol agents engaged in a “standard practice” of warrantless searches of migrant farm laborers’ homes. 762 F.2d at 1331. So too in *Melendres*, as discussed above.

Moreover, the individual Plaintiffs and UFW members were targeted indiscriminately while going about their daily lives, while in *Lyons*, the plaintiff was subject to the alleged policy only after being lawfully stopped for committing a traffic violation. *See* 461 U.S. at 105. Thus, the Supreme Court found *Lyons*’ theory of standing too speculative because it required that he first commit another traffic violation or other offense before he could possibly be subject to an illegal chokehold without provocation. *Id.* By contrast, Defendants’ practices do not depend on Plaintiffs engaging in unlawful conduct. Rather, individual Plaintiffs and UFW members were targeted while sitting in a car, traveling within the speed limit, and obeying traffic laws. *See, e.g.*, 1-ER057-58; 2-ER-316; 2-ER-324; 2-ER-334; 2-ER-355; 2-ER-309, 2-ER-312. Others were targeted while they were simply

gathered in a public parking lot or frequenting a local business. *See, e.g.*, 1-ER-055-56; 2-ER-320; 2-ER-348-49; 2-ER-331; 2-ER-341. Here, the indiscriminate, unprovoked stop *is* the injury—and Plaintiffs are powerless to avoid it. Thus, unlike in *Lyons*, but similar to those cases where the Ninth Circuit has found standing, Plaintiffs injuries are likely to recur as they cannot avoid Defendants’ harmful practices by “simply avoiding criminal activity.” *See, e.g., Melendres*, 695 F.3d at 998 (affirming court’s holding that “exposure to [unconstitutional] policy while going about one’s daily life,” constitutes “evidence that there is ‘sufficient likelihood’ that the Plaintiffs’ rights will be violated again”).

Similarly, the breadth of the violations at issue is different too. In *Lyons*, plaintiff faced only one incident of a chokehold, but here individual Plaintiffs and UFW members were personally affected by nearly a dozen unlawful incidents—plus, there were nearly 80 total arrests (and many more detentive stops) initiated within a nearly weeklong campaign. *See Thomas*, 978 F.2d at 508 (distinguishing *Lyons* because it involved “one citizen in a very large city” alleging misconduct).

Finally, unlike *Lyons*, the District Court here granted provisional class certification, in part, on the very basis that the record established practices violative of Plaintiffs’ federal rights. *See LaDuke*, 762 F.2d at 1325; 1-ER-054-63. While Defendants suggest that the District Court’s class certification does not impact the analysis, this too is wrong. In *Hawkins v. Comparet-Cassani*, this Court

considered precisely this issue. 251 F.3d 1230, 1237 (9th Cir. 2001) The Court determined that the fact that the named plaintiff was “seeking injunctive relief on behalf of a class” favored establishing standing for prospective injunctive relief, distinguishing the case from *Lyons. Id.* (“[I]t is not irrelevant that [they] sought to represent broader interests than his own.”); *Lynch v. Dawson*, 820 F.2d 1014, 1016 (9th Cir. 1987) (“For standing purposes ‘this court’s inquiry must focus on the standing of the *class* to seek equitable relief.”)).

Defendants also cite an interim Supreme Court stay order from another case, *Noem v. Vasquez Perdomo*, which does not apply here. OB 19-21. This order stayed a temporary restraining order entered by the Central District of California while appellate proceedings were pending. *Noem v. Vasquez Perdomo*, No. 25A169, 2025 WL 2585637, at *1 (2025). That stay order did not provide any reasoning or analysis (as Defendants readily admit, *see* OB 20), and did not address standing at all. *Vasquez Perdomo*, 2025 WL 2585637, at *1. It also is not precedential. *See Merrill v. Milligan*, 142 S. Ct. 879, 879 (2022) (Kavanaugh, J., concurring) (explaining “[a] stay order d[id] not make or signal any change to . . . [the] law” and was not “a ruling on the merits”).

In addition, Defendants cite the single-Justice concurrence from *Vasquez Perdomo* that no other Justice joined. 2025 WL 2585637, at *2. Justice Kavanaugh’s unjoined concurrence in a separate case with a different record does

not disturb the controlling circuit precedent here. *Id.* A single-Justice concurrence, much like a dissent, is of course non-precedential. 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.”); *Dababnah v. Keller-Burnside*, 208 F.3d 467, 471 n.3 (4th Cir. 2000) (“It goes without saying that the majority opinion, not the gloss that the concurrence seeks to place thereon, is controlling.”).

Moreover, the stay order in *Vasquez Perdomo* was based on a factual record and district court findings that materially differ. There, the plaintiffs alleged that the Government had a practice of relying on four specific factors (alone or combined) that were insufficient to develop reasonable suspicion. Appellant Brief, *Noem v. Vasquez Perdomo*, (2025) (No. 25A169), 2025 WL 2606729, at *3. By contrast, Plaintiffs here allege—and the District Court found—that Defendants maintained a “practice” of “conducting stops without conducting *any individualized assessment* of reasonable suspicion at all.” 1-ER-055 (emphasis in original). That distinction makes a difference. Justice Kavanaugh explained in *Vasquez Perdomo* that, even if the Government had adopted a policy permitting reliance on prohibited factors, immigration officers “might not rely *only* on those factors if and when they stop plaintiffs in the future.” *Vasquez Perdomo*, 2025 WL 2606729, at *5 (emphasis in original). Here, by contrast, *any* stop pursuant to the

challenged practice would necessarily be unlawful, because it dispenses entirely with individualized suspicion. And unlike in *Vasquez Perdomo*, Defendants did not even dispute that such a practice existed. 1-ER-003, n.1. Nor did they dispute that, at the time of filing, Defendants vowed to return for “round 2” in *Kern County* and the surrounding areas. *Id.*; 2-ER-200; 2-ER-218. Given these undisputed facts, Plaintiffs face a realistic threat of being subjected to indiscriminate stops and warrantless arrests where they live, work, and travel.

c. Defendants’ other cases do not establish that Plaintiffs lack standing.

Defendants also incorrectly suggest *Clapper v. Amnesty Int’l USA*, 568 U.S. 398 (2013), requires a different outcome. OB 14, 24. *Clapper* does no such thing.

Clapper explicitly recognized that the Supreme Court’s “cases do not uniformly require plaintiffs to demonstrate that it is *literally certain* that the harms they identify will come about,” and rather acknowledged that standing exists if there is “a ‘substantial risk’ that the harm will occur[.]” 568 U.S. at 414, n.5; *see San Diego Cty. Credit Union v. Citizens Equity First Credit Union*, 65 F.4th 1012, 1024-25 (9th Cir. 2023) (rejecting interpretation of *Clapper* as always requiring “certainly impending” harm). *Clapper* held that plaintiffs lacked standing to block the Government’s use of a surveillance statute *on the day it was enacted*, because it would require the Court to accept a “highly attenuated chain of possibilities” based on speculation, including: that the Government would choose to target their

specific communications and would invoke the statute to do so, that a court would authorize the surveillance, that the Government would successfully intercept communications, and that the intercepted communications would involve the plaintiffs. 568 U.S. at 410.

Here, by contrast, the harm is not based on “highly attenuated” contingencies: Defendants already targeted Plaintiffs and other class members in sweeping raids based on their unlawful practices and publicly committed to continue those practices—putting Plaintiffs and class members at substantial risk of being targeted again. *See City and Cty. of San Francisco v. United States Citizenship & Immigr. Servs.*, 944 F.3d 773, 787 (9th Cir. 2019) (finding reliance on *Clapper* unfounded where prior harms shown and reasonably expected to continue).

Other cases that Defendants cite do not say otherwise. Defendants cite *United States v. SCRAP*, 412 U.S. 669 (1973), to suggest that standing cannot be granted to an overly broad class of individuals that only “imagine circumstances” in which they could be affected. OB 27. But *SCRAP* **affirmed** the lower court’s finding that the plaintiffs’ standing allegations were sufficient to withstand a motion to dismiss, and “made it clear that standing is not to be denied simply because many people suffer the same injury.” *SCRAP*, 412 U.S. at 687. Similarly, Defendants’ reliance on *TransUnion LLC v. Ramirez*, 594 U.S. 413 (2021) is

misplaced. *TransUnion* considered a claim for damages based on an unmaterialized risk of harm. The Court made explicit that “a person exposed to a ***risk of future harm may pursue forward-looking, injunctive relief*** to prevent the harm from occurring, at least so long as the risk of harm is sufficiently imminent and substantial[,]” which is precisely what Plaintiffs have done here. *See TransUnion*, 594 U.S. at 435.

2. Plaintiffs also establish standing through their ongoing injuries.

Plaintiffs have standing based on a separate injury as well: prior to the injunction, they suffered ***ongoing*** injuries in that they were deterred from engaging in core aspects of their daily lives.

This type of deterrence is precisely the kind of injury the Supreme Court recognized as sufficiently concrete and imminent in *Laidlaw*. There, the defendant was unlawfully discharging pollutants into a waterway when the complaint was filed. *Friends of the Earth, Inc. v. Laidlaw Env’t Servs., Inc.*, 528 U.S. 167, 176 (2000). Environmental associations established standing for injunctive relief based on allegations that their members were deterred from frequenting the waterway in light of “members’ reasonable concern” about the negative effects of the pollutants. *Id.* at 183-84. The Court rejected the notion that plaintiffs had to prove that they would in fact be harmed by the pollutants; rather, the increased risk of harm reasonably led members to forgo use of the river, and such deterrence was a

concrete harm. *Id.* at 181. The Court found “nothing ‘improbable’” nor unreasonable about the members’ withdrawal from the waterway in light of their environmental concerns. *Id.* at 184; *see also Nat. Res. Def. Council v. EPA*, 542 F.3d 1235, 1245 (9th Cir. 2008) (applying *Laidlaw’s* deterrence theory to find standing); *Atay v. Cnty. of Maui*, 842 F.3d 688, 697 (9th Cir. 2016) (allegations that plaintiff’s “feared risk of harm” was sufficient to show injury, given the waterway had “been polluted by pesticide-laden storm runoff . . . in the past”); *cf. Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 153-55 (2010) (farmers established standing for injunctive relief based on measures taken to avoid risk of harm to their crops due to deregulation, despite lack of proof that *their* crops would certainly be impacted); *Gingery v. City of Glendale*, 831 F.3d 1222, 1227 (9th Cir. 2016) (applying *Laidlaw’s* deterrence theory outside environmental context).

Plaintiffs are similarly deterred here. The District Court found that, at the time the Complaint was filed, Defendants had ongoing, likely unlawful practices of stopping and arresting Latinos, farm workers, and day laborers at locations where they live, work, and travel. *See* 1-ER-077;1-ER-084-85. In the face of such ongoing operations, Plaintiffs and UFW members (who are Latino, farmworkers, and day laborers) were “reasonabl[y] concern[ed]” that they would be harmed by Defendants’ unrestrained, unlawful practices while going about their daily lives given that they fit the precise profile that Defendants’ practices targeted. *See, e.g.,*

2-ER-345 (plaintiff noting he “feel[s] too scared to go to the store where [he] was arrested,” and “feel[s] nervous just walking around in [his] neighborhood”). Such practices have deterred Plaintiffs and UFW members from engaging in core aspects of their daily lives—changing jobs, avoiding school engagement, and withdrawing from community and commercial spaces. *See, e.g.*, 2-ER-307-308.

Plaintiffs need not prove that they *will* certainly be subject to unconstitutional stops or seizures if they resume their daily activities; they need only show that they withdrew from daily life based on “reasonable concerns.” *See Laidlaw*, 528 U.S. at 181, 183-84; *Monsanto*, 561 U.S. at 153-55 (farmers did not need to show certain impact to their crops to recover for avoidance costs). That chilling of daily activities is itself a concrete, continuing injury under *Laidlaw*. *See* 528 U.S. at 184; *EPA*, 542 F.3d at 1245; *Atay*, 842 F.3d at 697; *Gingery*, 831 F.3d at 1227. Thus, Plaintiffs have standing based on their *ongoing* harms.

3. Plaintiff UFW has also established associational standing.

Plaintiff UFW has also established standing to bring claims on behalf of its members. An association establishes standing to bring suit on behalf of its members when: “(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization’s purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.” *Students for Fair Admissions*,

Inc. v. President & Fellows of Harvard Coll., 600 U.S. 181, 199 (2023). UFW readily satisfies—and the Defendants do not contest—the last two elements. Instead, Defendants appear to contend that UFW lacks standing because it has not sufficiently established an injury-in-fact for its members. Not so.

To show that its members have standing to sue in their own right, an organization need only demonstrate that at least one of its members has suffered an injury-in-fact. *California Rest. Ass’n v. City of Berkeley*, 89 F.4th 1094, 1099 (9th Cir. 2024). UFW has demonstrated that its members satisfy the injury requirement for the same reasons discussed above for the individual plaintiffs, *i.e.*, UFW members face an increased risk that their rights will be violated in a future raids pursuant to Defendants’ unlawful practices that specifically target farm workers and they face ongoing deterrent harm, refraining from enjoying activities of their daily lives due to the fear of indiscriminate raids. *See* 2-ER-306-09.

The specific experiences of UFW members Alicia, Benjamin, Carlos, Fernando, and Gabriela demonstrate the harm and ongoing fear felt across the UFW membership. 1-ER-017-18; 2-ER-309-14. For instance, Latina UFW members, such as Alicia and Gabriela, who have jobs in agriculture within the Eastern District, cannot avoid frequenting the locations targeted by Defendants’ ongoing operations due to their occupations. Thus, Defendants’ practices inherently “increase[] the threat of future harm to [the association plaintiffs’]

members.” *See City of Berkeley*, 89 F.4th at 1100; *Fla. State Conf. of N.A.A.C.P. v. Browning*, 522 F.3d 1153, 1163 (11th Cir. 2008) (finding associational standing for prospective relief where it was “highly unlikely—even with only a one percent chance of rejection for any given individual—that not a single [association] member will have his or her application rejected”).

Defendants urge that under *Summers v. Earth Island Institute*, 555 U.S. 488, 498 (2009), “statistical probabilities” do not suffice. OB 27. But UFW does not rely on speculative “statistical probabilities.” While the density and demographics of UFW’s membership certainly *do* make it probable that UFW members will be targeted by Defendants in the future, UFW has nonetheless identified *specific* members, including Alicia, Benjamin, Carlos, Fernando, and Gabriela, who personally have suffered, and continue to face a substantial risk of suffering, due to the unlawful stops and arrests given they fit the precise profile targeted by Defendants’ unlawful practices. *See* 2-ER-309-14.

B. The District Court did not abuse its discretion when finding a likelihood of irreparable harm to Plaintiffs.

The District Court found that Plaintiffs established a practice of Fourth Amendment and § 1357 violations and concluded that Plaintiffs were likely to succeed on those claims. 1-ER-077. These holdings—which Defendants do not challenge on appeal—independently satisfy *Winter*’s requirement that Plaintiffs demonstrate a likelihood of irreparable harm. *See Riley’s Am. Heritage Farms v.*

Elsasser, 32 F.4th 707, 731 (9th Cir. 2022) (“[E]vidence of an ongoing constitutional violation (i.e., a policy or practice) satisfies the [irreparable harm requirement for an injunction].”); *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017) (“[I]t follows inexorably from [a] conclusion that the government’s current policies are likely unconstitutional . . . that Plaintiffs have also carried their burden as to irreparable harm.”); *Baird v. Bonta*, 81 F.4th 1036, 1040 (9th Cir. 2023) (“If a plaintiff in [a constitutional] case shows he is likely to prevail on the merits, that showing usually demonstrates he is suffering irreparable harm no matter how brief the violation.”).

Border Patrol’s unlawful stop and arrest practices separate families, disrupt communities, left the Plaintiffs and class members living in constant fear, and violated the Plaintiffs’ and class members’ constitutional rights. 1-ER-068 (summarizing record); 1-ER-086 (finding constitutional rights violation). Defendants do not dispute that these harms are legally cognizable. OB 35-38. Nor do Defendants dispute Border Patrol’s repeated public statements expressing its intent to repeat “Operation Return to Sender” in Bakersfield and throughout the Eastern District. 1-ER-083-85; 2-ER-189-226. Defendants could have disclaimed that intent by submitting their own evidence, but they did not. 1-ER-084 (noting evidence of future intent was “uncontroverted”). And Defendants do not dispute that Plaintiffs’ daily lives place them within the dragnet of Border Patrol’s

unlawful practices. For example, Ms. Aguilar Mejia, who Border Patrol agents pulled over and arrested, lives in Bakersfield and cannot avoid driving through the areas that Border Patrol targeted. 2-ER-356-57. Mr. Munguia Esquivel still has to go to the Home Depot where Border Patrol stopped and arrested him. 2-ER-352. Plaintiff Morales Cisneros cannot avoid running errands in Bakersfield or change the color of his skin. 2-ER-345.

Instead, Defendants recycle their failed standing argument to contest irreparable harm. Citing no evidence, Defendants claim that Plaintiffs are not likely to fall victim to Defendants' unlawful conduct again, and thus, will not be harmed again. Defendants have not shown the District Court's decision was illogical, implausible, or without support, and cannot meet the applicable abuse of discretion standard. *See Pimentel*, 670 F.3d at 1105.

This case is not like *Hodgers-Durgin v. De la Vina*, which challenged allegedly unlawful vehicle stops by Border Patrol in Arizona. 199 F.3d 1037, 1039 (9th Cir. 1999) (en banc). In *Hodgers-Durgin*, unlike this case, there was no finding of an officially authorized pattern of unlawful behavior. 199 F.3d at 1044. And in *Hodgers-Durgin*, the plaintiffs drove hundreds of miles across the region every week, saw Border Patrol agents nearly every day, and yet were stopped only once in ten years. *Id.* at 1039. Unlike in *Hodgers Durgin*, Border Patrol has been under a preliminary injunction barring the challenged conduct for most of the time

the suit has been pending. The challenged conduct is also meaningfully different. In this case, Border Patrol agents swarmed a community, engaged in widespread practices of constitutional and statutory violations, and publicly expressed their intent to return and repeat the same conduct. 1-ER-068, 1-ER-076, 1-ER-083-85; 2-ER-200-06; 2-ER-218-24.

Indeed, like in *LaDuke*, Defendants repeatedly and consistently “avowed [their] future intent” to replicate Operation Return to Sender, which further supports a finding of irreparable harm. *See* 762 F.2d at 1330 (“The likelihood that class members will suffer prospective injury is buttressed not only by the defendants’ past conduct but also by the defendants’ avowed future intent.”); 2-ER-200-04; 2-ER-218-20.

Defendants’ claim that the District Court relied on a single statement to find a likelihood that Border Patrol had imminent plans to continue its unlawful conduct. OB 37. Even if true, Defendants do not explain why that would be an abuse of discretion. But it is also wrong. The District Court relied on several of Border Patrol’s own unequivocal statements, including that it: “continue[s] to field dozens of Border Patrol Agents in Kern County and surrounding area” and “we will try and catch even more next time.” *See* 1-ER-084-85; 2-ER-200-24; *see also supra*, Section II.B.

Moreover, Defendants’ statements expressed a commitment to performing

these operations unlawfully, explaining that they will arrest anyone they encounter that doesn't have proper documentation regardless of flight risk. *See* 1-ER-84; 2-ER-224. Because Defendants' own representations demonstrate that—absent court order—they intended to continue unlawful stop and arrest practices in the Eastern District, “it [is] reasonable for the district court to conclude that the Plaintiffs faced a real possibility that they w[ill] again be stopped or detained[.]” *See Melendres*, 695 F.3d at 1002.

Defendants' “musters” do not alter this conclusion. *See* OB 36, 38. As a threshold matter (and discussed below), Defendants' Reasonable Suspicion Muster and post-injunction, extra-record evidence are not properly before this Court. *See infra*, Section VI.C.2. This Court has recognized only limited exceptions to its general rule that the Court may not consider new facts on appeal unless it has granted a motion to supplement the record. *See Lowry v. Barnhart*, 329 F.3d 1019, 1024 (9th Cir. 2003) (noting narrow circumstances where extra-record evidence is considered). The irreparable harm analysis is not such an exception. *Id.*

Regardless, purportedly voluntary cessation of a challenged practice does not necessarily mitigate irreparable harm. *See Boardman v. Pac. Seafood Grp.*, 822 F.3d 1011, 1023 (9th Cir. 2016) (affirming irreparable harm finding where defendant had terminated the challenged merger). When 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, and, in some cases, the character of the past violations.” *United States v. W. T. Grant Co.*, 345 U.S. 629, 633 (1953); *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 never acknowledged “the wrongful nature” of their practices; they characterize their musters as merely their response to “inconsistent enforcement.” OB at 29. The “character of the[ir] past violations” was egregious: Border Patrol agents stopped U.S. citizens and lawful 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. *See, e.g.*, 2-ER-348-49; 2-ER-320-21; 2-ER-309-10, 2-ER-312; 2-ER-355-56; 2-ER-316-17. And this Court has every reason to doubt Defendants’ “bona fides” given their refusal to unequivocally repudiate their past violations and, should the Court consider supplemental evidence, their ongoing conduct.⁸ *See* 1-ER-081; 1-SER-098; 1-SER-104; 1-SER-016, 14:12-19; 1-SER-027, 25:8-11. The District Court

⁸ Defendants improperly rely on post-injunction evidence to oppose irreparable harm. As discussed in Plaintiffs’ Motion to Supplement, the Court should disregard that evidence. If considered, the Court should likewise consider Plaintiffs’ extra-record evidence showing that Defendants’ illegal activities have continued within the District *despite* the PI Order. *See generally*, Plaintiffs’ Mot. to Supplement; Volume 2 SER.

did not abuse its discretion finding irreparable harm.

C. Plaintiffs' claims are not moot.

Defendants fail to satisfy their burden of showing that Plaintiffs' claims are moot simply because Border Patrol issued two "musters" purporting to address the considerations agents should follow when conducting warrantless arrests and detentive stops.

A party asserting mootness "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). That only occurs "when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." *L.A. Cnty. v. Davis*, 440 U.S. 625, 631 (1979). Even if a party demonstrates that the defendants have voluntarily ceased the challenged conduct, that "does not ordinarily render a case moot[.]" *Bell v. City of Boise*, 709 F.3d 890, 898 (9th Cir. 2013)). "It is exceedingly rare . . . for a defendant's voluntary termination of allegedly wrongful activity to" result in a finding of mootness. *LGS Architects, Inc. v. Concordia Homes of Nevada*, 434 F.3d 1150, 1153 (9th Cir. 2006).

To the extent voluntary cessation is shown, a defendant carries 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.* (quoting *Laidlaw*, 528 U.S. at 170) (emphasis in original); *see also Trinity*

Lutheran Church of Columbia, Inc. v. Comer, 582 U.S. 449, 457 n.1 (2017). In other words, Defendants must present evidence “demonstrat[ing] that the change [in behavior] is ‘entrenched’ or ‘permanent.’” *Fikre v. FBI*, 904 F.3d 1033, 1037, 1039 (9th Cir. 2018).

This Circuit considers several factors when evaluating voluntary cessation through changes in policy, many of which are discussed in *Rosebrock v. Mathis*, 745 F.3d 963, 971 (9th Cir. 2014). Mootness requires, for example, that “the new policy address[] *all* of the objectionable measures [the] officials took against the plaintiffs.” *Bell*, 709 F. 3d at 900. There must be “procedural safeguards insulating the new state of affairs from arbitrary reversal.” *Fikre*, 904 F.3d at 1039; *see also McCormack v. Herzog*, 788 F.3d 1017, 1024 (9th Cir. 2015) (“[A]n executive action that is not governed by any clear or codified procedures cannot moot a claim”), *abrogated on other grounds by Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022). Likewise, a finding of mootness is less likely where a policy change is not “broad in scope and unequivocal in tone,” has been in place for a short period of time, and where “similar” conduct has occurred after its adoption. *Rosebrock*, 745 F.3d at 971-72; *Fikre*, 904 F.3d at 1038.

Here, Defendants argue mootness based on both pre- and post-injunction evidence. OB 28-29. They argue that the District Court incorrectly rejected their mootness argument based on the April 2025 Warrantless Arrest Muster published

three days prior to their opposition to Plaintiffs’ motion for preliminary injunction. *Id.* According to Defendants, that muster moots Plaintiffs’ claims because it “broadcast[ed] to its agents the law applicable” to “traffic stops and reasonable suspicion, factors to consider when assessing flight risk” and “how agents should document” warrantless arrests. OB 29, 31.

Defendants also argue that the claims are mooted by extra-record evidence that post-dates the District Court’s preliminary injunction order—including Border Patrol publishing a “Second Muster” regarding reasonable suspicion (hereafter, the “Reasonable Suspicion Muster”) to comply with the order. *Id.* at 29. Defendants assert that the second muster “broadcast[ed] to its agents” the “factors to consider when assessing reasonable suspicion.” OB 29, 31. Neither Defendants’ pre- or post-injunction evidence moots Plaintiffs’ claims.

1. The District Court correctly held that the April 2025 Warrantless Arrest Muster did not moot this case.

Under the relevant factors, *see Fikre*, 904 F.3d at 1037-39; *Rosebrock*, 745 F.3d at 971-72, the District Court correctly held that Defendants’ Warrantless Arrest Muster does not make it “absolutely clear” that the alleged behavior “cannot reasonably be expected to recur.” *Laidlaw*, 528 U.S. at 170; 1-ER-077-83.

First, the Warrantless Arrest Muster is not “broad in scope and unequivocal in tone” and does not address “all of the objectionable measures” at issue. *Fikre*, 904 F.3d at 1039. The Warrantless Arrest Muster, at best, relates the “law

applicable” to warrantless arrests, OB 31, and does not address the core behavior underlying Plaintiffs’ allegations. *See Laidlaw*, 528 U.S. at 170 (precluding mootness unless “it is **absolutely** clear that the allegedly wrongful **behavior** could not reasonably be expected to recur” (second emphasis added)). In fact, Defendants conceded at oral argument below that the muster is “not focused on addressing the allegations—or the past conduct of Border Patrol agents.” 1-ER-082; 1-SER-016, 14:12-19; 1-SER-027, 25:8-11. For example, one of Plaintiffs’ core allegations is that it is unlawful to conduct dragnet stops of large numbers of Latinos, farm workers, and day laborers indiscriminately without individualized reasonable suspicion that they are violating an immigration law. 3-ER-364, 3-ER-404-05. But the muster does not address specific conduct (or most stops at all). As the District Court found, Defendants have refused to “unambiguously renounce” the challenged conduct, *id.*, indicating that it may “easily” recur, *Flores v. Bennett*, No. 22-16762, 2023 WL 4946605, at *1 (9th Cir. Aug. 3, 2023); 1-ER-082. The Warrantless Arrest Muster does not unequivocally forbid the challenged behavior.

Moreover, as the District Court found, the muster is incomplete: it only addresses vehicle stops, and not “detentive stops by foot patrols.” 1-ER-080-82; 2-ER-150-52. It also lacks guidance on **how** agents should determine reasonable suspicion. *See* 1-ER-152. The District Court also correctly found that the language of the muster is equivocal: the muster is patterned off a “Broadcast Statement of

Policy” that Defendant Department of Homeland Security (“DHS”) adopted as part of a settlement in *Nava v. DHS*, No. 18-cv-3757 (N.D. Ill.). But in place of the *Nava* policy’s mandatory language (“must”) requiring that agents document the “facts and circumstances” of warrantless arrests, the muster uses a more relaxed “should” standard. *Compare* 2-ER-150-52 with 2-ER-299-301; 1-ER-080.⁹

Second, Defendants identify no “procedural safeguards” against rescinding, revising, or ignoring the muster. *Fikre*, 904 F.3d at 1039. In *Bell*, this Court held that “the ease with which the Chief of Police” of a town could alter a “Special Order” issued to his department “counsels against a finding of mootness.” 709 F.3d at 900; *McCormack*, 788 F.3d at 1025 (“[A]n executive action that is not governed by any clear or codified procedures cannot moot a claim”); *see also United States v. W. T. Grant Co.*, 345 U.S. 629, 632 (1953) (mootness not justified if a party is “free to return to his old ways”). As the District Court found, the Warrantless Arrest Muster is an “internal policy” that can be withdrawn without any procedural barriers. 1-ER-081. Indeed, soon after Defendants issued their muster, Plaintiffs requested that the parties enter a stipulation to keep the muster in place during the

⁹ Defendants cite cases noting that “should” can sometimes entail a mandatory obligation, OB at 33, but Defendants offer no evidence that “should” language is treated as mandatory by Border Patrol agents, especially when placed in contrast to mandatory “must” language used elsewhere in the musters and in the DHS Broadcast Statement of Policy. 1-ER-079.

litigation, but Defendants refused, indicating that the muster is not permanent.¹⁰

See 1-SER-098; 1-SER-104.

Third, “the promulgation of a new policy” is insufficient to show mootness where there are “no *facts* to support” changed behavior. *Gluth v. Kangas*, 951 F.2d 1504, 1507 (9th Cir. 1991). Defendants presented no evidence of changed behavior to the District Court. Indeed, Border Patrol had not completed training of agents on the Warrantless Arrest Muster when the District Court issued the preliminary injunction. 1-ER-081 n.15; 1-SER-018-19, 16:20-17:3; 1-SER-029, 27:20-21. Moreover, the District Court correctly held that such training, characterized by Border Patrol as a “refresher” on prior trainings, 2-ER-155, “offer[s] little support to find mootness” because Border Patrol’s unlawful conduct occurred *despite* long-standing and “well-established” Fourth Amendment and § 1357(a)(2) law. 1-ER-083 (emphasis in original).

Fourth, the muster had been in place less than a month, “render[ing] it impossible for the [District] Court to find that the terms of the Muster are now ‘entrenched’ in the practices of Border Patrol’s El Centro Sector.” 1-ER-081 (citing *Fikre*, 904 F.3d at 1033); *A.O. v. Cuccinelli*, 457 F.Supp.3d 777, 789 (N.D.

¹⁰ While courts will presume that the government acts in good faith, “promises to refrain from future violations, no matter how well meant, are not sufficient to establish mootness.” *TRW, Inc. v. F.T.C.*, 647 F.2d 942, 953 (9th Cir. 1981).

Cal. 2020) (six months insufficient); *ArcBest II, Inc. v. Oliver*, 593 F. Supp. 3d 957, 966 (E.D. Cal. 2022) (less than one year insufficient). A period of multiple years usually accompanies an entrenched policy. *See Rosebrock*, 745 F.3d at 973 (three years with no violations); *Am. Diabetes Ass'n v. United States Dep't of the Army*, 938 F.3d 1147, 1153 (9th Cir. 2019) (two years with no violations).¹¹

Based on these factors, the District Court correctly found that the Warrantless Arrest Muster did not moot Plaintiffs' claims. 1-ER-077-83. Rather than contest those findings on the record before the District Court, Defendants argue that *Rosebrock* created a categorical rule that changes in policy purporting to address "inconsistent enforcement" moots a claim challenging unlawful behavior. OB 30-32. Defendants misunderstand *Rosebrock*. There, the case was mooted because the government issued a "clear" and "unequivocal" directive to stop the posting of any material, and the undisputed evidence on appeal (after summary judgment) showed that the police "strictly enforce[ed]" that rule for three years. *Id.* at 970, 973.

Here, unlike the clear directive in *Rosebrock*, the Warrantless Arrest Muster

¹¹ Even in this short time after the muster issued, Border Patrol had also engaged in conduct "similar to that challenged." *Rosebrock*, 745 F.3d at 972. Even though outside the Eastern District, the District Court found that on April 22, 2025, Border Patrol had raided a Home Depot in Pomona with tactics that appeared to bear "striking similarity to 'Operation Return to Sender.'" 1-ER-084; 1-SER-069-96.

does not unequivocally address all of the alleged behavior—it does not discuss the alleged Border Patrol agent behavior at issue or even purport to cover detentive stops on foot. 2-ER-299-301. And unlike *Rosebrock*, this case is in its early phases with discovery at its start, the muster has been in place only a short time, and even in that short period, similar conduct has occurred. Also, while the *Rosebrock* court found no *policy* of violating the law, *Rosebrock*, 745 F.3d at 968 n.4, the District Court found an ongoing “pattern and practice” of violations, 1-ER-077; 1-ER-083-85; *see also* 1-ER-410-11 (policy allegations). Defendants’ Warrantless Arrest Muster does not make it “absolutely clear” that the alleged behavior could not reasonably be expected to recur. *Laidlaw*, 528 U.S. at 170; 1-ER-082-83.

2. Defendants’ post-injunction evidence does not moot Plaintiffs’ claims.

Failing to show mootness on the record on appeal, Defendants turn to evidence of Defendants’ purported compliance with the preliminary injunction to argue that Plaintiffs’ claims are moot. *See* 1-ER-091-129. Defendants point to Border Patrol’s (1) issuance of another muster addressing the standard for reasonable suspicion—the June 2025 Reasonable Suspicion Muster or the “Second Muster” (2-ER-128); (2) three post-PI declarations regarding “training” of Border Patrol agents (2-ER-121-25); and (3) and “adher[ence]” to that “guidance and training,” OB 28-29, 34-35—all actions that the preliminary injunction required. 1-ER-086-87. This evidence cannot satisfy Defendants’ burden.

a. The Court should disregard the post-injunction evidence.

Defendants' post-injunction evidence is improper. Except in "unusual" circumstances, the Court "consider[s] only the district court record on appeal." *Lowry*, 329 F.3d at 1024. A party may not "unilaterally supplement the record on appeal" and instead must "proceed by motion or formal request." *Id.* at 1024-25.

While Defendants may claim that extra-record evidence is allowed because it "raise[s] a question of mootness," *id.* at 1024, as discussed below, no mootness question is raised by the evidence Defendants seek to add because it concerns partial compliance with a preliminary injunction, not "voluntary" cessation, *see Flores v. Bennett*, 675 F. Supp. 3d 1052, 1059 (E.D. Cal. 2023), *aff'd by Flores*, 2023 WL 4946605, at *1; *cf. All. for the Wild Rockies v. Petrick*, 68 F.4th 475, 486 (9th Cir. 2023) (total compliance with a judgment does not moot case "unless it is not possible to take any effective action to undo the results of compliance"). Even if the record could have been supplemented, Defendants failed to proceed by "motion or formal request" and instead "unilaterally" supplement[ed]" the Excerpts of Record. *See Lowry*, 329 F.3d at 1024-25. The Court should disregard this evidence. *See id.* at 1025-26.

If the Court excuses this procedural default, because Defendants omit significant post-injunction information that undermines Defendants' mootness argument, the Court should grant Plaintiffs' motion to supplement the record to

consider all relevant facts on appeal. *See* Plaintiffs’ Motion to Supplement Record.

b. Defendants do not meet their burden with post-injunction evidence.

Even if Defendants’ extra-record evidence is considered, the events following the District Court’s injunction—which were never considered below—do not demonstrate mootness. As mentioned, Defendants’ new evidence, at most, reflects that the preliminary injunction is necessary to avoid further unlawful stops and arrests. Courts reject mootness based on changes in conduct occurring “*because of* [] Court-imposed requirements” where a “civil contempt finding” may apply. *Flores*, 675 F. Supp. 3d at 1059; *cf. Courthouse News Serv. v. Planet*, 947 F.3d 581, 598 n.10 (9th Cir. 2020) (rejecting mootness where “[n]othing other than the injunction in this litigation prevent[ed]” a return to the challenged policy).

Here, the June 2025 Reasonable Suspicion Muster issued because the District Court required Border Patrol to issue “guidance [for] Border Patrol agents concerning how they should determine whether ‘reasonable suspicion’ exists.” 1-ER-088. Most of Defendants’ training of Border Patrol agents (other than the partial training on the Warrantless Arrest Muster, 1-ER-081) and their supposed “adherence” to that “guidance and training,” OB 33-35, occurred *because* the District Court ordered training and adherence. 1-ER-088-89. This evidence does not show that, absent the injunction, Border Patrol’s practices have changed.

Even if properly considered, Defendants’ post-injunction evidence is

insufficient to meet their burden. The Reasonable Suspicion Muster (2-ER-128) is not “broad and unequivocal,” and does not address or “unambiguously renounce” “all the challenged behavior.” *See Fikre*, 945 F.3d at 1039. As with the Warrantless Arrest Muster, it says nothing about the core alleged behavior at issue, including that it is unlawful to stop large numbers of Latinos, farm workers, and day laborers just because they are driving in Latino agricultural areas or standing in Home Depot parking lots. *See, e.g.*, 3-ER-364-65, 3-ER-404-06.¹² On the other *Rosebrock* factors, Defendants still offer no evidence of “procedural safeguards” against withdrawal of the musters. *Fikre*, 945 F.3d at 1039.¹³ While Defendants rely on additional declarations claiming that that El Centro agents received training on both musters, 1-ER-121-27, those sparse accounts are too vague to evaluate the scope, content, and thoroughness of the training.¹⁴ *See* 1-ER-083 (rejecting

¹² The parties are actively litigating whether the Reasonable Suspicion Muster presents an accurate statement of the Fourth Amendment analysis or adequately addresses the challenged practices in pending motions before the District Court. 2-ER-091-121. For example, the muster suggests using “mode of dress or haircut” as a factor instead of apparent ethnicity. 2-ER-128-29. Plaintiffs contend that is insufficient guidance because using characteristics that “cast suspicion on large segments of the law abiding population” has minimal probative value. *United States v. Manzo-Jurado*, 457 F.3d 928, 935 (9th Cir. 2006).

¹³ In the *Nava* case, Defendant DHS tried to “rescind” the obligations of the warrantless arrest musters in June 2025. 2025 WL 2842146, at *22. That attempt was only ineffective because the policy was within an enforceable judgment. *Id.*

¹⁴ Defendants’ declarations also indicate that not all El Centro Border Patrol agents have received the required training. 2-ER-121-29.

Defendants’ arguments that training pursuant to the April 2025 muster was sufficient to moot case). And only a few months have elapsed since the musters went into effect, unlike the multi-year periods where an entrenched policy was found. *See, e.g., Rosebrock*, 745 F.3d at 968.¹⁵

c. Defendants ignore post-injunction evidence that demonstrates they have not mooted Plaintiffs’ claims.

Defendants’ selective presentation of post-injunction events ignores significant evidence undermining their claims. Despite the musters, Border Patrol agents have continued behavior “similar to that challenged” in the Eastern District. *Rosebrock*, 745 F.3d at 972; *see also Conservation Cong. v. U.S. Forest Serv.*, 720 F.3d 1048, 1053–54 (9th Cir. 2013) (rejecting defendants’ mootness argument where “defendants continue precisely the behavior [plaintiff] challenges”); *Davis v. New York*, 316 F.3d 93, 99 (2d Cir. 2002) (rejecting mootness where the plaintiff “assert[ed] that the policy is not being enforced”).

Soon after Defendants issued the Reasonable Suspicion Muster, on July 17, 2025, Border Patrol returned to the Eastern District with conduct that mirrored January’s “Operation Return to Sender.” 2-ER-200-05; 2-SER-179-81; 2-SER-

¹⁵ Defendants’ musters and training are subject to ongoing discovery in the District Court. 2-SER-114 ¶ 2. To the extent the Court does not find that Defendants have simply failed to satisfy their burden, it should, at least, allow additional discovery before deciding mootness. *See Wells Fargo & Co. v. Wells Fargo Exp. Co.*, 556 F.2d 406, 430 n.24 (9th Cir. 1977) (“[D]iscovery . . . should be granted where pertinent facts bearing on the question of jurisdiction are controverted”).

185-86; 2-SER-207-08; 2-SER-212-13. As shown by sworn declarations of three witnesses, Border Patrol agents swarmed Latino-presenting people in a Home Depot parking lot, like Filiberto de Jesus Rivera-Molina, commanded them to stop, and demanded their “papers.” 2-SER-212-13. They grabbed Isael Mazariegos from behind without warning as he was talking to a friend in the parking lot. 2-SER-207. Border Patrol agents stopped Selvin Mejia Diaz, a high school student, as he was walking through a residential neighborhood blocks away from the Home Depot only because he was a Latino in the general vicinity. 2-SER-179-80; 2-SER-185-86. Border Patrol agents then arrested people without evaluating flight risk or asking any of the questions contemplated by the Warrantless Arrest Muster. 2-SER-207-08; 2-SER-179-80; 2-SER-185-86. To be clear, this Court need not wade into the factual disputes regarding the events of this Sacramento raid nor whether Border Patrol’s conduct was, in fact, unlawful,¹⁶ as those are issues to be addressed by the District Court through currently pending motions¹⁷ or at trial. However, this conduct “similar to that challenged” demonstrates that a live dispute remains. *See*

¹⁶ Any claim that Defendants changed tactics due to the musters or the PI Order should be viewed skeptically because the Government reportedly fired a U.S. Attorney when she reminded Bovino in advance of the Sacramento raid of Defendants’ legal obligations under the preliminary injunction. 2-SER-145-46.

¹⁷ Issues related to the Sacramento raid are before the District Court as part of (1) Plaintiffs’ opposition to Defendants’ motion to dismiss raising substantially similar mootness grounds as those here (USDC Dkt. 64), and (2) Plaintiffs’ motion to enforce the preliminary injunction (1-ER-091-120).

Rosebrock, 745 F.3d at 972.

Defendants' post-injunction public statements further undermine their claim that the musters have corrected Border Patrol's practices. Soon after the District Court injunction, federal officials created a quota of 3,000 immigration arrests per day, incentivizing the kind of indiscriminate practices that were enjoined. 2-SER-192. Then, in October 2025, mirroring the approach he took in leading "Operation Return to Sender," Defendant Bovino said that his goal in conducting immigration raids in Chicago was to arrest "all" "illegal aliens" and that Border Patrol would act with "reckless abandon," ignoring the required totality-of-the-circumstances analysis. 2-SER-139-40. That same month, Defendant DHS stated in an official press release, which Bovino repeated in an interview, that only "reasonable suspicion" is necessary for arrests, 2-SER-152; 2-SER-176, undermining the probable cause standard stated in the Warrantless Arrest Muster and required by § 1357(a)(2). These practices have led to other lawsuits throughout the county where courts have similarly found that Defendants are not complying with probable cause requirements in conducting indiscriminate raids. 2-SER-116-18; *Cf. Escobar Molina v. DHS.*, No. 25-3417 (BAH) 2025 WL 3465518, at *23-*27 (D.D.C. Dec. 2, 2025) (finding likelihood of success on the merits of showing practice of "making warrantless civil immigration arrests without the requisite probable cause findings" in violation of § 1357(a)(2)); *Ramirez Ovando v. Noem*, No. 1:25-cv-

03183-RBJ, 2025 WL 3293467 (D. Colo. Nov. 25, 2025); *Castanon-Nava v. DHS*, No. 25-3050, 2025 WL 3552514 (7th Cir. Dec. 11, 2025).

Federal officials have likewise publicly undermined the Fourth Amendment requirement for reasonable suspicion. In an interview with the *New York Times* in November 2025, after Border Patrol was about to move from raids in Chicago to raids in Charlotte and New Orleans, Bovino confirmed that ethnicity “could be” an articulable factor for reasonable suspicion, 2-SER-131-33; compare *Montero-Camargo*, 208 F.3d at 1135, and that the challenged raids were the “model” going forward, 2-SER-128. These statements undermine any claim that the musters have changed the alleged behavior.

In sum, Defendants’ extra-record evidence does not make it “absolutely clear” that the challenged behavior will not recur. *Laidlaw*, 528 U.S. at 170.

D. Defendants’ challenge to the scope of the District Court’s injunction is forfeited and fails to show an abuse of discretion.

Defendants seek to overturn the preliminary injunction as an impermissibly vague “follow-the-law” injunction under Rule 65(d), but their arguments attack only two of the seven paragraphs in the injunction order attached to the District Court’s 85-page opinion. OB 38-41; 1-ER-087-89. The rest of the injunction thus must remain in place regardless of their Rule 65(d) challenge. As to the two provisions Defendants challenge, their vagueness argument fails because they waived the issue below and it otherwise lacks merit.

As a threshold matter, Defendants forfeited their Rule 65(d) challenge to the injunction's terms by failing to raise it below. With their motion for preliminary injunction, Plaintiffs submitted a proposed order with terms that mirror the language Defendants challenge here. 1-SER-106-08. Defendants did not challenge those provisions as vague, although they had the opportunity to do so in briefing and during oral argument. *See, generally*, 2-ER-130-156; 1-SER-003-68. Defendants have thus waived any such challenge on appeal. *See Armstrong v. Brown*, 768 F.3d 975, 981–82 (9th Cir. 2014) (failure to challenge proposed modification to injunction terms before district court waived issue on appeal).

Regardless, the provisions Defendants challenge comply with Rule 65(d). That rule is about notice. An order meets its requirements if it provides “fair and well-defined notice of what the injunction prohibits.” *Transgo, Inc. v. Ajac Transmission Parts Corp.*, 768 F.2d 1001, 1022 (9th Cir. 1985). An order runs afoul of Rule 65(d) only when it is “too vague to be understood.” *Portland Feminist Women’s Health Center v. Advocates for Life, Inc.*, 859 F.2d 681, 685 (9th Cir. 1988). That is a high bar, and this Court will set aside an injunction only if it is so vague that it has “no reasonably specific meaning.” *Melendres v. Skinner*, 113 F.4th 1126, 1140 (9th Cir. 2024). There is no basis to do so here, where the District Court struck a careful balance between describing what Defendants must do to comply with the injunction while not micromanaging Defendants “with

explicit instructions on the appropriate means to accomplish [its] directive[s].” 1-ER-087-89; see *Fortuyne v. Am. Multi-Cinema, Inc.*, 364 F.3d 1075, 1087 (9th Cir. 2004).

The provisions Defendants contest “describe in reasonable detail . . . the acts they restrain[,]” and thus, satisfy Rule 65(d). Fed. R. Civ. Proc. 65(d). The first contested paragraph requires Border Patrol agents to establish reasonable suspicion that a person is present in the United States in violation of the immigration laws before detentive stops. 1-ER-087. The second paragraph requires agents to establish probable cause that a person is likely to escape before arresting without a warrant. *Id.* The District Court ordered these remedies based on findings that Defendants had a practice of failing to conduct the requisite evaluation under both standards. 1-ER-054, 1-ER-059, 1-ER-061; 1-ER-077; cf. *Reno Air Racing Ass’n, Inc. v. McCord*, 452 F.3d 1126, 1133-34 (9th Cir. 2006) (challenged provisions must be read “in light of the circumstances surrounding [the order]’s entry”).

These specific provisions are far from the injunction terms struck for vagueness in the cases Defendants cite. OB 39-40. For example, in *Schmidt v. Lessard*, the challenged injunction prohibited defendants from “enforc[ing] . . . the present Wisconsin scheme” without specifying the meaning of the phrase “the present Wisconsin scheme.” 414 U.S. 473, 474 (1974). In *Vasquez Perdomo*, the stay panel struck a portion of an injunction that created an exception for conduct

“permitted by law” without explaining what conduct would be “permitted by law” and what would not. *Vasquez Perdomo v. Noem*, 148 F.4th 656, 680 (9th Cir. 2025).¹⁸ The challenged provisions in *Schmidt* and *Vasquez Perdomo* are so vague that they did not specify *what* law Defendants must follow.¹⁹ That is not the case here, where the injunction sets forth the standard Defendants must follow. Indeed, this Court has twice upheld functionally identical injunctions to this one. *See Int'l Molders' & Allied Workers' Loc. Union No. 164 v. Nelson*, 643 F. Supp. 884, 903 (N.D. Cal. 1986) *affirmed in relevant part by* 799 F.2d 547, 551 (9th Cir. 1986) (upholding paragraphs 8-9 of injunction prohibiting immigration agents from conducting detentive stops “‘without reasonable, articulable suspicion’ and warrantless arrests without cause); *LaDuke*, 762 F.2d at 1327 (upholding injunction requiring defendants to “adduce articulable suspicion of both alienage and unlawful presence prior to the initiation of detentive stops”).

Defendants’ claim that they cannot follow the requirements in the provisions

¹⁸ Defendants cite *Vasquez Perdomo* for the stay panel’s *dicta* that an order that “simply restates the constitutional requirement of reasonable suspicion” *could* be impermissible. That panel’s conjecture about a hypothetical order has no bearing on the detailed order issued in this case.

¹⁹ The other cases Defendants cite are inapt because they do not evaluate injunctions under Rule 65(d). *Anderson v. Creighton*, 483 U.S. 635, 640 (1987) (discussing the specificity with which a “clearly established” right must be defined in qualified immunity analysis); *Harlow v. Fitzgerald*, 457 U.S. 800, 814 (1982) (same).

they challenge because they do not know what “reasonable suspicion” and “probable cause” will mean in any given case. OB 39-40. Defendants cannot seriously claim ignorance of these fundamental rules, particularly when they have issued “musters” that purport to set forth these very legal standards. OB 28-35. Defendants then protest that the order’s purported “vast and vague scope” will allow “Plaintiffs to monitor each and every immigration stop by Border Patrol [in the Eastern District].” OB 42. But a district-wide injunction of the type here is necessary “to remedy the specific harm alleged”—district-wide unlawful practices. *Lamb-Weston, Inc. v. McCain Foods, Ltd.*, 941 F.2d 970, 974 (9th Cir. 1991). And Defendants’ bare assertion that the single-district preliminary injunction in this case has “disrupt[ed Border Patrol’s] operations, deterr[ed] recruitment, [or] chill[ed] the ardor of current agents” is unsupported by the record. OB 41.

Defendants further complain that “it is impossible . . . to anticipate” what conduct will violate the injunction because the order failed to “specify particular factors” Border Patrol agents are barred from relying on when establishing reasonable suspicion. OB 40. But “there are no magic words that automatically run afoul of Rule 65(d), and the inquiry is context-specific.” *Reno Air Racing Ass’n., Inc.*, 452 F.3d at 1133. The context in *this* order, which requires Border Patrol to set forth detailed guidance explaining factors that agents may not rely on in forming reasonable suspicion, 1-ER 075-77, and how to evaluate probable cause of

flight risk under § 1357(a)(2), 1-ER-299-300, provides precisely the “specific factors” Defendants complain are missing. At bottom, if an injunction is sufficiently specific to provide “fair notice”—as this one does—it is not impermissibly vague under Rule 65(d). *Portland Feminist Women’s Health Center*, 859 F.2d at 685.

The injunction thus complies with Rule 65(d).

E. Defendants’ challenge to the injunction based on 8 U.S.C. § 1252(f)(1) is barred by binding authority.

The District Court correctly held that 8 U.S.C. § 1252(f)(1) does not bar the relief Plaintiffs seek. Section 1252(f)(1) limits lower courts’ authority to issue injunctions that “enjoin or restrain the operation” of statutes codified in a single subchapter of the INA, permitting such injunctions only with respect to individuals in removal proceedings.

As Defendants concede, the preliminary injunction in this case “enjoin[s]” only their behavior under 8 U.S.C. § 1357(a)(2), the statute governing immigration agents’ warrantless arrest authority, which is not covered by § 1252(f)(1). OB 43. Defendants also concede that this Court’s decision in *Gonzalez v. ICE*, which held that § 1252(f)(1) does not apply to injunctions that operate on § 1357, commands the result the District Court reached here. OB 43; 975 F.3d 788, 814 (9th Cir. 2020); *see also Cath. Soc. Servs., Inc. v. INS*, 232 F.3d 1139, 1150 (9th Cir. 2000) (en banc) (same).

Nevertheless, Defendants argue that by enjoining the warrantless arrest provisions at § 1357, the injunction somehow interferes with the “operation” of two unrelated statutes: 8 U.S.C. § 1226, which governs arrest and detention on a warrant, and 8 U.S.C. § 1229, which governs removal proceedings and does not mention arrests at all. OB 42-43.

Defendants cite no authority for their argument, which cannot be squared with this Circuit’s binding precedent. *See Gonzalez v. DHS*, 508 F.3d 1227, 1233 (9th Cir. 2007) (holding that § 1252(f)(1) does not bar injunctions that have collateral effects on covered provisions); *Al Otro Lado v. Exec. Off. for Immigr. Rev.*, 138 F.4th 1102, 1126 (9th Cir. 2025) (same, in denial of rehearing en banc), *cert. granted on other grounds sub nom. Noem v. Al Otro Lado*, No. 25-5, 2025 WL 3198572 (U.S. Nov. 17, 2025). And, in *Garland v. Aleman Gonzalez*, the Supreme Court addressed this Court’s 2007 decision in *Gonzalez* and left its holding undisturbed. 596 U.S. 543, 553 n.4 (2022).

The District Court correctly found that the “collateral effects” of which Defendants complain are “frivolous.” 1-ER-036. Section 1226 covers only enforcement actions “on a warrant,” while § 1357(a)(2) covers only enforcement actions “without warrant.” Defendants do not explain how an injunction on warrantless arrests can interfere with the operation of a statute limited to warrant-based arrests. *See* OB 42-43; 1-ER-036. And § 1229 governs removal proceedings;

it does not mention arrests at all. Defendants do not explain how an injunction requiring that immigration agents establish probable cause of flight risk before effecting a warrantless arrest under § 1357(a)(2) somehow “order[s] federal officials to take or to refrain from taking actions to enforce, implement, or otherwise carry out” the provisions in § 1226 or § 1229. *Garland*, 596 U.S. at 550. Nor can they.

Accordingly, § 1252(f)(1) does not apply.

VII. CONCLUSION

For the foregoing reasons, the Court should affirm the District Court’s order.

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CERTIFICATE OF COMPLIANCE

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CERTIFICATE OF SERVICE

I hereby certify that on December 23, 2025, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

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