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)

DEFENDANTS-APPELLANTS' REPLY BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

Immigration and Nationality Act of 1952, as amended:

REGULATIONS

INTRODUCTION

The Defendants' Opening Brief demonstrated that Plaintiffs lack standing to seek prospective relief, that their claims are moot, and that the injunction is impermissibly vague and overbroad. Plaintiffs' case rests on a small number of alleged unlawful stops and arrests confined to a single three-day period in January 2025.

I. Plaintiffs cannot establish a concrete, non-speculative likelihood that they themselves will again be subjected to unlawful stops or arrests, as Article III requires. Plaintiffs cannot circumvent the imminent-injury requirement by alleging a general pattern or policy of misconduct and their evidence is, in any event, unconvincing under any standard. There has not nearly been a sufficient showing of a concrete likelihood of recurring injury to Plaintiffs to justify District-wide oversight of Border Patrol's operations.

II. Moreover, Plaintiffs' claims are independently moot because Border Patrol voluntarily issued guidance to its agents and initiated training to ensure consistent compliance with governing law. And nothing otherwise reasonably indicates a cognizable danger of recurrent injury.

III. Plaintiffs' arguments underscore that the injunction here cannot stand because it imposes an impermissible "follow the law" mandate invoking the Fourth Amendment without articulating the legal standards Defendants are to follow. Plaintiffs also have no good response to *Perdomo v. Noem*, 148 F.4th 656, 680 (9th Cir. 2025), and their forfeiture argument is meritless.

ARGUMENT

I. Plaintiffs Failed to Establish Standing to Seek Prospective Relief

Standing for prospective relief "does not exist merely because plaintiffs experienced past harm and fear its recurrence." *Noem v. Vasquez Perdomo*, __S. Ct.__, 2025 WL 2585637, at *2 (U.S. Sept. 8, 2025) (Kavanaugh, J., concurring) (citing *City of Los Angeles v. Lyons*, 461 U.S. 95 (1983)). Plaintiffs must show "an objectively reasonable likelihood" of future injury. *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 410 (2013).

Plaintiffs cannot make that showing as a matter of law. Standing is determined by the facts in existence at the time the complaint is filed. *Clark v. Lakewood*, 259 F.3d 996, 1006 (9th Cir. 2006). At the time the complaint was filed, eight individuals alleged a single encounter each

with Border Patrol during a three-day window in early January 2025. No similar events preceded this and no similar events followed it. None of the individuals were stopped again by Border Patrol. No location was visited again by Border Patrol. And those encounters occurred within a district containing roughly eight million residents. Opening Brief at 19. There is, consequently, "no good basis to believe that law enforcement will unlawfully stop [Plaintiffs] in the future . . . and certainly no good basis for believing any stop of the plaintiffs is imminent." *Perdomo*, 2025 WL 2585637, at *2.

Plaintiffs cannot circumvent the imminent-injury requirement by alleging a general pattern or policy of misconduct. *See Lyons*, 461 U.S. at 105; Opening Brief at 16-18, 23-24. Their evidence of a pattern or practice of unlawful stops and arrests is, in any event, unconvincing under any standard.[1] First, they assert that it is not a handful of

[1] Plaintiffs state that Defendants did not dispute a pattern or practice of unlawful stops and arrests existed, citing the district court's notation that Defendants did not "deny the factual allegations made in Plaintiffs' evidence." Answering Brief at 28 (citing 1-ER-3 n.1). Defendants disputed the allegations. 1-SER-015-16, 27. Plaintiffs similarly state that Defendants "do not make any argument to suggest that Plaintiffs' evidence is insufficient to establish an unlawful practice under the 'clear showing' standard." Answering Brief at 17 n.6, 34 (asserting "Defendants do not challenge on appeal" that Plaintiffs established "a

unlawful stops and arrests, but "nearly a dozen." Answering Brief at 20, 25. Even "nearly a dozen" incidents remain a statistically insignificant subset within a vast district with nearly eight million residents and cannot establish a likelihood of imminent recurrence, especially given their temporal and geographic concentration. *See* Opening Brief at 19. Plaintiffs consequently suggest that the alleged injury was broader than nearly a dozen unlawful stops and arrests, pointing to 77 total arrests and 200 stops by Border Patrol during Operation Return to Sender. Answering Brief at 20 (citing 3-ER-364 and 1-SER-101-02), 25. But there is no evidence that unlawful stops or arrests occurred to the other 66 arrestees and hundreds stopped. The total number of arrests and stops, therefore, would appear to only underscore how disproportionately small the number of alleged injuries were considering the entire operation, and undermine that there was any pattern of unlawful stops or arrests.

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practice of Fourth Amendment and § 1357 violations"). Defendants argued that Plaintiffs' evidence was insufficient to establish an unlawful pattern or practice "under any standard," after explaining the district court applied an erroneously low standard of proof to Plaintiff's evidence. Opening Brief at 24-26. Plaintiffs, on the other hand, do not appear to contest that the district court applied an erroneously low standard of proof to find a pattern or practice of unlawful conduct. Answering Brief at 17 n.6.

Plaintiffs next point to social media posts where "Defendants publicly expressed an intent to replicate their unlawful sweeps in this District. . . ." Answering Brief at 21 (citing 3-ER-407-10; 2-ER-204; 2-ER-218; 2-ER-260; 3-ER-407-10). Where in the social media posts there is an expressed policy to unlawfully stop and arrest individuals, Plaintiffs do not say. Plaintiffs instead point to social media posts generally describing Border Patrol's intent for more interior operations.[2] *See* Answering Brief at 21-22. To the extent Plaintiffs assert that they have established an imminent likelihood of being subject to unlawful stops and arrests because they are a racially targeted group, Answering Brief at 22, 24-25, the Department of Homeland Security has stated it does not racially target any group for immigration enforcement, 2-SER-176.

Plaintiff's' reliance on alleged "chilling effects" merely re-packages subjective apprehensions of future harm, which *Lyons* and *Clapper* make clear cannot supply standing. Answering Brief at 30-32 (relying on

[2] Plaintiffs also point to a July 2025 operation in Sacramento, but this post-dates their complaint by months. Answering Brief at 21 (citing Section VI.C.2 of their brief); *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 180 (2000) (noting that courts have "an obligation to assure . . . that [the plaintiff] had Article III standing at the outset of the litigation").

Laidlaw and arguing that "chilling of daily activities" injury is "ongoing injury"). Indeed, the Supreme Court squarely rejected Plaintiffs' argument in *Clapper*, 568 U.S. at 418-19 (rejecting respondents' argument, based on *Laidlaw*, that the "chilling effect" on their activities to avoid greater injuries provided standing). The Supreme Court explained that the Second Circuit "improperly allowed respondents to establish standing by asserting they suffer present costs and burdens that are based on a fear of [injury], so long as that fear is not 'fanciful, paranoid, or otherwise unreasonable." 568 U.S. 398, 415-16 (2013).

> This improperly waters down the requirements of Article III. Respondents' contention that they have standing because they incurred certain costs as a reasonable reaction to a risk of harm is unavailing—because the harm respondents seek to avoid is not certainly impending. In other words, respondents cannot manufacture standing merely by inflicting harm on themselves and on their fears of hypothetical future harm that is not certainly impending.

Id. at 416; *Laidlaw*, 528 U.S. at 184-85 ("the reasonableness of Lyons' fear is dependent upon the likelihood of the allegedly unlawful conduct") (quoting *Lyons*, 461 U.S. at 105, 107 n.8). Plaintiffs make the same mistake here, conflating the necessary imminent, concrete anticipated harm—another unlawful stop or arrest—with the harm that results from refraining in particular activities—the "chilling of daily activities."

Answering Brief at 32. "[A]llowing [Plaintiffs] to bring this action based on costs they incurred in response to a speculative threat would be tantamount to accepting a repackaged version of" Plaintiffs' subjective fears of harm. *Clapper*, 568 U.S. at 416.

Plaintiffs also argue that United Farm Workers has associational standing on behalf of its members. Answering Brief at 32-34. But whether the focus is on United Farm Worker members or class members generally, the harm cannot be speculative. Opening Brief at 26-27; *B.K. v. Snyder*, 922 F.3d 957, 966-67 (9th Cir. 2019) ("[W]hen we measure a plaintiffs' standing, regardless of whether the plaintiff sues individually or as a class representative, we look concretely at the facts that pertain to that plaintiff.").

The constitutional requirement of standing is a critical feature of the separation-of-powers among the branches of government. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 577 (1992). This is why a "concrete" likelihood of injury to plaintiffs is necessary before a court can "participate in law enforcement." *Id.* Based on a small number of allegedly unlawful stops and arrests a district court is now the continuing monitor of all Border Patrol stops and arrests with the Eastern District

of California. There has not nearly been a sufficient showing of a concrete likelihood of recurring injury to Plaintiffs to justify this oversight of Executive law enforcement. The courts are not permitted to be a "continuing monitor of . . . the soundness of Executive action." *Lujan*, 504 U.S. at 577.

II. The Intervening Steps Taken by Border Patrol Have Rendered Plaintiffs' Claims Moot

The claims that were the subject of the preliminary injunction are moot. Plaintiffs, like the district court, treat the *Rosebrock* factors as mandatory and determinative of mootness. Answering Brief at 41-47; 1-ER-078-83. However, this Court has long recognized that voluntary recommitment to lawful enforcement by a law-enforcement agency can moot claims for prospective relief.

In *Williams v. Alioto*, 549 F.2d 136, 138-40 (9th Cir. 1977), a law enforcement agency was similarly alleged to have a policy of permitting unlawful stops in violation of the Fourth Amendment. Specifically, plaintiffs alleged that the police department had an unconstitutional policy permitting stops of all black males fitting a general description. *Id.* at 139-40. Shortly after the filing of plaintiffs' lawsuit seeking declaratory and injunctive relief, the police department promulgated new

guidance which explained that reasonable suspicion for a stop requires "specific, articulable facts" justifying that the person stopped had committed a crime:

> The term "reasonable suspicion" is not capable of precise definition; it is more than a hunch or mere speculation on the part of an officer, but less than the probable cause necessary for arrest. It may arise out of a contact, or it may exist prior to or independently of a contact. Reasonable suspicion has been defined as a combination of specific and articulable facts, together with reasonable inferences from those facts, which in light of the officer's experience, reasonably justify believing that the person to be stopped had committed, was committing, or was about to commit a crime.

Id. at 139 & 139 n.2. The guidance also listed factors for officers to consider which, alone or in combination, could establish reasonable suspicion. *Id.* at 139. The district court nonetheless entered a preliminary injunction, finding the new guidance insufficient because it still appeared to permit unconstitutional stops. *Id.* This Court agreed with the police department—by issuing the new guidance the police department "voluntarily had remedied any constitutional defects in its behavior," which suggested "the district court issued an injunction in a controversy that had ended." *Id.* at 141.

The *Rosebrock* factors are not mandatory. *Am. Diabetes Ass'n v. U.S. Dep't of the Army*, 938 F.3d 1147, 1153 (9th Cir. 2019). The factors

in *Rosebrock* are rather a "loose framework" that may or may not be relevant depending on the type of voluntary cessation. *Id.* Here, they are not relevant. *See* Opening Brief at 29-32; *see also id.* at 30 (citing *Rosebrock v. Mathis*, 745 F.3d 963, 974 (9th Cir. 2014)).

El Centro Sector Border Patrol voluntarily remedied the alleged constitutional defects by issuing guidance (a "Muster") and initiating training before any adjudication on the merits. 2-ER-150-56. Plaintiffs moved for a preliminary injunction alleging vehicle stops without individualized reasonable suspicion of an immigration violation, warrantless arrests without considering flight risk, and encounters in parking lots that were coercive and escalated to suspicionless stops. 2-ER-173-75, 177-182. The Muster set forth the standard for vehicle stops, the standard for warrantless arrests, and El Centro Sector committed to training all Border Patrol agents on consensual encounters in compliance with the Fourth Amendment, Supreme Court caselaw, and Ninth Circuit caselaw. 2-ER-155-56; *Alioto*, 549 F.2d at 139 n.2. The trainings would also cover vehicle stops and warrantless arrests. 2-ER-155-56. The Muster was moreover a mirror of the guidance Plaintiffs attached to their preliminary injunction. 2-ER-150-52, 299-301.

In *Alioto*, the Court also held that, beyond the guidance issued by the police department, "even more important[ly]," the circumstances that had given rise to the challenged stops (investigations into a string of killings) had ended (apprehension and conviction of the killers). 549 F.2d at 142. But nonetheless, when a law enforcement agency voluntarily recommits to consistent enforcement of the law—voluntarily issues guidance and orders training addressing the alleged violations—this supports mootness and no procedural safeguards against recurrence are necessary. There are inevitably inconsistencies in law enforcement, despite prior training. A law enforcement agency that voluntarily recommits to consistent enforcement in light of alleged inconsistencies, however, should moot the need for a court to monitor stops and arrests by that law enforcement agency District-wide under threat of contempt, even assuming that was ever an appropriate remedy in response to a handful of unlawful stops and arrests (it was not, *see* Part I).

Although mootness was established at the time of the court's order, as explained above, the "Second Muster" additionally supports mootness. The Second Muster was issued to comply with the injunction, *see* Answering Brief at 48 (citing *Flores v. Bennett*, 675 F.Supp.3d 1052, 1059

(E.D. Cal. 2023), but it was part of a process which El Centro Sector voluntarily initiated. There is no indication that, if El Centro Sector had believed more or different instructions were needed, they would not have provided that. Indeed, no gaps in the First Muster were initially identified by Plaintiffs after Defendants asserted mootness and, rather, Plaintiffs sought Defendants' stipulation to a court order keeping the First Muster in place without revision. *See* 1-SER-104. It was not until their Reply, filed on April 17, 2025, that Plaintiffs raised what they perceived to be gaps in the Muster, and less than two weeks later the district court held a hearing on Plaintiffs' motions and issued the injunction. Dkt. 1:25-cv-246 Nos. 38, 46, 47. Training on the Muster had meanwhile begun. 1-SER-18-19. Thus, where excluding injunctive compliance actions from mootness considerations is premised on the notion that the party would not have undertaken those actions but for being ordered to do so, *Flores*, 675 F.Supp.3d at 1059, here the record shows that Defendants voluntarily continued the process they began and filled the gaps in the Muster and continued training.[3]

[3] Plaintiffs also assert the Second Muster misstates the law applicable to stops under the Fourth Amendment, referring to their challenge, in their Motion to Enforce, that interior operations by Border Patrol must exclude

Plaintiffs cite their Motion to Enforce to assert that the controversy is not moot. Answering Brief at 51-53. Where the Muster(s) and trainings moot Plaintiffs' prospective claims for relief, "the relevant

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certain factors from the reasonable suspicion inquiry. Answering Brief at 50 n.12 (citing 2-ER-091-121). Categorically excluding Border Patrol from considering certain factors when forming reasonable suspicion of an immigration violation during interior operations is beyond the scope of Plaintiffs' complaint. 3-ER-362-432. To the extent it nonetheless is relevant to mootness, however, Plaintiffs have not identified how the Second Muster misstates the law where it tracks Supreme Court and Ninth Circuit precedent. *Compare* 2-ER-128 *with U.S. v. Brignoni-Ponce*, 422 U.S. 873, 884-85 (1975); *compare* 2-ER-129 *with U.S. v. Manzo-Jurado*, 457 F.3d 928, 935 & n.6 (9th Cir. 2006) (Hispanic appearance has minimal probative value in areas with a large Hispanic population). And Plaintiffs do not explain how discovery would otherwise be relevant to a restatement of law. Answering Brief at 51 n.15.

Similarly, while Plaintiffs assert the more recent training declarations are "too vague to evaluate the scope, content, and thoroughness of the training" on the Musters, they do not substantiate this claim beyond noting that only 889 of the 975 El Centro Sector Border Patrol agents had been trained by August 2025. Answering Brief at 50 & 50 n.14 (citing 2-ER-121-29); 2-ER-155 (El Centro Sector "is staffed by 975 Border Patrol Agents"). In any event, the "scope and content" of the trainings are the subjects of the Musters, i.e., stops and arrests in compliance with the Fourth Amendment, 8 U.S.C. § 1357, and Supreme Court and Ninth Circuit precedent. 2-ER-121-24 (citing Part 4 of the Court's injunction (1-ER-88-89)) (ordering training on the guidance ordered above), 2-ER-155-56. And even if the training consisted of handouts or a video, for example, that no less demonstrates commitment to consistent enforcement of the law. Answering Brief at 51 n.15 (asserting discovery is needed before relying on the training declarations for mootness).

question" for mootness becomes whether "the challenged conduct or laws will recur" and whether, moreover, it is "likely to affect again the litigants in the original lawsuit." *Alioto*, 549 F.2d at 143-44. "When the chance of repetition is remote or speculative, there is no jurisdiction." *Id.* at 142. "There must be a cognizable danger, a reasonable expectation, of recurrence for the repetition branch of the mootness exception to be satisfied." *Id.* at 145.

Nothing in the Sacramento operation, subject of the Motion to Enforce, indicates that a Plaintiff was "affect[ed] again"—that repetition of the alleged injury occurred to any Plaintiff. *Alioto*, 549 F.2d at 143-44 ("In class actions, the repetition need occur as to some of either the named or unnamed plaintiffs."). Indeed, the Sacramento operation underscores how remote and speculative the possibility has always been that any Plaintiff is likely to be stopped and arrested again by Border Patrol, much less stopped and arrested again in the injurious manner alleged. *See supra* at Part I. And this result was almost a foregone conclusion because "[a]lthough there are numerous named and unnamed plaintiffs, this number is small compared to the entire population of [the Eastern District of California]." *Alioto*, 549 F.2d at 143-44.

Moreover, there is no reasonable basis to conclude that unlawful stops and arrests occurred during the Sacramento operation. *Alioto*, 549 F.2d at 145 ("There must be a cognizable danger, a reasonable expectation, of recurrence for the repetition branch of the mootness exception to be satisfied"). This is because on their face the arrest reports show Border Patrol assessed reasonable suspicion of an immigration violation and assessed flight risk. 2-ER-102-03, 111-15. There is video that corroborates the arrest reports, 2-SER-142, and a news article, 2-SER-203 (Border Patrol "surveilled locations in Sacramento and ran license plates for two days before executing arrests. Some of the plates came back as owned by previously deported immigrants in the country illegally."). There is also the presumption that these arrest reports are reliable. *Hernandez v. Garland*, 52 F.4th 757, 766 (9th Cir. 2022) ("Forms I-213 are entitled to a presumption of reliability . . . regardless of the purpose for which the form is used" and the agents who prepared the forms are presumed to "perform their duties properly without motive or interest other than to submit accurate and fair reports"). Between the presumption, the arrest reports, and corroboration of the arrest reports, there is no cognizable, reasonable claim of an injunction violation. There

is only Plaintiffs' declarations that, despite all this, the arrest reports have been falsified.[4] 2-ER-101-05, 112-13. Plaintiffs cannot manufacture a live controversy in this manner.[5]

Defendants issued a Muster and implemented training responsive to the complaint, yet Plaintiffs insisted additional measures were required. Defendants then issued a Second Muster and expanded training, which Plaintiffs in turn attacked as misstating the law and supported by declarations they deemed too vague. When Defendants submitted arrests reports that facially demonstrate compliance with the

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[4] Plaintiffs assert that Defendants "selectively" failed to include the declarations from arrestees underlying the claims in their Motion to Enforce that the agency falsified arrest records. Answering Brief at 51-52. Defendants did not submit the declarations because they are summarized in detail in Plaintiffs' motion. 2-ER-103-04; Ninth Cir. R. 30-1.4 Advisory Committee Note ("…parties may elect to include only portions of the transcript of document. But the parties should provide enough surrounding pages to provide relevant context…"). Indeed, Plaintiffs' summary of the declarations does not add anything to what is summarized in the Motion to Enforce. *Compare* Answering Brief at 52 *with* 2-ER-103-05.

[5] Plaintiffs assert that recent national media statements undermine the First Muster's statement that an agent must have probable cause of flight risk before executing a warrantless arrest. Answering Brief at 53. It is unreasonable to claim that a media statement issued months after issuance of the First Muster, and after almost all El Centro Border Patrol agents have been trained on the First Muster, somehow undermines these instructions and training.

governing law, Plaintiffs responded by alleging the reports were falsified. Plaintiffs' arguments illustrate why jurisdiction is lacking: no set of remedial circumstances would ever suffice, ensuring perpetual judicial supervision untethered from any concrete likelihood of recurrence. Thus, the Court should vacate the injunction.

III. At Minimum, Plaintiffs Cannot Show Irreparable Harm to Justify Preliminary Injunctive Relief

Plaintiffs have no answer for *Hodgers-Durgin v. de la Vina*, 199 F.3d 1037, 1039 (9th Cir. 1999) (en banc), which forecloses irreparable harm findings absent a concrete likelihood of future unlawful stops. Plaintiffs simply repackage their argument that their evidence establishes a pattern or practice of unlawful stops and arrests, Answering Brief at 36-37, and again point to social media posts generally describing Border Patrol's intent for more interior operations, Answering Brief at 37-38.

Except that Plaintiffs cannot contend with the additional argument that Border Patrol's recommitment to consistent enforcement of the law pertaining to stops and arrests renders the likelihood that they will be unlawfully stopped or arrested again by Border Patrol even less likely. They instead assert that intervening events supporting mootness cannot

be considered for irreparable harm. Answering Brief at 38. But Plaintiffs are incorrect. *See Smith v. Helzer*, 95 F.4th 1207, 1212-13 (9th Cir. 2024) (applying mootness to irreparable injury); *Lofton v. Verizon Wireless (VAW) LLC*, 586 Fed. Appx. 420, 421 (9th Cir. 2014) ("Even where the defendant's voluntary cessation does not moot a claim for injunctive relief . . . we consider cessation of the alleged misconduct in determining whether the plaintiff has carried his burden of demonstrating a likelihood of irreparable harm") (citing *TRW, Inc. v. F.T.C.*, 647 F.2d 942, 953-54 (9th Cir. 1981)). Indeed, even where events have not mooted a case, the same events can preclude establishing a likelihood of recurrent injury. *TRW, Inc.*, 647 F.2d at 954.

Consequently, Plaintiffs cannot meet their burden of showing they would be imminently, irreparably subject to unlawful stops and arrests in the future.

IV. The Injunction Improperly Imposes a "Follow the Law" Mandate

Plaintiffs' arguments confirm that the injunction is an impermissible "follow the law" order. On the one hand, Plaintiffs contend that the injunction "sets forth the standard Defendants must follow." Answering Brief at 57. On the other, they acknowledge that the

injunction articulates no legal standard beyond a bare reference to the Fourth Amendment, and they are therefore actively disputing what Fourth Amendment standards Defendants are required to apply. Answering Brief at 50 n.12 (citing 2-ER-091-121). Against that backdrop, Plaintiffs' reliance on Defendants' Musters as the "very legal standards" supplied by the injunction is circular and unpersuasive, particularly where the Plaintiffs simultaneously challenge those Musters as illegally deficient. Answering Brief at 57-58. That same contradiction undermines Plaintiffs' assertion that Border Patrol can readily anticipate what conduct would violate the injunction Answering Brief at 58.[6] In effect, Plaintiffs concede that the injunction is vague because it "did not specify *what* law Defendants must follow." Answering Brief at 57 (emphasis in original).

[6] To the extent Defendants require leave to rely on the Motion to Enforce to exemplify the injunction's vagueness, rather than mootness, Defendants assert extraordinary circumstances permit this reliance. *Barilla v. Ervin*, 886 F.2d 1514, 1521 n.7 (9th Cir. 1989). Specifically, that between the Answering Brief and the Motion to Enforce there is the extraordinary circumstance that, here, Plaintiffs argue the injunction is not vague, but in the proceedings below essentially admit the opposite, using vagueness in the injunction to define what the law is that Defendants are to follow. Answering Brief at 55-59; 2-ER-098-100.

Plaintiffs also have no good response for *Perdomo*. Defendants observed that, in *Perdomo*, this Court suggested that an order which "simply restates the constitutional requirement of reasonable suspicion . . . could be an impermissible follow-the-law injunction." Opening Brief at 40. Plaintiffs wave this away as dicta. Answering Brief at 57 n.18. But where *Perdomo held* that the part of the injunction barring stops unless "permitted by law" was impermissibly vague, 148 F.4th at 680, it is inescapable that an order barring stops *not* "permitted by [Fourth Amendment] law" would likewise be impermissibly vague. And that is exactly why the Court observed that an injunction simply stating a defendant should follow the constitutional requirement of reasonable suspicion could be an impermissible follow-the-law injunction.

Moreover, in *Thomas v. County of Los Angeles*, 978 F.2d 504, 509 (9th Cir. 1992), this Court found an injunction impermissibly vague where it ordered the Los Angeles Sheriff's Department to, among other things, "[f]ollow the Department's own stated policies and guidelines regarding the use of force and procedures for conducting searches," without defining "what the policies are, or how they can be identified." *Id.* at 509. It was too vague even though one might expect a sheriff's

department to be familiar with its own policies on these matters. *Id.* at 509-10. *A fortiori* here. The district court ordered Defendants to follow the Fourth Amendment and 8 U.S.C. § 1357 regarding stops and arrests, respectively. 1-ER-087. But here the district court did not even refer to existing guidance and instead ordered Defendants to produce it. 1-ER-088. That is, the district court, in addition to simply ordering Defendants to follow the law, rendered the order murkier still by ordering Defendants to tell the court and Plaintiffs what the law is.

Forfeiture does not apply. Answering Brief at 55. As a concurring opinion of this Court has observed, preliminary injunctions proceed on an expedited basis, involve complex factual scenarios, and, consequently, there is typically insufficient time to develop arguments. *See Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1139-40 (9th Cir. 2011) (Mosman, J., concurring) (observing preliminary injunctions involve "complex factual scenarios teed up on an expedited basis" where, consequently, "[t]he arguments that flow from the facts . . . do not have the clarity and development that will come later . . . "). It is unfair, therefore, to apply forfeiture of arguments against the party opposing a motion for preliminary injunction (and simultaneously a motion for

provisional class certification) on such an accelerated, informal schedule. Indeed, the Federal Rules of Evidence do not strictly apply in the preliminary injunction context because of the speed of proceedings, *Herb Reed Enters., LLC v. Florida Entm't Mgmt., Inc.*, 736 F.3d 1239, 1250 n.5 (9th Cir. 2013), and similar flexibility should be afforded to procedural rules, *Miller v. French*, 530 U.S. 327, 360-361 (Breyer, J., dissenting (courts in equity cases are permitted flexibility to "tailor relief and related relief procedure").

Forfeiture moreover does not apply because Rule 65(d)'s specificity requirement protects fundamental due process interests and presents a pure question of law. The notice requirements of Rule 65(d) enshrine one of "[t]he most fundamental postulants of our legal order" because of the danger of a court "imposi[ing] . . . a penalty for disobeying a command that defies comprehension." *Granny Goose Foods, Inc. v. Brotherhood of Teamsters and Auto Truck Drivers Loc. No. 70 of Alameda Cnty.*, 415 U.S. 423, 444 (1974); *Scott v. Schedler*, 826 F.3d 207, 212 (5th Cir. 2016) (The specificity requirement of Rule 65(d) "embodies the elementary due process requirement of notice"). In other words, an impermissibly vague injunctive order seriously affects the fairness, integrity, or public

reputation of judicial proceedings. The Court will not apply forfeiture of an argument not raised before the district court where it is necessary to preserve the integrity of the judicial process or where the issue is a pure question of law. *Armstrong v. Brown*, 768 F.3d 975, 981 (9th Cir. 2014); Answering Brief at 55 (citing *Armstrong*).

Here it is both. Vagueness is a pure question of law and the specificity requirements of Rule 65(d) are fundamental to protecting a defendant from the dangers of a court imposing penalties for disobeying an unenforceable order. Plaintiffs in fact point to no case where a court held a vagueness argument under Rule 65(d) subject to forfeiture. Answering Brief at 55. Indeed, even where the appealing party did not raise a vagueness challenge to an injunctive order either before the district court or on appeal, a court has nonetheless reached the issue. *See S.E.C. v. Smyth*, 420 F.3d 1225 n.14 (11th Cir. 2005).

* * *

The small number of alleged unlawful stops and arrests, *supra* at Part I, the moving goalposts for Border Patrol, *supra* at Part II, and the standardless hanging contempt for each and every stop and arrest by Border Patrol within the District, *supra* at Part IV, demonstrate that

prospective relief in this case is not about remedying the unlawful stops and arrests alleged in the complaint, but about hobbling and haranguing Border Patrol interior operations until they stop altogether. And Plaintiffs have, in fact, hinted as much. *See* 2-ER-165 (Plaintiffs' motion for preliminary injunction: "Congress designed the modern immigration system with a clear division of responsibility: Immigration and Customs Enforcement ("ICE") enforces immigration law in the interior of the United States; Customs and Border Protection ("CBP") and its Border Patrol subdivision does so *at the border*") (emphasis in original), 3-ER-372-73 (Plaintiffs' complaint: "When Congress dismantled the legacy Immigration and Naturalization Service ("INS") and replaced it with DHS, it divided immigration enforcement responsibilities between two sub-agencies: Immigration and Customs Enforcement ("ICE") and CBP" where ICE "handles enforcement in the interior of the United States" and "CBP focuses on immigration enforcement at the border"). The injunction here should be no vehicle for that.

Respectfully submitted,

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Dated: January 13, 2026

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitations of Fed. R. App. P. 32(a)(7)(B)(2) because it contains 6,356 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii). This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2010, Century Schoolbook, 14-point type.

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CERTIFICATE OF SERVICE

I hereby certify that 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 on January 13, 2026. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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