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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

LAS AMERICAS IMMIGRANT ADVOCACY) CASE NO. 3:19-cv-02051-IM
CENTER, et al.,)
)
Plaintiffs,)
v.) **DEFENDANTS' RESPONSE TO**
) **PLAINTIFFS' NOTICE OF**
) **ADDITIONAL AUTHORITY**
DONALD TRUMP, et al.,)
)
Defendants.)
)
)
_____)

Plaintiffs submitted a Notice of Additional Authority citing *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 140 S. Ct. 1891 (2020). See ECF No. 73. *Regents* does not help Plaintiffs. In *Regents*, the Supreme Court concluded that a claim under the Administrative Procedure Act (APA) challenging DHS's rescission of Deferred Action for Childhood Arrivals (DACA) was not barred by 8 U.S.C. § 1252(b)(9) and (g). In reaching that conclusion, however, the Court reasoned that while § 1252(b)(9) did not bar review of the particular APA claim in that case, it did present "a jurisdictional bar where those bringing suit" are "asking for review of an order of removal, the decision ... to seek removal, or the process by which ... removability will be determined." *Regents*, 140 S. Ct. at 1907 (citation and internal quotations omitted).

Plaintiffs' claims in this case squarely challenge the "process by which removability will be determined." *Id.* Plaintiffs argue in their Notice of Additional Authority that they are not challenging the process for how cases are adjudicated or "removability will be determined." ECF No. 73 at 1-2. But in the same Notice, Plaintiffs describe their claims as challenging "policies and practices governing the administration of the immigration court system." *Id.* at 2. And Plaintiffs have previously described their claims as challenging the "manner in which Defendants administer the removal process across the immigration court system." Pls' Opp. to Mot. to Dismiss, ECF No. 57 at 16. Whenever a claim, "however it is framed, challenges the procedure and substance of an agency determination that is 'inextricably linked' to the order of removal, it is prohibited." *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1032 (9th Cir. 2016) (quoting *Martinez v. Napolitano*, 704 F.3d 620, 623 (9th Cir. 2012)). Section 1252 thus bars claims related to "any removal-related activity," *J.E.F.M.*, 837 F.3d at 1032, including all "decisions and actions leading up to or consequent upon final orders of deportation," *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483-85 (1999).

As set out in Defendants' Motion to Dismiss, all of Plaintiffs' claims relate to the process by which the immigration courts adjudicate claims and determine removability. *See* ECF No. 24 at 17-19. Accordingly, Plaintiffs' claims must be dismissed for, among other reasons, lack of jurisdiction based on 8 U.S.C. § 1252(b)(9) and (g). *Regents* did not narrow the scope of § 1252's limits on jurisdiction and it did not purport to overrule the Supreme Court's ruling just two weeks earlier in *Nasrallah v. Barr*, 140 S. Ct. 1683 (2020), which reiterated that any challenges arising from removal proceedings must be consolidated in a petition for review to the court of appeals. *Id.* at 1690; *see also* ECF No. 74, Defendant's Notice of Additional Authority.

Dated: July 9, 2020

Respectfully submitted,

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