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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

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

On July 11, 2020, Plaintiffs submitted a Notice of Additional Authorities addressing *East Bay Sanctuary Covenant v. Barr*, 2020 WL 3637585 (9th Cir. July 6, 2020), and *Capital Area Immigrants' Rights Coalition (CAIR) v. Trump*, 2020 WL 3542481 (D.D.C. June 30, 2020). *See* ECF No. 76. Plaintiffs cite these cases in support of their standing, zone-of-interests, and jurisdictional arguments, but neither decision supports Plaintiffs' claims in this case.

Plaintiffs first note that *East Bay* held that plaintiff nonprofit organizations had standing because the rule at issue in that case frustrated their mission of assisting asylum seekers and resulted in a diversion of resources from their other initiatives. 2020 WL 3637585, at *8. But *East Bay*, like other cases addressing this theory of standing, is clear that to establish standing based on diversion of resources, an organization has to show two thing: (1) that the challenged policy would have caused "some other injury" directly to the organization had it not diverted resources, and (2) that the organization diverted significant resources specifically to counteract the injury that would have occurred but for the diverted resources. *Id*.

In *East Bay*, the court held that the organizations had identified a direct injury from the rule because the organizations assist asylum seekers who are not in removal proceedings to affirmatively apply for asylum, and alleged that under the rule they would lose "'a large number' of potential" clients who would no longer be eligible to apply for asylum. *Id*. Here, in contrast, Plaintiffs have not alleged any potential loss of clients or any other concrete injury to the organizations themselves that might result from informal agency benchmarks for case completion and scheduling. In *East Bay*, the court also noted that the plaintiffs had put forward "uncontradicted evidence" that they had been forced to divert resources, including having to "overhaul" their "affirmative asylum practice" and divert resources outside their "core mission" to instead create a new "removal defense program." *Id*. at *8-9. Here, in contrast, Plaintiffs have put forward no

concrete allegations of diverted resources, identified no new programs that they have been forced to develop, and their own allegations show that they are continuing to carry out their core missions of representing individuals in immigration court. *East Bay*'s ruling on standing also was based in part on the organizations' allegations that they "would lose significant funding," *id*., something Plaintiffs here have not alleged.

CAIR addressed the same regulation as *East Bay* and similarly noted that the burden was on an organization to show a "direct conflict between the defendant's conduct and the organization's mission," and that it was forced to use its resources to counteract the alleged harm. *CAIR*, 2020 WL 3542481, at *7. The court noted that, unlike here, the organizations had shown that they would lose clients and would be forced to divert resources to develop new programs for aliens who could no longer affirmatively apply for asylum to instead apply for other forms of protection or instead raise claims in removal proceedings, directly inhibiting these organizations' existing "daily activities." *Id*. at *7-8.

Plaintiffs also cite *CAIR*'s ruling on zone of interests, which the court based mainly on 8 U.S.C. § 1158—the same statute at issue in all of the other cases Plaintiffs earlier cited in support of their zone-of-interests arguments. *CAIR*, 2020 WL 3542481, at *11; *see* Reply in Support of Mot. to Dismiss, ECF No. 68, at 7-10. *CAIR* does not address the statute governing removal proceedings on which Plaintiffs base all of their claims, 8 U.S.C. § 1229a. The *CAIR* court emphasized that "the organizational Plaintiffs ha[d] pointed to those portions of the INA that directly reference the asylum services they provide." *CAIR*, 2020 WL 3542481, at *11. Plaintiffs here have never pointed to anything in § 1229a that regulates or relates to the interests of organizations. As the Ninth Circuit said in *East Bay*, § 1158 is different because it deals with "[m]igrants in the country who file affirmatively for asylum," whose claims are "collateral to the

process of removal," and who "never encounter the statutory provisions governing removal" under 8 U.S.C. § 1229a. *East Bay III*, 950 F.3d 1242, 1269-70 (9th Cir. 2020).

Plaintiffs next cite language in *CAIR* addressing the scope of 8 U.S.C. § 1252(b)(9). But *CAIR* affirms that § 1252(b)(9) applies when claims "involve questions arising from a removal action or proceeding," *CAIR*, 2020 WL 3542481, at *8, and all of Plaintiffs' claims here relate to removal proceedings or agency actions related to those proceedings. *See also* Notice of Additional Authority, ECF No. 74 (addressing *Nasrallah v. Barr*, 140 S. Ct. 1683 (2020)). Courts have thus held in cases such as *P.L.* and *A.S.A.P.* that § 1252(b)(9) bars claims by organizational plaintiffs related to how proceedings in immigration court are conducted. *See* Reply, ECF No. 68, at 15-17. And the Ninth Circuit has said that § 1252(b)(9) also addresses "policies-and-practices challenges," and bars any "broader challenges to agency policies and practices" for conducting removal proceedings. *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1034-35 (9th Cir. 2016). When Congress provides a detailed review scheme addressing certain issues and provides that such issues must be raised by particular parties in particular ways, it forecloses claims brought by other parties or in other ways, and nothing prevents Congress from enacting such jurisdictional limits even where they foreclose broader pre-enforcement claims brought by organizations or other individuals. *See* Reply, ECF No. 68, at 17-18, 25 (discussing *Block*, *Thunder Basin*, and *AFL-CIO v. Trump*).

Finally, unlike *CAIR*, where plaintiffs were seeking to vacate a regulation that applied in circumstances outside of removal proceedings, Plaintiffs here challenge informal agency guidelines for scheduling that apply only in removal proceedings by seeking injunctive relief that would limit the government's discretion over case scheduling in ways not contemplated by 8 U.S.C. § 1229a. Section 1252(f) bars such attempts to restrain the operation of the statutory provisions governing removal proceedings and "suits brought by organizational plaintiffs" or any

claim for "injunctive relief with respect to organizational plaintiffs." *Padilla v. ICE*, 953 F.3d 1134, 1150 (9th Cir. 2020); *see also* Defendants' Reply, ECF No. 68, at 22-23.

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