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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

M-J-M-A; Victor CRUZ GAMEZ,

Case No.: 6:25-cv-02011-MTK

Plaintiffs,

v.

**DEFENDANTS' MOTION TO
DISMISS COUNTS 7-9**

**JULIO HERNANDEZ; TODD
LYONS; U.S. IMMIGRATION AND
CUSTOMS ENFORCEMENT;
MARKWAYNE MULLIN; U.S.
DEPARTMENT OF HOMELAND
SECURITY; TODD BLANCHE,**

Defendants.

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CERTIFICATION OF COMPLIANCE WITH LR 7-1

Pursuant to Local Rule 7-1, counsel for Defendants certifies that the parties conferred in good faith regarding the relief requested in this motion. Plaintiffs oppose this motion.

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

Defendants have moved to stay further merits proceedings, including any obligation to answer the supplemental pleading, pending resolution of Defendants' appeal from the preliminary injunction order and related class-certification issues. That remains Defendants' primary position. The pending appeal presents threshold questions that may eliminate or materially narrow Counts 7 through 9, including Article III standing, the availability of APA review, the propriety of classwide adjudication, and the permissible scope of prospective relief. Defendants do not seek to stay the preliminary injunction through this motion, and they remain in compliance with that injunction. But because the Court has set an accelerated deadline for Defendants to respond to the supplemental pleading before resolving the pending stay motion, Defendants file this motion protectively to preserve their threshold objections and avoid any suggestion that they have failed to respond.

Counts 7 through 9 should be dismissed. Those counts do not challenge a discrete, final agency action. Instead, Plaintiffs seek to transform alleged individual arrest disputes, public statements, and generalized enforcement allegations into a

statewide APA challenge to an unwritten “policy and practice” of unlawful warrantless civil immigration arrests. But the APA does not authorize broad programmatic supervision of federal immigration enforcement based on an alleged pattern of field-level conduct. To proceed under the APA, Plaintiffs must identify final agency action that marks the consummation of agency decisionmaking and creates legal consequences. They have not done so.

Plaintiffs’ claims also fail for independent jurisdictional reasons. Plaintiffs seek prospective, classwide relief based on past arrests and asserted fear of future enforcement. But they do not plausibly allege that either named Plaintiff faces an imminent, non-speculative threat of a future unlawful warrantless arrest traceable to the alleged policy and redressable by the sweeping relief requested. Nor may Plaintiffs evade the Immigration and Nationality Act’s jurisdictional limits by recasting challenges to arrest decisions made in connection with civil immigration enforcement and the initiation of removal proceedings as APA policy claims.

The defects are especially clear given the remedies Plaintiffs seek. Plaintiffs ask the Court to vacate and set aside an alleged unwritten policy, enjoin future violations of broadly defined class rights, and order expungement of records concerning putative class members. Those remedies confirm the problem: there is no discrete final agency action to vacate, no proper basis for a follow-the-law injunction governing future arrest decisions across Oregon, and no foundation for classwide expungement based on individualized arrest circumstances.

Accordingly, if the Court requires Defendants to respond to Counts 7 through 9 at this time, those counts should be dismissed for lack of jurisdiction and failure to state a claim. At a minimum, the Court should clarify that this protective motion suspends any answer deadline or extend the responsive pleading deadline until after the Court resolves Defendants' pending motion to stay proceedings.

BACKGROUND

On October 30, 2025, named Plaintiff MJMA filed a habeas petition challenging the lawfulness of her stop and arrest. Dkt. 1. Prior to the two-day evidentiary hearing set for December 2 and 3, 2025, Petitioner's counsel indicated a desire to "supplement" the habeas petition with class allegations. At the close of the evidentiary hearing, the parties and the Court discussed Petitioner's intent to file motions to supplement the petition, for class certification, and for preliminary injunctive relief. Tr. 446:14–460:14 (Dec. 3, 2025). Respondents' counsel implored the Court to resolve the habeas petition before allowing supplementation of the petition to add class claims both because resolution of the habeas petition would determine whether MJMA could be an adequate class representative and because of the robust record already before the Court. Tr. 447:22–448:10. In response, the Court stated:

As it relates to that one petitioner and -- you know, I agree that I have more than enough of a record to move forward on that matter. I just want to make sure that we're dealing with all of the other matters that, I think, the parties know about, the counsel knows about. And if the only other issue is a motion to amend the petition for -- to make allegations regarding class -- regarding a class, then -- then I think your point is also well taken about addressing the merits of the

petitioner herself and then proceeding with the motion to amend if the petition survives.

Tr. 447:22–448:10. With respect to receiving Petitioner’s counsel’s various motions, the Court ultimately stated, “My representation to you is that I’m going to do that if they file it. I’m going to consider it -- consider staying, in all likelihood, if they file those papers. If I’m having second thoughts about whether to stay those motions, I’ll invite the Government’s response.” Tr. 460:10–14.

On December 5, 2025, the Court issued an order stating:

The Court has preliminarily considered the evidence presented on the Petition for Writ of Habeas Corpus and is inclined to grant the petition at least as it relates to Claims 5 and 6. Therefore, the Court is also inclined to receive and consider the Petitioner’s Motion to Amend the Petition and for Class Certification. As the Court assured Respondents at the hearing, they may now file an advisory brief explaining their position as to why it would nevertheless be prudent to stay Petitioner’s motions.

Dkt. 51.

On December 9, 2025, Respondents filed a motion to extend the briefing deadline as to whether a stay was appropriate because the propriety of a stay was dependent on the contents of the motions Petitioner intended to bring. Dkt. 52. Therefore, Respondents requested the Court grant them at least 14 days after Petitioner filed her motions for the government to decide whether a stay was appropriate. *Id.* at 3. The Court granted Respondents’ extension motion but instead of setting a deadline for stay briefing, the Court set deadlines for Respondents to respond to Petitioner’s Motion to Amend the Petition, Motion for Class Certification,

and Closing Brief on Petitioner's Writ of Habeas Corpus as February 20, 2026. Dkt. 53.

On January 9, 2026, Petitioner filed a panoply of motions that fundamentally altered the litigation from a habeas petition to a class action complaint: a motion to supplement the petition, a motion for class certification, a motion for preliminary injunctive relief, and a motion to reset the closing habeas petition briefing schedule. Dkts. 59–65. On January 12, 2026, the Court held a telephonic status conference where it granted Petitioner's motion to supplement the petition and directed Petitioner to file her supplemental pleading. Dkt. 67. The Court also set briefing deadlines for both the preliminary injunction motion and the motion for class certification as well as an evidentiary hearing for the preliminary injunction but did not set an answer deadline to the supplemental complaint. *Id.* Though not compliant with LR 15-1(a)(3), the operative pleading consists of six counts of purported habeas relief and three counts of class relief under the APA. Dkt. 68.

On February 4, 2026, the Court granted Plaintiffs' motion for a preliminary injunction and provisionally certified the Unassessed Risk Class. Dkt. 82. On April 6, 2026, Defendants filed a notice of appeal for the preliminary injunction. Dkt. 93.

On June 12, 2026, Respondents filed a motion to dismiss the still-lingering habeas petition, which Respondents understand to constitute counts one through six of the supplemental complaint. Dkt. 100.

On June 24, 2026, the Court granted Plaintiffs' motion for class certification. Dkt. 103. On July 6, 2026, Defendants filed a notice of appeal for the Court's order

granting class certification. Dkt. 107. That same day, Defendants also filed a motion to stay the district court proceedings in light of the appeal of the decisions granting preliminary injunctive relief and, relatedly, class certification. Dkt. 108. On July 8, 2026, Defendants also filed a motion to extend their answer deadline, which was set for July 9, because the motion to stay was still pending. Dkt. 109. Both the motion to stay and the motion to extend the answer deadline are still pending with the Court.

LEGAL STANDARD

I. Rule 12(b)(1)

Rule 12(b)(1) authorizes dismissal where the Court lacks subject-matter jurisdiction. A jurisdictional challenge may be facial or factual. In a facial challenge, the Court assesses whether the allegations in the complaint are sufficient to establish jurisdiction, accepting well-pleaded factual allegations as true but not accepting legal conclusions cast as factual allegations. *See Leite v. Crane Co.*, 749 F.3d 1117, 1121–22 (9th Cir. 2014). A factual challenge permits the Court to consider evidence outside the pleadings without converting the motion into one for summary judgment. *Id.*; *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004).

Plaintiffs bear the burden of establishing subject-matter jurisdiction, including Article III standing. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992). Standing requires a concrete, particularized, and actual or imminent injury that is fairly traceable to the challenged conduct and likely to be redressed by a favorable decision. *Id.* at 560–61. A plaintiff seeking prospective declaratory or injunctive relief must show a real and immediate threat of future injury; past exposure to allegedly

unlawful conduct does not itself establish standing to seek prospective relief. *City of Los Angeles v. Lyons*, 461 U.S. 95, 101–05 (1983). And because Article III is an “irreducible constitutional minimum,” a class action may proceed only if the named plaintiffs have standing to pursue the claims and relief sought. *Lujan*, 504 U.S. at 560; *see also TransUnion LLC v. Ramirez*, 594 U.S. 413, 431 (2021).

II. Rule 12(b)(6) and APA Claims

Rule 12(b)(6) authorizes dismissal where the complaint fails to state a claim upon which relief can be granted. To survive dismissal, a complaint must plead sufficient factual matter to state a claim that is plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Although the Court accepts well-pleaded factual allegations as true, it need not accept legal conclusions, conclusory allegations, unwarranted inferences, or unreasonable deductions from the facts alleged. *Iqbal*, 556 U.S. at 678–79; *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001).

Claims under the Administrative Procedure Act are subject to additional limits. The APA authorizes review only of “final agency action for which there is no other adequate remedy in a court.” 5 U.S.C. § 704. To qualify as final agency action, the challenged action must mark the consummation of the agency’s decisionmaking process and must be one by which rights or obligations have been determined or from which legal consequences flow. *Bennett v. Spear*, 520 U.S. 154, 177–78 (1997). The APA does not permit broad programmatic attacks on agency operations or wholesale judicial supervision of an agency’s day-to-day conduct. *Norton v. S. Utah Wilderness*

All., 542 U.S. 55, 64 (2004); *Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 890–91 (1990). A plaintiff must therefore identify a discrete final agency action, not merely aggregate alleged individual incidents, enforcement priorities, public statements, or field-level practices into a generalized challenge to agency conduct.¹

ARGUMENT

I. Counts 7–9 Should Be Dismissed for Lack of Article III Jurisdiction.

Counts 7 through 9 seek prospective classwide relief from an alleged statewide policy or practice governing warrantless civil immigration arrests. But Plaintiffs do not plead facts establishing Article III standing to pursue that relief. At most, Plaintiffs allege that they were arrested in the past, that they disagree with the legality of those arrests, and that they fear future enforcement activity. Those allegations are insufficient to invoke this Court’s jurisdiction over claims seeking prospective declaratory, injunctive, vacatur, and expungement relief directed at future arrest practices throughout Oregon.

¹ This motion is filed protectively in light of the Court’s accelerated responsive-pleading deadline and Defendants’ pending motion to stay further merits proceedings. Defendants previously moved to dismiss the habeas counts, Counts 1 through 6. This motion is directed to the separate supplemental APA and *Accardi* claims in Counts 7 through 9 and raises threshold jurisdictional objections that may be raised at any time. *See* Fed. R. Civ. P. 12(h)(3). To the extent the Court concludes that Rule 12(g) affects any portion of this motion, Defendants respectfully request that the Court construe this filing as a Rule 12(b)(1) motion, as a motion to clarify or extend the responsive-pleading deadline, and as notice that Defendants preserve any Rule 12(b)(6) defenses for inclusion in an answer and, if appropriate, a motion under Rule 12(c).

A. Plaintiffs allege past arrests and speculative fear of future enforcement, not an imminent future unlawful warrantless arrest.

A plaintiff seeking prospective relief must show more than past exposure to allegedly unlawful conduct. *Lyons*, 461 U.S. at 101–05. The plaintiff must establish a real and immediate threat that he or she will again be subjected to the challenged unlawful conduct. *Id.*; see also *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 409 (2013) (“[T]hreatened injury must be certainly impending to constitute injury in fact.”) (quotation marks omitted). That requirement is especially important where, as here, Plaintiffs ask the Court to supervise future law-enforcement conduct.

Plaintiffs have not met that burden. The relevant future injury is not merely the possibility that Plaintiffs may encounter immigration officers, or even the possibility that Plaintiffs may be subject to future immigration enforcement. The injury necessary to support Counts 7 through 9 is much more specific: a future warrantless civil immigration arrest, made without the individualized determinations required by 8 U.S.C. § 1357(a)(2), traceable to the alleged unlawful policy or practice challenged in the supplemental pleading. Plaintiffs do not plausibly allege that such an injury is imminent as to either named Plaintiff.

That conclusion follows from *Lyons*. There, the plaintiff alleged that police officers had previously subjected him to an unlawful chokehold, but the Supreme Court held that the past incident did not establish standing to seek an injunction governing future police conduct. 461 U.S. at 105–06. The same principle applies here. Allegations that Plaintiffs were previously arrested without adequate statutory determinations do not establish that they face a real and immediate threat of being

arrested again without a warrant and without the required individualized determinations. *See id.* at 102 (“Past exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief.” (quotation marks omitted)).

Nor do allegations of fear or anxiety supply the missing jurisdictional predicate. Plaintiffs allege that they fear future arrest and detention under the alleged policy or practice. But subjective fear of future enforcement is not the same as an actual or imminent injury. *See Clapper*, 568 U.S. at 416–18. To establish standing for prospective relief, Plaintiffs must plausibly allege facts showing that the specific unlawful conduct they seek to enjoin is likely to recur as to them. They have not done so.

B. Class allegations cannot cure the named plaintiffs’ lack of standing.

Plaintiffs cannot avoid Article III’s limits by pleading classwide allegations. A named plaintiff must have standing to pursue each claim and each form of relief sought. *Lujan*, 504 U.S. at 560–61. And a class action may not proceed unless the named plaintiffs themselves present a live case or controversy. *See O’Shea v. Littleton*, 414 U.S. 488, 494 (1974). Class allegations therefore do not relieve Plaintiffs of the obligation to plead an imminent, concrete, and redressable injury supporting prospective relief.

That principle is dispositive here. Counts 7 through 9 seek relief on behalf of broad classes of individuals who allegedly have been or will be subjected to warrantless immigration arrests in Oregon. But the named Plaintiffs do not plausibly

allege that they themselves face a real and immediate threat of a future unlawful warrantless arrest. Without such an allegation, they may not seek an injunction regulating how DHS conducts future warrantless arrests throughout Oregon.

The same problem exists at the class level. The proposed relief would extend to individuals who may be arrested in the future, even though whether any future arrest is lawful will depend on individualized facts known to the arresting officer at the time, including facts bearing on immigration status, identity, attempted flight, and other circumstances. Plaintiffs cannot establish Article III jurisdiction by assuming that future arrests of unidentified class members will occur, will be warrantless, will lack the required individualized determinations, and will result from the alleged policy or practice rather than case-specific facts.

C. The requested prospective and classwide remedies would not redress Plaintiffs' alleged injuries.

Plaintiffs' requested relief confirms the standing problem. Counts 7 through 9 seek prospective declarations, classwide injunctive relief, vacatur of an alleged unwritten "policy and practice," and expungement of arrest-related records. But those remedies do not redress the past arrests alleged by Plaintiffs. Nor do they redress generalized fear of future enforcement absent a plausible allegation that Plaintiffs face an imminent future unlawful warrantless arrest.

The redressability defect is particularly clear because Plaintiffs do not challenge a discrete final agency action directed at them. They instead ask the Court to regulate future arrest practices statewide. Even if Plaintiffs believed their own arrests were unlawful, that would not authorize prospective relief governing all

warrantless civil immigration arrests in the District of Oregon. Article III requires relief tailored to the plaintiff's own injury. It does not permit a federal court to issue statewide operational relief based on past alleged injuries and speculation about future law-enforcement encounters.

Accordingly, Counts 7 through 9 should be dismissed for lack of Article III jurisdiction.

II. Counts 7–9 are Barred by the INA's Jurisdiction-Stripping Provisions.

Section 1252(g) bars jurisdiction because arresting an alien is inextricably intertwined with the decision to commence removal proceedings, adjudicate a case, or execute a removal order. That provision states that, “[e]xcept as provided in this section,” no court has jurisdiction to hear any claim “arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien.” 8 U.S.C. § 1252(g).

The Supreme Court has explained that § 1252(g) applies to “three discrete actions” that are central to the Executive’s immigration-enforcement discretion: the decision or action to “commence proceedings, adjudicate cases, or execute removal orders.” *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482–83 (1999). Those decisions include the discretion to decide whether and when to pursue removal proceedings, as well as the discretion to abandon them. *Id.* at 483–84. The Court emphasized that such prosecutorial decisions are “particularly ill-suited to judicial review” and that those concerns are “greatly magnified in the deportation context.” *Id.* at 489–90.

The Ninth Circuit has applied the same principle. *See Cortez-Felipe v. INS*, 245 F.3d 1054, 1057 (9th Cir. 2001) (“The Attorney General has discretion regarding when and whether to initiate deportation proceedings.”); *Jimenez-Angeles v. Ashcroft*, 291 F.3d 594, 599 (9th Cir. 2002) (“We construe § 1252(g), which removes our jurisdiction over ‘decisions to commence proceedings,’ to include not only a decision in an individual case *whether* to commence, but also *when* to commence, a proceeding.”) (emphasis in original).

Plaintiffs’ claims arise from DHS’s decisions and actions to commence removal proceedings. Conducting immigration arrests for those without final orders of removal only has purpose if removal proceedings can be commenced. Indeed, arrests are an important mechanism to serve an alien with an NTA and commence removal proceedings. And it makes sense that challenges to immigration arrests are not subject to judicial review because an alien has the ability to challenge the legality of his arrest in removal proceedings, should he be placed in removal proceedings. There, the alien can move to suppress the evidence DHS has procured to support the charges of inadmissibility or removability. Without those charges, DHS would be unable to commence proceedings, further demonstrating that the arrest cannot be detached from the commencement of proceedings. Section 1252(g) of the INA unequivocally bars judicial review of any claim arising from the decision to commence proceedings, and an arrest is a decision arising from the decision to commence proceedings.

Even where DHS exercises prosecutorial discretion and decides to not commence removal proceedings, that does not grant this Court jurisdiction to review

Plaintiffs' claims. As discussed extensively in Respondents' motion to dismiss MJMA's habeas petition, DHS's decision to not commence proceedings does not make MJMA's and similarly-situated putative plaintiffs' claims reviewable in district court. Instead, it means they have not suffered a redressable injury and their claims are therefore not ripe for review in immigration court. *Accord Khalil v. President*, No. 25-2162, 2026 WL 111933, at *11 (3d Cir. Jan. 15, 2026) (explaining that if Khalil succeeded on a challenge at the Board of Immigration Appeals, his claim would no longer be ripe for review). Of course, whether removal proceedings should be commenced is strictly within DHS's discretion and therefore also barred from judicial review under 8 U.S.C. § 1252(g). *See Cortez-Felipe*, 245 F.3d at 1057; *Jimenez-Angeles*, 291 F.3d at 599.

Plaintiffs' challenge to an alleged policy and practice of conducting arrests in violation of 8 U.S.C. § 1357(a)(2) is barred by the exclusive jurisdiction provision of the INA because the decision to arrest an alien flows from DHS's prosecutorial discretion to commence removal proceedings.

III. Counts 7–9 Fail Because Plaintiffs Identify No Final Agency Action Reviewable Under the APA.

Counts 7 through 9 should also be dismissed because Plaintiffs do not identify a final agency action reviewable under the Administrative Procedure Act. The APA authorizes review only of “final agency action for which there is no other adequate remedy in a court.” 5 U.S.C. § 704. To qualify as final agency action, the challenged action must “mark the consummation of the agency’s decisionmaking process” and must be one by which “rights or obligations have been determined” or from which

“legal consequences will flow.” *Bennett*, 520 U.S. at 177–78 (quotation marks omitted). Plaintiffs’ generalized allegations of an unwritten statewide “policy and practice” of unlawful warrantless arrests do not satisfy those requirements.

A. A generalized alleged “policy and practice” is not discrete agency action.

The APA does not authorize broad programmatic attacks on agency operations. *Norton*, 542 U.S. at 64. Nor may a plaintiff aggregate a collection of individual agency actions or alleged field-level practices and present them as a single reviewable program. *Lujan*, 497 U.S. at 890–91. The plaintiff must identify a discrete agency action that is final within the meaning of § 704.

Plaintiffs have not done so. Counts 7 through 9 do not challenge a rule, order, adjudication, memorandum, directive, or other completed agency action adopting the alleged unlawful policy. Instead, Plaintiffs challenge an asserted pattern of enforcement conduct—individual warrantless arrests, alleged failures to make particularized determinations, public statements about immigration enforcement, and generalized allegations about enforcement priorities in Oregon. Labeling that collection of allegations a “policy and practice” does not transform it into final agency action.

That distinction matters. If Plaintiffs contend that particular arrests were unlawful, those arrests may rise or fall on their own facts in the appropriate procedural posture. But the APA does not permit Plaintiffs to convert alleged defects in individual arrest decisions into a broad challenge to DHS’s civil immigration

enforcement operations throughout Oregon. The final-agency-action requirement prevents precisely that type of wholesale judicial supervision of agency conduct.

B. Plaintiffs do not plausibly allege consummated agency decisionmaking.

Plaintiffs also fail to allege facts showing that DHS consummated a decisionmaking process adopting the policy they seek to challenge. A final agency action must reflect the agency's settled position, not speculation inferred from individual incidents or public rhetoric. *Bennett*, 520 U.S. at 177–78.

Here, Plaintiffs do not identify any final agency decision adopting a policy of conducting warrantless civil immigration arrests without the determinations required by 8 U.S.C. § 1357(a)(2). They instead infer such a policy from alleged arrest incidents and statements about enforcement priorities. But allegations that some officers violated the law in particular cases do not plausibly establish that DHS made a final agency decision to adopt an unlawful statewide policy. Nor do general statements about increased immigration enforcement show that the agency consummated a decision to disregard the statutory requirements for warrantless arrests.

The alleged policy is especially implausible as final agency action because it is inconsistent with the legal framework Plaintiffs themselves invoke. Section 1357(a)(2) and the implementing regulation govern the circumstances in which immigration officers may conduct warrantless arrests. Plaintiffs do not identify any final DHS action purporting to displace those requirements. Absent such an action, Plaintiffs' theory is not an APA challenge to final agency action; it is a generalized

challenge to how Plaintiffs believe officers have applied—or failed to apply—the governing law in the field.

C. The alleged unwritten policy does not bind the agency or create legal consequences.

Plaintiffs also fail to satisfy *Bennett*'s second requirement. A final agency action must determine rights or obligations or produce legal consequences. 520 U.S. at 178. The alleged unwritten “policy and practice” does neither.

Plaintiffs do not allege a binding directive requiring officers to conduct warrantless arrests without individualized determinations. They do not identify any agency document, order, or final decision that changes the legal standard governing warrantless arrests or alters the rights or obligations of any person. At most, Plaintiffs allege that officers have acted unlawfully in individual cases and that those alleged violations reflect a broader practice. But an alleged pattern of unlawful conduct is not the same thing as final agency action creating legal consequences.

Nor can Plaintiffs establish final agency action by pointing to public statements or alleged enforcement priorities. Statements about enforcement objectives do not themselves bind DHS officers, alter the governing legal standard, or determine the rights or obligations of Plaintiffs or putative class members. The APA does not permit courts to review generalized enforcement rhetoric as though it were a final rule or order.

D. Individual arrests, public statements, and enforcement priorities cannot be aggregated into final agency action.

Count 9 fares no better because it invokes the Nava Settlement Broadcast and *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954). Plaintiffs allege that DHS has failed to comply with that broadcast in connection with warrantless arrests. But alleged noncompliance with the Nava Settlement Broadcast in individual cases is not itself final agency action. Nor does *Accardi* supply a freestanding basis to obtain classwide APA relief absent jurisdiction, a valid cause of action, and a reviewable final agency action.

If Plaintiffs seek to enforce the Nava Settlement Broadcast directly, they have not pleaded a basis to do so in this action, nor could they because they were not parties to the settlement agreement. And if Plaintiffs seek APA review of alleged violations of that broadcast, they still must identify a discrete final agency action subject to review. They have not identified any final agency action adopting, rescinding, amending, or applying the broadcast in a way that determines rights or obligations or creates legal consequences. Count 9 therefore fails for the same reason as Counts 7 and 8.

For these reasons, Counts 7 through 9 should be dismissed because Plaintiffs have not identified final agency action reviewable under the APA.

IV. Counts 7 and 8 Fail Because They Seek Classwide APA Review of Individualized Arrest Determinations.

Counts 7 and 8 fail for an additional reason: they attempt to convert individualized arrest determinations under 8 U.S.C. § 1357(a)(2) into a classwide

APA challenge to an alleged statewide policy. That is not a proper use of the APA. The lawfulness of any warrantless civil immigration arrest depends on the facts known to the arresting officer at the time of the arrest, including facts bearing on immigration status and whether the person was likely to escape before a warrant could be obtained. Those individualized questions cannot be transformed into a single APA claim merely by alleging that DHS has a “policy and practice” of making unlawful arrests.

A. Section 1357(a)(2) requires a fact-specific, officer-specific probable-cause inquiry.

Section 1357(a)(2) authorizes a warrantless civil immigration arrest only when an officer has “reason to believe” that the person arrested is in the United States in violation of immigration law and “is likely to escape before a warrant can be obtained.” 8 U.S.C. § 1357(a)(2). The Ninth Circuit has treated “reason to believe” as equivalent to probable cause. *Tejeda-Mata v. INS*, 626 F.2d 721, 725 (9th Cir. 1980). And probable cause is a practical, totality-of-the-circumstances inquiry that turns on the facts known to the officer at the time. *See District of Columbia v. Wesby*, 583 U.S. 48, 57 (2018).

Counts 7 and 8 necessarily depend on that individualized inquiry. Count 7 alleges that DHS failed to make adequate individualized determinations of likelihood of escape. Count 8 alleges that DHS failed to make adequate individualized determinations of immigration status. But whether either allegation is true as to any particular arrest depends on case-specific facts: what the officer knew about the person’s identity, immigration history, prior encounters, attempted flight or evasive

conduct, location, ability to obtain a warrant, and other circumstances bearing on the statutory standard. Those facts vary from arrest to arrest.

That individualized inquiry is incompatible with Plaintiffs' effort to plead Counts 7 and 8 as classwide APA claims directed at a generalized "policy and practice." Plaintiffs cannot establish a violation of § 1357(a)(2) in the abstract. The statute asks whether the arresting officer had the required reason to believe in a particular case. That inquiry is not resolved by broad allegations about enforcement operations or by disagreement with DHS's enforcement priorities.

B. Alleged errors in individual arrests do not establish a statewide policy reviewable under the APA.

Even assuming Plaintiffs could identify individual arrests in which officers failed to make the determinations required by § 1357(a)(2), that would not establish the APA claim pled in Counts 7 and 8. Individual violations of a statute do not, without more, become a final agency action or a statewide policy subject to vacatur and classwide injunctive relief under the APA.

That distinction is important. Plaintiffs do not merely seek relief from their own arrests. They seek relief that would regulate warrantless civil immigration arrests across Oregon and bind DHS officers in future encounters involving nonparties. But the alleged unlawfulness of any particular arrest does not answer whether DHS has adopted a final, binding policy of violating § 1357(a)(2). Nor does it justify classwide relief untethered to the individualized circumstances of each arrest.

Plaintiffs' theory would collapse the distinction between individual enforcement disputes and APA review of final agency action. Under that theory, a

plaintiff could collect allegations of field-level errors, label them a “policy and practice,” and obtain broad judicial supervision of agency operations. The APA does not permit that result. It requires a discrete final agency action, not a generalized challenge to how officers allegedly applied statutory standards in individual cases.

C. Plaintiffs cannot avoid the individualized nature of the inquiry by alleging a failure to conduct individualized assessments.

Plaintiffs may argue that Counts 7 and 8 are common because they challenge the alleged failure to make individualized assessments at all. But that framing assumes the answer to the merits question. Whether an officer made an individualized assessment—and whether that assessment satisfied § 1357(a)(2)—depends on what happened in each encounter and what information was available to the officer at the time.

For example, an officer may have information from databases, prior encounters, surveillance, admissions, evasive conduct, inability to confirm identity, attempted flight, or other circumstances. In another case, the relevant facts may be entirely different. The statute does not prescribe a single checklist or a uniform evidentiary formula. It requires reason to believe, based on the circumstances of the particular arrest, that the statutory requirements are met.

Plaintiffs therefore cannot establish Counts 7 and 8 through a single classwide answer. The Court would need to examine individual arrests to determine whether the statutory requirements were satisfied. That is not a proper basis for an APA claim seeking to vacate an alleged statewide policy and impose prospective classwide relief.

D. *Accardi* does not supply a freestanding classwide cause of action.

Plaintiffs' reliance on *Accardi* does not cure these defects. *Accardi* stands for the principle that an agency generally must follow rules that bind it. But *Accardi* does not eliminate Article III requirements, the INA's jurisdictional limits, the APA's final-agency-action requirement, or the individualized nature of the statutory arrest inquiry under § 1357(a)(2).

Nor does *Accardi* transform alleged errors in individual arrest decisions into a classwide APA claim. If Plaintiffs contend that officers failed to follow governing law or policy in particular arrests, those allegations would still require arrest-specific analysis. They do not establish that DHS adopted a final agency action requiring officers to disregard § 1357(a)(2), and they do not support classwide vacatur or prospective relief under the APA.

Counts 7 and 8 should therefore be dismissed because they seek to use the APA to obtain classwide review of individualized arrest determinations rather than review of a discrete final agency action.

V. Count 9 Fails Independently Because the Nava Settlement Broadcast Is Not Enforceable Here Through a Classwide APA/*Accardi* Claim.

Count 9 fails for reasons independent of Counts 7 and 8. Plaintiffs allege that ICE is bound by the Nava Settlement Broadcast and that Defendants have a policy and practice of making warrantless arrests in Oregon in violation of the broadcast. But Count 9 does not plead a valid basis for Plaintiffs to enforce the settlement-related policy in this action, does not identify a final agency action reviewable under

the APA, and does not transform the individualized probable-cause inquiry required by § 1357(a)(2) into a classwide checklist.

A. Plaintiffs do not plead a valid basis to enforce the Nava Settlement Broadcast in this action.

The Nava Settlement Broadcast arose from a settlement agreement in *Castañon Nava v. Department of Homeland Security*, No. 18-cv-03757 (N.D. Ill.). Plaintiffs do not allege that they are parties to that settlement, that this Court has jurisdiction to enforce it, or that the settlement gives Plaintiffs a freestanding cause of action to obtain classwide relief in this case. To the extent Plaintiffs seek to enforce that settlement-related policy directly, Count 9 fails because Plaintiffs have not pleaded a valid basis for doing so in this separate action.

Accardi does not fill that gap. *Accardi* recognizes that agencies generally must follow binding rules that govern their own conduct. 347 U.S. at 268. But *Accardi* does not create jurisdiction where Article III and the INA do not permit it, does not eliminate the APA's final-agency-action requirement, and does not allow nonparties to a settlement to obtain broad classwide enforcement of settlement-related guidance in a different court. Plaintiffs therefore cannot rely on *Accardi* to convert the Nava Settlement Broadcast into a freestanding cause of action for statewide injunctive, vacatur, and expungement relief.

B. Alleged noncompliance with internal guidance is not final agency action.

Count 9 also fails because alleged noncompliance with the Nava Settlement Broadcast in individual arrests is not final agency action. Plaintiffs do not challenge

a final agency decision adopting, rescinding, amending, or applying the broadcast in a way that determines rights or obligations or creates legal consequences. Instead, they allege that officers have failed to comply with the broadcast in connection with warrantless arrests in Oregon.

That is not enough under the APA. The APA authorizes review of final agency action, not broad judicial supervision of alleged field-level noncompliance with internal or settlement-related guidance. If Plaintiffs contend that officers failed to consider relevant circumstances in particular arrests, that allegation would require an arrest-specific inquiry into what each officer knew, what each officer considered, and whether the officer had the reason to believe required by § 1357(a)(2). It would not establish a discrete final agency action subject to vacatur or classwide prospective relief.

The distinction is important. Plaintiffs do not seek to set aside the Nava Settlement Broadcast as unlawful. They seek to enforce their view of the broadcast across future arrests in Oregon. But the APA does not provide a general mechanism for courts to monitor agency compliance with internal guidance in ongoing law-enforcement operations. Absent a discrete final agency action, Count 9 cannot proceed

C. The policy does not transform the flexible probable-cause inquiry into a judicial checklist.

Count 9 also rests on an overbroad view of the Nava Settlement Broadcast. Plaintiffs allege that the broadcast requires officers to consider factors bearing on likelihood of escape, including identity, prior escapes or evasions, attempted flight,

ties to the community, and other circumstances relevant to whether a person is likely to abscond. But those considerations are part of a totality-of-the-circumstances inquiry. They do not create a rigid checklist, and they do not require officers to mechanically document or exhaust every possible factor before making a warrantless arrest.

That matters because § 1357(a)(2) requires reason to believe that the statutory criteria are satisfied in the circumstances of a particular arrest. Some encounters may involve attempted flight, refusal to identify oneself, inability to confirm identity, prior evasions, or other facts that bear directly on likelihood of escape. Other encounters may involve different facts. The relevant inquiry remains practical, individualized, and tied to the facts known to the officer at the time. Count 9 improperly seeks to convert that flexible inquiry into a classwide operational mandate enforced through the APA.

D. Count 9 cannot support the remedies Plaintiffs seek.

The remedies Plaintiffs seek confirm why Count 9 fails. Plaintiffs ask the Court to declare DHS's conduct unlawful, vacate an alleged policy and practice, enjoin future violations, and order classwide expungement. But if the alleged problem is noncompliance with the Nava Settlement Broadcast in particular arrests, there is no final agency action to vacate. Nor is there a proper basis to issue a statewide injunction prescribing how officers must apply settlement-related guidance in future encounters involving nonparties. And classwide expungement would require

individualized determinations regarding the circumstances and lawfulness of each arrest.

Count 9 should therefore be dismissed. Plaintiffs cannot use *Accardi* and the Nava Settlement Broadcast to evade the jurisdictional, APA, and remedial limits that govern Counts 7 through 9.

VI. Plaintiffs’ Requested Remedies Exceed the Court’s Authority and Confirm the Defects in Counts 7–9.

The remedies Plaintiffs seek confirm that Counts 7 through 9 are not proper APA claims. Plaintiffs ask the Court to declare DHS’s conduct unlawful, vacate and set aside an alleged unwritten “policy and practice,” enjoin future violations of broadly defined class rights, and order expungement of records concerning Plaintiffs and putative class members. Those remedies are unavailable because Plaintiffs identify no discrete final agency action to vacate, seek an impermissible follow-the-law injunction or an overbroad operational mandate, and request classwide expungement that would require individualized determinations regarding nonparty arrests.

A. There is no final agency action to vacate or set aside.

The APA permits a court to “hold unlawful and set aside agency action” that is arbitrary, capricious, contrary to law, or otherwise defective. 5 U.S.C. § 706(2). But that remedy presupposes reviewable agency action. Where a plaintiff identifies no discrete final agency action, there is nothing for the Court to vacate or set aside.

That is the problem here. Plaintiffs do not identify a final rule, order, directive, memorandum, adjudication, or other completed agency action adopting the alleged

unlawful policy. They instead allege a “policy and practice” inferred from individual arrests, public statements, and asserted enforcement activity. Even if Plaintiffs could challenge particular arrests in an appropriate posture, the Court cannot vacate a generalized allegation that officers have violated the law. Because Counts 7 through 9 identify no final agency action, the requested vacatur remedy is unavailable.

B. The requested injunction is an impermissible follow-the-law injunction or an overbroad operational mandate.

Plaintiffs also seek broad prospective injunctive relief prohibiting future violations of class rights. That requested relief underscores the same defect. If the injunction merely requires Defendants to comply with 8 U.S.C. § 1357(a)(2), 8 C.F.R. § 287.8, or other governing law, it is an impermissible follow-the-law injunction. Rule 65 requires an injunction to “state its terms specifically” and to “describe in reasonable detail” the acts restrained or required. Fed. R. Civ. P. 65(d)(1). An injunction that simply commands compliance with existing law does not satisfy that requirement and risks converting ordinary legal standards into contempt-enforceable operational supervision.

If, on the other hand, the requested injunction imposes obligations beyond the statute and regulation—such as court-prescribed documentation requirements, reporting obligations, factor-weighting rules, or other operational mandates—it is overbroad and untethered to any valid APA claim. Section 1357(a)(2) requires a practical, individualized assessment based on the circumstances known to the officer at the time. It does not authorize courts to prescribe statewide arrest procedures,

supervise future field encounters, or impose classwide reporting obligations absent a valid claim and properly tailored relief.

Either way, the requested injunction exceeds the proper scope of relief. Plaintiffs cannot obtain statewide prospective regulation of warrantless civil immigration arrests based on alleged past arrests and an asserted unwritten policy that is not final agency action. Article III, Rule 65, the APA, and the INA all require more.

C. Classwide expungement is unavailable on this generalized APA theory.

Plaintiffs' request for expungement is even more problematic. Plaintiffs ask the Court to order Defendants to expunge "all records collected and maintained about Plaintiffs and class members from their unlawful arrests, including any derivative information." That remedy would require the Court to determine which arrests were unlawful, what records were collected or maintained because of each arrest, what information is derivative, and whether expungement is appropriate as to each person and each record.

Those questions cannot be resolved through a generalized APA challenge to an alleged statewide policy. They would require individualized inquiries into the facts of each arrest, the basis for each officer's determination, the records generated, the uses of those records, and the legal consequences of expungement. The APA does not authorize classwide expungement of law-enforcement and immigration records based on an alleged "policy and practice" untethered to a discrete final agency action.

The breadth of the requested expungement remedy also illustrates why Counts 7 through 9 cannot proceed as pleaded. Plaintiffs seek relief affecting nonparties, future arrests, operational records, and derivative information across Oregon. Such relief is not tailored to any concrete injury suffered by the named Plaintiffs and is not available absent a valid jurisdictional basis, a cognizable cause of action, and a reviewable final agency action.

VII. In the Alternative, the Court Should Clarify or Extend the Responsive-Pleading Deadline Pending Resolution of the Stay Motion.

If the Court does not dismiss Counts 7 through 9 at this time, it should at minimum clarify or extend Defendants' responsive-pleading deadline pending resolution of Defendants' motion to stay proceedings. Defendants have moved to stay further merits proceedings, including any obligation to answer the supplemental pleading, because the pending appeal and related class-certification issues present threshold questions that may eliminate or materially narrow the claims, parties, discovery, and remedies in this case. Defendants file this motion protectively only because the Court set an accelerated deadline to respond to the supplemental pleading before resolving the stay motion.

CONCLUSION

Defendants respectfully request the Court dismiss Plaintiffs' Counts 7, 8, and 9 from the supplemental complaint.

Respectfully submitted this 16th day of July, 2026.

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