

1 BRETT A. SHUMATE
2 Assistant Attorney General
3 Civil Division

4 ERIC J. HAMILTON
5 Deputy Assistant Attorney General

6 SEAN SKEDZIELEWSKI
7 Counsel to the Assistant Attorney General
8 Civil Division

9 ALEXANDER K. HAAS
10 ANDREW I. WARDEN
11 KATHLEEN C. JACOBS
12 Civil Division, Federal Programs Branch

13 BILAL A. ESSAYLI
First Assistant United States Attorney
14 DAVID M. HARRIS
Assistant United States Attorney
15 Chief, Civil Division
16 DANIEL A. BECK
Assistant United States Attorney
Chief, Complex and Defensive Litigation Section
17 PAUL (BART) GREEN (Cal. Bar No. 300847)
Assistant United States Attorney
Federal Building, Suite 7516
300 North Los Angeles Street
Los Angeles, California 90012
Telephone: (213) 894-0805
Email: Paul.Green@usdoj.gov

18 Attorneys for Defendants

19 UNITED STATES DISTRICT COURT
20 FOR THE CENTRAL DISTRICT OF CALIFORNIA

21 LOS ANGELES PRESS CLUB; *et al.*,

22 Plaintiffs,

23 v.
24 KRISTI NOEM, in her official capacity as
Secretary of Homeland Security; *et al.*,
25 Defendants.

**DEFENDANTS' REPLY MEMORANDUM IN
SUPPORT OF MOTION TO DISMISS**

Hearing Date: December 4, 2025
Hearing Time: 10:00 a.m.
Ctrm: 5B
Hon. Hernán D. Vera

1 **TABLE OF CONTENTS**

2 <u>DESCRIPTION</u>	3 <u>PAGE</u>
4 TABLE OF AUTHORITIES	5 ii
5 REPLY MEMORANDUM.....	6 1
6 I. INTRODUCTION	7 1
7 II. ARGUMENT.....	8 1
8 A. Plaintiffs Lack Standing To Obtain Equitable Relief Against Defendants.....	9 1
9 B. Plaintiffs' First Amendment Claims Are Inadequate (Count 1).....	10 4
10 C. The Fourth Amendment Claim Fails (Count 2).....	11 5
11 D. The Fifth Amendment Claim Also Fails (Count 2).....	12 6
12 E. Plaintiffs Fail To State A Claim Under The APA (Count 3).....	13 6
13 F. Declaratory "Relief" Is Not An Independent Cause Of Action (Count 4)	14 9
14 G. Plaintiffs Should Not Be Given Leave To Amend	15 9
15 III. CONCLUSION.....	16 9

1 **TABLE OF AUTHORITIES**

2 <u>DESCRIPTION</u>	3 <u>PAGE</u>
4 Cases	
5 <i>Al Otro Lado, Inc. v. McAleenan</i> , 6 394 F. Supp. 3d 1168 (S.D. Cal. 2019)	7-8
7 <i>Ashcroft v. Iqbal</i> , 8 556 U.S. 662 (2009)	4
9 <i>Benson v. State Bd. of Parole and Probation</i> , 10 384 F.2d. 238 (9th Cir. 1967)	9
11 <i>C.G.B. v. Wolf</i> , 12 464 F. Supp. 3d 174 (D.D.C. 2020)	8
13 <i>Chicago Headline Club v. Noem</i> , 14 No. 25-3023 (7th Cir. Nov. 19, 2025)	3
15 <i>City of Los Angeles v. Lyons</i> , 16 461 U.S. 95 (1983)	1
17 <i>Clapper v. Amnesty Int'l USA</i> , 18 568 U.S. 398 (2013)	1, 2, 3
19 <i>County of Sacramento v. Lewis</i> , 20 523 U.S. 833 (1998)	6
21 <i>Fiedler v. Clark</i> , 22 714 F.2d 77 (9th Cir. 1983)	9
23 <i>Forrester v. City of San Diego</i> , 24 25 F.3d 804 (9th Cir. 1994)	5
25 <i>Gorin v. Hartford Life Ins. Co.</i> , 26 2019 WL 1578371 (C.D. Cal. Feb. 25, 2019)	4
27 <i>Hodgers-Durgin v. de la Vina</i> , 28 199 F.3d 1037 (9th Cir. 1999)	2
29 <i>Ileto v. Glock, Inc.</i> , 30 349 F.3d 1191 (9th Cir. 2003)	3
31 <i>Index Newspapers LLC v. United States Marshals Serv.</i> , 32 977 F.3d 817 (9th Cir. 2020)	3
33 <i>Jones v. City of Los Angeles</i> , 34 2022 WL 2062920 (C.D. Cal. Feb. 16, 2022)	6
35 <i>Laird v. Tatum</i> , 36 408 U.S. 1 (1972)	3
37 <i>Lemus v. Rite Aid Corp.</i> , 38 613 F. Supp. 3d 1269 (C.D. Cal. 2022)	1

1	<i>Lopez v. FAA</i> , 318 F.3d 242 (D.C. Cir. 2003)	8
2	<i>Marder v. Lopez</i> , 450 F.3d 445 (9th Cir. 2006)	4
3	<i>Noem v. Vasquez Perdomo</i> , --- F. Supp. 3d ---, 2025 WL 2585637 (U.S. Sept. 8, 2025)	1
4	<i>Puente v. City of Phoenix</i> , 123 F.4th 1035 (9th Cir. 2024)	5
5	<i>Reddy v. Litton Indus., Inc.</i> , 912 F.2d 291 (9th Cir. 1990)	9
6	<i>Sanderlin v. Dwyer</i> , 116 F.4th 905 (9th Cir. 2024)	5
7	<i>Schilling v. Rogers</i> , 363 U.S. 666 (1960)	9
8	<i>United States ex rel. Accardi v. Shaughnessy</i> , 347 U.S. 260 (1954)	8
9	<i>United States v. Texas</i> , 599 U.S. 670 (2023)	8
10	<i>Updike v. Multnomah Cty.</i> , 870 F.3d 939 (9th Cir. 2017)	2
11	Statutes	
12	5 U.S.C. § 551	8
13	5 U.S.C. § 701	8
14	Other	
15	8 C.F.R. § 287.8	8
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

1 **REPLY MEMORANDUM**

2 **I. INTRODUCTION**

3 As Defendants' Motion to Dismiss (ECF No. 81) explained, the First Amended Complaint
4 ("FAC") should be dismissed. The FAC fails to establish any Plaintiffs' standing because it does not
5 plausibly allege a violation of any of Plaintiffs' constitutional rights or an *imminently certain* risk of
6 future harm. Moreover, every claim pleaded in the FAC fails as a matter of law. Because Plaintiffs'
7 Opposition (ECF No. 82) to the FAC fails to rehabilitate its many deficiencies, the FAC should be
8 dismissed. Furthermore, because Plaintiffs have not requested leave to amend, the action should be
9 dismissed without leave to amend.

10 **II. ARGUMENT**

11 **A. Plaintiffs Lack Standing To Obtain Equitable Relief Against Defendants.**

12 The FAC fails to establish that any named Plaintiff has standing to pursue their claims. Plaintiffs
13 must show that an alleged injury is "concrete" and "actual or imminent, not 'conjectural' or
14 hypothetical." *City of Los Angeles v. Lyons*, 461 U.S. 95, 101-02 (1983). Here, Plaintiffs' claims fall
15 short of standing for prospective relief where they simply "fear its recurrence." *Noem v. Vasquez*
16 *Perdomo*, --- F. Supp. 3d ---, 2025 WL 2585637, at *2 (U.S. Sept. 8, 2025) (Kavanaugh, J., concurring)
17 (citing *Lyons*, 461 U.S. 95). It is not sufficient to establish a plaintiff's rights were violated in past
18 incidents, because absent a "real and immediate threat" that he will suffer the same injury in the future,
19 he lacks standing. *Lyons*, 461 U.S. at 105. Plaintiffs' allegations are insufficient to support an inference
20 that the "threatened injury" of future constitutional or Administrative Procedure Act violations is
21 "certainly impending" and not merely "possible." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409
22 (2013) (quoting *Whitmore v. Arkansas*, 495 U.S. 149, 158 (1990)). Plaintiffs have thus failed to allege
23 Article III standing for their claims.¹

24
25
26

¹ There is no merit to Plaintiffs' critique that Defendants did not address Plaintiffs' class allegations in
27 the motion to dismiss. *See* Pls.' Opp'n at 2. "Class allegations in a complaint are typically tested on a
28 motion for class certification, not at the pleading stage." *See Lemus v. Rite Aid Corp.*, 613 F. Supp. 3d
1269, 1277 (C.D. Cal. 2022).

1 For a variety of reasons, Plaintiffs cannot establish standing for prospective relief not least
2 because they fail to allege that DHS *lacks* policies forbidding excessive force and First Amendment
3 retaliation. That aside, there is not, nor has there ever been, a real and immediate threat that Plaintiffs
4 will suffer the same alleged injury again in the future. *See Hodgers-Durgin v. de la Vina*, 199 F.3d
5 1037, 1043-44 (9th Cir. 1999) (en banc). Plaintiffs attempt to downplay the significant passage of time
6 without injury or threat of injury to them, although the factual record pre-injunction belies the requisite
7 standard for Plaintiffs' standing and prospective relief. Specifically, the FAC appears to acknowledge
8 that no alleged injuries have been suffered by the overwhelming majority of Plaintiffs since July 10,
9 2025. *See Clapper*, 568 U.S. at 410 (stating plaintiffs must show "an objectively reasonable likelihood"
10 of future injury). Further, Plaintiffs cannot rely on non-party allegations to establish their standing.
11 Plaintiffs thus have no good basis to believe that the predicated injury will reoccur and that a specific
12 named plaintiff *himself or herself* will suffer it. *Updike v. Multnomah Cty.*, 870 F.3d 939, 948 (9th Cir.
13 2017).

14 Second, Plaintiffs merely allege that they inserted themselves in disruptive riots and were then
15 collaterally exposed to crowd control devices. That is not enough to establish standing. Deployment of
16 crowd control devices is not *per se* unlawful such that recurrence of riots establishes standing. On the
17 contrary, just as an arrest may or may not lead to a choke hold as in *Lyons*, a protest that turns into a riot
18 may or may not lead to incidental exposure to crowd control devices. For example, Plaintiff Beckner-
19 Carmitchel's own depiction of the violent riot on September 1, 2025, corroborates the timing of the
20 account submitted by of Deputy Regional Director Roger Scharmen from Defendant's Reply in support
21 of their Motion to Stay previously submitted. ECF No. 65. In fact, that at around 7:00 p.m., a ten-foot
22 high fence erected between DHS and the protestors was "opened" (or breached) by protestors.
23 Scharmen Decl. ECF No. 65-1 ¶ 8 & FAC ECF No. 67 ¶¶ 125-26. Beckner-Carmitchel's factual
24 assertions point toward the conclusion that he was inadvertently injured when agents allegedly "sprayed
25 everyone in attendance at the protest," FAC ¶ 127, but that does not mean that Defendants engaged in
26 unlawful law enforcement activity such as to invoke Article III standing for prospective relief or that a
27 similar situation will lead to the same result during future riots. For the same reasons, Plaintiff Press
28 Club Members Buer and Mareina's vague recitation of events (and omission of context of the violent

1 riots in which they found themselves) cannot show that they face a “realistic threat” of the allegedly
2 improper conduct occurring again when their alleged injuries were merely inadvertent.

3 Plaintiffs also cannot invoke “subjective ‘chill’” of First Amendment activity as a substitute for
4 establishing a “specific present objective harm or a threat of specific future harm.” *Laird v. Tatum*, 408
5 U.S. 1, 13-14 (1972). Here, Plaintiffs’ abstract and unspecified “fear” is insufficient to establish
6 standing. Plaintiffs have not made any factual allegations showing that any of them have been chilled.
7 Their only allegations of a chilling effect are boilerplate assertions that Defendants actions are chilling
8 Plaintiffs’ exercise of their First Amendment rights. *See* FAC ¶¶ 7, 105, 283. That is nothing more than
9 a bare legal conclusion, as it lacks any factual information necessary to support its claim of a legally
10 cognizable chilling effect—it lacks any factual basis at all, such as which Plaintiffs were allegedly
11 chilled, what actions caused the chill, what activities Plaintiffs ceased, or when any of the alleged
12 chilling happened. *See Ileto v. Glock, Inc.*, 349 F.3d 1191, 1200 (9th Cir. 2003) (“[W]e do not ...
13 Assume the truth of legal conclusions cast in the form of factual allegations.”). Further, Plaintiffs
14 cannot demonstrate standing on the theory that they have been chilled by the fear of an implausible
15 harm. A purported chilling effect cannot be ““based on a fear of future injury that itself [is] too
16 speculative to confer standing.”” *Index Newspapers LLC v. United States Marshals Serv.*, 977 F.3d 817
17 (9th Cir. 2020) (quoting *Munns v. Kerry*, 782 F.3d 402, 410 (9th Cir. 2015)). Here, in the absence of
18 factual allegations within the FAC that show any likelihood that a named Plaintiff will suffer harm in
19 the future, the allegation of a chilling effect caused by that risk of harm must likewise fail. Given this,
20 any Plaintiff who remains “chilled” only self-inflicts such harm. *See Clapper*, 568 U.S. at 417-18.

21 Finally, Plaintiffs’ basis for standing is undermined by the recent stay decision from the Seventh
22 Circuit. *Chicago Headline Club, et al. v. Noem, et al.*, No. 25-3023 (7th Cir. Nov. 19, 2025) (attached
23 hereto as Ex. A). In granting the stay, the Circuit Court found that the federal government was likely to
24 succeed because the preliminary injunction, modeled on and very similar to the one here, was
25 overbroad and too prescriptive. The Circuit Court further stated that it had “reservations about Article
26 III standing” given that “[a] fear that such harm will recur is insufficient, on its own, to show standing
27 for injunctive relief.” *Id.* (citing *Lyons*, 461 U.S. at 107 n.8). As is the case here, Plaintiffs cannot show
28 “that the past harm they allegedly faced is likely to imminently happen to them in the future.” *Id.* at *1.

1 **B. Plaintiffs' First Amendment Claims Are Inadequate (Count 1).**

2 Plaintiffs' First Amendment arguments boil down to one point—that the Court does not need to
3 decide whether the FAC states any First Amendment claim because the Court previously granted
4 Plaintiffs a preliminary injunction. But on a motion to dismiss, the Court must assess whether the
5 *allegations* in the FAC, not the declarations filed with the PI motion, are sufficient. *See Ashcroft v.*
6 *Iqbal*, 556 U.S. 662, 678 (2009). The Motion argued that Plaintiffs have failed to allege that any
7 individual officer who used force at the protests acted with retaliatory intent or that any invidious intent
8 can be attributed to DHS. The only allegations that Plaintiffs point to are selective quotations in the
9 FAC. *See Opp'n at 12* (citing FAC ¶¶ 75-77, 93-99). But these quotations, attributed to government
10 officials, are incomplete and misleading (¶¶ 94-97) or vague, anonymous statements based on
11 "information and belief" (¶¶ 98-99). The Court is not "required to accept as true conclusory allegations
12 that are contradicted by documents referred to in the complaint." *Paulsen v. CNF Inc.*, 559 F.3d 1061,
13 1071 (9th Cir. 2009); *see also Gorin v. Hartford Life Ins. Co.*, 2019 WL 1578371, at *4 n.2 (C.D. Cal.
14 Feb. 25, 2019) (disregarding conclusory statements in complaint contrary to the documents attached to
15 the complaint).

16 Given the inadequacy of the allegations, Plaintiffs' Opposition tries to incorporate by reference
17 for the first time the entire motion for preliminary injunction and supporting evidence. *See Opp'n at 12.*
18 Doing so for the first time in an opposition brief is improper, and regardless, nowhere does the FAC
19 actually incorporate the PI motion or the declarations supporting the PI motion. Those materials are not
20 appropriate for consideration as part of this motion because the FAC does not "necessarily rel[y]" on
21 those declarations—the FAC does not refer to any of the declarations, and the declarations are not
22 "central to the [Plaintiffs'] claim." *Marder v. Lopez*, 450 F.3d 445, 448 (9th Cir. 2006). Even if the
23 FAC is construed to incorporate Plaintiffs' motion for preliminary injunction and supporting
24 declarations, those factual allegations were insufficient to support a preliminary injunction, as
25 Defendants have consistently argued. Indeed, the Ninth Circuit Court of Appeals has now scheduled
26 oral argument for December 12, 2025, on Defendants' motion to stay this Court's order on the
27 preliminary injunction. As for Plaintiffs' right-of-access claim, Plaintiffs' Opposition identifies no
28 allegations that they have been denied access to a government process to which they have a right of

1 access.²

2 **C. The Fourth Amendment Claim Fails (Count 2).**

3 Assuming that Plaintiffs have standing to pursue a Fourth Amendment claim, which they do not,
4 Plaintiffs' Opposition fails to explain how their claim is legally sufficient. Plaintiffs argue that the use
5 of pepper spray and other crowd-control measures constitutes a "seizure." The Ninth Circuit's decision
6 in *Puente v. City of Phoenix* is on-point. 123 F.4th 1035, 1051-55 (9th Cir. 2024) (affirming denial of
7 Fourth Amendment claim in the context of crowd control measures employed during protest of the
8 President); *see also Forrester v. City of San Diego*, 25 F.3d 804, 805-07 (9th Cir. 1994) (holding pain
9 compliance techniques on passive protesters not unreasonable to remove them). Plaintiffs rely heavily
10 on *Sanderlin v. Dwyer*, 116 F.4th 905 (9th Cir. 2024), which states that "[a] seizure requires the use of
11 force with intent to restrain." *Id.* at 913 (citing *Torres v. Madrid*, 592 U.S. 306, 317 (2021)). But
12 plaintiffs do not point to a specific instance in which a plaintiff in this case was hit by a "40mm foam
13 baton" as was the case in *Sanderlin*. Rather, Plaintiffs' allegations focus on tear gas cannisters and
14 pepper spray, *see, e.g.*, FAC ¶¶ 126, 194, 207, 219, 226, making the *Peunte* far more analogous to the
15 allegations before this Court. The FAC, however, fails to allege that any individual officer had an intent
16 to restrain. Asserting in conclusory fashion that crowd-control devices are "specifically designed" to
17 "incapacitate individuals" is insufficient. If it were, any use of a crowd-control device would constitute
18 a "seizure."

19 Since the use of force claim arose "outside the context of a seizure," they are evaluated under a
20 "shocks-the-conscience test." *See Puente*, 123 F.4th at 1053. Plaintiffs, however, offer no argument to
21 rebut this point as to the Fourth Amendment claim. Consequently, the Fourth Amendment claim should
22 be dismissed.

23
24
25
26 ² Plaintiffs argue that that the Motion to Dismiss does not attack Plaintiff's "viewpoint discrimination"
27 theory. That Plaintiffs resort to arguing waiver based on a few passing references to "viewpoint
28 discrimination" in a 70 page brief speaks to the weakness of the First Amendment claim. *See, e.g.*, ¶¶ 91, 282. Regardless, conclusory passing references in the FAC are insufficient to a maintain a
"viewpoint discrimination" claim.

1 **D. The Fifth Amendment Claim Also Fails (Count 2).**

2 Plaintiffs concede that their Fifth Amendment claim is adequately covered by their Fourth
3 Amendment claim, but seek permission to plead the Fifth Amendment claim “in the alternative.” Opp’n
4 at 16. Plaintiffs ignore the controlling Supreme Court case, *County of Sacramento v. Lewis*, 523 U.S.
5 833 (1998)³, holding that “if a constitutional claim is covered by a specific constitutional provision, the
6 claim must be analyzed under the standard appropriate to that specific provision, not under substantive
7 due process.” *Id.* at 833. Instead, Plaintiffs rely on the District Court’s unpublished opinion in *Jones v.*
8 *City of Los Angeles*, 2022 WL 2062920 (C.D. Cal. Feb. 16, 2022). In that case, the Court identified a
9 scenario in which the First Amendment retaliation claim would fail, but there would still be a
10 substantive due process claim under the Fourteenth Amendment. Plaintiffs offer no such explanation
11 here. Therefore, the Fifth Amendment claim must be dismissed.⁴

12 **E. Plaintiffs Fail To State A Claim Under The APA (Count 3).**

13 Plaintiffs cannot establish either that there is a final agency action that could be reviewed under
14 the APA nor that Defendants violated their written polices such that a final agency action has taken
15 place. Notably, Plaintiffs concede that no final agency action has occurred that could be reviewed and
16 vacated under the APA. Indeed, the “statements made by several [agency] officials” that Plaintiffs rely
17 do not constitute “final agency action” as a matter of law. ECF No. 84 at 22. Even in the light most
18 favorable to Plaintiffs, the “quotes” that they rely on (ECF No. 82 at 22) are at best incomplete. On
19 their face, not a single quote refers to any force used in violation of the Constitution or in any way to
20 promote violence against protestors. In fact, Plaintiffs repeatedly omit the context of these quotes and to
21 whom they are directed—violent rioters. Repeatedly, throughout the FAC, Plaintiffs assert “statements
22 made by several of those officials about sustaining DHS violent conduct against protesters exercising
23 their First Amendment rights,” however, looking closer, Plaintiffs present highly edited and out-of-

24
25 ³ Plaintiffs actually misrepresent the holding in *Lewis*. Plaintiffs claim that the Supreme Court in *Lewis*
26 stated that a plaintiff is “permitted to alternatively plead [a] a substantive due process claim.” Opp’n at
27 16. But nowhere does that quote appear in the case. Instead, it was the district court in *Jones* that reached
28 that conclusion and used that language.

⁴ Oddly, much of Plaintiffs’ argument about the Fifth Amendment re-hashes their allegations on the
Fourth Amendment (Opp’n at 17-19), which as discussed above fails to state a claim.

1 context “quotes.” As just one of several examples, Plaintiffs made the following “quote” in the FAC
2 and cited to it in their opposition (ECF No. 82 at 22) to justify their informal APA claim:

3 “In an interview with Fox News on June 10, 2025, Defendant Noem stated about
4 DHS’s response to the ongoing protests in this District, ‘We’re going to hit them
5 back and hit them back harder than we have before . . . The more they protest . . .
the harder ICE is going to come after them.’” ECF No. 67 ¶ 75.

6 What Secretary Noem *actually* said:

7 “The more that people conduct violence against law enforcement officers, boy,
8 we’re going to hit them back and hit them back harder than we ever have before.
9 And we conducted more operations today than we did the day before and tomorrow
10 we’re going to double those efforts again. The more that they protest *and commit*
11 *acts of violence against law enforcement officers*, the harder ICE is going to come
after them.” *See* “We have been going after the ‘worst of the worst’ in LA: Kristi
Noem (June 10, 2025) <https://www.foxnews.com/video/6374069994112>
(emphasis added).

12 Plaintiffs cannot manufacture an APA claim through self-serving snippets taken out of context. Absent
13 their scattershot quotation efforts, Plaintiffs cannot show that there was any informal policy to violate
14 the law or informal disregard of regulation or policy to establish an APA claim. Each out of context
15 quote lodged by Plaintiffs must be viewed in its full context. When reviewed in the appropriate light, it
16 is obvious that there has never been an informal policy to disregard regulations, nor are there any
17 violations of policies and practices that DHS has sanctioned and ratified.

18 Simply put, Plaintiffs concede there is no formal policy violation pursuant to the APA and
19 absent out-of-context quotes and unsubstantiated allegations made by non-parties, Plaintiffs scattershot
20 allegations of policy violations involving wholly different facts are insufficient to identify the policy or
21 custom they contend violates DHS regulations. *See Al Otro Lado, Inc. v. McAleenan*, 394 F. Supp. 3d
22 1168, 1207 (S.D. Cal. 2019) (quoting *Lightfoot v. D.C.*, 273 F.R.D. 314, 326 (D.D.C. 2011) (“The
23 question is not whether a constellation of disparate but equally suspect practices may be distilled from
24 the varying experiences of the class; rather, Plaintiffs must first identify the ‘policy or custom’ they
25 contend violates the dictates of procedural due process and then establish that the ‘policy or custom’ is
26 common to the class.”) Here, Plaintiffs, quoting *McAleenan*—rather than *Lightfoot* from which the
27 entirety of the *McAleenan* quote came—Plaintiffs again obfuscate the context. As quoted above,
28 *Lightfoot* does not merely identify a “constellation of disparate but equally suspect practices distilled

1 from varying experiences of the class,” but requires that Plaintiffs first identify the “policy or custom”
2 they contend violates the dictates of procedural due process. *Lightfoot*, 273 F.R.D. at 326. Absent
3 piecemeal, curated quotes from law and facts, Plaintiffs fail to identify a policy or custom that violates
4 the dictates of procedural due process.

5 To the extent Plaintiffs challenge actions by individual law enforcement officers in responding
6 to violent crowds, any such actions would not be an “agency action” subject to review under the APA.
7 *See* 5 U.S.C. § 551(13) (defining an agency action as “rule, order, license, sanction, relief, or the
8 equivalent or denial thereof, or failure to act”). Further, any such actions would fall outside the scope of
9 APA review because they are “committed to agency discretion by law.” 5 U.S.C. § 701(a)(2); *see*
10 *United States v. Texas*, 599 U.S. 670, 678 (2023) (“Under Article II, the Executive Branch possesses
11 authority to decide ‘how to prioritize and how aggressively to pursue legal actions against defendants
12 who violate the law.’” (quoting *TransUnion LLC v. Ramirez*, 594 U.S. 413, 429 (2021)); *Go Leasing,*
13 *Inc. v. Nat'l Transp. Safety Bd.*, 800 F.2d 1514, 1523 (9th Cir. 1986) (“the Administrator need not
14 promulgate rules constraining his discretion as to when to employ a particular statutory enforcement
15 action”).

16 Plaintiffs’ argument based on *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260
17 (1954), likewise misses the mark. *Accardi* requires agencies to follow their own “internal, procedural
18 regulations” in making decisions. *Lopez v. FAA*, 318 F.3d 242, 246 (D.C. Cir. 2003). The doctrine is
19 rooted in notions of procedural due process. *Id.* Accordingly, “*Accardi* only encompasses procedural
20 rules.” *See C.G.B. v. Wolf*, 464 F. Supp. 3d 174, 226 n.42 (D.D.C. 2020). Here, Plaintiffs base their
21 *Accardi* claim on 8 C.F.R. § 287.8(a), but that provision sets forth substantive criteria for uses of force,
22 not procedural requirements officers must follow before using such force. *Id.* (stating that officers shall
23 use “the minimum non-deadly force necessary to accomplish the officer’s mission”). Plaintiffs tellingly
24 identify no similar invocations of *Accardi* in the discretionary law enforcement context, thus
25 reenforcing that this theory of APA relief fails.

1 **F. Declaratory “Relief” Is Not An Independent Cause Of Action (Count 4).**

2 Despite Plaintiffs’ contention, it is well established that the Declaratory Judgment Act is not an
3 independent source of federal jurisdiction. *Fiedler v. Clark*, 714 F.2d 77, 79 (9th Cir. 1983). The Act
4 merely provides an additional remedy in cases where jurisdiction is otherwise established. *Luttrell v.*
5 *United States*, 644 F.2d 1274, 1275 (9th Cir. 1980). Accordingly, jurisdiction must be found to exist on
6 another ground. *See Benson v. State Bd. of Parole and Probation*, 384 F.2d. 238, 239 (9th Cir. 1967);
7 *Schilling v. Rogers*, 363 U.S. 666, 677 (1960). Here, because Plaintiffs lack standing to assert their
8 claims, the Court lacks an independent basis for declaratory relief.

9 **G. Plaintiffs Should Not Be Given Leave To Amend**

10 Plaintiffs do not request leave to amend. Indeed, Plaintiffs shared their proposed amended
11 complaint with defense counsel in advance to attempt to forestall this motion. *See* ECF No. 56, at ¶¶ 4,
12 5, 7. Even if Plaintiffs had requested leave, amendment would be futile because Plaintiffs have not
13 identified any new information they would add to support their claims. *See, e.g., Reddy v. Litton Indus.,*
14 *Inc.*, 912 F.2d 291, 296-97 (9th Cir. 1990) (“Although leave to amend should be liberally granted, the
15 amended complaint may only allege ‘other facts consistent with the challenged pleading.’”).

16 **III. CONCLUSION**

17 For these reasons, the action and all of its claims should be dismissed.

1 Dated: November 20, 2025

Respectfully submitted,

2 BRETT A. SHUMATE
3 Assistant Attorney General
Civil Division

4 ERIC J. HAMILTON
5 Deputy Assistant Attorney General

6 SEAN SKEDZIELEWSKI
7 Counsel to the Assistant Attorney General
Civil Division

8 ALEXANDER K. HAAS
9 ANDREW I. WARDEN
KATHLEEN C. JACOBS
Civil Division, Federal Programs Branch

10 BILAL A. ESSAYLI
First Assistant United States Attorney
11 DAVID M. HARRIS
Assistant United States Attorney
12 Chief, Civil Division
DANIEL A. BECK
13 Assistant United States Attorney
Chief, Complex and Defensive Litigation Section
14 PAUL (BART) GREEN
Assistant United States Attorney

15
16 /s/ Paul (Bart) Green
17 PAUL (BART) GREEN*
Assistant United States Attorney

18 Attorneys for Defendants

19
20 L.R. 11-6.2 Certificate of Compliance

21 *Counsel of record certifies that this brief contains 3,527 words, which complies with the word
22 limit of L.R. 11-6.1, and 10 pages or fewer, which complies with the Court's Standing Order.