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15 IN THE UNITED STATES DISTRICT COURT
16 EASTERN DISTRICT OF CALIFORNIA

17 UNITED FARM WORKERS, et al.,

18 Plaintiffs,

19 v.

20 KRISTI NOEM, SECRETARY OF
HOMELAND SECURITY, et al.,

21 Defendants.
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No. 1:25-cv-00246-JLT-CDB

**DEFENDANTS' OPPOSITION TO
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

Scheduled Hearing: April 28, 2025, at 1:30 p.m.,
Courtroom 4, before Hon. Jennifer L. Thurston

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INTRODUCTION

1
2 Named Plaintiffs, Oscar Morales Cisneros, Wilder Munguia Esquivel, and Yolanda Aguilera
3 Martinez, in the instant putative class action, move the Court to enjoin the United States Border Patrol
4 (“USBP”) from conducting unlawful stops and arrests in the Eastern District of California. The Court
5 should deny their motion. First and foremost, Plaintiffs cannot show a likelihood of success on the
6 merits because the Court lacks jurisdiction to consider Plaintiffs’ claims and, moreover, lacks
7 jurisdiction to enter a class-wide injunction restraining USBP’s enforcement operations. Second, the
8 claims subject of Plaintiffs’ motion for preliminary injunction have, in any event, been resolved.
9 Plaintiffs allege that in an operation conducted between January 7, 2025, and January 9, 2025, in the
10 Eastern District of California, USBP violated the Fourth Amendment and the statutory requirements of 8
11 U.S.C. § 1357(a)(2). Complaint at ¶¶ 1-3, 326-45. On April 4, 2025, USBP’s El Centro Sector issued
12 policy and guidance (termed a “Muster”) and committed to providing training thereon. Exhibit A
13 (Muster); Exhibit B (Declaration of Sergio Guzman). The Muster is materially identical to DHS’s
14 “Broadcast Statement of Policy.” *See* Plaintiffs’ Proposed Order (requesting the Court enjoin USBP
15 from stops in violation of the Fourth Amendment and arrests in violation of 8 U.S.C. § 1357(a)(2) and to
16 order USBP to comply with DHS’s “Broadcast Statement of Policy”); Complaint Appendix A.
17 Accordingly, USBP’s prompt, responsive, and demonstrated commitment to forestalling similar alleged
18 violations in the future renders an injunction inappropriate, either as a matter of mootness or lack of a
19 cognizable continued and future irreparable injury.¹
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27 ¹ Plaintiffs also allege that USBP engaged in a pattern or practice of coercing detained individuals into
28 accepting voluntary departure, but this is not part of their motion for preliminary injunction. Complaint
at ¶¶4, 272-75, 346-50 (Claim IV).

BACKGROUND

I. Procedural History

On February 26, 2025, Plaintiffs filed a complaint for declaratory and injunctive relief alleging that, in an operation conducted between January 7, 2025, and January 9, 2025, USBP violated the Fourth Amendment and the statutory requirements of 8 U.S.C. § 1357(a)(2). Complaint at ¶¶ 1-3, 326-45 (Claims I, II, and III). Specifically, Plaintiffs allege that USBP agents engaged in a pattern and practice of warrantless race-based stops, and a pattern or practice of warrantless arrests without assessing flight risk. Complaint at ¶¶ 3, 236, 239; Memorandum of Points and Authorities in Support of Motion for Preliminary Injunction (“Memo”) at 1-2. Plaintiffs also claim to represent two classes under Federal Rules of Civil Procedure 23(b)(2). Complaint at ¶¶ 17, 312-18. On March 7, 2025, Plaintiffs filed a motion for preliminary injunction and a motion to provisionally certify a Suspicionless Stop Class and a Warrantless Arrest Class.

II. Factual Background²

A. Named Plaintiffs’ Allegations

On January 7, 2025, named Plaintiff Oscar Morales Cisneros left work to head home, parking outside of a liquor store to fill up empty water jugs. Cisneros Declaration at ¶ 4. He was about to reverse out of his parking spot when an unmarked Chevrolet Tahoe pulled up behind his truck and blocked him in. *Id.* Cisneros put his truck back in park and lowered his driver’s side window. *Id.* Two men in Border Patrol uniforms approached his window and one of the men asked Cisneros if he had papers and was here legally. *Id.* at ¶¶ 4-5. Cisneros did not answer. *Id.* at ¶ 5. Cisneros provided his driver’s license when asked for it and one of the officers walked back to the Tahoe with the license. *Id.* When the agent returned, he told Cisneros he was in the United States illegally and arrested him. *Id.* at ¶

² Facts in this section are as alleged by named Plaintiffs in their declarations. Defendants do not concede these allegations.

1 5-6. Cisneros was transported to a detention facility in El Centro and, on January 10, 2025, provided
2 with a monitoring device and released. *Id.* at ¶¶ 9, 18-19. It is undisputed Cisneros lacks status in the
3 United States.

4 On January 7, 2025, around noon, named Plaintiff Wilder Munguia Esquivel was outside a
5 Home Depot in Bakersfield, standing with a group of other day laborers, when several unmarked
6 vehicles pulled up and at least ten plain-clothed men, most wearing masks covering all but their eyes,
7 exited the vehicles and aggressively “swarmed around us.” Esquivel Declaration at ¶¶ 4-5. One of the
8 men asked Esquivel about his status – “Do you have papers? Do you have identification? Where are you
9 from?” *Id.* at ¶5. When Esquivel did not answer, the man asked again, but louder, and then asked again,
10 louder still. *Id.* Esquivel turned away from the man and walked away. *Id.* The man followed Esquivel,
11 continuing to ask Esquivel questions. *Id.* Esquivel did not respond, and the man ordered Esquivel to
12 stop. *Id.* Esquivel realized the man was a federal immigration agent and stopped, telling the agent “I
13 have the right to remain silent.” *Id.* at ¶¶ 5-6. The agent asked Esquivel for identification and ordered
14 Esquivel to take out his wallet. *Id.* at ¶ 6. Before Esquivel could comply, the agent removed the wallet
15 from Esquivel’s back pocket, looked through it, and arrested him. *Id.* at ¶¶ 7-9. It is undisputed that
16 Esquivel lacks status in the United States.

17 On January 8, 2025, at around 4:30 pm, named Plaintiff Yolanda Aguilera Martinez was driving
18 in a vehicle when she saw two vehicles, one with flashing police lights, pulled over to the right side of
19 the road with three men standing near the vehicles. Martinez Declaration at ¶¶ 4-5. The men were in
20 plain-clothes, but with holstered firearms, and one of the men raised his hand and flagged Martinez to
21 pull over her vehicle. *Id.* Once she pulled over, the man who flagged Martinez down approached her
22 window and asked about her immigration status. *Id.* at ¶ 6. Martinez produced a driver’s license, but
23 the man questioned its authenticity. *Id.* at ¶6. The man told Martinez to exit the vehicle. *Id.* at ¶ 7. She
24 exited, the man pushed her to the ground, placed handcuffs on her, then placed her in the back of his
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1 vehicle. *Id.* Martinez requested an opportunity to use her phone to obtain a photograph of her
2 permanent resident card. *Id.* at ¶ 10. The man agreed, she obtained her phone from her vehicle, showed
3 the agent a photograph of her permanent resident card, and she was released from custody. *Id.*

4 **B. USBP Guidance and Training**

5 On April 4, 2025, the El Centro Sector of Border Patrol issued a “Muster.” Exhibit (“Ex”) A.
6 The Muster contains guidance on the requirement for reasonable suspicion for traffic stops conducted
7 throughout the Eastern District of California, guidance on assessing flight risk using factors such as
8 “family, home, or employment” (that is, community ties), and guidance on documenting the facts and
9 circumstances surrounding a warrantless arrest in an alien’s Form I-213 as soon as practicable. *See Ex.*
10 A. USBP El Centro Sector plans to conduct training sessions to ensure compliance with the Muster
11 within 60 days for the more than 900 El Centro Sector Border Patrol Agents, supervisors, and command
12 staff on report writing, compliance with the Fourth Amendment and 8 U.S.C. § 1357, and compliance
13 with Supreme Court and Ninth Circuit law on conducting vehicle stops, consensual encounters, and
14 warrantless arrests.³ Ex. B (Declaration of Sergio Guzman) at ¶¶ 10-16.

17 **III. Statutory and Regulatory Background**

18 Under the INA, immigration officials are authorized to perform the warrantless arrest of:

19 [A]ny alien in the United States, if he has reason to believe that the alien so arrested
20 is in the United States in violation of any such law or regulation and is likely to
21 escape before a warrant can be obtained for his arrest, but the alien arrestee shall be taken
22 without unnecessary delay . . . before an officer of the Service having authority to examine aliens
as to their right to enter or remain in the United States.

23 8 U.S.C. § 1357(a)(2); *see Abel v. United States*, 362 U.S. 217, 232-37 (1960) (discussing longstanding
24 administrative arrest procedures in deportation cases). “Reason to believe” has been equated with the
25 constitutional requirement of probable cause. *Tejeda-Mata v. I.N.S.*, 626 F.2d 721, 725 (9th Cir. 1980)

27 _____
28 ³ El Centro Sector will endeavor to train all such employees within 60 days. However, it may not be
practicable to do so because of, for example, employees being on detail or extended leave.

1 (internal citations omitted).

2 The regulations implementing this statute require that “[w]ith respect to an alien arrested and
3 administratively charged with being in the United States in violation of law, the arresting officer shall
4 adhere to the procedures set forth in 8 C.F.R. § 287.3 if the arrest is made without a warrant.” 8 C.F.R.
5 § 287.8(c)(2)(iv). That regulation provides that “an alien arrested without a warrant of arrest . . . will be
6 examined by an officer other than the arresting officer.” 8 C.F.R. § 287.3(a). “If no other qualified
7 officer is readily available and the taking of the alien before another officer would entail unnecessary
8 delay, the arresting officer, if the conduct of such examination is a part of the duties assigned to him or
9 her, may examine the alien.” *Id.* “If the examining officer is satisfied that there is prima facie evidence
10 that the arrested alien . . . is present in the United States in violation of the immigration laws, the officer
11 will either refer the case to an immigration judge for further inquiry . . . , order the alien removed . . . , or
12 take whatever other action may be appropriate or required under the laws or regulations applicable to the
13 particular case. *Id.* at § 287.3(b). DHS ordinarily will make an initial determination within 48 hours of
14 the apprehension whether the alien will remain in custody, be paroled, be released on bond or be
15 released on recognizance. 8 C.F.R. § 287.3(d). In addition, DHS will decide whether to issue a notice
16 to appear and arrest warrant. *Id.*

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19 The general detention authority for aliens in removal proceedings is governed by 8 U.S.C. §
20 1226(a). Under this section, “an alien may be arrested and detained,” on issuance of a warrant, “pending
21 a decision on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a). After a
22 removal becomes final, 8 U.S.C. § 1231(a) authorizes detention.

23 STANDARDS OF REVIEW

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25 A preliminary injunction is “an extraordinary and drastic remedy, one that should not be granted
26 unless the movant, by a clear showing, carries the burden of persuasion.” *Loper v. Brewer*, 680 F.3d
27 1068, 1072 (9th Cir. 2012). This is a “heavy” burden. *Earth Island Inst. v. Carlton*, 626 F.3d 462, 469
28

1 (9th Cir. 2010) (internal quotation omitted). “A plaintiff seeking a preliminary injunction must show
2 that: (1) she is likely to succeed on the merits, (2) she is likely to suffer irreparable harm in the absence
3 of preliminary relief, (3) the balance of equities tips in her favor, and (4) an injunction is in the public
4 interest.” *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (internal quotation omitted). The
5 court evaluates “these factors on a sliding scale, such that a stronger showing of one element may offset
6 a weaker showing of another.” *Recycle for Change v. City of Oakland*, 856 F.3d 666, 669 (9th Cir.
7 2017) (internal citations omitted). When the balance of equities “tips sharply in the plaintiff’s favor,”
8 the plaintiff must raise only “serious questions” on the merits - a lesser showing than likelihood of
9 success. *See All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir. 2011). Mandatory
10 injunctions, which order a party to take action, are “particularly disfavored,” *Marlyn Nutraceuticals, Inc.*
11 *v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 879 (9th Cir. 2009), and should be denied “unless the
12 facts and law clearly favor the moving party,” *Stanley v. University of S. Cal.*, 13 F.3d 1313, 1320 (9th
13 Cir. 1994) (internal citations omitted).
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16 ARGUMENT

17 **I. Plaintiffs Fail to Establish a Likelihood of Success on Merits**

18 **A. The Court Lacks Jurisdiction to Review Plaintiffs’ Claims Under 8 U.S.C. §** 19 **1252(a)(5) and (b)(9)**

20 Pursuant to 8 U.S.C. § 1252(b)(9), “[j]udicial review of all questions of law and fact, including
21 interpretation and application of constitutional and statutory provision, arising from any action taken or
22 proceeding brought to remove an alien from the United States under this subchapter shall be available
23 only in judicial review of a final [removal] order.” And a petition for review filed in the appropriate
24 court of appeals is the sole and exclusive means for judicial review of a final removal order. *See* 8
25 U.S.C. § 1252(a)(5). In other words, if a claim challenges a “decision to detain [an alien] in the first
26 place or seek removal,” a district court lacks jurisdiction to consider that claim and it instead must be
27 reviewed through the administrative process. *Jennings v. Rodriguez*, 138 S. Ct. 830, 841 (2018).
28

1 The stops and detentions that Plaintiffs challenge were actions taken to remove them from the
2 United States, that is, to “detain [them] in the first place and seek their removal.” *Jennings*, 138 S. Ct. at
3 841. Plaintiffs challenge the questions of law and fact behind these actions, specifically, whether USBP
4 had reasonable suspicion for the stops and probable cause for the arrests. Because Plaintiffs challenge
5 questions of law and fact arising from these actions taken to remove them, 8 U.S.C. § 1252(a)(5) &
6 (b)(9) require that they bring these claims in petitions for review in the court of appeals. Indeed,
7 petitions for review commonly consider challenges related to whether immigration authorities had
8 reasonable suspicion to stop, or probable cause to arrest, an alien. *Sanchez v. Sessions*, 904 F.3d 643
9 (9th Cir. 2018); *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1033 (9th Cir. 2016) (8 U.S.C. § 1252(a)(5) and
10 (b)(9) bars district courts from reviewing legal questions “routinely raised in petitions for review”). And
11 these same legal questions are commonly raised by aliens in removal proceedings asking administrative
12 and federal courts of appeal to suppress evidence of their removability due to Fourth Amendment or
13 regulatory violations, or terminate proceedings due to the same. *Sanchez*, 904 F.3d at 653-54 (alleged
14 race-based stop by Coast Guard challenged in removal proceedings) (citing *Rajah v. Mukasey*, 544 F.3d
15 427, 446-47 (2d Cir. 2008)); *Leal-Burboa v. Garland*, No. 21-70279, 2022 WL 17547799 (9th Cir.
16 2022) (alleged race-based stop challenged in removal proceedings). If the legal remedy for unlawful
17 stops and arrests is provided in removal proceedings, ipso facto these challenges are part of the decision
18 to remove an alien. It does not matter that a class remedy “might be more efficient than requiring each
19 applicant to file a PFR,” or preferred as a method to challenge “policy and practice,” as 8 U.S.C. §
20 1252(b)(9) plainly precludes “all district court review of any issue raised in a removal proceeding.”
21 *J.E.F.M.*, F.3d at 837 at 1034-35, 1038; *Nava*, 435 F.Supp.3d at 894 (rejecting application of 8 U.S.C. §
22 1252(b)(9) because removal proceedings “are not structured to provide . . . system-wide reforms”).
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26 Defendants acknowledge that in *Nava v. Department of Homeland Security*, 435 F.Supp.3d 880
27 (N.D. Ill. 2020), a case relied upon by Plaintiffs as similar litigation, the court rejected an argument that
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1 8 U.S.C. § 1252(a)(9) precluded it from reviewing a class challenge to alleged unlawful stops and arrests
2 by Immigration and Customs Enforcement (“ICE”). Complaint at ¶¶ 280-83; Memo at 16. This is a
3 single district court case that is not remotely binding on this Court. It is also not persuasive. First, the
4 district court incorrectly interpreted the Supreme Court’s decision in *Jennings* as holding that 8 U.S.C. §
5 1252(a)(9) applied only to reviewing “lawful” actions taken to remove an alien from the United States.
6 *Id.* at 890-91. The Supreme Court did nothing of the sort. Indeed, many challenges brought by aliens in
7 a petition for review allege some variation of the claim that the decision to remove them is unlawful.
8 This is particularly true for aliens charged with deportability under 8 U.S.C. § 1227 (describing the
9 grounds for deportation), but even when aliens concede removability, they often allege that the denial of
10 relief was unlawful. The district court ignored that the precise claims Plaintiffs raise here – Fourth
11 Amendment challenges to their original arrest – may be reviewed in a petition for review. Holding that
12 § 1252(b)(9) only applies to “lawful” actions would lead to absurd results and claim splitting wherein
13 aliens could challenge their arrest in several Article III forums. Further, since the district court’s
14 decision in *Nava*, the Supreme Court rejected a related argument with regard to § 1252(f)(1). *See*
15 *Garland v. Aleman Gonzalez*, 596 U.S. 543, 552-54 (2022) (rejecting an argument that 8 U.S.C. §
16 1252(f)(1) applies only to the operation of “properly interpreted” statutory provisions, noting that
17 statutes can be operated “unlawfully” or “improperly”).

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21 Second, the *Nava* court held that, in any event, the plaintiffs’ factual and legal challenges to their
22 stops and arrests of aliens were “too remote” from “the removal process,” citing *Jennings*, 138 S. Ct. at
23 840 & 841 n.3. 435 F.Supp.3d at 891-92. First, this analysis plainly contradicts the analysis in
24 *J.E.F.M.*, 837 F.3d at 1033, in which the Ninth Circuit held that the test for whether § 1252(b)(9) applies
25 is whether the claims are “routinely raised in petitions for review” – a test Defendants can easily
26 demonstrate. *See supra* at 7. Regardless, the “remote,” collateral challenges described in *Jennings*,
27 however, were challenges to injuries entirely unrelated to the decision to detain or remove an alien –
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1 conditions of confinement, assault by a detention guard or fellow detainee, a car crash, or prolonged
2 detention. *Jennings*, 138 S. Ct at 840. It was too “expansive” to “cram[]” these actions into action
3 “arising from a decision to remove an alien.” *Id.* But the stop and arrest of an alien is directly, linearly
4 part of the process to remove an alien – the stops occurred to investigate immigration status rendering an
5 alien removable, and the arrests because of probable cause of removability. The “legal questions” in this
6 case challenging the stops and arrests are directly part of the removal process. *Jennings*, 138 S. Ct. at
7 841 n.3; Complaint at ¶¶ 3, 7. Accordingly, the Court lacks jurisdiction pursuant to 8 U.S.C. §
8 1252(a)(5) and (b)(9).⁴

10 **B. This Court Lacks Jurisdiction to Issue an Injunction to Anyone Other Than the**
11 **Named Plaintiffs**

12 That these claims must be brought in petitions for review underscores, moreover, that a class
13 wide injunction is inappropriate. But 8 U.S.C. § 1252(f)(1), in any event, bars the court from granting
14 Plaintiffs’ request to preliminarily enjoin USBP’s detention and removal operations. In *Aleman*
15 *Gonzalez*, 596 U.S. at 544, the Supreme Court held that 8 U.S.C. § 1252(f)(1) “generally prohibits lower
16 courts from entering injunctions that order federal officials to take or to refrain from taking actions to
17 enforce, implement, or otherwise carry out the specified statutory provisions.” The specified statutory
18 provisions are 8 U.S.C. §§ 1221-1232, as amended by the Immigration and Nationality Act. *See Al Otro*
19 *Lado v. Exec. Office of Immigr. Rev.*, 120 F.4th 606, 627 n.16 (9th Cir. 2024). 8 U.S.C. § 1226, a
20 covered statute, concerns the apprehension and detention of aliens. 8 U.S.C. § 1229, another covered
21 statute, concerns the initiation of removal proceedings against an alien. Enjoining these provisions is
22 barred even if a court determines that the agency’s “operation” of a covered provision is unlawful or
23 incorrect. *Aleman Gonzalez*, 596 U.S. at 552-54. To the extent Plaintiffs allege they are seeking to
24 enjoin 8 U.S.C. § 1357, the actions under this statute cannot be untangled from apprehension and
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27 _____
28 ⁴ To the extent Plaintiffs argue 8 U.S.C. § 1252(b)(9) does not apply to aliens not in removal proceedings, this is a problem with their class.

1 removal operations. Consequently, Plaintiffs’ request to restrain USBP’s allegedly unlawful detention
2 and removal operations necessarily seeks to enjoin operation of provisions covered by 8 U.S.C. §
3 1252(f)(1). A class-wide injunction is, therefore, prohibited and any injunctive remedy must be
4 individualized to named Plaintiffs.

5 **C. The Plaintiffs’ Claims Are Moot**

6 Plaintiffs’ claims are moot in light of new guidance issued by USBP providing nearly all the
7 relief Plaintiffs seek in their motion. Plaintiffs allege that, in an operation conducted between January 7,
8 2025, and January 9, 2025, USBP violated the Fourth Amendment and the statutory requirements of 8
9 U.S.C. § 1357(a)(2). Complaint at ¶¶ 1-3, 326-45. Plaintiffs seek declaratory and injunctive relief
10 claiming Border Patrol will replicate these alleged unlawful acts because the agency lacks policy and
11 guidance for ensuring compliance with the Fourth Amendment and 8 U.S.C. § 1357(a)(2). Complaint at
12 ¶¶ 249-50, 276-77, 329-30, 336, 340. Pointing to an example of sufficient guidance issued by DHS (the
13 “Broadcast”), Plaintiffs move the Court to enjoin USBP from conducting warrantless stops and arrests in
14 the Eastern District of California that do not comply with the DHS Broadcast, and order USBP to
15 develop guidance similar to the Broadcast and conduct training thereon. PI Motion at 1-2; Memo at 16,
16 19, 23; Complaint at ¶¶ 278-83, Prayer for Relief ¶¶ 4-5, 8-10, Appendix A. In the meantime, Plaintiffs
17 continue, they will suffer “continued and future irreparable injury.” Complaint at ¶¶ 333, 339, 345.

18 However, on April 4, 2025, the El Centro Sector USBP issued a “Muster” to all Sector
19 employees that is in all material respects identical to the Broadcast issued in *Castanon Nava*. *Compare*
20 *El Centro Muster*, Exhibit (“Ex.”) A, *with* Complaint Appendix A. The Muster contains guidance on the
21 requirement for reasonable suspicion for traffic stops conducted throughout the Eastern District of
22 California, guidance on assessing flight risk using factors such as “family, home, or employment” (that
23 is, community ties), and guidance on documenting the facts and circumstances surrounding a
24 warrantless arrest in an alien’s Form I-213 as soon as practicable. *See* Ex. A; Complaint at ¶ 278
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1 (stating USBP should provide its officers guidance on the requirement for reasonable suspicion for
2 traffic stops in the interior, away from the border, and guidance on assessing flight risk using factors
3 such as “family, home, or employment,” that is, community ties). El Centro Sector USBP is moreover
4 taking steps to implement training on the Muster. Ex. B. USBP will conduct training sessions to ensure
5 compliance with the Muster within 60 days for the more than 900 El Centro Sector Border Patrol
6 Agents, supervisors, and command staff on report writing, compliance with the Fourth Amendment and
7 8 U.S.C. § 1357, and compliance with Supreme Court and Ninth Circuit law on conducting vehicle
8 stops, consensual encounters, and warrantless arrests. Ex. B. at ¶¶ 10-16.

10 USBP’s issuance of guidance and commitment to training thereon constitutes a change in
11 circumstances forestalling a “substantial controversy . . . of sufficient immediacy and reality.” *Preiser v.*
12 *Newkirk*, 422 U.S. 395, 402 (1975); *Friends of the Earth, Inc. v. Laidlaw Env’t Servs. (TOC), Inc.*, 528
13 U.S. 167, 189 (2000) (the party asserting mootness bears the burden of showing subsequent events have
14 “made it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to
15 recur”). This is “more than a mere voluntary cessation of allegedly illegal conduct where [USBP is] . . .
16 free to return to [their] old ways.” *Preiser*, 422 U.S. at 402. Pursuant to the Muster, Border Patrol
17 agents “may stop a vehicle to enforce civil immigration laws only if they are aware of specific,
18 articulable facts that reasonably warrant suspicion that the vehicle contains alien(s) who may be illegally
19 in the country” and, “[i]n considering ‘likelihood of escape’ . . .[,] must consider the totality of the
20 circumstances known to the agent before making the arrest.” Ex. A. Further, Border Patrols agents
21 “must document the facts and circumstances surrounding the vehicle stop” and “the facts and
22 circumstances surrounding th[e] warrantless arrest” in the narrative section of the alien’s I-213 as soon
23 as practicable. *Id.* “[W]hile there is always the possibility that [USBP] might disregard the [Muster and
24 training thereon], such speculative contingencies afford no basis for [the court] passing on the
25 substantive issues [Plaintiffs] would have [the court] decide.” *Preiser*, 422 U.S. at 403 (internal
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1 citations omitted). Indeed, USBP’s prompt and responsive actions in light of Plaintiffs’ complaint
2 forcefully demonstrates its commitment to forestall similar alleged violations in the future. “[T]here is
3 now no reasonable expectation that the [alleged] wrong will be repeated,” *Preiser*, 422 U.S. at 402, and,
4 again, this is the relief Plaintiff’s requested, *see* PI Motion at 1-2; Memo at 16, 19, 23; Complaint at ¶¶
5 278-83, Prayer for Relief ¶¶ 4-5, 8-10, Appendix A. Plaintiffs, therefore, lack a continuing interest in
6 pursuing their motion and, consequently, the Court lacks a controversy to adjudicate. Individual
7 allegedly aggrieved aliens can seek remedies through the administrative process described in Part I.A.

9 **II. Plaintiffs Cannot Meet Their Burden to Show They Would be Irreparably Harmed Absent** 10 **the Prospective Injunction They Seek**

11 To the extent the Court has jurisdiction, and Plaintiffs claims are not moot, Plaintiffs nonetheless
12 cannot demonstrate that they will be irreparably harmed absent a preliminary injunction in light of
13 USBP’s issuance of new guidance providing nearly all the relief Plaintiffs seek in their motion and
14 rendering any alleged future harm unlikely. “The purpose of an injunction is to prevent future
15 violations” and, therefore, requires the movant establish a “cognizable danger of recurrent violation” and
16 not just “the mere possibility” of future harm. *U.S. v. W. T. Grant Co.*, 345 U.S. 629, 633 (1953).
17 Where the defendants proffer a “bona fide[] . . . expressed intent to comply” with plaintiffs’ request and
18 “discontinue” the alleged past violations, plaintiffs no longer possess a cognizable danger of recurrent
19 violation. *Id.* By issuing the Muster and committing to training thereon, USBP has provided the remedy
20 Plaintiffs requested for alleged past violations. *See* Ex. A; Ex. B. There has meanwhile been no
21 “intransigence,” or “following one adjudicated violation with others,” which might serve to undermine
22 the bona fides of USBP’s expressed commitments. *W.T. Grant Co.*, 345 U.S. at 634. On the contrary,
23 USBP addressed the complaint promptly, responsively, and with demonstrated commitment to forestall
24 “similar [alleged] violations in the future.” *W.T. Grant Co.*, 345 U.S. at 634; *Kansas v. Nebraska*, 574
25 U.S. 445, 466 (2015) (defendant’s “new compliance measures, so long as followed,” and which were
26 “implemented in good faith,” preclude a “cognizable danger of recurrent violation”) (citing *W.T. Grant*
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1 Co., 345 U.S. at 633). Accordingly, Plaintiffs cannot establish a cognizable “continued and future
2 irreparable injury” absent an injunction. Complaint at ¶¶ 333, 339, 345.

3 **III. The Balance of Equities and the Public Interest Favor the Denial of Preliminary Relief**

4 When the Government is a party, the balancing of equities and public interest merge. *See Nken*
5 *v. Holder*, 556 U.S. 418, 435 (2009). The equities do not favor granting Plaintiffs’ motion because,
6 again, their claims have been resolved. Indeed, the public interest should favor an agency taking
7 prompt, responsive action in light of a complaint against it. This is a favorable result and granting a
8 preliminary injunction despite such actions would provide little incentive for agencies to take prompt,
9 responsive actions in the future. Meanwhile, it is undisputed that two of the three named plaintiffs
10 (Cisneros and Esquivel) are illegally present in the United States. An alien’s unlawful presence in the
11 United States is a continuing violation of the law and the government has a legitimate and significant
12 interest in ensuring that immigration laws are enforced. *See INS v. Lopez-Mendoza*, 468 U.S. 1032,
13 1047 (1984) (discussing that “a person whose unregistered presence in this country, without more,
14 constitutes a crime” and while “[t]he constable’s blunder may allow the criminal to go free, [] we have
15 never suggested that it allows the criminal to continue in the commission of an ongoing crime”). And
16 this public interest is served by allowing USBP to continue to conduct its operations without premature
17 intervention by the Court. Accordingly, the balance of the hardships and the public interest weigh
18 against granting Plaintiffs’ motion.
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22 **CONCLUSION**

23 The Court should, accordingly, dismiss Plaintiffs’ motion for lack of jurisdiction or,
24 alternatively, to the extent the Court finds jurisdiction, it should deny the instant motion because
25 Plaintiffs cannot meet the standard for a preliminary injunction.

26 DATED: April 7, 2025
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Respectfully submitted

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