

1 CRAIG H. MISSAKIAN (CABN 125202)  
United States Attorney  
2 PAMELA T. JOHANN (CABN 145558)  
Chief, Civil Division  
3 KELSEY J. HELLAND (CABN 298888)  
Assistant United States Attorney

4 450 Golden Gate Avenue, Box 36055  
5 San Francisco, California 94102-3495  
Telephone: (415) 436-6488  
6 FAX: (415) 436-6748  
kelsey.helland@usdoj.gov

7 Attorneys for Defendants  
8

9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 SAN JOSE DIVISION

12 STANFORD DAILY PUBLISHING CORP., *et*  
13 *al.*,

14 Plaintiffs,

15 v.

16 RUBIO, *et al.*,

17 Defendants.  
18

Case No. 5:25-cv-06618-NW

**DEFENDANTS' REPLY IN SUPPORT OF  
CROSS-MOTION FOR SUMMARY  
JUDGMENT**

Date: November 19, 2025

Time: 9:00 a.m.

Place: Courtroom 3, 5th Floor

The Honorable Noël Wise

**TABLE OF CONTENTS**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- I. INTRODUCTION .....1
- II. ARGUMENT .....2
  - A. Plaintiffs Lack Standing.....2
    - 1. Stanford Daily lacks standing. ....2
      - (i) Stanford Daily lacks associational standing. ....2
      - (ii) Stanford Daily lacks corporate standing. ....5
      - (iii) Stanford Daily lacks organizational standing. ....5
    - 2. The individual Plaintiffs lack standing. ....6
  - B. Plaintiffs’ Claims Lack Merit. ....8
    - 1. The statutes do not violate the First Amendment. ....8
      - (i) Plaintiffs’ “facial” challenge ignores the statutes’ legitimate scope. ....8
      - (ii) The statutes’ legitimate purposes overcome nonimmigrant visa-holders’ reduced First Amendment protections. ....11
    - 2. The statutes do not violate the Fifth Amendment. ....14
- III. CONCLUSION.....15

**TABLE OF AUTHORITIES**

Page(s)

**Cases**

1

2

3

4 *AAUP v. Rubio,*

5 No. 25-10685-WGY, 2025 WL 2777659 (D. Mass. Sept. 30, 2025) ..... 5, 6, 7, 12

6 *Bluman v. FEC,*

7 800 F. Supp. 2d 281 (D.D.C. 2011) ..... 13

8 *Boutilier v. INS,*

9 387 U.S. 118 (1967) ..... 15

10 *Cal. Communities Against Toxics v. Armorcast Prods. Co.,*

11 No. CV 14-5728 PA, 2014 WL 12966008 (C.D. Cal. Nov. 12, 2014) ..... 2, 3

12 *Demore v. Kim,*

13 538 U.S. 510 (2003) ..... 11, 14

14 *Dep’t of Com. v. New York,*

15 588 U.S. 752 (2019) ..... 5

16 *Dep’t of State v. Muñoz,*

17 602 U.S. 899 (2024) ..... 13

18 *FDA v. All. for Hippocratic Med.,*

19 602 U.S. 367 (2024) ..... 3, 6

20 *Fiallo v. Bell,*

21 430 U.S. 787 (1977) ..... 14

22 *Fitzgerald Reno, Inc. v. DOT,*

23 60 F. App’x 53 (9th Cir. 2003) ..... 4

24 *Fleck & Associates, Inc. v. City of Phoenix,*

25 471 F.3d 1100 (9th Cir. 2006) ..... 2, 4

26 *Harisiades v. Shaughnessy,*

27 342 U.S. 580 (1952) ..... 12, 13, 14, 15

28 *Hellenic Lines Ltd. v. Rhoditis,*

398 U.S. 306 (1970) ..... 12

*Holder v. Humanitarian Law Project,*

561 U.S. 1 (2010) ..... 13, 14, 15

1 *Hunt v. Wash. State Apple Advert. Comm’n*,  
 2 432 U.S. 333 (1977)..... 2, 3

3 *Johnson v. Eisentrager*,  
 4 339 U.S. 763 (1950)..... 12

5 *Johnson v. United States*,  
 6 576 U.S. 591 (2015)..... 14

7 *Jordan v. DeGeorge*,  
 8 341 U.S. 223 (1951)..... 15

9 *Kleindienst v. Mandel*,  
 10 408 U.S. 753 (1972)..... 13

11 *Kwong Hai Chew v. Colding*,  
 12 344 U.S. 590 (1953)..... 11, 12

13 *Lopez v. Candaele*,  
 14 630 F.3d 775 (9th Cir. 2010) ..... 7

15 *Lujan v. Defenders of Wildlife*,  
 16 504 U.S. 555 (1992)..... 5

17 *Mahler v. Eby*,  
 18 264 U.S. 32 (1924)..... 15

19 *Mathews v. Diaz*,  
 20 426 U.S. 67 (1976)..... 14

21 *Moody v. NetChoice, LLC*,  
 22 603 U.S. 707 (2024)..... 8, 9

23 *Noh v. INS*,  
 24 248 F.3d 938 (9th Cir. 2001) ..... 10

25 *OPAWL - Bldg. AAPI Feminist Leadership v. Yost*,  
 26 118 F.4th 770 (6th Cir. 2024) ..... 13

27 *Or. Advocacy Ctr. v. Mink*,  
 28 322 F.3d 1101 (9th Cir. 2003) ..... 2, 3

*Palestine Info. Off. v. Shultz*,  
 853 F.2d 932 (D.C. Cir. 1988)..... 14

*Peace Ranch, LLC v. Bonta*,  
 93 F.4th 482 (9th Cir. 2024) ..... 6

1 *Presidio Golf Club v. National Park Service,*  
 155 F.3d 1153 (9th Cir. 1998) ..... 4

2

3 *Pritkin v. DOE,*  
 254 F.3d 791 (9th Cir. 2001) ..... 5

4

5 *Region 8 Forest Serv. Timber Purchasers Council v. Alcock,*  
 993 F.2d 800 (11th Cir. 1993) ..... 4

6 *Reno v. Am.-Arab Anti-Discrimination Comm.,*  
 525 U.S. 471 (1999)..... 9

7

8 *Rodriguez Diaz v. Garland,*  
 53 F.4th 1189 (9th Cir. 2022) ..... 11

9

10 *Sessions v. Dimaya,*  
 584 U.S. 148 (2018)..... 14

11 *Students for Fair Admissions, Inc. v. President and Fellows of Harvard Coll.,*  
 600 U.S. 181 (2023)..... 3

12

13 *Summers v. Earth Island Inst.,*  
 555 U.S. 488 (2009)..... 3

14

15 *Susan B. Anthony List v. Driehaus,*  
 573 U.S. 149 (2014)..... 6

16

17 *Trump v. Hawaii,*  
 585 U.S. 667 (2018)..... 10, 14

18 *United States v. Curtiss–Wright Export Corp.,*  
 299 U.S. 304 (1936)..... 14, 15

19

20 *United States v. Singh,*  
 979 F.3d 697 (9th Cir. 2020) ..... 13

21

22 *United States v. Verdugo-Urquidez,*  
 494 U.S. 259 (1990)..... 11

23

24 *Warth v. Seldin,*  
 422 U.S. 490 (1975)..... 3

25 *Wash.State Grange v. Wash. State Repub. Party,*  
 552 U.S. 442 (2008)..... 8, 9, 11

26

27 *Zemel v. Rusk,*  
 381 U.S. 1 (1965)..... 15

28

1 **Statutes**

2 8 U.S.C. § 1201 ..... 10  
3 8 U.S.C. § 1252 ..... 9

4 **Rules**

5 Fed. R. Civ. P. 56(a) ..... 6

6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 **I. INTRODUCTION**

2 Plaintiffs' opposition (Dkt. 44) confirms that they are seeking an advisory opinion about the  
3 scope of the First and Fifth Amendments that they do not need and the Court is ill-equipped to provide.  
4 The Court should enter summary judgment in the government's favor because Plaintiffs lack standing  
5 and their claims fail on the merits.

6 Stanford Daily does not have standing to ask this Court to declare federal immigration laws  
7 unconstitutional. It does not have "associational standing"; courts have limited that doctrine to  
8 organizations that reflect the views of their members as to the issues raised in the litigation, but Stanford  
9 Daily is just a general-purpose student newspaper. The issues in this lawsuit are not "germane" to its  
10 mission of reporting on campus activities. Nor does it have "corporate" or "organizational" standing; it  
11 wholly fails to substantiate any claimed injuries, and in any event those injuries would be the result of  
12 the actions of third parties, not the government.

13 Nor do the individual Plaintiffs have standing. They offer no evidence to overcome the  
14 government's showing that the specific campus-protest enforcement actions on which they base their  
15 claims concluded months ago, with no action taken against either of them. At most, they point to  
16 general comments in the media by the Secretaries of State and Homeland Security about the importance  
17 of enforcing the law—but Plaintiffs ignore the Secretaries' comments that enforcement would be  
18 directed at supporters of terrorism, and in any event, such high-level comments do not show a specific  
19 threat directed at Plaintiffs. That is especially true here, where the government's evidence reflects it has  
20 disavowed enforcement based on the "pure political speech" that Plaintiffs put at issue.

21 Plaintiffs' claims also fail on the merits. Plaintiffs bring a facial First Amendment challenge, but  
22 they wholly fail to address the statutes' legitimate constitutional scope. Plaintiffs ignore the  
23 government's authorities demonstrating that aliens (and especially temporary nonimmigrant visa  
24 holders) have reduced First Amendment protections and, as a consequence, the statutes' legitimate  
25 purpose satisfies the constitution. Instead, Plaintiffs attack a series of straw men, pretending the  
26 government argues that aliens have "no" First Amendment rights, as if that were the only alternative to  
27 the full protections afforded citizens. But Plaintiffs' black-or-white approach ignores the well-  
28 recognized "ascending scale" of rights that, in this context, supports the government's ability to exclude

1 nonimmigrants for foreign policy reasons.

2 Plaintiffs’ Fifth Amendment vagueness challenge likewise fails, because Plaintiffs fail to  
3 recognize nonimmigrants’ reduced Fifth Amendment protections, the political branches’ wide discretion  
4 in immigration policy, and, most importantly, the need for statutes regarding foreign-policy issues to  
5 paint with a broader brush than might be required in other contexts. Congress cannot specify ahead of  
6 time what specific foreign-policy problems the Secretary of State may need to address; nor does the  
7 Constitution require it to try. Rather, the Constitution recognizes the political branches’ flexibility to  
8 respond to changing international circumstances by allowing Congress to authorize the Executive to  
9 exclude certain nonimmigrants when their presence jeopardizes the United States’ interests.

10 The Court should therefore grant summary judgment for the government.

## 11 **II. ARGUMENT**

### 12 **A. Plaintiffs Lack Standing.**

#### 13 **1. Stanford Daily lacks standing.**

##### 14 **(i) Stanford Daily lacks associational standing.**

15 Stanford Daily does not have “associational standing,” both because it is not the type of  
16 organization that can invoke that doctrine, and because it does not satisfy the doctrine’s elements.

17 As the Ninth Circuit has made clear, “[a]ssociational standing is reserved for organizations that  
18 ‘express the collective views and protect the collective interests’ of their members.” *Fleck &*  
19 *Associates, Inc. v. City of Phoenix*, 471 F.3d 1100, 1106 (9th Cir. 2006) (quoting *Hunt v. Wash. State*  
20 *Apple Advert. Comm’n*, 432 U.S. 333, 345 (1977)) (cleaned up). Thus, “[t]o satisfy the requirements for  
21 associational standing, the association’s members must possess sufficient ‘indicia of membership—  
22 enough to satisfy the purposes that undergird the concept of associational standing: that the organization  
23 is sufficiently identified with and subject to the influence of those it seeks to represent as to have a  
24 ‘personal stake in the outcome of the controversy.’” *Cal. Communities Against Toxics v. Armorcast*  
25 *Prods. Co.*, No. CV 14-5728 PA, 2014 WL 12966008, at \*2 (C.D. Cal. Nov. 12, 2014) (quoting *Or.*  
26 *Advocacy Ctr. v. Mink*, 322 F.3d 1101, 1111 (9th Cir. 2003)).

27 Stanford Daily fails to provide any evidence that it represents the “collective views” of its  
28 “members” with respect to the issues in this litigation, such that it has a sufficient “personal stake in the

1 outcome.” *See* Compl. ¶¶ 65-71; Dkt. 44 at 10-12. It asserts that it is a “voluntary membership  
2 organization,” Compl. ¶ 66, and argues that that is sufficient, Dkt. 44 at 10. But the fact that Stanford  
3 students work for the newspaper on a voluntary basis does not in any way demonstrate that the  
4 newspaper represents their views on the type of immigration subjects that Plaintiffs put at issue in this  
5 case.

6 Indeed, Stanford Daily’s stated “mission” is to “act as a major source of news relating to or of  
7 interest to the Stanford University community and to provide an educational opportunity to Stanford  
8 University students in journalistic writing, photography and business.” Supp. Helland Decl. Ex. 6 at 1  
9 (case adjusted). Its own bylaws limit its “members” to its “Editorial” and “Business Staff.” *Id.* Ex. 7 at  
10 1. Nothing in its own governing documents suggests that the organization’s purpose is to represent the  
11 views of its Editorial and Business Staff on immigration issues, or in bringing constitutional claims  
12 under the First and Fifth Amendments. *See generally id.* Exs. 6, 7. Students understandably join the  
13 newspaper to gain journalism experience—not to advocate on behalf of noncitizens. Plaintiffs put  
14 forward no evidentiary basis for the Court to conclude that its “members” joined it for reasons related to  
15 this litigation. *See Cal. Communities Against Toxics*, 2014 WL 12966008, at \*3 (“[T]he FAC fails to  
16 allege sufficient facts describing Plaintiff’s organizational structure, the number and type of members,  
17 the location of those members, and how the members influence the organization.”).

18 In fact, Stanford Daily is fundamentally unlike any kind of organization that the Supreme Court  
19 has previously held, or even suggested, could invoke the doctrine of associational standing. It is not an  
20 advocacy organization with a mission “to defend human and civil rights secured by law.” *Students for*  
21 *Fair Admissions, Inc. v. President and Fellows of Harvard Coll.*, 600 U.S. 181, 197 (2023); *cf., e.g.,*  
22 *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 376 (2024) (denying standing to “pro-life medical  
23 associations); *Summers v. Earth Island Inst.*, 555 U.S. 488, 490 (2009) (denying standing to “a group of  
24 organizations dedicated to protecting the environment”); *Warth v. Seldin*, 422 U.S. 490, 494 (1975)  
25 (denying standing to organization with purpose “to alert ordinary citizens to problems of social concern  
26 . . . and to urge action on the part of citizens to alleviate the general housing shortage for low and  
27 moderate income persons”). Nor is it a “trade association” with a purpose of “protecting and enhancing  
28 the market for Washington apples.” *Hunt v. Wash. State Apple Advert. Comm’n*, 432 U.S. 333, 344

1 (1977).

2         Rather, it is a student newspaper that works to “cover all relevant campus activities in an  
3 unbiased fashion and provide an outlet for Stanford community members to publish opinions.” Compl.  
4 ¶ 69. If the doctrine of associational standing has any remaining vitality at all, *see* Dkt. 33 at 12, it  
5 should not be extended to a general-purpose student newspaper challenging provisions of the  
6 Immigration and Nationality Act. *See Fleck*, 471 F.3d at 1106; *accord Region 8 Forest Serv. Timber*  
7 *Purchasers Council v. Alcock*, 993 F.2d 800, 810 n.15 (11th Cir. 1993) (“The associational standing test  
8 articulated in *Hunt* is properly reserved for voluntary membership organizations—*like trade*  
9 *associations or environmental groups.*”) (emphasis added).

10         Even if this structural problem were not sufficient by itself, Stanford Daily fails to satisfy the  
11 elements of the associational standing doctrine. Most prominently, the interests it seeks to vindicate by  
12 this lawsuit are not “germane” to its mission of reporting about campus activities. *See, e.g., Fleck*, 471  
13 F.3d at 1106 (privacy interests of members of gay men’s social club not germane to club’s profit-  
14 seeking mission); *Fitzgerald Reno, Inc. v. DOT*, 60 F. App’x 53, 53 (9th Cir. 2003) (“TTAX has no  
15 standing because it is a taxpayer organization whose purported environmental interests are not germane  
16 to its members.”). Plaintiffs argue that the “germaneness” requirement is “undemanding,” citing the  
17 Ninth Circuit’s decision in *Presidio Golf Club v. National Park Service*, 155 F.3d 1153 (9th Cir. 1998).  
18 *See* Dkt. 44 at 11. But the environmental and historical issues in that case were much more “germane”  
19 to the Presidio Golf Club’s bona fide “interest in maintaining the historical and environmental integrity  
20 of the Clubhouse” than Plaintiffs’ interest in immigration issues here. 155 F.3d at 1159.

21         Moreover, as discussed previously and in further detail below, none of Stanford Daily’s  
22 individual “members” would have standing themselves. *See* Dkt. 33 at 12-16. And the involvement of  
23 individual members will be necessary to this litigation, because the newspaper has put their experiences  
24 and beliefs at issue.

25         Finally, Plaintiffs’ associational standing theory has no limiting principle. If a newspaper can  
26 file suit based on its reporters’ and interviewees’ fears of immigration enforcement, so could any other  
27 organization that happens to occasionally rely on the effort of a noncitizen. Rather than start down this  
28 slippery slope, the Court should reject Plaintiffs’ associational standing theory.

1                                   **(ii) Stanford Daily lacks corporate standing.**

2           As explained previously, Plaintiffs do not allege (much less prove) that the government has  
3 stopped Stanford Daily from engaging in any First Amendment activity. *See* Dkt. 33 at 13. Rather, they  
4 argue that the newspaper’s unidentified noncitizen “writers and editors” have “reacted” to the  
5 government’s enforcement actions directed at still other third parties, and that those “reactions” can  
6 supply standing for Stanford Daily itself. *See* Dkt. 44 at 12. Not so.

7           First, Plaintiffs have not quantified or substantiated these alleged reactions in any way that would  
8 allow the Court to find standing. *Cf. Dep’t of Com. v. New York*, 588 U.S. 752, 768 (2019) (“The  
9 evidence at trial established that noncitizen households have historically responded to the census at  
10 lower rates than other groups.”). And second, because the enforcement effort on which Plaintiffs base  
11 their claims has concluded and less than 1% of referred noncitizens experienced any enforcement action,  
12 Dkt. 33 at 8, any such “reactions” would neither be reasonable nor fairly traceable to Defendants.

13           In short, Plaintiffs cannot manufacture standing out of the unjustified decisions of Stanford  
14 Daily’s anonymous noncitizen writers and editors. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555,  
15 560-61 (1992); *Pritkin v. DOE*, 254 F.3d 791, 798 (9th Cir. 2001).

16                                   **(iii) Stanford Daily lacks organizational standing.**

17           Finally, Plaintiffs do not overcome the deficiencies in their organizational standing argument.  
18 *Compare* Dkt. 33 at 13, *with* Dkt. 44 at 13-14. Indeed, Plaintiffs simply double-down on their vague  
19 allegations in the Complaint that an unknown number of unidentified noncitizens “working at and  
20 contributing to Stanford Daily have self-censored.” Compl. ¶ 72; *see also* Dkt. 44 at 14. But even if  
21 true, Plaintiffs *still* supply no evidence indicating that there has been any material effect on the quantity  
22 or quality of the newspaper’s “core business activity” of reporting on campus events—especially now,  
23 months after the Complaint was filed. *See* Dkt. 44 at 13-14. Nor would any such effects be fairly  
24 traceable to Defendants.

25           Indeed, the district court in *AAUP* determined that the lead plaintiff group in that case *lacked*  
26 organizational standing. *See AAUP v. Rubio*, No. 25-10685-WGY, 2025 WL 2777659, at \*44 (D. Mass.  
27 Sept. 30, 2025). As that court explained, the “harms” upon which AAUP attempted to rely—“deterred  
28 and diminished noncitizen participation in AAUP events and diverted resources from more typical core

1 advocacy issues such as ‘adjunctification’ to dealing with immigration law”—were insufficient to for an  
2 organization to demonstrate standing in its own right. *Id.*

3 The Supreme Court has cautioned that the organizational standing doctrine is reserved for  
4 “unusual case[s]” and should not be “extend[ed].” *All. for Hippocratic Med.*, 602 U.S. at 396. The  
5 Court should decline to extend the doctrine here.

## 6 **2. The individual Plaintiffs lack standing.**

7 In order for a plaintiff to demonstrate standing based on potential future enforcement, the threat  
8 of enforcement must be “substantial.” *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158, 164  
9 (2014); *Peace Ranch, LLC v. Bonta*, 93 F.4th 482, 489 (9th Cir. 2024).

10 Here, the individual Plaintiffs’ claimed standing depends on their factual assertion that the  
11 government is taking ongoing immigration-enforcement actions based solely on protected political  
12 speech. *See* Dkt. 44 at 7. But Defendants have demonstrated that the government “has completed its  
13 review of the 5,000-plus campus-protester names referred to it,” with “less than 1% of campus-protest  
14 leads . . . result[ing] in nonimmigrant visa revocations”—none of which included Plaintiffs, despite their  
15 prior speech. Dkt. 33 at 8. Moreover, the revocations that did occur “were the result of the individuals’  
16 conduct at protests or other information discovered about them from the resulting investigations, not  
17 their mere participation in or presence at public protests or pure political speech.” *Id.*

18 Plaintiffs supply no evidence that could create a “genuine dispute as to [this] material fact.” Fed.  
19 R. Civ. P. 56(a). Instead, Plaintiffs primarily argue that, in *AAUP*, the district court found that  
20 Secretaries Rubio and Noem had made general threats of “continue[d]” enforcement action with an  
21 intent to chill noncitizens’ First Amendment rights. *See* Dkt. 44 at 7 (citing 2025 WL 2777659, at \*41).  
22 But Plaintiffs misunderstand the district court’s findings in *AAUP*. First, the facts and claims in *AAUP*  
23 are distinct from those in this case. *AAUP* itself was an association of university professors and  
24 graduate students who alleged that their participation in public protests led to them being targeted for  
25 deportation under an “ideological deportation policy.” After concluding that *AAUP* itself lacked  
26 organizational standing, the court determined that its faculty and student members who were not U.S.  
27 citizens had sufficient standing to mount a First Amendment “as-applied” challenge that they had been  
28 specifically targeted for enforcement based on their viewpoints.

1 Second, the district court in that case expressly found that there “was no ideological deportation  
2 policy,” and that “[i]t was never the Secretaries’ immediate intention to deport all pro-Palestinian non-  
3 citizens.” 2025 WL 2777659, at \*39. The claims in that case involved what the court called a specific,  
4 “discrete enforcement initiative” that had already concluded by the time of the trial in that matter in July.  
5 *Id.* at \*52; *see also id.* at \*4, \*8-10 (describing results of completed investigations into campus  
6 protestors). Plaintiffs therefore cannot use *AAUP* to overcome Defendants’ evidence that the  
7 investigation effort that Plaintiffs claim to fear has concluded, with enforcement action taken against  
8 less than 1% of the referred individuals, and Plaintiffs themselves suffering no consequences.

9 Moreover, the statements cited in *AAUP*, and on which Plaintiffs try to rely here, were made  
10 months ago and do not reflect an ongoing effort to take such enforcement action with regard to  
11 Plaintiffs. And in any event, such “general threat[s] by officials to enforce those laws which they are  
12 charged to administer’ do not create the necessary injury in fact.” *Lopez v. Candaele*, 630 F.3d 775, 787  
13 (9th Cir. 2010) (internal quotation marks omitted).

14 Plaintiffs purport to be “[b]affl[ed]” by the government’s explanation that initial enforcement  
15 decisions—such as deciding whether to take further action with respect to individuals that have been  
16 referred to HSI—are made by low-level agents, rather than the agencies’ political leadership. Dkt. 44 at  
17 7. But Defendants have explained that that is in fact how the government enforces the statutes at issue.  
18 *See* Dkt. 33 at 5-9. And that matters, because under the process the government described, the vast  
19 majority of cases investigated by DHS and State are never escalated to the level where Secretaries would  
20 be involved. *See id.* Importantly, because Plaintiffs’ standing depends on the actual likelihood of  
21 threatened enforcement, and not just their subjective belief, they must show that there is a substantial  
22 chance that the line agents investigating such cases would escalate them for action by the Secretary of  
23 State. But Plaintiffs supply no evidence indicating that such agents are currently targeting university  
24 students for enforcement action based solely on protected speech. *See generally* Dkt. 44. To the  
25 contrary, Plaintiffs admit that they were among the set of student protesters previously referred for  
26 investigation, but no enforcement action was taken against them based on their speech.

27 Plaintiffs’ attempt to minimize the government’s disavowal of such threatened enforcement also  
28 fails. *See* Dkt. 44 at 8-9. Plaintiffs try to downplay this as a mere “litigation position.” But the

1 government has shown, as a factual matter, through the testimony of its non-attorney witnesses, that  
2 “[n]either State nor DHS have a policy of targeting individuals based on protected political speech”;  
3 “DHS does not refer individuals for visa revocations solely because they participated in public protests”;  
4 “[n]or does DHS refer individuals for visa revocations solely because they have used the phrase ‘from  
5 the river to the sea, Palestine will be free,’ or described Israel as having committed ‘genocide’ or  
6 ‘apartheid’ in Gaza.” Dkt. 33 at 8-9 (citing Helland Decl. Exs. 4 & 5). And while Plaintiffs try to  
7 analogize themselves to a small handful of third parties who have been subject to enforcement action,  
8 the government has consistently taken the position across these cases that individuals subject to  
9 enforcement under the statutes have done more than exercise pure political speech.

10 **B. Plaintiffs’ Claims Lack Merit.**

11 **1. The statutes do not violate the First Amendment.**

12 **(i) Plaintiffs’ “facial” challenge ignores the statutes’ legitimate scope.**

13 Plaintiffs sow confusion about the standard applicable to their claims by bringing a “facial”  
14 challenge to the statutes “as applied to protected speech.” *See* Dkt. 44 at 14, 24 n.10; Compl. ¶¶ 134,  
15 137. But facial challenges and as-applied challenges are two separate things with two separate  
16 standards. *See, e.g., Moody v. NetChoice, LLC*, 603 U.S. 707, 723 (2024); *Wash. State Grange v. Wash.*  
17 *State Repub. Party*, 552 U.S. 442, 449-51 (2008). Whereas “as-applied” challenges concern a law’s  
18 application to a particular set of facts, facial challenges concern the law’s validity in the abstract. *See*  
19 *Wash. State Grange*, 552 U.S. at 450.

20 “Facial challenges are disfavored for several reasons.” *Id.* “Claims of facial invalidity often rest  
21 on speculation. As a consequence, they raise the risk of premature interpretation of statutes on the basis  
22 of factually barebones records.” *Id.* (internal quotation marks omitted). “Facial challenges also run  
23 contrary to the fundamental principle of judicial restraint that courts should neither anticipate a question  
24 of constitutional law in advance of the necessity of deciding it nor formulate a rule of constitutional law  
25 broader than is required by the precise facts to which it is to be applied.” *Id.* (internal quotation marks  
26 omitted). “Finally, facial challenges threaten to short circuit the democratic process by preventing laws  
27 embodying the will of the people from being implemented in a manner consistent with the Constitution.”  
28 *Id.* at 451. The Supreme Court “has therefore made facial challenges hard to win.” *Moody*, 603 U.S. at

1 723.

2 For a facial challenge in the First Amendment context, “[t]he question is whether a substantial  
3 number of the law’s applications are unconstitutional, judged in relation to the statute’s plainly  
4 legitimate sweep.” *Id.* Thus, “[t]he first step in the proper facial analysis is to assess the [challenged]  
5 laws’ scope.” *Id.* at 724. In a facial challenge, courts cannot ignore this requirement merely because a  
6 plaintiff has focused on the laws’ application to certain situations. *See id.* (explaining parties’ and lower  
7 courts’ error in “focus[ing] on how the laws applied to the content-moderation practices that giant  
8 social-media platforms use,” rather than “address[ing] the full range of activities the laws cover, and  
9 measure the constitutional against the unconstitutional applications”). Instead, the proper method for  
10 challenging the application of a statute as-applied to specific situations is in individual adjudications,  
11 such as habeas proceedings brought by those subject to the provisions. Or, in immigration cases, in  
12 eventual petitions for review of removal decisions, where Congress has specifically preserved aliens’  
13 rights to raise constitutional challenges. *See* Dkt. 33 at 4-5; *see also, e.g.*, 8 U.S.C. § 1252(a)(2)(D)  
14 (preserving courts of appeals’ jurisdiction over constitutional claims in review of removal proceedings);  
15 *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 474, 487 (1999) (holding challenges to  
16 removal, including First Amendment ones, must be brought in removal proceedings).

17 Similarly here, Plaintiffs cannot artificially limit their challenge to the laws’ application to  
18 “protected speech.” Plaintiffs “chose to litigate these [claims] as facial challenges, and that decision  
19 comes at a cost.” *Moody*, 603 U.S. at 723. Indeed, Plaintiffs’ framing merely begs the question of what  
20 qualifies as “protected speech” in the context of nonimmigrant student visa holders. And this framing  
21 still raises all of the problems the Supreme Court has repeatedly recognized regarding facial challenges  
22 more broadly: Plaintiffs ask the Court to speculate based on a barebones factual record; they ask the  
23 Court to abandon the principle of judicial restraint and proactively announce a rule of constitutional law  
24 extending beyond the factual circumstances of the parties before it; and the ruling they seek threatens to  
25 prevent the government from implementing the laws consistent with the Constitution. *See Wash. State*  
26 *Grange*, 552 U.S. at 450-51.

27 Properly construed, the question the Court must decide is whether “a substantial number” of the  
28 challenged statutes’ applications are unconstitutional in relation to their legitimate sweep. *Id.* The

1 answer is plainly no. Indeed, Plaintiffs make no effort to quantify the relative scopes of what they view  
2 as permissible or impermissible enforcement. *See generally* Dkt. 44; Dkt. 32; Compl. Rather, they limit  
3 their discussion to what they call applications to “protected speech,” without even defining the term.

4 But the statutes have a well-established and longstanding history of legitimate use. *See* Dkt. 33  
5 at 3-6. Indeed, there are countless indisputably legitimate reasons that the government may decide to  
6 revoke a visa after it was issued. The President may decide to revoke the visas of foreign nationals from  
7 a certain country for foreign-policy and national-security reasons. *See Trump v. Hawaii*, 585 U.S. 667,  
8 696 (2018). The government may determine that a particular “visa had been obtained illegally.” *See*,  
9 *e.g.*, *Noh v. INS*, 248 F.3d 938, 942 (9th Cir. 2001). The list goes on. Indeed, the visa-revocation  
10 provision is not limited to speech-based grounds in any way. *See* 8 U.S.C. § 1201(i).

11 Similarly, the foreign-policy-removal provision has more than three decades of history behind it.  
12 *See* Dkt. 33 at 4. The provision makes “deportable” those aliens “whose presence or activities in the  
13 United States the Secretary of State has reasonable ground to believe would have potentially serious  
14 adverse foreign policy consequences for the United States.” *Id.* § 1227(a)(4)(C)(i). The need for such a  
15 provision has long been recognized. *See* Dkt. 33 at 4 & n.1. Moreover, the statute expressly provides  
16 that an alien cannot be removable “because of the alien’s past, current, or expected beliefs, statements,  
17 or associations, if such beliefs, statements, or associations would be lawful within the United States  
18 unless the Secretary of State personally determines that the alien’s [presence] would compromise a  
19 compelling United States foreign policy interest.” 8 U.S.C. § 1227(a)(4)(C)(ii). In other words,  
20 “protected speech” could only be used as the basis for removal in cases the Secretary of State himself  
21 determines have a particularly and sufficiently high foreign-policy justification.

22 In short, the two challenged statutes’ “plainly legitimate” scope is broad. Plaintiffs have  
23 supplied no evidence or argument comparing that broad scope to what they claim would be the statutes’  
24 unconstitutional application, but it is readily apparent that any such application would be exceedingly  
25 rare in comparison to the government’s large volume of immigration enforcement work. *See, e.g.*, Dkt.  
26 33 at 5 (noting the Office of Intelligence’s generation of approximately 25,000 to 30,000 Reports of  
27 Analysis each year); *id.* at 8 (explaining that “less than 1% of campus-protest leads (at most,  
28 approximately 40 out of more than 5,000) have resulted in nonimmigrant visa revocations”). Plaintiffs’

1 facial challenge therefore fails. *See Wash. State Grange*, 552 U.S. at 457-58.

2 **(ii) The statutes’ legitimate purposes overcome nonimmigrant visa-**  
3 **holders’ reduced First Amendment protections.**

4 Even on its own terms, however, Plaintiffs’ challenge to the statutes “as applied to protected  
5 speech” fails. The government previously explained that nonimmigrant visa holders have reduced First  
6 Amendment rights, and because the statutes have bona fide and legitimate purposes, they do not violate  
7 the First Amendment in that context. *See* Dkt. 33 at 16-20.

8 Instead of responding to the government’s argument, Plaintiffs attack a straw man, pretending  
9 that the government argues that “noncitizens have *no* First Amendment rights.” Dkt. 44 at 17. But the  
10 government did not make that argument. *See* Dkt. 33 at 16-19. Rather, the government explained that,  
11 under binding Supreme Court and Ninth Circuit authority, aliens have *reduced* constitutional protections  
12 (including First Amendment rights) compared to citizens, and the strength of their rights grows on “a  
13 generous and ascending scale” as they increase their “identity with our society.” *Id.* at 16 (quoting  
14 *Kwong Hai Chew v. Colding*, 344 U.S. 590, 596 n.5 (1953)).

15 Plaintiffs offer no substantive response to that principle, which has been repeatedly reaffirmed by  
16 the Supreme Court and Ninth Circuit in a variety of contexts. *See, e.g., Demore v. Kim*, 538 U.S. 510,  
17 522 (2003) (“In the exercise of its broad power over naturalization and immigration, Congress regularly  
18 makes rules that would be unacceptable if applied to citizens.”) (internal quotation marks omitted);  
19 *United States v. Verdugo-Urquidez*, 494 U.S. 259, 271 (1990) (holding that Fourth Amendment did not  
20 apply to search of foreign national’s property abroad, and distinguishing prior cases by noting that they  
21 “establish only that aliens receive constitutional protections when they have come within the territory of  
22 the United States and developed substantial connections with this country”); *Rodriguez Diaz v. Garland*,  
23 53 F.4th 1189, 1205-06 (9th Cir. 2022) (“[W]e interpret the Due Process Clause consistent with  
24 longstanding precedent recognizing that the process due aliens must account for the government’s  
25 countervailing interests in immigration enforcement—considerations that do not apply to U.S.  
26 citizens.”).

27 Instead, Plaintiffs cite a variety of cases for the unremarkable proposition that the First  
28 Amendment “applies” to lawfully present aliens, without addressing *how* it applies. *See* Dkt. 44 at 15-

1 16. For example, Plaintiffs argue that the Supreme Court’s recitation in a footnote in *Kwong Hai Chew*  
2 of its prior dicta in *Wixon* somehow means that the First Amendment applies with full force to aliens.  
3 *See id.* at 16. But the very same footnote also reaffirmed the principle that aliens’ rights increase with  
4 their connections to society: “Mere lawful presence in the country creates an implied assurance of safe  
5 conduct and gives him certain rights; they become more extensive and secure when he makes  
6 preliminary declaration of intention to become a citizen, and they expand to those of full citizenship  
7 upon naturalization.” *Kwong Hai Chew*, 344 U.S. at 596 n.5 (quoting *Johnson v. Eisentrager*, 339 U.S.  
8 763, 770-71 (1950)).

9 Similarly, Plaintiffs argue that in *Hellenic Lines Ltd. v. Rhoditis*, 398 U.S. 306 (1970), the full  
10 Supreme Court “adopted” the position of the concurrence in *Wixon*. *See* Dkt. 44 at 16. But *Hellenic*  
11 *Lines* was not about the First Amendment at all; it was about an injured seaman’s claim under the Jones  
12 Act, and the Court held that a lawful permanent resident with “substantial and continuing contacts . . .  
13 with this country” could be subject to liability under the Jones Act even though the injured seamen was  
14 Greek. *See* 398 U.S. at 309. If anything, *Hellenic Lines* confirms that the extent of an individual’s  
15 connections with this country is relevant to evaluating the extent to which American law applies to  
16 them. *See id.* But that case involving a lawful permanent resident and the Jones Act plainly does not  
17 stand for the proposition that nonimmigrant visitors are entitled to the full protections of citizens under  
18 the First Amendment. *See id.*

19 Thus, the question is not whether the First Amendment *applies*; the question is, what does the  
20 First Amendment *require* in these circumstances? Plaintiffs argue for an all-or-nothing approach, such  
21 that temporary visitors to the United States receive the same protections as citizens. *See* Dkt. 44 at 14-  
22 18. But that argument runs counter to the many authorities discussed recognizing the lesser protections  
23 available to noncitizens. And Plaintiffs’ attempts to distinguish those authorities falter.

24 First, Plaintiffs unconvincingly try to escape the impact of *Harisiades v. Shaughnessy*, 342 U.S.  
25 580 (1952), by arguing that it merely held that noncitizens could be punished for their speech to the  
26 same extent as citizens. *See* Dkt. 44 at 17. But of course, “citizens generally cannot be deported.”  
27 *AAUP*, 2025 WL 2777659, at \*45. The very fact that *Harisiades* affirmed a punishment for a noncitizen  
28 that could not be used for citizens demonstrates that the groups may indeed be treated differently in

1 some circumstances. And indeed, then-Judge Kavanaugh cited *Harisiades* in 2011 for the proposition  
2 that the Supreme Court “has further indicated that aliens’ First Amendment rights might be less robust  
3 than those of citizens in certain discrete areas.” *Bluman v. FEC*, 800 F. Supp. 2d 281, 288 (D.D.C.  
4 2011), *aff’d*, 565 U.S. 1104 (2012).

5 Second, Plaintiffs argue that *Bluman* and two appellate cases relying on it, *OPAWL - Bldg. AAPI*  
6 *Feminist Leadership v. Yost*, 118 F.4th 770, 777 (6th Cir. 2024), and *United States v. Singh*, 979 F.3d  
7 697, 711 (9th Cir. 2020), are inapplicable because they merely concerned “one unique abridgment of  
8 First Amendment rights, the ability to financially contribute to an election campaign.” Dkt. 44 at 17.  
9 But Plaintiffs concede that these cases confirm the government’s central point: noncitizens have  
10 reduced First Amendment rights compared to citizens. Indeed, as these cases and those discussed above  
11 make clear, the extent of aliens’ First Amendment rights depends on the context, including the extent of  
12 the aliens’ connections to the country and the circumstances of the speech at issue.

13 The practical effect of nonimmigrant visa holders’ reduced First Amendment rights in this case is  
14 that the challenged statutes are constitutional so long as the government has articulated a facially  
15 legitimate and bona fide justification for their use. *See Dep’t of State v. Muñoz*, 602 U.S. 899, 908  
16 (2024); *Kleindienst v. Mandel*, 408 U.S. 753, 769-70 (1972).<sup>1</sup> As the government previously explained,  
17 the applications of the statutes Plaintiffs challenge here further the government’s legitimate national-  
18 security and foreign-policy interests in countering support for terrorist groups and addressing  
19 antisemitism. *See* Dkt. 33 at 19 (citing *Holder v. Humanitarian Law Project*, 561 U.S. 1, 31-32 (2010)).

20 That is enough to reject Plaintiffs’ claims, but as the government argued previously, the statutes  
21 would survive review even under a heightened standard. *See* Dkt. 33 at 20. That is because the  
22 decisions regarding admissibility, foreign policy, and national security by their nature serve compelling  
23 government interests. *See id.* (citing, *e.g.*, *Harisiades*, 342 U.S. at 588-89). And as the government  
24 previously explained with respect to Plaintiffs’ vagueness challenge, the statutes are appropriately  
25 tailored because “so long as Congress wanted to maintain the State Department’s discretion to revoke  
26

---

27 <sup>1</sup> Plaintiffs strangely argue that the government does not “dispute that [the] laws are subject to  
28 strict scrutiny.” Dkt. 44 at 21. But the government plainly argued that a lower standard applied. *See*  
Dkt. 33 at 18-20.

1 visas and make aliens removable whose presence threatened American foreign policy interests, the only  
2 way to do so was to draft statutes like §§ 1201(i) and 1227(a)(4)(C).” *Id.* at 24.

3 Plaintiffs’ First Amendment challenge therefore fails.

## 4 **2. The statutes do not violate the Fifth Amendment.**

5 The parties’ dispute regarding the Fifth Amendment boils down to a disagreement as to the scope  
6 of the political branches’ discretion with respect to the admission and exclusion of nonimmigrants for  
7 foreign-policy reasons. *Compare* Dkt. 33 at 20-25, *with* Dkt. 44 at 23-25. The government has the  
8 better view of the cases.

9 Indeed, Plaintiffs do not meaningfully dispute that the Supreme Court and lower courts have  
10 recognized the political branches’ discretion regarding “the admission and exclusion of foreign  
11 nationals.” *Hawaii*, 585 U.S. at 702 (quoting *Fiallo v. Bell*, 430 U.S. 787, 792 (1977)); *see also*  
12 *Harisiades*, 342 U.S. at 588-89; *Palestine Info. Off. v. Shultz*, 853 F.2d 932, 944 (D.C. Cir. 1988). Nor  
13 do Plaintiffs dispute that, over and over again, the Supreme Court has held that noncitizens have reduced  
14 Fifth Amendment protections compared to citizens. *See, e.g., Kim*, 538 U.S. at 522 (“Congress may  
15 make rules as to aliens that would be unacceptable if applied to citizens.”); *Mathews v. Diaz*, 426 U.S.  
16 67, 78 (1976). Plaintiffs’ response to these undisputed points is merely that these prior cases did not all  
17 arise in the vagueness context, and so the Court should ignore them. *See* Dkt. 44 at 23-25.

18 Plaintiffs instead rely on the Supreme Court’s plurality opinion in *Sessions v. Dimaya*, 584 U.S.  
19 148 (2018), for the proposition that immigration laws are not wholly immune from vagueness  
20 challenges. *See* Dkt. 44 at 23. But the issue in *Dimaya* was the INA’s incorporation of a criminal  
21 statute that the Court had already previously held to be void for vagueness. *See* 584 U.S. at 155 (citing  
22 *Johnson v. United States*, 576 U.S. 591 (2015)). It is hardly surprising that the Court held that a criminal  
23 statute that was unconstitutionally vague remained vague when it was used for immigration purposes.

24 But whereas criminal conduct can be defined with relative specificity, “the special exigencies of  
25 foreign policy require Congress to draft statutes that ‘provide a standard far more general than that  
26 which has always been considered requisite with regard to domestic affairs.” *Palestine Info. Off.*, 853  
27 F.2d at 944 (D.C. Cir. 1988) (quoting *United States v. Curtiss–Wright Export Corp.*, 299 U.S. 304, 324  
28 (1936)). “[B]ecause of the leeway necessary to represent adequately this nation’s interests in foreign

1 affairs, Congress ‘must of necessity paint with a brush broader than that it customarily wields in  
2 domestic areas.’” *Id.* (quoting *Zemel v. Rusk*, 381 U.S. 1, 17 (1965)).

3 The Constitution does not require Congress to spell out, in advance, the various specific foreign-  
4 policy concerns that could justify visa revocations and removals. Rather, such “[m]atters relating ‘to the  
5 conduct of foreign relations . . . are so exclusively entrusted to the political branches of government as to  
6 be largely immune from judicial inquiry or interference.’” *Id.* (quoting *Harisiades*, 342 U.S. at 589).

7 In that context—in light of their unique, foreign-policy purpose, and the political branches’  
8 special discretion in that area—the statutes are not impermissibly vague under the Fifth Amendment.  
9 *See, e.g., HLP*, 561 U.S. at 18-20; *Boutilier v. INS*, 387 U.S. 118, 123 (1967) (affirming deportation  
10 against vagueness challenge); *Jordan v. DeGeorge*, 341 U.S. 223, 225, 232 (1951) (same); *Mahler v.*  
11 *Eby*, 264 U.S. 32, 40 (1924) (“[T]he expression ‘undesirable residents of the United States’ is  
12 sufficiently definite to make the delegation quite within the power of Congress.”).

13 **III. CONCLUSION**

14 For the foregoing reasons, the Court should deny Plaintiffs’ Motion for Summary Judgment,  
15 grant Defendants’ Cross-Motion for Summary Judgment, and enter final judgment in favor of  
16 Defendants.

17  
18 Dated: November 3, 2025

19 CRAIG H. MISSAKIAN  
20 United States Attorney

21 /s/ Kelsey J. Helland  
22 KELSEY J. HELLAND  
23 Assistant United States Attorney

24 Attorneys for Defendants  
25  
26  
27  
28