UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IMMIGRANT ADVOCATES RESPONSE COLLABORATIVE, et al.,

Plaintiffs,

v.

DEPARTMENT OF JUSTICE, et al.,

Defendants.

Civil Action No. 25-2279 (TNM)

DEFENDANTS' REPLY IN FURTHER SUPPORT OF THEIR MOTION TO DISMISS

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Defendants respectfully submit this reply in further support of their motion to dismiss. *See* Defs' Mot. to Dismiss ("Defs' Mot.") (ECF No. 34). Defendants address below certain points raised by Plaintiffs in their opposition and otherwise rely on the arguments from their motion, which are incorporated herein by reference.

ARGUMENT

I. The Organizational Plaintiffs Lack Organizational Standing.[1]

Plaintiffs' theory on organization standing invites the Court to stretch the limits of binding Supreme Court and D.C. Circuit precedent. The Court should decline Plaintiffs' invitation.

Plaintiff Immigrant Advocates contends that it has established standing by alleging that Defendants' policies had adverse effects throughout the immigrant community. Pls' Opp'n to Mot. to Dismiss ("Pls' Opp'n") (ECF No. 38) at 13. A "commonsense inference" does not lend itself to conferring standing on Immigrant Advocates. *Id.* Immigrant Advocates allegedly has "no staff time available to support, train, and orient *new* volunteers," and instead must make do with "only returning volunteers." Compl. ¶ 113 (emphasis added). But this is the quintessential "self-inflicted budgetary choice." Defs' Mot. at 5 (citing *Am. Soc'y for Prevention of Cruelty to Animals v. Feld Entm't, Inc.*, 659 F.3d 13, 25 (D.C. Cir. 2011)). Immigrant Advocates has made a conscious decision to direct organizational resources towards certain organizational efforts while deemphasizing others. But that theory is insufficient for standing purposes. *See League of United Latin Am. Citizens v. Exec. Off. of the President*, 780 F. Supp. 3d 135, 180 (D.D.C. 2025) ("Instead, the D.C. Circuit has analyzed organizational standing by focusing on whether a defendant's conduct prompted a plaintiff organization to divert resources toward providing *additional direct*

[1] Plaintiffs conceded that they do not assert an associational standing theory. *See* Pls' Mot. at 12 n.4. Therefore, Defendants do not address those arguments there.

services designed to offset the harmful effects of the challenged conduct.") (emphasis added in part).

Plaintiff Immigrant Advocates does not adequately rebut Defendants' arguments that the organization's website cuts against standing. *See* Defs' Mot. at 7; Pls' Opp'n at 14. All Plaintiff Immigrant Advocates cites to is an allegation that they had to modify its Friend of the Court programming daily so that the information would be accurate and useful and that it has had to reduce the number of respondents that it can assist. *See* Compl. ¶ 112. But "an organization's use of resources for litigation, investigation in anticipation of litigation or advocacy is not sufficient to give rise to an Article III injury." *Food & Water Watch v. Vilsack*, 808 F.3d 905, 919 (D.C. Cir. 2015); *see also Friends of Animals v. Zinke*, 373 F. Supp. 3d 70, 90 (D.D.C. 2019). Put another way, Plaintiff Immigrant Advocates argument "is essentially an argument that [the Center] cannot allocate issue advocacy expenses in the way it would prefer, which is insufficient to establish standing." *Ams. for Safe Access v. DEA*, 706 F.3d 438, 458 (D.C. Cir. 2013); *see also Friends of Animals*, 373 F. Supp. 3d at 90.

Finally, Plaintiff Immigrant Advocates argues that it has had to modify its programming, which now requires more time to provide services, thereby resulting in fewer clients. Pls' Opp'n at 14. But "an organization does not suffer an injury in fact where it 'expend[s] resources to educate its members and others' unless doing so subjects the organization to 'operational costs beyond those normally expended.'" *Food & Water Watch*, 808 F.3d at 920 (quoting *Nat'l Taxpayers Union*, 68 F.3d at 1434). Plaintiff Immigrant Advocates makes no allegations that come close to reaching that bar.

Plaintiff Immigrant Advocates cannot circumvent these standing requirements simply by challenging a policy. Defs' Mot. at 8. The cases it cites in support of its claim of standing,

moreover, favor Defendants. Pls' Opp'n at 15. A party alleging organizational standing must allege actual expenditure of resources and not general generic statements about reallocation of resources. *See Friends of Animals v. Bernhardt*, 961 F.3d 1197, 1208 (D.C. Cir. 2020). Moreover, that organizational plaintiff must also show a "programmatic injury." *League of Women Voters of the United States v. Newby*, 838 F.3d 1, 9 (D.C. Cir. 2016). And while a frustrated ability to provide legal services could result in standing, *see Cap. Area Immigrants' Rts. Coal. v. Trump*, 471 F. Supp. 3d 25, 38-39 (D.D.C. 2020), the D.C. Circuit has confirmed that "[t]he mere fact that an organization redirects some of its resources to litigation and legal counseling in response to actions or inactions of another party is insufficient to impart standing upon the organization," *Turlock Irrigation Dist. v. FERC*, 786 F.3d 18, 24 (D.C. Cir. 2015). Therefore, this Court should follow the Supreme Court's most recent mandate: "[A]n organization that has not suffered a concrete injury caused by a defendant's action cannot spend its way into standing simply by expending money to gather information and advocate against the defendant's action. An organization cannot manufacture its own standing in that way." *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 394 (2024); *accord Am. Immigr. Laws. Ass'n v. Reno,* 18 F. Supp. 2d 38, 50 (D.D.C. 1998) (Sullivan, J.), *aff'd*, 199 F.3d 1352 (D.C. Cir. 2000).[2]

Although Defendants acknowledge that Plaintiff American Gateways is in a slightly different posture from Plaintiff Immigrant Advocates, *see* Defs' Mot. at 8, that difference does not lead this Court to a different result on standing. Plaintiff American Gateways lacks standing for many of the same reasons argued above. That organization's standing theory also runs contrary to D.C. Circuit precedent. *See Food & Water Watch*, 808 F.3d at 919 ("an organization's use of resources for litigation, investigation in anticipation of litigation, or advocacy is not sufficient to

[2] Defendants refer the Court to their motion to dismiss. *See* Defs' Mot. at 9.

give rise to an Article III injury."); *Turlock Irrigation Dist. v. FERC*, 786 F.3d 18, 24 (D.C. Cir. 2015) ("This is true whether the advocacy takes place through litigation or administrative proceedings."). That Defendants decide to exercise their discretion in dismissing removal proceedings or arresting aliens affects the individual aliens, not the organization. Whether Plaintiff American Gateways could arguably claim associational standing is of no moment as it has disavowed that theory. *See* Pls' Opp'n at 12 n.4.[3] In terms of organizational standing, the only theory of standing advanced in the complaint, *id.* American Gateways has failed to demonstrate organizational injury and, therefore, has failed to meet its burden to establish this Court's jurisdiction over its claims.

Neither organization can spend its way into standing. *League of United Latin Am. Citizens*, 780 F. Supp. 3d at 180. Thus, their claims should be dismissed.[4]

II. Three Named Plaintiffs Lack Standing.

R.A. – R.A. has been removed and therefore lacks standing to bring this suit because his alleged injury is not redressable. *See* Defs' Mot. at 11. *Kiakombua v. Wolf*, 498 F. Supp. 3d 1

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[3] In their opposition, Plaintiffs "reserve the right to amend the complaint to add [an associational standing] theory." Pls' Opp'n at 12 n.4. Because there is no motion for leave to amend before the Court at this time, Defendants do not take a position here as to whether any amendment would be futile. Nor should Defendants' proposed arguments here be in any way construed as conceding that Plaintiff American Gateways would have associational standing should it seek to amend the Complain to advance that theory.

[4] Because the organizational plaintiffs have failed to demonstrate any concrete injury, their lack of standing cannot be salvaged by their request for declaratory relief. Defs' Mot. at 17 n.4. Plaintiffs fail to meaningfully respond to this argument, contending that "a declaratory judgment would clarify the legal relationships between the Organizational Plaintiffs and the government by establishing that the challenged policy changes were unlawful." Pls' Opp'n at 17. But it is well settled that a plaintiff cannot "allege a bare procedural violation, divorced from any concrete harm, and satisfy the injury-in-fact requirement." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 341 (2016). In the absence of concrete injury, therefore, a plaintiff lacks standing to seek a declaration that an alleged government policy is illegal.

(D.D.C. 2020), does not help R.A. Pls' Opp'n at 18. There, the issue was whether two plaintiffs had received proper credible fear determinations, which is why the court contemplated a possibility of return. *Id.* at 29. But more important, the Supreme Court recently reaffirmed its longstanding recognition that "the admission and exclusion of foreign nationals is a 'fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control.'" *Dep't of State v. Muñoz*, 602 U.S. 899, 907 (2024) (quoting *Trump v. Hawaii*, 585 U.S. 667, 702 (2018)). Now that R.A. has been removed subject to an expedited order of removal, an order requiring his return would effectively require Defendants to bring an alien back and allow him to remain here despite having no status.[5] And the Court certainly could not order the government to place R.A. in full removal proceedings. *See Jimenez-Angeles v. Ashcroft*, 291 F.3d 594, 599 (9th Cir. 2002) ("We construe § 1252(g) . . . to include not only a decision in an individual case *whether* to commence, but also *when* to commence, a proceeding.") *see also Sissoko v. Rocha*, 509 F.3d 947, 950–51 (9th Cir. 2007) (holding that § 1252(g) barred review of a Fourth Amendment false-arrest claim that "directly challenge[d] [the] decision to commence expedited removal proceedings"); *Humphries v. Various Fed. USINS Emps.*, 164 F.3d 936, 945 (5th Cir. 1999) (determining that § 1252(g) prohibited review of an alien's First Amendment retaliation claim based on the Attorney General's decision to put him into exclusion proceedings); *Alvarez v. U.S. Immigr. & Customs Enf't*, 818 F.3d 1194, 1203 (11th Cir. 2016) ("By its plain terms, [§ 1252(g)] bars us from questioning ICE's discretionary decisions to commence removal—and thus

[5] That is not to say that R.A. had no opportunity to obtain review. Congress specifically provided for limited review in habeas proceedings. 8 U.S.C. § 1252(e)(2); *see also I.M. v. U.S. C.B.P.*, 67 F.4th 436, 439 (D.C. Cir. 2023). *See id.* at 445. Absent that, section 1252(a)(2)(A) divests this Court of jurisdiction over Plaintiff's expedited removal claims. *See id.*

necessarily prevents us from considering whether the agency should have used a different statutory procedure to initiate the removal process.").[6] Therefore, R.A. cannot establish redressability.

M.S. – M.S. is not in removal proceedings, is not detained, and has not been subjected to expedited removal proceedings. Defs' Mot. at 11-12. His only retort is that he "fear[s] imminent placement into expedited removal" and that he would "likely" face arrest. Pls' Opp'n at 20. But this confirms that M.A.'s standing hinges on multiple layers of speculation. He speculates that he will be placed into expedited removal proceedings. He speculates that he will be subject to detention. He speculates that he would have a successful credible fear claim. He finally speculates that he would be subject to the so-called courthouse arrest policy. If such "'layers of speculation'" is not sufficient for redressability purposes, *Architects & Eng'rs for 9/11 Truth v. Raimondo*, Civ. A. 21-02365 (TNM), 2022 U.S. Dist. LEXIS 136601, at *16 (D.D.C. Aug. 2, 2022) (quoting *Lawyers' Comm. For 9/11 Inquiry, Inc. v. Wray*, 848 F. App'x 428, 431 (D.C. Cir. 2021)), then they certainly should not be sufficient to establish harm.

J.L/J.M – Plaintiff J.L. acknowledges that his claims should be dismissed. Pls.' Opp'n at 20 n.6. Plaintiff J.M. did not respond to Defendants' arguments and the Court should deem the arguments conceded. *See Hashmatullah Faizi v. Garland*, Civ. A. No. 24-839 (RC), 2024 U.S. Dist. LEXIS 2237984, at *16 (D.D.C. Dec. 11, 2024); *Fateh v. Blinken*, No. 23-cv-1277, 2024 U.S. Dist. LEXIS 34917, at *4 (D.D.C. Feb. 29, 2024).

[6] While § 1252(g) also bars review of claims, it similarly bars the Court from supplanting the government's prosecutorial discretion in commencing proceedings.

III. Plaintiffs' Challenges Related to Counts I and II Fail.

A. The INA Strips this Court of Subject-Matter Jurisdiction.

Section 1252(a)(2)(A) bars review. *See* Defs' Mot. at 13-14. Plaintiffs are effectively challenging: (1) Defendants' decision to invoke expedited removal when detaining those aliens; (2) the application of the expedited removal statute against them; and (3) Defendants' supposed procedures to implement the provisions of 8 U.S.C. § 1225(b)(1). *See M.M.V. v. Garland*, 1 F.4th 1100, 1106 (D.C. Cir. 2021) (applying the "procedures and policies adopted" bar)). Plaintiffs' challenge goes to the very heart of a decision to make an alien subject to expedited removal. Entertaining such a challenge would contravene the statute's clear jurisdictional bar. *See I.M. v. U.S. CBP*, No. 20-CV-3576, 2022 WL 266703, at *4 (D.D.C. Jan. 28, 2022) (holding that § 1252(a)(2)(A) removes from federal courts jurisdiction to review issues "relating to section 1225(b)(1)," such as expedited removal proceedings or credible fear determinations, other than as explicitly permitted by section 1252(e)) *aff'd*, 67 F.4th 436 (D.C. Cir. 2023); *see also Mendoza-Linares v. Garland*, 51 F.4th 1146, 1154-62 (9th Cir. 2022).

Congress specifically foreclosed judicial review over discretionary detention decisions. *See* 8 U.S.C. § 1226(e). Aliens challenging the so-called courthouse arrest policy would in fact be bringing challenges to the initial decision to detain them pending proceedings. Those challenges would indeed be barred. *See Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020) (finding that § 1226(e) did not bar review because the petitioner did not challenge "his initial detention"); *see also Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019) (not applying § 1226(e) because the petitioner did not challenge the "*initial detention* or bond decision") (emphasis added); *Mayorga v. Meade*, No. 24-CV-22131, 2024 WL 4298815, at *7 (S.D. Fla. Sept. 26, 2024) (applying § 1226(e) to hold that a § 1226(a) detainee "failed to establish that his detention is subject to review"). While aliens in expedited removal are subject to mandatory detention, the decision of

whether to detain in the first place is a discretionary one, which is part-and-parcel of the decision to initiate expedited removal proceedings. *See* 8 U.S.C. § 1252(g).

B. Section 1252(f)(1) Prevents this Court from Ordering the Requested Relief.

As argued, 8 U.S.C. § 1252(f)(1) prohibits this Court from granting the relief sought on a classwide basis. *See* Defs' Mot. at 14. Plaintiffs wrongly contend that declaratory relief and vacatur remain available. *See* Pls' Opp'n at 26. By requesting that this Court declare the Defendants' actions unlawful and vacate the underlying decisions, Plaintiffs are seeking a coercive order from this Court. As the Supreme Court has recognized, injunctions are the "means by which a court tells someone what to do or not to do," "direct[ing] the conduct of a party . . . with the backing of its full coercive powers." *Nken v. Holder*, 556 U.S. 418, 428 (2009). The definition makes sense, for an injunctive order operates "'*in personam.*'" *Id.* (quoting *Black's Law Dictionary* 800 (6th ed.1990)). An order that sets aside Defendants' decisions would "command[] [her] to undo some wrong injury." *Id.* (citation omitted). Therefore, vacatur would operate as a form of relief that operates like an injunction. *See, e.g.*, *Diné Citizens Against Ruining Our Env't v. Haaland*, 59 F.4th 1016, 1048 (10th Cir. 2023) (vacatur of agency action is a "form of injunctive relief granted by district courts" (citation modified)). Indeed, "[i]n a general sense, every order of a court which commands or forbids is an injunction." *Nken*, 556 U.S. at 428. That is precisely the type of relief that § 1252(f)(1) prohibits.

Although the D.C. Circuit has not yet decided whether § 1252(f)(1) bars APA vacatur, *see N.S.*, 141 F.4th at 290 n.7, the statutory text certainly supports such a reading. The provision's prefatory clause is clear: "Regardless of the nature of the action or claim." 8 U.S.C. § 1252(f)(1). To deem APA vacatur to somehow not be covered by the reach of § 1252(f)(1) would render the provision's prefatory clause a "toothless," allowing parties to circumvent clear jurisdictional bars by creative pleading. *See E.F.L. v. Prim*, 986 F.3d 959, 965 (7th Cir. 2021) (applying principle

when affirming a neighboring jurisdictional bar); *see also Tazu v. Att'y Gen.*, 975 F.3d 292, 298 (3d Cir. 2020) (same). As vacatur "restrict[s] or stop[s] official action," *Direct Mktg. Ass'n v. Brohl*, 575 U.S. 1, 13 (2015), Congress plainly foreclosed any such order by this Court by declaring in § 1252(f)(1) that "no court (other than the Supreme Court) shall have jurisdiction or authority to enjoin or restrain the operation of" the covered provisions.

Finally, that Plaintiffs seek separate declaratory relief is of no moment. The Declaratory Judgment Act only permits a court to "declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought." 28 U.S.C. § 2201(a). Courts can enter declaratory judgment if it will either (1) "serve a useful purpose in clarifying the legal relations in issue" or (2) "terminate and afford relief from the uncertainty, insecurity, and controversy giving rise to the proceeding." *President v. Vance*, 627 F.2d 353, 364 n.76 (D.C. Cir. 1980) (citation omitted). Plaintiffs by their own admission are seeking more than a simple declaration that would fall into either of the two buckets. *See* Compl. (ECF No. 1) at Prayer for Relief (seeking vacatur and injunction for each alleged violation of law). Plaintiffs' proposed declaration would "interdict[]" "the operation at large of the [INA] statute," thereby prohibiting Defendants from continuing to apply it. *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 155 (1963). Defendants would face the threat of contempt if there were a violation of the Court's order. Thus, as a practical matter, such an order would fail to differentiate "between injunctive and declaratory relief." *California v. Grace Brethren Church*, 457 U.S. 393, 408 (1982).

While Defendants acknowledge that the D.C. Circuit has indicated that § 1252(f)(1) does not bar the granting of declaratory relief, *see Make the Rd. N.Y. v. Wolf*, 962 F.3d 612, 635 (D.C. Cir. 2020), that holding contemplates a properly crafted declaratory judgment. It would have to be "totally noncoercive." *Kennedy*, 372 U.S. at 155; *see also Steffel v. Thompson*, 415 U.S. 452, 471

(1974) ("Though [a declaratory judgment] may be persuasive, it is not ultimately coercive." (citation omitted)). This is precisely why declaratory judgments and injunctions are two different remedies requiring "different considerations" and why there are times when a declaratory judgment may be appropriate even if an injunction is not. *Steffel*, 415 U.S. at 469. Moreover, under *Make the Road*, this Court could issue a declaratory judgment, but "the Government [remains] free to continue to apply" the challenged action pending further proceedings, including appellate review. *Kennedy*, 372 U.S. at 155. That would follow Congress's plan for § 1252(f)(1), which was enacted not to entirely "preclude challenges" to covered immigration procedures, but to ensure that "the procedures will remain in force while such lawsuits are pending." H.R. Rep. No. 469, 104th Cong., 2d Sess. Pt. 1 at 161 (1996). *Grace Brethren Church* is particularly instructive. There, the Supreme Court held that the Tax Injunction Act, 28 U.S.C. § 1341, which barred orders that "suspend or restrain" tax collection, stripped courts of jurisdiction to enter not just injunctive relief, but also declaratory relief. *Grace Brethren Church*, 457 U.S. at 408.

The Court should extend the same reasoning here, even though Plaintiffs seek a declaration and accompanying vacatur under § 706. *See United States v. Texas*, 599 U.S. 670, 690-701 (2023) (Gorsuch, J., concurring) (agreeing that a district court cannot use vacatur under 5 U.S.C. § 706 to "sidestep" § 1252(f)(1)).

C. Section 1252(e)(3) Bars Review of Plaintiffs' Arbitrary-and-Capricious Claim to the So-Called Courthouse Arrest Policy.

Defendants clearly articulated the jurisdictional bars precluding this Court's review of this claim. Defs' Mot. at 15. Plaintiffs oddly contend that Counts I, II, and III through VII are not subject to Sections 1252(a)(2)(A) and 1252(e) because they do not implicate implementation of expedited removal. But that is not a coherent assertion.

Plaintiffs' entire theory is that the alleged dismissal guidance leads to aliens being placed in expedited removal. *See* Pls' Opp'n at 8 (arguing that the so-called courthouse arrest policy is dismissal guidance because it relates to dismissal of full removal proceedings to then place aliens in expedited removal). The so-called courthouse arrest policy, while not mentioning 8 U.S.C. § 1225, certainly pertains to Plaintiffs' challenge to expedited removal and changes made thereto according to Plaintiffs' own theory. Plaintiffs cannot slice the bread so thinly as to avoid the reach of § 1252(e)(3).

Plaintiffs try to avoid the expedited removal bars by claiming that textual disparity between the expedited removal statute and the Administrative Procedure Act ("APA") permits their arbitrary-and-capricious claim to move forward. Pls' Opp'n at 23. That argument is flawed. It reads a standard into the statute that is simply not there. *See* Defs' Mot. at 15.

D. Plaintiffs' Courthouse-Arrest Policy Challenge is Time-Barred.

Plaintiffs only contend that their so-called courthouse-arrest policy challenge is not subject to § 1252(e)(3)'s limitations. *See* Pls' Opp'n at 21-22. But the challenges are subject to § 1252(e)(3). *See supra.* Assuming that the Court deems the challenges are covered by § 1252(e)(3), Plaintiffs have waived any argument as to why their challenge falls within the 60-day limitation.

E. Arrest-Policy Challenges Sound in Habeas.

Plaintiffs contend that they need not seek relief through habeas when challenging an arrest policy. Pls' Opp'n at 28. That is inconsistent with the relief that Plaintiffs ultimately seek. *See* Defs' Mot. at 16-19. Indeed, courts have entertained similar challenges *in habeas*. *See, e.g.*, *Samb v. Joyce*, Civ. A. No. 25-6373 (DEH), 2025 U.S. Dist. LEXIS 161109, at *4 (S.D.N.Y. Aug, 19, 2025).

IV. Plaintiffs' Claims Related to the Expansion of Expedited Removal (Counts VIII and IX) Fail.

Plaintiffs failed to plausibly plead claims under these counts, and the Court should dismiss. *See* Defs' Mot. at 19-21. Plaintiffs contend that "upon information and belief" is adequate and may survive the *Twombly-Iqbal* inquiry. *See* Pls' Opp'n at 40-43. They ask this Court to take note of Defendants' lack of denial when it comes to the existence of the expansion guidance. *See id.* at 41. That approach turns the *Twombly-Iqbal* burden improperly on Defendants. At a motion to dismiss stage, Defendants are required to accept the allegations as true. *See Fuentes-Fernandez & Co. v. Caballero & Castellanos, PL*, 770 F. Supp. 2d 281 (D.D.C. 2011). So, that argument fails to address this pleading deficiency.

"The D.C. Circuit has made clear that a plaintiff may plead upon information and belief 'only when the necessary information lies within the defendant's control,' *and* the allegations are 'accompanied by a statement of the facts upon which the allegations are based.'" *Mahoney v. United States Capitol Police Bd.*, 566 F. Supp. 3d 22, 28 (D.D.C. 2022) (quoting *United States ex rel. Cimino v. Int'l Bus. Machines Corp.*, 3 F.4th 412, 424 (D.C. Cir. 2021)). Plaintiffs, however, fail to accompany their "upon information and belief" allegations with a supporting statement of facts. All they have is a conclusory allegation. *See* Compl. ¶ 99.

Additionally, allegations related to Plaintiffs L.H., E.P., D.C., E.C., and P.D. do not save the complaint. L.H.'s allegations are internally inconsistent as she indicates that she has "received an expedited removal order" but is waiting on a credible fear determination. Compl. ¶ 16. But then she plausibly cannot have an expedited removal order. *See* 8 U.S.C. § 1225(b)(1)(A)(i) (an alien "who is arriving in the United States," who an immigration officer determines lacks valid entry documentation or makes material misrepresentations, shall be "order[ed] ... removed from the United States without further hearing or review *unless* the alien indicates either an intention to

apply for asylum under [8 U.S.C. § 1158] or a fear of persecution."); *see also I.M. v. United States Customs & Border Prot.*, Civ. A. No. 20-3576 (DLF), 2022 U.S. Dist. LEXIS 16213, at *3 (D.D.C. Jan. 21, 2022) (credible fear determination becomes "final" after an immigration judge upholds the asylum officer's determination and that is when the alien "is subject to removal"). The same can be said about E.P. E.C., and P.D., who allege that they have expedited removal orders but are waiting for credible fear interviews. Compl. ¶¶ 18, 20, 21. These statements are "'not entitled to be assumed true" because they are bare assertions, *Vera Inst. of Just. v. United States DOJ*, Civ. A. No. 25-1643 (APM), 2025 U.S. Dist. LEXIS 128304, at *48 (D.D.C. July 7, 2025) (quoting *Iqbal*, 556 U.S. at 681)). and are inherently contradictory, *see Warner v. Tinder Inc.*, 105 F. Supp. 3d 1083, 1098 (C.D. Cal. 2015) (contradictory allegations are inherently implausible). D.C. does not even allege that he has an expedited removal order. Compl. ¶ 19. Therefore, there are no plausible allegations to support their claims.

As regards the organizational plaintiffs, they lack standing to seek relief that enjoins or restrains expedited removal because that relief is limited to individual aliens against whom expedited removal proceedings have been initiated. *See* 8 U.S.C. § 1252(f)(1). Alternatively, they fail to state a claim for the same reason.

V. Plaintiffs' Concurrent Proceedings Guidance Claims (Counts X and XI) Fail.

Plaintiffs suffer the same pleading deficiencies as they do with their expansion of expedited removal theory. *See* Defs' Mot. at 22-23. Plaintiffs resort to the same irrelevant assertion about Defendants not denying the existence of said guidance and that only Defendants would have possession of said guidance. Pls' Opp'n at 43. But they only rely on generic statements that are nothing more than conclusory allegations and are "'not entitled to be assumed true." *Vera Inst. of Just.*, 2025 U.S. Dist. LEXIS 128304, at *48 (quoting *Iqbal*, 556 U.S. at 681)). And while certain plaintiffs have alleged that they are subject to expedited removal orders and have pending appeals

at the Board of Immigration Appeals, as argued above, those allegations are inherently contradictory. *I.M.*, 2022 U.S. Dist. LEXIS 16213, at *3 (credible fear determination becomes "final" after an immigration judge upholds the asylum officer's determination and that is when the alien "is subject to removal").

Similarly, Plaintiffs cannot rely on bare allegations about the policy being "written" to get around the *Twombly/Iqbal* pleading standard.

VI. Plaintiffs' Challenges to the Government's Dismissal Guidance (Counts III to VII) Fail.

A. The INA Precludes District Court Review.

Challenges related to expedited removal are clearly foreclosed. *See supra.* Plaintiffs' challenge to immigration judges dismissing full removal proceedings are questions that arise out of an action taken and proceeding brought to remove an alien from the United States, and Congress specifically forbade district court review of those challenges. *See* 8 U.S.C. § 1252(b)(9). Moreover, Plaintiffs are explicitly challenging immigration judges' decisions in commencing proceedings and adjudicating cases. Congress foreclosed review of those challenges, as well. *See* 8 U.S.C. § 1252(g).

Section 1252(b)(9) - "[M]ost claims that even relate to removal" are improper if brought before the district court. *E.O.H.C. v. Sec'y U.S. Dep't of Homeland Sec.* 950 F.3d 177, 184 (3d Cir. 2020); *see also Reno v. Am.-Arab Anti-Discrimination Comm.* ("*AADC*"), 525 U.S. 471, 483 (1999) (labeling section 1252(b)(9) an "unmistakable zipper clause," and defining a zipper clause as "[a] clause that says 'no judicial review in deportation cases unless this section provides judicial review.'"); *Vasquez v. Aviles*, 639 F. App'x 898, 900–01 (3d Cir. 2016); *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) ("Taken together, § 1252(a)(5) and § 1252(b)(9) mean that any issue – whether legal or factual – arising from any removal-related activity can be reviewed only

through the [petition-for-review] process."). Plaintiffs contend that § 1252(b)(9) only applies if there is a final order of removal. *See* Pls' Opp'n at 24. That has no support in the statutory provision. Nothing in that language suggests that district courts may nonetheless adjudicate issues "arising from any action taken or proceeding brought to remove an alien" while removal proceedings are ongoing and up until a final order of removal is entered. And that rule would make no sense: it would mean a district court could lose jurisdiction midway through a case once the parallel immigration proceedings produced a final order.

Moreover, a majority of the Justices in *Jennings v. Rodriguez*, recognized that §1252(b)(9) applies before a final order is issued. Justice Alito, joined by Chief Justice Roberts and Justice Kennedy, concluded that §1252(b)(9) did not apply to aliens challenging their prolonged detention because they were "not challenging the decision to detain them in the first place" or "challenging any part of the process by which their removability will be determined"—steps that precede a final order. *See* 583 U.S. 281, 294-95 (2018) (plurality opinion). Meanwhile, Justice Thomas and Justice Gorsuch explained that §1252(b)(9) should apply to a challenge to prolonged pre-final-order detention. *Id.* at 314-23 (Thomas, J., concurring). So while the Justices did not necessarily agree on the *precise* scope of §1252(b)(9), five Justices understood that §1252(b)(9) is operational *during* the removal proceedings—not just at the end.

Plaintiffs maintain internal inconsistency in their arguments by contending that their challenges are wholly collateral to the removal process. Pls' Opp'n at 24. By their own admission, they rely on allegations of pending BIA appeals to establish that there is some alleged concurrent proceeding guidance. That sounds in removal-related issues, which district courts lack jurisdiction to consider.

That Plaintiffs are raising a policy-and-practice claim does not undercut the application of § 1252(b)(9). Pls' Opp'n at 24-25 (relying on *McNary v. Haitian Refugee Ctr.*, 498 U.S. 479, 492 (1991)). *McNary* involved a constitutional pattern-and-practice challenge to the INS's administration of a temporary residence program for special agricultural workers ("SAW"), and the statute permitting judicial review did not refer to a "group of decisions or a practice or procedure employed in making decisions." 498 U.S. at 483, 492. Because the plaintiffs' constitutional pattern-and-practice claims required "factfinding and record-developing capabilities" that the statute would have barred if applied, the Court concluded that Congress had not intended to bar district court review of such claims. *Id.* at 492, 496-97. Reasoning that Congress "easily could have used broader statutory language" if it had "intended the limited review provisions [at issue] to encompass challenges to INS procedures and practices," the Court provided two examples of what might constitute language "expansive" enough to remove jurisdiction over SAW status claims. *See id.* at 494. (suggesting (1) "all causes ... arising under any of the provisions" and "all questions of law and fact"). Section 1252(b)(9) employs the exact kind of clear language that *McNary* said *would be* sufficient to strip jurisdiction.

Section 1252(g) – challenges to immigration judges dismissing proceedings are direct challenges to how the Attorney General adjudicates cases. But under Plaintiffs' theory, it is also a challenge to the commencement of proceedings. Both challenges are barred under § 1252(g).

Whether and how an immigration judge resolves the underlying removability charges and any requests for relief are "decision[s] or action[s]" to "adjudicate" the case. 8 U.S.C. § 1252(g). Thus, this Court lacks jurisdiction to review any cause or claim arising from those decisions and actions. *See Kilani-Hewitt v. Bukszpan*, 130 F. Supp. 3d 858, 864 (S.D.N.Y. 2015) ("Kilani–Hewitt seeks to compel IJ Bukszpan to consider her reopened adjustment of status application

immediately . . . . [T]he Court is in no better position to act because the relief that the Plaintiffs seek would limit the Attorney General's discretion to 'adjudicate' Kilani–Hewitt's case— an act that is specifically excluded from this Court's purview pursuant to Section 1252(g).").

Plaintiffs claim to have plausibly alleged that Defendants are exercising their discretionary authority to dismiss full removal proceedings and instead placing aliens into expedited removal proceedings. *See Matter of M-S-*, 27 I. & N. Dec. 509, 510 (Att'y Gen. 2019) (observing that DHS has discretion whether to place an alien "in either expedited or full proceedings" (citing *Matter of E-R-M- & L-R-M-*, 25 I&N Dec. 520, 524 (BIA 2011)). That is a direct challenge to when and how the Executive decides to commence proceedings against aliens. That clearly falls within the scope of § 1252(g). *See Reno*, 525 U.S. at 487.[7]

B. Plaintiffs Fail to State a Claim under Counts III and IV.

1. The EOIR Dismissal Guidance is Not a Final Agency Action.

Plaintiffs are relying on *an email* and asking this Court to find that a final agency action. *See* Defs' Mot. at 26-27. Plaintiffs do not dispute they are relying on an email for this contention and instead argue that this consummates an agency's decisionmaking process. Pls' Opp'n at 30-31. But the problem is that Plaintiffs concede that the email does nothing more than show "how immigration judges *should* handle" their caseloads. That is a far cry from binding the agency to take certain action. *Contra Drs. for Am. v. OPM*, 793 F. Supp. 3d 112 (D.D.C. July 2, 2025) ("Simply put, the OPM Memo 'bound [agency] staff by' requiring them to take certain actions") (quoting *Biden*, 597 U.S. at 808-09). Rather, immigration judges must still rely on independent legal authority, as reflected in the email, when it comes to motions to dismiss. *See* Email, *African*

[7] Because the decision to commence and dismiss proceedings are clearly within the Executive's discretion, Plaintiffs cannot rely on the APA to obtain review. *See* 5 U.S.C. § 701(a)(2) (precluding review for "agency action committed to agency discretion by law").

Cmtys. Together v. Lyons, Civ. A. No. 25-6366 (S.D.N.Y. Aug. 11, 2025), ECF No. 23-2 at 10 (citing statutes and regulations). Therefore, immigration judges must still rely on legal authorities, and this email—even as construed by Plaintiffs—would constitute nothing more than a guiding "statement of policy," which is not a final agency action. *See All. for Nat. Health, USA v. United States*, Civ. A. No. 24-cv-2989 (CRC), 2025 U.S. Dist. LEXIS 134565, at *14 (D.D.C. July 15, 2025) (relying on *National Mining v. McCarthy*, 758 F.3d 243, 252-53 (D.C. Cir. 2014)).

2. The EOIR Dismissal Guidance is Not Arbitrary, Capricious, Nor Contrary to Law.

Plaintiffs' retorts to Defendants' arguments on this point make little sense now that this claim is moot. *See* Defs' Notice of Suppl. Authority (ECF No. 35). Even if the claim was not moot, Plaintiffs' retorts do not rebut Defendants' arguments. *Compare* Defs' Mot. at 27-28, *with* Pls' Opp'n at 33-34.

Plaintiffs contend that the voluntary cessation exception to mootness applies here. *See* Pls' Opp'n at 34. Once again, their argument remains internally inconsistent. They argue that EOIR so-called "dismissal guidance" was withdrawn to avoid litigation but then acknowledge that the email on which they rely was withdrawn after its effect was stayed by another district court. *Id.* Defendants chose to withdraw the May 30 email "to eliminate any remaining uncertainty." *See* Defs' Not. of Suppl. Authority (ECF No. 35-1) at 3. The withdrawal of the email under these circumstances does not meet the test for voluntary cessation.

Plaintiffs seem to contend that the regulations require that motions be made in writing. *See* Pls' Opp'n at 33. In support of that contention, Plaintiffs are citing a regulation that govern motions to reopen and motions for reconsideration. *See* 8 C.F.R. § 1003.23. Plaintiffs fail to explain why that regulation governs motions to dismiss a removal proceeding. Additionally, even if the regulation did govern motions to dismiss in that context, it permits the immigration judge to accept

oral motions. *Id.* § 1003.23(a). All the email indicates is that an immigration judge is not *required* to have additional documentation or briefing and does not curtail the "unless otherwise permitted by the immigration judge" *Id.*

C. The DHS Dismissal Guidance Challenges (Counts V to VII) Also Fail.

Jurisdictional bars in the INA clearly support dismissal of these claims. *See* Defs' Mot. at 30; 8 U.S.C. §§ 1252(a)(2)(B)(ii), (b)(9), (g). Citing a *New York Times* article that does not mention any policy nor purports to quote from a policy cannot be sufficient to meet the *Twombly/Iqbal* pleading standard. *See* Defs' Mot. at 29; *see supra* at §§ IV, V. Additionally, the alleged DHS dismissal guidance cannot be a final agency action subject to APA review. *See supra* at § VI.B.1.

D. Plaintiffs' Standalone Fifth Amendment Claim Fails.

As Defendants already argued, the individual aliens cannot raise a constitutional claim related to removal proceedings in federal district court when Congress created a carefully crafted scheme to bring such challenges. *See* Defs' Mot. at 31 (citing 8 U.S.C. § 1252(b)(9)).

For those plaintiffs in expedited removal, their due process claim goes beyond what Congress intended, and the Supreme Court has confirmed that Congress may set those contours. *See Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020). Plaintiffs try to distinguish *Thuraissigiam* on the ground that it involved someone seeking actual entry whereas plaintiffs here have already entered. *See* Pls' Opp'n at 39. That is a distinction without a difference. Applicants for admission are defined in the INA. *See* 8 U.S.C. § 1225(a)(1). Applicants for admission "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Section 1225(b)(1) covers applicants for admission, including arriving aliens or aliens who have not been admitted and have been present for less than two years, and directs that both of those classes of applicants for admission are subject to expedited removal. 8 U.S.C. § 1225(b)(1). Section 1225(b)(2) "serves as

a catchall provision that applies to all applicants not covered by 1225(b)(1) (with specific exceptions not relevant here)." *Jennings*, 583 U.S. at 287; *see also Matter of Li*, 29 I. & N. Dec. 66, 69 (BIA 2025) ("[A]n applicant for admission . . . whether or not at a port of entry, and subsequently placed in removal proceedings is detained under . . . 8 U.S.C. § 1225(b), and is ineligible for any subsequent release on bond."). Plaintiffs are applicants for admission and therefore only are entitled to the procedures set forth by Congress. And the longstanding procedures for expedited removal readily satisfy any due-process requirement. Those procedures guarantee aliens "three levels" of independent administrative review to make the basic showing there is a "significant possibility" that they might be eligible for asylum or another protection from removal—at which point, they are placed in removal proceedings. *See Thuraisssigiam*, 591 U.S. at 109-10.

Plaintiffs cannot rely on physical presence alone to claim additional due process. This is because an alien's physical presence is not what is necessary for him to "effect[] an entry" into the United States; he must be "admitted into the country pursuant to law" at some point. *Thuraissigiam*, 591 U.S. at 138-40 (quotations omitted). Nowhere did the Court suggest that its analysis would be different if the alien was seized 50 yards into the country; or 50 miles; or 500 miles. And as noted, the Court has applied the entry fiction to parolees who have lived within the interior of the country for years, pending proceedings. *See, e.g.*, *Kaplan v. Tod*, 267 U.S. 288, 230-31 (1925) (holding that an intellectually disabled girl paroled into the care of relatives for nearly nine years must be "regarded as stopped at the boundary line").

Finally, the organizational plaintiffs do not seem to contest that they lack an independent Fifth Amendment claim. *See* Defs' Mot. at 31. Therefore, the Court should dismiss their Fifth Amendment claim.

CONCLUSION

For these reasons, the Court should grant Defendants' motion and dismiss the case.

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Respectfully submitted,

JEANINE FERRIS PIRRO
United States Attorney

By: *s/ Dhruman Y. Sampat*
DHRUMAN Y. SAMPAT
Assistant United States Attorney
601 D Street, NW
Washington, DC 20530
(202) 252-2525

Attorneys for the United States of America