THE HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

NWDC RESISTANCE, and COALITION OF ANTI-RACIST WHITES,

Plaintiffs,

v.

IMMIGRATION & CUSTOMS ENFORCEMENT, MATTHEW T. ALBENCE, in his official capacity as Acting Director of Immigration and Customs Enforcement; and CHAD F. WOLF, in his official capacity as Acting Secretary of Homeland Security,

Defendants.

Case No. 3:18-cv-5860-RBL

MOTION TO DISMISS FOR LACK OF JURISDICTION

Noted on Motion Calendar:
March 6, 2020

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Defendants Immigration and Customs Enforcement ("ICE"), Acting Director of ICE Matthew T. Albence, and Acting Secretary of the Department of Homeland Security Chad F. Wolf (collectively, "Defendants"), by and through their counsel, Brian T. Moran, United States Attorney for the Western District of Washington, and Katie D. Fairchild, Assistant United States Attorney for said District, hereby file this Motion to Dismiss for lack of jurisdiction.

I. INTRODUCTION

This Court should dismiss this case for lack of jurisdiction because Plaintiffs assert claims over which Congress has stripped federal district courts of jurisdiction and because Plaintiffs lack standing to bring these claims. Plaintiffs in this action are two Washington-based organizations challenging alleged "selective enforcement" of immigration laws against individuals. Despite the fact that these two organizations are based in and appear to only operate within the Pacific Northwest—and no individual person has joined them as a party to this action—Plaintiffs purport to bring nationwide claims challenging removal decisions and immigration proceedings related to more than a dozen individuals, most of whom are located hundreds or thousands of miles away. The vast majority of these individuals are not members of either organization (and none appears to be a member of one organization). Plaintiffs' pleadings fail to identify whether all of these individuals want to be involved in, consented to, or even know about this litigation. Yet, Plaintiffs assert claims that demand adjudication of the specific immigration status of each person and any removal decision and/or proceeding. This case is not an appropriate vehicle for such claims.

First, jurisdiction over "selective enforcement" of immigration laws—*i.e.*, removal decisions, proceedings, and related actions—is precluded by 8 U.S.C. §§ 1252(g), (a)(5), and (b)(9). Section 1252(g) bars jurisdiction over "any cause or claim" arising from decisions to commence removal proceedings, adjudicate cases, or execute removal orders. Sections 1252(a)(5) and (b)(9) bar jurisdiction over all decisions and actions arising from removal decisions, such as the decision to open an investigation, to surveil a suspected violator, to reschedule a removal hearing, to include various provisions in a final removal order, and to deny

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reconsideration of that order. These matters are at the heart of Plaintiffs' "selective enforcement" claims, and therefore are not properly brought in this Court. Instead, these matters may be raised by individuals in their immigration proceedings, if they choose—which some of them have already done in separate litigation. Second, even assuming that this Court has jurisdiction to hear such claims, these organizational Plaintiffs do not have standing to bring them on behalf of these third-parties. Plaintiffs cannot satisfy the requirements of either associational or organizational standing and their claims run afoul of the Supreme Court's third-party standing doctrine. For any and all of these reasons, this Court should dismiss this action for lack of jurisdiction.

II. BACKGROUND

The federal government "has broad, undoubted power over the subject of immigration and the status of aliens." *Arizona v. United States*, 567 U.S. 387, 394 (2012); U.S. Const. art. I, § 8, cl. 4 (granting Congress the power to "establish a uniform Rule of Naturalization"). "Federal governance of immigration and alien status is extensive and complex. Congress has specified categories of aliens who may not be admitted to the United States" and "has specified which aliens may be removed from the United States and the procedures for doing so." *Arizona*, 567 U.S. at 395-96. Through the Immigration and Nationality Act ("INA"), Congress granted the Executive Branch authority to enforce immigration laws and authorized it to investigate, arrest, and detain aliens who are suspected of being, or found to be, unlawfully present in the United States and to effectuate their removal. *See* 8 U.S.C. §§ 1182, 1225, 1226, 1231, 1357. The Department of Homeland Security ("DHS") is an agency of the Executive Branch, and ICE is one of the agencies within DHS charged with enforcing the INA.

Federal immigration laws are typically enforced through immigration removal proceedings initiated after arrest, and through the issuance of a notice to appear filed with the immigration court. *See* 8 C.F.R. §§ 1239.1(a), 1003.14, 1003.18. "A principal feature of the removal system is the broad discretion exercised by immigration officials." *Arizona*, 567 U.S. at 396. For example, "[f]ederal officials, as an initial matter, must decide whether it makes sense to pursue removal at all," and [i]f removal proceedings commence, aliens may seek asylum and

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other discretionary relief allowing them to remain in the country or at least to leave without formal removal." *Id.*; *see also* 8 U.S.C. §§ 1229a(c)(4) (applications for relief from removal); 1158 (asylum), 1229b (cancellation of removal), 1229c (voluntary departure).

The central tenet of Plaintiffs' Amended Complaint is the allegation that Defendants are misusing their broad discretion by selectively enforcing immigration laws against immigration activists. *See* Am. Compl. ¶¶ 9-11, 88, 99-103, 106-107; Prayer for Relief at ¶ b. In short, Plaintiffs allege that Defendants are targeting certain individuals for "adverse enforcement action" and removal based upon their speech. *Id.* Plaintiffs assert four claims: (1) violation of the First Amendment; (2) violation of the Due Process Clause of the Fifth Amendment; (3) violation of the APA; and (4) violation of the Equal Protection Clause. *Id.* at ¶¶ 85-107. The factual allegations that form the bases for these selective enforcement or targeting claims are all grounded on alleged detention and removal actions taken against "activists," namely, Daniela Vargas,[1] Migrant Justice members,[2] Baltazar "Rosas" Aburto Gutierrez,[3] Ravi Ragbir,[4] Jean Montrevil,[5] Eliseo Jurado,[6] Amer Othman Adi,[7] Alejandra Pablos,[8] Sergio Salazar,[9] Emilio Gutierrez-Soto,[10] and Maru Mora-Villalpando.[11]

Plaintiffs ask for a "permanent injunction" that would restrain Defendants from enforcing federal immigration law against these individuals and unidentified others. *See id.* Prayer for Relief at ¶ b. Yet none of these individuals are named as parties to this action. Plaintiffs allege

[1] *Id.* at ¶¶ 16-17 (allegedly detained in connection with a visa overstay).

[2] *Id.* at ¶¶ 18-19 (allegedly arrested in connection with a visa overstay).

[3] *Id.* at ¶ 20 (allegedly detained following his partner's arrest and deportation to Mexico).

[4] *Id.* at ¶¶ 21-23 (allegedly detained with plans to deport him based upon a prior deportation order).

[5] *Id.* at ¶¶ 24-27 (allegedly arrested, detained, and deported to Haiti).

[6] *Id.* at ¶¶ 28-29 (allegedly detained individual "born in Mexico and [who] came to the United States as a teenager").

[7] *Id.* at ¶¶ 30-31 (allegedly deported to Jordan).

[8] *Id.* at ¶¶ 32-34 (allegedly arrested and detained while having a pending asylum case).

[9] *Id.* at ¶¶ 35-37 (allegedly arrested individual "who came to the United States from Mexico").

[10] *Id.* at ¶¶ 38-43 (allegedly arrested individual "who arrived in the United States in 2008 to request asylum").

[11] *Id.* at ¶¶ 44-52 (allegedly selected "for deportation").

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that some of these individuals are pursuing their own individual asylum claims. *Id*. at ¶¶ 34 (Pablos), 38 (Gutierrez-Soto). Others appear to be pursuing individual claims challenging their removal based on alleged targeting or selective enforcement. *Id*. at ¶¶ 21-23 (Ragbir); 38-42 (Guiterrez-Soto); 44-52 (Mora-Villalpando). Moreover, according to the allegations, many of these individuals are located hundreds, if not thousands of miles away. *Id*. at ¶¶ 16-17 (Mississippi); 18-19 (Vermont); 21-23 (New York); 24-26 (Haiti); 30-31 (Jordan); 32-34 (Virginia); 38-42 (Texas). Likewise, much of the alleged targeting took place hundreds of miles away from the Pacific Northwest, where both Plaintiffs are located.

Plaintiffs in this action are not individuals, but rather interest groups. The first, Northwest Detention Center Resistance ("NWDC Resistance"),[12] "is a grassroots organization based in Washington State working to . . . . end all detention and deportation in Washington State," and to "make it as difficult as possible for ICE to deport anyone from this state."[13] The second, Coalition of Anti-Racist Whites ("CARW") is a Seattle-based organization that "educates, organizes, and mobilizes white people to show up powerfully for racial justice and collective liberation."[14] With the exception of Mora-Villalpando, who is the leader and founder of NWDC Resistance, there is nothing in the record to indicate whether any other individual identified in the Amended Complaint knows that such claims are being asserted on their behalf or that this Court is being asked to make factual and legal determinations directly relevant to removal proceedings or asylum determinations in which they may be involved. *See* Dkt. 24. CARW does not even allege that any of the identified individuals are a member of it, nor that any of CARW's members have been subjected to selective enforcement.

[12] NWDC Resistance appears to have changed its name to "La Resistencia." *See* http://laresistencianw.org/ (last visited February 12, 2020). Because Plaintiffs have not changed the name on the pleadings, Defendants continue to use the name NWDC Resistance for consistency.

[13] *See* http://laresistencianw.org/ (last visited February 12, 2020).

[14] *See* https://www.carw.org/ (last visited February 12, 2020).

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III. ARGUMENT

A. Legal Standard for Motion Dismiss for Lack of Jurisdiction.

Dismissal is appropriate under Federal Rule of Civil Procedure 12(b)(1) when the court lacks subject matter jurisdiction over the claim. Subject matter jurisdiction is a threshold issue that goes to the court's power to hear the case. *See, e.g.*, *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94-95 (1998). That is because, "[f]ederal courts are courts of limited jurisdiction," and "[t]hey possess only that power authorized by Constitution and statute, which is not to be expanded by judicial decree." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) (internal citation omitted).

"A plaintiff bears the burden to establish that subject matter jurisdiction is proper." *Ball v. United States*, No. C17-5056RBL, 2018 WL 4095084, at *3 (W.D. Wash. Aug. 28, 2018). "A federal court is presumed to lack subject matter jurisdiction until plaintiff establishes otherwise." *Allen v. U.S. Postal Serv.*, No. C10-5721 RBL, 2012 WL 3763618, at *3 (W.D. Wash. Aug. 29, 2012), *aff'd*, 588 F. App'x 679 (9th Cir. 2014). "When a defendant moves to dismiss a case for lack of subject matter jurisdiction, the plaintiff has the burden of providing by a preponderance of the evidence that the court possesses jurisdiction." *Luiz v. N. Circle Indian Hous. Auth.*, No. 18-CV-04712-RMI, 2018 WL 5733652, at *1 (N.D. Cal. Oct. 30, 2018). "Additionally, the court may consider evidence outside the pleadings to resolve factual disputes." *Grounds v. United States by & through Dep't of Energy*, No. 3:17-CV-01190-HZ, 2019 WL 1270928, at *1 (D. Or. Mar. 18, 2019).

B. 8 U.S.C. § 1252(g) Bars Jurisdiction over "Selective Enforcement" Claims.

By its plain language, 8 U.S.C. § 1252(g) eliminates U.S. District Court jurisdiction over claims that Defendants are selectively enforcing immigration law. *See* Am. Compl. ¶¶ 9, 85-107. Federal courts are courts of limited jurisdiction, the reach of which is set by Congress and the Constitution. *Kokkonen*, 511 U.S. at 377. Through § 1252(g), Congress has declared that district courts do not have jurisdiction over "any cause or claim" arising from decisions to commence proceedings or execute removal orders:

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> Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.

Id. *See also* H.R. Rep. No. 109-72, at 301 (explaining that Congress amended § 1252(g) to expressly "clarify" that no "other non-direct judicial review [is] available for any claim arising from a decision or action by [the Secretary] regarding the *initiation* and adjudication of removal proceedings or the execution of removal orders against any alien.") (emphasis added). In *Reno v. Am.-Arab Anti-Discrimination Comm.* ("*AADC*"), the Supreme Court made clear that § 1252(g) eliminates jurisdiction concerning "three discrete actions that the Attorney General may take: her 'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.' . . . which represent the initiation or prosecution of various stages in the deportation process." 525 U.S. 471, 482-83 (1999). The Court explained that "Section 1252(g) was directed against a particular evil: attempts to impose judicial constraints upon prosecutorial discretion." *Id*. at 485 n.9.

Applying *AADC*, courts in the Ninth Circuit hold that § 1252(g) eliminates a district court's jurisdiction to consider challenges to the exercise of ICE's discretion to determine both *whether* and *when* to commence or carry out these three actions. *See Gebreslasie v. United States Citizenship & Immigration Servs.*, 778 F. App'x 532, 533 (9th Cir. 2019) (dismissing pursuant to § 1252(g) a claim premised on the timeline for commencing removal proceedings); *Balogun v. Sessions*, 330 F. Supp. 3d 1211, 1215 (C.D. Cal. 2018), *appeal dismissed sub nom. Balogun v. Barr*, No. 18-56258, 2019 WL 4729845 (9th Cir. July 30, 2019) ("the jurisdictional question here becomes easy to answer: a challenge to ICE's refusal to stay removal is the paradigmatic claim arising from a decision to execute a removal order. If ICE's enforcement discretion is to mean anything, it must include the discretion to decide *whether* and *when* to start removal proceedings and execute removal orders"); *Palacios-Bernal v. Barr*, No. 519CV01963RGKMAA, 2019 WL 5394019 (C.D. Cal. Oct. 22, 2019) (Section 1252(g) precludes jurisdiction to consider a

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challenge to federal government's refusal to postpone plaintiff's removal). Plaintiffs' selective enforcement allegations directly challenge the exercise of Defendants' discretion to determine whether and when to commence proceedings, adjudicate cases, or execute removal orders against individuals. *See* Am. Compl. ¶¶ 9-11, 16-52, 88, 99-103, 106-107. Therefore, there is no jurisdiction pursuant to § 1252(g).

Indeed, this is the outcome prescribed by *AADC*, which involved analogous claims. The *AADC* plaintiffs alleged "that the INS was selectively enforcing immigration laws against [plaintiffs] in violation of their First and Fifth Amendment rights," and was "allegedly targeting them for deportation because of their affiliation with a politically unpopular group." 525 U.S. at 472-74. Likewise, here, Plaintiffs allege that "ICE has engaged in a pattern and practice of selectively enforcing immigration laws against outspoken immigrant rights activists who publicly criticize U.S. immigration law, policy, and enforcement." Am. Compl. ¶ 9.[15] In *AADC* the Court determined that "Respondents' challenge to the Attorney General's decision to 'commence proceedings' against them falls squarely within § 1252(g)—indeed, as we have discussed, the language seems to have been crafted with such a challenge precisely in mind," and that therefore "8 U.S.C. § 1252(g) deprives the federal courts of jurisdiction." 525 U.S. at 487, 492. Plaintiffs' claims in this action stand on the same ground and therefore also fall squarely within the jurisdiction stripping provisions of § 1252(g).

Lest there be any doubt, this was the result reached by the Second Circuit in *Ragbir v. Homan*, 923 F.3d 53, 63-66 (2d Cir. 2019), a case that is not just analogous, but involves many of the same individuals and identical factual allegations. This Court previously held that *Ragbir* "involved very similar allegations about ICE targeting immigrant rights activists—in fact, the FAC often used language identical to the current case to describe ICE's conduct toward many of

[15] Plaintiffs in this case identify approximately a dozen individuals who Plaintiffs allege have been subject to selective enforcement, but Plaintiffs do not claim that any of them were not otherwise subject to discretionary removal action by ICE. *Id.* at ¶¶ 16-52. This is not a case like *Arce v. United States*, for example, where the issue was violation of a court order, not a discretionary removal decision. 899 F.3d 796 (9th Cir. 2018); *see also Ragbir v. Homan*, 923 F.3d 53, 64 (2d Cir. 2019) (distinguishing *Arce*).

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the same activists, such as Ragbir and Mora-Villalpando." Dkt. 30, p. 3.[16] In *Ragbir*, the Second Circuit considered whether § 1252(g) deprived the district court of jurisdiction to consider plaintiff Ragbir's "claims that certain officials of the Department of Justice and of the Immigration and Customs Enforcement ("ICE") agency of the Department of Homeland Security (collectively, "the Government"), selectively enforced against Ragbir a final order of removal on the basis of his speech that these officials disfavor." *Ragbir*, 923 F.3d at 57. The Second Circuit concluded that § 1252(g) limited the court's jurisdiction to hear Ragbir's claim of selective enforcement:

> Here, the Government unquestionably had statutory authority to execute Ragbir's final order of removal, and that very conduct is the retaliation about which Ragbir complains. To remove that decision from the scope of section 1252(g) because it was allegedly made based on unlawful considerations would allow Plaintiffs to bypass § 1252(g) through mere styling of their claims. And so, we conclude that the Government's challenged conduct falls squarely within the ostensible jurisdictional limitation of § 1252(g).

Id. at 64. That same conclusion applies to the same selective enforcement allegations in this case.[17]

As the Supreme Court stated, this Court does not "ask whether in [its] judgment Congress should have authorized [a] suit, but whether Congress in fact did so." *Lexmark Intern., Inc. v. Static Control Components, Inc*. 572 U.S. 118, 128 (2014). By allowing Plaintiffs' claims to proceed, additional avenues of jurisdiction would be read into § 1252(g) that the statute's plain language and history do not support. Moreover, the result would be in conflict with Supreme

[16] As this Court explained, "the allegations and relief sought in the two cases are nearly the same. Both FACs describe ICE's practice of targeting immigrant rights activists—indeed, they even focus on largely the same activists using sometimes identical language. Both FACs also seek national declaratory and injunctive relief against ICE, although the first case also seeks individual relief for Ragbir." *Id*. at 10.

[17] Because, unlike this case, the Second Circuit was considering claims brought by an *individual plaintiff*, Ragbir, as well as organizations, the Second Circuit also considered whether, "even if § 1252 bars all jurisdiction over his claim, the Suspension Clause nonetheless requires the availability of a petition for writ of habeas corpus," for individual plaintiff Ragbir. *Id*. at 66. The Second Circuit answered this question in affirmative, finding that *individual plaintiff* Ragbir could assert an individual habeas claim. *Id*. at 78. Habeas jurisdiction is not available to the organizational Plaintiffs in this action because there are no individual Plaintiffs in this action and "this is not a habeas corpus case; it is an action for declaratory and injunctive relief brought by organizational Plaintiffs not subject to governmental custody." *Asylum Seeker Advocacy Project v. Barr*, No. 19-CV-6443 (JMF), 2019 WL 4221479, at *4 (S.D.N.Y. Sept. 5, 2019).

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Court precedent, Ninth Circuit precedent, and create a split of authority from a case involving the same individuals and identical factual allegations.

C. Sections 1252(a)(5) & (b)(9) Preclude District Court Jurisdiction over Claims Premised on Decisions to Initiate or Pursue Removal Proceedings.

To the extent that Plaintiffs purport to style their claims as challenges to actions other than those covered by § 1252(g),[18] jurisdiction would nonetheless be precluded by 8 U.S.C. §§ 1252(a)(5) and (b)(9) because the legal issues presented in the Amended Complaint are inextricably intertwined with Defendants' alleged decisions to initiate and/or pursue removal proceedings. First, § 1252(a)(5) declares that a petition for review ("PFR") to the Court of Appeals is the exclusive means for challenging removal:

> **(5) Exclusive means of review**
>
> Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this chapter, except as provided in subsection (e). For purposes of this chapter, in every provision that limits or eliminates judicial review or jurisdiction to review, the terms "judicial review" and "jurisdiction to review" include habeas corpus review pursuant to section 2241 of Title 28, or any other habeas corpus provision, sections 1361 and 1651 of such title, and review pursuant to any other provision of law (statutory or nonstatutory).

Id.

Second, § 1252(b)(9) funnels all challenges to immigration proceedings and removal orders to the Courts of Appeals:

> With respect to review of an order of removal under subsection (a)(1), the following requirements apply: . . . .
>
> Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this

[18] Such an argument would not be well founded because, as explained in *AADC*, allegations of selective enforcement and targeting for removal like those in the Amended Complaint fall squarely within the ambit § 1252(g). Therefore the Amended Complaint should be dismissed in its entirety pursuant to § 1252(g). *See generally Ragbir*, 923 F.3d at 64. However, even if Plaintiffs attempt to give their allegations a strained or unreasonable reading to try and avoid § 1252(g), jurisdiction would still be precluded by 8 U.S.C. §§ 1252(a)(5) and (b)(9) as set forth below.

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> subchapter shall be available only in judicial review of a final order under this section. Except as otherwise provided in this section, no court shall have jurisdiction, by habeas corpus under section 2241 of Title 28 or any other habeas corpus provision, by section 1361 or 1651 of such title, or by any other provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact.

Id.

In *AADC*, the Court explained that § 1252(b)(9) is an "unmistakable 'zipper' clause" that "channels judicial review of *all* ['decisions and actions' arising from deportation proceedings]" to a court of appeals in the first instance. 525 U.S. at 483. The *AADC* Court listed the following examples of "decisions or actions" that "may be part of the deportation process" including, "the decisions to open an investigation, to surveil the suspected violator, to reschedule the deportation hearing, to include various provisions in the final order that is the product of the adjudication, and to refuse reconsideration of that order." *Id*. at 482. Likewise, in *Jennings v. Rodriguez*, a plurality of the Court confirmed that § 1252(b)(9) would bar jurisdiction over "decision[s] to detain . . . in the first place or to seek removal," when it held that the Court had jurisdiction because *Jennings* did not include such a claim. 138 S. Ct. 830, 841 (2018); *accord Nielsen v. Preap*, 139 S. Ct. 954, 962 (2019).

"This statutory scheme was designed to limit all aliens to one bite of the apple with regard to challenging an order of removal." *Martinez v. Napolitano*, 704 F.3d 620, 622 (9th Cir. 2012) (internal quotation omitted). In considering the reach of §§ 1252(b)(9) and (a)(5), and whether a district court has jurisdiction, the Ninth Circuit holds that "indirect" challenges to removal orders are not permissible, but a district court may consider "independent" claims. *Id*.; *Yong Guo v. Nielson*, No. C18-1557-RSM-BAT, 2019 WL 2515166, at *1 (W.D. Wash. June 18, 2019) ("Federal district courts," do not "have jurisdiction over claims that directly or indirectly challenge an order of removal."). To distinguish between impermissible indirect challenges and permissible independent claims, the Ninth Circuit follows the Second Circuit's approach in *Delgado v. Quarantillo*, 643 F.3d 52 (2d Cir. 2011), and holds that "the distinction . . . 'will turn on the substance of the relief that a plaintiff is seeking.'" *Martinez*, 704 F.3d at 622 (quoting

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Delgado, 643 F.3d at 55). "When a claim . . . however it is framed, challenges the procedure and substance of an agency determination that is inextricably linked to the order of removal, it is prohibited." *Id*. at 623 (internal citation omitted). Thus, the *Martinez* court found no jurisdiction over APA claims where "Martinez challenge[d] the procedure and substance of the BIA's determination that he was ineligible for asylum, withholding of removal, and relief under the [Convention Against Torture]," as this was "the basis of [the BIA's] removal order." *Id*. The Ninth Circuit held that these claims amounted to impermissible indirect challenges to a removal order because "if Martinez had prevailed on any one of them, the BIA would not have affirmed the removal order." *Id*.; *see also Freire v. United States Dep't of Homeland Sec.*, 711 F. App'x 58, 59 (2d Cir. 2018) (no jurisdiction "if the relief requested in the challenge would invalidate the [removal] order; such a challenge is in effect an attempt to obtain judicial review of the removal order indirectly.")

Courts in the Western District of Washington and across the country have dismissed a wide variety of indirect challenges to removal proceedings for lack of jurisdiction. *See e.g.*, *Anaya Murcia v. Godfrey*, No. C19-587-JLR-BAT, 2019 WL 5597883, at *6 (W.D. Wash. Oct. 10, 2019), *report and recommendation adopted sub nom. Anaya Murcia v. Godfrey*, No. C19-587-JLR, 2019 WL 5589612 (W.D. Wash. Oct. 30, 2019) ("All of Mr. Anaya Murcia's claims relate to his asserted right to be present during his removal hearing. . . . However they are framed, they challenge decisions that are inextricably linked to the pending removal proceedings. Thus, his claims 'arise from' actions taken to remove him and must be raised in a petition for review, not in this Court at this time"); *Uppal v. Kelly*, No. C17-306-TSZ-JPD, 2017 WL 4621172, at *5 (W.D. Wash. Aug. 10, 2017), *report and recommendation adopted*, No. C17-306-TSZ, 2017 WL 4573922 (W.D. Wash. Oct. 13, 2017) ("Based on the record before the Court, it appears that petitioner's *Miranda* and mini-*Miranda* claims arose before removal proceedings were initiated against him. Nevertheless, because petitioner asserts that these errors affected all subsequent proceedings—presumably including both his immigration and criminal proceedings—they indirectly challenge his removal order. Thus, this Court does not have

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jurisdiction over them."); *Gomez v. McAleenan*, No. 19-CV-04199-JCS, 2019 WL 5722619, at *4 (N.D. Cal. Nov. 5, 2019) ("As Gomez asks the Court to grant relief that will have the effect of negating an order of removal, should one be issued, the Court concludes that her challenge to the policy that governs the issuance of visas . . . must be brought in the Court of Appeals."); *Asylum Seeker Advocacy Project v. Barr*, No. 19-CV-6443 (JMF), 2019 WL 4221479, (S.D.N.Y. Sept. 5, 2019) (organizational Plaintiffs brought impermissible indirect challenge to the "lawfulness of *in absentia* removal orders entered pursuant to allegedly deficient notices to appear," because while the organizations "*presently* seek only an order entitling unrepresented immigrants to a hearing . . . their 'ultimate goal' is to challenge the lawfulness of the removal orders themselves.").[19]

Here, it is evident that Plaintiffs' claims are "inextricably linked" to challenges to removal decisions and proceedings upon consideration of the allegations in the Amended Complaint, the legal issues raised therein, and the substance of the requested relief. Consequently, there is no jurisdiction in this Court pursuant to §§ 1252(a)(5) and (b)(9). *See Martinez*, 704 F.3d at 622-23. Each of Plaintiffs' claims—brought under the First Amendment, Due Process Clause of the Fifth Amendment, APA, and Equal Protection Clause—are premised on alleged "selective[] *enforce*[*ment* of] immigration laws against outspoken immigrant rights activists," in other words, decisions about removal. *See, e.g.*, Am. Compl. ¶¶ 99-107 (emphasis added). Plaintiffs state that their "lawsuit *challenges the practice* of [Defendants] to systematically *surveil, detain, and deport* immigrant activists who speak out about immigration policies and practices," which are, again, decisions about removal. Am. Compl. p. 1 (emphasis added). As pled, Plaintiffs' claims

[19] *See also e.g.*, *Singh v. Holder*, 638 F.3d 1196, 1211 (9th Cir. 2011) ("Although as a technical matter Singh's habeas petition seeks relief from immigration detention without asking the court to exercise jurisdiction over his final order of removal, this portion of his habeas petition is wholly intertwined with the merits of his removal order. Singh makes the same argument in his habeas petition as he makes in his petition for review. . . . Because this portion of his habeas petition does nothing more than attack the IJ's removal order, we lack jurisdiction to review it other than on a petition for review.") (internal citation omitted); *Ketsoyan v. U.S. Dep't of Justice*, No. 219CV01198VAPAGRX, 2019 WL 4261881 (C.D. Cal. July 2, 2019) (no jurisdiction over claim for injunctive relief preventing Defendants from revoking supervision due to his removal order); *Ferreyra v. Nielsen*, No. 18-CV-1005, 2018 WL 4496330, at *3 (E.D. Wis. Sept. 18, 2018) (no jurisdiction over Due Process claims that directly and indirectly challenge detention in connection with removal).

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are expressly and intrinsically intertwined with Defendants' "decisions or actions" that "may be part of the [removal] process" such as, "the decisions to open an investigation, to surveil the suspected violator," *AADC*, 525 U.S. at 482, or the "decision[s] to detain them in the first place or to seek removal," *Jennings*, 138 S. Ct. at 841. Plaintiffs' claims are indirect, if not direct, challenges to these decisions.

To wit, for each of the allegedly undocumented individuals that Plaintiffs identify in their Amended Complaint, and upon which Plaintiffs purport to base their claims, Plaintiffs challenge detention and/or removal decisions or actions taken. *See* Am. Compl. ¶¶ 16-52; *cf. Ragbir*, 923 F.3d at 64 ("Here, the Government unquestionably had statutory authority to execute Ragbir's final order of removal, *and that very conduct is the retaliation about which Ragbir complains*.") (emphasis added). These are the quintessential "decisions or actions" that §§ 1252(a)(5) and (b)(9) channel to the Court of Appeals. *See, e.g.*, *Cancino-Castellar v. Nielsen*, 338 F. Supp. 3d 1107, 1115 (S.D. Cal. 2018) (no jurisdiction because "the legal question raised by Plaintiffs' Fourth Amendment claim arises from aspects of the removal process" including the "decision to detain them in the first place" and "the decision . . . to seek removal.") (internal quotations omitted).

Consideration of "the substance of the relief that a plaintiff is seeking," confirms this result because Plaintiffs are demanding a bar on removing or attempting to remove certain individuals. *See Martinez*, 704 F.3d at 622. In their Prayer for Relief, Plaintiffs ask for a nationwide injunction barring certain "investigation, surveillance, detention, deportation, or any other adverse enforcement action." Am. Compl., Prayer for Relief (b). Regardless of how Plaintiffs frame their claims, it is clear from their request for relief that Plaintiffs wish to challenge "the procedure and substance of an agency determination that is inextricably linked to [an] order of removal," which "is prohibited" by §§ 1252(a)(5) and (b)(9). *Martinez*, 704 F.3d at 623 (internal citation omitted); *see also Ketsoyan*, 2019 WL 4261881, at *4 ("Here, Plaintiffs *are* challenging potential detention pursuant to removal; there is accordingly no jurisdiction"). Put simply, there is no jurisdiction because "if this Court were to grant the relief [Plaintiffs]

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seek[] and bar the government from removing [certain individuals], then the Government would be without a mechanism to enforce [a] removal order . . . . [Plaintiffs'] challenge, therefore, on its face is a sure, if indirect, attack on [a] removal order itself." *Barros Anguisaca v. Decker*, 393 F. Supp. 3d 344, 350 (S.D.N.Y. 2019) (internal citation omitted). Consequently, there can be no jurisdiction in this Court pursuant to §§ 1252(a)(5) and (b)(9).

D. The Organizational Plaintiffs Lack Standing to Bring this Action.

This Court should also dismiss this action for the independent reason that the organizational Plaintiffs lack the requisite standing to litigate the alleged "targeting" or "selective enforcement" against the individuals identified in the Amended Complaint and unidentified others. The standing doctrine comes from the Constitution's limit on the power of federal courts to only hear "cases" and "controversies." U.S. Const. art. III § 2, c.1. "It requires federal courts to satisfy themselves that the plaintiff has alleged such a personal stake in the outcome of the controversy as to warrant *his* invocation of federal court jurisdiction." *Summers v. Earth Island Institute*, 555 U.S. 488, 493 (2009) (internal citation omitted). "[T]he irreducible constitutional minimum of standing contains three elements:" (1) "an injury in fact—an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent not conjectural or hypothetical;" (2) "a causal connection between the injury and the conduct complained of;" and (3) "it must be likely as opposed to merely speculative that the injury will be redressed by a favorable decision." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992) (internal quotation and citation omitted).

Plaintiffs bear the burden of establishing each element of standing, and because "they are not mere pleading requirements but rather an indispensable part of the plaintiff's case, each element must be supported in the same way as any other matter on which the plaintiff bears the burden of proof." *Id*. at 561. Additionally, this Court's "standing inquiry [is] especially rigorous when reaching the merits of the dispute would force [this Court] to decide whether an action taken by one of the other two branches of the Federal Government was unconstitutional." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 408 (2013) (internal quotation omitted); *see also*

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Chardon-Dubos v. United States, 273 F. App'x 5, 5-6 (1st Cir. 2008) ("Where standing is at issue, heightened specificity is obligatory at the pleading stage. The resultant burden cannot be satisfied by purely conclusory allegations or by a Micawberish reading of a party's generalized averments.") (internal quotation omitted). And where, as here, "the plaintiff is not himself the object of the government action or inaction he challenges, standing is not precluded, but it is ordinarily substantially more difficult to establish." *Lujan*, 504 U.S. at 562 (internal quotation omitted).

Organizations may attempt to establish standing in two ways. First, under "associational standing," the organization brings the suit directly on behalf of its members and must show that an individual member has suffered a cognizable injury germane to the purpose of the organization, even if the organization has not suffered a direct injury. *Int'l Longshore & Warehouse Union v. Nelson*, 599 F. App'x 701, 702 (9th Cir. 2015). Second, an organization may attempt to establish its own "organizational standing" based on an alleged injury to the organization itself and must satisfy the same "'irreducible constitutional minimum' test for standing [as applied] in the context of an individual plaintiff." *La Asociacion de Trabajadores de Lake Forest v. City of Lake Forest*, 624 F. 3d 1083, 1088 (9th Cir. 2010). Additionally, even where an organization can establish an injury to the organization itself, it should not run afoul of the Supreme Court's third-party standing rule "that a party generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties." *Kowalski v. Tesmer*, 543 U.S. 125, 129-30 (2004) (internal citation omitted). Plaintiffs fail to demonstrate standing under any theory.

1. Plaintiffs Cannot Satisfy the Requirements for Associational Standing.

The allegations in Plaintiffs' Amended Complaint demonstrate that they have not, and cannot, satisfy the requirements for associational standing. To establish associational standing, Plaintiffs must show that:

(a) its members would otherwise have standing to sue in their own right;

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> (b) the interests it seeks to protect are germane to the organization's purpose; and
>
> (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.

Associated Gen. Contractors of Am., San Diego Chapter, Inc. v. California Dep't of Transp., 713 F.3d 1187, 1194 (9th Cir. 2013) (*"AGC").*

CARW fails at the first step because the Amended Complaint fails to identify a single member of CARW allegedly injured by Defendants. "To meet the first prong, [Plaintiffs] must show that *a member* suffers an injury-in-fact that is traceable to the defendant and likely to be redressed by a favorable decision." *Id*. (emphasis added). Failure to name at least one injured *member* is fatal for associational standing. *Id*. Courts have not hesitated to dismiss on this basis alone. In *AGC*, for example, the Ninth Circuit dismissed for lack of jurisdiction and failure to establish associational standing where "AGC does not identify any affected members by name nor has it submitted declarations by any of its members attesting to harm they have suffered or will suffer." *Id.* In *Draper v. Healey*, the court affirmed the district court's dismissal where the complaint failed to "identify any member of the group . . . . [who] may have been injured by the [challenged] regulation." 827 F.3d 1, 3 (1st Cir. 2016).

CARW may not rely on alleged injuries suffered by non-members to establish associational standing. *See, e.g.*, *Rodriguez v. City of San Jose*, 930 F.3d 1123, 1134 (9th Cir. 2019) (no associational standing where "Plaintiffs admit that Lori is not a member of either SAF or CGF, and the organizations do not appear to assert that they have standing on behalf of any other member."); *Bayaa v. United Airlines, Inc.*, 249 F. Supp. 2d 1198, 1203-04 (C.D. Cal. 2002) (no associational standing where an organization did "not claim that the eleven individuals allegedly . . . [injured] are its members, and therefore [the organization] cannot seek to represent them."). Nor can CARW establish associational standing by merely alleging that some unidentified member has been injured. *See Faculty, Alumni, & Students Opposed to Racial Preferences v. Harvard Law Review Ass'n*, No. CV 18-12105-LTS, 2019 WL 3754023, at *6-7 (D. Mass. Aug. 8, 2019). Because CARW fails to identify a single member allegedly injured by

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Defendants' actions, and because it cannot rely on allegations related to non-members, CARW fails to establish associational standing and dismissal is warranted.

NWDC Resistance also fails to satisfy the first prong of the associational standing test. The only NWDC Resistance member identified in Plaintiffs' Amended Complaint is Mora-Villalpando. *See* Am. Compl. ¶¶ 44-52. Therefore, NWDC may only rely on allegations related to Mora-Villalpando's alleged injuries to establish associational standing. *See Rodriguez*, 930 F.3d at 1134. Of course, "[t]he mere naming of an individual is insufficient to create standing," and an organization must also plead a cognizable "injury-in-fact experienced by that" member. *FOAGLA, Inc. v. 7-Eleven, Inc.*, No. EDCV141432JGBSPX, 2014 WL 12601505, at *3 (C.D. Cal. Dec. 18, 2014). Here, the injury that NWDC Resistance alleges on behalf of Mora-Viallalpando is one over which this Court does not have jurisdiction pursuant to 8 U.S.C. §§ 1252(g), (a)(5), and (b)(9). *See* Part B *supra*.[20] Because NWDC Resistance does not allege an injury to Mora-Villalpando over which this Court has jurisdiction, NWDC Resistance fails to establish associational standing through its allegations concerning Mora-Villalpando. *Cf. FOAGLA*, 2014 WL 12601505, at *3 (no associational standing through named members where the complaint failed to allege sufficient facts specific to the identified members).

CARW fails to satisfy the second prong of the associational standing test on the face of the pleadings. CARW cannot demonstrate that "the interests it seeks to protect are germane to the organization's purpose," *AGC*, 713 F.3d at 1194, because as alleged by CARW, the organization's purpose is indefinite and set by others. CARW states that its "mission is to undo institutional racism and white privilege through education and organizing in white communities and active support of anti-racist, people of color-led organizations." Am. Compl. ¶ 69. CARW declares that neither its leadership nor is members make the decisions about what interests it seeks to protect because "it is anathema to [CARW's] mission for white people to make decisions about the direction of their activism." *Id.* at ¶ 82. Instead, CARW's "goals" and "agenda" are

[20] Even if Plaintiffs could rely on allegations related to non-members, those too are barred by 8 U.S.C. §§ 1252(g), (a)(5), and (b)(9) for the same reason.

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"expressly set" by individuals outside of CARW who make the "decisions" about what to prioritize. *Id*. at ¶¶ 72-73, 82. As described by CARW, its activism is open-ended and boundless. *Id*. at ¶ 72 ("They ask undocumented activist leaders what those leaders need and do those things."). If CARW satisfies the purpose inquiry in this case, it could satisfy the inquiry in any case, which would render the second prong of the associational standing inquiry meaningless. *Cf. Warth v. Seldin*, 422 U.S. 490, 499 (1975) (the Supreme "Court has held that when the asserted harm is a generalized grievance shared in substantially equal measure by all or a large class of citizens, that harm alone normally does not warrant exercise of jurisdiction. . . . [and a] plaintiff generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties.").

Finally, Plaintiffs cannot satisfy the associational standing inquiry because "both the fact and extent of [the alleged] injury" that gives rise to Plaintiffs' claims for relief "would require individualized proof" and "the participation of individual members." *Int'l Longshore & Warehouse Union v. Nelson*, 599 F. App'x 701, 702 (9th Cir. 2015) (internal citation omitted). For the third prong, "[t]he central inquiry is whether asserting the claim requires individual participation in establishing the proof." *Am. Baptist Churches in the U.S.A. v. Meese*, 712 F.Supp. 756, 766 (N.D.Cal. 1989). In this case individual participation is necessary because, at a minimum, Plaintiffs' claims of "selective enforcement" based on speech depend on offering proof related to (1) an undocumented individual's specific speech; (2) Defendants' knowledge of that speech; (3) the facts, basis, and timing of an undocumented individual's detention and/or removal proceedings, *i.e.*, the "adverse enforcement" that Plaintiffs seek to enjoin; and (4) the motivation of Defendants in an individual case.

Where, as here, proof for declaratory or injunctive relief depends on the unique facts and circumstances related to individual members or on the motivations for individual actions, courts have found no associational standing. *American Baptist Churches* is instructive. There, the court found that refugee organizations failed to establish standing because:

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> The plaintiff refugee organizations herein assert a variety of claims that place in issue the motivation of undocumented Salvadorans and Guatemalans in entering this country. As a component of their claim, plaintiffs must prove that these aliens entered this country to escape persecution, rather than for illegitimate purposes such as seeking economic opportunities. Because the participation of individual members is required, the plaintiff refugee organizations lack associational standing to pursue these claims on their members' behalf. Defendants' motion to dismiss on this ground is therefore granted.

Id.; *see also Int'l Bhd. of Teamsters v. Am. W. Airlines, Inc.*, No. CIV-95-2924-PHX-RGS, 1997 WL 809760, at *5 (D. Ariz. Sept. 25, 1997) (no associational standing because "this is the type of case where individual participation will be critical because the overriding issue . . . is whether the Plaintiffs indeed felt coerced and intimidated by [defendant's] actions."); *HPG Corp. v. Aurora Loan Servs., LLC*, 436 B.R. 569, 581-82 (E.D. Cal. 2010) (no associational standing where "the complaint prays for declaratory and/or injunctive relief that sets aside or prevents foreclosure sales based upon statutory violations," and "a plaintiff would have to demonstrate that she has the right to sue for such violations").

In this case, not only do the allegations in Plaintiffs' Amended Complaint depend on individualized proof, but Defendants' various defenses will also involve individualized facts—some of which may be prohibited from public disclosure due to federal law—and necessitate the participation of individuals identified in the Amended Complaint. For example, Defendants may defend against the allegations related to an individual by offering evidence that an investigation leading to a detention was related to alleged criminal activity of an undocumented individual rather than speech. Or, that initiation of removal proceedings was based on any other reason, for example a shift in enforcement priorities,[21] in any particular case. This case would require a series of mini-trials into the reason why each undocumented individual was allegedly "targeted"

[21] For example, on February 20, 2017, DHS issued a memorandum implementing the Executive Order entitled "Enhancing Public Safety in the Interior of the United States," issued by the President on January 25, 2017. It provided guidance for all Department personnel regarding the enforcement of the immigration laws of the United States, and is applicable to the activities of ICE, U.S. Customs and Border Protection ("CBP"), and U.S. Citizenship and Immigration Services ("USCIS"). It further rescinded previous conflicting "directives, memoranda, or field guidance regarding the enforcement of our immigration laws and priorities for removal." https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf.

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for removal. Associational standing is not warranted under such circumstances. *See Am. Baptist Churches in the U.S.A.*, 712 F.Supp. at 766.

2. Plaintiffs Fail to Satisfy the Requirements for Organizational Standing.

Plaintiffs also fail to satisfy the requirements for organizational standing because they have not established a cognizable injury in fact, their claims run afoul of the Supreme Court's third-party standing doctrine, and their alleged injury in fact is not redressable through Plaintiffs' demand for prospective relief.

First, Plaintiffs fail to allege a cognizable "injury in fact." *See Lujan*, 504 U.S. at 560. In the Ninth Circuit, "an organization may establish injury in fact if it can demonstrate: (1) frustration of its organizational mission; and (2) diversion of its resources to combat the particular [injurious behavior] in question." *Rodriguez*, 930 F.3d at 1134 (internal quotation and citation omitted). But, an organization "cannot manufacture the injury by incurring litigation costs or simply choosing to spend money fixing a problem that otherwise would not affect the organization at all." *La Asociacion de Trabajadores de Lake Forest*, 624 F.3d at 1088. Thus, in *Rodriguez*, the Ninth Circuit found that guns rights organizations failed to establish an injury in fact where the organizations sought to challenge "the City's seizure of one person's . . . guns and the refusal to give them back," because "the organizations have not shown how the requested relief would redress any broader harm that the organizations work to combat," and the "organizational plaintiffs have not explained how the City's retention of Lori's guns either impedes their ability to carry out their mission or requires them to divert substantial resources away from the organizations' preferred uses—let alone both." *Rodriguez*, 930 F.3d at 1135. The court further explained that, "[t]he mere fact that these organizations represent California gun owners and provide legal advice in navigating California's gun laws does not automatically lead to the conclusion that the confiscation and retention of Lori's guns frustrates their missions or requires them to divert resources." *Id*. at 1136.

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The facts here are analogous. Both NWDC Resistance and CARW premise their alleged diversion of resources injury on involvement with Mora-Villalpando's removal proceeding. *See* Am. Compl. ¶¶ 58, 61, 63-66, 73, 78-79.[22] They request that this Court enjoin Defendants from enforcing immigration laws against Mora-Villalpando. *Id*., Prayer for Relief. Critically, what Plaintiffs' allegations fail to do is "show[] how the requested relief would redress any broader harm that the organizations work to combat," or how resources are "diverted" given that preventing Mora-Villalpando's removal appears entirely consistent with their stated mission. *Rodriguez*, 930 F.3d at 1135. NWDC Resistance asserts that its goal is to "end all detention and deportation in Washington State," and to "make it as difficult as possible for ICE to deport anyone from this state." *See* http://laresistencianw.org/ (last visited February 12, 2020). CARW, to the extent it has a definable mission, alleges that its "goals are set by undocumented activist leaders, such as Mora-Villalpando." Am. Compl. ¶ 73. Consequently, as in *Rodriguez*, these organizations fail to show how challenging Mora-Villalpando's removal proceeding establishes an injury-in-fact rather than a description of their involvement in her immigration proceedings.[23]

Second, Plaintiffs cannot establish standing consistent with the Supreme Court's third-party standing doctrine. In *Kowalski v. Tesmer*, the Court held that attorneys lacked third-party standing to bring constitutional claims on behalf of potential clients. 543 U.S. at 129-34. The Court assumed arguendo that Plaintiffs could satisfy the *Lujan* injury in fact requirement but found standing was nonetheless inappropriate under the prudential third-party doctrine. The third-party standing rule provides that "a party generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties." *Id*. at 129 (internal quotation omitted). It "assumes that the party with the right has the appropriate

[22] Neither Plaintiff alleges that it is expending resources due to involvement in another individual's removal proceeding.

[23] The *Rodriguez* court indicated that in other cases, courts have noted some tension between general Article III standing principles and cases in this Circuit finding organizational standing in situations where organizations allege injury based on voluntary expenses that advanced their missions. *Rodriguez*, 930 F.3d at 1135 n.10. However, based on the analogous circumstances, and for the same reasons as in *Rodriguez*, that larger issue and "those concerns are not directly implicated here." *Id*.

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incentive to challenge (or not challenge) governmental action and to do so with the necessary zeal and appropriate presentation," and "represents a healthy concern that if the claim is brought by someone other than one at whom the constitutional protection is aimed . . . the courts might be called upon to decide abstract questions of wide public significance even though other governmental institutions may be more competent to address the questions and even though judicial intervention may be unnecessary to protect individual rights." *Id*. at 129 (internal citation and quotation omitted). Third-party standing may be appropriate where (1) "the party asserting the right has a 'close' relationship with the person who possesses the right," and (2) "there is a 'hindrance' to the possessor's ability to protect his own interests." *Id*. at 130.

In *Kowalski*, the Court held that a relationship with future clients was not sufficiently close and there was no hindrance to the ability of individuals to assert their claims, as evidenced by the fact that some individuals had asserted individual claims. *Id*. at 132. The same is true here. Plaintiffs do not have a sufficiently close relationship with the individuals identified in the complaint who are not members of Plaintiff organizations and with whom Plaintiffs are not otherwise involved. These individuals are not even akin to "future clients" as there is no indication that Plaintiffs will ever have a relationship with them. Additionally, Plaintiffs do not allege that the individuals cannot assert their own claims. To the contrary, Ragbir is bringing a habeas action in the Southern District of New York, *Ragbir*, 923 F.3d 53; Plaintiffs allege that Guiterrez-Soto "filed a writ for habeas corpus, alleging . . . that Guiterrez-Soto was targeted for detention due to his exercise of his First Amendment rights" in the Western District of Texas, Am. Compl. ¶¶ 41-42; and Plaintiffs claim to be supporting Mora-Villalpando in her removal proceeding where she may directly bring her claims, *id*. at ¶¶ 63-66, 78-79. This Court should find that Plaintiffs do not have standing under these facts. *See Kowalski*, 543 U.S. at 129-34; *Nw. Immigrant Rights Project v. United States Citizenship & Immigration Servs.*, 325 F.R.D. 671, 689-90 (W.D. Wash. 2016) (immigrants' rights organization lacked third-party standing).

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Third, Plaintiffs' alleged organizational injury in fact—diversion of resources to assist with Mora-Villalpando's immigration proceedings—is not redressed by the prospective nationwide injunction Plaintiffs seek. "Past exposure to [alleged] illegal conduct does not in itself show a present case or controversy regarding injunctive relief . . . if unaccompanied by any continuing, present adverse effects." *O'Shea v. Littleton*, 414 U.S. 488, 495-96 (1974) Prospective injunctive relief is only available where there is a real or immediate threat that Plaintiffs will be injured again. *See City of Los Angeles v. Lyons*, 461 U.S. 95, 105 (1983) (plaintiff previously subjected to police stranglehold lacked standing to seek injunctive relieve because there was no showing of future police conduct against plaintiff); *Gleason v. Bundage*, No. 6:17-CV-01415-AA, 2018 WL 2305690, at *3 (D. Or. May 18, 2018) ("Because Plaintiffs cannot show imminent injury in connection with their prospective claims, they lack standing to assert those claims."); *Lininger v. Pfleger*, No. 17-CV-03385-SVK, 2017 WL 5128170, at *4-6 (N.D. Cal. Nov. 6, 2017). Here, Plaintiffs do not allege that they have diverted resources to defend against removal proceedings for any other individual except Mora-Villalpando, *nor do Plaintiffs allege that they intend to divert resources to assist other individuals with their immigration proceedings in the future*. In other words, Plaintiffs do not even allege that they will suffer the same alleged diversion of resources injury in the future. Accordingly, Plaintiffs lack standing to assert a claim for prospective injunctive relief. *See McCarthy v. Barrett*, 804 F. Supp. 2d 1126, 1150 (W.D. Wash. 2011) (prospective injunctive relief not warranted where "Plaintiffs have not presented evidence that shows they are suffering from continuing adverse effects"); *accord Int'l Longshore & Warehouse Union*, 599 F. App'x at 702.

IV. CONCLUSION

For the foregoing reasons, this Court should dismiss this action for lack of jurisdiction.

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DATED this 13th day of February, 2020.

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