IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

SOUTHERN POVERTY LAW CENTER; and **ASYLUM SEEKER ADVOCACY PROJECT**,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as President of the United States; **WILLIAM BARR**, in his official capacity as Attorney General of the United States; **U.S. DEPARTMENT OF JUSTICE**; **EXECUTIVE OFFICE FOR IMMIGRATION REVIEW**; and **JAMES MCHENRY**

DISCUSSION

Although Defendants raise lack of venue as their final ground for dismissal, this Court addresses venue first because

which looks to “where a corporation's officers direct, control, and coordinate the corporation’s activities.” *Hertz Corp. v. Friend*, 559 U.S. 77, 92–93 (2010). Where there are multiple plaintiffs, only one plaintiff must be a resident of the district to satisfy the residency requirement of venue under § 1391(e)(1)(C). *See* , 958 F.2d 252, 256 (9th Cir. 1991) (citing *Exxon Corp. v. FTC*, 588 F.2d 895, 898–99 (3d Cir. 1978) (“[R]equiring every plaintiff in an action against the federal government . . . to independently meet section 1391(e)’s standards would result in an unnecessary multiplicity of litigation . . . There is no requirement that all plaintiffs reside in the forum district.”).

Here, Plaintiff Innovation Law Lab was founded and incorporated in Oregon and directs and controls its operations out of its Portland office. ECF 57 at 56 (citing ECF 1 at ¶ 20). From the Portland office, Innovation Law Lab manages nationwide programs that do work in a number of other states, including Georgia, Missouri, California, North Carolina, and Texas. *Id*. This explanation of Innovation Law Lab’s activities establishes that its “nerve center” is in Portland and that it is therefore a proper plaintiff in the District Court of Oregon. As noted above, no other plaintiff needs to re0 6120 G -0.036 Tc[(re)] TJETQ0.00000912 0 6195136 ≽71 0 00000y,2pTf0Qrinti tto be p7 T

18. They also argue that Plaintiffs are attempting to—and cannot—assert the rights of third parties in order to confer standing for themselves. *Id.* at 19. In other words, Defendants argue that Plaintiffs are contesting policies that do not affect them but, rather, affect other people with whom Plaintiffs have some relationship. *Id.*

This is not an accurate representation of the injuries that Plaintiffs have asserted, nor is it an accurate characterization of their legal argument. Plaintiffs allege, as a result of Defendants' policies, that they have been forced to divert resources into redesigning programs and systems, retraining staff, and ramping up community education programs, that their volunteer recruitment efforts have been rendered "futile," and that their attorneys have been forced to squander resources preparing for cases that are not heard on the merits. In sum, Plaintiffs allege that Defendants' policies have rendered it nearly impossible for the organizations to fulfill their missions and for their attorneys and staff to do their jobs. ECF1 at 46–53. The asserted injuries alleged in the complaint, regardless of their merits on the facts, are sufficient to confer Article III standing in the Ninth Circuit and this Court is bound by that precedent.

An organization may assert standing on its own behalf without invoking the rights of third-party individuals. *See East Bay Sanctuary Covenant v. Trump*, 950 F.3d 1242, 1265 (9th Cir. 2020) ("EBSC

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The bar is relatively low. In *ESBC II*, the Ninth Circuit found that it was sufficient for plaintiffs to have pleaded injuries that included frustration of their mission because the challenged policy discouraged asylum seekers and the loss of clients that resulted from that discouragement. 950 F.3d at 1266–67. Similarly, the Ninth Circuit also held that it was sufficient for Innovation Law Labs—a plaintiff in this case as well—to have pleaded that an immigration policy had hindered its core mission and forced it to divert resources because of the increased cost of the new program. *Innovation Law Lab v. Wolf*, 951 F.3d 1073, 1078 (9th Cir. 2020). Notably, the Ninth Circuit held that there is no “threshold magnitude” for the injuries that must be asserted. *ESBC II*, 950 F.3d at 1267. One less client, or an injury that “amount[s] to pennies” is enough. *Id.*

This Court is bound by the *East Bay* line of cases. There is no way to meaningfullu se [illegible]

Given that Plaintiffs have satisfied the first the first prong of the *Lujan* analysis, they easily meet the second and third, neither of which Defendants challenge in their motion. ECF 24 at 17–24. There is no serious doubt, on these facts, that there is a causal link alleged between the policies described in the complaint and the alleged injuries, nor is there any serious doubt that injunctive relief—which Plaintiffs seek—would serve to redress that harm. Again, this Court is not ruling on the merits of the allegations at this stage in the proceedings, merely whether Plaintiffs have properly pled facts sufficient to confer standing. This Court therefore finds that Plaintiffs do have Article III standing to bring their claims and DENIES Defendants' motion on this ground.

b. The Immigration and Nationality Act

Defendants also argue that Plaintiffs' claims are not within "the zone of interests" contemplated by the INA and are therefore not claims that may be brought under that statute. ECF 24 at 24. They argue that Congress did not intend for organizations to bring claims under 8 U.S.C. § 1229(a), the statute the Plaintiffs rely on, and that this lack of congressional intent precludes standing for the statutory claims. ECF 68 at 15–16. For their part, Plaintiffs argue that because they seek to enforce the INA and because their interests are aligned with and related to the interests of the individuals subject to removal proceedings, their claims fall squarely within the zone of interests contemplated by the INA. ECF 57 at 23–26.

The ultimate question to be answered is whether Plaintiffs "fall within the class of plaintiffs whom Congress has authorized to sue under [§ 1229a]." *Control Components, Inc.*, 572 U.S. 118, 128 (2014). They must do so in order to bring their claims in federal court.

extension, for aliens in removal proceedings to achieve their statutory right to counsel. Per *ESBC II*, these claims fall within the "zone of interests" covered by § 1229a. 950 F.3d at 1270 ("The Organizations' purpose is to help individuals apply for and obtain asylum, provide low-cost immigration services, and carry out community education programs with respect to those services. This is sufficient for the Court's lenient APA test: at the very least, the Organizations' interests are 'marginally related to' and 'arguably within' the scope of the statute.") (internal citations omitted).

Immigration and Nationality Act. Defendants cite five statutes, each of which are addressed in turn below.

a. § 1252(a)(5)

Defendants argue that 8 U.S.C. § 1252 establishes a system of judicial review that precludes this lawsuit, beginning with § 1252(a)(5), which reads: "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. . ." ECF 24 at 26. They argue that a review of the practices and policies at issue in this suit would amount to a review of removal orders because those policies eventually lead to removals. ECF 68 at 17. In response, Plaintiffs argue that they are not challenging any individual removal orders, nor are they challenging any action that is "inextricably linked" to a removal order, and § 1252(a)(5) therefore does not apply. ECF 57 at 26–27.

The plain language of § 1252(a)(5) refers only to an "order of removal." *See also Singh v. Gonzales*, 499 F.3d 969, 978 (9th Cir. 2007). Plaintiffs have not challenged any particular order of removal—this Court is not being asked to review any decision by an immigration court, nor would a ruling in Plaintiffs' favor have the effect of reversing any order of removal. This Court therefore finds that § 1252(a)(5) is inapplicable here and does not limit this Court's jurisdiction over these claims because this lawsuit appears to fall outside the bounds of the narrow language of the statute.

b. § 1252(b)(9)

Next, Defendants argue that § 1252(b)(9) bars district court jurisdiction over Plaintiffs' claims. ECF 24 at 26. The statute provides that "[j]udicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from

1077–78 (D. Or. 2018) (finding jurisdiction where claims did not challenge a removal action and were "too remote" from such an action to fall within the scope of § 1252(b)(9)).

In this case, § 1252(b)(9) does not preclude this court's jurisdiction over most of Plaintiffs' claims because these claims would not be cognizable through the PFR process, with one exception. Plaintiffs' claims relating to "asylum-free zones" appear to fall within the jurisdictional bar imposed by § 1252(b)(9), in spite of Plaintiffs' efforts to frame the issue differently. The crux of Plaintiffs' objection to the asylum-free zones is that the immigration courts Plaintiffs identify as belonging to this category deny asylum applications at rates that are too high to be legally tenable. In order to grant relief on these claims, this court would be required to issue a ruling that said that these courts need to produce different outcomes in some proportion of the asylum cases before them. In other words, these claims require a ruling that would interfere with immigration courts' disposition of asylum cases. That posture for these claims appears to fall within the § 1252(b)(9) jurisdictional bar.

This is not to suggest that Plaintiffs cannot discuss these asylum

cumbersome as to force them to expend extra resources and hinder their ability to recruit volunteers. Further, Plaintiffs are not individual aliens and they are not bringing claims on behalf of any alien. They therefore do not have access to the PFR process for their asserted claims. Allowing organizational plaintiffs to bring claims alleging systemic problems, independent of any removal orders, that allegedly cause harms specific to those organizations does not thwart the purpose of § 1252(b)(9).

c. § 1329

Defendant next argues that 8 U.S.C. § 1329 deprives this court of jurisdiction over Plaintiffs' claims. ECF 24 at 30. That statute reads: "The district courts of the United States shall have jurisdiction of all causes, civil and criminal, *brought by the United States* that arise under the provisions of this subchapter." 8 U.S.C.§ 1329

of § 1329 forecloses the operation of other jurisdictional mechanisms . . .”). Plaintiffs allege jurisdiction under

standard of review. As to the first question, this Court finds that the statute does not strip jurisdiction, for the same reasons § 1252(b)(9) does not. The scope of § 1252(g) is limited to the three discrete actions listed in the statute. *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 482 (1999) ("The provision applies only to three discrete actions that the Attorney General may take: her 'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.' . . . It is implausible that the mention of three discrete events along the road to deportation was a shorthand way of referring to all claims arising from deportation proceedings.") (emphases in original); *see also DHS v. Regents*, 140 S.Ct. 1891, 1907 (2020). The statute is therefore narrower in scope than § 1252(b)(9), on its face and by way of the court's interpretation. It stands to reason that if § 1252(b)(9) does not bar jurisdiction, § 1252(g) cannot.

Second, Defendants' argument that Plaintiffs' claims are not subject to a meaningful standard of review is not related to § 1252(g), nor is it persuasive on the issue of jurisdiction. Plaintiffs have argued throughout their briefing that the INA does impose standards for case-by-case adjudication and that some level of process is required in immigration proceedings. Further, the APA does provide a standard of review, which asks whether agency action is "arbitrary, capricious" or otherwise an "abuse of discretion." 5 U.S.C. § 706(2)(A). That standard is well developed in federal case law. *See, e.g. DHS v. Regents*, 140 S. Ct. at 1910 (applying arbitrary

e. § 1252(f)(1)

Finally, Defendants argue that 8 U.S.C. § 1252(f)(1) prohibits this court from granting the injunctive relief that Plaintiffs seek in this case. ECF 68at 28; *see also* ECF 1 at 63 (requesting injunctive relief). Section 1252(f)(1) provides:

> Regardless of the nature of the action or claim or of the identity of the party or parties bringing the action, no court (other than the Supreme Court) shall have jurisdiction or authority to enjoin or restrain the operation of the provisions of part IV of this subchapter, as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, other than with respect to the application of such provisions to an individual alien against whom proceedings under such part have been initiated.

18 U.S.C. § 1252(f)(1). Part IV refers to 8 U.S.C. §§ 1221–1231. *See Catholic Soc. Servs., Inc. v. INS*, 232 F.3d 1139, 1150 (9th Cir. 2000)

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a valid claim for relief. That determination is set out in the discussion below. This Court finds that Plaintiffs' claims do not allege individual harms to specific aliens but, rather, allege a systemic "gross mismanagement" of the immigration system by Defendants. While not a common or traditional approach to a lawsuit like this, the "gross mismanagement" theory is sufficient to state a claim on the merits.

a. Claim One

Plaintiffs' first claim for relief alleges that "asylum-free zones" and the immigration court backlog violate the Take Care Clause[6] of the United States constitution and the INA's case-by-case adjudication standards.[7] ECF 1 at 53. By "asylum-free zones," Plaintiffs refer to certain immigration courts where judges deny asylum petitions at such a high rate as to allegedly deny aliens due process. *Id.* at ¶¶ 84–103. Plaintiffs allege that these high rates of denials stem from a discriminatory animus against asylum seekers. *Id.* at ¶ 97. In these courts, Plaintiffs contend, the law governing asylum has been essentially suspended. *Id.* at ¶ 100. As to the backlog, Plaintiffs allege that it constitutes more than 1 million cases and has grown by nearly 300 percent in less than nine years.

action, and this Court finds that it does not bar the cause of action asserted here. Defendants' motion to dismiss Claim One is DENIED.[8]

b. Claim Two

Plaintiffs' second claim for relief alleges that Defendants' policies and practices have infected the immigration court system with a degree of actual bias that violates the INA's guarantee that every alien be heard by an impartial adjudicator. ECF 1 at 55. Plaintiffs argue that this impartial adjudicator guarantee is coextensive with the Fifth Amendment Due Process Clause. *Id*. at ¶ 202. This systemic judicial bias, which Plaintiffs say is driven both by policies and also by a general hostility toward immigrants, renders it nearly impossible to receive a fair hearing and for Plaintiffs to render their services. *Id*. at ¶¶ 204–07.

Defendants attack this claim on two fronts. First, they argue that the INA does not waive the government's sovereign immunity, and Plaintiffs may not sue them at all. ECF 24 at 34. As Plaintiffs point out, the APA contains a waiver of immunity that applies to all actions brought against agencies and federal officials, even when those actions do not seek review under the APA. ECF 57 at 41 (citing 5 U.S.C. § 702, *Presbyterian Church v. United States*, 870 F.2d 518, 523–26 (9th Cir. 1989)). Defendants correctly note that this waiver does not apply in circumstances where other statutes preclude judicial review. ECF 68 at 34 (citing 5 U.S.C. § 701(a)(1)). Defendants believe that the statutes discussed above bar judicial review in this case and that Plaintiffs' claims therefore fall outside the APA's waiver of immunity. *Id*. As discussed

[8] Defendants did not attack Plaintiffs' first claim for relief on any grounds other than the Take Care Clause. The court notes that it is likely debatable whether other aspects of this claim satisfy FRCP 12(b)(6) but because Defendants did not raise those arguments, this Court declines to reach them.

Similarly, Plaintiffs' fifth and sixth claims for relief allege that

test. First, the action must be the "consummation" of the agency's decision-making process. *Bennett v. Spear*, 520 U.S. 154, 177–78 (1997). Second, it must be one by which rights and obligations are determined or by which legal consequences will follow. *Id*. at 178 (internal quotations omitted). The second prong of the *Bennett* test is not met if an agency action carries "no direct consequences," but it is met if the action "alters the legal scheme" to which the agency is subject. *Id*.

Plaintiffs allege two final agency actions: the adoption of the metrics policy and the promulgation of the FAMU directive. ECF 57 at 39.

does not appear to be so. Both policies change the way immigration judges run their dockets and their courtrooms. Accordingly, Plaintiffs have at least sufficiently alleged that such docket management has practical consequence for parties or their attorneys. For example, if this court adopted a docket management policy in criminal cases that required all suppression hearings to be held within 30 days of an indictment, no one could argue that such a policy would not have practical consequences for everyone involved. Further, as Plaintiffs have stated, the metrics policy has direct consequences for judges' performance evaluations and, by extension, for their jobs. Finally, aliens in immigration courts have a statutory right to counsel, conferred by the INA. It seems plausible that the practical consequences of the challenged policies would interfere with their right to that representation and with Plaintiffs' ability to provide it, thus interfering with legal rights and obligations related to the policies. This Court finds that the challenged actions are therefore final agency actions for purposes of the APA, and Defendants' motion to dismiss these claims is DENIED.

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Dismiss is GRANTED in part and

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is DENIED with respect to all of

KARIN J. IMMERGUT
United States District Judge