No. 25-4864

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

OSNY SORTO-VASQUEZ KIDD, *et al.*,

Plaintiffs-Appellees,

vs.

MARKWAYNE MULLIN, *et al.*,

Defendants-Appellants.

On Appeal from the United States District Court for the Central District of California, Case No. 2:20-cv-03512-ODW-JPR
The Hon. Otis D. Wright II

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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9th Cir. Case Number(s) 25-4864

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INTRODUCTION

This case is about the government's policy of entering into a person's home property, without a judicial warrant, for the purpose of carrying out an immigration arrest—a policy that flouts precedent of the Supreme Court and this Court. The Plaintiffs here are two organizations that represent scores of undocumented noncitizens and individuals who live with noncitizens in the Los Angeles area. They brought this suit in 2020 to challenge home-arrest practices of Immigration and Customs Enforcement ("ICE") that were harming their members.[1] Plaintiffs showed that ICE officers are trained to conduct what they describe as "knock and talks," by which they enter into the curtilage of a residence without a judicial warrant on the theory of an implied license. But ICE officers conducting a "knock and talk" do not merely "talk" to residents—instead, they have been trained to enter individuals' home property for the express purpose of arresting them. That is not mere conjecture; it is a factual finding of the district court that the government does not dispute, based on extensive record evidence that includes training materials, deposition testimony, and sworn declarations. Applying established precedent, the district court held that ICE's "knock and talk" arrest policy is in

[1] In addition to the claims addressed in this appeal, Plaintiffs' suit also challenged ICE's practice of conducting "ruses," whereby officers obtain what they claim is "consent" to enter a home or convince the resident to exit the home without first verbally stating their true identity as immigration officers or their immigration-law purpose. Plaintiffs and the government settled the ruse-class claims. 2-ER-31–37.

plain violation of the Fourth Amendment, and it vacated that policy in the Los Angeles area.

In this appeal, the government tries to avoid judicial review of that policy by inventing challenges to Plaintiffs' standing that were not raised in the district court over the more than four years—and five hundred filings—preceding the challenged order. The government did not challenge Plaintiffs' standing in its motion to dismiss, in its opposition to class certification, or at summary judgment. It was not until more than a year after the district court entered summary judgment, when the government sought a stay pending appeal, that the government first challenged Plaintiffs' standing. The district court easily dispensed with that argument, explaining that Plaintiffs have standing to sue on behalf of their members, who are the targets of the government's knock-and-talk arrest policy, and on behalf of themselves, because that policy stifles Plaintiffs' ability to accomplish their mission. This Court should conclude the same.

On the merits, the government's defense of its knock-and-talk arrest policy runs headlong into binding precedent. Under *United States v. Lundin*, 817 F.3d 1151 (9th Cir. 2016), officers do not have an implied license to "encroach upon the curtilage of a home with the intent to arrest the occupant." *Id.* at 1160. And under *Florida v. Jardines*, 569 U.S. 1 (2013), it is unlawful for law enforcement to enter the curtilage of a home and exceed the scope of their implied license. Those cases

conclusively establish that the knock-and-talk arrest policy is unlawful. The government tries to confine *Lundin* to its facts, but that effort ignores the clear import of that decision, which set forth an unequivocal rule that an officer exceeds any general implied license to enter a person's home property when the purpose of the visit is to arrest the resident.

The government alternatively contends that even if the law-enforcement tactics at issue would generally violate the Fourth Amendment, they do not do so in the context of immigration enforcement because ICE officers have "administrative warrants," often received from fellow immigration-enforcement officers, when they conduct immigration arrests. But, as the district court held, the government expressly waived that argument pursuant to a stipulation that reflected a deliberate tactical decision by the government to forgo that argument in exchange for the valuable benefit of avoiding certain discovery. And in any event, the government's argument contravenes foundational Fourth Amendment precedent—which requires officers to obtain a warrant issued by a neutral and detached judicial officer before conducting a targeted arrest at a person's home. It also contravenes the government's own immigration regulations, which likewise impose a judicial-warrant requirement when ICE officers conduct such an arrest. This Court should affirm.

STATEMENT OF JURISDICTION

Plaintiffs agree with the government's statement of jurisdiction (Gov.Br.2), except that Plaintiffs disagree with the government's contention that Plaintiffs did not establish Article III standing.

STATEMENT OF THE ISSUES

I. Whether Plaintiffs have standing, either because their membership consists of those who are the targets of the government's knock-and-talk arrest policy, or because that policy frustrates their organizational mission and forces a diversion of their organizational resources.

II. Whether the government's policy of conducting knock-and-talk arrests without a judicial warrant violates the Fourth Amendment.

III. Whether the government's policy of conducting knock-and-talk arrests without a judicial warrant violates the Administrative Procedure Act ("APA").

STATEMENT OF THE CASE

A. Factual Background

1. For many years, ICE has conducted a substantial number of civil immigration arrests at homes in the Los Angeles area. 2-ER-183. Many of those arrests have been conducted without a judicial warrant—i.e., a warrant issued by a judge or other neutral magistrate—using a procedure that ICE calls a "knock and talk." 1-ER-004.

According to ICE, officers begin a knock-and-talk by "walking up to the door of a residence to speak with an occupant." 2-ER-142. ICE officers do not obtain express consent from homeowners before entering their property; instead, ICE officers are "trained that they may enter the curtilage of a home pursuant to 'an implied license,' meaning that they are instructed to walk across curtilage to speak to the occupants if the general public (*e.g.*, a mailman, a political canvasser, or a delivery person) could so as well." 1-ER-004. Once at the door, ICE officers "may state that they are conducting an investigation" or make other representations. 2-ER-143. But in truth, ICE officers are not at the residence to investigate; they are there to "conduct[] a targeted arrest." 2-ER-143; *see* 1-ER-005 (describing ICE training materials that define a "knock and talk" to include the "[a]rrest [of] an individual"); 3-SER-537–543 (Fourth Amendment training).

ICE's use of "knock and talks" to conduct warrantless home arrests in Los Angeles is pervasive. According to an expert analysis of ICE data, every team and suboffice within ICE's Los Angeles Area of Responsibility ("LA AOR") conducts knock-and-talk arrests. 2-ER-090. That same analysis found that, from 2017 to 2022, ICE categorized 27% of residential arrests as "knock and talks." 2-ER-089. Others were logged as "outside of residence," but those included arrests initiated by "knock and talks." 2-ER-091. Overall, at least 8% of *all* ICE arrests in the LA AOR in 2022 were conducted using a "knock and talk." 2-ER-090.

That is consistent with ICE policies and trainings, which "authorize and encourage officers to use 'knock and talks' to carry out civil immigration arrests." 1-ER-005. Prospective ICE officers learn at their academy training how to "justify" encroaching on a person's home property by using the "stated purpose" of "knocking on a door in an attempt to speak with an occupant." 1-ER-005–006. ICE officers regularly receive "Fourth Amendment training" that instructs them that it is permissible to "walk across curtilage" of the homes of those they seek to arrest. *Id.* And an ICE's "Best Practices" handbook describes a "knock and talk" as one of the "primary methods of apprehension" that ICE officers may use to "[a]rrest" an individual. 1-ER-005.

2. The Coalition for Humane Immigrant Rights Los Angeles ("CHIRLA") and the Inland Coalition for Immigrant Justice ("ICIJ") are non-profit organizations that represent communities targeted by ICE's knock-and-talk arrests and devote considerable resources to assisting those individuals.

CHIRLA's mission is to "create a more just society fully inclusive of immigrants and to advance the civil and human rights of immigrants and refugees, regardless of immigration status." 2-ER-079. It accomplishes that mission through "civic engagement" with and "community organizing" of its vast membership. *Id.* Approximately 49,000 CHIRLA members reside in the Central District of California. 1-SER-018. A "significant percentage of CHIRLA's

members are undocumented or otherwise vulnerable to arrest by ICE" at "their home." 2-ER-079. Many undocumented CHIRLA members have been subject to a knock-and-talk arrest or live in the same community as those who have been subject to a knock-and-talk arrest. *See, e.g.*, 2-ER-218; 1-SER-018. As a result, ICE's practice of conducting such arrests has had substantial effects on CHIRLA's operations. Fear of unlawful home arrests has "discouraged" CHIRLA members from "participating in CHIRLA events" and "policy campaigns" or from accessing critical "information, services, and benefits." 2-SER-273. And CHIRLA has diverted "scar[c]e resources from its other core work to provide emergency assistance" to affected members. 2-SER-272.

ICIJ serves the immigrant community in the Inland Empire and surrounding region by "collectively advocat[ing] to improve the lives of immigrants." 2-SER-338. ICIJ does that work through "community organizing," "education," and "training." *Id.* A "sizable percentage" of ICIJ's volunteers are subject to removal or live with someone who is subject to removal, and some "have already been[] harmed by ICE's unlawful home arrest practices." 2-ER-082. Accordingly, like CHIRLA, ICIJ has experienced substantial difficulties due to ICE's practice of conducting knock-and-talk arrests. Both ICIJ volunteers and members of the immigrant community they serve have "expressed to ICIJ staff that they would prefer to limit their public engagement due to concerns about the risk that ICE may

target them or an undocumented family member living at their home for arrest." 2-ER-083. And ICIJ has "diverted considerable resources to respond to issues created by ICE's home arrest practices," which has prevented ICIJ's staff from "working on critical aspects of the positions for which they were originally hired" and has otherwise drained ICIJ's limited funds. 2-SER-340.

B. Procedural Background

1. In 2020, CHIRLA and ICIJ (collectively, "Plaintiffs") brought a lawsuit to challenge ICE's home-arrest practices, including ICE's policy of conducting knock-and-talk arrests.[2] Plaintiffs alleged that the knock-and-talk arrest policy violates the Fourth Amendment because unlicensed entry into a person's home curtilage requires a judicial warrant, which ICE does not obtain prior to conducting knock-and-talk arrests.

The government moved to dismiss, arguing (*inter alia*) that ICE officers do not violate the Fourth Amendment when they conduct home arrests without a judicial warrant because they obtain an "administrative warrant" from an immigration official before conducting immigration arrests. The district court rejected that argument, holding that "administrative warrants" do not satisfy the warrant requirement under the Fourth Amendment, which requires a warrant issued by a neutral and detached judicial officer. 3-SER-576–577.

[2] A third Plaintiff, Osny Sorto-Vasquez Kidd, sought damages only.

During discovery, Plaintiffs requested that the government produce a number of documents associated with home arrests. Among them, Plaintiffs requested that the government produce any "administrative warrant" or "warrant of removal" forms that ICE officers had obtained for purposes of conducting a home arrest. 3-ER-363. The government wished to avoid such discovery, so the parties discussed a stipulation that would render such discovery unnecessary. The parties ultimately reached an agreement, in a stipulation signed by counsel for all parties and filed in district court, stating that the government "will not argue or claim that an administrative warrant (I-200) or warrant of removal (I-205) provides the Government the legal authority to enter a residence or other location in which an individual has a reasonable expectation of privacy under the Fourth Amendment, or that the presence of such warrant is a factor supporting any defense by Defendants in this action, in the District Court or on appeal." *Id.* In exchange for that "waiver," Plaintiffs agreed to "withdraw their request for the production" of administrative warrants. *Id.*

Plaintiffs later moved for class certification. 3-ER-321–355. The government opposed on various grounds but did not challenge Plaintiffs' standing, instead "reserv[ing] its right to challenge standing in its anticipated motion for summary judgment." 2-ER-316 n.7. The district court certified a class consisting of "[a]ll individuals residing at a home in the LA AOR where ICE has conducted

or will conduct a warrantless civil immigration enforcement operation using a 'knock and talk.'" 2-ER-279. The court found class certification appropriate because ICE has systemwide policies and practices "with respect to knock-and-talks" that are amenable to class resolution. 2-ER-274.

2. The parties then moved for summary judgment, and the district court granted Plaintiffs' motion. Despite the government's reservation of rights, the government did not dispute at summary judgment that Plaintiffs have standing. The district court thus proceeded to examine the government's knock-and-talk arrest policy on the merits. The court explained that "it is undisputed that ICE officers physically encroach on and occupy the curtilage of an individual's home when conducting a 'knock and talk,'" and that they "[l]ack[] a judicial warrant, express consent, or some other exception to the warrant requirement"—proceeding only with "implied cons[ent] and an administrative warrant." 1-ER-011. After analyzing policy manuals and statements by ICE officers, the court found it "consistently true" that ICE officers "are trained to enter constitutionally protected areas of a home for the purpose of arresting the occupant." 1-ER-017–018. It followed from that finding that ICE's practices do not adhere to a "clear proposition" of this Court's precedent: "The 'knock and talk' exception to the warrant requirement does not apply when officers encroach upon the curtilage of a

home with the intent to arrest the occupant." 1-ER-016 (quoting *Lundin*, 817 F.3d at 1160).

Despite the government's stipulation that it would not rely on "administrative warrants" to defend the legality of its actions, the government urged the district court to uphold knock-and-talk arrests due to the government's use of such warrants. The court rejected that argument. It ruled that the government's attempt to evade its stipulation was "illogical and untenable," considering that the government had "reaped the benefits of [its] agreement … by being excused from providing certain discovery." 1-ER-012. The court further ruled in the alternative that "administrative warrants" do not "satisf[y] the requirements for 'warrants' under the Fourth Amendment," which include the "need for independent judgment." 1-ER-013.

For many of the same reasons, the district court also determined that ICE's knock-and-talk arrest policy violates the APA. The court explained that conducting "knock and talks" for the purpose of arresting a resident violates 8 C.F.R. § 287.8(f)(2), which prohibits immigration officers from entering without a warrant or consent into non-public areas of a residence, "including the curtilage of such residence," for the purpose of questioning residents about their immigration

status. 1-ER-018.[3] The court explained that the regulation's "warrant" requirement adopts the "common definition of that term," which refers to a judicial warrant. 1-ER-020.

The court therefore declared ICE's policy of knock-and-talk arrests unlawful, and it vacated that policy to the extent it permitted such arrests in the LA AOR. 1-ER-025–026. A year later, at the request of the government, the court entered partial final judgment. 2-ER-038–040.

3. The government then filed the instant appeal and moved in the district court to stay the partial final judgment. In that stay motion, the government for the first time challenged Plaintiffs' standing. 1-SER-028–030. The court rejected that challenge and denied the motion. The court concluded that Plaintiffs have associational standing to sue on behalf of their members because, if "Defendants resume their 'knock and talk' practice, Plaintiffs' members would necessarily face a significant risk of injury, one that implicates core Fourth Amendment protections." 1-SER-007. The court further concluded that Plaintiffs have organizational standing because "Defendants' 'knock and talk' policy and practice perceptibly impaired Plaintiffs' ability to carry out their core missions." 1-SER-

[3] The district court had previously found at the motion-to-dismiss stage that "questioning" under the regulation included asking for documents to verify identity, which officers routinely did when conducting a knock-and-talk arrest. 3-SER-582.

006. The court also once again rejected Defendants' Fourth Amendment and APA arguments. 1-SER-009–013.

SUMMARY OF ARGUMENT

1. Plaintiffs CHIRLA and ICIJ have both associational standing and organizational standing. They have associational standing because their membership includes a significant number of individuals who are the targets of the government's knock-and-talk policy, including specific undocumented noncitizens in Los Angeles who have been identified in this litigation. Under this Court's established precedent, that is plainly enough to establish standing to seek prospective relief against an officially-sanctioned policy or practice of the government. The government's arguments to the contrary are foreclosed by that precedent, fail to identify any clear error in the district court's decision, and misapprehend the record—which makes clear that Plaintiffs' members have been harmed by knock-and-talk arrests in the past and would be harmed by them again in the future if the judgment below were vacated. Plaintiffs also have organizational standing because knock-and-talk arrests have frustrated their core missions by deterring undocumented noncitizens from engaging with the organizations, and because both organizations have been forced to divert resources to address knock-and-talk arrests that threaten their members.

2. ICE's knock-and-talk arrest policy violates the Fourth Amendment. Under binding precedent, an officer violates the Fourth Amendment by entering the curtilage of a home without a judicial warrant for the purpose of effectuating an arrest. That is precisely what ICE's knock-and-talk policy entails—as the government does not dispute. The government contends that its policy is nevertheless lawful because it is a tool for immigration enforcement, not criminal enforcement, and ICE officers have "administrative warrants" when they conduct knock-and-talk arrests. But the government plainly waived its ability to invoke "administrative warrants" as a defense in this litigation when it stipulated not to make that argument in exchange for Plaintiffs' valuable concession to forgo discovery of those warrants. The district court did not abuse its discretion—and, indeed, was correct—when it enforced that stipulation. In any event, the government's argument is wrong. Officers cannot violate the Fourth Amendment when they enforce the immigration laws, and the Fourth Amendment requires a warrant from a neutral and detached magistrate before entry onto the curtilage for a targeted home arrest absent express consent. A "warrant" issued by an immigration-enforcement officer does not suffice.

3. The government's knock-and-talk arrest policy also violates 8 C.F.R. § 287.8(f)(2). That regulation requires a judicial warrant, not an administrative warrant, when ICE officers conduct immigration enforcement at a person's home.

The district court correctly rejected the government's strained attempt to read that regulation as incorporating only an administrative-warrant requirement.

STANDARD OF REVIEW

This Court reviews de novo a district court's order granting summary judgment. *Healy v. Milliman Inc.*, 164 F.4th 701, 705 (9th Cir. 2026). In addition, it will affirm a district court's determination that plaintiffs are likely to suffer threatened harm in the future unless that determination is clearly erroneous or incorrect as a matter of law. *Mayfield v. United States*, 599 F.3d 964, 970 (9th Cir. 2010). And it reviews for abuse of discretion a district court's decision to enforce a discovery stipulation. *See Bail Bonds by Marvin Nelson, Inc. v. Comm'r*, 820 F.2d 1543 (9th Cir. 1987) (citing *United States v. Boothman*, 654 F.2d 700, 703 (10th Cir. 1981)); *United States v. Morales*, 684 F.3d 749, 754 (8th Cir. 2012); *Waldorf v. Shuta*, 142 F.3d 601, 616 (3d Cir. 1998).

ARGUMENT

I. Plaintiffs Have Standing

The district court correctly rejected the government's late-breaking standing argument. Under longstanding Circuit precedent, Plaintiffs have associational standing to sue on behalf of their members because their members are the targets of the government's policy and practice of conducting warrantless knock-and-talk arrests. Plaintiffs also have organizational standing to challenge that policy and practice, which impedes Plaintiffs' core organizational missions and forces Plaintiffs

to divert resources to address the government's unlawful actions. The government's contrary arguments fail to reckon with binding precedent or with the undisputed evidence in this case.[4]

A. Plaintiffs Have Associational Standing

1. Plaintiffs have associational standing so long as their "members would otherwise have standing to sue in their own right." *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977).[5] Standing exists under Article III when "a person exposed to a risk of future harm … pursue[s] forward-looking … relief to prevent the harm from occurring, at least so long as the risk of harm is sufficiently imminent and substantial." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 435–36 (2021). The law is clear that certainty of future harm is not required; it is enough that "there is a 'substantial risk' that the harm will occur." *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014) (quoting *Clapper v. Amnesty Int'l*, 568 U.S. 398, 416 (2013)); *see Holder v. Humanitarian L. Project*, 561 U.S. 1, 15 (2010)

[4] If the Court concludes that either CHIRLA or ICIJ has standing, the Court need not conduct any additional standing analysis. *See Nat'l Ass'n of Optometrists & Opticians LensCrafters, Inc. v. Brown*, 567 F.3d 521, 523 (9th Cir. 2009).

[5] The government does not dispute that the other two factors for associational standing—that the interests the organizations "seek[] to protect are germane to the organization[s'] purpose" and that "neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit"—have been satisfied. *See Hunt*, 432 U.S. at 343. And they plainly have been satisfied. *See* 1-SER-007–008.

(permitting pre-enforcement challenge based on "credible threat" of enforcement). This Court "will affirm a district court's ruling … that [an] alleged threatened injury is sufficiently likely to occur, unless that determination is clearly erroneous or incorrect as a matter of law." *Mayfield*, 599 F.3d at 970.[6]

2. a. There is no error—much less the clear error needed for reversal—in the district court's determination that Plaintiffs' members "necessarily face a significant risk of injury" from the government's "'knock and talk' practice." 1-SER-007; *see also id.* ("Absent this Court's order holding that Defendants' 'knock and talk' policy is unconstitutional, … Plaintiffs' members face a real and immediate risk of future injury."); 2-ER-264 (class-certification order describing Plaintiffs' showing that "CHIRLA's and ICIJ's members and volunteers have been impacted by the challenged home arrest practices and are at risk of being impacted in the future"). Plaintiffs have made the very showing that this Court has held is "sufficient[]" to show a likelihood of future injury—that their members are the targets of a

[6] The government does not mention the clear-error standard of review required by this Court's precedent; it states only the de-novo standard of review that typically applies to summary-judgment orders. Gov.Br.15. But this Court has applied clear-error review to a district court's finding that an alleged threatened injury is sufficiently likely to occur, even when the case comes to this Court following summary judgment, and even "[]though questions of standing are" otherwise "reviewed de novo." *Mayfield*, 599 F.3d at 968, 970; *Melendres v. Arpaio*, 695 F.3d 990, 995, 997 (9th Cir. 2012). The government provides no reasoned basis not to apply clear-error review here.

government "policy" or "pattern of officially sanctioned behavior." *Mayfield*, 599 F.3d at 971 (citations omitted); *accord Melendres v. Arpaio*, 695 F.3d 990, 998 (9th Cir. 2012).

The evidence that ICE conducts knock-and-talk arrests pursuant to a policy or pattern of officially sanctioned behavior is overwhelming. According to the government's own statement of undisputed facts, "Field Officers are trained that they may enter the curtilage" of a home to "walk[] up to the door of a residence" and "state that they are conducting an investigation," and they may then "conduct[] a targeted arrest." 2-ER-248–250. An ICE's "Best Practices" handbook reflects that training: It "encourages field officers to use 'knock and talks' as one of the '[f]our primary methods of apprehension.'" 1-ER-016; *see also* 3-SER-536–543 (Fourth Amendment training on using a "knock and talk" when conducting an arrest at a home); 3-SER-483–485 (deposition testimony confirming that "policy and training encourage officers to do a knock and talk"). Consistent with that evidence, the district court found that "ICE policies and trainings" not only "authorize" but "encourage" officers to use "'knock and talks' to carry out civil immigration arrests." 1-ER-005. The government does not dispute that finding on appeal. *See* Gov.Br.25-36 (challenging associational standing without ever contesting that ICE has a policy of conducting knock-and-talk arrests); *see also* 2-ER-268 (class certification order noting that "[n]o one disputes ICE has and actually employs [the

challenged] policies and practices in the field"). To the contrary, the government's brief repeatedly refers to its "policies and practices" of conducting knock-and-talk arrests, *e.g.*, Gov.Br.1-3, and it "express[ly] claim[s the] 'authority'" to continue using those policies and practices in Los Angeles, *Melendres*, 695 F.3d at 998.[7]

Under this Court's cases, CHIRLA and ICIJ members have standing to challenge those officially-sanctioned policies and practices so long as they are targets of them, *see Melendres*, 695 F.3d at 998 (plaintiffs had standing where they fit within the category of individuals that the challenged "pattern or practice" was "targeting")—and they plainly are. On the government's own telling, ICE seeks to use its knock-and-talk arrest policy "specifically in the Los Angeles area of responsibility" to target noncitizens whom immigration officers (allegedly) have "probable cause" to "believe" to be "removable from the United States." Gov.Br.4-5. It is undisputed that most of CHIRLA's membership resides in the greater Los Angeles area, 2-ER-078, and a "significant percentage" of CHIRLA members "are undocumented or otherwise vulnerable to arrest by ICE[,] … or live in the same household as such a person," 2-ER-079. Likewise, there is no dispute that ICIJ

[7] *See also ICYMI – General Counsel James Percival's Wall Street Journal Op-Ed on Administrative Warrants*, DEPARTMENT OF HOMELAND SECURITY (Feb. 3, 2026), *available at* https://www.dhs.gov/news/2026/02/03/icymi-general-counsel-james-percivals-wall-street-journal-op-ed-administrative (Department of Homeland Security General Counsel arguing long after the decision below that judicial warrants are not needed "for any arrest" of an undocumented noncitizen).

"serv[es] the immigrant community of the Inland Empire" and that a "sizable percentage" of ICIJ members are "subject to removal or live with someone who is subject to removal." 2-ER-081–082. Plaintiffs' members thus fit the precise description of the individuals that the government would target if it could continue enforcing its knock-and-talk arrest policy in Los Angeles.

b. The government nevertheless asserts that Plaintiffs' members are not "personally likely to be subjected to [a knock and talk] in the future." Gov.Br.27. That argument not only is unresponsive to this Court's cases, but also ignores record evidence of specific members who are targets of the challenged policy. Indeed, despite the immense risks associated with a noncitizen coming forward to provide testimony in this case, specific individuals who are "undocumented or otherwise vulnerable to arrest by ICE" and are "at risk of ICE coming to their home" have come forward. 2-ER-079. One example is A.Z.T.,[8] a CHIRLA member who lives in Los Angeles and does "not have permission to be in the United States under the civil immigration laws." 2-ER-218. In order to knock on A.Z.T.'s "front door," ICE officers would need to encroach on the curtilage of his house by stepping onto

[8] Although there is generally no requirement for an organization to "identify particular injured members by name" where, as here, "it is clear and not speculative that a member of a group will be adversely affected by a challenged action," *Mi Familia Vota v. Fontes*, 129 F.4th 691, 708 (9th Cir. 2025), the government not only has A.Z.T.'s name but has deposed him in this case.

A.Z.T.'s "porch," beneath his "porch roof." *Id.* A.Z.T. has personal knowledge of ICE walking onto the property of neighbors' homes "without asking for consent"—raising a credible threat that "ICE will use these [same] tactics" at his home. 2-ER-218-219. R.C.C., a CHIRLA member married to A.Z.T. who lives in the same house, faces the same risks. R.C.C. also is unlawfully present, aware that ICE has targeted her community with knock and talks, and reasonably fears that "ICE will use these tactics" on her next. 2-SER-217.

The government's argument is further refuted by evidence in the record of Plaintiffs' members who have experienced a knock and talk in the past. *Contra* Gov.Br.27.[9] Before this litigation began, for instance, ICE officers went to the Los Angeles home of CHIRLA members O.S. and J.S. and "knocked from just outside the front door." 1-SER-018. "ICE's intent was to arrest J.S.," and although it could not do so the first time it knocked, officers were able to arrest J.S. just days later, catching him on his way to his car. *Id.* O.S. and J.S. still live at that home, and (absent the decision below) would face the threat of ICE "com[ing] to their door to

[9] The government notes that it "lodged various evidentiary objections" to the accounts of knock and talks targeting Plaintiffs' members. Gov.Br.28. But the government ignores that the district court "thoroughly considered and … overruled" any relevant objections. 1-ER-007 n.8.

conduct a warrantless arrest again." *Id.*[10] So would the myriad others who (the record shows) have experienced ICE officers entering their property without a judicial warrant, knocking on their doors, and carrying out a civil immigration arrest. *See, e.g.*, 2-SER-339–340 (ICIJ members targeted by "deceptive ICE encounters at their homes" and reporting "multiple instances of ICE home arrests and ruses"); 3-SER-485 (30(b)(6) testimony confirming widespread practice); 3-SER-409–411 (estimating frequency of "knock and talks").[11] Though the government claims that Plaintiffs' evidence does not reveal "knock and talks," Gov.Br.28-29, it plainly does,

[10] Plaintiffs' submitted the evidence regarding O.S. and J.S. in a declaration filed in district court in support of Plaintiffs' opposition to the government's motion to stay—which was the first opportunity for Plaintiffs to address the government's standing arguments. That declaration is part of the record on appeal. *See* Fed. R. App. P. 10(a)(1) (the "record on appeal" includes "the original papers and exhibits filed in the district court"). But if this Court has any doubts, it would be appropriate to supplement the record on appeal to include it. *See Teamsters Loc. Union No. 117 v. Washington Dep't of Corrs.*, 789 F.3d 979, 986 (9th Cir. 2015) (where defendant raised standing for the first time on appeal, appellate court accepted affidavits "for the limited purpose of confirming the … harms" facing plaintiffs); *see also, e.g.*, *Ouachita Watch League v. Jacobs*, 463 F.3d 1163, 1170 (11th Cir. 2006) ("Although we generally do not consider evidence that the parties did not submit in the district court, we have the power to do so when doing so is in the interests of justice and judicial economy.").

[11] *See also* 2-SER-263–67; 2-SER-257–62; 2-SER-251–56; 2-SER-247–50; 2-SER-243–46 ; 2-SER-239–42; 2-SER-234–38; 2-SER-230–33; 2-SER-225–29; 2-SER-221–24; 2-SER-210–14; 2-SER-204–09; 2-SER-199–203; 1-SER-191–96; 1-SER–184-90; 1-SER-177–83; 1-SER-173–76.

see 2-ER-208–215 (describing instances of "knock and talks" where officers entered the curtilage of class members' homes for the purpose of effectuating arrests).[12]

The government also tries to portray the risk to any one individual as "remote or speculative," Gov.Br.32, but that argument does not withstand scrutiny. Consider A.Z.T., whose declaration states that the government *has his current address*. 2-ER-218. Given the government's enforcement posture, he certainly would face a substantial and imminent risk of being subject to a knock-and-talk arrest if the judgment below were vacated. So too would many other similarly situated members of Plaintiffs' organizations; as the district court explained, the government has "acknowledge[d] that they have 'the home addresses'" of "many" individuals whom the government would arrest but for the judgment below. 1-SER-007. The government's pervasive use of knock-and-talk arrests further supports the

[12] The government suggests (Gov.Br.29) that one of the individuals identified in the record, Mr. Osorio, did not actually experience a "knock and talk" arrest. That is false. Officers undisputedly "conducted a 'knock and talk' at the home where … Osorio was staying," and (according to the government's own statement) once officers "positively identified" Osorio they "placed [him] under arrest." 2-ER-136. That qualifies as a "knock and talk" arrest, regardless of whether Osorio gave his "consent to enter his home" (Gov.Br.29) at some point during the encounter. For similar reasons, the government's arguments regarding the arrest of Mr. Maldonado are unpersuasive. The government says he "voluntarily stepped outside" (Gov.Br.27 n.7) during the knock and talk at his home, but by then, the injury—a warrantless encroachment onto his home curtilage for the purpose of carrying out an arrest—had already occurred, making any subsequent actions irrelevant.

substantial risk to Plaintiffs' members. The record shows that "knock and talks" accounted for 27% of residential arrests in the greater Los Angeles area prior to the district court's decision. 1-ER-005. And it is clear that the government would continue to make liberal use of that policy in Los Angeles if that decision were vacated; its brief in this Court calls the knock-and-talk arrest policy "an imperative immigration enforcement tool in [this] region" and argues that the decision below "directly impedes mission-critical civil immigration enforcement practices." Gov.Br.1.[13]

In all events, this Court has held that where plaintiffs challenge an officially-sanctioned "policy and practice" of the government, they can establish standing even where the risk to any "particular individual plaintiff may not be 'high.'" *Melendres*, 695 F.3d at 998. Here, the risk to each member of Plaintiffs' organizations who is

[13] Contrary to the government's suggestion, Gov.Br.36, Plaintiffs' standing arguments do not improperly rest on "statistical probabilit[ies]." The government relies on *Summers v. Earth Island Inst.*, 555 U.S. 488, 498 (2009), but the probability analysis that *Summers* rejected assumed that the fact that an organization has a large number of members, standing alone, means that at least one of those members was probably affected by a challenged policy. *See id.* at 497-98. Here, Plaintiffs' standing does not rest on the sheer number of people who are members of their organizations. Plaintiffs instead have made the far greater showing that their members—including specific individuals addressed in the record—are targets of the government's officially-sanctioned knock-and-talk arrest policy, which the government seeks to use pervasively in their communities.

targeted by the knock-and-talk arrest policy is substantial—but even if not, standing to challenge the knock-and-talk arrest policy is secure.

Ultimately, the government's bald assertion that Plaintiffs have only a "generalized policy disagreement of ICE's future enforcement operations untethered to any actual injury" (Gov.Br.33) is belied by the record. The government has adopted a "written policy" or "pattern of officially sanctioned" knock-and-talk arrests. *Melendres*, 695 F.3d at 998. The government has "repeatedly engaged in th[ose] injurious acts in the past" against Plaintiffs' members and in their communities, and it has trained ICE officers to continue to engage in those acts in the future against the precise demographic of individuals whom Plaintiffs represent, in the precise communities in which they live. *Armstrong v. Davis*, 275 F.3d 849, 861 (9th Cir. 2001). Under those circumstances, future injury to Plaintiffs' members is "sufficiently likely," *Melendres*, 695 F.3d at 998—just as the district court found. There is no error, clear or otherwise, in that determination.

3. The government seeks to sidestep the district court's well-supported determination by analogizing to another law enforcement case out of Los Angeles, *City of Los Angeles v. Lyons*, 461 U.S. 95 (1983)—but that analogy fails. The plaintiff in *Lyons* had been placed in an illegal chokehold during a traffic stop and sought an injunction against any future use of chokeholds under similar circumstances. *See id.* at 97-99. The Supreme Court concluded that Lyons did not

have standing to seek that injunction because he was not "realistically threatened" by a repeat chokehold. *Id.* at 109. Lyons did not allege that the City had "ordered or authorized police officers" to use chokeholds "absent some resistance or other provocation by the arrestee or other subject." *Id.* at 106, 110. And there was no reason to think that Lyons would "illegally resist arrest or detention" in the future or that "officers would disobey their instructions" and attempt a chokehold "without any provocation." *Id.* at 106. Lyons lacked standing because he could not show that he "might be realistically threatened by police officers who acted within the strictures of the City's policy." *Id.*

This case is different in at least two critical ways. First, Plaintiffs' claims do not depend on speculation that their members will *provoke* law-enforcement conduct in the future. There is "no predicate action" that Plaintiffs' members "would need to take, other than simply going about their lives, to potentially be subject to the challenged practice." 1-SER-009 (quotation mark omitted). This Court has distinguished *Lyons* on precisely that ground, explaining that the denial of standing in *Lyons* was "based on the plaintiff's ability to avoid engaging in illegal conduct" in the future. *Hodgers-Durgin v. de la Vina*, 199 F.3d 1037, 1041 (9th Cir. 1999) (en banc); *accord Honig v. Doe*, 484 U.S. 305, 320 (1988) (Court is "unwilling to assume" that a party "will repeat the type of misconduct that would once again place him or her at risk"). Where, as here, standing does not depend on "speculation about

future unlawful conduct," *Lyons* has no purchase. *Dep't of Com. v. New York*, 588 U.S. 752, 768 (2019); *see Melendres*, 695 F.3d at 998 ("[E]ven if the Plaintiffs comply with all criminal laws enforceable by the Defendants, under the Defendants' view of the Fourth Amendment, the Plaintiffs remain vulnerable to unlawful detention *solely* because an officer has reasonable suspicion or knowledge that they are not authorized to be present in the United States.").

Second, unlike in *Lyons*, Plaintiffs' members are threatened by law enforcement acting *within* the strictures of an officially sanctioned policy or practice. *Compare* pp. 18-20, *supra* (showing the existence of an officially sanctioned knock-and-talk policy and practice aimed at Plaintiffs' members), *with Lyons*, 461 U.S. at 106 (failing to show any "realistic[] threat[]" from officers acting pursuant to "order[] or authoriz[ation]"). This Court has recognized time and again, after *Lyons*, that a plaintiff can show that a "threatened injury" is "likely to recur" by showing that the injury arises from implementation of a "written policy" or that "the harm is part of a 'pattern of officially sanctioned … behavior, violative of the plaintiffs' [federal] rights.'" *Mayfield*, 599 F.3d at 971 (quoting *Armstrong*, 275 F.3d at 861); *see Melendres*, 695 F.3d at 998; *LaDuke v. Nelson*, 762 F.2d 1318, 1323 (9th Cir. 1985). That is precisely the showing that Plaintiffs have made and that the district court found. *See* pp. 18-19, *supra*. Yet the government does not even attempt to

engage with this Court's post-*Lyons* line of cases, much less show how it could be distinguished.[14]

4. The government briefly argues that associational standing is unavailable because this is a Fourth Amendment case. Gov.Br.35. But binding precedent defeats that argument. *See Stavrianoudakis v. U.S. Fish & Wildlife Serv.*, 108 F.4th 1128, 1143 (9th Cir. 2024) (organization had standing to vindicate members' rights against suspicionless searches). And for good reason: There is no Fourth Amendment exception to the longstanding right of an association to bring constitutional claims on behalf of its injured members where, as here, doing so is germane to the organization's purpose and participation of individual members is not needed. *See Students for Fair Admissions v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 199 (2023); *Hunt*, 432 U.S. at 343. Not a single one of the cases cited by the government has anything to do with associational standing, let alone

[14] Justice Kavanaugh's solo concurrence to the Supreme Court's unreasoned stay order in *Noem v. Vasquez Perdomo*, 146 S. Ct. 1 (2025), does not assist the government. "The Supreme Court's unreasoned stay orders [are] 'not conclusive as to the merits,'" *Nat'l TPS All. v. Noem*, 166 F.4th 739, 754 (9th Cir. 2026), and a single Justice's concurrence does not have precedential effect, *see Maryland v. Wilson*, 519 U.S. 408, 412-13 (1997) (statements "contained in a concurrence" do not "constitute[] binding precedent"). In any event, Justice Kavanaugh's concurrence stated that, at the TRO stage of *Vasquez Perdomo*, the plaintiffs had not shown they would be harmed in the future based on the particular policy they challenged. See *Vasquez Perdomo*, 146 S. Ct. at 3-4. Here, by contrast, the government does not even argue that Plaintiffs might experience a knock-and-talk arrest based on anything other than the challenged knock-and-talk arrest policy.

establishes some Fourth Amendment exception to it. *See* Gov.Br.34-35 (citing *Rakas v. Illinois*, 439 U.S. 128, 133–34 (1978) (declining to adopt theory of standing in which *individuals* could vicariously assert standing based on Fourth Amendment harms suffered by others); *Black Lives Matter L.A. v. City of Los Angeles*, 113 F. 4th 1249, 1261 (9th Cir. 2024) (describing certain *excessive-force* claims as ill-suited for *class-wide resolution* in light of dispositive, fact-specific differences in individuals' cases)).

5. For all the reasons just explained, the existing record is more than sufficient to establish associational standing in this case. However, should this Court disagree, the proper course would be to remand for additional factfinding without vacating the judgment below. *See, e.g.*, *Friery v. Los Angeles Unified Sch. Dist.*, 448 F.3d 1146, 1150 (9th Cir. 2006) ("order[ing] a limited remand to the district court with instructions to develop the factual record and to determine whether [plaintiff] has standing to bring suit," while "offer[ing] no view on whether … dismissal of the action … is appropriate at this juncture"). The government waited to raise its standing objections until after discovery closed and summary judgment had been entered against it. Under these circumstances, Plaintiffs must be permitted to cure any deficiencies in the record prior to any vacatur of the judgment.

B. Plaintiffs Have Organizational Standing

CHIRLA and ICIJ have organizational standing as well. A plaintiff satisfies the requirements for organizational standing by showing "(1) frustration of its organizational mission; and (2) diversion of its resources to combat the particular [policy] in question." *Smith v. Pac. Props. & Dev. Corp.*, 358 F.3d 1097, 1105 (9th Cir. 2004). CHIRLA and ICIJ have made both showings.

1. First, the record makes clear that the government's knock-and-talk policy has frustrated the missions of both CHIRLA and ICIJ.

CHIRLA's core mission is to "create a more just society fully inclusive of immigrants and to advance the civil and human rights of immigrants and refugees, regardless of immigration status." 2-SER-270. CHIRLA accomplishes that mission through "civic engagement, community education," and "community organizing." *Id.* The government's knock-and-talk policy has directly impeded that work: It has "discouraged [CHIRLA members] from participating in CHIRLA events or sharing their personal stories as part of policy campaigns," or from "access[ing] information, services, and benefits to which they are entitled and which they need to thrive," by instilling fear that ICE officers would notice their participation and "target[]" them with an unlawful home arrest. 2-SER-273.

The record shows similar interference with ICIJ's mission to "collectively advocate to improve the lives of immigrants." 2-SER-338. Like CHIRLA, ICIJ

accomplishes its mission through "community organizing," "education," and "training." *Id*. The knock-and-talk policy has impeded ICIJ's mission in much the same way that it has impeded CHIRLA's: It has led "community members [to] express that they would prefer to limit their public engagement with ICIJ due to concerns about the risk that ICE may target them or an undocumented family member living at their home for arrest." 2-SER-340.

In short, the government's knock-and-talk policy has stifled the ability of CHIRLA and ICIJ to engage with their members—the very means by which each organization accomplishes its mission. That easily establishes the mission-frustration showing required by Supreme Court and Ninth Circuit precedent. *See, e.g.*, *FDA v. All. For Hippocratic Med.*, 602 U.S. 367, 369 (2024) (*Alliance*) (requiring organization to show that the challenged policy "directly affected and interfered with" its "core business activities"); *Immigrant Defs. L. Ctr. v. Noem*, 145 F.4th 972, 988 (9th Cir. 2025) (organization had standing because it made that showing); *E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 663 (9th Cir. 2021) (organization had standing because defendants' actions "perceptibly impaired" plaintiffs' "ability to perform the services they were formed to provide"). And it easily distinguishes the Plaintiffs here from those who have "only a general legal, moral, ideological, or policy objection" to the challenged conduct. Gov.Br.19.

The government nevertheless argues (Gov.Br.24) that Plaintiffs' unrebutted testimony is insufficient because Plaintiffs rely on "third-party reactions" based on "fear." But this Court's cases make clear that such reactions are sufficient for organizational standing. For example, in *Comite de Jornaleros de Redondo Beach v. City of Redondo Beach*, 657 F.3d 936, 943 (9th Cir. 2011) (en banc), this Court held that an anti-solicitation ordinance "frustrated" the "mission" of a day-laborer organization by chilling the activities of day laborers in various ways—including by "prevent[ing] day laborers from making their availability to work known" and by "discourag[ing] both employees and employers from participating in hiring transactions." *Id*. Those third-party reactions to fear about potential "enforcement of the … ordinance" were sufficient. *Id.* Likewise, in *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006 (9th Cir. 2013), this Court held that various organizations that provided assistance to undocumented noncitizens had standing to challenge a state law that criminalized the harboring or transporting of such noncitizens because the organizations "reasonably fear[ed]" that the law would "deter[]" volunteers and staff from providing assistance. *Id.* at 1018. There too, the predictable reactions of third parties who feared enforcement of the law against them were sufficient.

2. CHIRLA and ICIJ also have shown that they have been forced to divert resources to address the government's knock-and-talk policy, separate and apart from those organizations' expenditure of resources to pursue this case.

The looming threat of unlawful knock-and-talk arrests forced CHIRLA to shift "scarce resources from its other core work to provide emergency assistance" to its members who "are affected by ICE's home arrest practices." 2-SER-272. For example, CHIRLA "expended staff time and resources to fortify sanctuary policies and bolster its 'Know Your Rights' programming." 2-SER-273. And it bore increased costs to its Rapid Response Network, which provided pro bono or low-cost legal representation to those subjected to ICE's unlawful practices. 2-SER-272, 276–306.

ICIJ similarly "diverted considerable resources to respond to issues created by ICE home arrests." 2-SER-340. It shifted staff from other activities to those that supported individuals targeted by knock and talks, including work to "conduct[] intake with community members," "document[] their stories," "try[] to place their cases with attorneys," "help[] to identify sponsors and secure bond," and "provid[e] other humanitarian support." *Id.* That work prevented ICIJ's staff from "spend[ing] time working on critical aspects of the positions for which they were originally hired" and drained the organization's resources such that "the overwhelming majority of ICIJ's bond fund and Immigrant Justice Fund, and its

referrals for legal representation, went toward individuals affected by home arrests." *Id.* As a result of that resource diversion, ICIJ was "unable to provide sufficient assistance to other immigrants in the region." *Id.*

Accordingly, both CHIRLA and ICIJ have established "'concrete and demonstrable injur[ies]' to the[ir] core activities" due to the shift in resources that the knock-and-talk policy demanded. *Immigrant Defs.*, 145 F.4th at 988 (citation omitted). Under this Court's cases, those injuries satisfy the resource-diversion requirement for organizational standing. *See, e.g.*, *Fellowship of Christian Athletes v. San Jose Unified Sch. Dist. Bd. of Educ.*, 82 F.4th 664, 683 (9th Cir. 2023) (en banc) ("Lost money and 'staff time spent responding' to a challenged government action are directly redressable and, under [this Court's] precedent, vest direct organizational standing." (citation omitted)).

The government's argument (Gov.Br.21) that Plaintiffs have not "differentiat[ed] between lawful home arrests and unlawful home arrests," or between "knock-and-talks and ruses" is unpersuasive. CHIRLA and ICIJ's declarations submitted in support of summary judgment make clear that they have expended resources to address the effects of "ICE's *unlawful* home arrest practices." 2-SER-271 (emphasis added); 2-SER-339 (emphasis added). And as discussed above, the government's knock-and-talk arrest policy was pervasive—and many knock-and-talk arrests involve ruses, and vice versa. The government

identifies no support for its apparent view that CHIRLA and ICIJ would *not* have diverted resources if ICE's policy was to conduct only knock-and-talk arrests, without the additional threat of ruses.

The government also argues (Gov.Br.21) that CHIRLA and ICIJ's injuries are insufficient because they "identify *voluntary* resource expenditure." In the government's view (Gov.Br.23), CHIRLA and ICIJ could have "chosen not to respond" to the harms visited on their members and on the communities that the organizations serve. That argument is meritless. CHIRLA and ICIJ have identified resource expenditures that are *necessary* for those organizations to accomplish their core missions, which include assisting the very noncitizens who are targeted by the knock-and-talk arrest policy and whose engagement those organizations need for their success. *See* 1-SER-006 (district-court finding that "Plaintiffs' expenditures are not self-inflicted or the result of a generalized policy disagreement," but are instead "the direct and foreseeable response to Defendants' ongoing enforcement practices and the fear, confusion, and legal needs those practices generate among Plaintiffs' members"). This Court's cases do not regard it as "voluntary" when an organization shifts its resources to focus on a problem that is at the core of its organizational mission and the needs of its members. *See, e.g.*, *Immigrant Defs.*, 145 F.4th at 988 (finding harm to organization that "had to expend resources to counteract and offset" the challenged policy to "avoid

abandoning a core constituency and undermining its mission"); *Whiting*, 732 F.3d at 1018.

This case is thus nothing like *Alliance*, on which the government repeatedly relies. In *Alliance*, the Court held that "an 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." 602 U.S. at 394. Here, by contrast, CHIRLA and ICIJ have shown a "concrete injury," *id.*, in just the way that *Alliance* envisions—by demonstrating that the knock-and-talk arrest policy "directly affected and interfered with" their "core business activities," *id.* at 395, by deterring their members from engaging with them, *see* pp. 30-31, *supra*. And they have shown a diversion of resources not to "manufacture [their] own standing," *Alliance*, 602 U.S. at 394, but instead to address a problem that was directly harming their members and frustrating their missions, *see Immigrant Defs.*, 145 F.4th at 987 (explaining *after* the decision in *Alliance* that "an organization has direct standing to sue where a defendant's behavior has 'frustrated its mission and caused it to divert resources in response to that frustration of purpose'" (citation omitted)). That is the precise scenario for which organizational standing is appropriate.

II. The District Court Correctly Held that ICE's Use of Knock-and-Talk Arrests Violates the Fourth Amendment

A. ICE's Warrantless Knock-and-Talk Arrests Exceed the Implied License to Enter a Person's Home Property

As the district court correctly held, immigration officers violate the Fourth Amendment when they enter the curtilage of a home, without a judicial warrant, for the purpose of making an arrest.

1. "[P]hysical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed." *United States v. U.S. Dist. Ct. for the E. Dist. of Mich.*, 407 U.S. 297, 313 (1972); *see Jardines*, 569 U.S. at 6 ("When it comes to the Fourth Amendment, the home is first among equals."). Accordingly, for over four decades, it has been "a basic principle of Fourth Amendment law" that "searches and seizures inside a home without a warrant are presumptively unreasonable." *Payton v. New York*, 445 U.S. 573, 576 (1980) (citation omitted). That principle extends equally to the "curtilage" of a home—the area "immediately surrounding [the] house"—which "enjoys protection as part of the home itself." *Jardines*, 569 U.S. at 6. Although some narrow and limited exceptions to the warrant requirement exist, "the contours" of any "warrant exception permitting home entry are 'jealously and carefully drawn,' in keeping with the 'centuries-old principle' that the 'home is entitled to special protection.'" *Lange v. California*, 594 U.S. 295, 303 (2021) (citation omitted).

One such carefully drawn exception permits warrantless entry onto a person's home property where the homeowner has "given his leave" for that entry. *Jardines*, 569 U.S. at 8. Leave may be given expressly, or it may be "implied from the habits of the country." *Id.* (citation omitted). In our nation, the "implicit license" to transgress a person's curtilage "typically permits the visitor to approach the home by the front path, knock promptly, wait briefly to be received, and then (absent invitation to linger longer) leave." *Id.*; *see also id.* ("Complying with the terms of that traditional invitation does not require fine-grained legal knowledge; it is generally managed without incident by the Nation's Girl Scouts and trick-or-treaters."). It does *not* permit an officer to act in a manner that exceeds what "any private citizen might do." *Id.* (quoting *Kentucky v. King*, 563 U.S. 452, 469 (2011)). That rule applies not only to the places an officer might go, but also to the reasons for the officer's entry, because the "scope of a license" is "limited not only to a particular area but also to a specific purpose." *Id.* at 9. Accordingly, an officer who enters a person's home property for a "purpose" for which the officer does not have a "license" exceeds the implied-license exception to the warrant requirement. *Id.* at 10.

In *United States v. Lundin*, this Court held that an officer who enters a person's home property for the purpose of arresting the resident exceeds the implied license that might otherwise permit entry. This Court explained that "the

background social norms that invite a visitor to the front door do not invite him there … to arrest the occupant." 817 F.3d at 1160 (citation omitted). Officers seeking to arrest a home resident instead "act[] for a purpose that virtually no resident would willingly accept." *Id.* at 1159. That conclusion followed from this Court's earlier decision in *United States v. Perea-Rey*, 680 F.3d 1179 (9th Cir. 2012), which made clear that the "knock and talk exception authorizes officers to enter the curtilage to initiate a consensual conversation with the residents of a home"—not to "engage in warrantless detentions and seizures of residents" to which nobody would consent. *Id.* at 1189 (holding that Border Patrol violated the Fourth Amendment by entering the curtilage of a home to detain suspected undocumented noncitizens).

The *Lundin* Court thus held unequivocally: "The 'knock and talk' exception to the warrant requirement does not apply when officers encroach upon the curtilage of a home with the intent to arrest the occupant." 817 F.3d at 1160. That holding firmly establishes that the government's practice of conducting warrantless knock and talks for the purpose of arresting noncitizens is unlawful.

2. The government's responses lack merit. It primarily suggests (Gov.Br.43) that it can distinguish *Lundin* because in that case the police "knocked on the suspect's door at 4:00 a.m.," while "ICE knock-and-talks are permitted only between the hours of 6:00 a.m. and 9:00 p.m." But the timing of the so-called

"knock and talk" in *Lundin* was only one basis on which the Court found the government's conduct impermissible. 817 F.3d at 1159. The Court also held that, separate and apart from the timing of the knock and talk, officers who "knock on the door of a home" for "purposes" other than asking questions "generally exceed the scope of the customary license." *Id.* The Court never suggested that a knock and talk for the purpose of arresting a person would somehow become valid simply because it occurred during daytime. *See id.* at 1160 ("An officer does not violate the Fourth Amendment by approaching a home at a reasonable hour *and* knocking on the front door with the intent merely to ask the resident questions." (emphasis added)). And here, the government does not remotely challenge the district court's finding that (no matter what time the knocks occur) ICE officers are trained to conduct knock-and-talks "with the intent and purpose of arresting the occupant." 1-ER-017.

The balance of the government's arguments are a transparent effort to relitigate *Lundin*. The government protests that "Fourth Amendment inquiries require a totality-of-the-circumstances approach," Gov.Br.41, and it warns that following the holding of *Lundin* could yield (unspecified) "unsupportable results." Gov.Br.42. But *Lundin* is the law of this Circuit, whether the government likes it or not. And in any event, the government's concerns are unfounded. The holding of *Lundin* leaves ample room for district courts to consider all circumstances of a

case in determining whether an officer "encroach[ed] upon the curtilage of a home with the intent to arrest the occupant," *Lundin*, 817 F.3d at 1160, which is precisely the type of inquiry that the Supreme Court envisioned in *Jardines*, *see* 569 U.S. at 10 (explaining that whether a search is reasonable "depends upon whether the officers had an implied license to enter the porch, which in turn depends upon the purpose for which they entered"). Nor is there any cause for concern that ICE's operations will be unduly "impede[d]" (Gov.Br.43); under *Lundin*, ICE remains free to "knock on [a person's] front door with the intent merely to ask the resident questions," 817 F.3d at 1160, and ICE always remains free to seek a judicial warrant to accomplish a home arrest.

But none of that is part of ICE's knock-and-talk policy. As the district court determined—based on the very totality-of-the-circumstances review that the government endorses—ICE's knock-and-talk policy is characterized by warrantless home encroachments for the purpose of arrest. 1-ER-008. The district court cited testimony from ICE officers who described knock and talks as "an arrest operation" and who acknowledged that they conducted knock and talks if their "intention" was "to make the arrest." 1-ER-017. It directly followed from that evidence that ICE's knock-and-talk policy calls for officers to enter onto the curtilage of target homes "with the intent to arrest the occupant"—thus

disqualifying that policy for the "'knock and talk' exception to the warrant requirement." *Lundin*, 817 F.3d at 1160; *see Perea-Rey*, 680 F.3d at 1189.

B. The Government's Reliance on "Administrative Warrants" Fails

The government argues that even if the Court rejects its reading of *Lundin*, its conduct is still lawful because ICE officers have "administrative warrants" when they conduct knock-and-talk arrests. Gov.Br.44-50. But the district court correctly held that the government waived that argument, and in any event it is meritless.

1. *The government waived any argument that administrative warrants justify its knock-and-talk arrests*

a. The government's reliance on administrative warrants is foreclosed by its express stipulation, which the district court properly enforced. During discovery, the government sought Plaintiffs' agreement to forgo the government's production of the very administrative warrants that the government now invokes. Plaintiffs agreed to give the government that valuable concession in exchange for the government's express commitment—reflected in a signed stipulation—that "[i]n this litigation," it would not "argue or claim that an administrative warrant (I-200) or warrant of removal (I-205) provides ICE the legal authority to enter a residence" or "that the presence of such warrant is a factor supporting any defense … in the District Court or on appeal." 3-ER-363. The district court held that the government's stipulation unequivocally foreclosed its reliance on administrative

warrants as a defense against its violation of the Fourth Amendment. 1-ER-012. After all, the government "reaped the benefits of [its] agreement" by "being excused from providing certain discovery," and the government "cannot have [its] cake and eat it too." *Id.*

The district court did not abuse its discretion—or, indeed, make any error—in reaching that conclusion. *See* p. 15, *supra* (citing cases establishing abuse-of-discretion standard for review of district court's enforcement of stipulation); *Simula, Inc. v. Autoliv, Inc.*, 175 F.3d 716, 726 (9th Cir. 1999) (reviewing discovery rulings for abuse of discretion). As this Court has recognized, "[s]tipulations serve both judicial economy and the convenience of the parties," and "courts will enforce them absent indications of involuntary or uninformed consent." *United States v. Molina*, 596 F.3d 1166, 1169 (9th Cir. 2010) (quoting *CDN Inc. v. Kapes*, 197 F.3d 1256, 1258 (9th Cir. 1999)). The government does not suggest that there are any such indications here.

In fact, the history of the stipulation confirms just the opposite—that the stipulation was a carefully considered litigation bargain that the government chose to strike. At the motion to dismiss stage, the government relied on administrative warrants to try to justify ICE's entry into constitutionally protected areas of the home**.** *See* 3-SER-549–550. In response, Plaintiffs sought—and the district court largely granted—discovery into any administrative warrants associated with

individuals whom the government arrested at or near their home. 3-SER-550–551. Faced with that discovery obligation, the government proposed the very deal that the parties ultimately entered: Plaintiffs would withdraw their discovery requests for administrative warrants, and the government would forgo reliance on those administrative warrants in this litigation. 3-SER-551–552. Once that stipulation was entered, the government was no longer under an obligation to produce administrative warrants, and it did not do so—thus "reap[ing] the benefits of th[e] agreement" that the government proposed. 1-ER-012. This Court routinely enforces waivers by the government that are the result of such a "tactical decision." *Johnson v. Rancho Santiago Cmty. Coll. Dist.*, 623 F.3d 1011, 1022 (9th Cir. 2010); *cf. Hamilton v. State Farm Fire & Cas. Co.*, 270 F.3d 778, 782-783 (9th Cir. 2001) (explaining that judicial estoppel prevents a party from obtaining a litigation advantage through one position and later seeking an advantage by taking an inconsistent position).

b. The government appears to make two arguments regarding the stipulation, but neither has merit. First, the government says that its argument about administrative warrants is a challenge to Plaintiffs' prima facie case—not a "defense" that would be covered by the stipulation. Gov.Br.45-46. But the district court, in an exercise of its ample discretion to adjudicate disputes about the meaning of discovery stipulations, properly rejected that argument. It explained

that a "defense"—the term used in the stipulation—"includes a contention that 'demonstrates that plaintiff has not met its burden of proof.'" 1-ER-012 (quoting *Zivkovic v. S. Cal. Edison Co.*, 302 F.3d 1080, 1088 (9th Cir. 2002)). Any other interpretation would have read the stipulation out of its context: The entire point of the stipulation was that discovery of administrative warrants would be rendered unnecessary as long as the government committed not to invoke such warrants in trying to defeat Plaintiffs' claims. *See* 3-SER-552–553.

Second, the government suggests that this Court may ignore the stipulation because it "formed the basis" for a "ruling on a legal question." Gov.Br.46. But that is simply false. Unlike in *Martin v. Sundial Marine Tug & Barge Works, Inc.*, 12 F.4th 915 (9th Cir. 2021) (cited Gov.Br.46), where this Court refused to accept a stipulation as to the proper interpretation of a federal statute, the agreement here did not stipulate to the meaning of the Fourth Amendment, the legal effect of administrative warrants, or any other conclusion of law. It required only that the presence or absence of administrative warrants in encounters would play no role in adjudicating this case—just as many other potential arguments the government could have pressed played no role because the government decided not to raise them. Under binding precedent, there is no impediment to enforcing a waiver of that kind. *See Steagald v. United States*, 451 U.S. 204, 209 (1981) (holding that, in "defend[ing] against petitioner's charge of an unlawful search," the government

"may lose its right" to "assert[] that petitioner lacked a reasonable expectation of privacy in the searched home, or that he consented to the search, or that exigent circumstances justified the entry").

The government is likewise wrong in suggesting that the stipulation affected the district court's merits analysis. After enforcing the government's stipulation against it, the court proceeded to address the government's administrative-warrant theory *in the alternative*. *See* 1-ER-012 ("However, even if the Court were to consider administrative warrants, Defendant's arguments would still fall short."). The court undertook an independent analysis of the sufficiency of administrative warrants, separate and apart from the stipulation, by assessing whether administrative warrants could supply authority to enter constitutionally protected areas of the home. The discovery stipulation did not resolve, or even bear on, the court's analysis of that issue—except insofar as it prevented *Plaintiffs* from raising arguments that might have been revealed by the discovery they would have received absent the stipulation.

Ultimately, having chosen as a tactical matter to forgo any administrative-warrant defense for the benefit of avoiding (potentially harmful) discovery, the government cannot turn around and raise that defense now that its tactical decision has proven unwise. This Court should affirm the district court's enforcement of the stipulation and decline to consider the government's waived arguments.

2. *The government's administrative-warrant defense fails on the merits*

If the Court does reach the government's argument that administrative warrants give ICE a special license to enter the curtilage of a home that no other law enforcement agency has (Gov.Br.44-50), the Court should reject it.

a. Under well-established precedent, the civil immigration context does not call for a different Fourth Amendment analysis when it comes to rules around entry into the home or curtilage. This Court has repeatedly confirmed that the Fourth Amendment constrains what immigration officers may do in areas where there exists a reasonable expectation of privacy. *See, e.g.*, *Perez Cruz v. Barr*, 926 F.3d 1128, 1133, 1141 (9th Cir. 2019) (holding that the Fourth Amendment prohibited officers from detaining individuals on the pretext of executing a search warrant at a business); *Lopez-Rodriguez v. Mukasey*, 536 F.3d 1012, 1016-17 (9th Cir. 2008) (concluding that the Fourth Amendment barred officers' entry into home without consent); *LaDuke*, 762 F.2d at 1327-29 (holding that the Fourth Amendment prohibited officers from executing nonconsensual seizures in migrant farmworker housing areas). In all of these cases, the Fourth Amendment analysis did not differ despite arising in the civil immigration context.

It is likewise clear that when a warrant is required under the Fourth Amendment, that means a warrant issued by an independent, judicial officer. That was the holding of the Supreme Court in *Coolidge v. New Hampshire*, 403 U.S.

443 (1971), which explained that a "warrant" under the Fourth Amendment must be issued by a "neutral and detached magistrate." *Id.* at 450; *see also Shadwick v. City of Tampa*, 407 U.S. 345, 350 (1972) ("The warrant traditionally has represented an independent assurance that a search and arrest will not proceed without probable cause."). A law enforcement officer—even a chief "government enforcement agent"—by definition does not meet this requirement. *Coolidge*, 403 U.S. at 450. It straightforwardly follows that administrative immigration warrants—which are issued by immigration law-enforcement officers, rather than a "neutral and detached magistrate," *id.*—do not satisfy the warrant requirement under the Fourth Amendment—just as the district court correctly held, 1-ER-013-14 (summary judgment order); 3-SER-576–577 (order on motion to dismiss).

b. The government's contrary position rests primarily on the Supreme Court's decision in *Abel v. United States*, 362 U.S. 217 (1960), but that decision does not assist the government. As the government concedes, the language in *Abel* on which the government stakes its case is pure dicta. Gov.Br.48-49. Indeed, the passages the government invokes referring to the "administrative arrest procedure in deportation cases" are in the part of the decision discussing a question that was expressly not before the Court. *See Abel*, 362 U.S. at 230 (question "is not entitled to our consideration in the circumstances before us"). This Court is not bound by the Supreme Court's discussion of an issue not "presented for review," *Barapind v.*

Enomoto, 400 F.3d 744, 750 (9th Cir. 2005) (en banc)—and it does not follow such dicta where subsequent decisions have "undercut [its] theory or reasoning," *Miller v. Gammie*, 335 F.3d 889, 900 (9th Cir. 2003) (en banc), or where it otherwise is not "sufficiently persuasive," *United States v. Montero-Camargo*, 208 F.3d 1122, 1132 n.17 (9th Cir. 2000) (en banc); *see Cnty. of Amador v. U.S. Dep't of the Interior*, 872 F.3d 1012, 1021 n.10 (9th Cir. 2017) (explaining that "unreasoned dicta" is "entitled to little weight").

Both bases for not following dicta are present here. First, the dicta in *Abel* is irreconcilable with subsequent holdings of the Supreme Court. *Abel* was decided many years before *Coolidge v. New Hampshire* and *Payton v. United States* made clear that a warrant issued by a "neutral and detached magistrate," *Coolidge*, 403 U.S. at 450, is presumptively necessary before officers arrest a person in their abode, *see Payton*, 445 U.S. at 586 & n.24. Those holdings of the Supreme Court run directly contrary to any assumed "constitutional validity" of an "administrative arrest procedure" that calls for home arrests without a judicial warrant. *Abel*, 362 U.S. at 233.

Second, whatever the validity of the administrative procedure considered in *Abel*, the dicta in that case provides no support for the modern administrative-warrant regime used today. The *Abel* dicta "rel[ied] almost entirely on laws that, when enacted, permitted arrest authorization only to be issued by a structurally

distinct officer at the highest echelons of executive power: in one instance, the president and in others, a cabinet secretary."[15] Today, there are multiple dozens of categories of immigration officers who issue administrative arrest warrants, including "some of the least-detached and lowest-level agents within the immigration enforcement system."[16] The dicta in *Abel* lends no support, reasoned or otherwise, to that modern regime. Indeed, it strains credulity to suggest that the *Abel* Court would have blessed that regime for a home entry, especially when about one decade later the Court announced the requirement for warrants under the Fourth Amendment to be issued by neutral and detached magistrates, on the ground that "prosecutors and policemen simply cannot be asked to maintain the

[15] Lindsay Nash, *Inventing Deportation Arrests*, 121 Mich. L. Rev. 1301, 1315-32 (2023) (explaining that early immigration laws reserved arrest authority to high-level, structurally distinct executive officials rather than to line-level enforcement agents, and those regimes built in separation and external checks between those who set removal policy and those who executed it). Professor Nash has also explained why a founding-era understanding of the Fourth Amendment is incompatible with a carveout for immigration warrants: State removal laws on the books at the time of ratification of the Fourth Amendment authorized arrest based only on warrants issued by magistrates and tribunals with judicial power. Lindsay Nash, *Deportation Arrest Warrants*, 73 Stan. L. Rev. 433, 436-38, 480-83 (2021).

[16] 1-ER-013; 3-SER-576–577; Nash, *Inventing Deportation Arrests*, *supra* note 15, 121 Mich. L. Rev. at 1315, 1355-58 (explaining that a sample of nearly 1,000 administrative warrants show that they are issued by "officers primarily and intimately engaged in enforcement, detention, and deportation," and that many who issue warrants of arrest are not even expressly subdelegated that authority under existing regulations).

requisite neutrality with regard to their own investigations." *Coolidge*, 403 U.S. at 450.

The government nevertheless insists that two decisions of this Court citing *Abel* provide support for applying it here, Gov.Br.49—but neither does. The first, *Gonzalez v. ICE*, 975 F.3d 788 (9th Cir. 2020), involved the question whether civil immigration enforcement was governed by the *Gerstein* rule requiring a prompt determination of probable cause by a neutral and detached magistrate. *Id.* at 823-24. The district court had concluded it was not, relying on *Abel*, *id.* at 825, but this Court disagreed, *id.* at 826. It explained that the Fourth Amendment requires a probable-cause determination to be made by at least an immigration judge, not a law-enforcement official—a requirement that administrative warrants utterly fail.[17] And even if administrative warrants were issued by an immigration judge, *Gonzalez* still would not help the government. The Court had no occasion to consider whether *home-arrest warrants* issued by an executive official are compatible with *Coolidge* and *Payton*, as that was not the issue in *Gonzalez*. The second case, *Sherman v. United States Parole Comm'n*, 502 F.3d 869 (9th Cir. 2007), is likewise of no help. *Sherman* dealt with the arrest of an alleged criminal

[17] The government does not and cannot contend that administrative warrants are issued by immigration judges. The Director of the Los Angeles Field Office conceded in his deposition that even an I-205 warrant of removal is not issued by an immigration judge. 1-SER-170–171; *see* 1-ER-013.

parole violator, a unique Fourth Amendment context; it says nothing about immigration enforcement, let alone what ICE officers may do at a person's home.[18]

c. Finally, the government's reliance (Gov.Br.47, 49-50) on the unpublished memorandum disposition in *Matias Rauda v. Wilkinson*, 844 F. App'x 945 (9th Cir. 2021), is unconvincing.

Matias Rauda arose in the context of a petition for review of a removal order challenging the denial of a motion to suppress. Suppression is generally not available in removal proceedings based on a Fourth Amendment violation; the petitioner must show an "egregious" violation. *See, e.g., Sanchez v. Sessions*, 904 F.3d 643, 648 (9th Cir. 2018). Accordingly, the panel in *Matias Rauda* was not charged with making conclusive pronouncements about the meaning of the Fourth Amendment; at most, the panel determined that there was no "egregious" Fourth Amendment violation in that particular case. The district court therefore correctly distinguished *Matias Rauda* as a case about suppression in removal proceedings—not a case about the general Fourth Amendment standards that govern civil immigration enforcement. 1-ER-015–016.

[18] The out-of-circuit case cited by the government, *City of El Cenizo v. Texas*, 890 F.3d 164 (5th Cir. 2018), also says nothing about what power, if any, an administrative warrant grants an ICE officer to enter a person's home.

The abbreviated reasoning that *Matias Rauda* provides is in accord. That case "decline[d]" to "extend" *Lundin* to the circumstances at issue on the ground that *Matias Rauda* arose in a context that "implicates distinct constitutional interests from those involved in a criminal case." 844 F. App'x at 948. In support of that proposition, the panel cited *INS v. Lopez-Mendoza*, 468 U.S. 1032 (1984), which was a case about *suppression in removal proceedings*. *See id.* at 1042 (generally declining to "apply[] the exclusionary rule in deportation proceedings"). The citation to *Lopez-Mendoza* thus confirms that the "distinct constitutional interests" in *Matias Rauda* were a product of that case's challenge to a suppression determination in a removal case. *Matias Rauda* did not and could not foreclose relief in a case like this one—seeking prospective relief for a pattern of Fourth Amendment violations—considering that *Lopez-Mendoza* itself recognized that prospective relief remains available where suppression is not. *Id.* at 1045.

The government nevertheless reads *Matias Rauda* to reflect the far broader proposition that civil immigration enforcement presents "distinct constitutional interests" that warrant a departure from Fourth Amendment principles generally, including those announced in *Lundin*. Gov.Br.47. But that interpretation of *Matias Rauda* does not account for the panel's citation to *Lopez-Mendoza*. Nor would it make sense to read the panel to endorse a proposition that is so clearly out of step with binding precedent, without any engagement with that precedent.

Indeed, the panel did not discuss the steady drumbeat of cases that apply Fourth Amendment law in the immigration context. *See* p. 47, *supra*. Nor did the panel explain why the application of *Lundin* would turn on the *type* of arrest an officer enters the curtilage of a home to conduct—or how a distinction between criminal arrests and immigration arrests could be compatible *Perea-Rey*. *See* p. 39, *supra.* The panel likewise did not explain how an administrative warrant issued by an enforcement officer could be compatible with the neutral and detached assessment of probable cause that *Coolidge* and *Payton* held is required for a home arrest. All of that is absent from *Matias Rauda* because the panel did not reach the broad conclusion the government finds in that opinion.

In any event, as an unpublished decision, *Matias Rauda* should not dictate the outcome here. *See* 9th Cir. R. 36-3(a) (unpublished dispositions are "not precedent"). *Matias Rauda* contains hardly any reasoning; it does not discuss *Coolidge* (or *Abel*), *Perea-Rey*, or *Payton*, much less explain how an administrative warrant could satisfy Fourth Amendment requirements. *See Grimm v. City of Portland*, 971 F.3d 1060, 1067 (9th Cir. 2020) (reasoning of unpublished dispositions "is rarely developed enough to acknowledge and account for competing considerations, reconcile precedents that could be seen as in tension with each other, or describe limitations to the legal holdings—because in theory, there are no new legal holdings"). Perhaps most glaring, *Matias Rauda* seemed to

make a distinction under the Fourth Amendment between the warrant requirement for "approach[ing] the residence" and "knocking on the front door," on the one hand, and the warrant requirement for "enter[ing] the residence," on the other. 844 F. App'x at 948. But any such distinction was erased by the Supreme Court's decision in *Jardines*, which held unequivocally that the "curtilage" of a home "enjoys protection as part of the home itself." 569 U.S. at 6. The panel's summary disposition does not address that holding in any respect. Such an abbreviated decision should not form the basis of this Circuit's rule on the significant issue of whether ICE's knock-and-talk arrest policy is lawful.

The decision in *Matias Rauda* also does not take account of the facts discovered through this litigation. The panel in *Matias Rauda* assumed that officers would use the administrative warrant to enter the curtilage to "solicit consent to entry," 844 F. App'x at 948, but the record here shows that officers in many cases did not do anything like that. They instead asked individuals to step outside, confirmed their identity, and placed them under arrest. 1-SER-159; 1-SER-096. To the extent officers engaged in conversation with residents, it was often to trick the residents into giving their "consent." 1-SER-159; 1-SER-081–095; 2-ER-208–215 (describing class members' experiences, including that of an

individual who cooperated with ICE officers only because they led her to believe they were parole officers looking for her son).[19]

In sum, there is no reason why the Court should adopt a rule that permits ICE officers to enter onto the curtilage to "solicit consent" to enter when their purpose is to arrest. That rule not only is illogical and would likely result in numerous additional instances of deception, since few people would knowingly consent to entry into their home for an arrest operation, but it also does not take into account the Fourth Amendment principles that protect the curtilage of one's home in the first place. Indeed, the government's own law enforcement expert agreed that administrative warrants should not provide field officers with any additional authority to enter an individual's home curtilage than they would have with no warrant at all. 1-SER-146; 1-SER-043–050; 1-SER-038–041. And the government's 30(b)(6) witness testified that ICE's policy of using "knock and talks" does not depend on whether officers have an administrative warrant or not. 1-SER-146; *see* 3-SER-451–452.

[19] The record further shows the damaging consequences of officers' using deceptive tactics to "solicit consent." 2-ER-209 (E.T.C. explaining that after his arrest by ICE, he "has lost [his] faith in law enforcement); 2-ER-212 (same as to Mr. Gomez Rodriguez); *id.* (Mr. Osorio feels "stabbed in the back"); 2-ER-214 (Mr. Arellano Delgado's arrest "felt more like a kidnapping"). That evidence, too, was not before the panel in *Matias Rauda*.

Exempting ICE's civil immigration activities from long-established protections surrounding the home would be inconsistent with the Fourth Amendment and would pose immediate threats to Plaintiffs' members and the certified class. If this Court reaches the government's arguments that rely on administrative warrants, this Court should reject them.

III. The District Court Correctly Held that ICE's Use of Knock-and-Talk Arrests Violates the Administrative Procedure Act

This Court should also affirm the district court's alternative holding that ICE's use of knock-and-talk arrests violates governing regulations and thus cannot be sustained under the APA. 1-ER-020–021. Under 8 C.F.R. § 287.8(f)(2), "[a]n immigration officer may not enter into the non-public areas of a … residence including the curtilage of such residence" to "question[] the occupant[]," "unless the officer has either aw arrant or … consent." The district court correctly determined that the term "warrant" in that regulation refers to a warrant that satisfies Fourth Amendment requirements, including the requirement that the warrant be issued by a neutral and detached magistrate. 1-ER-020-21. Knock-and-talk arrests are not conducted with a warrant meeting that requirement; they therefore straightforwardly violate the government's own regulations.

This Court's cases firmly support that conclusion. In *Sanchez v. Sessions*, 904 F.3d 643 (9th Cir. 2018), this Court interpreted a neighboring provision—8 C.F.R. § 287.8(b)(2)—to incorporate "Fourth Amendment guarantees" because the

set of regulations were "intended to reflect constitutional restrictions." *Sanchez*, 904 F.3d at 651. This Court reinforced that conclusion in *Perez Cruz v. Barr*, 926 F.3d 1128 (9th Cir. 2019), which held that "the regulatory standards" under section 287.8(b)(2) are "at least as stringent as those imposed by the Fourth Amendment." *Perez Cruz*, 926 F.3d at 1137.[20] That reasoning apples squarely to section 287.8(f)(2).

The history of the regulation is in accord. The government proposed section 287.8(f)(2), along with a number of other regulations that would "establish enforcement standards," for the purpose of aligning the standards applied to immigration officers and other Department of Justice law-enforcement officers, and ensuring "disciplined and professional conduct." 57 Fed. Reg. 47,011 (Oct. 14, 1992). The government cautioned that it did not "consider it appropriate to incorporate evolving judicial precedent into regulations." 59 Fed. Reg. 42,406, 42,412 (Aug. 17, 1994). But by the time the government promulgated section 287.8(f)(2), it was already well established that the Fourth Amendment's warrant requirement refers to a judicial warrant. In fact, for many years ICE training

[20] The government argues that the district court's reliance on *Perez Cruz* was in error because that case dealt with criminal search-and-arrest warrants. Gov.Br.52. But that distinction has nothing to do with the critical part of *Perez Cruz*—its determination that the relevant regulations are at least as stringent as the Fourth Amendment.

instructed officers that they needed a judicial warrant to enter the home. 1-SER-038–040.

The government's arguments to the contrary do not reckon with the text and history of section 287.8(f)(2). The government suggests that the regulation would have used different language had it intended to pick up the Fourth Amendment's judicial-warrant requirement, rather than an administrative-warrant requirement. Gov.Br.51. But that argument is contrary to this Court's decision in *United States v. Vargas-Amaya*, 389 F.3d 901(9th Cir. 2004), which interpreted the term "warrant" in a statute to refer to a warrant meeting the requirements of the Fourth Amendment, absent some "affirmative[] indicat[ion] otherwise." *Id.* at 904. Here, there is none. To the contrary, the context of the regulation makes clear that it *must* refer to judicial warrants, because section 287.8(f)(2) governs entry not only onto the curtilage of an individual's property, but also *into* the home itself. It is implausible that the government would permit such a grave intrusion without a judicial warrant—at least without saying so expressly.

The government's citations to other statutes and regulations that refer to "warrants" or "warrants of arrest" do not alter the analysis. Some of those citations expressly refer to administrative warrants, *see* 8 U.S.C. § 1226(a) ("warrant issued by the Attorney General"), while others expressly implement the administrative-warrant statute, *see, e.g.*, 8 C.F.R. § 236.1(b). In those instances, the language or

context shows clearly that the text refers to an administrative warrant. *See id.*; 8 C.F.R. § 287.5(e), 8 C.F.R. § 287.8(c)(2) (all discussing a "warrant of arrest" or a "warrant" in the context of referring to a "warrant of arrest"); *see also* 8 C.F.R. § 241.2 (discussing "warrant of removal"). What the government lacks is any example of a regulation that uses the term "warrant" in the context of home entry to refer to an administrative warrant.

Reading "warrant" in section 287.8(f)(2) to refer to administrative warrants, rather than judicial warrants, would transform a regulation intended to go at least as far as the Fourth Amendment into one that authorizes intrusion into the home without any judicial check. The Court should reject that interpretation.

CONCLUSION

The Court should affirm.

Dated: June 22, 2026

By: *<u>/s/ Jeremy S. Kreisberg</u>*

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