

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

**United States District Court
Central District of California**

OSNY SORTO-VASQUEZ KIDD et al.,

Plaintiffs,

v.

ALEJANDRO MAYORKAS,¹
United States Secretary of Homeland
Security, in his official capacity, et al.,

Defendants.

Case No 2:20-cv-03512-ODW (JPRx)

**ORDER RE MOTIONS FOR
SUMMARY JUDGMENT [488] [489]**

I. INTRODUCTION

While “knock and talks”—as defined by the United States Supreme Court—are considered constitutional, “knock and talks”—as defined and executed by U.S. Immigration and Customs Enforcement (“ICE”)—are not. Considering the policies and practices governing how ICE conducts its “knock and talks,” the more accurate title for certain law enforcement operations would be “knock and arrests.” This Order serves to vacate those unlawful policies and practices.

In this action, Plaintiffs Osny Sorto-Vasquez Kidd, the Inland Coalition for Immigrant Justice (“ICIJ”), and the Coalition for Humane Immigrant Rights Los

¹ Pursuant to Federal Rule of Civil Procedure 25(d), Alejandro Mayorkas and Tae D. Johnson substituted in as Defendants for Chad F. Wolf and Matthew T. Albence, respectively.

1 Angeles (“CHIRLA”) seek class-wide declaratory relief that various actions, policies,
2 and practices by which ICE officers allegedly enter residences or curtilage to arrest
3 occupants violate the Fourth Amendment and the Administrative Procedure Act
4 (“APA”). (First Am. Compl. (“FAC”), ECF No. 38.) Plaintiffs also seek class-wide
5 injunctive relief to enjoin Defendants from engaging in certain actions, policies, and
6 practices in the future. (*Id.*) Plaintiffs and Official Capacity Defendants² now both
7 move for summary judgment. (*See* Pls.’ Mot. Partial Summ. J. (“PMSJ”), ECF No. 489;
8 Defs.’ Mot. Summ. J. (“DMSJ”), ECF No. 488.) For the reasons below, the Court
9 **GRANTS** Plaintiffs’ Motion and **DENIES** Defendants’ Motion, as described in more
10 detail below.³

11 II. BACKGROUND⁴

12 Plaintiffs challenge how ICE conducts law enforcement in its Los Angeles Area
13 of Responsibility (“AOR”), which includes the counties of Los Angeles, Orange, San
14 Bernardino, Riverside, Ventura, Santa Barbara, and San Luis Obispo. (Pls.’ SUF
15 (“PSUF”) 20, ECF No. 489-1; Defs.’ SUF (“DSUF”) 7, ECF No. 488-1.) Specifically,
16 Plaintiffs allege two methods by which ICE officers in this district “routinely conduct
17 arrests in or near the home that violate the Constitution”: (1) ICE officers misrepresent
18 themselves as police or probation to trick individuals into granting them entry into or
19 otherwise relinquishing the privacy of their homes (the “Ruse” claims), and (2) ICE
20 officers enter the constitutionally protected private areas around individuals’ homes to
21 arrest occupants without consent or a judicial warrant (the “Knock and Talk” claims).

22 ² The Official Capacity Defendants’ Motion for Summary Judgment, (ECF No. 488), is brought by
23 Alejandro Mayorkas (Secretary of the U.S. Department of Homeland Security), Tae Johnson (Acting
24 Director of ICE), Joseph Macias (Los Angeles Special Agent in Charge of Homeland Security
25 Investigations), David Marin (Director of ICE’s Los Angeles Field Office), and the United States of
26 America (collectively, the “Official Capacity Defendants”). (*See* DMSJ; FAC ¶¶ 17–20.)

26 ³ Having carefully considered the papers filed in connection with the motions, the Court deemed the
27 matters appropriate for decision without oral argument. Fed. R. Civ. P. 78; C.D. Cal. L.R. 7-15.

27 ⁴ Unless otherwise noted, the Court derives the factual background from the parties’ Statements of
28 Uncontroverted Facts (“SUF”), Statements of Genuine Disputes (“SGD”), and Responses thereto
(collectively, the “Statements”), in addition to the parties’ clearly and specifically cited evidence.
See C.D. Cal. L.R. 56-1 to 56-4.

1 (FAC ¶ 1.) Having previously informed the Court that the parties reached a resolution
2 as to the “Ruse” claims,⁵ the motions for summary judgment at issue here focus solely
3 on the “Knock and Talk” claims.

4 **A. “Knock and Talks”**

5 ICE—a part of the U.S. Department of Homeland Security (“DHS”)—generally
6 defines a “knock-and-talk” as simply walking up to the door of a residence to speak
7 with an occupant. (PSUF 36; DSUF 15.) As part of carrying out a “knock and talk,”
8 field officers enter onto curtilage without first obtaining residents’ express consent and,
9 upon initiating contact with the resident, generally state that they are “conducting an
10 investigation.” (PSUF 58; DSUF 22.) Field officers are trained that they may enter the
11 curtilage of a home with “an implied license,” meaning that they are instructed to walk
12 across curtilage to speak to the occupants if the general public (*e.g.*, a mailman, a
13 political canvasser, or a delivery person) could do so as well. (DSUF 17–19; *see also*
14 DSUF 29 (“Los Angeles Field Officers understand that they may enter onto the
15 curtilage of the property if the general public can do the same.”).)

16 1. “*Knock and Talks*” and *Civil Immigration Arrests*

17 In addition to “walking up to the door of a residence to speak with an occupant,”
18 (DSUF 15), ICE officers use “knock and talks” to carry out civil immigration arrests.
19 (PSUF 37.) Despite often stating a different purpose for their visit, the true “intent” and
20 “actual purpose” behind a “knock and talk” is to make an immigration arrest. (PSUF 42,
21 48.) When executing a “knock and talk,” field officers typically do not have a judicial
22 warrant (*i.e.*, a warrant issued by a judge or other neutral magistrate), (PSUF 33), but
23 are instead often armed with an administrative arrest warrant.⁶ Plaintiffs’ expert

24 ⁵ See *infra* Section II.B for discussion of this case’s procedural history.

25 ⁶ Plaintiffs state that field officers “are not required to always” have an administrative warrant when
26 conducting civil immigration enforcement operations at or near homes, (PSUF 34, 53), but Defendants
27 state that field officers “must possess” either a Form I-205 (Warrant of Removal) or Form I-200
28 (Warrant for Arrest of Noncitizen) when conducting a targeted arrest, (DSUF 24). As “civil
immigration enforcement operations at or near homes” is broader than “a targeted arrest,” both of
these statements can be true. However, despite this minor disagreement, the parties agree that field
officers do not typically possess a judicial warrant when carrying out a “knock and talk.” (*See* Defs.’

1 witness, Dr. Bret M. Dickey, states that according to available ICE data, “knock and
2 talks” accounted for at least 27% of residential arrests for the period during which data
3 was available and at least 8% of all arrests in 2022. (Decl. Bret M. Dickey ISO PMSJ
4 Ex. 1 (“Dickey Report”) ¶¶ 17–21, 35, 48–50, ECF No. 489-11.)

5 2. *“Knock and Talks” in ICE Policy and Training*

6 ICE policies and trainings authorize and encourage officers to use “knock and
7 talks” to carry out civil immigration arrests. (PSUF 56.) Field officers take Fourth
8 Amendment training on a bi-annual basis, and the materials and content presented in
9 such trainings are generated by ICE headquarters in Washington, DC. (DSUF 10–11.)
10 During a “Fourth Amendment Refresher Training,” dated June 2021, field officers were
11 instructed that they “[m]ay walk across curtilage to speak to the occupants if the general
12 public could do so as well.” (Decl. Giovanni Saarman Gonzalez ISO PMSJ (“Saarman
13 Gonzalez Decl.”) Ex. 5 (“Refresher Training Presentation”) 37, ECF No. 489-3.⁷)

14 ICE’s “At-Large Best Practices” Handbook lists a “knock and talk” as one of the
15 “[f]our primary methods of apprehension.” (Saarman Gonzalez Decl. Ex. 7 (“At-Large
16 Best Practices”) 8.) The Handbook defines a “knock and talk” as the “[a]rrest [of] an
17 individual by knocking on the door of the residence and either making an entry or
18 calling the subject outside.” (*Id.*)

19 Furthermore, to become a full-fledged field officer, a prospective ICE officer
20 must complete a 16-to-20-week Basic Immigration Enforcement Training Program
21 (“BIETP”) at the Federal Law Enforcement Training Center, also known as “the
22 academy.” (PSUF 30; DSUF 9.) The BIETP Lesson Plan, which includes a
23 Performance Objective titled “Explain how to lawfully approach a dwelling for a knock
24 and talk,” lays out factors informing prospective ICE officers of best practices when
25 using walkways/paths to access the property’s door. (Saarman Gonzalez Decl. Ex. 3

26
27 SGD (“DSGD”) 33, ECF No. 491-1 (disputing only the contention that ICE officers “never have a
judicial warrant”).

28 ⁷ For clarity, the Court’s pincites to exhibits refer to the documents’ internal pagination, rather than
the pagination provided by either the CM/ECF system or the documents’ Bates label number.

1 (“BIETP Lesson Plan”) 15–18.) The BIETP Lesson Plan lists different approaches to
2 “justify” encroaching on such walkways “for a stated purpose such as knocking on a
3 door in an attempt to speak with an occupant.” (*Id.* at 17.)

4 The Fugitive Operations Handbook, also created by ICE headquarters, is the main
5 guide for ICE field operations for the Los Angeles Field Office. (PSUF 24.) In a section
6 titled “Consent,” the Fugitive Operations Handbook states:

7 Neither a Warrant for Arrest of Alien (I-200) nor a Warrant of Removal
8 (I-205) authorizes officers to enter the target’s residence or anywhere else
9 where the target has a reasonable expectation of privacy. A government
10 intrusion into an area where a person has a reasonable expectation of
11 privacy for the purpose of gathering information will trigger Fourth
12 Amendment protections, including a physical intrusion into a
13 constitutionally protected area Therefore, without a criminal warrant,
officers must obtain voluntary consent before entering a residence or area
where there is a reasonable expectation of privacy.

14 (Saarman Gonzalez Decl. Ex. 2 (“Fugitive Operations Handbook”) 18.) The Fugitive
15 Operations Handbook does not specifically reference “knock and talks.” (*See id.*)

16 3. *Examples of “Knock and Talks” in Practice*

17 Plaintiffs provide numerous examples involving members of the “Knock and
18 Talk Class” of ICE field officers executing a “knock and talk” with the purpose of
19 arresting the occupant. (PSUF 69–81.⁸) The Court highlights a few here.

20
21 ⁸ Defendants object to portions of the declarations in support of the Statements in this section. (*See*
22 *Defs.’ Objs. Evid. ISO PMSJ, ECF No. 491-7.*) These objections are primarily based on hearsay, lack
23 of foundation, the best evidence rule, and improper legal argument. (*See id.*) Much of the material to
24 which Defendants object is unnecessary to the resolution of the motions and the Court need not resolve
25 these objections. For similar reason, foundation-based objections are moot in the context of summary
26 judgment motions. *Burch v. Regents of Univ. of Cal.*, 433 F. Supp. 2d 1110, 1119 (E.D. Cal. 2006).
27 Moreover, the Court does not consider improper argument and legal conclusions in the parties’
28 Statements, (*see* Scheduling & Case Management Order (“Scheduling Order”) 7–9, ECF No. 82), so
Defendants’ objections on that basis are also moot. As for hearsay, a court may consider evidence
raised on summary judgment if the evidence could be presented in an admissible form at trial. Fed.
R. Civ. P. 56(e); *Fraser v. Goodale*, 342 F.3d 1032, 1036–37 (9th Cir. 2003). However, the Court
finds the evidence objected-to on the basis of hearsay as unnecessary to resolving these motions.
Accordingly, Defendants’ hearsay objections are also denied as moot. Finally, to the extent the Court
relies on objected-to evidence in this order without further discussion, those objections have been

1 On February 17, 2017, at approximately 8:30 am, ICE officers conducted a
2 “knock and talk” at the home of Diana Rodriguez⁹ in Santa Ana. (PSUF 72.) The
3 officers approached the back entrance of Rodriguez’s home, which is only accessible
4 by entering the back yard. (*Id.*) After Rodriguez’s girlfriend answered the door, an
5 officer asked Rodriguez to step outside, answer some questions, and provide the officers
6 with identification. (*Id.*) After Rodriguez stepped outside, the officers took her into
7 custody. (*Id.*)

8 On April 23, 2017, at approximately 7:30 am, ICE officers approached the
9 residence of Linda Urbano Vasquez in Pomona by entering through a fence surrounding
10 her property. (PSUF 73.) The officers entered onto a covered porch to reach the front
11 door. (*Id.*) When Urbano Vasquez answered the door, officers indicated that they were
12 probation and looking for her brother, Jose. (*Id.*) After Jose approached the front door,
13 the officers took him into custody. (*Id.*)

14 On October 13, 2019, ICE officers conducted a “knock and talk” at the residence
15 of Sigifredo Zendejas Lopez in Anaheim. (PSUF 74.) To access the front door, the
16 officers had to enter a small patio outside the door that was covered by a tarp and
17 enclosed by a gate. (*Id.*) When Mr. Zendejas Lopez’s approached the door, the officers
18 told him that they needed to speak with him outside, where the officers took him into
19 custody. (*Id.*)

20 On April 23, 2020, at approximately 6:00 am, ICE officers came to home of
21 Javier Gomez Rodriguez in Santa Maria to execute a “knock and talk.” (PSUF 75.)
22 Upon opening the door, two officers asked Gomez Rodriguez to step outside to answer
23

24 _____
25 thoroughly considered and are overruled. See *Burch*, 433 F. Supp. 2d at 1122 (proceeding with only
26 necessary rulings on evidentiary objections).

27 ⁹ Defendants ask the Court to judicially notice three different minute orders from Los Angeles and
28 Orange County Superior Court related to the probation of Diana Rubick Rodriguez, Jose Urbano
Vasquez, and Sigifredo Zendejas Lopez. (Req. Judicial Notice, ECF No. 488-2.) Defendants’ Motion,
however, makes no mention of these documents or states why they are in any way relevant.
Regardless, the Court reviewed each of the documents and did not find them necessary to resolve
either motion for summary judgment and, accordingly, **DENIES** Defendant’s Request **AS MOOT**.

1 a couple of questions. (*Id.*) As soon as he stepped outside, the officers arrested him.
2 (*Id.*)

3 In each of these instances, consistent with the training policies and procedures
4 described above, ICE officers entered the curtilage of the home for the purpose of
5 arresting the resident without a judicial warrant or the express consent of the resident.

6 **B. This Lawsuit**

7 On April 16, 2020, Plaintiffs initiated this lawsuit against various officials for
8 ICE and DHS in their official capacities, the United States of America, and individual
9 officers O.M., C.C., J.H., and J.N. (Compl., ECF No. 1; FAC.)

10 On February 7, 2023, the Court granted ICIJ and CHIRLA’s (together, the
11 “Coalition Plaintiffs”) motion to certify two classes of individuals who have been or
12 will be affected by Defendants’ alleged unconstitutional practices: the “Ruse” Class and
13 the “Knock and Talk” Class. (Order Granting Pls.’ Mot. Certify Class, ECF No. 335.)
14 The latter class includes “[a]ll individuals residing at a home in the [Los Angeles Area
15 of Responsibility] where ICE has conducted or will conduct a warrantless civil
16 immigration enforcement operation using a ‘knock and talk.’” (*Id.* at 24.)

17 On October 10, 2023, after the parties informed the Court that they had reached
18 or believed they would reach a settlement of all claims in this action related to the
19 “Ruse” Class claims, the Court stayed all claims except for those related to the “Knock
20 and Talk” Class. (Min. Order, ECF No. 485.)

21 The parties now each move for summary judgment regarding the “Knock and
22 Talk” Class claims. (*See* PMSJ; DMSJ.) The Coalition Plaintiffs, on behalf of
23 themselves and the certified “Knock and Talk” Class, seek summary judgment on their
24 claims challenging Defendants’ policy and practice of entering the curtilage of homes
25 to arrest class members for alleged civil immigration violations. (*See* PMSJ.)
26 Defendants seek summary judgment in their favor on the same “Knock and Talk” Class
27 claims. (*See* DMSJ.)

28

1 **III. LEGAL STANDARD**

2 A court “shall grant summary judgment if the movant shows that there is no
3 genuine dispute as to any material fact and the movant is entitled to judgment as a matter
4 of law.” Fed. R. Civ. P. 56(a). A disputed fact is “material” where it might affect the
5 outcome of the suit under the governing law, and the dispute is “genuine” where “the
6 evidence is such that a reasonable jury could return a verdict for the nonmoving party.”
7 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The burden of establishing
8 the absence of a genuine issue of material fact lies with the moving party. *See Celotex*
9 *Corp. v. Catrett*, 477 U.S. 317, 322–23 (1986).

10 Once the moving party satisfies its initial burden, the nonmoving party cannot
11 simply rest on the pleadings or argue that any disagreement or “metaphysical doubt”
12 about a material issue of fact precludes summary judgment. *See id.* at 324; *Matsushita*
13 *Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). The non-moving
14 party must show that there are “genuine factual issues that . . . may reasonably be
15 resolved in favor of either party.” *Cal. Architectural Bldg. Prods., Inc. v. Franciscan*
16 *Ceramics, Inc.*, 818 F.2d 1466, 1468 (9th Cir. 1987) (quoting *Anderson*, 477 U.S.
17 at 250) (emphasis omitted). Provided the moving party has satisfied its burden, the
18 court should grant summary judgment against a party who fails to make a sufficient
19 showing on an element essential to her case when she will ultimately bear the burden
20 of proof at trial. *Celotex*, 477 U.S. at 322–23.

21 In ruling on summary judgment motions, courts “view the facts and draw
22 reasonable inferences in the light most favorable” to the nonmoving party, without
23 making credibility determinations or weighing conflicting evidence. *Scott v. Harris*,
24 550 U.S. 372, 378 (2007) (internal quotation marks omitted). Thus, when parties file
25 cross-motions for summary judgment, the court “evaluate[s] each motion separately,
26 giving the nonmoving party in each instance the benefit of all reasonable inferences.”
27 *A.C.L.U. of Nev. v. City of Las Vegas*, 466 F.3d 784, 790–91 (9th Cir. 2006). The court
28 considers each party’s cited evidence, “regardless under which motion the evidence is

1 offered.” *Las Vegas Sands, LLC v. Nehme*, 632 F.3d 526, 532 (9th Cir. 2011).
2 Conclusory, speculative, or “uncorroborated and self-serving” testimony will not raise
3 genuine issues of fact to defeat summary judgment. *Villiarimo v. Aloha Island Air, Inc.*,
4 281 F.3d 1054, 1061 (9th Cir. 2002); *Thornhill Publ’g Co. v. GTE Corp.*, 594 F.2d 730,
5 738 (9th Cir. 1979). The nonmoving party must provide more than a “scintilla” of
6 contradictory evidence to survive summary judgment. *Anderson*, 477 U.S. at 251–52;
7 *Addisu v. Fred Meyer, Inc.*, 198 F.3d 1130, 1134 (9th Cir. 2000).

8 The Court may assume that material facts claimed and adequately supported are
9 undisputed except to the extent that such material facts are (a) included in the opposing
10 party’s responsive statement of disputes *and* (b) controverted by declaration or
11 competent written evidence. C.D. Cal. L.R. 56-4. The Court is not obligated to look
12 any further in the record for supporting evidence other than what is actually and
13 specifically referenced. *Id.*

14 IV. DISCUSSION

15 With only the “knock and talk” claims at issue here, Plaintiffs argue that the Court
16 should “issue injunctive and declaratory relief to put an end to Defendants’ blatant
17 disregard of the Fourth Amendment and sanctity of the home” and “‘set aside’
18 Defendants’ unlawful policy and practice under the APA.” (PMSJ 2.) Conversely,
19 Defendants ask that the Court grant summary judgment in their favor on the same issue.
20 (DMSJ 2.)

21 The Court will first consider whether Defendants’ home arrest policies and
22 practices violate the Fourth Amendment; it will then determine whether those policies
23 and practices violate the APA; and, finally, the Court will decide what remedies are
24 available and best suited to address those determinations.

25 A. “Knock and Talks” and the Fourth Amendment

26 The narrow issue here is whether Defendants’ policy and practice of entering the
27 curtilage of homes and knocking on the door, not merely to talk to residents but to arrest
28 them, violates the protections of the Fourth Amendment.

1 1. *The Protections of the Fourth Amendment*

2 At the core of the Fourth Amendment stands “the right of a man to retreat into
3 his own home and there be free from unreasonable governmental intrusion.” *Silverman*
4 *v. United States*, 365 U.S. 505, 511 (1961). “It is a ‘basic principle of Fourth
5 Amendment law’ that searches and seizures inside a home without a warrant are
6 presumptively unreasonable.” *Payton v. New York*, 445 U.S. 573, 586 (1980) (quoting
7 *Coolidge v. New Hampshire*, 403 U.S. 443, 477 (1971)). The general rule states: “[O]ur
8 law holds the property of every man so sacred, that no man can set his foot upon his
9 neighbour’s close without his leave.” *Florida v. Jardines*, 569 U.S. 1, 8 (2013)
10 (alteration in original) (quoting *Entick v. Carrington*, 2 Wils. K.B. 275 (K.B. 1765)).
11 This protection extends to curtilage—the area “immediately surrounding [the] house”—
12 which “enjoys protection as part of the home itself.” *Id.* at 6; *see also Oliver v. United*
13 *States*, 466 U.S. 170, 180 (1984) (stating that curtilage is “part of [the] home itself for
14 Fourth Amendment purposes.”). Therefore, “[b]ecause the curtilage is part of the home,
15 searches and seizures in the curtilage without a warrant are also presumptively
16 unreasonable.” *United States v. Perea-Rey*, 680 F.3d 1179, 1184 (9th Cir. 2012) (citing
17 *Oliver*, 466 U.S. at 180).

18 Here, it is undisputed that ICE officers physically encroach on and occupy the
19 curtilage of an individual’s home when conducting a “knock and talk.” Lacking a
20 judicial warrant, express consent, or some other exception to the warrant requirement,
21 Defendants argue that ICE officers are armed with implied consent and an
22 administrative warrant when executing a “knock and talk.”

23 2. *Administrative Warrants*

24 Defendants argue that “ICE’s execution of an arrest pursuant to an administrative
25 warrant following a consensual encounter does not violate the Fourth Amendment.”
26 (DMSJ 2, 8–11.) That is not a proper formulation of the issue here, which focuses not
27 on whether the arrest itself is authorized, but rather whether the “consensual encounter”
28

1 leading up to the arrest was proper. To this end, the administrative warrants upon which
2 Defendants rely do not satisfy the Fourth Amendment’s warrant requirement.

3 As a preliminary matter, Defendants have stipulated in this litigation that they
4 “will not argue or claim” that an administrative warrant provides legal authority “to
5 enter a residence or other location in which an individual has a reasonable expectation
6 of privacy” or “that the presence of such warrant is a factor supporting any defense by
7 Defendants in this action.” (Stip. ¶ 22, ECF No. 153.) Defendants now try to argue that
8 they may use the existence of administrative warrants not “as a factor supporting their
9 *defense*, but rather to show that Plaintiffs cannot establish their *prima facie* case of a
10 Fourth Amendment violation.” (DMSJ 10.) Defendants’ position is illogical and
11 untenable. A “defense” includes a contention that “demonstrates that plaintiff has not
12 met its burden of proof.” *Zivkovic v. S. Cal. Edison Co.*, 302 F.3d 1080, 1088 (9th Cir.
13 2002). Defendants cannot have their cake and eat it too. Defendants here have reaped
14 the benefits of their agreement to enter into the stipulation by being excused from
15 providing certain discovery, and they are now precluded from arguing that
16 administrative warrants provide legal authority “to enter a residence or other location
17 in which an individual has a reasonable expectation of privacy,” which includes the
18 curtilage of the home. (*See* Stip. ¶ 22.)

19 However, even if the Court were to consider administrative warrants, Defendants’
20 arguments would still fall short. Although it is true that 8 U.S.C. §§ 1226(a) and
21 1231(a)—which authorize the arrest of noncitizens with an administrative warrant and
22 mandate that noncitizens be taken into custody for removal—make no reference of a
23 judicial warrant, the question here is whether an administrative warrant serves a
24 sufficient basis upon which an ICE officer may enter the constitutionally protected areas
25 of a home.

26 A judicial “arrest warrant founded on probable cause implicitly carries with it the
27 limited authority to enter a dwelling in which the suspect lives when there is reason to
28 believe the suspect is within,” *Payton*, 445 U.S. at 603, and “consistent with the Fourth

1 Amendment, immigration authorities may arrest individuals for civil immigration
2 removal purposes pursuant to an administrative arrest warrant issued by an executive
3 official, rather than by a judge,” *Gonzalez v. U.S. Immigr. & Customs Enf’t*, 975 F.3d
4 788, 825 (9th Cir. 2020). However, as the Court has previously noted, (*see* Order re
5 Mot. Dismiss, ECF No. 58), the Supreme Court has expressly declined to consider
6 whether an administrative warrant satisfied the requirements for “warrants” under the
7 Fourth Amendment. *See Abel v. United States*, 362 U.S. 217, 230 (1960)).

8 Rather, case law supports the need for independent judgment in issuing warrants.
9 *See, e.g., Shadwick v. City of Tampa*, 407 U.S. 345, 350 (1972) (“The warrant
10 traditionally has represented an independent assurance that a search and arrest will not
11 proceed without probable cause Thus, an issuing magistrate must . . . be neutral
12 and detached.”); *Coolidge*, 403 U.S. at 449 (“[T]he whole point of the basic rule . . . is
13 that prosecutors and policemen simply cannot be asked to maintain the requisite
14 neutrality with regard to their own investigations.”).

15 Here, not all case administrative warrants are reviewed by an independent officer.
16 There are fifty-two immigration officer categories expressly authorized to issue arrest
17 warrants for immigration violations, as well as “[o]ther duly authorized officers or
18 employees of [DHS] or the United States who are delegated the authority.” 8 C.F.R.
19 § 287.5(e)(2). For example, a Form I-205 (Warrant of Removal) is reviewed by an ICE
20 supervisor who signs on behalf of the Field Office Director and not by any judge
21 (immigration or otherwise). (Decl. Anne Lai ISO Pls.’ Opp’n DMSJ Ex. 12 (“Giles
22 Dep.”) 39:23–40:24, ECF No. 492-3.) Because the administrative warrants at issue here
23 lack the independent assurance guaranteed by the Fourth Amendment, they do not
24 immunize Defendants’ conduct. This is also consistent with ICE training materials,
25 which affirm “that administrative warrants do not authorize entry into a dwelling
26 without consent.” (DSUF 25.)

27 Having determined that an administrative warrant is insufficient to enter the
28 constitutionally protected areas of a home, the Court turns next to whether ICE officers

1 have implied consent to conduct a “knock and talk”—as defined by ICE—to carry out
2 a civil immigration arrest.

3 3. *Implied Consent*

4 Defendants argue that ICE officers have an implied license to enter the curtilage
5 of an individual’s residence to “[a]rrest an individual by knocking on the door of the
6 residence and either making entry or calling the subject outside.” (DMSJ 5–6; At-Large
7 Best Practices 8.)

8 A person can give leave (even implicitly) for another to enter the constitutionally
9 protected extensions of one’s home. “A license may be implied from the habits of the
10 country,” *McKee v. Gratz*, 260 U.S. 127, 136 (1922), and “the knocker on the front door
11 is treated as an invitation or license to attempt an entry, justifying ingress to the home
12 by solicitors, hawkers and peddlers for all kinds of salable articles,” *Breard v.*
13 *Alexandria*, 341 U.S. 622, 626 (1951). “This implicit license typically permits the
14 visitor to approach the home by the front path, knock promptly, wait briefly to be
15 received, and then (absent invitation to linger longer) leave.” *Jardines*, 569 U.S. at 8.
16 Thus, applying this standard to law enforcement, “a police officer not armed with a
17 warrant may approach a home and knock, precisely because that is ‘no more than any
18 private citizen might do.’” *Id.* (quoting *Kentucky v. King*, 563 U.S. 452, 469 (2011)).

19 Applying the Supreme Court’s holding in *Jardines*, the Ninth Circuit has found
20 that “the scope of a license is often limited to a specific purpose, and the customary
21 license to approach a home and knock is generally limited to the ‘purpose of asking
22 questions of the occupants.’” *United States v. Lundin*, 817 F.3d 1151, 1159 (9th Cir.
23 2016) (citation omitted) (quoting *Perea-Rey*, 680 F.3d at 1187) (citing *Jardines*,
24 569 U.S. at 8–10). Accordingly, a law enforcement officer who knocks on the door of
25 a home for a purpose other than “asking questions of the occupants . . . generally
26 exceed[s] the scope of the customary license and therefore do[es] not qualify for the
27 ‘knock and talk’ exception.” *Id.* This is because although the “reasonableness” inquiry
28 under the Fourth Amendment “is predominantly an objective inquiry,” *Ashcroft v. al-*

1 *Kidd*, 563 U.S. 731, 736 (2011), the determination of “whether the officer’s conduct
2 was an objectively reasonable search . . . depends upon whether the officers had an
3 implied license to enter the porch, which in turn depends upon the purpose for which
4 they entered,” *Jardines*, 569 U.S. at 10. Therefore, because an implied license to enter
5 the curtilage of a home is limited “to a specific purpose,” *id.* at 9, “[t]he ‘knock and talk’
6 exception to the warrant requirement does not apply when officers encroach upon the
7 curtilage of a home with the intent to arrest the occupant,” *Lundin*, 817 F.3d at 1160.

8 Defendants argue that the Ninth Circuit’s holding in *Lundin* does not apply
9 because it “arose in the criminal context, involved a warrantless arrest, and took place
10 at 4:00 a.m.” (DMSJ 6.) In doing so, Defendants rely on *Matias Rauda v. Wilkinson*,
11 844 F. App’x 945, 948 (9th Cir. 2021) (unpublished),¹⁰ where the Ninth Circuit
12 “decline[d] . . . to extend [the court’s] holding in [*Lundin*]” and upheld the denial of a
13 motion to suppress evidence in an immigration proceeding. However, *Matias Rauda* is
14 materially distinguishable from this case. As expressly noted in the court’s opinion,
15 “[b]ecause the exclusionary rule is generally inapplicable to immigration proceedings,”
16 a petitioner must show an “egregious violation” of his or her Fourth Amendment rights
17 to obtain a suppression remedy. *Id.* (quoting *I.N.S. v. Lopez-Mendoza*, 468 U.S. 1032
18 (1984)). In other words, the panel in *Matias Rauda* was considering whether the alleged
19 Fourth Amendment violation warranted the suppression of evidence in Matias Rauda’s
20 immigration proceeding, which required an “egregious violation.” This case arises
21 under a different posture and legal standard, which seeks to affirmatively prevent future
22 Fourth Amendment violations, including violations that may not qualify as “egregious.”
23 Although it is true that ICE is conducting arrests for the purpose of immigration
24 enforcement, affirmative prospective relief against Fourth Amendment violations
25 remains available and triggers constitutional concerns distinct from the “exclusionary

26
27 ¹⁰ As an unpublished case, *Matias Rauda* has no precedential value. See 9th Cir. R. 36-3(a)
28 (“Unpublished dispositions and orders of this Court are not precedent.”) Unpublished decisions are
“of little use to district courts or litigants in predicting how [the Ninth Circuit] . . . will view any novel
legal issues in the case on appeal.” *Grimm v. City of Portland*, 971 F.3d 1060, 1067 (9th Cir. 2020).

1 rule” at issue in *Matias Rauda*. See *Lopez-Mendoza*, 468 U.S. at 1045 (discussing “the
2 availability of alternative remedies for institutional practices by the INS that might
3 violate Fourth Amendment rights”).

4 Defendants second argument on why *Lundin* is inapplicable—ICE officers
5 mostly possess administrative warrants—is equally fruitless. As discussed previously,
6 the Court does not find that administrative warrants alone permit law enforcement entry
7 into the protected areas of a home, and therefore do not grant ICE officers, who are
8 armed with the intent to arrest the occupant, the authority to enter the protected areas of
9 a residence to speak with the occupant or further “solicit consent to entry.” (DMSJ 9.)
10 And finally, ICE’s guidance here that “knock and talks” can be conducted as early as
11 6:00 a.m. is not materially distinguishable from the “knock and talk” conducted at 4:00
12 a.m. in *Lundin*. Therefore, the Court heeds the Ninth Circuit’s guidance in *Lundin*,
13 which stands for the clear proposition that “[t]he ‘knock and talk’ exception to the
14 warrant requirement does not apply when officers encroach upon the curtilage of a home
15 with the intent to arrest the occupant.” *Lundin*, 817 F.3d at 1160.

16 Here, ICE officers are trained “that they may enter the curtilage of a residence to
17 conduct a knock and talk under the theory of an implied license.” (DMSJ 3.) However,
18 in contravention of the rule for implied licenses detailed above, ICE’s policy and
19 practice does not limit that encroachment to the purpose of “asking questions of the
20 occupant.” See *Lundin*, 817 F.3d at 1159. For example, although certain training
21 materials state that ICE officers can merely “walk across curtilage to speak to the
22 occupants if the general public could do so as well,” (Refresher Training
23 Presentation 37), or that field officers can knock on a person’s door “for a stated purpose
24 such as knocking on a door in an attempt to speak with an occupant,” (BIETP Lesson
25 Plan 17), ICE’s training materials take that guidance too far when it encourages field
26 officers to use “knock and talks” as one of the “[f]our primary methods of
27 apprehension,” (At-Large Best Practices 8). To be consistent with the Fourth
28 Amendment, it is not sufficient that “[f]ield officers are instructed that the license is

1 granted for the purpose of *making contact with the occupant.*” (DSUF 19 (emphasis
2 added).) This is because the implied license of approaching the front door of a residence
3 does not cover all instances “of making contact with the occupant,” but is more narrowly
4 tailored to “the purpose of asking questions of the occupants.” *Perea-Rey*, 680 F.3d
5 at 1187. The intent and purpose of arresting the occupant does not fall within the scope
6 of the implied license.

7 However, that is precisely how “knock and talks” are employed by ICE field
8 officers. ICE’s Supervisory Detention and Deportation Officer (SDDO) C.S. states that
9 “knock and talks” constitute “an arrest operation.” (Decl. Christina Marquez ISO
10 DMSJ (“Marquez Decl.”) Ex. P (“SDDO C.S. Dep.”) 100:13–19, ECF No. 488-4.) ICE
11 Deportation Officer H.P. states that H.P.’s understanding of ICE’s policy and practice
12 regarding implied consent allows him to “knock on the door” to arrest someone “if
13 [H.P.’s] intention is to make the arrest.” (*Id.* Ex. N (“DO H.P. Dep.”) 252:4–16.) In
14 fact, according to ICE Deportation Officer D.G., the only time D.G. performs a “knock
15 and talk” is when D.G. is executing an administrative arrest warrant. (*Id.* Ex. T (“DO
16 D.G. Dep.”) 119:5–20.) These sentiments are confirmed by ICE Deportation Officer
17 F.G., who states that, after confirming that the suspect was home during a “knock and
18 talk,” F.G. would “do the arrest.” (*Id.* Ex. U (“DO F.G. Dep.”) 71:24–72:3.)

19 The narratives of “knock and talks” executed upon class members only further
20 elucidate the consequences that ICE’s training and policy have in practice. In each of
21 the examples reviewed by the Court,¹¹ ICE officers routinely entered the curtilage of a
22 home and, immediately upon identifying the suspect, took him or her into custody. In
23 their briefing, Defendants agree that “[a]ll knock and talks require an administrative
24 warrant . . . because [they are] considered . . . targeted arrest[s].” (DMSJ 9.)

25 To summarize, although it is true that the specific facts surrounding each “knock
26 and talk” can vary, it is consistently true across ICE’s policies and practice that field
27 officers are trained to enter constitutionally protected areas of a home for the purpose

28 ¹¹ See *supra* Section II.A.3 (“Examples of ‘Knock and Talks’ in Practice”).

1 of arresting the occupant. Such policies and practices are materially distinguishable
2 from lawfully “approaching a home . . . and knocking on the front door with the intent
3 merely to ask the resident questions,” *Lundin*, 817 F.3d at 1160, and exceed the scope
4 of implied consent. It is therefore clear to the Court that “knock and talks”—which, as
5 defined and executed by ICE, can be more accurately termed “knock and arrests”—
6 violate the Fourth Amendment insofar that they are conducted with the purpose of
7 arresting the resident.

8 **B. “Knock and Talks” and the APA**

9 The next issue is whether ICE’s systemwide policy and practice of “knock and
10 talks” also runs afoul of the APA. Plaintiffs allege that Defendants’ conduct constitutes
11 both a regulatory and constitutional violation of the APA. The Court considers each in
12 turn.

13 1. *Regulatory APA Violation*

14 A court reviewing an APA claim must “hold unlawful and set aside agency
15 action . . . found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not
16 in accordance with law.” 5 U.S.C. § 706(2)(A). Relevantly, an APA claim seeking
17 such relief may be brought where an agency is alleged to have done “precisely what
18 [its] regulations forbid [it] to do.” *United States ex rel. Accardi v. Shaughnessy*,
19 347 U.S. 260, 267 (1954); accord *Church of Scientology of Cal. v. United States*,
20 920 F.2d 1481, 1487 (1990) (“Pursuant to the *Accardi* doctrine, an administrative
21 agency is required to adhere to its own internal operating procedures.”); *Morton v. Ruiz*,
22 415 U.S. 199, 235 (1974) (“Where the rights of individuals are affected, it is incumbent
23 upon agencies to follow their own procedures.”).

24 Here, Plaintiffs allege that the agencies fail to comply with 8 C.F.R.
25 § 287.8(f)(2), which states in pertinent part,

26 An immigration officer may not enter into non-public areas of . . . a
27 residence including the curtilage of such residence . . . for the purpose of
28 questioning the occupants or employees concerning their right to be or

1 remain in the United States unless the officer has either a warrant or the
2 consent of the owner or other person in control of the site to be inspected.

3 This regulation applies to “[s]ite inspections,” which are “enforcement activities
4 undertaken to locate and identify aliens illegally in the United States . . . at locations
5 where there is a reasonable suspicion, based on articulable facts, that such aliens are
6 present.” 8 C.F.R. § 287.8(f)(1).

7 Similar to the Fourth Amendment claims discussed above, Plaintiffs allege that
8 ICE field officers violate this regulation when they enter onto the curtilage of a
9 residence without a judicial warrant “for the purpose of questioning the occupants.”
10 (PMSJ 12–13 (quoting 8 C.F.R. § 287.8(f)(2)).) To make this determination, the Court
11 must resolve: (1) whether ICE officers are entering into “non-public” areas of a
12 residence, and (2) whether they possess a “warrant” for the purposes of 8 C.F.R.
13 § 287.8(f)(2).

14 The first issue is whether immigration officers, when conducting a “knock and
15 talk,” are entering into “non-public” areas of a residence for the purposes of 8 C.F.R.
16 § 287.8(f)(2). Despite the regulation expressly stating that the “non-public” areas of a
17 residence “includ[e] the curtilage of [a] residence,” Defendants argue that curtilage is
18 exempt from this regulation because it constitutes “public” areas of a residence. (*See*
19 *DMSJ 11–12; Defs.’ Opp’n PMSJ 9–10, ECF No. 491.*) Defendants’ position on this
20 issue is untenable.

21 Defendants’ primary argument is that their interpretation is supported by 8 C.F.R.
22 § 287.8(f)(4), which authorizes an immigration officer to enter “any area of a business
23 or other activity to which the general public has access or onto open fields that are not
24 farms or other outdoor agricultural operations without a warrant, consent, or any
25 particularized suspicion.” However, the areas referenced in this section of the
26 regulation are clearly distinguishable from the constitutionally protected areas of a
27 home. Rather, the “public” areas referenced in this regulation reflect the “open fields
28 doctrine,” under which “open fields” are not protected by the Fourth Amendment. *See*

1 *Hester v. United States*, 265 U.S. 57, 59 (1924) (holding that the Fourth Amendment’s
2 protection accorded “persons, houses, papers and effects” did not extend to the open
3 fields); *see also Oliver*, 466 U.S. at 178 (upholding the constitutionality of a search of
4 an open field despite posted “no trespassing” signs). However, curtilage—the area
5 immediately surrounding the home—does not fall under the open fields doctrine. *See*
6 *United States v. Dunn*, 480 U.S. 294, 299–303 (1987) (distinguishing curtilage from
7 open fields). Therefore, the Court finds, consistent with the clear language of 8 C.F.R.
8 § 287.8(f)(2), that immigration officers enter non-public areas of a residence when
9 conducting a “knock and talk” as defined and executed by ICE.

10 Second, 8 C.F.R. § 287.8(f)(2) requires that an immigration officer first obtain a
11 warrant or appropriate consent to enter the curtilage. Plaintiffs argue that the use of the
12 term “warrant” here means “a judicial warrant that complies with the Fourth
13 Amendment, (PMSJ 12), whereas Defendants argue that “warrant” refers to an
14 administrative warrant issued by authorized immigration officers, (DMSJ 11 n.3). “It
15 is a well-established canon of statutory construction that when Congress uses a term of
16 art, such as ‘warrant,’” Congress intends “to incorporate the common definition of that
17 term.” *United States v. Vargas-Amaya*, 389 F.3d 901, 904 (9th Cir. 2004). Applying
18 this understanding to the regulation, the Immigration and Naturalization Service
19 (“INS”) has found that “the rule incorporate[d] judicial precedent based on the Fourth
20 Amendment to the Constitution concerning the issuance of warrants [and] the obtaining
21 of consent to enter a premises.” *Enhancing the Enforcement Authority of Immigration*
22 *Officers*, 59 Fed. Reg. 42406, 42412 (Aug. 17, 1994). Furthermore, the Ninth Circuit
23 has found that § 287.8¹² “was intended to reflect constitutional restrictions on the
24 ability of immigration officials to interrogate and detain persons in this country” and
25 thus “provid[es] at least as much protection as the Fourth Amendment.” *Perez Cruz v.*
26 *Barr*, 926 F.3d 1128, 1137 (9th Cir. 2019) (quoting *Sanchez v. Sessions*, 904 F.3d 643,

27
28 ¹² In *Perez Cruz*, the Ninth Circuit specifically referred to 8 C.F.R. § 287(b)(2), but that section involves equally important constitutional rights and the court’s reasoning applies to subsection (f)(2).

1 651 (9th Cir. 2018)). The Court therefore agrees with this position and finds that the
2 warrant requirements under the Fourth Amendment apply to 8 C.F.R. § 287.8(f)(2),
3 which, as discussed previously, require a judicial warrant to enter a home or its curtilage
4 under the Fourth Amendment.

5 To support their interpretation, Defendants again rely on a separate section of the
6 regulation that defines a “warrant of arrest” as a “Form I-200, Warrant of Arrest.”
7 (DMSJ 11 n.3 (citing 8 C.F.R. § 236.1(b)).) However, although it is true that a “warrant
8 of arrest” can refer to an administrative warrant, the use of the term “warrant” does not
9 necessarily have the same definition as a “warrant of arrest.”¹³ For Defendants’
10 interpretation to hold water, an administrative warrant would authorize officers to enter
11 a residence, which, as discussed previously, is an untenable position.

12 Accordingly, the Court finds that Defendants’ systematic conduct of entering
13 persons’ curtilage without a judicial warrant with the intent to arrest the occupant
14 violates 8 C.F.R. § 287.8(f)(2).

15 2. *Constitutional APA Violation*

16 An APA claim can also be brought against a final agency action that is “contrary
17 to constitutional right, power, privilege, or immunity.” 5 U.S.C. § 706(2)(B). As
18 discussed above, Plaintiffs sufficiently establish a Fourth Amendment violation
19 resulting from the agencies’ policy and practice regarding “knock and talks,” and
20 Defendants do not argue that this finding is insufficient to support an APA violation.
21 Accordingly, summary judgment for the “Knock and Talk” Class is also appropriate as
22 to the constitutional APA claim.

23 **C. Available and Appropriate Remedies**

24 Having determined that the “Knock and Talk” Class successfully establishes
25 Fourth Amendment and APA violations, the Court must determine what remedies
26

27
28 ¹³ In fact, this argument, to a degree, cuts against Defendants as it makes clear that the legislature has the ability to clarify when they intend to refer to an administrative warrant when that is their intent.

1 properly and adequately cure Defendants’ misconduct. Plaintiffs seek declaratory and
2 injunctive relief.

3 The Court must first determine which remedies are available. Under 8 U.S.C.
4 § 1252(f), “no court (other than the Supreme Court) shall have jurisdiction or authority
5 to enjoin or restrain the operation of the provisions of part IV of this subchapter
6 [§§ 1221–1232].” This statute “generally prohibits lower courts from entering
7 injunctions that order federal officials to take or to refrain from taking actions to
8 enforce, implement, or otherwise carry out the specified statutory provisions.” *Garland*
9 *v. Aleman Gonzalez*, 596 U.S. 543, 550 (2022).

10 Defendants argue that injunctive relief would necessarily interfere with two
11 statutes that fall within § 1252(f)’s specified statutory provisions: 1226(a) and 1231(a).
12 Title 8 U.S.C. § 1226(a) states that “[o]n a warrant issued by the Attorney General, an
13 alien may be arrested and detained pending a decision on whether the alien is to be
14 removed from the United States.” Title 8 U.S.C. § 1231(a) provides that “when an alien
15 is ordered removed, the Attorney General shall remove the alien from the United States
16 within a period of 90 days.” Sections 1226(a) and 1231(a) pertain to the issuance of a
17 warrant for arrest, the general authority to arrest an alien, and the subsequent detention
18 and removal of the alien.

19 In *Aleman Gonzalez*, the Supreme Court held that the test under § 1252(f) is
20 whether an injunction would “interfere with [Defendants’] efforts to operate” one of the
21 specified statutory provisions. *Aleman Gonzalez*, 596 U.S. at 551. An injunction in this
22 action would not directly pertain to the issuance of warrants, but rather the method in
23 which warrants are executed. In fact, Plaintiffs expressly disclaim any challenge against
24 the issuance of the removal order itself or the decision to execute it. (PMSJ 15–16.)
25 Rather, the *execution* of warrants is governed by 8 U.S.C. § 1357, which is not one of
26 the specified statutory provisions covered by § 1252(f). Section 1252(f) therefore does
27 not directly impede the Court’s authority to issue injunctive relief to ensure that ICE
28 executes warrants in a manner consistent with the United States Constitution. *See*

1 *Galvez v. Jaddou*, 52 F.4th 821, 830–31 (9th Cir. 2022) (holding § 1252(f) does not bar
2 injunctive relief enjoining immigration statutes outside of the specified statutory
3 provisions); *Gonzales v. DHS*, 508 F.3d 1227, 1232–33 (2007) (same).

4 While a court may not issue injunctive relief that interferes with a covered
5 provision, a court may still “enjoin the unlawful operation of a provision *that is not*
6 *specified in § 1252(f)(1)* even if that injunction has *some collateral effect* on the
7 operation of a covered provision.” *Aleman Gonzalez*, 596 U.S. at 553 n.4 (citing
8 *Gonzales*, 508 F.3d at 1233) (second emphasis added); *see Al Otro Lado, Inc. v.*
9 *Mayorkas*, 619 F. Supp. 3d 1029, 1047 (S.D. Cal. 2022) (finding that § 1252(f)
10 precluded injunctive relief where the statute that “Defendants principally invoke[d] as
11 a legal basis to implement the unlawful regulation” nevertheless “interfere[d]” with
12 Defendants’ efforts to operate one of the specified statutory provisions). The question
13 is therefore whether an injunction would “directly” implicate a covered provision or
14 merely collaterally affect the operation of a covered provision. *Gonzales*, 508 F.3d
15 at 1233.

16 An injunction requiring that Defendants execute warrants in a manner consistent
17 with the Constitution would have no direct impact on the issuance of a warrant for
18 arrest, the general authority to arrest an alien, or the subsequent detention and removal
19 of the alien. There is a clear distinction between the authority to issue warrants under
20 § 1226(a) and the one to execute arrests under § 1357. In *Al Otro Lado*, a case upon
21 which Defendants heavily rely, a district court in the Southern District of California
22 found that DHS’s policy of turning back asylum seekers without evaluating their
23 applications for asylum was a violation of both the APA and the Fifth Amendment’s
24 Due Process Clause. *Al Otro Lado*, 619 F. Supp. 3d at 1032. The court concluded,
25 however, that § 1252(f) precluded classwide injunctive relief because “the inspection
26 and referral duties this [c]ourt found Defendants had withheld by implementing their
27 [Policy] are explicitly imposed by the INA at § 1225(a)(3) (delineating immigration
28

1 officers’ duty to inspect) and § 1225(b)(1)(A)(ii) (delineating immigration officers’
2 duty to refer asylum seekers).” *Id.* at 1045.

3 In contrast, classwide injunctive relief in this action would not “explicitly
4 impose[]” any duty required by a provision covered by § 1225(f). The injunction sought
5 in this case is more similar to another order issued in *Al Otro Lado*, where the court
6 granted a permanent injunction barring application of the Asylum Ban to class
7 members, finding that the injunction, while “no doubt[]” affecting the removal
8 proceedings of class members, only did so “collateral[ly].” *Al Otro Lado, Inc. v.*
9 *Mayorkas*, No. 17-cv-02366-BAS-KSC, 2022 WL 3142610, at *23 (S.D. Cal. Aug. 5,
10 2022), *appeal filed*, No. 22-55988 (9th Cir. Oct. 25, 2022).

11 The injunction that Plaintiffs seek in this case—prohibiting ICE’s policies and
12 practices regarding the execution of “knock and talks”—would at most collaterally
13 impact any statutory provision covered by § 1252(f). Accordingly, as the Ninth Circuit
14 upheld in *Gonzales*, the injunction’s effect on a provision covered by § 1252(f) “is one
15 step removed from the relief sought by Plaintiffs and therefore does not bring this action
16 within the [§ 1252(f)] bar.” *Gonzales*, 508 F.3d at 1233. The court *may*, therefore,
17 issue injunctive relief.

18 In addition to issuing injunctive relief, the Court can issue declaratory relief—
19 which is not precluded by § 1252(f)—and also vacate and set aside Defendants’
20 unlawful policies and training materials under the APA. *See Rodriguez v. Hayes*,
21 591 F.3d 1105, 1119 (9th Cir. 2010) (“It is simply not the case that Section 1252(f) bars
22 Petitioner from receiving declaratory relief on behalf of the class.”); *Reno v. American-*
23 *Arab Anti-Discrimination Comm.*, 525 U.S. 471, 481–82 (9th Cir. 1999) (“By its plain
24 terms, and even by its title, [§ 1252(f)] is nothing more or less than a limit on injunctive
25 relief. It prohibits federal courts from granting classwide injunctive relief against the
26 operation of §§ 1221–1231, but specifies that this ban does not extend to individual
27 cases.”). Defendants argue that § 1252(f) also precludes the Court’s ability to issue a
28 judicial vacatur, but that argument is inconsistent with *Aleman Gonzalez*. *See Aleman*

1 *Gonzalez*, 596 U.S. at 571 (Sotomayor, J., concurring in the judgment and dissenting in
2 part) (“[T]he Court does not purport to hold that § 1252(f)(1) affects courts’ ability to
3 ‘hold unlawful and set aside’ agency action . . . under the [APA].”).

4 Having evaluated the availability of the various equitable remedies, the Court
5 must next determine which remedies are proper to cure Defendants’ wrongful conduct.
6 First, the Court deems declaratory judgment to be appropriate in this case, as it will
7 “serve a useful purpose in clarifying and settling the legal relations between the parties.”
8 *L.A. Cnty. Bar Ass’n v. Eu*, 979 F.2d 697, 703 (9th Cir. 1992). Defendants contend that
9 declaratory judgment in this case “is only useful if it forces Defendants to change its
10 policies or practices,” (DMSJ 17), but the Court disagrees. Declaratory judgment has
11 long been viewed as a useful remedy, as it serves to settle questions of law that lie at
12 the heart of the parties’ dispute. *See Eu*, 979 F.2d at 701 (holding that declaratory relief
13 was available on the basis that it is “substantially likely” that the government “would
14 abide by [the court’s] authoritative determination”). The Court therefore finds it
15 reasonable and appropriate to award declaratory judgment in Plaintiffs’ favor.

16 Furthermore, the Court deems it appropriate to vacate Defendants’ unlawful
17 policies. Vacatur, as compared to an injunction, is a “less drastic remedy” that does not
18 “compel[] nor restrain[] further agency decision-making.” *Immigrant Defs. L. Ctr. v.*
19 *Mayorkas*, No. 20-cv-9893-JGB (SHKx), 2023 WL 3149243, at *14 (C.D. Cal.
20 Mar. 15, 2023) (alterations in original) (quoting *Texas v. United States*, 50 F.4th 498,
21 528–29 (5th Cir. 2022)). Unlike an injunction, “a vacatur does not restrain the enjoined
22 defendants from pursuing other courses of action to reach the same or a similar result
23 as the vacated agency action.” *Al Otro Lado*, 619 F. Supp. 3d at 1045 (citing Daniel
24 Mach, *Rules Without Reasons: The Diminishing Role of Statutory Policy and Equitable*
25 *Discretion in the Law of NEPA Remedies*, 35 Harv. Env’t L. Rev. 205, 237 (2011)).
26 Here, either vacatur or an injunction would suffice to strike down ICE’s “knock and
27 talk” policy, but only an injunction would restrain Defendants from, in the future,
28 attempting to institute a modified or amended version of the “knock and talk” policy

1 that complies with constitutional limitations. “An injunction is a drastic and
2 extraordinary remedy,” *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 165
3 (2010), and the Court finds the less drastic remedy of vacatur to be sufficient to redress
4 the “Knock and Talk” Class’s injury. By opting for vacatur, Defendants have the
5 opportunity to develop a policy and practice that reaches the same or similar result as
6 the vacated agency action, but in a constitutional manner. Accordingly, the Court finds
7 it appropriate to vacate any policies and practices that the Court has found to conflict
8 with the Fourth Amendment to United States Constitution and 8 C.F.R. § 287.8(f)(2),
9 as detailed further below.

10 V. CONCLUSION

11 For the reasons discussed above, the Court **GRANTS** Plaintiffs’ Motion for
12 Partial Summary Judgment pursuant to Federal Rule of Civil Procedure 56(c) as to the
13 Knock and Talk Class’s First, Second, and Third Cause of Action. (ECF No. 489.) The
14 Court **DENIES** Defendants’ Motion for Summary Judgment. (ECF No. 488.)

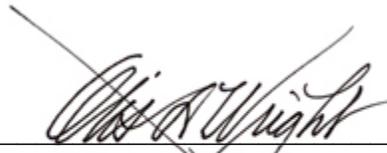
15 The Knock and Talk Class is entitled to judgment on its Fourth Amendment claim
16 because Defendants maintain a system-wide policy and practice of entering the
17 curtilage of homes, without a judicial warrant or consent, for the purpose of arresting
18 the occupant. The Knock and Talk Class is further entitled to judgment on its APA
19 claims because Defendants’ system-wide policy and practice violates 8 C.F.R.
20 § 287.8(f)(2) and is “contrary to [a] constitutional right,” 5 U.S.C. § 706(2)(B).

21 Accordingly, the Court **DECLARES** that the challenged system-wide policies
22 and practices of entering the curtilage of homes for the purpose of arresting the occupant
23 violate the Fourth Amendment to the United States Constitution and the APA. The
24 Court **VACATES** any policies and practices that allow officers in the Los Angeles Field
25 Office of ICE or Enforcement and Removal Operations (“ERO”), and any agents with
26 Homeland Security Investigations (“HSI”) participating with such ERO officers on civil
27 immigration enforcement operations in the Los Angeles AOR to enter the curtilage of
28 a home for the purpose of arresting an occupant, absent a judicial warrant, valid express

1 consent by a resident of the home, or other legal authority by which the officer may
2 enter the curtilage of the occupant’s home. This Order specifically applies to the
3 portions of Defendants’ policies and trainings pertaining to the entry onto curtilage for
4 the purpose of carrying out an arrest, without judicial warrant or express consent,
5 through the use of “knock and talks.” The Court will issue a final judgment to this
6 effect at the resolution of this case.

7
8 **IT IS SO ORDERED.**

9
10 May 15, 2024

11
12 

13 **OTIS D. WRIGHT, II**
14 **UNITED STATES DISTRICT JUDGE**