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11 UNITED STATES DISTRICT COURT
 12 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 13

15 IMMIGRANT DEFENDERS LAW
 CENTER, a California corporation, et
 16 al.,

17 Plaintiffs,

18 v.

19 ALEJANDRO MAYORKAS,
 Secretary, Department of Homeland
 20 Security, in his official capacity, et al.,

21 Defendants.

No. 2:20-cv-09893 JGB (SHKx)

**DEFENDANTS' SUPPLEMENTAL
 BRIEF IN SUPPORT OF THEIR
 MOTION TO DISMISS (DKT. 189)
 AND OPPOSITION TO MOTION
 FOR CLASS CERTIFICATION
 (DKT. 210)**

Judge: Honorable Jesus G. Bernal
 Crtrm: 1
 Date: October 3, 2022
 Time: 9:00 a.m.

Hon. Jesus G. Bernal

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1 **I. INTRODUCTION**

2 At the September 2, 2022 Status Conference, the Court ordered the parties to
3 file supplemental briefs addressing the effect of the Supreme Court’s *Biden v.*
4 *Texas* decision and the vacatur of the *Texas v. Biden* nationwide injunction on
5 Defendants’ Motion to Dismiss (Dkt. 189) and Plaintiffs’ Motion for Class
6 Certification (Dkt. 205) (the “Pending Motions”). Dkt. 237. As explained further
7 below, Defendants agree with Plaintiffs that the *Biden v. Texas* decision and
8 vacatur of the *Texas v. Biden* nationwide injunction have no effect on the Pending
9 Motions, except that (a) the *Biden v. Texas* decision confirms as correct
10 Defendants’ 8 U.S.C. § 1251(f)(1) argument in support of their Motion to Dismiss
11 and in opposition to Plaintiffs’ Motion for Class Certification (that Plaintiffs’
12 requested injunctive relief is barred), and (b) the *Biden v. Texas* decision and
13 vacatur of the *Texas v. Biden* injunction render moot Defendants’ arguments that
14 Plaintiffs’ requested relief conflicts with the *Texas v. Biden* injunction.

15 **II. BACKGROUND**

16 On June 30, 2022, the Supreme Court issued its decision in *Biden v. Texas*,
17 142 S. Ct. 2528 (2022). In *Biden*, the United States Supreme Court held that (a)
18 notwithstanding the fact that the *Texas v. Biden* injunction violated 8 U.S.C. §
19 1252(f)(1), the Court had subject-matter jurisdiction to decide the appeal; (b) the
20 Government’s rescission of MPP did not violate Section 1225 of the INA, and (c)
21 the October 29, 2021 Memorandum terminating MPP was a final agency action.
22 *Id.* at 2540, 2543-45. The Court remanded for further proceedings consistent with
23 its opinion. *Id.* at 2548. On August 3, 2022, the Fifth Circuit issued an order
24 remanding the case to the U.S. District Court for the Northern District of Texas.
25 *Texas v. Biden*, 43 F.4th 446 (5th Cir. 2022). On August 6, 2022, the Fifth
26 Circuit’s mandate issued. *Texas v. Biden*, Case No. 21-cv-00067 (N.D. Tex.), Dkt.
27 145. On August 8, 2022, the District Court lifted the nationwide injunction. *Id.*,
28 Dkt. 147. On September 2, 2022, the Court held a Status Conference, during

1 which the instant briefing was ordered. Dkt. 237. On September 9, 2022,
2 Plaintiffs filed their supplemental brief. Dkt. 240.

3 **III. DEFENDANTS' MOTION TO DISMISS (DKT. 189)**

4 With respect to Defendants' Motion to Dismiss (Dkt. 189), the vacatur of the
5 *Texas v. Biden* injunction moots Defendants' argument that the relief Plaintiffs
6 request in the SAC conflicts with the *Texas v. Biden* injunction. Dkt. 189 at 16-19
7 (Section III.A). Defendants' other arguments in support of their Motion to Dismiss
8 are based on the pleadings of the SAC (which have not since been amended) and
9 are unaffected by the vacatur of the *Texas v. Biden* injunction: (1) Plaintiff's
10 Claims 1-3 & 5-6 and request for declaratory relief remain moot (*id.* at 19-21),
11 (2) Plaintiffs' claims remain subject to multiple jurisdictional bars, namely 8
12 U.S.C. §§ 1252(d), 1252(b)(9), 1252(a)(2)(B)(ii), & 1252(f) (*id.* at 21-32),
13 (3) Organizational Plaintiffs still fail to demonstrate standing (*id.* at 32-37), and
14 (4) each of Plaintiffs' claims fail on the merits (*id.* at 37-46). Defendants therefore
15 request a ruling on their Motion to Dismiss, which was taken under submission
16 following argument of the parties on May 16, 2022. *See* Dkt. 224.

17 **IV. PLAINTIFFS' MOTION FOR CLASS CERTIFICATION (DKT. 205)**

18 With respect to Plaintiffs' Motion for Class Certification (Dkt. 205), the
19 vacatur of the *Texas v. Biden* injunction moots Defendants' argument that the
20 classwide relief Plaintiffs' request conflicts with the *Texas v. Biden* injunction.
21 Dkt. 210 at 10-11 (Section III.C). Defendants' other arguments in support of their
22 Opposition to Plaintiffs' Motion for Class Certification are unaffected by the
23 vacatur of the *Texas v. Biden* injunction. *See id.* at 7-31. Defendants propose that
24 the Court rule on the Plaintiffs' Motion for Class Certification (Dkt. 205) or set
25 that motion for argument after it rules on Defendants' Motion to Dismiss (Dkt.
26 189).

1 **V. 8 U.S.C. § 1252(F)(1)**

2 In their supplemental brief (Dkt. 240), Plaintiffs argue that *Biden v. Texas*,
3 142 S. Ct. 2528 (2022), and *Garland v. Aleman Gonzalez*, 142 S. Ct. 2057 (2022),
4 confirm there is subject matter jurisdiction in this case and that “declaratory relief
5 remains appropriate.” Dkt. 240 at 12-13. Plaintiffs do not argue that injunctive
6 relief remains available following *Aleman Gonzalez* and *Texas. Id.*

7 *Aleman Gonzalez* and *Texas* both confirm Defendants’ argument that
8 classwide injunctive relief is unavailable in this case. *See* Dkt. 189 at 30-32; Dkt.
9 208 at 17-18; Dkt. 210 at 7-10. In *Aleman Gonzalez*, the Supreme Court clarified
10 that 8 U.S.C. § 1252(f)(1) precludes class-wide injunction of any “operation of”
11 the covered immigration provisions—including when the plaintiff alleges that the
12 agency’s conduct violates the statutory provisions. 142 S. Ct. at 2063-64, 2066. It
13 therefore effectively overrules the holding in *Rodriguez v. Hayes* that “Section
14 1252(f) prohibits only injunction of ‘the operation of’ the detention statutes, not
15 injunction of a violation of the statutes.” 591 F.3d 1105, 1120 (9th Cir. 2010).
16 *Aleman Gonzalez* therefore precludes Plaintiffs’ requested class-wide injunction to
17 return the proposed class to the United States, as it would enjoin the initial decision
18 to return them to Mexico pursuant to 8 U.S.C. § 1225(b)(2)(C). *See* 8 U.S.C.
19 § 1252(f)(1) (limiting courts’ ability to “enjoin or restrain the operation of [§§ 1221-
20 1232]”); 8 U.S.C. § 1225(b)(2)(C); Dkt. 210 at 7-8. Plaintiffs do not argue
21 otherwise in their supplemental brief. *See* Dkt. 240.

22 As to whether Section 1252(f)(1) bars class-wide declaratory relief, neither
23 *Aleman Gonzalez* nor *Texas* addressed that question. *See Aleman Gonzalez*, 142 S.
24 Ct. at 2065 n.2 (“Because only injunctive relief was entered here, we have no
25 occasion to address this argument.”); *Texas*, 142 S. Ct. at 2540 (noting that the
26 district court awarded only injunctive relief and not declaratory relief); *id.* at 2562
27 (noting that the Court “reserves the question whether § 1252(f)(1) bars declaratory
28 relief”) (Barrett, J., dissenting). It therefore remains an open question whether

1 Section 1252(f)(1) bars class-wide declaratory relief. However, Defendants
2 maintain that Section 1252(f)(1) *does* bar class-wide declaratory relief, particularly
3 in this case. The “practical effect” of a declaratory judgment here—that original
4 MPP was unlawful—would be “a class-wide injunction against” the operation of
5 Section 1225(b)(2)(C). *Hamama v. Adducci*, 912 F.3d 869, 880 n.8 (6th Cir.
6 2018), *cert. denied*, 141 S. Ct. 188 (2020). Plaintiffs and members of the proposed
7 class then could, and potentially would, “immediately seek an injunction grounded
8 on the authority of the declaratory judgment.” *Alli v. Decker*, 650 F.3d 1007, 1020
9 n.2 (3d Cir. (Fuentes, J., dissenting)). And Section 1252(f)(1) would not itself
10 preclude follow-on injunctions sought by any member of the proposed class who is
11 “an individual alien” in removal “proceedings” to rescind the contiguous return
12 decision and return him or her to the United States. 8 U.S.C. § 1252(f)(1). In
13 other words, if there is no bar to class-wide declaratory relief under Section
14 1252(f)(1), Plaintiffs and the proposed class would be permitted to obtain
15 indirectly what they are clearly barred under Section 1252(f)(1) from seeking
16 directly.

17 Moreover, even if Section 1252(f)(1) provides no bar to class-wide
18 declaratory relief concerning the operation of one of the covered provisions,
19 Plaintiffs’ request for declaratory relief—declaring original MPP unlawful—is
20 barred for other reasons, as Defendants stated previously. The request is moot, and
21 standalone declaratory relief is not available under Rule 23 where injunctive relief
22 is not available. *See* Dkt. 210 at 9-11.

23 Finally, Plaintiffs are correct that the Supreme Court clarified in *Texas* that
24 Section 1252(f)(1) does not concern subject matter jurisdiction. Dkt. 240 at 12; *see*
25 *Texas*, 142 S. Ct. at 2540. Rather, it limits courts’ jurisdiction to grant certain
26 relief, including that it “deprives the lower courts of ‘jurisdiction’ to grant
27 classwide injunctive relief.” *Id.* at 2540. However, Plaintiffs are incorrect to the
28 extent they are asserting that anything in *Texas* or *Aleman Gonzalez* suggests that

1 subject-matter jurisdiction exists in this case. As Defendants have argued
2 previously, the Court lacks subject-matter jurisdiction over Plaintiffs’ claims for
3 several reasons wholly independent of Section 1252(f)(1). Plaintiff’s Claims 1-3
4 & 5-6 and request for declaratory relief remain moot (Dkt. 189 at 19-21),
5 Plaintiffs’ claims remain subject to multiple jurisdictional bars, namely 8 U.S.C.
6 §§ 1252(d), 1252(b)(9), 1252(a)(2)(B)(ii), & 1252(f) (*id.* at 21-32), and
7 Organizational Plaintiffs still fail to demonstrate standing (*id.* at 32-37). Neither
8 *Texas* nor *Aleman Gonzalez* have any bearing on these arguments.

9 **VI. CONCLUSION**

10 For the foregoing reasons, Defendants respectfully request that the Court
11 issue a ruling on Defendants’ pending Motion to Dismiss (Dkt. 189) and, if
12 necessary, hold oral argument on and rule on Plaintiffs’ pending Motion for Class
13 Certification (Dkt. 205).

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15 Dated: September 16, 2022

Respectfully submitted,

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