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22 **UNITED STATES DISTRICT COURT**
23 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**
24 **(San Diego)**

25 AL OTRO LADO, Inc., *et al.*,

26 *Plaintiffs,*

27 v.

28 ALEJANDRO N. MAYORKAS,
Secretary of Homeland Security, *et al.*,
in their official capacities,

Defendants.

Case No. 3:23-cv-01367-AGS-BLM

Hon. Andrew G. Schopler

**NOTICE OF
SUPPLEMENTAL
AUTHORITY CONCERNING
MOTION TO DISMISS (ECF
NO. 68)**

1 In their motion to dismiss, Defendants argued that the two Organizational
2 Plaintiffs have not pleaded Article III standing for various reasons. In June 2024, the
3 Supreme Court issued decisions in *FDA v. Alliance for Hippocratic Medicine*, 144
4 S. Ct. 1540 (2024) and *Murthy v. Missouri*, 144 S. Ct. 1972, 2024 WL 3165801
5 (June 26, 2024), which are relevant to whether the Organizational Plaintiffs' allega-
6 tions are sufficient to withstand a facial attack on standing.

7 First, in *Alliance*, the Supreme Court determined that plaintiff medical asso-
8 ciations lacked standing to challenge the FDA's decision concerning the regulation
9 of others. *Alliance*, 144 S. Ct. at 1558–59, 1563–65. In its opinion, the Court reiter-
10 ated that traceability and redressability are “substantially more difficult to establish”
11 when “a plaintiff challenges the government’s unlawful regulation (or lack of regu-
12 lation) of someone else.” *Id.* at 1556–57. It also made clear that its prior decision in
13 *Havens Realty v. Coleman*, 455 U.S. 363 (1982), does not stand for the “expansive
14 theory” that “standing exists when an organization diverts its resources in response
15 to a defendant’s actions.” *Alliance*, 144 S.Ct. at 1564. The Court stated that organi-
16 zations may not manufacture their own standing “simply by expending money to
17 gather information and advocate against the defendant’s action.” *Id.* at 1563–64. It
18 described *Havens Realty* as an “unusual case” where the defendant’s actions “di-
19 rectly affected and interfered with” the plaintiff’s core business activities because
20 the defendant gave false information about apartment availability that “impaired”
21 plaintiff’s ability to “provide counseling and referral services for low and moderate
22 income homeseekers.” *Id.*

23 *Alliance* calls into question the Ninth Circuit’s previous interpretations and
24 applications of *Havens Realty*. See, e.g., *E. Bay Sanctuary Covenant v. Trump*, 932
25 F.3d 742, 765–66 (9th Cir. 2018) (“We have thus held that, under *Havens Realty*, a
26 diversion-of-resources injury is sufficient to establish organizational standing for
27 purposes of Article III, if the organization shows that, independent of the litigation,
28 the challenged policy frustrates the organization's goals and requires the

1 organization to expend resources in representing clients they otherwise would spend
2 in other ways.”) (internal quotations and citations omitted). Thus, organizational
3 standing arguments previously foreclosed or discouraged by Ninth Circuit precedent
4 are likely now available under *Alliance*.

5 For example, here, the Organizational Plaintiffs have not only failed to allege
6 facts to show that their costs or injuries are cognizable or attributable to a purported
7 “CBP One Turnback Policy,” but their claimed diversion-of-resource injuries inde-
8 pendently cannot establish standing under *Alliance*. See Compl. ¶¶ 141–151; Opp.
9 to Mot. to Dismiss (ECF No. 72) at 15–16. Organizational Plaintiff Al Otro Lado
10 alleges that it has diverted resources “to conduct POE monitoring to document how
11 the CBP One Turnback Policy plays out in practice so that they can properly advise
12 clients and engage with policymakers and advocates,” including spending “countless
13 hours in stakeholder engagement meetings” to advocate to DHS against the alleged
14 “CBP One Turnback Policy.” Compl. ¶¶ 142, 144. *Alliance* forecloses reliance on
15 such expenditures alone to establish standing: an organization “cannot spend its way
16 into standing simply by expending money to gather information and advocate
17 against the defendant’s action.” 144 S. Ct. at 1563–54. More broadly, *Alliance* stands
18 for the proposition that an organization cannot establish standing merely because it
19 spends money and expends resources to assist people, even if that assistance is a
20 response to changes in law or alleged changes to government practice. See *Alliance*,
21 144 S. Ct. at 1564; see Compl. ¶¶ 143, 145, 149. Unlike in *Havens Realty*, the Or-
22 ganizational Plaintiffs have not alleged facts to show that the government’s alleged
23 actions have “interfered with” or “imposed [an] impediment to” their core business
24 activities. See *id.*

25 Next, in *Murthy*, 144 S. Ct. 1972, 2024 WL 3165801 (June 26, 2024), the
26 Supreme Court held that the plaintiff states and individual social media users had
27 failed to establish a “concrete link between their injuries”—suppression of speech
28 on social media platforms—and federal government entities’ communications with

1 social media platforms. *Murthy*, 2024 WL 3165801 at *17. The Supreme Court em-
2 phasized that there must be a sufficient causal connection between the claimed injury
3 and the challenged governmental conduct to establish standing. *Id.* at *10–17. Just
4 as the plaintiffs in *Murthy* failed to demonstrate “a substantial risk of future injury
5 that is traceable to the Government defendants and likely to be redressed by an in-
6 junction,” *id.* at *13, the Organizational Plaintiffs have failed to allege facts to show
7 that their alleged costs or injuries are attributable to the claimed “CBP One Turnback
8 Policy” or likely to be redressed by relief pertaining thereto, *see* Mem. in Supp. of
9 Mot. to Dismiss (ECF No. 68-1) at 14–16; Reply (ECF No. 73) at 3–4.

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DATED: July 12, 2024

Respectfully submitted,
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CERTIFICATE OF SERVICE

I certify that I served a copy of this document on the Court and all parties by filing this document with the Clerk of the Court through the CM/ECF system, which will provide electronic notice and an electronic link to this document to all counsel of record.

DATED: July 12, 2024

Respectfully submitted,

/s/ Katherine J. Shinnors
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United States Department of Justice

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