No. 26-2090

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

VICTOR CRUZ GAMEZ, et al.,

Plaintiffs-Appellees,

v.

TODD M. LYONS, et al.,

Defendants- Appellants.

On Appeal from the United States District Court
For the District of Oregon
No. 6:25-cv-02011 Hon. Mustafa T. Kasubhai

PLAINTIFFS-APPELLEES' RESPONSE TO DEFENDANTS-APPELLANTS' MOTION TO SUPPLEMENT THE RECORD OR TAKE JUDICIAL NOTICE

I. INTRODUCTION

On June 22, 2026, Appellants filed the same motion twice: a motion to supplement the record or, alternatively, take judicial notice of two documents: a form I-200, administrative arrest warrant, and a Notice to Appear, both bearing the name of named plaintiff Victor Cruz-Gamez. Dkt. 19.1; Dkt 20.1.[1] For the reasons described below, Appellees oppose the twice-filed motion.[2]

II. LEGAL STANDARD

The record on appeal consists of "(1) the original papers and exhibits filed in the district court; (2) the transcript of proceedings, if any; and (3) a certified copy of the docket entries prepared by the district clerk." Fed. R. App. 10(a). "If anything material to either party is omitted from or misstated in the record by error or accident", the record may be supplemented by the court of appeals. *Id.* 10(e). But such supplementation is limited to "unusual circumstances" and "extraordinary cases"; by default, the Court of Appeals "consider[s] only the district court record." *Lowry v. Barnhart*, 329 F.3d 1019, 1024 (9th Cir. 2003); *accord Barilla v. Ervin*,

---

[1] While each docket entry pertains to a different type of document demarcation, Motion to Supplement or Correct Record, Dkt. 19.1, and Motion for Judicial Notice, Dkt. 20.1, both entries contain the same document titled "APPELLANTS' MOTION TO SUPPLEMENT THE RECORD OR TAKE JUDICIAL NOTICE."

[2] Per circuit rule, the motion will be referred to the merits panel and Appellants will be permitted to cite the materials in their briefing. 9th Cir. R. 27-1, Circuit Advisory Committee Note (7). Thus, Appellees may also further oppose this motion and Appellants' arguments therein in their Answering Brief as well.

886 F.2d 1514, 1521 n.7 (9th Cir. 1989), *overruled on other grounds by Simpson v. Lear Astronics Corp.,* 77 F.3d 1170, 1174 (9th Cir.1996) ("Only in extraordinary situations should the record on appeal be supplemented with material that was not before the district court.").

Similarly, courts may take judicial notice only of a fact "that is not subject to reasonable dispute because it" is either "(1) generally known within the trial court's jurisdiction; or (2) can be accurately and readily determined from sources *whose accuracy cannot be reasonably questioned.*" FRE 201(b) (emphasis added).

III. ARGUMENT

The court should deny both Appellants' motion to supplement the record or, the alternative to take judicial notice of the two submitted documents.

First, Appellants do not come close to showing that "extraordinary" circumstances justify supplementation of the record. *See Lowry*, 329 F.3d at 1024. Their motion does not even attempt to explain why extraordinary circumstances exist in this case, or why they failed to submit these documents as part of the evidentiary record below. *See* Dkt. 19.1 at 4-5; Dkt. 20.1 at 4-5 (merely citing FRAP 10(e) and making a relevance argument). Appellants' arguments regarding jurisdiction and mootness are irrelevant to the district court's preliminary injunction ruling.

Appellants had a full opportunity to participate in a full-day preliminary injunction hearing on February 4, 2026. *See generally* 3-ER-123-377, 1-ER-14-64. They chose to not submit any evidence at that hearing. 3-ER- 127-131; 138-226, 310.[3] The documents they seek to submit are dated October 14, 2025, meaning they were readily available to Appellants long before the evidentiary hearing at which they chose not to present them. *See* Dkt. 20.1 at 12, 15. This court should not reward Appellants' delay, or change of strategy, at this late hour and should limit itself to the appellate record. *Accord IMDb.com Inc. v. Becerra*, 962 F.3d 1111, 1126 n.7 (9th Cir. 2020) (declining to admit evidence "not before the district court" that was submitted "*for the first time* during the pendency of the appeal") (emphasis in

[3] See 3-ER-161-167 (cross examination testimony of Plaintiff Gamez Cruz where government counsel makes no inquiry whatsoever regarding a "warrant" or a "notice to appear"); 3-ER-167-171 (Plaintiffs disputing government theory and government counsel conceding that "[o]f course, all we have is the testimony of Mr. Cruz Gamez about events that happened last October during a stressful situation. I can offer an alternative explanation…" but presenting no evidence). The Appellants-Defendants submitted no evidence during the preliminary injunction hearing which was a strategic call. *Cf.* 3-ER-261 (in analogous context of government counsel making strategic calls to not try issues and later raise them, Court explaining to government counsel, "[I]t was, at the end of the day, your choice not to brief it. And that's not my problem today" because "when somebody raises an issue, I will actually take great pain to make sure that you have an opportunity to fully explore it because I operate on a presumption that if you're bringing it to my attention, it means something substantive, weighty, that you want to have me consider. This isn't one of those issues."). The Defendants-Appellants strategically choose not to bring their evidence to court to be tested by the court in the adversarial proceeding.

original); *United States v. Elias*, 921 F.2d 870, 874 (9th Cir. 1990) ("Documents or facts not presented to the district court are not part of the record on appeal.").

This is particularly the case because Appellees would have disputed the authenticity and probed the reliability of the documents with which Appellants seek to supplement the record. Appellants request that the record be supplemented with an arrest warrant, but the district court found that the evidence before it "demonstrates [Appellant] ICE's practice of fabricating warrants after arrests were made." *M-J-M-A- v. Hermosillo*, 822 F.Supp.3d 1147, 1179 (D. Or. 2026). The appellate court is not the appropriate forum for a dispute over these documents' authenticity. As the *Lowry* court noted:

> As a court of appeals, we lack the means to authenticate documents submitted to us, so we must be able to assume that documents designated part of the record actually are part of the record. To be sure, the fact that a document is filed in the district court doesn't resolve all questions of authenticity, but it does ensure that both opposing counsel and the district court are aware of it at a time when disputes over authenticity can be properly resolved.

329 F.3d at 1024. Here, the Defendants strategically seek to introduce new evidence on appeal to bypass the "time when disputes over authenticity can be properly resolved." *Id.*

The cases cited by Appellants do not compel a different result. In *Dent v. Holder*, this court took judicial notice of the petitioner's application for naturalization (at his request) in part because "the government's failure to provide

[him] with his A-file, and his evident ignorance of its existence, justif[ied] his failure to present them to the tribunal." 627 F.3d 365, 371-72 (9th Cir. 2010). Here, the government has provided no such justification for its failure to present this evidence to the district court.

Moreover, *Dent* applied the principle reached in *Lising v. INS*, 124 F.3d 996 (9th Cir. 1997), which interpreted the rule announced in *Fisher v. INS*, 79 F.3d 955 (9th Cir. 1996) (en banc). *Fisher* held that, in the context of a petition for review of a removal order, this Court can only consider evidence outside the record when considered by the Board of Immigration Appeals (BIA), or where the BIA "abuse[d] its discretion by failing to consider such evidence upon the motion of the applicant." 79 F.3d at 964. As *Lising* explained, this rule "was intended to ensure that petitioners present all outside documents, reports, or information during the course of the administrative proceedings and not offer them for the first time before this court." 124 F.3d at 998. Thus, in *Lising*, the court took judicial notice of the petitioner's naturalization application, which had been in the government's possession and directly disproved an adverse factor improperly relied upon by the BIA to deny the petitioner's waiver application. 124 F.3d at 998.

Both *Dent* and *Lising* took judicial notice over government objection when the petitioner sought to surface a government document that the government had improperly not submitted, or considered, as part of the record below. The facts here

are entirely dissimilar, as Appellants seek to correct their own error without any justification for their prior failure.[4]

Trigueros v. Adams, 658 F.3d 983, 987 (9th Cir. 2011) also supports Appellees' position, not Appellants. *Trigueros* notes that courts may only "take judicial notice of documents 'not subject to reasonable dispute'" and therefore considered documents from state court proceedings that were directly relevant to the federal habeas corpus petition on review. 658 F.3d at 987 (quoting Fed. R. Evid. 201(b)). Here, the documents Appellants seek to notice are from their own agency, not a court proceeding, and they are in fact subject to "reasonable dispute" since the court below found that the agency has been fabricating documents. *M-J-M-A- v. Hermosillo*, 822 F.Supp.3d at 1179. Indeed, courts throughout the country have found that the government is currently acting in bad faith in its immigration policy and immigration-related litigation. *See, e.g., Fed. Educ. Ass'n v. Trump*, 795 F. Supp. 3d 74, 88-92 (D.D.C. 2025), *stay pending appeal denied*, No. 25-5303, 2025 WL 2738626 (D.C. Cir. Sep. 25, 2025) (citing multiple cases in which courts have found the government to have acted in bad faith and declining to apply the

[4] Appellants also cite *DeHoog v. Anheuser-Busch InBev SA/NV*, 899 F.3d 758, 762-63 n.5 (9th Cir. 2018). ECF 20.1 at 6. But the *DeHoog* footnote merely states "Consumers' motion to take judicial notice of government documents, court filings, press releases, and undisputed matters of public record concerning the ABI-SAB transaction (Dkt. No. 17) is granted." *Id.* There is no analysis, and nothing to suggest that the government documents noticed in that case had disputed authenticity.

presumption of regularity to a challenged executive order); *Soriano Neto v. Hyde*, No. 25-00425, 2026 WL 205533 at *3 (D.R.I. Jan. 27, 2026) (concluding that the government both willfully violated two court orders and willfully misrepresented facts to the court); *Am. Ass'n of Univ. Professors v. Rubio*, 802 F. Supp. 3d 120, 174 (D. Mass. 2025) (rejecting testimony from the Acting Director of ICE as "disingenuous, squalid, and dishonorable"). Because the agency's records in this case are subject to reasonable dispute, they are not appropriate for judicial notice.

IV. CONCLUSION

Appellants make no attempt to explain why extraordinary circumstances would justify their failure to submit the documents at issue before the district court, and the documents are not appropriate for judicial notice because their accuracy and veracity is disputed. Appellants' motion to supplement the record or, in the alternative, take judicial notice should be denied.

Respectfully submitted,

/s/Nelly Garcia Orjuela
NELLY GARCIA ORJUELA
nelly@innovationlawlab.org
STEPHEN W. MANNING
stephen@innovationlawlab.org
JORDAN CUNNINGS
jordan@innovationlawlab.org
KELSEY PROVO
kelsey@innovationlawlab.org

ROSA SAAVEDRA VANACORE
rosa@innovationlawlab.org
INNOVATION LAW LAB
333 SW 5th Ave., Suite 200
Portland, OR 97204-1748
Telephone: 503-922-3042

Dated: July 20, 2026

Attorneys for Plaintiffs-Appellees

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rules of Appellate Procedure 27 and 32(g) and 9th Cir. Rule 32-3(2), I certify that this motion was prepared using 14-point Times New Roman type, which is serif and proportionally spaced, and contains 1,738 words, which, divided by 280, is less than the 20 pages authorized in 9th Cir. Rule 27 1(1)(d).

*/s/Nelly Garcia Orjuela_*
NELLY GARCIA ORJUELA
nelly@innovationlawlab.org
STEPHEN W. MANNING
stephen@innovationlawlab.org
JORDAN CUNNINGS
jordan@innovationlawlab.org
KELSEY PROVO
kelsey@innovationlawlab.org
ROSA SAAVEDRA VANACORE
rosa@innovationlawlab.org
INNOVATION LAW LAB
333 SW 5th Ave., Suite 200
Portland, OR 97204-1748
Telephone: 503-922-3042
Attorneys for Plaintiffs-Appellees

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on July 20, 2026. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

*/s/Nelly Garcia Orjuela_*
NELLY GARCIA ORJUELA
nelly@innovationlawlab.org
STEPHEN W. MANNING
stephen@innovationlawlab.org
JORDAN CUNNINGS
jordan@innovationlawlab.org
KELSEY PROVO
kelsey@innovationlawlab.org
ROSA SAAVEDRA VANACORE
rosa@innovationlawlab.org
INNOVATION LAW LAB
333 SW 5th Ave., Suite 200
Portland, OR 97204-1748
Telephone: 503-922-3042
Attorneys for Plaintiffs-Appellees