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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ABDIQAFAR WAGAFE, et al.,

Plaintiff,

v.

JOSEPH R. BIDEN, President of the United
States, et al.,

Defendant.

CASE NO. 17-CV-00094-LK

ORDER DENYING DEFENDANTS'
MOTION TO DISMISS

This matter comes before the Court on Defendants' Motion to Dismiss Claims of Naturalization Class and Individual Claims of Named Plaintiffs Wagafe, Jihad and Manzoor for Lack of Subject Matter Jurisdiction. Dkt. No. 628. Plaintiffs oppose the motion. Dkt. No. 634. For the reasons discussed below, the Court denies Defendants' motion.

I. BACKGROUND

Plaintiffs initiated this class action in early 2017 against the United States Citizenship and Immigration Services ("USCIS"), a component of the Department of Homeland Security ("DHS"), as well as several government officials. Dkt. Nos. 1, 17. Plaintiffs seek declaratory and injunctive

1 relief related to USCIS’s Controlled Application Review and Resolution Program (“CARRP”), a
2 national security vetting program which affects the evaluation and processing of some individuals’
3 applications for immigration benefits. *See generally* Dkt. No. 47. The Court has certified two
4 nationwide classes to be represented by the five named Plaintiffs in this case: the “Naturalization
5 Class” and the “Adjustment Class.” Dkt. No. 69 at 8, 31.

6 The Naturalization Class, represented by Plaintiffs Abdiqafar Wagafe, Noah Abraham
7 (formerly known as Mushtaq Jihad), and Sajeel Manzoor, is comprised of all people “(1) who have
8 or will have an application for naturalization pending before USCIS, (2) that is subject to CARRP
9 or a successor ‘extreme vetting’ program, and (3) that has not been or will not be adjudicated by
10 USCIS within six months of having been filed.” *Id.* at 8. On behalf of this class, Plaintiffs allege
11 that USCIS “has refused to adjudicate their applications in accordance with the governing statutory
12 criteria,” and instead “applied impermissible ultra vires rules” under CARRP, preventing “the
13 agency from granting Plaintiffs’ applications (and, in the case of Mr. Wagafe, caus[ing] the agency
14 to delay granting his application until this lawsuit motivated it to do so).” Dkt. No. 47 at 3; *see*
15 *also id.* at 33 (“Mr. Wagafe’s naturalization application was subject to CARRP or its successor
16 ‘extreme vetting’ program, which caused the delay in adjudication of his naturalization
17 application, despite the fact that he was statutorily entitled to naturalize,” and the delay caused him
18 “significant harm”); *id.* at 39 (similar allegations as to Mr. Abraham); *id.* at 41 (similar allegations
19 as to Mr. Manzoor); *id.* at 42–45 (similar allegations as to the Naturalization Class).

20 Plaintiffs assert seven causes of action on behalf of themselves and the Naturalization
21 Class, alleging that CARRP violates (1) the Due Process Clause of the Fifth Amendment through
22 failure to provide notice and an opportunity to respond to CARRP classification, Dkt. No. 47 at
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1 47;¹ (2) the Due Process Clause of the Fifth Amendment through the unauthorized and indefinite
2 suspension of the adjudication of applications, Dkt. No. 47 at 47; (3) the equal protection
3 component of the Fifth Amendment’s Due Process Clause through the indefinite suspension of the
4 adjudication of applications based on country of origin, *id.* at 47–48; (4) the Immigration and
5 Nationality Act (“INA”) and its implementing regulations through the imposition of additional
6 non-statutory, substantive adjudicatory criteria for naturalization, *id.* at 48–49; (5) and (6) the
7 Administrative Procedure Act (“APA”) through arbitrary and capricious final agency action and
8 failure to provide a notice and comment period before implementing a substantive rule, *id.* at 49–
9 50; and (7) the “Uniform Rule of Naturalization” clause of the Constitution through the creation
10 of additional naturalization requirements not enacted by Congress; *id.* at 50.

11 Among other things, Plaintiffs request the following relief: (1) an order directing
12 Defendants to adjudicate Plaintiffs’ and the class members’ applications, and to do so “based solely
13 on the statutory criteria”; (2) a declaration that CARRP or any successor “extreme vetting”
14 program violates the Constitution, the INA, and the APA; (3) an injunction prohibiting Defendants
15 “from applying CARRP or any successor ‘extreme vetting’ program to the processing and
16 adjudication of” Plaintiffs’ and the class members’ applications; (4) an order directing Defendants
17 to “rescind CARRP or any successor ‘extreme vetting’ program because they failed to follow the
18 process for notice and comment by the public”; and (5) alternatively, an order directing Defendants
19 to provide Plaintiffs and class members “with notice that they have been subjected to CARRP or
20 any successor ‘extreme vetting’ program, the reasons for subjecting them to [such program], and
21 a reasonable opportunity to respond to those allegations before a neutral decision-maker[.]” *Id.* at
22 51–52.

24 ¹ The Court previously dismissed this claim as to the Adjustment Class. Dkt. No. 69 at 17, 22.

1 From Plaintiffs’ perspective, precluding the Naturalization Class’s challenge to CARRP
2 “would deny review to a whole range of conduct and complaints for which USCIS could never be
3 held accountable[.]” Dkt. No. 634 at 6. Plaintiffs argue that Congress did not intend to create a
4 special statutory review scheme covering all naturalization-related claims, and that even if it did,
5 the applicable law weighs in favor of the Court’s exercise of general federal question jurisdiction
6 in this case. *Id.* at 6–17. In addition, Plaintiffs contend that neither Section 1447(b) or 1421(c)
7 provides an adequate remedy for the Naturalization Class’s claims, *id.* at 17–20, and that such
8 claims are ripe for review because the class members have already been subjected to CARRP, *id.*
9 at 20–24. The Court agrees with Plaintiffs.²

10 **A. Legal Standard**

11 “Federal courts are courts of limited jurisdiction” and “possess only that power authorized
12 by Constitution and statute[.]” *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377
13 (1994). “The objection that a federal court lacks subject-matter jurisdiction . . . may be raised by a
14 party, or by a court on its own initiative, at any stage in the litigation, even after trial and the entry
15 of judgment.” *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 506 (2006) (citing Fed. R. Civ. P. 12(b)(1));
16 *see also* Fed. R. Civ. P. 12(h)(3) (“If the court determines at any time that it lacks subject-matter
17 jurisdiction, the court must dismiss the action.”).

18 A challenge to subject matter jurisdiction under Rule 12(b)(1) may be facial or factual. *Safe*
19 *Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). “In a facial attack, the challenger
20 asserts that the allegations contained in a complaint are insufficient on their face to invoke federal
21 jurisdiction,” whereas “in a factual attack, the challenger disputes the truth of the allegations that,

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23 ² Defendants further argue that “[t]he Court’s dismissal of the naturalization class claims . . . should apply equally to
24 the individual claims of Named Plaintiffs Abdiqafar Wagafe, Mushtaq Abed Jihad and Sajeel Manzoor[.]” Dkt. No.
628 at 20 n.12. However, for the same reasons discussed below in denying Defendants’ motion with respect to the
claims of the Naturalization Class, the Court also denies Defendants’ arguments with respect to the named Plaintiffs’
individual claims.

1 by themselves, would otherwise invoke federal jurisdiction.” *Id.* District courts resolve facial
2 attacks as they do motions to dismiss under Rule 12(b)(6): “[a]ccepting the plaintiff’s allegations
3 as true and drawing all reasonable inferences in the plaintiff’s favor,” and then determining
4 whether they are legally sufficient to invoke jurisdiction. *Leite v. Crane Co.*, 749 F.3d 1117, 1121
5 (9th Cir. 2014). With a factual attack, on the other hand, “[t]he plaintiff bears the burden of proving
6 by a preponderance of the evidence that each of the requirements for subject-matter jurisdiction
7 has been met.” *Id.* In evaluating a factual attack, courts may look to evidence beyond the complaint
8 without converting the motion to dismiss into one for summary judgment. *Safe Air for Everyone*,
9 373 F.3d at 1039.

10 **B. *Thunder Basin* Does Not Preclude Federal Question Jurisdiction Over Claims**

11 Defendants argue that under *Thunder Basin Coal Company v. Reich*, 510 U.S. 200 (1994),
12 *Axon Enterprise, Inc. v. Federal Trade Commission*, 598 U.S. 175 (2023), and *Miriyeva v. United*
13 *States Citizenship & Immigration Services*, 9 F.4th 935 (D.C. Cir. 2021), the INA’s exclusive
14 judicial review process “leav[es] general federal jurisdiction intact only for ‘existential’ questions
15 about an agency’s very power to act,” which are not implicated by the Naturalization Class’s
16 claims. Dkt. No. 628 at 3.

17 1. *Thunder Basin* Doctrine

18 Generally, federal question jurisdiction under 28 U.S.C. § 1331 exists to review agency
19 actions. *Califano v. Sanders*, 430 U.S. 99, 105 (1977). The APA provides a limited waiver of
20 sovereign immunity in agency review actions seeking declaratory and injunctive relief. 5 U.S.C.
21 §§ 701–06. Importantly, though, the APA’s judicial review provisions do not apply where “statutes
22 preclude judicial review.” 5 U.S.C. § 701(a)(1); *see also Wade v. Blue*, 369 F.3d 407, 411 n.2 (4th
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1 Cir. 2004) (“[A] specific limitation of federal court jurisdiction . . . overrides the general grant of
2 federal jurisdiction in § 1331.”).³

3 In *Thunder Basin*, the Supreme Court set out a two-step framework for determining when
4 a statutory scheme of administrative and judicial review forecloses parallel district court
5 jurisdiction under Section 1331. Courts first determine whether such intent is “fairly discernible
6 in the statutory scheme.” *Thunder Basin*, 510 U.S. at 207. If so, courts consider whether the
7 litigant’s claims are “of the type Congress intended to be reviewed within [the] statutory structure.”
8 *Id.* at 212. A finding that they are forecloses parallel district court jurisdiction.

9 When evaluating whether the plaintiff’s claims are “of the type Congress intended to be
10 reviewed within th[e] statutory structure,” courts weigh three factors known as the “*Thunder Basin*
11 factors”: (1) whether precluding district court jurisdiction could “foreclose all meaningful judicial
12 review” of the claim; (2) whether the claim is “wholly collateral to the statute’s review provisions”;
13 and (3) whether the claim is “outside the agency’s expertise.” *Axon Enter.*, 598 U.S. at 186
14 (cleaned up). The latter two factors “reflect in related ways the point of special review provisions—
15 to give the agency a heightened role in the matters it customarily handles, and can apply distinctive
16 knowledge to.” *Id.*

17 Defendants argue that the INA sets forth a “comprehensive and exclusive review process”
18 that envelopes the Naturalization Class’s claims. Dkt. No. 628 at 9–14. In Defendants’ view, 8
19 U.S.C. §§ 1447(b) and 1421(c) “provide meaningful judicial review by affording naturalization
20 applicants *de novo* review of their claims in a United States District Court.” *Id.* at 11. And because
21 the Class’s claims “attack *how* USCIS administers the national security vetting of benefit
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24 ³ A statute may do so either explicitly, “providing in so many words that district court jurisdiction will yield,” or
implicitly, such as when a statutory scheme provides for “review in a court of appeals following the agency’s own
review process.” *Axon Enter.*, 598 U.S. at 185.

1 applications,” rather than its “*power* to determine their eligibility for naturalization or to vet their
2 applications as part of the process,” the claims are not “wholly collateral.” *Id.* at 12–13. Finally,
3 Defendants contend that the Class’s claims are not outside the agency’s expertise, as reflected by
4 Congress’s overhaul of the statute in 1990 to enlarge the agency’s role. *Id.* at 13.

5 Plaintiffs counter that Sections 1447(b) and 1421(c) create only narrow “processes for
6 obtaining judicial review of individual naturalization applications in certain procedural scenarios”
7 not present here. Dkt. No. 634 at 12. According to Plaintiffs, if the Naturalization Class were to
8 pursue remedies under 1447(b) or 1421(c), it would “foreclose the very relief they seek” because
9 it “would be too late to prevent the years of delay and unlawful treatment caused by the application
10 of an illegal policy to their case.” *Id.* at 14. Plaintiffs emphasize that neither statute provides for
11 challenges to the legality of agency policy and practices; 1447(b) “is a vehicle only to seek a
12 decision on a naturalization application” and 1421(c) “only provides jurisdiction for de novo
13 review of an individual applicant’s eligibility to naturalize”—and since a 1421(c) litigant would
14 no longer be subject to CARRP, their CARRP-related claims would be moot. *Id.* at 14–15. For this
15 reason, Plaintiffs argue, the Naturalization Class’s claims are wholly collateral to the INA’s review
16 scheme, and USCIS’s expertise (or lack thereof) relative to their claims “simply does not fit the
17 situation here.” *Id.* at 15–17.

18 The Court assumes without deciding that the review scheme Congress established in the
19 INA can implicitly foreclose federal question jurisdiction under Section 1331. *See, e.g., Miriyeva,*
20 9 F.4th at 939–40. Even so, a review of the *Thunder Basin* factors does not indicate that the
21 Naturalization Class’s claims are of the type Congress intended to be reviewed under the INA.
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1 2. Precluding Jurisdiction Could Foreclose All Meaningful Judicial Review of the
2 Naturalization Class’s Claims

3 Naturalization decisions by USCIS pursuant to the INA are subject to three avenues of
4 judicial review. *See Escaler v. U.S. Citizenship and Immigr. Servs.*, 582 F.3d 288, 290–91 (2d Cir.
5 2009). First, if an application for naturalization is not acted upon within 120 days of the
6 naturalization examination, an applicant can seek a hearing in a district court, which may determine
7 the application or remand it to USCIS with instructions. 8 U.S.C. § 1447(b).⁴ Second, if an
8 application is denied after completion of the available administrative review procedures, the
9 applicant is able to seek *de novo* review of the denial in a district court. 8 U.S.C. § 1421(c).⁵ Third,
10 in extreme cases, mandamus relief may be available under 28 U.S.C. § 1361 for a failure to perform
11 a clear, nondiscretionary duty. *See Heckler v. Ringer*, 466 U.S. 602, 616 (1984).

12 Here, the Naturalization Class alleges that USCIS’s application of CARRP to class
13 members’ naturalization applications, resulting in the “unauthorized and indefinite suspension of
14 Plaintiffs’ and the Proposed Classes’ applications for immigration benefits,” violates the Equal
15 Protection and Due Process Clauses of the Constitution, the Uniform Rule of Naturalization clause,
16 the APA, and the INA. Dkt. No. 47 at 47–50. Because of this alleged “indefinite suspension,” class
17 members may never have an examination, much less a denial of their application (at which point

18 ⁴ Section 1447(b), entitled “Request for hearing before district court,” specifically provides as follows:

19 If there is a failure to make a determination under section 1446 of this title before the end of the
20 120-day period after the date on which the examination is conducted under such section, the
21 applicant may apply to the United States district court for the district in which the applicant resides
22 for a hearing on the matter. Such court has jurisdiction over the matter and may either determine the
23 matter or remand the matter, with appropriate instructions, to the Service to determine the matter.

24 *See also id.* § 1446(a)–(d) (describing the investigation, examination, and determination phases).

⁵ Section 1421(c), entitled “Judicial review,” specifically provides that:

 A person whose application for naturalization under this subchapter is denied, after a hearing before
 an immigration officer under section 1447(a) of this title, may seek review of such denial before the
 United States district court for the district in which such person resides in accordance with chapter
 7 of title 5. Such review shall be *de novo*, and the court shall make its own findings of fact and
 conclusions of law and shall, at the request of the petitioner, conduct a hearing *de novo* on the
 application.

1 they would no longer be a member of the class)—meaning they could never seek relief under either
2 Section 1447(b) (which requires that an examination have occurred) or Section 1421(c) (which
3 requires that a denial have occurred). Dkt. No. 634 at 14 (“It is precisely because thousands of
4 class members are placed in limbo and are stuck waiting years for an interview and a decision, that
5 they are barred from asking a district court to exercise jurisdiction and adjudicate their applications
6 under §§ 1447(b) and 1421(c).”). And even those applicants who have had an examination and
7 could therefore seek certain relief under 1447(b) would not necessarily know that their applications
8 had been subjected to CARRP; USCIS does “not make information about CARRP public,” Dkt.
9 No. 47 at 5 n.1, and never notifies applicants that their applications are undergoing CARRP review,
10 *id.* at 13–14, 20. Finally, as Defendants observe, the Naturalization Class does not “alleg[e] a
11 failure by Defendants to carry out any clear, ministerial duty owed to the naturalization class in
12 relation to CARRP that can be enforced through a writ of mandamus.” Dkt. No. 628 at 6 n.5.

13 Under USCIS’s theory, the agency could, for blatantly discriminatory purposes, shelve
14 certain naturalization applications prior to any examination, and the applicants would have no
15 judicial recourse. However, “Congress rarely allows claims about agency action to escape effective
16 judicial review,” *Axon Enter.*, 596 U.S. at 186, and the INA’s statutory review scheme does not
17 reflect that Congress intended such a futile result here. That is not to say that Sections 1421(c),
18 1447(b), and 1361 fail to provide meaningful judicial review in and of themselves. But in this case,
19 the Court agrees with Plaintiffs that precluding federal question jurisdiction could foreclose
20 meaningful judicial review of the Naturalization Class’s causes of action in light of the near-term
21 inapplicability of these provisions to the claims at hand.

22 The cases that Defendants rely on do not counsel otherwise. For example, in *Miriyeva*, the
23 plaintiff attempted to challenge CARRP within the context of her already-denied naturalization
24 application. 9 F.4th at 938, 941. As Defendants note, “Miriyeva asked the Court to ‘stop the agency

1 from *maintaining the denial* of any naturalization application’ on the basis of the challenged
2 policy.” Dkt. No. 639 at 4 (emphasis added) (quotation marks omitted) (quoting *Miriyeva*, 9 F.4th
3 at 942). Here, by contrast, the Naturalization Class is not “challenging denied naturalization
4 applications or seeking final decisions on their applications[.]” Dkt. No. 634 at 13. Instead, they
5 are seeking to prohibit USCIS from applying CARRP when adjudicating their applications. *Id.*;
6 *see also* Dkt. No. 47 at 51–52; *Axon Enter.*, 598 U.S. at 192 (“What makes the difference here is
7 the nature of the claims and accompanying harms that the parties are asserting”; in other words,
8 “the ‘here-and-now’ injury of subjection to an unconstitutionally structured decisionmaking
9 process” as well as “subjection to that process irrespective of its outcome, or of other decisions
10 made within it”).

11 Because precluding district court jurisdiction could foreclose meaningful judicial review
12 of the Naturalization Class’s claims, the Court finds that the first *Thunder Basin* factor weighs in
13 favor of exercising general federal question jurisdiction.

14 3. The Naturalization Class’s Claims Are Wholly Collateral to the INA’s Review
15 Provisions

16 With respect to the second *Thunder Basin* factor, the Supreme Court’s decision in *Elgin v.*
17 *Department of Treasury* suggests that whether a claim is “wholly collateral” to the relevant
18 statutory review scheme depends on whether that scheme is intended to provide the sort of relief
19 sought by the plaintiff. 567 U.S. 1, 22 (2012) (ruling that the employees’ claims were not “wholly
20 collateral to the CSRA [Civil Service Reform Act] scheme” because they were “requesting relief
21 that the CSRA routinely affords”).

22 Here, the D.C. Circuit’s analysis in *Miriyeva* is instructive. The court reasoned that “[i]f
23 the plaintiff is seeking to have her denied application overturned,” then “a claim regarding the
24 process and policies that dictated that denial is not wholly collateral to such denial.” 9 F.4th at 942

1 (quotation marks omitted). Accordingly, the court found that because Miriyeva was, “‘at bottom’
2 trying to reverse her denied [naturalization] application, her claims [we]re not wholly collateral.”
3 *Id.* (quoting *Heckler*, 466 U.S. at 614).

4 In contrast, for the Naturalization Class to prevail on their claims, it will not be necessary
5 for the Court to determine their eligibility to naturalize or prescribe the outcomes of their
6 naturalization applications. Rather, a successful class member would only be entitled to a CARRP-
7 free adjudication—regardless of whether the adjudication was expedient or ultimately successful.
8 *See* Dkt. No. 634 at 3 (class members “seek to enjoin the agency from applying the CARRP policy
9 to the processing and adjudication of their applications, *not* to establish their eligibility for the
10 benefit or to have their applications decided by the Court”); *see also McNary v. Haitian Refugee*
11 *Ctr., Inc.*, 498 U.S. 479, 495 (1991) (finding that plaintiffs’ challenges to the procedures used by
12 the agency did not fall within the scope of relevant review statute where prevailing on the merits
13 would not “have the effect of establishing their entitlement to” the immigration benefit); *Am.-Arab*
14 *Anti-Discrimination Comm. v. Reno*, 70 F.3d 1045, 1060 (9th Cir. 1995) (concluding that general
15 federal jurisdiction was permitted where plaintiffs were “not challenging the particular outcome
16 of the application, but the collateral procedure” used to process applications).

17 The Court therefore finds that the Naturalization Class’s claims challenging the legality of
18 CARRP are wholly collateral to the review scheme provided in the INA, and the second *Thunder*
19 *Basin* factor also supports an exercise of jurisdiction under Section 1331.

20 4. The Naturalization Class’s Claims Would Not Benefit From the Agency’s Expertise

21 Plaintiffs claim that the final *Thunder Basin* factor “simply does not fit the situation
22 presented here,” Dkt. No. 634 at 17, whereas Defendants maintain that Congress “has granted the
23 agency a critical role in reviewing naturalization applications in the first instance,” Dkt. No. 628
24 at 13.

1 **C. The Naturalization Class’s Claims Are Ripe for Adjudication**

2 “The basic rationale of the ripeness requirement is to prevent the courts, through avoidance
3 of premature adjudication, from entangling themselves in abstract disagreements.” *Twitter, Inc. v.*
4 *Paxton*, 56 F.4th 1170, 1173 (9th Cir. 2022) (cleaned up). There are constitutional and prudential
5 components of ripeness. The former “is synonymous with the injury-in-fact prong of the standing
6 inquiry,” *id.* (quoting *Cal. Pro-Life Council, Inc. v. Getman*, 328 F.3d 1088, 1094 n.2 (9th Cir.
7 2003)), and the latter is “guided by two overarching considerations: the fitness of the issues for
8 judicial decision and the hardship to the parties of withholding court consideration,” *Bishop Paiute*
9 *Tribe v. Inyo Cnty.*, 863 F.3d 1144, 1154 (9th Cir. 2017) (cleaned up). “Prudential considerations
10 of ripeness are discretionary.” *Id.* (quoting *Thomas v. Anchorage Equal Rts. Comm’n*, 220 F.3d
11 1134, 1142 (9th Cir. 2000)).

12 Defendants contend that the claims of the Naturalization Class are not ripe because “(1) the
13 claims are premised on Plaintiffs’ benefit applications remaining undecided by USCIS, (2) there
14 are multiple nontrivial grounds on which the agency may ultimately decide the applications, and
15 (3) . . . the actual basis for any potential denial of class member applications is . . . necessarily
16 unknown.” Dkt. No. 628 at 15; *see also* Dkt. No. 639 at 8. As Plaintiffs point out, though, “class
17 members may never have ripe claims under §§ 1447(b) and 1421(c) precisely because CARRP
18 prevents their applications from being scheduled for an interview and decided.” Dkt. No. 634 at
19 21. The Court reiterates that members of the Naturalization Class are not challenging the ultimate
20 outcomes of their applications; they are challenging the legality of CARRP vis-à-vis their pending
21 applications. *See* Dkt. No. 47 at 47–52 (Plaintiffs’ causes of action and prayer for relief). The Court
22 agrees with Plaintiffs that “their claims are ripe because they are, by definition, currently subject
23 to CARRP, and thus already suffering the very conduct they complain about.” Dkt. No. 634 at 3.

1 It is not clear to the Court why members of the Naturalization Class would need to have
2 their applications denied before their claims challenging CARRP could be considered ripe. *See,*
3 *e.g., Am.-Arab Anti-Discrimination Comm.*, 70 F.3d at 1060 (finding that “a positive outcome of
4 the legalization process” is not “determinative in the ripeness analysis of [a] due process
5 claim . . . challeng[ing] a collateral procedure limiting access to an entitlement”); *cf. Al Naham v.*
6 *U.S. Dep’t of State*, No. 14-CV-9974 (JPO), 2015 WL 3457448, at *3 n.8 (S.D.N.Y. June 1, 2015)
7 (“[A]pplicants are likely to have an independent interest in finality that is frustrated by the absence
8 of any decision, favorable or not.”). On the contrary, according to the allegations in this case, by
9 applying for naturalization and being subjected to CARRP, these Plaintiffs have taken “the
10 affirmative steps that [they] could take” before USCIS impeded their path. *Proyecto San Pablo v.*
11 *I.N.S.*, 189 F.3d 1130, 1138 (9th Cir. 1999) (quoting *Reno v. Cath. Soc. Servs., Inc.*, 509 U.S. 43,
12 59 (1993)).

13 In sum, the constitutional and prudential components of ripeness are satisfied. The claims
14 of the Naturalization Class establish an injury in fact showing that the legal issues presented are
15 fit for judicial decision, and the hardship to the class absent judicial consideration is apparent.

16 **D. The INA Does Not Provide An Adequate Remedy for the Naturalization Class’s**
17 **APA Claims**

18 Under the APA, “[a]gency action made reviewable by statute and final agency action for
19 which there is no other adequate remedy in a court are subject to judicial review.” 5 U.S.C. § 704.
20 To be adequate, an alternative remedy must at a minimum provide the plaintiff “specific
21 procedures” by which the agency action can receive judicial review or some equivalent. *Bowen v.*
22 *Massachusetts*, 487 U.S. 879, 903 (1988). The adequacy of the relief available need not provide
23 review identical to that which the APA would provide, so long as the alternative remedy offers the
24 “same genre” of relief. *Citizens for Responsibility & Ethics in Wash. v. U.S. Dep’t of Justice*, 846

1 F.3d 1235, 1245 (D.C. Cir. 2017). However, “[a]n alternative remedy will not be adequate under
2 § 704 if the remedy offers only ‘doubtful and limited relief.’” *Garcia v. Vilsack*, 563 F.3d 519, 522
3 (D.C. Cir. 2009) (quoting *Bowen*, 487 U.S. at 901).

4 Defendants contend that Sections 1447(b) and 1421(c) provide adequate alternative
5 remedies that preclude the exercise of jurisdiction over the Naturalization Class’s two APA claims,
6 leaving Plaintiffs without the APA’s waiver of sovereign immunity. Dkt. No. 628 at 18–20; *see*
7 Dkt. No. 47 at 49–50 (APA causes of action). For reasons similar to those discussed above
8 regarding the first and second *Thunder Basin* factors, the Court finds that Defendants have failed
9 to establish that the INA provides an adequate alternative remedy for the Naturalization Class’s
10 APA claims.

11 Sections 1447 and 1421 would not necessarily remedy the injury about which the class
12 complains. Section 1421(c) requires a denial, and Section 1447(b) requires an interview—things
13 that may never occur due to CARRP’s allegedly unlawful “indefinite suspension” policy. *See Kim*
14 *v. Ashcroft*, 340 F. Supp. 2d 384, 393 (S.D.N.Y. 2004) (“[US]CIS simply does not possess
15 unfettered discretion to relegate [noncitizens] to a state of ‘limbo,’ leaving them to languish there
16 indefinitely.”). And again, even those applicants who receive an interview or whose applications
17 are ultimately denied would not have reason to know their application had been subjected to
18 CARRP. Indeed, Plaintiffs’ complaint seeks a remedy for this lack of notice precisely to afford
19 them “a reasonable opportunity to respond to those allegations before a neutral decision-maker.”
20 Dkt. No. 47 at 52. For these reasons, it is far from certain that the Naturalization Class, as certified,
21 could ever bring their collateral claims under the INA.

22 Defendants argue for the first time in their reply brief that because some class members
23 have had their naturalization interview and could invoke Section 1447(b), the Court “is unable to
24 issue relief to the Naturalization Class as a whole” and therefore “may decertify the Naturalization

1 Class *sua sponte* because it does not meet the requirements of Rule 23.” Dkt. No. 639 at 11 & n.9.
2 The Court “need not consider arguments raised for the first time in a reply brief.” *Zamani v.*
3 *Carnes*, 491 F.3d 990, 997 (9th Cir. 2007). Nor does the Court find occasion to *sua sponte* revisit
4 its prior finding that the class shares a “common question” of “whether CARRP is lawful” that
5 “will not change based on facts particular to each class member,” thus enabling a single ruling to
6 provide relief to the entire class. Dkt. No. 69 at 25, 30.

7 **III. CONCLUSION**

8 For the foregoing reasons, Defendants’ motion to dismiss, Dkt. No. 628, is DENIED.

9 Dated this 20th day of May, 2024.

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12 Lauren King
13 United States District Judge
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