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UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

IMMIGRANT DEFENDERS LAW  
CENTER, a California Corporation, et  
al.,

Plaintiffs,

v.

KRISTI NOEM<sup>1</sup>, Secretary,  
Department of Homeland Security, in  
her official capacity, et al.,

Defendants.

No. 2:20-cv-09893-JGB-SHK

**DEFENDANTS' NOTICE OF MOTION  
AND MOTION FOR SUMMARY  
JUDGMENT: MEMORANDUM OF  
POINTS AND AUTHORITIES**

Hearing Date: June 1, 2026  
Hearing Time: 9:00 a.m.  
Ctrm: Riverside, Ctrm 1  
Hon. Jesus G. Bernal

<sup>1</sup> Under Federal Rule of Civil Procedure 25(d), Kristi Noem, the current Secretary of Homeland Security, is automatically substituted as the proper defendant in this action in place of Alejandro Mayorkas.

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**NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT**

PLEASE TAKE NOTICE that, on June 1, 2026 at 9:00 a.m., or as soon thereafter as they may be heard, Defendants will, and hereby do, move this Court for an order granting summary judgment in their favor pursuant to Fed. R. Civ. P. 56. This motion will be made in the George E. Brown, Jr. Federal Building and Courthouse before the Honorable Jesus G. Bernal, United States District Judge, located at 3470 Twelfth Street, Riverside, CA 92501.

Defendants bring the motion on the grounds that there are no genuine triable issues of material fact related to Plaintiffs' claims, and that, as a matter of law, Defendant is entitled to summary judgment under Fed. R. Civ. P. 56.

This motion is made upon this Notice, the attached Memorandum of Points and Authorities, the concurrently filed Statement of Undisputed Facts ("SUF"), the declaration of Christina Marquez, and all pleadings, records, and other documents on file with the Court in this action, and upon such oral argument as may be presented at the hearing of this motion.

This motion is made following the conference of counsel pursuant to Local Rule 7-3 which was held on January 30, 2026 and February 19, 2026. *See* Declaration of Christina Marquez "Marquez Decl." ¶¶ 7, 9.

1 Dated: February 23, 2026

Respectfully submitted,

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9 /s/ Christina Marquez

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

In 2018, to curb the illegal immigration crisis and exploitation of the asylum process, the Secretary of the Department of Homeland Security (“DHS”) implemented the Migrant Protection Protocols, otherwise known as MPP. MPP was implemented pursuant to express statutory authority under the Immigration and Nationality Act (“INA”) and used to return certain aliens arriving on land from Mexico, illegally or without proper documents, back to Mexico, while their removal proceedings are pending. *See* INA Section 235(b)(2)(C) [8 U.S.C. § 1225(b)(2)(C)] (An alien “arriving on land (whether or not at a designated port of arrival) from a foreign territory contiguous to the United States,” may be returned “to that territory pending a [removal] proceeding under section 1229a” of the INA) (citation modified).

Organizational Plaintiffs Immigrant Defenders Law Center (“ImmDef”) and Jewish and Family Services of San Diego (“JFS”) along with eleven Individual Plaintiffs<sup>2</sup> seek sweeping relief including declaratory relief and vacatur. Such relief is barred in part by *Garland v. Aleman Gonzalez*, 596 U.S. 543, 550-51 (2022).

Plaintiffs’ claims fail for several reasons. As a threshold matter, Organizational Plaintiffs fail to establish standing because their “diversion of resources” and “frustration of mission” theories for standing were rejected by the Supreme Court in *Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 380-81 (2024) (“*Alliance*”). Additionally, Organizational Plaintiffs fail to show a direct injury to their core business activities. Notwithstanding this issue, Organizational Plaintiffs’ statutory claims under the Administrative Procedure Act (“APA”) are jurisdictionally barred pursuant to 8 U.S.C. § 1252(a)(5) and (b)(9).

As to the merits, Plaintiffs’ claims fail as a matter of law for the following reasons:

---

<sup>2</sup> Plaintiff Rodrigo Doe filed a notice of voluntary dismissal on December 4, 2022, leaving eleven individual plaintiffs. *See* Dkt. 255.

1        *First*, MPP does not violate the statutory right to counsel because the statutory  
2 right to counsel only provides aliens with the right to be represented by a lawyer in  
3 removal proceedings and MPP did not infringe on this right.

4        *Second*, MPP does not violate the right to apply for asylum because MPP does not  
5 prohibit aliens from filing asylum applications. Instead, MPP requires aliens to remain in  
6 Mexico while removal proceedings, including adjudication of any asylum application,  
7 are pending. Any incidental effects are insufficient to establish a violation.

8        *Third*, MPP does not violate Individual Plaintiffs' Fifth Amendment due process  
9 rights because they fail to establish that MPP was implemented without any reasonable  
10 justification in the service of a legitimate governmental objective.

11        *Lastly*, MPP does not violate the First Amendment because it regulates pure non-  
12 expressive conduct not speech.

13        Accordingly, Defendants are entitled to summary judgment.

## 14    **II.    STATUTORY BACKGROUND**

### 15        **A.    Expedited Removal and Removal Proceedings**

16        The INA, 8 U.S.C. § 1101 *et seq.*, governs admission of aliens into the United  
17 States. Section 1225 establishes procedures for aliens who are “applicants for  
18 admission,” that is, aliens present in the United States without being admitted or who  
19 arrive in the United States, either at a port of entry or who cross the border unlawfully.  
20 *See* 8 U.S.C. § 1225(a)(1). An immigration officer, upon encountering an applicant for  
21 admission, must first determine whether the alien is clearly and undoubtedly admissible  
22 to the United States. *Jennings v. Rodriguez*, 583 U.S. 281, 286-87 (2018); *Matter of M-*  
23 *S-*, 27 I. & N. Dec. 509, 510 (A.G. 2019). If the alien is not, the officer must determine  
24 whether the alien is eligible, and should be processed for, expedited removal pursuant to  
25 8 U.S.C. § 1225(b)(1), or else should be afforded a removal proceeding under § 1229a  
26 by applying § 1225(b)(2). *Jennings*, 583 U.S. at 287; *Matter of M-S-*, 27 I. & N. Dec. at  
27 510.

28        Expedited removal, described in 8 U.S.C. § 1225(b)(1), is designed to remove

1 certain aliens quickly without extensive procedures. *See Jennings*, 583 U.S. at 287.  
2 Section 1225(b)(1)(A)(i) provides (subject to exemptions and additions not relevant  
3 here) that certain applicants for admission are eligible for expedited removal if they are  
4 inadmissible based on fraud or a willful misrepresentation in an attempt to gain  
5 admission to the United States or obtain another immigration benefit, 8 U.S.C. §  
6 1182(a)(6)(C), or because they have no valid visa, passport, or other valid entry or  
7 suitable travel document, *id.* § 1182(a)(7). For aliens subject to expedited removal, the  
8 officer “shall order the alien removed from the United States without further hearing or  
9 review,” unless the alien indicates either an intention to apply for asylum or a fear of  
10 persecution. *Id.* § 1225(b)(1)(A)(i). Such an alien who indicates an intent to apply for  
11 asylum or expresses fear of persecution will be interviewed to ascertain whether he has a  
12 “credible fear of persecution.” *Id.* § 1225(b)(1)(B)(ii); *see id.* § 1225(b)(1)(A)(ii). If so,  
13 the alien “shall be detained for further consideration of the application for asylum.” *Id.* §  
14 1225(b)(1)(B)(ii); *see Jennings*, 583 U.S. at 287.

15 Section 1225(b)(2)—an alternative to the expedited removal procedure described  
16 in §1225(b)(1)—is “broader.” *Jennings*, 583 U.S. at 288. Subparagraph (A) of §  
17 1225(b)(2) encompasses any applicant for admission who an immigration officer  
18 “determines” is “not clearly and beyond a doubt entitled to be admitted,” and provides  
19 that such an alien “shall be detained for a proceeding under section 1229a of this title.” 8  
20 U.S.C. § 1225(b)(2)(A). Section 1225(b)(2)(A) thus serves as a “catchall provision,”  
21 reaching the aliens not covered by § 1225(b)(1). *See Jennings*, 583 U.S. at 287.

22 Section 1229a, cross referenced in § 1225(b)(2)(A), establishes the process for  
23 removal proceedings—as distinguished from the expedited removal procedure in §  
24 1225(b)(1). A removal proceeding involves a hearing before an immigration judge, in  
25 which the alien can assert asylum or any other grounds for relief or protection from  
26 removal, subject to review by the Board of Immigration Appeals. *See* 8 U.S.C. § 1229a.  
27 A removal proceeding begins with a Notice to Appear that “can charge inadmissibility  
28 on any ground, including the two that render an individual eligible for expedited

1 removal.” *See* 8 U.S.C. § 1229a(a)(2). Section 1225(b)(2)(A) requires mandatory  
2 detention during an alien’s removal proceedings, subject only to temporary release on  
3 parole “for urgent humanitarian reasons or significant public benefit.” 8 U.S.C.  
4 § 1182(d)(5)(A); *see Jennings*, 583 U.S. at 288. It is undisputed that, even if an alien is  
5 eligible for expedited removal, DHS has prosecutorial discretion not to apply expedited  
6 removal and instead to place that alien into removal proceedings. *See Matter of E-R-M-*  
7 *& L-R-M-*, 25 I. & N. Dec. 520, 523 (BIA 2011) (“DHS has discretion to put aliens in”  
8 removal proceedings “even though they may also be” eligible for expedited removal).

9 As mentioned, applicants for admission who are placed in removal proceedings  
10 are typically required to be detained for the duration of those proceedings. *See* 8 U.S.C.  
11 § 1225(b)(2)(A); *Jennings*, 583 U.S. at 287. As an alternative to mandatory detention,  
12 however, Congress provided that, “[i]n the case of an alien described in subparagraph  
13 (A) [of § 1225(b)(2)] who is arriving on land (whether or not at a designated port of  
14 arrival) from a foreign territory contiguous to the United States, the [Secretary] may  
15 return the alien to that territory pending a proceeding under section 1229a of this title.” 8  
16 U.S.C. § 1225(b)(2)(C). This contiguous-return authority enables DHS to return aliens  
17 arriving on land from Mexico or Canada, instead of keeping them detained in the United  
18 States during removal proceedings, which can often take months or even years.

#### 19 **B. Contiguous-Territory Return Authority**

20 An alien “arriving on land (whether or not at a designated port of arrival) from a  
21 foreign territory contiguous to the United States,” may be returned “to that territory  
22 pending a [removal] proceeding under section 1229a” of the INA. 8 U.S.C.  
23 § 1225(b)(2)(C) (citation modified). In enacting § 1225(b)(2)(C), Congress codified the  
24 Government’s “long-standing practice” of requiring certain aliens arriving from Mexico  
25 or Canada to await removal proceedings there and expanded “beyond that historical  
26 practice” by authorizing the temporary return of any applicant for admission arriving on  
27 land from those contiguous countries. *Matter of M-D-C-V-*, 28 I. & N. Dec. 18, 25-26 &  
28 n.10 (BIA 2020) (discussing pre-IIRIRA practice and 1997 adoption of regulations

1 codified at 8 C.F.R. §§ 235.3(d) and 1235.3(d)). Contiguous-Territory Return Authority  
2 enables DHS to avoid detaining those aliens throughout their removal proceedings, “at  
3 considerable expense,” or else “allow[ing them] to reside in this country, with the  
4 attendant risk that [they] may not later be found.” *See DHS v. Thuraissigiam*, 591 U.S.  
5 103, 108 (2020). Notably, the Supreme Court stayed an injunction blocking enforcement  
6 of MPP, concluding the Government was likely to succeed on the merits and implicitly  
7 recognizing the lawfulness of Contiguous-Territory Return Authority. *See Wolf v.*  
8 *Innovation L. Lab*, 589 U.S. 1271 (2020); *see also Immigrant Defs. L. Ctr. v. Noem*, 145  
9 F. 4th 972, 996 (Nelson, J., dissenting) (explaining how the Supreme Court in granting  
10 the stay in *Innovation L. Lab* concluded that the Government was likely to succeed on  
11 the merits in enforcing MPP).

### 12 **III. STATEMENT OF FACTS**

#### 13 **A. Migrant Protection Protocols and its Implementation**

14 The Department of Homeland Security (“DHS”) began to develop a plan to  
15 operationalize the Contiguous-Territory Return Authority, around the fall of 2018. SUF  
16 1. Implementing this authority required agreement from the Mexican government, which  
17 concluded in December 2018. SUF 2. Mexico committed to implementing essential  
18 measures on their side of the border for aliens returned pursuant to MPP, including  
19 providing humanitarian visas to stay on Mexican soil, the ability to apply for work, and  
20 affording protections under Mexico’s constitution and international treaties to which  
21 Mexico was a party. SUF 3. While the Contiguous-Territory Return Authority had been  
22 occasionally utilized in the past, the broader implementation of this authority in 2018 is  
23 what became known as MPP. SUF 4.

24 On December 20, 2018, Secretary of Homeland Security Kirstjen M. Nielsen  
25 announced the implementation of MPP. SUF 6. MPP was a U.S. Government action  
26 whereby certain aliens arriving in the United States by land from Mexico—illegally or  
27 without proper documentation—could be returned to Mexico and wait outside of the  
28 U.S. for the duration of their removal proceedings. SUF 5. MPP was implemented to

1 address the migration crisis along the southern border. SUF 7. More specifically, it was  
2 intended to prevent the exploitation of the asylum process, resulting in an asylum  
3 backlog of more than 786,000 pending cases as of December 2018. SUF 8.

4 1. The MPP Enrollment Process

5 The process of being enrolled into MPP began when U.S. Customs and Border  
6 Protection (“CBP”)<sup>3</sup> agents or officers encountered an alien who either arrived at a port  
7 of entry or entered the United States illegally between ports of entry, without proper  
8 documentation. SUF 18. Upon this initial encounter, officers used their discretion to  
9 determine whether the alien was amenable to being placed into MPP. SUF 19. Certain  
10 aliens were ineligible for MPP. *See* SUFs 10-17.

11 Aliens could be enrolled into MPP if they were “arriving on land” at ports of entry  
12 or between ports of entry. SUF 20. For an alien encountered entering between ports of  
13 entry, the alien was determined to have been “arriving on land” if the alien was  
14 encountered within 96 hours of the alien’s crossing of the land border. SUF 21. Aliens  
15 enrolled in MPP would be documented in the appropriate system of records and provided  
16 certain documents, including a Notice to Appear (“NTA”), a tear sheet, and a list of local  
17 legal providers from the Department of Justice Executive Office for Immigration Review  
18 (“EOIR”). SUF 22. The tear sheet informed MPP enrollees that they would be returned  
19 to Mexico pending removal proceedings and further instructed them of the date, time,  
20 and port of entry to which they must report for their court hearing(s). SUFs 23-25. There  
21 were two types of tear sheets, depending on whether it was informing an MPP enrollee  
22 of an initial hearing or subsequent hearing. *Id.* These documents were provided to the  
23 individual in English and Spanish as most of those subject to MPP were Spanish  
24 speakers. SUF 26. The list of legal service providers included legal service providers  
25 local to the relevant port of entry. SUF 28.

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27 <sup>3</sup> Border Patrol’s (“USBP”) jurisdiction is the area of land between ports of entry  
28 whereas CBP’s Office of Field Operations (“OFO”) is responsible for processing  
individuals seeking admission at a port of entry.

1        Additionally, officers were advised to inform MPP enrollees that they needed to  
2 arrive at the port of entry with sufficient time in advance of the scheduled hearing to  
3 allow appropriate time for processing, transportation to the court, and consultation with  
4 counsel if they wish. SUF 29. Once the MPP enrollee received this information, he or  
5 she would be returned to Mexico. SUF 30. Each USBP sector and OFO field office  
6 where MPP was put into practice, implemented their own standard operating procedures  
7 (“SOPs”); however, the MPP enrollment process was consistent throughout DHS. SUF  
8 31. Additionally, these SOPs acknowledged the importance of access to counsel. SUF  
9 32. More specifically, SOPs stated in pertinent part:

10        The United States and the Government of Mexico acknowledge that  
11 individuals subject to the MPP have a right to counsel at their own expense  
12 in U.S. removal proceedings and will not impede or inhibit access to counsel.  
13 While the Government of Mexico will continue to regulate the practice of  
14 law within its territory, U.S.-based immigration lawyers who wish to meet  
15 with their clients who are subject to the MPP to discuss or prepare their U.S.  
immigration cases are free to do so either in person or telephonically,  
provided they comply with Mexican immigration law and procedures.

16 *See* SUF 33.

## 17            2.     The MPP Process

18        On the day of an MPP enrollee’s hearing, the MPP enrollee would arrive at the  
19 port of entry at the time designated—generally, a time sufficient to allow for CBP  
20 processing, pre-hearing consulting with counsel (if applicable), and timely appearance at  
21 hearings. SUF 35. U.S. Immigration and Customs Enforcement (“ICE”), Enforcement  
22 and Removal Operations (“ERO”) was responsible for the transport of MPP enrollees  
23 from the port of entry to the immigration court, if necessary. SUF 36 The Immigration  
24 Hearing Facilities (“IHF”) in Laredo and Brownsville were at the port of entry therefore  
25 transportation was not required. SUF 37. ERO would ensure arrival at the immigration  
26 court facility in advance of the MPP enrollee’s scheduled hearing so the MPP enrollee  
27 could meet with counsel in advance of the hearing. SUF 38. MPP enrollees’ counsel  
28 were able to consult with their clients for up to one hour prior to the scheduled hearing

1 time. SUF 39.

2 If the MPP enrollee met with their counsel, they could do so in private spaces,  
3 including separate rooms with the door closed, depending on the particular facility. SUF  
4 40. While having a signed EOIR-28 establishing an attorney-client relationship was  
5 preferred, ERO would permit attorneys to meet with their clients even if there was not a  
6 signed EOIR-28, so long as they could validate the attorney-client relationship. SUF 41.  
7 If ERO officers were present outside of these private spaces, they were nearby solely for  
8 purposes of safety and instructed to respect the confidentiality of attorney-client  
9 conversations. SUF 42.

10 After an alien's removal hearing was over, ERO would transport him or her back  
11 to the port of entry for return to Mexico. SUF 43. If an MPP enrollee received a final  
12 order of removal, the MPP enrollee would be brought to the U.S. port of entry for  
13 removal back to their home county. SUF 44. If the MPP respondent was granted relief,  
14 or protection he/she would be processed according to ERO's standard practices as they  
15 relate to individuals who were granted relief. SUF 45.

16 3. Initial Implementation: San Ysidro Port of Entry

17 MPP was first implemented at the San Ysidro Port of Entry near San Diego,  
18 California. SUF 46. Hearings for aliens enrolled in MPP at the San Ysidro Port of Entry  
19 took place in existing physical non-detained immigration courts in San Diego. SUF 47.  
20 The existing facility did not have private meeting space but did have a large atrium style  
21 waiting room where counsel and their clients could separate and discuss privately. SUF  
22 48.

23 Following the implementation of MPP in San Ysidro, MPP expanded to El Paso,  
24 Brownsville, and Laredo. SUF 49. For each expansion, the government ensured there  
25 were areas for attorney-client conversations. SUF 50.

26 **B. Organizational Plaintiffs**

27 1. Immigrant Defenders Law Center ("ImmDef")

28 Plaintiff ImmDef is a nonprofit organization, who prior to the start of MPP

1 provided limited or full scope representation in immigration court proceedings in the  
2 Greater Los Angeles and Orange County areas (including the Inland Empire) but did not  
3 generally focus on the San Diego border area. SUF 51. In response to Defendants’  
4 implementation of MPP in January 2019, ImmDef established its Cross Border Initiative  
5 (“CBI”), which focuses on providing direct representation, *pro se* assistance, and  
6 advocacy to individuals subjected to MPP. SUF 52.

7 To represent individuals subjected to MPP, ImmDef undertook two new ventures:  
8 first, to begin representing individuals in the San Diego immigration court and, second,  
9 to engage in cross-border travel and communication. SUF 53. Both ventures required  
10 new infrastructure, staff, materials, and funding. SUF 54. In response to MPP, ImmDef  
11 established an office in San Diego. SUF 55.

12 2. Jewish Family Service of San Diego (“JFS”)

13 Plaintiff JFS is a nonprofit organization that, among other services, provides legal  
14 representation for individuals in immigration court proceedings in the Otay Mesa and  
15 San Diego immigration courts. SUF 56. In response to Defendants’ implementation of  
16 MPP in January 2019, JFS shifted its focus to respond to the needs of individuals subject  
17 to MPP. SUF 57. Before MPP, JFS had rarely engaged in cross-border legal work. SUF  
18 58.

19 JFS diverted resources from its core business activities, by establishing cross-  
20 border infrastructure to receive calls from individuals subject to MPP, reduced  
21 representation of detained/nondetained individuals in the San Diego area and created  
22 Know Your Rights programs for those subject to MPP. SUF 59.

23 **IV. ARGUMENT**

24 **A. Organizational Plaintiffs Lack Article III Standing**

25 Supreme Court precedent forecloses a finding that the Organizational Plaintiffs  
26 have standing to challenge MPP. This Court previously held that the Organizational  
27 Plaintiffs established standing based on a “frustration-of-mission” and/or “diversion-of-  
28 resources” theory. *See* Dkt. 261 at 32. However, the Supreme Court in *Food & Drug*

1 *Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 380-81 (2024) (“*Alliance*”) has since  
2 rejected these theories.

3 An organization asserting standing based on its own alleged injuries must show:  
4 “(1) that it has been injured or will imminently be injured, (2) that the injury was caused  
5 or will be caused by the defendant’s conduct, and (3) that the injury is redressable.”  
6 *Alliance*, 602 U.S. 367, 380-81 (2024). “The two questions in most standing disputes are  
7 injury in fact and causation.” *Id.* at 367. “Causation is ‘ordinarily substantially more  
8 difficult to establish’ when (as here) a plaintiff challenges the government’s ‘unlawful  
9 regulation (or lack of regulation) of someone else.’” *Id.* (quoting *Lujan v. Defs. of*  
10 *Wildlife*, 504 U.S. 555, 562 (1992)).

11 *Alliance* “marked a sea change in the doctrine of organizational standing” and the  
12 Ninth Circuit’s prior cases interpreting *Havens Realty v. Coleman*, 455 U.S. 363 (1982)  
13 are clearly irreconcilable with *Alliance* and have “therefore been ‘effectively  
14 overruled.’” *Immigrant Defs. L. Ctr. v. Noem*, 145 F. 4th 972, 996 (Nelson, J.,  
15 dissenting) (cleaned up). In fact, the Supreme Court explicitly stated in *Alliance* that  
16 *Havens* “does not stand for the expansive theory that standing exists when an  
17 organization diverts its resources in response to a defendant’s actions,” and noted that  
18 *Havens* was an “unusual case” and should not be extended “beyond its context.”  
19 *Alliance*, 602 U.S. at 395.

20 In *Alliance*, several doctors and pro-life medical associations challenged the Food  
21 and Drug Administration’s (“FDA”) regulations of *others* that facilitated access to  
22 mifepristone, an abortion drug. 602 U.S. at 376-77, 385 (emphasis added). The medical  
23 associations advanced the frustration of mission and diversion of resource theories to  
24 establish organizational standing. *See id.* at 393-95. More specifically, the medical  
25 associations argued that the FDA’s actions “‘impaired’ their ‘ability to provide services  
26 and achieve their organizational missions’” and “forced” them to “spend ‘considerable  
27 resources’ to the detriment of other spending priorities.” The Court rejected both  
28 arguments. *See id.*

1 More specifically, the Court held, “like an individual, an organization may not  
2 establish standing” because of “strong opposition to the government’s conduct,” an  
3 organization “must show ‘far more than simply a setback to [its] abstract social  
4 interests.’” *Id.* at 394 (quoting *Havens*, 455 U.S. at 379). That remains true “no matter  
5 how longstanding the interest and no matter how qualified the organization.” *Id.* (quoting  
6 *Sierra Club v. Morton*, 405 U.S. 727, 739 (1972)). The Court further held that “an  
7 organization that has not suffered a concrete injury caused by a defendant’s action  
8 cannot spend its way into standing simply by expending money to gather information  
9 and advocate against the defendant’s action.” *Id.* “An organization cannot manufacture  
10 its own standing in that way.” *Id.*; see *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 416  
11 (2013) (no standing where plaintiffs “inflict[ed] harm on themselves” by “incurr[ing]  
12 certain costs” in response to defendant’s actions).

13 In reaching this conclusion, the Court cabined *Havens*, which the medical  
14 associations understood as endorsing a diversion-of-resources theory. *Alliance*, 602 U.S.  
15 at 395. The Court in *Alliance* made clear that *Havens* turned not on diversion of  
16 resources, but on direct interference to HOME’s “core business activities.” *Id.*  
17 “Critically, HOME not only was an issue-advocacy organization, but also operated a  
18 housing counseling service.” *Id.* (citing *Havens*, 455 U.S. at 368). And when the  
19 company inflicted an informational injury on HOME by giving its employee false  
20 information about apartment vacancies, that injury “directly affected and interfered” with  
21 the organization’s “core business activities”—namely, its counseling services for  
22 prospective homeowners. *Id.* at 395. *Alliance*’s rationale makes clear that an  
23 organization cannot change its core business activities in response to a policy as a  
24 maneuver to establish standing. See *id.* at 394. Rather, its activities must be assessed as  
25 they existed prior to adoption of the challenged policy. See *id.*

26 Here, the Organizational Plaintiffs framed their factual assertions and standing  
27 arguments in now-obsolete definitions of standing: “diversion of resources” and  
28 “frustration of mission” theories. See Dkt. 175, Second Amended Complaint (“SAC”),

¶¶ 271-310. ImmDef’s evidence shows that, *in response to MPP*, it engaged in acts beyond its preexisting core business activities; that is precisely the type of voluntary activity that *Alliance* determined was insufficient to establish standing. ImmDef concededly did not represent aliens outside the United States (or even much beyond Los Angeles and Orange County) before MPP. SUF 51. It began doing so only in response to MPP. *See, e.g.*, SUF 53 (stating that, in response to MPP, ImmDef undertook two *new* ventures including representing individuals in San Diego Immigration Court and engaging in cross-border travel and communication); SUF 54 (Both ventures “requires new infrastructure, staff, materials, and funding”); SUF 52 (“In response to Defendants’ implementation of the Protocols in January 2019, ImmDef established its Cross Border Initiative (‘CBI’), which focuses on providing direct representation, pro se assistance, and advocacy to individuals subjected to MPP.”).

Likewise, JFS’s evidence shows that *in response to MPP*, JFS “shifted its focus to respond to the needs of individuals subjected to MPP...” SUF 57. JFS also admitted in the SAC that it “rarely engaged in cross-border legal work,” and diverted resources away from its core business activities to assist those subject to MPP. SUFs 58-59. This included diverting staff resources previously invested in running the JFS hotline dedicated to providing legal services to detained/non-detained individuals, into establishing cross-border infrastructure to receive calls from individuals subject to MPP. SUF 59. JFS also alleges that it diverted resources into creating Know Your Rights programs for those subject to MPP. *Id.* Because the Organizational Plaintiffs’ shift to representing aliens outside the U.S. came *in response to MPP*, they cannot establish standing to *challenge MPP*.

Further, the Organizational Plaintiffs have not presented evidence of a direct injury to pre-existing core business activities. Neither engaged in cross-border work prior to MPP. Moreover, neither alleges an informational injury or a direct interference with its pre-existing core business activities, such as the organization in *Havens*. In both *Alliance* and *Havens*, the Supreme Court analyzed the organizations’ core activities as

they existed at the time of the challenged conduct and determined whether the conduct affected those prior activities. *See Alliance*, 602 U.S. at 379 (noting that, prior to defendant’s conduct, plaintiff organization was engaged in “counseling and referral services for low-and moderate-income homeseekers,” and defendant’s actions “perceptibly impaired” the organization’s ability to provide those services). Accordingly, those core activities must have existed *before* the defendants’ challenged actions. For the Organizational Plaintiffs, they did not.

**B. Plaintiffs’ Requested Relief is Barred**

1. Plaintiffs’ Requested Relief is Barred by *Aleman Gonzalez*

Plaintiffs cannot prevail on several claims for relief because this Court is barred from issuing the requested relief pursuant to 8 U.S.C. § 1252(f)(1). *See Garland v. Aleman Gonzalez*, 596 U.S. 543, 550-51 (2022). While this Court previously declined to determine the precise remedies available to Plaintiffs, the issue is now ripe for summary judgment. *See* Dkt. 261 at 19. This Court has already acknowledged the dramatic reduction in its jurisdictional authority post-*Aleman Gonzalez*. *See* Dkt. 261 at 15 (“To say that an intervening change in the law has occurred understates the point; the Supreme Court’s *Aleman Gonzalez*...radically departs from the precedent under which this Court previously was bound.”).

The SAC sought overbroad and unlawful declaratory and injunctive relief. *See* SAC at p. 95, Prayer for Relief. However, Plaintiffs have since narrowed the scope of their requested relief and are no longer seeking class wide injunctive relief. *See* Marquez Decl. ¶ 8. Instead, Plaintiffs attempt to circumvent *Aleman Gonzalez* by seeking declaratory relief, vacatur of MPP under the APA, and injunctive relief for the named Individual Plaintiffs. Notably, Plaintiffs did not request vacatur of MPP in the SAC and may not do so now. *See* SAC at p. 95, Prayer for Relief. And importantly, Plaintiffs cannot avoid the holding of *Aleman Gonzalez* by ignoring the statute’s text, which bars not just injunctions, but also bars orders that otherwise “restrain” operation of the covered statutes. 8 U.S.C. § 1252(f)(1).

1 Section 1252(f)(1) provides: “Regardless of the nature of the action or claim or of  
2 the identity of the party or parties bringing the action, no court (other than the Supreme  
3 Court) shall have jurisdiction or authority to enjoin **or *restrain* the operation of the**  
4 **provisions of part IV of this subchapter** ... other than with respect to the application of  
5 such provisions to an individual alien against whom proceedings ... have been initiated.”  
6 8 U.S.C. § 1252(f)(1) (emphasis added). In *Aleman Gonzalez*, the Supreme Court held  
7 that 8 U.S.C. § 1252(f)(1) “generally prohibits lower courts from entering injunctions  
8 that order federal officials to take or to refrain from taking actions to enforce, implement,  
9 or otherwise carry out the specific statutory provisions,” 596 U.S. at 550, which includes  
10 several statutes at issue in this case, 8 U.S.C. § 1225(b)(2)(C) (providing for return of  
11 aliens to contiguous territory pending removal proceedings) and 8 U.S.C. §§ 1229,  
12 1229a, and 1231 (providing for removal proceedings and removal of aliens subject to  
13 orders of removal). This prohibition cannot be narrowly circumscribed. The Supreme  
14 Court rejected the argument that the application of § 1252(f)(1) depends on the nature of  
15 the claim in question. *Aleman Gonzalez*, 596 U.S. at 552-54. It noted that such an  
16 interpretation “clashes with § 1252(f)(1)’s prefatory clause, which states that the bar  
17 applies “[r]egardless of the nature of the action or claim.” *Id.* (citing *Nielsen v. Preap*,  
18 586 U.S. 392, 402 (2019) (Thomas, J., concurring in part and concurring in judgment));  
19 *see also Al Otro Lado, Inc. v. Mayorkas*, 619 F. Supp. 3d 1029 (S.D. Cal. Aug. 5, 2022).

20 Here, declaratory relief, and especially vacatur of MPP, clearly restrains  
21 Defendants’ statutory authority under 8 U.S.C. § 1225(b)(2)(C) (providing for return of  
22 aliens to contiguous territory pending removal proceedings). The language in 8 U.S.C.  
23 § 1252(f)(1), which bars orders that “enjoin or *restrain*” is far reaching. For example,  
24 interpreting analogous language, the Supreme Court held that the *Tax Injunction Act*, 28  
25 U.S.C. § 1341, which barred orders that “suspend or restrain” tax collection, stripped  
26 courts of jurisdiction to enter not just injunctive relief, but also declaratory relief.  
27 *California v. Grace Brethren Church*, 457 U.S. 393, 408 (1982); *see also Aleman*  
28 *Gonzalez*, 596 U.S. at 549 (“restrain” means to “check, hold back, or prevent (a person

1 or thing) from some course of action”).

2 Therefore, the relief Plaintiffs seek, regardless of how they cast it, prevents the  
3 Government from relying on the return authority at § 1225(b)(2)(C) that is statutorily  
4 authorized, thereby unlawful pursuant to § 1252(f)(1). Thus, to the extent this Court is  
5 inclined to grant vacatur/declaratory relief, it should be limited to the Plaintiffs in this  
6 case. *See Immigrant Defs. L. Ctr.*, 145 F. 4th at 995 (recognizing *Trump v. CASA, Inc.*,  
7 145 S. Ct. 2540 (2025) (applying the holding in *CASA* to limit relief in the context of the  
8 APA and vacatur only to ImmDef)).

9 2. Plaintiffs’ Requested Relief for the Individual Plaintiffs is Barred  
10 Because Parole Determinations are Committed to Agency Discretion

11 Further, the requested relief for the Individual Plaintiffs is akin to a request for  
12 parole. At this juncture, Plaintiffs concede that the only Individual Plaintiff they seek  
13 return to the United States is Chepo Doe, because all other Individual Plaintiffs are here  
14 in the United States.<sup>4</sup> *See* Marquez Decl. at ¶ 10. Parole determinations are committed to  
15 the discretion of the Secretary of Homeland Security and may only be prescribed on a  
16 “case-by-case basis for urgent humanitarian reasons or significant public benefit...” *See*  
17 8 U.S.C. § 1182(d)(5)(A). This Court has correctly acknowledged the “Executive  
18 Branch’s [] broad discretion to implement the parole authority delegated to it by  
19 Congress,” and thereby cautioned its ability to fashion an equitable remedy. *See* Dkt. 261  
20 at 29. Other Courts have also acknowledged these limits. *See Cuban American Bar*  
21 *Ass’n, Inc. v. Christopher*, 43 F.3d 1412, 1427 (11th Cir. 1995) (rejecting request for an  
22 injunction directing the government to parole certain classes of aliens and  
23 acknowledging the unfettered discretion of the federal government to determine what  
24 classes of aliens to permit entry). As such, as to Chepo Doe, the injunctive relief sought  
25 is unavailable as it is statutorily committed to the Secretary. As to the injunctive relief  
26

27 <sup>4</sup> However, Plaintiffs also advised that they may seek additional relief on behalf of  
28 the other Individual Plaintiffs in their moving papers but failed to articulate what relief  
they may seek. *See* Marquez Decl. at ¶ 10.

1 originally sought for the remaining Individual Plaintiffs, their claims are moot as they  
2 are in the United States.

3 **C. Plaintiffs’ Statutory Right-to-Counsel and Asylum Claims Under the**  
4 **APA Fail for Several Reasons**

5 1. A Judicial Review Bar Applies to Both APA Claims

6 A judicial review bar applies to both statutory claims, channeling both claims into  
7 the petition-for-review (“PFR”) process. Sections 1252(a)(5) and (b)(9) bar the district  
8 court from reviewing ImmDef’s claims. The INA provides exclusive judicial review of  
9 final orders of removal through the PFR process. *See J.E.F.M. v. Lynch*, 837 F.3d 1026,  
10 1031-33 (9th Cir. 2016). In particular, § 1252(a)(5) prescribes the vehicle for judicial  
11 review: “[A] petition for review ... shall be the sole and exclusive means for judicial  
12 review of an order of removal[.]” And lest there be any question about the scope of  
13 judicial review, § 1252(b)(9) mandates that “[j]udicial review of all questions of law and  
14 fact, including interpretation and application of constitutional and statutory provisions,  
15 arising from any action taken or proceeding brought to remove an alien from the United  
16 States ... shall be available only in judicial review of a final order[.]” “In enacting  
17 section 1252(b)(9), Congress plainly intended to put an end to the ... piecemeal nature of  
18 the review process ... in regard to removal proceedings.” *Aguilar v. U.S. Immigr. &*  
19 *Customs Enf’t Div. of Dep’t of Homeland Sec.*, 510 F.3d 1, 9 (1st Cir. 2007).

20 Section 1252(b)(9) is an “unmistakable zipper clause” that channels judicial  
21 review of “all questions of law and fact,” including both “constitutional and statutory”  
22 challenges into a PFR after administrative immigration proceedings have ended. *Reno v.*  
23 *American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 482-83 (1999); *see also*  
24 *E.O.H.C. v. Sec’y United States Dep’t of Homeland Sec.*, 950 F.3d 177, 186 (3d Cir.  
25 2020) (barring statutory right-to-counsel claim). The provision is capacious: “Section  
26 1252(b)(9) is ... breathtaking in scope and vise-like in grip and therefore swallows up  
27 virtually all claims that are tied to removal proceedings.” *J.E.F.M.*, 837 F.3d at 1031.  
28 Section 1252(b)(9)’s broad reach is consistent with the Congressional purpose

1 underpinning its enactment, namely to “streamline immigration proceedings” and  
2 “eliminate[] the previous initial step in obtaining judicial review—a suit in a District  
3 Court,” so that ““review of a final removal order is the only mechanism for reviewing  
4 any issue raised in a removal proceeding.”” *Singh v. Gonzales*, 499 F.3d 969, 975-76 (9th  
5 Cir. 2007) (emphasis added) (quoting H.R. Rep. No. 109-72 at 173 (May 3, 2005)).

6 Regarding an APA challenge in district court, “[w]hen a claim by an alien,  
7 however it is framed, challenges the procedure and substance of an agency determination  
8 that is ‘inextricably linked’ to the order of removal, it is prohibited by section  
9 1252(a)(5).” *Martinez v. Napolitano*, 704 F.3d 620, 623 (9th Cir. 2012). Accordingly,  
10 “[t]aken together, § 1252(a)(5) and (b)(9) mean that any issue—whether legal or  
11 factual—arising from any removal-related activity can be reviewed only through the  
12 [PFR] process.” *J.E.F.M.*, 837 F.3d at 1031 (emphasis in original).

13 Here, Plaintiffs’ claims regarding the right to apply for asylum in removal  
14 proceedings and have counsel during those proceedings are barred by the INA. Those  
15 rights are “bound up in and an inextricable part” of removal proceedings. *See J.E.F.M.*,  
16 837 F.3d at 1033 (right-to-counsel claims “must be raised through the PFR process  
17 because they ‘arise from’ removal proceedings,” were “not independent or ancillary to  
18 the removal proceedings,” and were instead, “bound up in and an inextricable part of the  
19 administrative process”). Thus, because the challenged actions are inextricably linked to  
20 removal proceedings and orders of removal, they are barred by § 1252(a)(5) and (b)(9),  
21 and they must be raised solely through the PFR process. *See id.* at 1033-34; *E.O.H.C.*,  
22 950 F.3d at 187-88.

## 23 2. MPP Does Not Violate the Statutory Right to Counsel

24 The INA expressly authorizes contiguous territory return pending removal  
25 proceedings; thus, the decision to exercise that authority cannot give rise to an APA suit  
26 for violating a separate INA provision regarding counsel. Aliens seeking admission have  
27 only those rights that “Congress has provided by statute.” *Thuraissigiam*, 591 U.S. at  
28 140 (citing 8 U.S.C. §§ 1225(b)(1)(B)(ii), (iv)); *see United States ex rel. Knauff v.*

1 *Shaughnessy*, 338 U.S. 537, 544 (1950) (“Whatever the procedure authorized by  
2 Congress is, it is due process as far as an alien denied entry is concerned.”).

3 In § 1229a removal proceedings, Congress gave aliens the “privilege of being  
4 represented, at no expense to the Government, by counsel of the alien’s choosing who is  
5 authorized to practice in such proceedings[.]” 8 U.S.C. § 1229a(b)(4)(A); *see* 8 U.S.C.  
6 §§ 1158(d)(1), 1362. As the “authorized to practice” requirement shows, that statutory  
7 right only extends to proceedings conducted by immigration judges under § 1229a in the  
8 United States. 8 U.S.C. §§ 1229a(b)(4)(A), 1362; *see Orozco-Lopez v. Garland*, 11 F.4th  
9 764, 778-79 (9th Cir. 2021) (8 C.F.R. § 208.31 “does not mean that a non-citizen must  
10 have counsel before an IJ can proceed, but only that a non-citizen must at least be  
11 informed of the entitlement to counsel and have an opportunity to seek counsel within  
12 [the time constraints].”). The alien is also entitled by regulation to a list of organizations,  
13 referral services, and attorneys qualified to provide pro bono services in immigration  
14 proceedings. 8 C.F.R. § 1003.61(b). However, this is as far as the right goes, at least with  
15 respect to aliens returned to Mexico under MPP. *United States v. Valdivias-Soto*, 112  
16 F.4th 713, 723 (9th Cir. 2024) (“To the extent a respondent can secure a pro bono  
17 attorney, the right to counsel entitles them to be represented by that attorney in their  
18 removal proceedings or on appeal.”)

19 Critically, in addition to Congress expressly authorizing DHS to return aliens to a  
20 contiguous territory “pending a proceeding under section 1229a[.]” Congress articulated  
21 no requirement that the Government actively facilitate an alien’s access to counsel in that  
22 foreign territory. 8 U.S.C. § 1225(b)(2)(C); *Biden v. Texas*, 597 U.S. 785, 801-02 (2022)  
23 (“Section 1225(b)(2)(C) plainly confers a discretionary authority to return aliens to  
24 Mexico during the pendency of their immigration proceedings.”). That statutory silence  
25 speaks volumes because § 1225(b)(2)(C) was enacted at the same time as the statutory  
26 privilege to obtain counsel in §§ 1158(d)(4), 1229a(b)(4)(A), and 1362. *See Orozco-*  
27 *Lopez*, 11 F.4th at 775 (explaining that the “broader legislative context” can help clarify  
28 statutory meaning).

Potentially inconveniencing the right to counsel is different from depriving an alien of that right all together. *See Immigrant Defs. L. Ctr.*, 145 F. 4th at 1011 (Nelson, J., dissenting). “Though MPP may make it harder for an alien to coordinate with a lawyer while they are abroad, it does not follow that the individual’s statutory right to counsel is violated when the Government exercises return authority that the same statute expressly allows.” *See Immigrant Defs. L. Ctr.*, 145 F. 4th at 1011 (Nelson, J., dissenting); *see also* 8 U.S.C. § 1225(b)(2)(C). “The Government must only permit MPP aliens to be represented by a lawyer should they find one.” *See Immigrant Defs. L. Ctr.*, 145 F. 4th at 1011 (Nelson, J., dissenting); *see also* 8 U.S.C. § 1362. The INA requires no more.

Here, the evidence reflects that Defendants permitted MPP enrollees to be represented by a lawyer should they choose to hire an attorney. SUFs No. 32-34, 39-42. In fact, all guidelines and standard operating procedures contemplated this representation. *See* SUFs 32-34. More specifically, MPP enrollees were provided with the EOIR list of local legal service providers. *See* SUF 28. They were afforded an opportunity to meet with their counsel prior to any hearings, and their attorneys were allowed to be present at all hearings. *See* SUF 32-34. Additionally, MPP enrollees were free to consult with their attorneys while in Mexico at any time.

Accordingly, Plaintiffs’ claims regarding obstructing access to counsel fail because they are premised on alleged rights beyond what Congress has provided. Plaintiffs’ asserted difficulty is inherent in any exercise of the statutory contiguous territory return authority, which will always place aliens “outside the country” pending removal proceedings. Nothing in the operational guidance for MPP limits the conduct of aliens or their counsel while they are in Mexico. And nothing in the INA requires the Government to provide in-person meeting time in government-provided confidential meeting rooms immediately before an immigration hearing—let alone for any length of time.

3. MPP Does Not Violate the Right to Apply for Asylum

As an initial matter, the APA provides no basis for Plaintiffs to disregard Congress’s decision to authorize contiguous territory return. The INA permits an alien “who is physically present in the United States or who arrives in the United States” to apply for asylum. 8 U.S.C. § 1158(a)(1). The statutory right, however, may be exercised only “in accordance with this section *or, where applicable*, section 1225(b) of this title.” *Id.* (emphasis added). And § 1225(b) provides the express authority for MPP. *See id.* § 1225(b)(2)(C). It follows that Congress limited an alien's right to apply for asylum when the Government is exercising its contiguous territory return authority under § 1225(b)(2)(C). *See Thuraissigiam*, 591 U.S. at 140 (“[A]n alien ... has only those rights regarding admission that Congress has provided by statute.”). In such cases, an alien can apply for asylum during the § 1229a removal proceedings referenced in the statute. *See* 8 U.S.C. § 1225(b)(2)(C) (“[T]he Attorney General may return the alien to [a contiguous] territory pending a proceeding under section 1229a of this title.”).

That is the only way to make sense of the statutory scheme. *See Immigrant Defs. L. Ctr.*, 145 F. 4th at 1009 (Nelson, J., dissenting). Indeed, Plaintiffs’ interpretation of the contiguous territory return infringes on the process of asylum, which is a “matter of executive discretion.” *See Refugee & Immigrant Ctr. v. Noem*, Case No. 25-5243 (D.C. Cir. Aug. 1, 2025) (granting stay in part and acknowledging that asylum is discretionary and a matter of executive discretion). Thus, while the INA confers a right to apply for asylum, *see* 8 U.S.C. § 1158(a)(1), it also authorizes the return of aliens to contiguous countries while removal proceedings play out, *id.* § 1225(b)(2)(C). Plaintiffs want the former to swallow the latter.

However, courts do not read statutes to clash in that way. *See Immigrant Defs. L. Ctr.*, 145 F. 4th at 1009 (Nelson, J., dissenting). Courts have a “duty” to interpret the INA “as a harmonious whole rather than at war with [itself].” *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 502 (2018). Here, the right to apply for asylum and the contiguous territory return authority “are capable of co-existence.” *See Cty. of Yakima v.*

1 *Confederated Tribes & Bands of Yakima Indian Nation*, 502 U.S. 251, 265 (1992).  
2 “Aliens physically present in the United States and sent back to Mexico under §  
3 1225(b)(2)(C) can apply for asylum in their pending removal proceedings,” yet the  
4 “Government need not surrender its express contiguous territory return authority and  
5 shelter aliens in the United States while their removal proceedings are ongoing.” *See*  
6 *Immigrant Defs. L. Ctr.*, 145 F. 4th at 1009 (Nelson, J., dissenting).

7       It was Congress that determined that aliens arriving on land from Mexico can be  
8 required to await removal proceedings and, if applicable in such proceedings, await  
9 adjudication of their asylum applications in Mexico. If an alien decides not to wait in  
10 Mexico for a final decision in their removal proceedings, including an asylum  
11 application or other applicable relief or protection, that is not because the alien lacked  
12 the right to apply for asylum. And the denial of an alien’s asylum application can hardly  
13 mean that the alien was unable to apply for asylum; it means just the opposite. The  
14 Government is not obligated to forego contiguous territory return to keep aliens in the  
15 United States during the pendency of removal proceedings.

16       Moreover, Plaintiffs’ theory that the contiguous territory return authority cannot  
17 be exercised if it makes aliens less likely to apply for or succeed in asylum applications  
18 lacks any coherent limiting principle. How much of a decrease in application or success  
19 rates is sufficient to trigger a conflict between the statutes? What conditions in Mexico  
20 make the authority unavailable? How materially must they differ from the prevailing  
21 conditions in Mexico at the time Congress provided contiguous-territory return  
22 authority?

23       Here, Congress permitted asylum applications but also permitted contiguous  
24 territory return requiring aliens to remain in Mexico while awaiting their § 1229a  
25 removal proceedings, to potentially include a decision on their applications for asylum or  
26 other pending relief or protection. Indeed, reducing the incentive to “mak[e] false claims  
27 to stay in the U.S.” is part of the reason for contiguous-territory return in the first place.  
28 SUFs 7-8. And there is no evidence suggesting that MPP enrollees were unable to apply

1 for asylum during their removal proceedings.

2        Additionally, the conditions in Mexico, as alleged in the SAC, do not undercut the  
3 fact that Plaintiffs were able to apply for asylum. And conditions in Mexico lack  
4 relevance to the statutory availability of the authority. Even if, for the sake of argument,  
5 conditions in the United States are better than conditions in Mexico, Congress still made  
6 the determination to authorize return to Mexico—meaning that awaiting a decision in  
7 removal proceedings, to include on an asylum application, if applicable, in Mexico is  
8 entirely consistent with the INA.

9        **D. Individual Plaintiffs Cannot Establish a Fifth Amendment Due Process**  
10        **Claim Because They Cannot Demonstrate That There is No Reasonable**  
11        **Justification for MPP**

12        The Constitution prohibits the federal government and States from “depriv[ing]” a  
13 “person” of “life, liberty, or property, without due process of law.” U.S. Const. Amend.  
14 V; *see* U.S. Const. Amend. XIV, § 1. The Supreme Court has recognized two types of  
15 due-process claims. *See Department of State v. Muñoz*, 602 U.S. 899, 910 (2024). A  
16 procedural-due-process claim takes as given the substantive determinations that would  
17 justify a deprivation of life, liberty, or property, but challenges the “adequacy of the[]  
18 procedures” for making those determinations. *Mathews v. Elridge*, 424 U.S. 319, 335  
19 (1976). In contrast, a substantive-due-process claim challenges the substance of the de-  
20 terminations themselves, arguing that they are inadequate to justify the deprivation “at  
21 all.” *Reno v. Flores*, 507 U.S. 292, 302 (1993).

22        These due process rights must also be analyzed in the context of immigration. The  
23 Supreme Court has recognized that “our immigration laws have long made a distinction  
24 between those aliens who have come to our shores seeking admission . . . and those who  
25 are within the United States after an entry, irrespective of its legality. In the latter  
26 instance, the Court has recognized additional rights and privileges not extended to those  
27 in the former category who are merely ‘on the threshold of initial entry.’ ” *Leng May Ma*  
28 *v. Barber*, 357 U.S. 185, 187 (1958) (quoting *Shaughnessy v. United States ex rel. Mezei*,

345 U.S. 206, 212 (1953)); *see also Thuraissigiam*, 591 U.S. at 140 ( “an alien who is  
detained shortly after unlawful entry cannot be said to have ‘effected an entry’” (quoting  
*Zadvydas v. Davis*, 533 U.S. 678, 693 (2001))). Aliens “inside the U.S., regardless of  
whether their presence here is temporary or unlawful, are entitled to certain  
constitutional protections unavailable to those outside our borders.” *Kwai Fun Wong v.*  
*United States*, 373 F.3d 952, 970 (9th Cir. 2004) (citing *Zadvydas*, 533 U.S. at 693; *Xi v.*  
*U.S. I.N.S.*, 298 F.3d 832, 837 (9th Cir. 2002)). But for those aliens who have neither  
acquired domicile or residence in the United States nor been lawfully admitted,  
“‘[w]hatever the procedure authorized by Congress is, it is due process as far as an alien  
denied entry is concerned.’” *Thuraissigiam*, 591 U.S. at 139 (quoting *Mezei*, 345 U.S. at  
212) (applying rule to alien who had made it 25 yards onto U.S. soil before being  
apprehended). “This principle has given rise to the ‘entry fiction,’ a legal concept which  
holds that ‘excludable aliens,’ ‘[e]ven if physically in this country, . . . are legally  
detained at the border’ and treated as if they have not entered the country.” *Padilla v.*  
*U.S. Immigr. & Customs Enf’t*, 354 F. Supp. 3d 1218, 1225 (W.D. Wash. 2018) (quoting  
*Garcia-Mir v. Smith*, 766 F.2d 1478, 1484 (11th Cir. 1985)). “Applying this legal fiction,  
Mezei held that the procedural due process rights of an alien detained on Ellis Island  
were not violated when he was excluded without a hearing.” *Kwai Fun Wong*, 373 F.3d  
at 971 (citing *Mezei*, 345 U.S. at 214); *see Angov v. Lynch*, 788 F.3d 893, 898 (9th Cir.  
2015) (“[The alien] has no . . . right [to procedural due process]. He presented himself at  
the San Ysidro port of entry without valid entry documents and sought asylum . . . .  
[T]hose, like [the alien], who have never technically ‘entered’ the United States have no  
such rights.” (quoting *Mezei*, 345 U.S. at 212). Aliens who have not entered the United  
States are afforded limited constitutional protections more generally. “[A]liens receive  
constitutional protections when they have come within the territory of the United States  
and developed substantial connections with this country.” *United States v. Verdugo-*  
*Urquidez*, 494 U.S. 259, 275 (1990). And as a corollary to this limitation, constitutional  
rights do not generally apply extraterritorially. *See id.* at 269, 274-75.

1 Here, Plaintiffs’ due process challenge is substantive, because while Plaintiffs  
2 contend that MPP imposed obstacles to obtaining counsel and/or meaningfully preparing  
3 asylum cases, *see* SAC at ¶ 87, without establishing that these impediments impacted the  
4 outcome of asylum proceedings there is no claim. This requires an individualized and  
5 substantive determination to identify whether the purported evidence that a Plaintiff  
6 wanted to present was relevant or necessary for the desired outcome in removal  
7 proceedings. *See Connecticut Department of Public Safety v. Doe*, 538 U.S. 1 (2003)  
8 (“Plaintiffs who assert a right to a hearing under the Due Process Clause must show that  
9 the facts they seek to establish in the hearing are relevant under the statutory scheme.”).  
10 Plaintiffs have not made that showing here.

11 Lastly, to prevail on a substantive due process argument, Plaintiffs must prove that  
12 the challenged exercise of power was “without *any* reasonable justification in the service  
13 of a legitimate governmental objective.” *County of Sacramento v. Lewis*, 523 U.S. 833,  
14 846 (1998) (emphasis added). The evidence is clear that MPP was implemented to  
15 curtail the exploitation of the asylum process, which is a legitimate governmental  
16 objective.

17 **E. MPP Does Not Violate the First Amendment Because It Regulates Pure**  
18 **Non-Expressive Conduct Not Speech**

19 MPP does not regulate speech by placing aliens in Mexico during their removal  
20 proceedings. That is a regulation of pure, non-expressive conduct—whether aliens may  
21 stay in the United States pending their removal proceedings. That regulation places, at  
22 most, incidental burdens on speech. *Sorrel v. IMS Health Inc.*, 564 U.S. 552, 567 (2011).  
23 Such incidental burdens “hardly mean[] that the law should be analyzed as one  
24 regulating the [plaintiff’s] speech rather than conduct.” *Rumsfeld v. FAIR*, 547 U.S. 47,  
25 62 (2006). Instead of restricting attorney speech or expressive conduct, MPP places  
26 aliens in a different country from the Organizational Plaintiffs’ attorneys who wish to  
27 speak with them. In that sense, MPP is like an ordinance prohibiting outdoor fires, a  
28 conduct-focused regulation that does not violate the First Amendment despite having the

1 incidental effect of restricting expressive flag burning. *See Sorrel*, 564 U.S. at 567 (citing  
2 *R.A.V. v. City of St. Paul*, 505 U.S. 377, 385 (1992)); *see also Texas v. Johnson*, 491  
3 U.S. 397, 404-06 (1989).

4 None of the MPP guiding principles or MPP standard operating procedures  
5 included any provision restricting communication between attorney and client and/or  
6 limiting the substance of these communications. *See* SUFs 32-34. Rather, they explicitly  
7 acknowledged access to counsel and advised that the right to counsel should not be  
8 inhibited. *See id.*

9 To the extent MPP's placement of aliens in Mexico could be viewed as a  
10 restriction on speech, it cannot be understood to do more than impose content-neutral  
11 time, place, and manner restrictions on communication with the Organizational  
12 Plaintiffs' existing clients by excluding them from the United States pending removal  
13 proceedings. Such restrictions are permissible when they are "narrowly tailored to serve  
14 a significant Governmental interest" and "leave open ample alternative channels for  
15 communication." *Mothershed v. Justices of the Sup. Ct.*, 410 F.3d 602, 611 (9th Cir.  
16 2005); *see also Kuba v. I-A Agric. Ass'n*, 387 F.3d 850, 858 (9th Cir. 2004) (quoting  
17 *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989)). The inherent challenges in  
18 communicating with someone in another country are amply justified by the  
19 Government's "compelling interest in protecting its borders." *Kariye v. Mayorkas*, 650  
20 F. Supp. 3d 865, 909 (C.D. Cal. 2022) (collecting cases).

21 Organizational Plaintiff JFS alleges that MPP restricted its ability to conduct  
22 Know Your Rights presentations and both Organizational Plaintiffs allege that MPP  
23 limited attorneys and clients to an hour of in person communication before a hearing.  
24 But restrictions on attorney access to clients are surpassingly common, as are restrictions  
25 on speech and conduct in courtrooms and courthouses. After all, the Government "may  
26 reserve [a] forum" like an immigration court "for its intended purposes, communicative  
27 or otherwise." *Reza v. Pearce*, 806 F.3d 497, 503 (9th Cir. 2015) (citation omitted).  
28 Organizational Plaintiffs ignore the fact that MPP left them free to communicate with

1 anyone, at any time, about anything, outside the immediate context of immigration  
2 hearings.

3 **V. CONCLUSION**

4 Based on the foregoing, Defendants respectfully request this Court grant summary  
5 judgment in favor of the Defendants.

6  
7 Dated: February 23, 2026

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