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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - EASTERN DIVISION**

IMMIGRANT DEFENDERS LAW
CENTER, *et al.*,

Plaintiffs,

v.

KRISTI NOEM, *et al.*,

Defendants.

Case No. 2:20-cv-09893-JGB-ACCV

**PLAINTIFFS' [REDACTED]
NOTICE OF MOTION, MOTION
FOR SUMMARY JUDGMENT,
AND OPPOSITION TO
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

Judge: Honorable Jesus G. Bernal
Crtrm: 1
Date: June 1, 2026
Time: 9:00 a.m.

Action Filed: October 28, 2020

[Caption Page Continued -
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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, Plaintiffs Immigrant Defenders Law Center, Jewish Family Service of San Diego, Ariana Doe, Francisco Doe, Chepo Doe, Yesenia Doe, Dania Doe, Sofia Doe, Lidia Doe, Antonella Doe, Gabriela Doe, Carlos Doe, and Reina Doe (collectively, “Plaintiffs”) will, and hereby do, move this Court for an order granting summary judgment in their favor pursuant to Federal Rule of Civil Procedure 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.

Plaintiffs 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, Plaintiffs are entitled to summary judgment under Federal Rule of Civil Procedure 56.

This motion is made upon this Notice, the attached Memorandum of Points and Authorities, the concurrently filed Plaintiffs’ Statement of Undisputed Facts (“SUF”), Plaintiffs’ Responses to Defendants’ Statement of Undisputed Facts (ECF No. 439-6), the concurrently filed declarations and exhibits, 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 March 13, 2026. *See* Declaration of Allyson C. Myers (“Myers Decl.”) ¶ 2.

Dated: March 23, 2026

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Dated: March 23, 2026

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INTRODUCTION

Between January 2019 and June 2021, Defendants deployed the “Migrant Protection Protocols” (“MPP 1.0”¹), which trapped asylum seekers in Mexico under perilous conditions that obstructed their ability to meaningfully access the U.S. asylum system. As this Court previously noted, “Defendants have conceded publicly and in papers filed during this litigation that MPP is indefensible as a matter of policy, in large part because of the burdens it imposed on the right to apply for asylum.” ECF 261 at 34. Plaintiffs now move for summary judgment on all claims because the undisputed facts establish that Defendants’ implementation of MPP 1.0 violated the rights of Individual Plaintiffs, Class Members,² and Organizational Plaintiffs Immigrant Defenders Law Center (“ImmDef”) and Jewish Family Service of San Diego (“JFSSD”) (collectively, “Plaintiffs”).

First, MPP 1.0 violated the Administrative Procedure Act (“APA”) and the Immigration and Nationality Act (“INA”) because it was contrary to law and arbitrary and capricious. MPP 1.0’s implementation was contrary to law because it violated the statutory right to access the asylum system and failed to comport with the Refugee Act’s directive to treat all asylum applicants equally. MPP 1.0 also unlawfully subjected respondents, including Individual Plaintiffs and Class Members, to conditions that were tantamount to the denial of the right to counsel. Further, the implementation of MPP 1.0 was arbitrary and capricious as Defendants failed to consider how conditions MPP 1.0 foreseeably created would impede Individual Plaintiffs’ and Class Members’ access

¹ For purposes of this memorandum, “MPP 1.0” refers to the implementation of the Migrant Protection Protocols between January 2019 and June 2021.

² Class Members are “[a]ll individuals subjected to MPP 1.0 prior to June 1, 2021, who remain outside the United States and whose cases are not currently active due to termination of proceedings or a final removal order.” ECF 261 at 49. The Court also certified three subclasses: the Terminated Case Subclass; the *In Absentia* Subclass; and the Final Order Subclass. *Id.* at 49–50.

1 to the asylum system and right to counsel, as well as Organizational Plaintiffs' ability
2 to adequately represent MPP 1.0 respondents.

3 *Second*, MPP 1.0 violated Individual Plaintiffs' and Class Members' rights under
4 the Due Process Clause, resulting in fundamentally unfair immigration proceedings.
5 Defendants' implementation of MPP 1.0 violated Individual Plaintiffs' and Class
6 Members' right to a full and fair hearing by failing to provide adequate notice of MPP
7 proceedings; by obstructing their access to counsel, their ability to apply for relief and
8 present evidence, and their access to the appeal process; and by preventing *In Absentia*
9 subclass members from attending their hearings.

10 *Third*, MPP 1.0 violated Plaintiffs' First Amendment rights by depriving
11 Individual Plaintiffs and Class Members of the right to consult counsel and to petition
12 the courts by unlawfully restricting their communications with counsel; and by
13 depriving Organizational Plaintiffs of the right to advise potential and existing clients
14 by unreasonably restricting their ability to meet and communicate with MPP
15 respondents.

16 Because MPP 1.0 violated Plaintiffs' statutory and constitutional rights, Plaintiffs
17 are entitled to vacatur of MPP 1.0, injunctive relief on behalf of Chepo Doe, and a
18 declaratory judgment that MPP 1.0 was arbitrary and capricious, contrary to law, and
19 in violation of the Constitution.

20 Defendants' contrary arguments in their Motion for Summary Judgment, ECF
21 439 ("Defs.' Mot."), lack merit for two main reasons. First, most of Defendants' Motion
22 regurgitates the same arguments regarding standing, remedies, and justiciability that
23 this Court and the Ninth Circuit have already rejected. *See* ECF 261, 405; *Immigrant*
24 *Defs. L. Ctr. v. Noem*, 145 F.4th 972 (9th Cir. 2025) ("*ImmDef*"). Second, Defendants'
25 arguments are unsupported by facts and misunderstand the law. Defendants insist that
26 MPP 1.0 did not violate Plaintiffs' statutory and constitutional rights because it did not
27 expressly *prohibit* Individual Plaintiffs and Class Members from accessing counsel or
28 the asylum system, or expressly *ban* Organizational Plaintiffs from meeting and

1 communicating with their clients in MPP. This Court and the Ninth Circuit have
2 rejected this argument, which ignores the repeated admonition that constitutional and
3 statutory rights cannot be “made illusory by the government’s own actions.” *ImmDef*,
4 145 F.4th at 992.

5 For these reasons, the Court should grant Plaintiffs summary judgment, deny
6 Defendants’ motion for summary judgment, and enter an order vacating MPP 1.0,
7 declaring it unlawful, and granting injunctive relief to Individual Plaintiff Chepo Doe.

8 THE UNDISPUTED FACTS

9 A. Defendants’ Development and Implementation of MPP 1.0

10 Around the fall of 2018, Defendant U.S. Department of Homeland Security
11 (“DHS”) began to develop plans to operationalize 8 U.S.C. § 1225(b)(2)(C), which
12 ultimately evolved into the Migrant Protection Protocols. Defendants’ Statement of
13 Undisputed Facts, ECF 439-6 (“Defs.’ SUF”) 1, 4. Plans for MPP 1.0 went forward
14 even though reliance on section 1225(b)(2)(C) had been “resisted for many years due
15 to lack of proof that Mexico was a safe place for migrants.” Plaintiffs’ Statement of
16 Undisputed Facts (“SUF”) 1. Indeed, even in 2018, Defendants were aware of the
17 dangers present in the Mexican border towns where they planned to send MPP 1.0
18 respondents. SUF 2. While planning MPP 1.0’s implementation, [REDACTED]
19 [REDACTED]
20 [REDACTED]. SUF 3. The U.S. State Department issued a travel
21 advisory on November 15, 2018, designating the Mexican border state of Tamaulipas a
22 Level 4 “Do Not Travel” risk. SUF 5. And the State Department’s 2017 Country Report
23 on Human Rights Practices had identified “violence against migrants by government
24 officers and organized criminal groups” as one of the “most significant human rights
25 issues in Mexico.” SUF 6.

26 Nonetheless, on December 20, 2018, then-DHS Secretary Kirstjen Nielsen
27 announced MPP 1.0, characterizing it as an “unprecedented” change to DHS policy.
28 SUF 7. In January 2019, Defendants began implementation. Defs.’ SUF 46. Under

1 MPP 1.0, DHS required certain individuals and families from non-contiguous countries
2 who presented themselves at or near the southern U.S. land border to return to Mexico
3 for the duration of their removal proceedings. SUF 8. Over the next few months,
4 Defendants rolled out MPP 1.0 at the San Ysidro, El Paso, Brownsville, and Laredo
5 ports of entry (“POE”). Defs.’ SUF 46, 49. In August 2019, DHS informed Congress
6 that it was going to build “large temporary immigration hearing facilities,” or IHFs, in
7 Brownsville and Laredo, Texas, for MPP immigration-related hearings. SUF 9.

8 When initiating MPP 1.0 proceedings, Defendants gave respondents a “tear
9 sheet” and Notice to Appear (“NTA”) indicating the date and time of their immigration
10 court hearing, along with a copy of the current Executive Office for Immigration
11 Review (“EOIR”) pro bono counsel list. SUF 10, 11. However, due to EOIR’s capacity
12 constraints, MPP 1.0 respondents were generally not scheduled for their initial
13 immigration court hearings for several months thereafter. SUF 13.

14 Defendants failed to provide any guidance to immigration agents and officers on
15 how to complete and conduct quality checks on NTAs for MPP 1.0 respondents. SUF
16 14. With an 80% increase in CBP-issued NTAs during MPP 1.0, supervisors overlooked
17 errors due to their increased workload. SUF 16, 17. Thus, one in ten NTAs reviewed by
18 the DHS Office of the Inspector General had errors significant enough to render the
19 notice deficient under statutory requirements. SUF 18, 58; *see also* 8 U.S.C. § 1229(a)
20 (requiring NTAs to include, *inter alia*, a written record of an address and telephone
21 number and the time and place at which proceedings will be held). Some NTAs listed
22 “Facebook” or “address known” as the respondent’s mailing address. SUF 22, 23. Other
23 NTAs did not include the date and time of the removal hearing, omitted the title or
24 signature of the issuing or serving officer or agent, were signed by an agent on behalf
25 of another agent, or had a service date preceding the preparation date. SUF 19. Tear
26 sheets and NTAs were provided only in English and Spanish, even though some MPP
27 respondents spoke only Indigenous languages. Defs.’ SUF 26; SUF 24.

1 On the date of an individual's hearing, the respondent had to present themselves at
2 the designated POE—without any transportation assistance from Defendants. SUF 25,
3 29. If the hearing location was far from the POE, Defendants provided transportation
4 inside the United States. SUF 26. However, if an individual presented at a different POE
5 location from what was indicated on their tear sheet, they would miss their court
6 hearing. SUF 27. MPP 1.0 respondents were often required to present at POEs by 4:00
7 a.m. to access transportation. SUF 29. Travel at that hour in Mexico was challenging
8 due to the risk of violence. SUF 30. Additionally, when they appeared at the POE, MPP
9 1.0 respondents had to present their NTA in order to be paroled into the United States.
10 SUF 31.

11 **B. Individuals in MPP 1.0 Were Returned to Dangerous and Unstable**
12 **Conditions in Mexico**

13 *Violence against MPP 1.0 respondents was routine.* Defendants sent MPP 1.0
14 respondents to dangerous border towns; most MPP respondents stayed in these areas
15 for the duration of MPP 1.0 and beyond, and those who did not still had to travel through
16 these areas to attend their hearings. SUF 32, 33. In November 2019, Nuevo Laredo, the
17 Mexican city directly across the border from the Laredo POE, was considered to be the
18 most dangerous place in Mexico, closely followed by Matamoros, which is directly
19 across the border from the Brownsville POE. SUF 4, 33. Across Mexico, MPP 1.0
20 respondents faced violence from cartels and other organized criminal groups, often with
21 the complicity of Mexican authorities. SUF 34. These “transnational criminal
22 organizations [] profited from putting migrants in harm's way while awaiting their court
23 hearings in Mexico.” SUF 35.

24 During MPP 1.0, human rights organizations sent Defendants reports of more
25 than 1,000 instances of violence toward MPP 1.0 respondents, including murder,
26 torture, rape, kidnapping, and other violent assaults. SUF 36. In November 2019,
27 Doctors Without Borders reported that **75%** of 400 migrants in northern Mexico whom
28 it treated had been recently kidnapped. SUF 37. Attorneys who worked with MPP 1.0

1 respondents similarly reported that numerous asylum seekers were kidnapped, tortured,
2 or assaulted, and many disappeared. SUF 38. MPP 1.0 respondents who worked with
3 U.S.-based attorneys or organizations were sometimes at greater risk because cartels
4 and organized criminal groups preyed on migrants perceived to have U.S. connections.

5 SUF 39. [REDACTED]
6 [REDACTED]
7 [REDACTED]. SUF 41.

8 ***Individuals in MPP 1.0 faced significant barriers to finding stable housing.***

9 Across the board, MPP 1.0 respondents had “inadequate and unreliable access to
10 food and shelter.” SUF 42, 129. In 2019 and throughout MPP 1.0’s implementation,
11 there was inadequate shelter space to accommodate the nearly 67,000 individuals in
12 MPP 1.0. SUF 43, 126. Many MPP 1.0 respondents were living in tent encampments.
13 SUF 44. One such encampment in Matamoros was subject to high levels of crime and
14 flooding. SUF 45. Some individuals were forced to live on the street or in abandoned
15 buildings. SUF 46. Even when individuals were fortunate enough to secure shelter
16 housing, they would often be required to give up their spot when they went to the United
17 States to attend immigration court hearings. SUF 47.

18 ***MPP 1.0 respondents had unreliable access to mail, telephones, and the***
19 ***internet.*** MPP 1.0 respondents often “lacked access to the internet, to a phone that made
20 international calls, to a phone with reception, [and] to interpretation.” SUF 48.
21 Additionally, respondents who managed to find space in a shelter were often subject to
22 additional communications restrictions. SUF 51, 52. For example, shelters often had
23 policies preventing individuals from using cellphones on shelter premises. SUF 51.
24 Access to mail was similarly unreliable: individuals in the tent camps did not have any
25 fixed address where they could receive mail, including mail from U.S. immigration
26 courts. SUF 54. [REDACTED]
27 [REDACTED]. SUF 53, 59. Lack of access to
28

1 mail services and technology limited many MPP 1.0 respondents' ability to gather
2 documentation needed to support their asylum claims. SUF 50, 57.

3 **C. Access to Counsel Issues Plagued MPP 1.0 from Start to Finish**

4 MPP 1.0 respondents could not come to the United States for legal meetings aside
5 from the times they had hearings, SUF 60, during which ICE maintained custody and
6 control over them. SUF 62. Unrepresented MPP 1.0 respondents were not permitted to
7 approach or speak to any attorneys present in court. SUF 63. For the few MPP 1.0
8 respondents lucky enough to have retained counsel prior to their hearing, attorney-client
9 consultations were limited to a one-hour window before the hearing; the spaces
10 provided for those meetings generally were not private or confidential as ICE officers
11 were present or observing. *See* SUF 65–67, 71–72, 74. Legal representatives were often
12 not permitted to use laptops or other electronics during these meetings. *See* SUF 73.

13 [REDACTED]
14 [REDACTED] SUF 65, 66. And in practice, the
15 allotted meeting time was often less than an hour. *See* SUF 67. Represented MPP 1.0
16 respondents were not permitted to speak with their attorneys after their court hearings.
17 SUF 75.

18 MPP 1.0 Respondents likewise faced pervasive barriers to accessing counsel in
19 Mexico while they awaited their hearings. Few know-your-rights programs operated in
20 Mexico to inform individuals about the asylum process or how to obtain representation.
21 SUF 76. As a result, many MPP 1.0 respondents lacked basic understanding of asylum
22 procedures or how to retain counsel. SUF 77.

23 The EOIR pro bono legal services lists that Defendants provided to MPP 1.0
24 respondents were not MPP-specific and identified only U.S.-based legal service
25 providers tied to existing U.S. court locations. SUF 78. Most contact information
26 provided was U.S.-based, with the exception of the EOIR hotline which had an
27 international number. SUF 79. Many listed organizations could not receive international
28 calls. SUF 80. For instance, JFSSD could not receive international calls—as it informed

1 ICE—until it modified its phone system after discovering the issue. SUF 81, 82. [REDACTED]
2 [REDACTED]
3 [REDACTED]. SUF 83, 84. Moreover,
4 DHS’s decision to concentrate thousands of cases in four border venues meant that
5 “demand for legal assistance far outstripped supply.” SUF 85. Many MPP 1.0
6 respondents were unable to find attorneys due to long waitlists and logistical
7 difficulties. SUF 86.

8 DHS also knew that Mexican law prohibited U.S.-licensed attorneys from
9 practicing law in Mexico. SUF 87. Mexican officials informed DHS that they could not
10 “knowingly endorse” unlicensed legal practice and that U.S. attorneys could be
11 deported for unauthorized practice. SUF 88, 89. Defendants nevertheless issued no
12 guidance addressing whether U.S.-licensed attorneys could practice in Mexico, SUF 90,
13 and [REDACTED].
14 SUF 91. [REDACTED]
15 [REDACTED]. SUF 92.

16 Even attorneys willing to travel to Mexico faced significant logistical barriers.
17 Few legal organizations had offices or private meeting spaces in Mexican border cities.
18 SUF 93. ImmDef created meeting space at significant cost, and in some cases attorneys
19 met clients outdoors, including on sidewalks. SUF 94, 95. Attorney Tania Guerrero—
20 one of the few dual U.S. and Mexican-licensed attorneys working full-time in Ciudad
21 Juárez—consulted with hundreds of MPP 1.0 respondents but lacked consistent private
22 meeting locations and often had to discuss traumatic information in public, such as in
23 “shelters, hotels, abandoned houses, and makeshift dwellings on the streets and in the
24 alleys.” SUF 96. Shelters sometimes denied U.S. attorneys entry. SUF 97.

25 Security conditions in northern Mexico created additional obstacles. MPP 1.0
26 respondents often could not reliably communicate with counsel due to safety concerns,
27 and attorneys faced risks traveling to meet clients. SUF 98, 99. Kidnappings or
28 disappearances of MPP 1.0 respondents were frequent. SUF 101. Attorneys also faced

1 threats and in some cases obtained kidnapping insurance. SUF 102. Jones Day
2 prohibited attorneys working with its Laredo Pro Bono Project from entering Mexico
3 due to safety concerns. SUF 103.

4 Communication barriers further impeded representation. Many MPP 1.0
5 respondents lacked international phone access and instead relied on internet-based
6 platforms, but internet connectivity was unreliable. SUF 48–49, 105. Phones were
7 frequently stolen or lost during kidnappings, resulting in loss of contact information and
8 case materials. SUF 107. Even when counsel was available, confidential remote
9 communication was often impossible for individuals living in shelters or encampments
10 where phone use was restricted. SUF 51–52. One respondent reported calling counsel
11 from a broom closet to hide from a shelter worker whom the respondent believed had
12 cartel connections. SUF 108. To facilitate communication, attorney Guerrero arranged
13 remote meetings in a cathedral basement and provided all of the logistical support so
14 that individuals could speak with U.S.-based attorneys. SUF 109.

15 **D. MPP 1.0 Resulted in Vastly Lower Rates of Legal Representation**
16 **and Success in Obtaining Relief**

17 The rates of representation and relief in MPP 1.0 proceedings demonstrate that
18 respondents had far less access to legal representation, and in turn, less meaningful
19 access to the asylum system, compared to U.S.-based respondents. EOIR records
20 indicate that 80% of asylum seekers appearing in U.S. immigration courts had legal
21 representation, but only about 7% of those subjected to MPP 1.0 ever had counsel.
22 SUF 111.

23 The outcomes of MPP 1.0 hearings show that MPP effectively denied noncitizens
24 any meaningful opportunity to obtain asylum. Only 732 individuals, out of
25 approximately 67,000 cases, were granted relief from removal—1.1%. SUF 112. Of the
26 cases that did not result in an *in absentia* order of removal, only 5.7% of MPP 1.0 cases
27 resulted in a grant of relief. SUF 116. In contrast, during fiscal year 2020, asylum or
28 other humanitarian relief was granted in 32% of non-MPP asylum cases in immigration

1 court—in other words, individuals seeking asylum from inside the United States were
2 more than five times more likely to succeed. SUF 117. The general “relief-granted rate”
3 for similarly situated Central American asylum seekers in the years leading up to MPP
4 1.0 was more than 26 times greater. SUF 113. Termination rates were also
5 “considerably higher for MPP cases than for comparable non-MPP cases.”³ SUF 118.
6 Not a single unrepresented MPP 1.0 respondent obtained relief in their immigration
7 proceedings. SUF 115.

8 **E. Defendants Determined That MPP 1.0 Cannot Be Implemented in**
9 **a Way That Complies with the Law**

10 In June 2019, Defendants initiated an internal “‘top-down’ review of MPP[.]”
11 SUF 119. A group of officials who “did not have involvement in the implementation of
12 MPP,” known internally as the “Red Team,” conducted the investigation. SUF 120. An
13 October 25, 2019 Red Team Report identified “significant deficiencies in MPP.”
14 SUF 121. These “shortfall[s]” led to recommendations that Defendants “[f]acilitate
15 migrant access to counsel and due process,” including by creating email accounts for
16 MPP respondents because mail and notice delivery were failing. SUF 122. The Report
17 also recommended Defendants ensure “sufficient, safe, and secure living conditions for
18 returnees to Mexico” and “[e]stablish protocols to ensure regular communication with
19 migrants during their stay in Mexico.” SUF 123–124.

20 On January 21, 2021, DHS suspended new enrollments into MPP 1.0 in what
21 became known as the “winddown.” SUF 125. By the end of that process in February
22 2021, Defendants had subjected nearly 67,000 asylum seekers to MPP 1.0. SUF 126.

23 In October 2021, then-DHS Secretary Mayorkas issued a Memorandum (the
24 “Memorandum”) explaining his decision to terminate MPP 1.0, relying in large part on
25 the Red Team’s findings. SUF 127–128. The Memorandum found, *inter alia*, that:

26 ³ Unlike asylum seekers in the United States with terminated immigration court cases,
27 MPP respondents whose cases were terminated were left in Mexico without the ability
28 to apply for asylum affirmatively and with no further access to the U.S. asylum system.
8 U.S.C. § 1158(a)(1).

(1) “The difficulties that MPP enrollees faced in Mexico, including the threat of violence and kidnapping, coupled with inadequate and unreliable access to food and shelter, likely contributed to people placed in MPP choosing to forego further immigration court proceedings regardless of whether their cases had merit,” SUF 129; (2) “Individuals in MPP faced multiple challenges accessing counsel and receiving sufficient information about court hearings,” SUF 130; (3) MPP 1.0 “impos[ed] substantial and unjustifiable human costs on migrants who were exposed to harm while waiting in Mexico,” as there was “[s]ignificant evidence indicat[ing] that individuals were subject to extreme violence and insecurity at the hands of transnational criminal organizations that profited from putting migrants in harm’s way while awaiting their court hearings in Mexico,” SUF 132; and (4) “[N]oncitizens in MPP were substantially more likely to receive *in absentia* removal orders than comparable noncitizens who were not placed in MPP during the relevant time period,” SUF 133, due at least in part to the fact that MPP 1.0 respondents “abandoned claims or otherwise failed to appear for proceedings because of insecurity in Mexico and inadequate notice about court hearings,” SUF 134. The Secretary concluded that “there are inherent problems with [MPP 1.0] that no amount of resources can sufficiently fix[.]” SUF 135.

LEGAL STANDARD

Summary judgment is appropriate where “there is no genuine issue as to any material fact,” and “the movant is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(a). Where the moving party demonstrates the absence of a genuine issue of material fact, the nonmoving party must identify specific facts to show that there is a factual dispute. *See Liu v. Standard Ins. Co.*, 457 F. Supp. 2d 1030, 1035–36 (C.D. Cal. 2006) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)).

A motion for summary judgment may be used to seek judicial review of agency administrative decisions per the APA. *Nw. Motorcycle Ass’n v. U.S. Dep’t of Agric.*, 18 F.3d 1468, 1471–72 (9th Cir. 1994). In deciding a motion for summary judgment as to an APA claim, “the district court is to determine whether or not as a matter of law

1 the evidence in the administrative record permitted the agency to make the decision it
2 did,” *City & Cnty. of San Francisco v. United States*, 130 F.3d 873, 877 (9th Cir. 1997)
3 (internal quotation marks omitted), or whether the agency action is “not authorized by
4 the statutory text, or some other source of lawful authority,” *Refugee & Immigrant Ctr.*
5 *for Educ. & Legal Servs. v. Noem*, 793 F. Supp. 3d 19, 59 (D.D.C. 2025) (internal
6 quotation omitted).

7 **ARGUMENT**

8 As the DHS Memorandum explained, MPP 1.0 thwarted noncitizens’ rights to
9 counsel, to apply for asylum, to obtain a fair hearing, and to petition courts. MPP 1.0
10 must be vacated under the APA because the systematic violations of respondents’ rights
11 to counsel and to apply for asylum were arbitrary, capricious, and contrary to the
12 Immigration and Nationality Act (“INA”). MPP 1.0 also violated Plaintiffs’ Fifth
13 Amendment and First Amendment rights by depriving Individual Plaintiffs and Class
14 Members of due process and interfering with their rights to hire and consult with
15 counsel (and, in the case of Organizational Plaintiffs, potential clients) and to petition
16 courts.

17 **I. ORGANIZATIONAL PLAINTIFFS HAVE STANDING**

18 As this Court and the Ninth Circuit have already determined, Plaintiff ImmDef
19 has organizational standing under *FDA v. Alliance for Hippocratic Medicine*
20 (*“Alliance”*), 602 U.S. 367 (2024). *ImmDef*, 145 F.4th at 988; ECF 405 at 12–13.
21 Plaintiff JFSSD has organizational standing for similar reasons. Defendants nonetheless
22 continue to raise arguments that this Court and the Ninth Circuit have already rejected.
23 As discussed below and in Plaintiffs’ prior briefing, *see* ECF 379 at 1–4, this Court
24 should again find that Organizational Plaintiffs have standing.⁴

25
26 ⁴ Defendants do not dispute that Individual Plaintiffs have standing, nor could they. *See*
27 ECF 261 at 12 (Plaintiffs have standing because they “seek[] redress for the continuing
28 adverse effects of Defendants’ unlawful conduct.”) (quoting ECF 207 at 7) (emphasis
omitted).

1 ImmDef has shown that MPP 1.0 impacted its “core business activities,” which
2 include providing direct representation, counseling, and legal assistance to noncitizens
3 in removal proceedings in and around southern California, with the goal of providing
4 universal representation. SUF 136; Pls.’ Resp. to Defs.’ SUF 51. MPP 1.0 forced
5 ImmDef’s prospective clients to return to Mexico instead of awaiting their hearings in
6 the United States. To reach those individuals and to attempt to adequately and ethically
7 represent them, ImmDef had to hire additional staff, engage in cross-border travel,
8 purchase international phone plans, and rent confidential client meeting spaces in
9 Mexico. SUF 137.

10 Defendants once again quibble that ImmDef does not have standing because it
11 took actions “in response to MPP.” Defs.’ Mot. at 12. Regardless of whether that is true,
12 under *Alliance*, an organization has standing when the defendants’ actions ““directly
13 affected and interfered with’ the plaintiff’s ‘core business activities.’” *ImmDef*, 145
14 F.4th at 988 (quoting *Alliance*, 602 U.S. at 395); *see also* ECF 405 at 12–13. As the
15 Ninth Circuit held, ImmDef satisfies this standard because the organization “expanded
16 its legal representation across the U.S.-Mexico border to *continue* carrying out its core
17 activities and longstanding mission” by “counteract[ing] and offset[ing] the barriers
18 that MPP imposed.” *ImmDef*, 145 F.4th at 988. Defendants do not even acknowledge
19 that the Ninth Circuit has already held that ImmDef has standing, rejecting the same
20 arguments Defendants repeat in their Motion. This Court should, for the third time,
21 conclude that ImmDef has organizational standing.

22 JFSSD has organizational standing for the same reasons as ImmDef. JFSSD has
23 established that MPP 1.0 interfered with its core business activities, which include
24 providing “holistic, culturally competent, trauma-informed, quality legal and other
25 supportive services to the immigrant community in San Diego and Imperial Counties.”
26 SUF 138. In order to fulfill its core mission, “JFSSD provided representation to those
27 subjected to MPP 1.0 appearing in the San Diego immigration court . . . [b]ecause many
28 asylum seekers appearing in the San Diego court were subjected to MPP 1.0.” SUF 139.

1 Defendants’ tired argument that ImmDef and JFSSD “have not presented
2 evidence of a direct injury to pre-existing core business activities,” Defs.’ Mot. at 12, is
3 wrong. As the Ninth Circuit ruled, “ImmDef cites to *ample record evidence* of how
4 [MPP 1.0] caused ‘concrete and demonstrable injury’ to its core activities.” *ImmDef*,
5 145 F.4th at 988 (quoting *Alliance*, 602 U.S. at 395) (emphasis added). Yet Defendants
6 persist in claiming that because ImmDef and JFSSD did not engage “in cross-border
7 work prior to MPP,” Defs.’ Mot. at 12, MPP 1.0 did not impact their core business
8 activities. Not so. As this Court explained, “ImmDef created initiatives . . . to limit the
9 adverse impacts of MPP on its core business activities of providing direct
10 representation, counseling, and legal assistance to noncitizens in removal proceedings
11 in and around southern California.” ECF 405 at 12. “[B]ecause MPP affected ImmDef’s
12 core business activities in Los Angeles, the expenditures ImmDef undertook *were*
13 *necessary and not voluntary*.” *Id.* at 13 (emphasis added). Likewise, JFSSD had to take
14 necessary actions in response to MPP 1.0 to carry out its core mission. *See* SUF 140
15 (“Because many asylum seekers appearing in the San Diego court were subjected to
16 MPP 1.0, [JFSSD] felt compelled to represent them *in order to fulfill this part of our*
17 *mission*.”) (emphasis added).

18 **II. MPP 1.0 VIOLATED THE APA AND THE INA**

19 Section 706(2) of the APA directs courts to “hold unlawful and set aside agency
20 action” that is “not in accordance with law,” “in excess of statutory jurisdiction,
21 authority, or limitations, or short of statutory right,” or “arbitrary, capricious [or] an
22 abuse of discretion.” 5 U.S.C. § 706(2)(A), (C). Only “final” agency action is
23 reviewable under 5 U.S.C. § 706(2). 5 U.S.C. § 704; *see Bennett v. Spear*, 520 U.S. 154,
24 177–78 (1997). Courts interpret finality in a “pragmatic and flexible manner,”
25 “focus[ing] on the practical and legal effects of the agency action.” *Oregon Nat. Desert*
26 *Ass’n v. U.S. Forest Serv.*, 465 F.3d 977, 982 (9th Cir. 2006).

27 For the reasons below, Defendants’ implementation of MPP 1.0 is a final agency
28 action that is unlawful and must be set aside pursuant to 5 U.S.C. § 706(2). *First*,

1 MPP 1.0 violates statutes Congress enacted to ensure access to asylum and to counsel.
2 *Second*, MPP 1.0’s implementation was arbitrary and capricious because Defendants
3 failed to consider how individuals placed in MPP 1.0 would be able to access the asylum
4 system and access counsel under this policy.

5 **A. The Implementation of MPP 1.0 Was a Final Agency Action**

6 The APA permits review over agency actions that are “final.” 5 U.S.C. § 704;
7 *Navajo Nation v. Dep’t of the Interior*, 876 F.3d 1144, 1171 (9th Cir. 2017). Agency
8 action is “final” when (1) it “mark[s] the ‘consummation’ of the agency’s
9 decisionmaking process,” and (2) as a result of the action, “‘legal consequences will
10 flow.’” *Bennett*, 520 U.S. at 177–78.

11 Per the Ninth Circuit, “[t]he 2019 version of MPP and its 2025 reimplementation
12 each constituted final agency action.” *ImmDef*, 145 F.4th at 991. In so concluding, the
13 Ninth Circuit affirmed this Court’s findings that (1) “the implementation of MPP” was
14 the “consummation of the current DHS’s decisionmaking process” because “DHS staff
15 were bound to implement MPP across the southern border”; and (2) “legal
16 consequences flowed or will flow” from MPP’s 2019 implementation and 2025
17 reimplementation because both agency actions “had an actual or immediately
18 threatened effect on both *ImmDef* and the population it serves.” *Id.* (citing ECF 413)
19 (internal quotation marks omitted); see *ONRC Action v. Bureau of Land Mgmt.*, 150
20 F.3d 1132, 1137 (9th Cir. 1998); *Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 894 (1990).

21 **B. Defendants’ Implementation of MPP 1.0 Was Contrary to Law**
22 **Because It Violated Plaintiffs’ Statutory Rights to Counsel and to**
23 **Access the Asylum System**

24 “Agency action is obviously ‘not in accordance with law’ if it violates some
25 extant federal statute or regulation.” *E. Band of Cherokee Indians v. U.S. Dep’t of the*
26 *Interior*, 534 F. Supp. 3d 86, 97 (D.D.C. 2021); *E. Bay Sanctuary Covenant v. Trump*,
27 950 F.3d 1242, 1271 (9th Cir. 2020), *amended*, 993 F.3d 640 (9th Cir. 2021).
28 Defendants’ implementation of MPP 1.0 ran directly contrary to the right to apply for
asylum enshrined in 8 U.S.C. § 1158 by (1) placing MPP 1.0 respondents in a foreign

1 country under dangerous conditions in a manner that obstructed access to all
2 components of the U.S. asylum system, and (2) treating asylum seekers at the southern
3 border in a discriminatory and non-uniform fashion. *See* SAC ¶¶ 333–34. Defendants’
4 implementation of MPP 1.0 further violated the right to counsel by imposing conditions
5 that systematically denied respondents the ability to retain counsel, and in the few
6 instances where counsel relationships existed, denied respondents the ability to engage
7 in confidential communications with counsel. Courts routinely review and invalidate
8 agency practices that interfere with the statutory right to counsel in removal proceedings
9 under this framework. *See, e.g., Usubakunov v. Garland*, 16 F.4th 1299, 1305–06 (9th
10 Cir. 2021); *Biwot v. Gonzales*, 403 F.3d 1094, 1098–1100 (9th Cir. 2005); *Orantes-*
11 *Hernandez v. Thornburgh*, 919 F.2d 549, 565–67 (9th Cir. 1990); *Torres v. DHS*, 411
12 F. Supp. 3d 1036, 1060–61 (C.D. Cal. 2019).

13 **1. Defendants’ implementation of MPP 1.0 was contrary to law**
14 **because it violated the statutory right to access the asylum system.**

15 The Refugee Act requires the government to “establish a uniform procedure for
16 passing upon an asylum application.” S. Rep. No. 96-256, at 9 (1980), *reprinted in* 1980
17 U.S.C.C.A.N. 141, 149. Accordingly, 8 U.S.C. § 1158(a)(1) provides that any
18 noncitizen who is physically present or arrives in the United States, irrespective of their
19 place of entry or status, “may apply for asylum in accordance with this section[.]” The
20 “legal rights bestowed upon asylum seekers by Congress,” ECF 405 at 26, include the
21 right to “substantiate [a] claim for asylum,” *Augustin v. Sava*, 735 F.2d 32, 37 (2d Cir.
22 1984) (citations omitted). That includes the right to counsel at no expense to the
23 government, 8 U.S.C. § 1158(d)(4), and to a “reasonable opportunity to examine the
24 evidence against [them], to present evidence on [their] own behalf, and to cross-
25 examine witnesses presented by the Government.” 8 U.S.C.
26 §§ 1229a(b)(4)(B), 1158(b)(1)(B); *see ImmDef*, 145 F.4th at 992. Beyond having the
27 right to seek asylum, noncitizens have the right to seek the reopening of their asylum
28 proceedings, 8 U.S.C. §§ 1229a(c)(7), (b)(5)(C), and to appeal unfavorable decisions,

1 *id.* § 1229a(c)(5). Although a grant of asylum is discretionary, the right to seek such
2 relief is not.

3 *a. MPP 1.0 imposed conditions that were tantamount to denial of the*
4 *right to apply for asylum*

5 Defendants’ implementation of MPP 1.0 is in direct conflict with section
6 1158(a)(1)’s clear mandate that anyone physically present or arriving in the United
7 States has a right to apply for asylum. *See Orantes-Hernandez*, 919 F.2d at 553 (“It is
8 undisputed that all [noncitizens] possess [the right to apply for asylum] under the
9 [Refugee] Act.”); *Jean v. Nelson*, 711 F.2d 1455, 1507 (11th Cir. 1983), *affirmed as*
10 *modified*, 472 U.S. 846 (1985). By trapping MPP 1.0 respondents in dangerous
11 conditions in Mexico and denying them access to counsel, Defendants virtually
12 eliminated MPP 1.0 respondents’ meaningful access to the asylum system, in violation
13 of the APA. Given that the exercise of the statutory right to apply for asylum “depends
14 upon [a noncitizen’s] opportunity to present their case to the immigration judge,” the
15 Ninth Circuit has recognized that this right “may be violated by a pattern or practice
16 that forecloses the opportunity to apply.” *Campos v. Nail*, 43 F.3d 1285, 1288 (9th Cir.
17 1994).

18 That MPP 1.0’s implementation undermined respondents’ right to apply for
19 asylum is confirmed by undisputed MPP statistics: while only 1.1% of MPP 1.0
20 respondents were granted relief, the comparable figure for non-MPP 1.0 respondents
21 was 26 times greater. *See supra*, Undisputed Facts, Section D; SUF 112–113.
22 Individuals subjected to MPP 1.0 “were substantially more likely to receive *in absentia*
23 removal orders”—or have their cases terminated—than non-MPP 1.0 respondents. SUF
24 118, 133. Indeed, it is undisputed that the data “suggest[s] that at least some MPP
25 enrollees with meritorious claims either abandoned or were unable to adequately
26 present their claims given the conditions faced by migrants in Mexico and barriers to
27 legal access.” SUF 114.

1 MPP 1.0 respondents were subjected to extreme violence, insecurity, and
2 inadequate and unstable access to housing. SUF 35–38, 42–47. They also lacked access
3 to certain basic resources that normally allow individuals to engage with the asylum
4 system: consistent access to telephonic, mail, or internet services. SUF 49, 51, 54; *see*
5 *supra*, Undisputed Facts, Section B. These undisputed conditions resulted in the de
6 facto denial of the right to access the asylum system.

7 Defendants’ implementation of MPP 1.0 did not just eliminate the right to apply
8 for asylum in the first instance—it locked individuals out of the entire asylum system.
9 The barriers inherent in Defendants’ implementation of MPP 1.0 prevented individuals
10 from accessing the process to appeal an immigration judge’s denial of their applications
11 for immigration relief as well as the process to seek reopening of individual immigration
12 proceedings. *See* SUF 144–145. The deficiencies in notice, coupled with the pervasive
13 inability to retain counsel, *see supra*, Undisputed Facts, Section C, meant that MPP 1.0
14 respondents were unlikely to receive notice of updates in their cases, including *in*
15 *absentia* removal orders or terminated cases. *See, e.g.*, SUF 134. Lack of timely notice
16 of an immigration judge’s decision significantly impedes an individual’s ability to
17 appeal that decision or seek reopening given the time limitations on both those
18 processes. *See* 8 U.S.C. § 1158(d)(5)(A)(iv) (30 days to appeal an asylum decision); *id.*
19 § 1229a(b)(5)(C)(i) (180 days to move to reopen an *in absentia* removal order if failure
20 to appear was based on exceptional circumstances); *id.* § 1229a(c)(7)(C)(i) (90 days to
21 move to reopen a removal order on the merits).

22 “[I]f the government enacts policies such that, irrespective of the merits of their
23 claims for protection, a noncitizen’s application [for asylum] has virtually no chance of
24 success,” the right to apply for asylum is rendered hollow. *ImmDef*, 145 F.4th at 992.
25 Allowing MPP 1.0 respondents access to the asylum system in name only—by placing
26 them in immigration proceedings—is contrary to the right to apply for asylum and
27 violates the APA.

b. *MPP 1.0 is contrary to the Refugee Act*

Defendants’ implementation of MPP 1.0 was also contrary to law in that it directly violated the “uniform procedure” for seeking asylum mandated by Congress under the Refugee Act, U.S.C. § 1158(a). *See* S. Rep. No. 96-25 at 9; *see Orantes-Hernandez v. Smith*, 541 F. Supp. 351, 375 (C.D. Cal. 1982) (acknowledging Congress’s focus on the “uniform, nondiscriminatory treatment of refugees” when it passed the Refugee Act); *see also* ECF 77. The Refugee Act was intended to replace the previous “ad hoc,” “inadequate,” and “discriminatory” administrative process with a formal, standardized asylum application process. 125 Cong. Rec. 23,232 (1979) (statement of Sen. Kennedy). Thus, under the Refugee Act, the geographic location where an individual applies for asylum should have no bearing on the merits of the individual’s application.

And yet, under Defendants’ implementation of MPP 1.0, it did. MPP 1.0’s explicit instruction that it only applied to individuals who crossed or presented themselves at the southern border meant that individuals subjected to MPP 1.0 were treated differently from individuals who applied for asylum anywhere else. *See* SUF 8. Defendants have explicitly confirmed not only disparate application of MPP 1.0, *see* Defs.’ SUF 5 (MPP 1.0 applied only to individuals arriving in the United States from Mexico), but also its disparate impact on court appearance rates and outcomes, *see* SUF 112–114, 118, 133–134; *see also supra*, Undisputed Facts, Sections C, D.

The dangers, deprivations of basic necessities, and barriers MPP 1.0 caused resulted in the disparate treatment of asylum seekers—and disparate access to the asylum system itself—based on geographic location. SUF 32–38, 42, 44–49. Indeed, the Court need look no further than the data cited in Defendants’ Administrative Record to conclude that MPP 1.0 violated the statutory requirement of a “uniform procedure” for seeking asylum, and is thus contrary to law. *See id.*

1 c. Defendants' contrary arguments are meritless

2 Defendants again attempt to argue that MPP 1.0 did not violate the right to apply
3 for asylum because it was authorized by another statute, 8 U.S.C. § 1225(b)(2)(C).
4 Defs.' Mot. at 28–30. That argument has been rejected time and again, both by this
5 Court and the Ninth Circuit. *See ImmDef*, 145 F.4th at 992–93; ECF 261 at 33–35.
6 Courts must “interpret statutes as a ‘harmonious whole rather than at war with one
7 another.’” ECF 261 at 34 (quoting *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 502 (2018)).
8 Accordingly, “the government’s authority under 8 U.S.C. § 1225(b)(2)(C) must be
9 exercised in accordance with the INA’s other provisions,” including the right to apply
10 for asylum. *ImmDef*, 145 F.4th at 993.

11 **2. Defendants’ implementation of MPP 1.0 was contrary to law**
12 **because it violated Plaintiffs’ statutory right to counsel.**

13 Congress guarantees noncitizens in removal proceedings “the privilege of being
14 represented, at no expense to the Government, by counsel of the [noncitizen]’s
15 choosing.” 8 U.S.C. § 1229a(b)(4)(A); *see Biwot*, 403 F.3d at 1098; *ImmDef*, 145 F.4th
16 at 992. The statutory right to counsel is a “fundamental” guarantee that preserves
17 fairness in removal proceedings, which are adversarial, legally complex, and often have
18 life-or-death consequences. *See Orantes-Hernandez*, 919 F.2d at 554, 565–66.
19 Government action violates that statutory guarantee when it makes representation
20 effectively unattainable. *See Usubakunov*, 16 F.4th at 1305–06; *Biwot*, 403 F.3d at
21 1099–1100; *Castro-O’Ryan v. INS*, 847 F.2d 1307, 1312 (9th Cir. 1988). In the
22 detention context, for example, courts have found that denial of private spaces to meet
23 with clients, the requirement that attorneys have a signed notice of appearance to meet
24 with clients, and restrictions on confidential telephone calls constitute a denial of the
25 right to counsel. *See Vasquez Perdomo v. Noem*, 2025 WL 3192939, at *6–7, *11 (C.D.
26 Cal. Nov. 13, 2025); *Torres*, 411 F. Supp. 3d at 1060–61.

27 MPP 1.0 violated this statutory guarantee. By forcing asylum seekers to remain
28 in Mexico while their removal proceedings were pending—and imposing government-

1 controlled barriers to communication, consultation, and retention of counsel—MPP 1.0
2 created conditions tantamount to a denial of counsel. *Usubakunov*, 16 F.4th at 1305–
3 06. The systemic nature of that deprivation is reflected in the undisputed data on rates
4 of representation and outcomes resulting in relief. *See supra*, Undisputed Facts,
5 Section D; SUF 110–118. Even when MPP 1.0 respondents managed to secure counsel,
6 MPP 1.0 imposed further barriers that significantly interfered with the statutory right.
7 As DHS itself later acknowledged, barriers to counsel were “endemic to the program’s
8 design.” SUF 135.

9 *a. MPP 1.0 prevented respondents from accessing counsel*

10 The structural barriers to securing representation while MPP 1.0 respondents
11 were stranded in Mexico, along with Defendants’ policies limiting access to counsel
12 while MPP 1.0 respondents were in the United States, were functionally “tantamount to
13 denial of counsel.” *Usubakunov*, 16 F.4th at 1307. It is undisputed that:

- 14 • Many MPP 1.0 respondents—based on one report, up to 77% of
15 respondents—did not have access to legal orientation programs in Mexico,
16 SUF 76.
- 17 • The EOIR pro bono lists provided to MPP 1.0 respondents were not MPP-
18 specific and identified only U.S.-based legal service providers tied to existing
19 U.S. court locations. SUF 78. The lists were created for U.S.-based
20 respondents, and most listed organizations could not receive international
21 calls or represent MPP 1.0 respondents (REDACTED). SUF
22 79–84.
- 23 • In just over one year, DHS concentrated almost 67,000 cases in four border
24 courts, ensuring the demand for legal assistance far outstripped supply. SUF
25 85, 126.

26 In the United States, Defendants’ policies further prevented respondents from
27 seeking counsel during the only time they were physically present in the United States.
28 MPP 1.0 respondents were paroled into the United States solely for court proceedings,

1 and they remained under ICE custody and control the entire time. SUF 60, 62.
2 Defendants’ policies—such as the one-hour meeting limit, SUF 65—were government-
3 imposed barriers inside government-controlled facilities, not incidental difficulties. *See*
4 *Torres*, 411 F. Supp. 3d at 1060–61. Additionally:

- 5 • Unrepresented respondents were prohibited from speaking to attorneys.
6 SUF 63;
- 7 • Attorneys were barred from speaking with respondents unless they had
8 already entered an appearance in the respondent’s case, SUF 64; and
- 9 • CBP and ICE controlled the attorney-access policies at IHFs, so only
10 attorneys with existing attorney-client relationships were permitted entry,
11 SUF 61, 69.

12 Defendants’ policies erected barriers at every stage that were “tantamount to
13 denial of counsel” and therefore unlawful. *Usubakunov*, 16 F.4th at 1307.

14 *b. MPP 1.0 created additional barriers even when respondents*
15 *could secure legal representation*

16 MPP 1.0 erected barriers to the attorney-client relationship even when
17 respondents managed to obtain counsel. Of course, the fundamental component of MPP
18 1.0—forcing respondents to live in Mexico while awaiting proceedings in U.S. courts—
19 created what DHS described as an “international barrier between migrants and their
20 counsel.” SUF 131. And Defendants did nothing to mitigate that international barrier in
21 order to facilitate MPP 1.0 respondents’ access to their counsel.

22 *In-person attorney-client meetings were significantly restricted.* MPP 1.0
23 respondents had limited-to-no opportunity to meet with their retained counsel.
24 Respondents could not enter the United States for attorney meetings except when
25 allowed in for hearings, see SUF 60, and [REDACTED]
26 [REDACTED]. SUF 92. On
27 the other hand, travel by U.S. attorneys to Mexico to meet with clients entailed legal,
28 logistical, and security risks. See SUF 87–90, 93–103. Defendants issued no guidance

1 clarifying whether cross-border representation was permitted and [REDACTED]

2 [REDACTED]. SUF 90–91.

3 Security conditions in Mexico imposed risks on respondents. MPP respondents
4 were exposed to widespread violence and kidnapping in northern Mexico. SUF 34–37,
5 98. Attorneys reported clients disappearing. SUF 38. Representation itself could
6 increase such risks because criminal groups targeted migrants perceived to have U.S.
7 connections. SUF 39.

8 Communication barriers. Telephonic attorney-client communication was
9 inhibited by a lack of international phone access, unreliable internet connectivity,
10 restrictions on phone use in shelters, and the frequent loss of cellphones during
11 kidnappings. SUF 49, 51–52, 105–107. The Red Team itself recognized the breakdown
12 in communication and recommended creating email accounts for MPP 1.0 respondents
13 because mail and notice delivery were failing. SUF 122, 124.

14 Limitations on pre-hearing attorney-client meetings. DHS imposed strict limits
15 on consultation time and confidentiality in immigration courts and IHFs. Represented
16 respondents were limited to approximately one hour of consultation before hearings—
17 and often had even less time in practice. SUF 65–67. Facilities lacked adequate
18 confidential meeting space, and ICE officers often monitored attorney-client
19 conversations. SUF 62, 71–72, 74. Respondents were not permitted to speak with
20 counsel after hearings. SUF 75.

21 These restrictions severely constrained communication, confidentiality, and case
22 preparation, even where representation existed. MPP 1.0 therefore violated the statutory
23 right to counsel for individuals in immigration proceedings.

24 *c. Defendants’ contrary arguments are belied by the record*

25 Defendants argue that they should prevail at summary judgment because MPP
26 1.0 did not expressly prohibit respondents from obtaining counsel, and that Defendants
27 had no duty to facilitate access to counsel. Defs.’ Mot. at 19 (“Defendants permitted
28 MPP enrollees to be represented by a lawyer should they choose to hire an attorney”

1 and respondents “were free to consult with their attorneys while in Mexico at any
2 time.”). But the right to counsel “cannot be made illusory by the government’s own
3 actions.” *ImmDef*, 145 F.4th at 992. The right is violated where, as here, the
4 “government enacts policies such that, irrespective of the merits of their claims for
5 protection, a noncitizen’s application has virtually no chance of success.” *Id.* The
6 undisputed record shows Defendants affirmatively interfered with MPP 1.0
7 respondents’ access to counsel. *See supra*, Undisputed Facts, Section C.

8 On this record, MPP 1.0 imposed structural impediments that made consultation
9 with counsel extremely unlikely for most respondents and severely restricted
10 representation even where it existed. Those conditions were inherent in the program’s
11 design and denied Plaintiffs their statutory right to counsel. *See Orantes-Hernandez*,
12 919 F.2d at 565–67; *Torres*, 411 F. Supp. 3d at 1060–61.

13 **C. Defendants’ Implementation of MPP 1.0 Was Arbitrary and**
14 **Capricious Under the APA**

15 Under the APA, agency action is arbitrary and capricious where the agency
16 “entirely failed to consider an important aspect of the problem” or offered a rationale
17 that runs counter to the evidence before it. *Motor Vehicle Mfrs. Ass’n v. State Farm*
18 *Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). As the Ninth Circuit has explained, “[t]he
19 agency must examine relevant data and articulate a satisfactory explanation for its
20 action, including a rational connection between the facts found and the choice made,”
21 and it “must also be cognizant that longstanding policies may have engendered serious
22 reliance interests that must be taken into account.” *ImmDef*, 145 F.4th at 992 (internal
23 quotation marks omitted); *see also Encino Motorcars, LLC v. Navarro*, 579 U.S. 211,
24 212 (2016); *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009). “Merely
25 saying something ‘was considered is not enough to show reasoned analysis.’” *ImmDef*,
26 145 F.4th at 992 (quoting *Texas v. Biden*, 10 F.4th 538, 555 (5th Cir. 2021)).

27 The administrative record demonstrates that Defendants “failed to provide even
28 [a] minimal level of analysis” for this never-before-seen operationalization of 8 U.S.C.

§ 1225(b)(2)(C); accordingly, “its action is arbitrary and capricious and so cannot carry the force of law.” *Encino Motorcars*, 579 U.S. at 221. The record is significant in both what is included—*e.g.*, records showing Defendants’ awareness of conditions in Mexico, SUF 40, issues with cross-border representation, SUF 131, 135, and the agency’s own evaluations finding deficiencies, SUF 121—and what is not—*e.g.*, any consideration of the impacts that conditions in Mexico and other policy elements would have on MPP 1.0 respondents’ ability to meaningfully access the asylum system and counsel. The undisputed facts demonstrate that Defendants failed to consider any reasonable alternatives, reliance interests, or the impact that the implementation of MPP 1.0 would have on the respondents themselves. *DHS v. Regents of Univ. of Cal.*, 591 U.S. 1, 28–33 (2020). Defendants’ implementation of MPP 1.0 therefore fails “[t]he reasoned explanation requirement of administrative law” and is arbitrary and capricious. *Dep’t of Com. v. New York*, 588 U.S. 752, 785 (2019).

1. Defendants failed to consider MPP 1.0’s impact on access to the asylum system.

The Administrative Record is clear that Defendants failed to consider how leaving individuals stranded outside the United States in life-threatening conditions and without access to legal representation would obstruct these individuals’ access to the U.S. asylum system. *See Judulang v. Holder*, 565 U.S. 42, 53 (2011) (in APA review, the court’s “task involves examining the reasons for agency decisions—or, as the case may be, the absence of such reasons”).

DHS knew conditions in Mexico were unsafe for migrants but did not consider how that would impact their ability to apply for asylum. *See supra*, Undisputed Facts,

Section B. Notably, [REDACTED]

[REDACTED] SUF 2. Dismissing kidnappings, assaults, and other systemic violence is not reasoned consideration. *See*

1 *Delaware Dep't of Nat. Res. & Env't Control v. EPA*, 785 F.3d 1, 16 (D.C. Cir. 2015)
2 (agency action is arbitrary and capricious if it does not adequately “respond to” serious
3 issues). In addition, Defendants made no effort to ensure asylum seekers had resources
4 and support in Mexico during the time they would be trapped there. *See supra*,
5 Undisputed Facts, Section B. The Red Team Report and the Memorandum confirm not
6 only the existence of these problems in MPP 1.0’s implementation, but also Defendants’
7 awareness of these problems. *See supra*, Undisputed Facts, Section E.

8 Similarly, DHS failed to respond to MPP 1.0’s impact on respondents’ ability to
9 restart or reopen their asylum proceedings or appeal an unfavorable decision.
10 Defendants “entirely failed to consider an important aspect of” MPP 1.0, *State Farm*,
11 463 U.S. at 43, much less to “articulate a satisfactory explanation for [their] action” in
12 light of these significant problems, *ImmDef*, 145 F.4th at 992.

13 **2. Defendants failed to consider MPP 1.0’s impact on access to**
14 **counsel.**

15 Although Defendants nominally “acknowledged the importance of access to
16 counsel,” Defs.’ SUF 32, the administrative record shows that Defendants did not
17 develop any meaningful framework to ensure access to counsel under MPP 1.0.
18 Foundational MPP 1.0 policy documents contain no discussion of how the statutory
19 right to counsel would be protected under MPP 1.0. Pls.’ Resp. to Defs.’ SUF 32. And
20 as previously described, DHS did not [REDACTED]
21 [REDACTED], publicly clarify whether U.S. lawyers could represent clients
22 in Mexico, provide confidential consultation space, or create mechanisms for cross-
23 border attorney meetings. *See supra*, Undisputed Facts, Section C; SUF 71–72, 74, 90–
24 91, 93–97.

25 As MPP 1.0 expanded, [REDACTED]
26 [REDACTED]
27 [REDACTED]. SUF 92. Yet the record reflects no meaningful course correction. The
28 Red Team Report later confirmed these deficiencies, identifying major shortfalls in

1 access to counsel and recommending reforms, including expanding know-your-rights
2 programs and facilitating attorney-client meetings. *SUF* 121–124. The persistence of
3 these problems nearly a year into implementation underscores that DHS had never
4 meaningfully evaluated how MPP 1.0 would affect the statutory right to counsel.
5 Defendants’ failure to consider this essential aspect of the policy renders MPP 1.0
6 arbitrary and capricious. *State Farm*, 463 U.S. at 43.

7 **III. MPP 1.0 DEPRIVED INDIVIDUAL PLAINTIFFS AND CLASS**
8 **MEMBERS OF DUE PROCESS AND PREJUDICED THEIR**
9 **APPLICATIONS FOR ASYLUM**

10 “[T]he Due Process Clause protects [noncitizens] in deportation proceedings and
11 includes the right to a full and fair hearing as well as notice of that hearing.” *United*
12 *States v. Rivera-Valdes*, 157 F.4th 978, 987 (9th Cir. 2025) (en banc) (citations omitted).
13 The guarantee of a full and fair hearing requires that noncitizens be given a “full and
14 fair opportunity to be represented by counsel, to prepare an application for . . . relief,
15 and to present testimony and other evidence in support of the application.” *Vilchez v.*
16 *Holder*, 682 F.3d 1195, 1199–1200 (9th Cir. 2012) (internal quotation marks omitted).
17 The undisputed facts show that the implementation of MPP 1.0 violated Individual
18 Plaintiffs’ and Class Members’ right to a full and fair hearing.⁵

19 **A. MPP 1.0 Violated Individual Plaintiffs’ and Class Members’ Due**
20 **Process Right to Counsel**

21 “[T]he right to retained counsel” is “among the rights that due process guarantees
22 to petitioners in immigration proceedings.” *Arrey v. Barr*, 916 F.3d 1149, 1157 (9th Cir.
23 2019); *see also Advocs. for Hum. Rts. v. DHS*, No. 2026 WL 404457, at *10 (D. Minn.

25 ⁵ Defendants attempt to resuscitate their argument that Plaintiffs are not entitled to any
26 due process rights, or at least only very narrow ones, relying on *DHS v. Thuraissigiam*,
27 591 U.S. 103, 114–15 (2020). Defs.’ Mot. at 22–23. This Court has already rejected that
28 argument after finding *Thuraissigiam*’s reasoning inapplicable to Plaintiffs in this case.
See ECF 261 at 39–40. Defendants’ Motion does nothing to explain why the outcome
should be any different now.

1 Feb. 12, 2026) (collecting cases). The due process right to counsel “contains the related
2 right to consult with counsel,” including the right to “confidential in-person visitation,”
3 as respondents in immigration proceedings “must be forthcoming about sensitive
4 matters such as past trauma, mental health issues, and criminal history.” *Arroyo v. DHS*,
5 2019 WL 2912848, at *17 (C.D. Cal. June 20, 2019) (Bernal, J.) (citing *Orantes-*
6 *Hernandez*, 919 F.2d at 564). Because Plaintiffs have established, *supra*, Section II.B.2,
7 that MPP 1.0 “violat[ed] [Individual Plaintiffs’ and Class Members’] statutory rights,”
8 Plaintiffs have also established “Due Process violations.” *Torres*, 411 F. Supp. 3d at
9 1063 (citing *Biwot*, 403 F.3d at 1098).

10 **B. MPP 1.0 Violated Individual Plaintiffs’ and Class Members’ Due**
11 **Process Right to Prepare an Application for Relief and Present**
12 **Evidence in Support of the Application**

13 MPP 1.0 violated Individual Plaintiffs’ and Class Members’ right “to a full and
14 fair hearing” and a “reasonable opportunity to present evidence on [their] behalf” by
15 trapping them in dangerous conditions; obstructing their ability to access means of
16 communication, such as mail and the internet; and obstructing their ability to seek to
17 reopen their proceedings or appeal removal decisions. *See Colmenar v. INS*, 210 F.3d
18 967, 971 (9th Cir. 2000). In addition, MPP 1.0 prevented *In Absentia* Subclass members
19 from attending their hearings.

20 **1. MPP 1.0 trapped Individual Plaintiffs and Class Members in**
21 **dangerous conditions that obstructed their ability to meaningfully**
22 **prepare for and participate in their proceedings.**

23 Individuals are deprived of due process where circumstances lead to their
24 “inability to marshal significant documentary evidence.” *Cruz Rendon v. Holder*, 603
25 F.3d 1104, 1110 (9th Cir. 2010). Courts have repeatedly found the right to participate
26 in proceedings is violated when an individual is removed to a country where the
27 individual may “face[] persecution, torture, and possibly death.” *Poghosyan v. Wolf*,
28 2020 WL 7347858, at *3 (C.D. Cal. Nov. 6, 2020); *see also Primero Garcia v. Barr*,

2020 WL 1139660, at *4 (N.D. Cal. Mar. 9, 2020) (finding it “untenable” that petitioner could continue to litigate if removed to a country where he faced violence).

It is undisputed that MPP 1.0 subjected Individual Plaintiffs and Class Members to dangerous conditions in Mexico. *See supra*, Undisputed Facts, Section B. MPP 1.0 respondents in Mexico awaiting their U.S. court hearings “were subject to extreme violence and insecurity at the hands of transnational criminal organizations that profited from putting migrants in harms’ way while awaiting their court hearings in Mexico.” SUF 132. It is further undisputed that DHS was aware of the risk to MPP 1.0 respondents of exposure to violent crimes, but implemented MPP anyway and did nothing to alleviate that risk. *See* SUF 40–41; *supra*, Undisputed Facts, Section B.

As DHS previously found, “[t]he difficulties that MPP enrollees faced in Mexico, including the threat of violence and kidnapping, coupled with inadequate and unreliable access to food and shelter, likely contributed to people placed in MPP choosing to forego further immigration court proceedings regardless of whether their cases had merit.” SUF 129. The significant risks to asylum seekers in Mexico violated Individual Plaintiffs’ and Class Members’ due process rights by interfering with their ability to prepare and present evidence and have a full opportunity to be heard. *Poghosyan*, 2020 WL 7347858, at *3.

2. MPP 1.0 obstructed Individual Plaintiffs’ and Class Members’ ability to access legal materials and information, prepare evidence, and present witnesses.

A government policy violates due process if it has the “cumulative effect” of denying a respondent constitutionally sufficient access to legal materials or other resources necessary to prepare an application for relief. *Innovation Law Lab v. Nielsen*, 342 F. Supp. 3d 1067, 1080 (D. Or. 2018); *see also Torres*, 411 F. Supp. 3d at 1045 (finding due process violation where government’s telephone policy restricted respondents’ ability to “contact . . . the outside world,” because it is “critical” for respondents to “contact family members and friends to gather evidence in support of

1 their cases”).

2 MPP 1.0 violated due process protections by restricting Individual Plaintiffs and
3 Class Members from accessing legal materials and other resources necessary to prepare
4 their applications. As discussed *supra*, Undisputed Facts, Section B, Individual
5 Plaintiffs and Class Members often lacked reliable access to the internet, phones that
6 could make international calls, and the financial means to communicate with anyone
7 who could represent them. SUF 48–49. Further, MPP 1.0 respondents generally did not
8 have access to stable housing in Mexico, meaning they lacked a reliable mailing address
9 where they could receive notices. SUF 42, 55.

10 MPP 1.0 further violated Individual Plaintiffs’ and Class Members’ due process
11 rights by preventing them from accessing a U.S. law library or legal self-help materials,
12 which are widely available in the United States, including to noncitizens detained inside
13 the United States. *Orantes-Hernandez v. Meese*, 685 F. Supp. 1488, 1511 (C.D. Cal.
14 1988) (constitutional rights violated where government failed to provide adequate law
15 libraries, legal self-help materials, or adequate access to writing materials), *aff’d sub*
16 *nom. Orantes-Hernandez v. Thornburgh*, 919 F.2d 549 (9th Cir. 1990).

17 Defendants’ obstruction of Individual Plaintiffs’ and Class Members’ access to
18 legal information and materials “hindered [Individual Plaintiffs’ and Class Members’]
19 efforts to pursue a legal claim,” thereby violating their right to a full and fair hearing.
20 *Vetcher v. Barr*, 953 F.3d 361, 370 (5th Cir. 2020).

21 **3. MPP 1.0 prevented Individual Plaintiffs and Class Members from**
22 **accessing the appeal process or from seeking to reopen or restart**
23 **their proceedings.**

24 Individuals have a “due process right to challenge . . . orders [of removal] in the
25 appropriate court” and “avail themselves of the administrative system that exists to
26 litigate meritorious motions to reopen.” *Chhoeun v. Marin*, 306 F. Supp. 3d 1147, 1158–
27 59 (C.D. Cal. 2018). For the same reasons MPP 1.0 deprived Individual Plaintiffs and
28 Class Members of their right to a full and fair hearing in their removal proceedings, *see*

1 *supra*, Sections III.A–B.2, MPP 1.0 deprived Individual Plaintiffs and Class Members
2 of their right to challenge their orders of removal.

3 **4. MPP 1.0 systematically violated the due process rights of the *In***
4 ***Absentia* Subclass and Individual Plaintiff subclass representatives**
5 **by preventing them from attending their hearings.**

6 Individuals in removal proceedings have a due process right to a “full and fair
7 opportunity . . . to present testimony and other evidence in support of the[ir] application”
8 for relief from removal proceedings. *Vilchez*, 682 F.3d at 1199–1200. Like Individual
9 Plaintiffs Chepo, Yesenia, and Antonella Doe, all members of the *In Absentia* Subclass
10 missed a hearing during MPP 1.0 and were ordered removed *in absentia* as a result.⁶
11 Defendants violated due process by obstructing the ability of Chepo, Yesenia and
12 Antonella Doe and the *In Absentia* Subclass members to attend their hearings and
13 present testimony and other evidence in support of their application for relief. *See*
14 *Nazarova v. INS*, 171 F.3d 478, 485 (7th Cir. 1999) (“[T]he course of events here
15 conspired to deprive [the respondent] of the meaningful opportunity to be heard that the
16 Due Process Clause guarantees.”).

17 DHS’s efforts to facilitate the appearance of MPP 1.0 respondents at their
18 immigration court hearings were limited to: sometimes providing them with the date,
19 time and location where they would need to present themselves at a POE, without
20 transportation assistance in Mexico; processing them at a U.S. POE, but only if they
21 reported to the correct POE; and providing them with transportation within the United
22 States to the court when necessary. SUF 17–19, 25–27. Further, MPP 1.0 imposed
23 numerous obstacles preventing respondents from arriving on time for their court
24 hearings. *See supra*, Undisputed Facts, Section A.

25 These undisputed facts establish that factors inherent in the MPP 1.0 policy

26 ⁶ The *In Absentia* Subclass includes all Class Members who “received an *in absentia*
27 order of removal in MPP proceedings, and whose cases have not been reopened and
28 are not currently pending review before a federal circuit court of appeals.” ECF No.
261 at 50.

1 prevented *In Absentia* Subclass members from attending their hearings on the scheduled
2 date. *Nazarova*, 171 F.3d at 480–81. Accordingly, MPP 1.0 violated the due process
3 rights of Chepo, Yesenia, and Antonella Doe and the *In Absentia* Subclass.

4 **C. MPP 1.0 Violated Individual Plaintiffs’ and Class Members’ Right**
5 **to Adequate Notice by Failing to Provide Accurate Information in**
6 **a Manner Reasonably Calculated to Give Actual Notice**

7 The government must provide notice that is “reasonably calculated to apprise
8 noncitizens of the pendency of removal proceedings and to afford them the opportunity
9 to be present and to participate,” taking into consideration the “‘circumstances and
10 conditions’ of [each] particular case.” *Rivera-Valdes*, 157 F.4th at 985, 988 (citing
11 *Walker v. City of Hutchinson*, 352 U.S. 112, 115 (1956)). Defendants failed to provide
12 NTAs that included sufficient information to satisfy due process requirements. *See*
13 *supra*, Undisputed Facts, Section A. Defendants further deprived Class Members of the
14 right to notice by failing to take steps to effectuate adequate notice, despite knowing
15 that Class Members received insufficient notice. “Where the Government learns that its
16 notice efforts have not succeeded, that knowledge triggers an obligation on the
17 Government’s part to take additional reasonable steps to effect notice, if it is practicable
18 to do so.” *Rivera-Valdes*, 157 F.4th at 989. Here, Defendants knew of systemic notice
19 failures in MPP 1.0 proceedings and made no effort to provide proper notice. As
20 described *supra*, Undisputed Facts, Section B, Class Members often had no means of
21 receiving communications from the immigration court, including mail relating to their
22 proceedings.

23 **D. Defendants’ Arguments, Which Mischaracterize Plaintiffs’**
24 **Claims, Are Meritless**

25 Defendants mischaracterize Plaintiffs’ procedural due process challenge as a
26 substantive due process challenge that would require Plaintiffs to meet a standard that
27 is entirely inapplicable. Defs.’ Mot. at 24. “[P]rocedural due process . . . claims . . . are
28 predicated on the right to a full and fair hearing.” *Fernandez v. Gonzales*, 439 F.3d 592,

1 602 n.8 (9th Cir. 2006) (emphasis added); *see also Barenca-Ramirez v. Garland*, 2023
2 WL 2965579, at *1 (9th Cir. Apr. 17, 2023) (a noncitizen’s claims of deprivation of the
3 “right to present his case” did not raise a “violat[ion] [of] a ‘substantive interest
4 protected by the Due Process Clause’” but may raise a “violation[] of procedural due
5 process”) (citation omitted); ECF 261 at 40 (recognizing that this case concerns “alleged
6 denials of procedural due process”). Plaintiffs here challenge MPP 1.0’s denial of the
7 right to a full and fair hearing and notice of that hearing. These are procedural due
8 process challenges that are not subject to the standard in *County of Sacramento v. Lewis*,
9 523 U.S. 833, 846 (1998), which applies only to substantive due process claims.

10 While Defendants argue that Plaintiffs have not “establish[ed] that [MPP 1.0’s]
11 impediments impacted the outcome of asylum proceedings,” Defs.’ Mot. at 24,
12 Plaintiffs need only establish that the “outcome of the proceeding *may* have been
13 affected by the alleged violation” of their right to a full and fair hearing. *Colmenar*, 210
14 F.3d at 971 (emphasis added); *see also, e.g., Reyes-Melendez v. INS*, 342 F.3d 1001 (9th
15 Cir. 2003). Plaintiffs have more than sufficiently shown that the impediments caused
16 by MPP 1.0 prevented Individual Plaintiffs and Class Members from marshaling
17 necessary evidence to present their asylum claims and likely prejudiced the outcomes
18 of their cases. *See supra*, Sections III.A–C.

19 **IV. MPP 1.0 DEPRIVED ORGANIZATIONAL PLAINTIFFS, INDIVIDUAL**
20 **PLAINTIFFS, AND CLASS MEMBERS OF THEIR FIRST**
21 **AMENDMENT RIGHTS**

22 There are two sets of First Amendment rights implicated in this case: the rights
23 of Organizational Plaintiffs to advise potential and existing clients, and the rights of
24 Individual Plaintiffs and Class Members to retain and consult attorneys. The undisputed
25 facts show that the implementation of MPP 1.0 violated both sets of First Amendment
26 rights.

A. The First Amendment Protects Organizational Plaintiffs’ Right to Advise Potential and Existing Clients

The First Amendment protects legal service providers from government interference when they are “advocating lawful means of vindicating legal rights.” *NAACP v. Button*, 371 U.S. 415, 437 (1963). Accordingly, legal service providers have the right to advise potential clients because “the efficacy of litigation as a means of advancing the cause of civil liberties often depends on the ability to make legal assistance available to suitable litigants.” *In re Primus*, 436 U.S. 412, 431 (1978); accord *United Transp. Union v. State Bar of Mich.*, 401 U.S. 576, 580 (1971). These rights also apply to immigration legal service providers. *See Nw. Immigrant Rts. Project v. Sessions*, 2017 WL 3189032, at *3 (W.D. Wash. July 27, 2017). In short, attorneys advising, assisting, and consulting with asylum-seeking clients are engaging in the “creation and dissemination” of legal information, which constitutes speech that the First Amendment protects. *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 570 (2011); accord ECF 405 at 23 (finding that ImmDef seeks to “advocat[e] lawful means of vindicating legal rights” for the “unpopular minority” of asylum-seeking clients, which is protected First Amendment activity) (quoting *Button*, 371 U.S. at 435). Thus, Organizational Plaintiffs have a clearly established First Amendment right to advise potential and existing clients subjected to MPP 1.0.

B. The First Amendment Also Protects Individual Plaintiffs’ and Class Members’ Right to Retain and Consult an Attorney

The First Amendment guarantees all persons the right to hire and consult an attorney. *See Eng v. Cooley*, 552 F.3d 1062, 1069 (9th Cir. 2009); *Mothershed v. Justices of Supreme Court*, 410 F.3d 602, 611 (9th Cir. 2005). This protection extends to the right to petition an administrative agency. *Nat’l Ass’n of Radiation Survivors v. Derwinski*, 994 F.2d 583, 595 (9th Cir. 1992) (citing *California Motor Transp. Co. v. Trucking Unlimited*, 404 U.S. 508, 510 (1972)). At least one court in this circuit has applied this right explicitly in immigration proceedings. *See Lyon v. ICE*, 171 F. Supp.

1 3d 961, 994 (N.D. Cal. 2016).

2 Applying Ninth Circuit precedent, *Lyon* held that plaintiffs’ procedural due
3 process and First Amendment claims were essentially the same because both claims
4 were related to “how telephone restrictions affected detainees’ ability to gather evidence
5 to present at their immigration hearing, and to contact, retain, and consult with
6 attorneys.” *See Lyon*, 171 F. Supp. at 994; *see also Nat’l Ass’n of Radiation Survivors*
7 *v. Derwinski*, 994 F.2d 583, 595 (9th Cir. 1992). MPP 1.0 restrictions here similarly
8 affected respondents’ ability to contact, retain, and consult with attorneys. For the same
9 reasons discussed in Individual Plaintiffs’ and Class Members’ procedural due process
10 claim, *supra*, Section III, the Court should also grant summary judgment on their First
11 Amendment claims.

12 **C. MPP 1.0’s Content-Based Restrictions Cannot Satisfy Strict**
13 **Scrutiny**

14 Defendants’ restrictions under MPP 1.0, including a one-hour limit on attorney-
15 client communications, SUF 65, and an outright ban on attorneys speaking with
16 potential clients, SUF 63, 69, are subject to strict scrutiny because they are explicit
17 content-based restrictions on protected expressive conduct: they regulate who
18 (noncitizens in removal proceedings and legal service providers) may seek or provide a
19 particular kind of speech (immigration-related legal advice), when, where, and for how
20 long. Such restrictions “cannot be justified without reference to the content of the
21 regulated speech” and are subject to strict scrutiny. *Reed v. Town of Gilbert, Ariz.*, 576
22 U.S. 155, 164 (2015) (internal quotation marks omitted). Moreover, officers from
23 ICE—the opposing party in immigration court proceedings—were sometimes present
24 during the limited one-hour meetings counsel was permitted with MPP 1.0 respondents.
25 SUF 74. The ability to maintain the confidentiality of these conversations is itself a First
26 Amendment right. *See Denius v. Dunlap*, 209 F.3d 944, 954 (7th Cir. 2000)
27 (interference with confidentiality impedes the client’s First Amendment right to obtain
28 legal advice). MPP 1.0’s restrictions, which effectively required respondents to waive

1 attorney-client privilege in order to communicate with counsel, were also content-based
2 restrictions. For the same reasons MPP 1.0 cannot satisfy intermediate scrutiny, *see*
3 *infra* Section IV.D., MPP 1.0 likewise cannot satisfy strict scrutiny's heightened
4 standard.

5 **D. Even If Viewed as Content-Neutral, MPP 1.0 Imposed**
6 **Unreasonable Time, Place, and Manner Restrictions**

7 Time, place, and manner restrictions on speech are reasonable and thus withstand
8 intermediate scrutiny only if they are “narrowly tailored to serve a significant
9 governmental interest” and “leave open ample alternative channels for communication
10 of the information.” *Mothershed*, 410 F.3d at 611 (internal quotation marks omitted).
11 To analyze whether challenged restrictions leave open ample alternative channels, the
12 Ninth Circuit considers factors that include whether a speaker can still reach the
13 intended audience, *Bay Area Peace Navy v. United States*, 914 F.2d 1224, 1229 (9th
14 Cir. 1990); whether the location of the activity is part of the expressive message, *Galvin*
15 *v. Hay*, 374 F.3d 739, 756 (9th Cir. 2004); the opportunity for spontaneity, *N.A.A.C.P.*
16 *W. Region v. City of Richmond*, 743 F.2d 1346, 1356 (9th Cir. 1984); and the cost and
17 convenience of alternatives. *City of Ladue v. Gilleo*, 512 U.S. 43, 57 (1994); *see Long*
18 *Beach Area Peace Network v. City of Long Beach*, 574 F.3d 1011, 1025 (9th Cir. 2009).

19 Assuming *arguendo* that the government's restrictions on Organizational
20 Plaintiffs, Individual Plaintiffs, and Class Members are content-neutral and thus subject
21 to intermediate scrutiny, *see Mothershed*, 410 F.3d at 610, MPP 1.0 “burden[s]
22 substantially more speech than necessary to further [the government's] interests.”
23 *Turner Broad. Sys., Inc. v. FCC*, 520 U.S. 180, 189 (1997). The undisputed evidence
24 demonstrates that Defendants' strict time limits on Organizational Plaintiffs' attorney-
25 client meetings before immigration court hearings were unreasonable time, place, and
26 manner restrictions because they were not “narrowly tailored to serve a significant
27 governmental interest” and did not “leave open ample alternative channels for
28 communication of the information.” *Mothershed*, 410 F.3d at 611 (internal quotation

marks omitted).

As discussed below, and as this Court previously found, “attorney-client consultations [were] limited to an ‘illusory one-hour window before a scheduled hearing,’” “lawyers . . . were forced to meet with their clients in nonconfidential settings,” and “unrepresented noncitizens . . . ‘were prohibited even from approaching legal representatives . . . to discuss possible representation.’” ECF 405 at 27 (citations omitted). These were unreasonable time, place, and manner restrictions because lawyers were functionally prohibited from meeting with prospective clients⁷ in the only realistically accessible safe space where they could do so.

1. Defendants’ restrictions were unreasonable time, place, and manner restrictions.

For their existing clients, Organizational Plaintiffs were left, at most, with a single hour before court appearances, which often was not available in practice and, in any case, was insufficient to provide comprehensive advice regarding the legal issues surrounding their clients’ asylum claims. SUF 65–68. Even if any meetings occurred, they took place in a non-confidential public setting, sometimes in the presence of ICE officials, and without access to the tools necessary for effective client representation. *See supra*, Undisputed Facts, Section C. Defendants also did not allow MPP 1.0 respondents to travel to the United States for attorney-client visits. *See infra*, n.8.

Courts have found similar restrictions to violate the First Amendment in the context of detention, in which a *lower* standard of scrutiny applies. *See, e.g., Torres*, 411 F. Supp. 3d at 1067–68 (finding plausible First Amendment violation where immigrant detainees’ contact with counsel was subject to significant restrictions of timing, duration, access to confidential space, and promptness); *Mercado v. Noem*, 800

⁷ ICE’s Enforcement and Removal Operations (“ERO”) maintained custody and control over MPP 1.0 respondents while they were in the United States for court hearings. SUF 62. DHS regulations provide that individuals returned to Mexico under 8 U.S.C. § (b)(2)(C) “shall be considered detained for a proceeding within the meaning of section 235(b) of the [INA].” 8 C.F.R. § 235.3(d).

1 F. Supp. 3d 526, 577–78 (S.D.N.Y. 2025) (restrictions on attorney-client
2 communications, including a lack of “attorney call rooms or in-person visitation,” at a
3 purportedly short-term detention site violated the First Amendment by “delay[ing]
4 critical legal advice” and sometimes “completely depriv[ing] a detainee of the ability to
5 obtain timely legal advice prior to removal”). For the same reasons, the MPP 1.0
6 restrictions are unreasonable time, place, and manner restrictions on the First
7 Amendment rights of Individual Plaintiffs and Class Members.

8 Defendants’ restrictions prevented Organizational Plaintiffs from advising
9 potential clients unless they paid for staff to travel to and rent safe meeting spaces in
10 Mexico. SUF 137. Travel to Mexico posed such serious safety concerns that some U.S.-
11 based legal services providers prohibited their staff from visiting MPP 1.0 respondents
12 in Mexico. SUF 102–103. Defendants also prohibited legal service providers from
13 conducting know-your-rights sessions for MPP 1.0 respondents at the immigration
14 courts and the IHFs. SUF 70. And only represented asylum seekers were permitted to
15 speak to counsel while in the United States for their immigration court proceedings.
16 SUF 64. Attorneys were outright prohibited from speaking with unrepresented asylum
17 seekers while they were in the United States for hearings. SUF 63.

18 It is undisputed that the single hour to consult with retained counsel before court
19 appearances was insufficient to obtain comprehensive legal advice. SUF 68. Preparing
20 an asylum case in removal proceedings requires multiple attorney-client meetings to
21 develop the facts and obtain necessary evidence, including translation of supporting
22 documents, working with country experts, and obtaining psychological evaluations.
23 SUF 68. “Building trust with clients who have undergone traumatic events and who are
24 in stressful and uncertain circumstances takes time and patience.” *Id.* Moreover, in
25 practice, MPP 1.0 respondents met with their counsel for only 20 to 45 minutes before
26 their hearings, SUF 67, and the limited U.S. spaces where represented MPP 1.0
27 respondents could meet with their attorneys were not private or confidential, SUF 71–
28 72, 74. These time and place restrictions were unreasonable because they undermined

1 the purpose of MPP 1.0 respondents' speech, which was to obtain legal advice.

2 As this Court has already held, Defendants' restrictions "afforded individuals
3 only a nominal right to hire and consult with an attorney," and "deprived [them] of any
4 meaningful way to communicate with (potential) counsel." ECF 261 at 46. These
5 deprivations "strike at the fundamental nature of what it means to practice immigration
6 law, to speak nothing of higher notions such as the importance of trust and rapport in
7 the attorney-client relationship." *Id.*

8 **2. MPP 1.0's speech restrictions were not narrowly tailored to serve**
9 **a significant governmental interest.**

10 Even if Defendants' restrictions on the right to hire and consult with counsel (and
11 counsel's corresponding right to consult with their clients) were reasonable restrictions,
12 they would still fail intermediate scrutiny because they were not "narrowly tailored to
13 serve a significant governmental interest." *Mothershed*, 410 F.3d at 611. Defendants
14 claim that MPP 1.0 was implemented "to address the migration crisis along the southern
15 border" and "to prevent the exploitation of the asylum process." Defs.' SUF 7, 8. But
16 the record has not established the existence of a "migration crisis" or any prevalent
17 "exploitation" of the asylum process. *See* Pls.' Resp. to Defs.' SUF 7, 8. Moreover,
18 assuming Defendants could demonstrate a significant governmental interest, MPP 1.0
19 was not narrowly tailored to serve that interest. The record demonstrates that
20 Defendants had several less restrictive options available to them, including establishing
21 or facilitating channels of communication between MPP 1.0 respondents and their
22 counsel, *see* SUF 122, and [REDACTED]
23 [REDACTED], *see* SUF 92.

24 **3. Defendants did not allow for any meaningful alternative**
25 **communication channels.**

26 Defendants' severe restrictions on attorney communications, including know-
27 your-rights presentations, were unreasonable and violated the First Amendment because
28 Defendants failed to consider or address the lack of available alternatives for providing

1 legal advice. *Accord Mercado*, 800 F. Supp. 3d at 578 (government’s “severe
2 restrictions placed on phone communications” of immigrant detainees violated the First
3 Amendment when they did not consider or implement “feasible alternatives” like free
4 unmonitored phone calls).

5 Defendants’ restrictions meant that the only time and place where unrepresented
6 MPP 1.0 respondents could speak with U.S.-licensed attorneys was in Mexico. As
7 discussed *supra*, Undisputed Facts, Section C, due to health, safety, legal, and resource
8 constraints, U.S.-based attorneys could not meet in person with MPP 1.0 clients on a
9 regular basis, and virtual legal communication with clients in Mexico was functionally
10 impossible or possible only at great expense or substantial risk. *See supra*, Section II.C.
11 While Individual Plaintiffs and Class Members were inside the United States, MPP 1.0
12 prohibited all communication by unrepresented individuals with potential counsel and
13 severely limited communication by represented individuals with counsel, both in time
14 and place. And when Class Members were in Mexico, Defendants’ implementation of
15 MPP 1.0 trapped them in circumstances where they lacked adequate technology or
16 resources to communicate with counsel or potential counsel. Such severe restrictions on
17 speech did not serve any government interest and did not allow for any meaningful, let
18 alone “ample,” alternative channels to communicate with counsel.

19 Defendants argue MPP 1.0’s restrictions had only an “incidental effect” on
20 protected speech, analogizing to how an ordinance prohibiting outdoor fires would limit
21 the protected activity of flag burning. *See* Defs.’ Mot. at 24–25. As this Court has
22 previously noted, Defendants’ argument “mischaracterizes the level of generality at
23 which Plaintiffs’ rights were restricted, as “Plaintiffs do not simply argue that
24 Defendants returned them to Mexico . . . [thereby] mak[ing] it more difficult to find and
25 talk to lawyers located in the United States.” ECF 261 at 45. The effect here was far
26 more pervasive. For example, the ban on attorneys speaking with potential clients while
27 in the United States for their hearings was an outright restriction—not a reasonable time,
28 place, or manner restriction; unrepresented MPP 1.0 respondents had no opportunity to

1 consult with U.S.-licensed attorneys during their limited time in the United States and
2 had no alternative channels through which to exercise their First Amendment rights.
3 SUF 63.

4 **V. PLAINTIFFS ARE ENTITLED TO VACATUR, DECLARATORY**
5 **RELIEF, AND INJUNCTIVE RELIEF**

6 **A. Vacatur Is the Default APA Remedy for Unlawful Agency Action**

7 When a court holds an agency action unlawful, vacatur is the default remedy
8 under the APA. *Montana Wildlife Fed’n v. Haaland*, 127 F.4th 1, 50 (9th Cir. 2025);
9 *National TPS All. v. Noem*, 798 F. Supp. 3d 1108, 1160 (N.D. Cal. 2025), *aff’d*, 166
10 F.4th 739 (9th Cir. 2026). Vacatur under section 706 is relief directed at the legality of
11 the agency action itself, not merely a plaintiff-specific, non-enforcement order. *See*
12 *Corner Post, Inc. v. Bd. of Governors of the Fed. Reserve Sys.*, 603 U.S. 799, 827–30
13 (2024) (Kavanaugh, J., concurring). Consistent with that understanding, courts have
14 repeatedly recognized that section 706 vacatur operates “universally” in the sense that
15 it sets aside the challenged agency action, rather than tailoring relief to the plaintiffs’
16 injuries. *See D.C. v. U.S. Dep’t of Agric.*, 444 F. Supp. 3d 1, 46 (D.D.C. 2020) (Howell,
17 J.) (rejecting contention that vacatur should be limited to plaintiffs); *see also National*
18 *TPS All.*, 798 F. Supp. 3d at 1160–61.

19 Nor does *Trump v. CASA, Inc.* foreclose the “universal” application of APA
20 vacatur. 606 U.S. 831, 846–47 n.10 (2025) (noting that “[n]othing we say today resolves
21 the distinct question whether the Administrative Procedure Act authorizes federal courts
22 to vacate federal agency action.”). *CASA* addressed equitable injunctions and did not
23 rewrite section 706’s statutory directive to “set aside” unlawful agency action.⁸ *See*

24 _____
25 ⁸ Nor did the Ninth Circuit decision on the government’s emergency application for a
26 stay in this case reach a contrary conclusion. The Ninth Circuit addressed only the limits
27 of a court’s injunctive authority to stay the effective date of a federal regulation under
28 section 705—not the wholly distinct issue of whether vacatur as a final judgment
remedy under section 706 remains universal in its effect. *See ImmDef*, 145 F.4th at 995
(noting the *CASA* decision’s “complete-relief principle for crafting *injunctive* relief

(Footnote Cont’d on Following Page)

1 *National TPS All.*, 798 F. Supp. 3d at 1160–61 (*CASA*’s reasoning—grounded in
2 historic equitable remedies—does not apply to section 706’s statutory command). And
3 section 706’s “set aside” language has long been understood to authorize vacatur of
4 agency action. *See* Mila Sohoni, *The Past and Future of Universal Vacatur*, 133 Yale
5 L.J. 2305 (2024).

6 Finally, Defendants cannot credibly claim prejudice or surprise from Plaintiffs’
7 request for section 706 vacatur: not only is vacatur the ordinary APA remedy,
8 Defendants have litigated remedies (including the proper characterization of § 705 and
9 § 706 relief) throughout this case. *See Immigrant Defs. L. Ctr. v. DHS*, No. 21-cv-0395
10 FMO, ECF 318 (C.D. Cal. Sept. 29, 2025) (finding the complaint implicitly identified
11 the APA’s presumptive remedy of vacatur and provided the government adequate
12 notice). As a general matter, “the scope of relief warranted in a case evolves depending
13 on the court’s findings at trial, and the decision regarding the proper remedy and the
14 scope of any injunctive relief ultimately rests with the court.” *Id.* at *11 (citing Fed. R.
15 Civ. P. 54(c) and circuit cases).

16 **B. Defendants’ “Jurisdictional Bar” Arguments Do Not Foreclose**
17 **Vacatur or Declaratory Relief**

18 Defendants’ remedies objections rely mainly on 8 U.S.C. §§ 1252(f)(1) and
19 (b)(9). Neither provision strips this Court of authority to award the remedies Plaintiffs
20 seek.

21 **1. Section 1252(f)(1) does not bar vacatur or declaratory relief.**

22 Defendants’ “procedural” objections largely repackage arguments they
23 pressed—and lost—in the section 705 stay proceedings in this case. In affirming this
24 Court’s stay, the Ninth Circuit expressly rejected Defendants’ procedural challenges,
25 including their contention that 8 U.S.C. § 1252(f)(1) barred APA relief: “§ 1252(f)(1)’s
26 bar on injunctive relief” does not “bar the district court’s stay pursuant to § 705 of the

27 _____
28 provides some useful guidance for crafting *interim equitable relief* in this case”) (emphases added).

[Administrative Procedure Act].” *ImmDef*, 145 F.4th at 989–90. Crucially, section 1252(f)(1) by its terms addresses injunctions that “enjoin or restrain the operation” of specified INA provisions; it does not mention stays, vacatur, or the APA’s command to “set aside” unlawful agency action. 8 U.S.C. § 1252(f)(1); 5 U.S.C. § 706(2).

Those same principles apply here. Vacatur under section 706 is not an injunction directed at the operation of the INA; it is the statutory consequence of a merits determination that agency action is unlawful. Nothing in section 1252(f)(1) repeals or overrides section 706’s instruction that courts “hold unlawful and set aside” agency action that is arbitrary, capricious, or contrary to law. 5 U.S.C. § 706(2)(A), (B). Courts addressing this question have likewise concluded that section 1252(f)(1) does not preclude vacatur or declaratory relief under the APA. *See Kidd v. Mayorkas*, 734 F. Supp. 3d 967, 986 (C.D. Cal. 2024) (explaining that the court may issue declaratory relief and “also vacate and set aside” unlawful policies under the APA). Section 1252(f)(1) thus poses no obstacle to the relief sought here.

2. Section 1252(b)(9) does not “zipper” this case into a petition for review and does not bar APA remedies.

Defendants argue that section 1252(b)(9) is an “unmistakable zipper clause” that channels “all questions of law and fact” into a petition for review after a final order of removal. Defs.’ Mot. at 16 (quoting *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 481–83 (1999)). That framing is overbroad as applied here.

Section 1252(b)(9) channels review only of claims “arising from any action taken or proceeding brought to remove a [noncitizen].” 8 U.S.C. § 1252(b)(9). The Supreme Court has cautioned against reading that provision to swallow challenges that are not, in substance, requests for review of removal orders or the conduct of individual removal proceedings. *See Jennings v. Rodriguez*, 583 U.S. 281, 292–94 (2018) (rejecting expansive reading that would swallow claims only loosely connected to removal); *Reno*, 525 U.S. at 482–83 (channeling provisions target piecemeal review of removal-related determinations). Plaintiffs here do not ask this Court to review or set aside any

1 individual order of removal; instead, they challenge the legality of a DHS policy and its
2 implementing guidance as agency action under the APA, including through claims
3 brought by Organizational Plaintiffs whose injuries do not depend on the validity of any
4 individual removal order. For the same reasons, 8 U.S.C. § 1252(a)(5) does not bar
5 review. Plaintiffs’ claims are precisely the sort of claim *Jennings* indicates should not
6 be forced into the petition-for-review channel simply because removal proceedings
7 exist in the background. 583 U.S. at 292–94.

8 **C. Declaratory Judgment Is an Available Remedy**

9 Under the Declaratory Judgment Act, a court may “declare the rights and other
10 legal relations of any interested party seeking such declaration.” 28 U.S.C. § 2201(a).
11 Declaratory relief is appropriate “(1) when the judgment will serve a useful purpose in
12 clarifying and settling the legal relations in issue, and (2) when it will terminate and
13 afford relief from the uncertainty, insecurity, and controversy giving rise to the
14 proceeding.” *Eureka Fed. Sav. & Loan Ass’n v. Am. Cas. Co.*, 873 F.2d 229, 231 (9th
15 Cir. 1989). And § 1252(f)(1) “does not ‘bar classwide declaratory relief.’” *Al Otro Lado*
16 *v. EOIR*, 120 F.4th 606, 625 (9th Cir. 2024) (quoting *Rodriguez v. Hayes*, 591 F.3d
17 1105, 1119 (9th Cir. 2009)).

18 Declaratory relief is appropriate here because it will clarify the legality of MPP
19 1.0 and resolve ongoing uncertainty, including because Defendants have recently
20 considered re-implementing MPP. *See* ECF 405 at 5 (“On January 21, 2025, DHS
21 announced that it was resuming implementation of MPP 1.0”); *Imperium Ins. Co. v.*
22 *Unigard Ins. Co.*, 16 F. Supp. 3d 1104, 1109 (E.D. Cal. 2014).

23 **D. Injunctive Relief Is Available to Individual Plaintiff Chepo Doe**

24 As part of their routine exercise of judicial power, district courts have the inherent
25 authority to fashion equitable remedies that may require ordering the government to
26 facilitate the return of unlawfully removed noncitizens to the United States. *See, e.g.,*
27 *Noem v. Abrego Garcia*, 145 S. Ct. 1017, 1018 (2025) (requiring the government to
28 facilitate the return of Abrego Garcia to “ensure that his case is handled as it would have

1 been had he not been improperly sent to El Salvador”); *Ms. L v. ICE*, 403 F. Supp. 3d
2 853, 860 (S.D. Cal. 2019) (court had remedial authority to bring back parents who were
3 wrongfully deported and therefore unlawfully separated from their children). Far from
4 undermining Defendants’ discretionary authority under 8 U.S.C. § 1182(d)(5)(A), such
5 equitable relief is aligned with Defendants’ “own well-established policy to ‘facilitate
6 [a noncitizen]’s return to the United States if . . . the [noncitizen]’s presence is necessary
7 for continued administrative removal proceedings.” *See Abrego Garcia*, 145 S. Ct. at
8 1019 (quoting U.S. Immigration and Customs Enforcement, Directive 11061.1,
9 Facilitating the Return to the United States of Certain Lawfully Removed Aliens, § 2
10 (Feb. 24, 2012)).

11 Plaintiff Chepo Doe, the only Individual Plaintiff who remains outside the United
12 States and in danger, requests that the Court order his and his dependents’ return to the
13 United States for a period sufficient to enable them to seek legal representation and
14 pursue asylum from inside the United States. *See* Ex. 73, Suppl. Chepo Doe Decl., ¶ 13.
15 Chepo Doe had no choice but to return to El Salvador after a local hospital in Mexico
16 denied his daughter treatment due to their immigration status, and she ultimately needed
17 emergency, life-saving surgery. SUF 141–142. As a result, they missed their fifth
18 immigration hearing and received an *in absentia* removal order. SUF 143. Facilitating
19 the return of Chepo Doe to the United States for the adjudication of his asylum claim
20 would provide him with the process to which he would have been entitled had he not
21 been unlawfully subjected to MPP 1.0. This relief is not only permissible because
22 Defendants violated his rights under the INA and the Constitution, but also necessary
23 to afford him full relief.

24 CONCLUSION

25 The Court should enter an order granting summary judgment to Plaintiffs;
26 declaring that MPP 1.0 violates the APA, the INA, and the Constitution; granting
27 injunctive relief to Individual Plaintiff Chepo Doe; and requiring that meaningful notice
28 of said order be given to all Class Members.

1 Dated: March 23, 2026

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CERTIFICATE OF COMPLIANCE PURSUANT TO L.R. 11-6.2

The undersigned, counsel of record for Plaintiffs, certifies that this brief contains 45 pages, which complies with the Court's Order to Modify Scheduling Order and Page Limits for Summary Judgment Briefing, ECF 435.

Dated: March 23, 2026

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