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UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

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

Plaintiffs,

v.

MARKWAYNE MULLIN<sup>1</sup>, Secretary,  
Department of Homeland Security, in  
his official capacity, et al.,

Defendants.

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

**DEFENDANTS' OPPOSITION TO  
PLAINTIFFS' CROSS MOTION FOR  
SUMMARY JUDGMENT AND REPLY  
IN SUPPORT OF DEFENDANTS'  
MOTION FOR SUMMARY  
JUDGMENT**

Hearing Date: June 8, 2026<sup>2</sup>  
Hearing Time: 9:00 a.m.  
Ctrm: Riverside, Ctrm 1

Honorable Jesus G. Bernal  
United States District Judge

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

<sup>2</sup> This is the parties' proposed new hearing date as outlined in their stipulation filed on April 6, 2026. Dkt. 454. This will afford Plaintiffs their opportunity to file a reply by May 22, 2026 and provide the Court the time anticipated by Local Rules 7-9 and 7-10 to review the parties' briefings prior to the June 8, 2026 hearing date.

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

In 2018, to curb the illegal immigration crisis and exploitation of the asylum process, the Secretary of the Department of Homeland Security (“DHS”) implemented the Migrant Protection Protocols, otherwise known as MPP. MPP was implemented pursuant to express statutory authority under the Immigration and Nationality Act (“INA”) and used to return certain aliens arriving on land from Mexico, illegally or without proper documents, back to Mexico, while their removal proceedings were pending.

Plaintiffs now argue that the implementation of MPP (1) violates the Administrative Procedure Act (APA) because it is contrary to law and arbitrary and capricious; (2) deprives Plaintiffs and class members of their due process rights; and (3) violates Plaintiffs’ and class members’ First Amendment Rights. For each of these grounds, Plaintiffs assert the same reasons why they believe their rights are violated, which namely include the country conditions in Mexico and issues impacting their ability to communicate or access counsel.

Plaintiffs construe the INA as imposing obligations beyond what Congress intended when drafting the relevant statutory provisions. This is why Plaintiffs’ granular view of the incidental impacts MPP had on MPP enrollees’ ability to apply for asylum is irrelevant to the analysis of whether MPP is fundamentally unlawful. Rather, MPP is lawful because:

1. MPP is not contrary to law as it is explicitly authorized by statute, *see Biden v. Texas*, 597 U.S. 785 (2022);

2. MPP is not arbitrary and capricious because DHS did not consider impermissible factors and did not fail to consider access to counsel issues;

3. MPP does not violate Plaintiffs’ Fifth Amendment procedural due process rights because aliens seeking admission to the United States cannot demand that their application for admission be determined in a particular manner or by use of a particular

1 type of proceedings; and

2 4. MPP does not violate the First Amendment because it regulates pure non-  
3 expressive conduct not speech.

4 Accordingly, Defendants are entitled to summary judgment.

## 5 **II. ARGUMENT**

### 6 **A. Plaintiffs Do Not Have Standing and Fail to Meaningfully Address the** 7 **Standard in *Hippocratic Medicine***

8 Plaintiffs incorrectly rely on the same evidence to establish standing that  
9 supported Plaintiffs' initial diversion of resources/frustration of mission theories. The  
10 Supreme Court in *Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 380-  
11 81 (2024) ("Alliance"), has since rejected these theories, therefore it cannot follow that  
12 the same evidence can be used to establish standing under *Alliance*. Especially given that  
13 *Alliance* "marked a sea change in the doctrine of organizational standing" and the Ninth  
14 Circuit's prior cases interpreting *Havens Realty v. Coleman*, 455 U.S. 363 (1982)  
15 ("*Havens*") are clearly irreconcilable with *Alliance* and have "therefore been 'effectively  
16 overruled.'" *Immigrant Defs. L. Ctr. v. Noem*, 145 F.4th 972, 1001 (Nelson, J.,  
17 dissenting) (9th Cir. 2025) (cleaned up). If the same evidence could be used to establish  
18 standing under all three theories, then it undermines the impact of the holding in  
19 *Alliance*.

20 Here, the Organizational Plaintiffs framed their factual assertions and standing  
21 arguments in now-obsolete definitions of standing: "diversion of resources" and  
22 "frustration of mission" theories. *See* Dkt. 175, Second Amended Complaint ("SAC"),  
23 ¶¶ 271-310. ImmDef's evidence shows that, in response to MPP, it engaged in acts  
24 beyond its preexisting core business activities; that is precisely the type of voluntary  
25 activity that *Alliance* determined was insufficient to establish standing. ImmDef  
26 concededly did not represent aliens outside the United States (or even much beyond Los  
27 Angeles and Orange County) before MPP. DSUF 51. It began doing so only in response  
28 to MPP. *See, e.g.*, DSUF 53 (stating that, in response to MPP, ImmDef undertook two

1 new ventures including representing individuals in San Diego Immigration Court and  
2 engaging in cross-border travel and communication); DSUF 54 (Both ventures “requires  
3 new infrastructure, staff, materials, and funding”); DSUF 52 (“In response to  
4 Defendants’ implementation of the Protocols in January 2019, ImmDef established its  
5 Cross Border Initiative (‘CBI’), which focuses on providing direct representation, pro se  
6 assistance, and advocacy to individuals subjected to MPP.”).

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

18 Further, the Organizational Plaintiffs have not presented evidence of a direct  
19 injury to pre-existing core business activities. Neither engaged in cross-border work  
20 prior to MPP. Moreover, neither alleges an informational injury or a direct interference  
21 with its pre-existing core business activities, such as the organization in *Havens*. In both  
22 *Alliance* and *Havens*, the Supreme Court analyzed the organizations’ core activities as  
23 they existed at the time of the challenged conduct and determined whether the conduct  
24 affected those prior activities. *See Alliance*, 602 U.S. at 379 (noting that, prior to  
25 defendant’s conduct, plaintiff organization was engaged in “counseling and referral  
26 services for low-and moderate-income homeseekers,” and defendant’s actions  
27 “perceptibly impaired” the organization’s ability to provide those services). Accordingly,  
28 those core activities must have existed before the Defendants’ challenged actions. For

1 the Organizational Plaintiffs, they did not.

2 **B. MPP Does Not Violate the APA Because It is Not Contrary to Law or**  
3 **Arbitrary and Capricious**

4 1. The Authority Underlying MPP is Authorized by Statute and Does  
5 Not Violate the Uniform Procedure for Seeking Asylum

6 The INA expressly authorizes contiguous territory return pending removal  
7 proceedings; thus, the decision to exercise that authority cannot give rise to an APA suit  
8 for violating a separate INA provision regarding access to counsel. Aliens seeking  
9 admission have only those rights that “Congress has provided by statute.” *Dep’t of*  
10 *Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (citing 8 U.S.C. §  
11 1225(b)(1)(B)(ii), (iv)); *see United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537,  
12 544 (1950) (“Whatever the procedure authorized by Congress is, it is due process as far  
13 as an alien denied entry is concerned.”).

14 Further, Plaintiffs broadly construe the concept of “uniform procedure” for  
15 seeking asylum by contending that it imposes obligations beyond what is outlined in the  
16 INA. 8 U.S.C. § 1158(a)-(c) and implementing regulations found in 8 C.F.R § 1208 set  
17 for uniform eligibility standards and establish the mechanics of the determination  
18 process, such as credibility assessments by a trier of fact.

19 Plaintiffs do not challenge how asylum applications are adjudicated or the removal  
20 proceedings process. Defensive applications, meaning those filed in removal  
21 proceedings, are decided by immigration judges in immigration courts, applying the  
22 substantive law at 8 U.S.C. § 1158 and its implementing regulations. The standards for  
23 deciding those asylum applications are the same for all applicants, including those who  
24 were enrolled in MPP, and Plaintiffs have not alleged otherwise. *See* Pltf’s Cross  
25 MSJ/Opp’n (“Opp’n”), Dkt. 450 at 21-23.

26 Rather, Plaintiffs want to expand the obligations set forth in 8 U.S.C. § 1158(d)  
27 and its implementing regulations. In removal proceedings, Congress gave aliens the  
28 “privilege of being represented, at no expense to the Government, by counsel of the

1 alien’s choosing who is authorized to practice in such proceedings[.]” 8 U.S.C. §  
2 1229a(b)(4)(A); *see* 8 U.S.C. §§ 1158(d)(4), 1362. As the “authorized to practice”  
3 requirement shows, that statutory right only extends to proceedings conducted by  
4 immigration judges under § 1229a in the United States. 8 U.S.C. §§ 1229a(b)(4)(A),  
5 1362. The alien is also entitled to a list of organizations, referral services, and attorneys  
6 qualified to provide pro bono services in immigration proceedings. 8 U.S.C. §  
7 1158(d)(4)(B); 8 C.F.R. § 1003.61(b). And those aliens returned to Mexico pursuant to  
8 MPP receive those rights.

9 This is all that the INA and implementing regulations require. All aliens returned  
10 to Mexico pursuant to MPP or permitted to be inside the United States receive what is  
11 required by statute and regulations. *United States v. Valdivias-Soto*, 112 F.4th 713, 723  
12 (9th Cir. 2024) (“To the extent a respondent can secure a pro bono attorney, the right to  
13 counsel entitles them to be represented by that attorney in their removal proceedings or  
14 on appeal.”).

15 Plaintiffs ignore that, in addition to Congress expressly authorizing DHS to return  
16 aliens to a contiguous territory “pending a proceeding under section 1229a[.]” Congress  
17 articulated no requirement that the Government actively facilitate an alien’s access to  
18 counsel in that foreign territory. *See* 8 U.S.C. § 1225(b)(2)(C); *Biden v. Texas*, 597 U.S.  
19 at 801-02 (“Section 1225(b)(2)(C) plainly confers a discretionary authority to return  
20 aliens to Mexico during the pendency of their immigration proceedings.”). That statutory  
21 silence speaks volumes because § 1225(b)(2)(C) was enacted at the same time as the  
22 statutory privilege to obtain counsel in §§ 1158(d)(4), 1229a(b)(4)(A), and 1362. *See*  
23 *Orozco-Lopez v. Garland*, 11 F.4th 764, 775 (9th Cir. 2021) (explaining that the  
24 “broader legislative context” can help clarify statutory meaning).

25 Potentially inconveniencing the right to counsel is different from depriving an  
26 alien of that right altogether. *See Immigrant Defs. L. Ctr.*, 145 F.4th at 1011 (Nelson, J.,  
27 dissenting). “Though MPP may make it harder for an alien to coordinate with a lawyer  
28 while they are abroad, it does not follow that the individual’s statutory right to counsel is

1 violated when the Government exercises return authority that the same statute expressly  
2 allows.” *See id.* (Nelson, J., dissenting); *see also* 8 U.S.C. § 1225(b)(2)(C). “The  
3 Government must only permit MPP aliens to be represented by a lawyer should they find  
4 one.” *See Immigrant Defs. L. Ctr.*, 145 F.4th at 1011 (Nelson, J., dissenting); *see also* 8  
5 U.S.C. § 1362. The INA requires no more.

6 Plaintiffs’ evidence does not establish that Defendants deprived MPP enrollees of  
7 their right to counsel. Rather, the evidence reflects that Defendants permitted MPP  
8 enrollees to be represented by a lawyer should they choose to hire an attorney. *See*  
9 Defendant’s Statement of Undisputed Facts (“DSUF”), Dkt. 439-6, Nos. 32-34, 39-42.  
10 In fact, all guidelines and standard operating procedures contemplated this  
11 representation. *See* DSUFs 32-34. More specifically, MPP enrollees were provided with  
12 the Executive Office for Immigration Review’s list of local legal service providers. *See*  
13 DSUF 28. They were afforded an opportunity to meet with their counsel prior to any  
14 hearings, and their attorneys were allowed to be present at all hearings. *See* DSUF 32-34.  
15 Additionally, MPP enrollees were free to consult with their attorneys via phone, mail, or  
16 electronic means while in Mexico.

17 Thus, MPP did provide access to counsel as required by the INA and  
18 implementing regulations. Therefore, Plaintiffs’ claim that MPP is contrary to law  
19 because it violates the statutory right to counsel fails.

20 2. The Implementation of MPP Was Not Arbitrary and Capricious

21 Arbitrary-and-capricious review is limited and “highly deferential”; courts must  
22 “presume[] the agency action to be valid,” *Sacora v. Thomas*, 628 F.3d 1059, 1068 (9th  
23 Cir. 2010), and may not substitute their “judgment for that of the agency,” *Gill v. DOJ*,  
24 913 F.3d 1179, 1187-88 (9th Cir. 2019); *see FCC v. Prometheus Radio Project*, 141 S.  
25 Ct. 1150, 1158 (2021). The agency need only articulate “a rational connection between  
26 the facts found and the choice made,” *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State*  
27 *Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43 (1983), and it is “reasonable for the [agency]  
28 to rely on its experience” in exercising its judgment, *Sacora*, 628 F.3d at 1068-69; *see*

1 *State Farm*, 463 U.S. at 29 (“It is not infrequent that the available data does not settle a  
2 regulatory issue and the agency must then exercise its judgment in moving from the facts  
3 and probabilities on the record to a policy conclusion.”).

4 The party “challenging an agency’s action as arbitrary and capricious bears the  
5 burden of proof ... to demonstrate that the agency’s ultimate conclusions are  
6 unreasonable.” *George v. Bay Area Rapid Transit*, 577 F.3d 1005, 1011 (9th Cir. 2009);  
7 *see also Dep’t of Commerce v. New York*, 139 S. Ct. 2551, 2573 (2019) (“[A] court may  
8 not reject an agency’s stated reasons for acting simply because the agency might also  
9 have had other unstated reasons. Relatedly, a court may not set aside an agency’s  
10 policymaking decision solely because it might have been influenced by political  
11 considerations or prompted by an Administration’s priorities.”).

12 In *Las Americas Immigrant Advoc. Ctr. v. Wolf*, the plaintiffs raised similar lack  
13 of access to counsel arguments when DHS instituted a new policy where individuals  
14 awaiting credible fear interviews or immigration judge’s review of negative credible fear  
15 determinations would be held in CBP detention facilities versus ICE detention facilities.  
16 507 F. Supp. 3d 1 (D.C. Cir. 2020), *dismissed sub nom. Las Americas Immigrant Advoc.*  
17 *Ctr. v. Mayorkas*, No. 20-5386, 2024 WL 3632500 (D.C. Cir. Aug. 1, 2024). Plaintiffs  
18 argued that the new detention-placement policy was adopted in an arbitrary and  
19 capricious fashion in violation of the APA because it deprived asylum seekers of  
20 procedural safeguards conferred by statute and deprived them of their Fifth Amendment  
21 due process rights. *Id.* More specifically, plaintiffs argued that the CBP facilities were  
22 not equipped to provide adequate access to counsel, *id.* at 18, and defendants, when  
23 implementing the new detention-placement policies, failed to consider the consequences  
24 of the policy and the needs of individuals in the credible fear process. *Id.* at 34.

25 The Court in *Las Americas* found that these policies were not arbitrary and  
26 capricious because the administrative record demonstrated that “when determining  
27 whether or not a new protocol for expediting the removal of certain noncitizens should  
28 be established, ‘DHS considered the migration crisis along the southwest border, the

1 increase in asylum claims, and the limited resources of ICE detention.” *Id.* at 36.

2 Additionally, the Court noted that the entire goal of the challenged policy was efficiency  
3 and the record reflected that the agency had fully articulated that goal. *Id.* at 38.

4 Similarly, Defendants implemented MPP in 2019 to address the migration crisis  
5 along the southern border and prevent the exploitation of the asylum process. *See* DSUF  
6 Nos. 7-8. Further, this goal was fully articulated. As DHS acknowledged in October  
7 2021, “MPP discouraged unlawful border crossings, decreased the filing of non-  
8 meritorious asylum claims, and facilitated more timely relief for asylum seekers.” Pl.  
9 Exh. 14 at AR00016. The court in *Texas v. Biden* noted in detail the benefits that MPP  
10 provided such as:

- 11 • “since a recent peak of more than 144,000 in May 2019, total enforcement actions  
12 ... have decreased by 64% through September 2019 ... border encounters with  
13 Central American families – who were the main driver of the crisis and comprise a  
14 majority of MPP-amenable aliens – have decreased by approximately 80%”
- 15 • “aliens without meritorious claims — which no longer constitute[d] a free ticket  
16 into the United States — [were] beginning to voluntarily return home.”
- 17 • “MPP addressed the perverse incentives created by allowing ‘those with non-  
18 meritorious claims ... [to] remain in the country for a lengthy period of time.’”
- 19 • “approximately 9 out of 10 asylum claims from Northern Triangle countries are  
20 ultimately found non-meritorious by federal immigration judges, and that MPP  
21 discouraged such aliens from traveling and attempting to cross the border in the  
22 first place.”

23 *Texas v. Biden*, 554 F. Supp. 3d 818, 848 (N.D. Tex. Aug. 13, 2021) (citations omitted),  
24 *aff’d*, 20 F.4th 928 (5th Cir. 2021), *as revised* (Dec. 21, 2021), *rev’d and remanded on*  
25 *other grounds*, 597 U.S. 785 (2022). Accordingly, MPP is not arbitrary and capricious.

26 **C. MPP Did Not Deprive Plaintiff or Class Members of Their Procedural**  
27 **Due Process Rights**

28 Even if the Court were to construe Plaintiffs’ due process claim as a procedural

1 due process claim, it still fails. An “expectation of receiving process is not, without  
2 more, a liberty interest protected by the Due Process Clause.” *Olim v. Wakinekona*, 461  
3 U.S. 238, 250 (1983). And it is “well settled that aliens seeking admission to the United  
4 States cannot demand that their application for entry be determined in a particular  
5 manner or by use of a particular type of proceedings. *For those aliens, the procedure*  
6 *fixed by Congress is deemed to be due process of law.*” *Rafeedie v. INS*, 880 F.2d 506,  
7 512-13 (D.C. Cir. 1989) (emphasis in original); *see also id.* (“[A]liens seeking admission  
8 to the United States...have no constitutional rights to any prescribed process.”).

9 For those aliens who have neither acquired domicile or residence in the United  
10 States nor been lawfully admitted, “[w]hatever the procedure authorized by Congress is,  
11 it is due process as far as an alien denied entry is concerned.” *Thuraissigiam*, 591 U.S. at  
12 139 (quoting *Shaughnessy v. Mezei*, 345 U.S. 206, 212 (1953)) (applying rule to alien  
13 who had made it 25 yards onto U.S. soil before being apprehended). “This principle has  
14 given rise to the ‘entry fiction,’ a legal concept which holds that ‘excludable aliens,’  
15 ‘[e]ven if physically in this country, . . . are legally detained at the border’ and treated as  
16 if they have not entered the country.” *Padilla v. U.S. Immigr. & Customs Enf’t*, 354 F.  
17 Supp. 3d 1218, 1225 (W.D. Wash. 2018) (quoting *Garcia-Mir v. Smith*, 766 F.2d 1478,  
18 1484 (11th Cir. 1985)). “Applying this legal fiction, Mezei held that the procedural due  
19 process rights of an alien detained on Ellis Island were not violated when he was  
20 excluded without a hearing.” *Wong v. United States*, 373 F.3d 952, 971 (9th Cir. 2004)  
21 (citing *Mezei*, 345 U.S. at 214); *see Angov v. Lynch*, 788 F.3d 893, 898 (9th Cir. 2015)  
22 (“[The alien] has no . . . right [to procedural due process]. He presented himself at the  
23 San Ysidro port of entry without valid entry documents and sought asylum . . . . [T]hose,  
24 like [the alien], who have never technically ‘entered’ the United States have no such  
25 rights.” (quoting *Mezei*, 345 U.S. at 212)). Aliens who have not entered the United States  
26 are afforded limited constitutional protections more generally. “[A]liens receive  
27 constitutional protections when they have come within the territory of the United States  
28 and developed substantial connections with this country.” *United States v. Verdugo-*

1 *Urquidez*, 494 U.S. 259, 275 (1990). And as a corollary to this limitation, constitutional  
2 rights do not generally apply extraterritorially. *See id.* at 269, 274-75.

3 **D. MPP Did Not Deprive Plaintiffs or Class Members of Their First**  
4 **Amendment Rights**

5 1. MPP Regulates Pure Non-Expressive Conduct, Not Speech

6 MPP regulates whether aliens may stay in the United States pending their removal  
7 proceedings. And placing aliens in Mexico during their removal proceedings is a  
8 regulation of pure, non-expressive conduct – not speech. MPP places, at most,  
9 “incidental burdens on speech.” *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 567 (2011).  
10 Such incidental burdens “hardly mean[] that the law should be analyzed as one  
11 regulating the [plaintiff’s] speech rather than conduct.” *Rumsfeld v. FAIR*, 547 U.S. 47,  
12 62 (2006). MPP places aliens in a different country from the Organizational Plaintiffs’  
13 attorneys who wish to speak with them and does not restrict attorneys’ speech or  
14 expressive conduct. “In that sense, MPP is like an ordinance prohibiting outdoor fires, a  
15 conduct-focused regulation that does not violate the First Amendment despite having the  
16 incidental effect of restricting expressive flag burning.” *Immigrant Defs. L. Ctr.*, 145  
17 F.4th at 1007 (Nelson, J., dissenting) (citing *Sorrell*, 564 U.S. at 567 (citing *R.A.V. v.*  
18 *City of St. Paul*, 505 U.S. 377, 385 (1992); *Texas v. Johnson*, 491 U.S. 397, 404-06  
19 (1989)).

20 None of the MPP guiding principles or MPP standard operating procedures  
21 included any provision restricting communication between attorney and client and/or  
22 limiting the substance of these communications. *See* DSUFs 32-34. Rather, they  
23 explicitly acknowledged access to counsel and advised that the right to counsel should  
24 not be inhibited. *See id.* Further DHS worked to ensure that prior to immigration court  
25 hearings, the alien processed into MPP had time to discuss their case with their attorney.  
26  
27  
28

2. Even If MPP Could Be Viewed As A Restriction on Speech It Did  
Nothing More Than Impose Content-Neutral Time, Place, and  
Manner Restrictions

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

Plaintiffs’ chief complaint is that the Defendants would transport MPP enrollees to an immigration court only one hour before their immigration hearing, which limited the amount of time that attorneys could meet in-person with their clients. But that is the incidental impact of logistics, not a content-based restriction. And the Plaintiffs fail to acknowledge that nothing in MPP’s guiding principles or standard operating procedures restricted communications between attorneys and their clients outside of that one-hour timeframe. Aliens and their attorneys could communicate via phone and email.

Plaintiffs argue that the one-hour restriction is content-based because the restriction “cannot be justified without reference to the content of the regulated speech” citing to *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 164 (2015). In *Reed*, the court found a town’s code governing the manner in which people may display outdoor signs to be content-based regulations because the code categorized signs and treated signs differently based on what the message on the sign was. *Id.* at 159-61.

1 Here, unlike in *Reed*, the one-hour limit was only applied to in-person attorney-  
2 client communications prior to a hearing and applied to all MPP enrollees consistently.  
3 The one-hour time limit was not imposed in such a way, where for example the subject  
4 matter of the attorney-client communication would dictate how long an alien could speak  
5 to their attorney. Further, aliens were free to communicate with their attorneys as much  
6 as they needed to beyond their immigration hearing days.

7 Clearly, MPP was not a regulation implemented to restrict Organizational  
8 Plaintiffs' speech. Rather, due to returning enrollees to a contiguous country,  
9 Organizational Plaintiffs' attorneys who wished to serve that population had to speak to  
10 their clients through phones, emails, and in-person one hour prior to the court hearing.  
11 This is, at most, an incidental burden on speech. No aspect of MPP's implementing  
12 guidance restricted attorney-client communications.

13 **E. Plaintiffs Cannot Circumvent *Aleman-Gonzalez* by Recharacterizing**  
14 **Their Requested Relief**

15 Plaintiffs' requested vacatur and declaratory judgment unquestionably restrain the  
16 operation of a provision that is specified in Section 1252(f)(1)—namely 8 U.S.C.  
17 § 1225(b)(2)(C) (providing for return of aliens to contiguous territory pending removal  
18 proceedings) and 8 U.S.C. §§ 1229, 1229a, and 1231 (providing for removal proceedings  
19 and removal of aliens subject to orders of removal)—because they require “federal  
20 officials to take or to refrain from taking actions to enforce, implement, or otherwise  
21 carry out” such statutes. *Garland v. Aleman Gonzalez*, 596 U.S. 543, 550-51 (2022).  
22 That conclusion cannot be avoided by an argument that a vacatur is merely “less drastic”  
23 than an injunction. Nor can it be avoided by asserting that a class wide declaratory  
24 judgment is somehow not coercive even where it invites each and every class member to  
25 obtain a follow-on injunction.

26 A vacatur and classwide declaratory judgment in this case would run to “an entire  
27 class of aliens,” *id.*, rather than an “individual alien,” 8 U.S.C. § 1252(f)(1). This Court  
28 certified a class under Rule 23(b)(2), which allows certification of classes that seek

1 “final injunctive relief or *corresponding* declaratory relief.” Fed. R. Civ. P. 23(b)(2)  
2 (emphasis added). The Advisory Committee defines “corresponding declaratory relief”  
3 as any remedy that “as a practical matter ... affords injunctive relief or serves as a basis  
4 for later injunctive relief.” Fed. R. Civ. P. 23(b)(2) Advisory Committee Note to 1996  
5 Amendment; 7AA Fed. Prac. & Proc. Civ. § 1775 (3d ed.). This definition makes clear  
6 that the purpose of the Rule 23(b)(2) class is to enjoin certain action or inaction on a  
7 classwide basis and that any declaratory relief issued to a 23(b)(2) class should be  
8 equivalent to an injunction. *See id.*; *see also Coca-Cola Bottling Co. of Elizabethtown,*  
9 *Inc. v. Coca-Cola Co.*, 98 F.R.D. 254, 271 (D. Del. 1983) (refusing to certify a Rule  
10 23(b)(2) class where “determination of these issues would not result in corresponding  
11 declaratory relief that would have the effect of enjoining the defendant from acting in the  
12 future”). Because Rule 23(b)(2) only allows declaratory relief that has the same practical  
13 effect as an injunction, Section 1252(f)(1)’s bar on classwide injunctive relief applies  
14 with equal force to any corresponding declaratory relief. *See Jennings v. Rodriguez*, 583  
15 U.S. 281, 313 (2018) (noting that Rule 23(b)(2) requires “final injunctive relief or  
16 corresponding declaratory relief [to be] appropriate respecting the class as a whole” and  
17 suggesting Section 1252(f)(1)’s prohibition on classwide injunctive relief would also  
18 prohibit any corresponding declaratory relief by stating “if the Court of Appeals  
19 concludes that it may issue only declaratory relief, then the Court of Appeals should  
20 decide whether that remedy can sustain the class on its own”).

21 As for vacatur, Congress precluded not only classwide orders that “enjoin,” but  
22 also those that “restrain.” 8 U.S.C. § 1252(f)(1). The independent meaning of “restrain”  
23 in Section 1252(f)(1) is particularly clear given the contrast between Section 1252(f)(1)  
24 (“enjoin or restrain”) and the very next provision, Section 1252(f)(2), which bars only  
25 orders that “enjoin” covered conduct. And the Supreme Court has explained that  
26 “restrain” is broad, reaching all judicial orders that “check, hold back, or prevent”  
27 governmental action. *Aleman Gonzalez*, 596 U.S. at 549. Vacatur plainly can have such  
28 “inhibit[ing]” effect. *Id.* If a rule provides the legal authority for officials to act, vacating

1 the rule obviously “prevents” officials from acting.

2 Accordingly, Plaintiffs’ requested relief is barred.

3 **F. Plaintiff Chepo Doe is Not Entitled to Injunctive Relief Because He Has**  
4 **Not Established His Inability to Pursue His Claims While Abroad or**  
5 **That He was Wrongfully Removed**

6 Plaintiff’s reliance on *Noem v. Abrego Garcia*, 145 S. Ct. 1017, 1018 (2025), and  
7 *Ms. L v. ICE*, 403 F. Supp. 3d 853, 860 (S.D. Cal. 2019), are severely misguided. Both  
8 involved purported wrongful removals, whereas here Plaintiff Chepo Doe voluntarily  
9 returned back to his country of El Salvador and has remained there, and appears to have  
10 remained there without incident for almost six years. *See* Dkt. 450-7, Pltf’s Ex. 73.  
11 Aliens do not have a right to be paroled into the United States to pursue motions to  
12 reopen or to pursue asylum claims. Instead, while aliens have the ability to move, subject  
13 to one exception, to reopen their removal proceedings from abroad, the statutory  
14 provision permitting individuals to move to reopen does not provide for individuals’  
15 return to the United States in order to do so. *See* 8 U.S.C. § 1229a(c)(7); 8 C.F.R. §  
16 1003.2(d); *Toor v. Lynch*, 789 F.3d 1055, 1060 (9th Cir. 2015). Further, applicants for  
17 admission, including those who claim fear at a port of entry are subject to mandatory  
18 detention pending their immigration proceedings, including a determination on an  
19 asylum application. 8 U.S.C. § 1225(b)(1) & (2).

20 Parole determinations are committed to the discretion of the Secretary of  
21 Homeland Security and may only be prescribed on a “case-by-case basis for urgent  
22 humanitarian reasons or significant public benefit...” *See* 8 U.S.C. § 1182(d)(5)(A).  
23 Plaintiff Chepo Doe has failed to establish urgent humanitarian reasons, especially given  
24 the current state of El Salvador. *See* U.S. Department of State Travel Advisory for El  
25 Salvador, available at [https://travel.state.gov/content/travel/en/international-](https://travel.state.gov/content/travel/en/international-travel/International-Travel-Country-Information-Pages/ElSalvador.html)  
26 [travel/International-Travel-Country-Information-Pages/ElSalvador.html](https://travel.state.gov/content/travel/en/international-travel/International-Travel-Country-Information-Pages/ElSalvador.html); *see also* 2024  
27 El Salvador Human Rights Report, available at [https://www.state.gov/wp-](https://www.state.gov/wp-content/uploads/2025/09/EL-SALVADOR-2024-HUMAN-RIGHTS-REPORT.pdf)  
28 [content/uploads/2025/09/EL-SALVADOR-2024-HUMAN-RIGHTS-REPORT.pdf](https://www.state.gov/wp-content/uploads/2025/09/EL-SALVADOR-2024-HUMAN-RIGHTS-REPORT.pdf).

Accordingly, Plaintiff Chepo Doe is not entitled to injunctive relief.

**III. CONCLUSION**

For the foregoing reasons, and for the reasons outlined in Defendants' Motion for Summary Judgment, this Court should enter judgment in favor of the Defendants.

Dated: April 27, 2026

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE WITH L.R. 11-6.2**

The undersigned, counsel of record for Defendants, certifies that the memorandum of points and authorities contains 4,713 words, which complies with the word limit of L.R. 11-6.1.

Dated: April 27, 2026

/s/ Christina Marquez

CHRISTINA MARQUEZ

Assistant United States Attorney