

MATTHEW T. HEARTNEY (SBN 123516)
Matthew.Heartney@arnoldporter.com
ARNOLD & PORTER KAYE SCHOLER LLP
777 South Figueroa Street, 44th Floor
Los Angeles, CA 90017-5844
Tel: (213) 243-4000 / Fax: (213) 243-4199

MELISSA CROW*
crowmelissa@uclawsf.edu
CENTER FOR GENDER &
REFUGEE STUDIES
1901 Pennsylvania Avenue NW
Suite 900, PMB 228
Washington, D.C. 20006
Tel: (202) 355-4471
Fax: (415) 881-8824

STEPHANIE M. ALVAREZ-JONES*†
stephanie@nipnl.org
NATIONAL IMMIGRATION PROJECT
OF THE NATIONAL LAWYERS GUILD
1763 Columbia Rd. NW, Suite 175 #896645
Washington, D.C. 20009
Tel: (202) 470-2082
Fax: (617) 227-5495

STEPHEN W. MANNING*
stephen@innovationlawlab.org
INNOVATION LAW LAB
333 SW 5th Ave, Suite 200
Portland, OR 97204
Tel: (503) 922-3042
Fax: (503) 882-0281

ARTHUR AGO*
arthur.ago@splcenter.org
SOUTHERN POVERTY LAW CENTER
1101 17th Street, NW, Suite 550
Washington, D.C., 20036
Tel: (202) 961-9325

Attorneys for Plaintiffs (continued on next page)

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

IMMIGRANT DEFENDERS LAW
CENTER, *et al.*,

Plaintiffs,

v.

MARKWAYNE MULLIN, *et al.*,

Defendants.

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

**PLAINTIFFS' [REDACTED]
REPLY IN SUPPORT OF THEIR
MOTION FOR SUMMARY
JUDGMENT**

Judge: Honorable Jesus G. Bernal
Crtrm: 1
Date: June 8, 2026
Time: 9:00 a.m.

Action Filed: October 28, 2020

1 [Caption Page Continued - Additional
2 Attorneys for Plaintiffs]

3 JORDAN CUNNINGS*
4 jordan@innovationlawlab.org
5 KELSEY PROVO*
6 kelsey@innovationlawlab.org
7 ROSA SAAVEDRA VANACORE*
8 rosa@innovationlawlab.org
9 INNOVATION LAW LAB
10 333 SW 5th Avenue, Suite 200
Portland, OR 97204
Tel: (503) 922-3042
Fax: (503) 882-0281

DANIEL S. SHIMELL (SBN 300931)
Daniel.Shimell@arnoldporter.com
ALLYSON C. MYERS (SBN 342038)
Ally.Myers@arnoldporter.com
ARNOLD & PORTER KAYE
SCHOLER LLP
777 South Figueroa Street, 44th Floor
Los Angeles, CA 90017-5844
Tel: (213) 243-4000
Fax: (213) 243-4199

11 VICTORIA F. NEILSON*†
12 victoria@nipnlg.org
13 TESS HELLGREN*‡
14 tess@nipnlg.org
15 NATIONAL IMMIGRATION
16 PROJECT OF THE NATIONAL
17 LAWYERS GUILD
18 1763 Columbia Rd. NW, Suite 175 #896645
Washington, D.C. 20009
Tel: (202) 474-3672
Tel: (617) 227-9727
Fax: (617) 227-5495

20
21 * *admitted Pro Hac Vice*

22 † *not admitted in DC; working remotely from Georgia and admitted in Georgia and
New Jersey only*

23 ‡ *not admitted in DC; working remotely from and admitted in New York only*

24 ‡‡ *not admitted in DC; working remotely from Florida and admitted in Florida and
Oregon only*

TABLE OF CONTENTS

	Page
INTRODUCTION	1
I. Organizational Plaintiffs Have Established Standing by Demonstrating That MPP 1.0 Impacted Their Core Business Activities.	1
II. Defendants Fail to Rebut Plaintiffs’ Copious Evidence That the Implementation of MPP 1.0 Was Arbitrary, Capricious, and Not in Accordance with Law.....	3
A. Plaintiffs Challenge the Implementation of the MPP 1.0 Policy, Not the Legality of the Statutory Provision Permitting Contiguous-Territory Return	4
B. Defendants’ Implementation of MPP 1.0 Violated the Uniform Procedures for Seeking Asylum and Obstructed the Statutory Right to Access Counsel	5
C. Defendants’ Implementation of MPP 1.0 Failed to Consider Crucial Impacts of the Policy.....	9
III. Defendants Fail to Engage with Plaintiffs’ Evidence That the Implementation of MPP 1.0 Violated Individuals’ Due Process Rights.....	11
IV. Defendants Mischaracterize Plaintiffs’ First Amendment Claims.....	12
A. MPP 1.0 Regulates Protected Attorney-Client Speech.....	12
B. MPP 1.0 Unlawfully Restrained Protected Speech Between Attorneys and Existing and Potential Clients	13
C. At minimum, MPP 1.0 imposed unreasonable time, place, and manner restrictions	15
V. The Requested Relief Is Squarely Within this Court’s Jurisdiction to Grant	16
A. Aleman Gonzalez Does Not Bar Plaintiffs’ Requested Relief	16
B. Plaintiff Chepo Doe Is Entitled to Meaningful Equitable Relief.....	18
CONCLUSION.....	20

TABLE OF AUTHORITIES

Page(s)

Cases

<i>Al Otro Lado v. EOIR</i> , 138 F.4th 1102 (9th Cir. 2025)	16
<i>Alliance. Refugee & Immigrant Ctr. for Educ. & Legal Servs. v. Noem</i> , 793 F. Supp. 3d 19 (D.D.C. 2025), <i>aff'd</i> , --- F.4th ----, 2026 WL 1110616 (D.C. Cir. Apr. 24, 2026).....	2
<i>Augustin v. Sava</i> , 735 F.2d 32 (2d Cir. 1984)	5
<i>Bautista v. Santacruz</i> , 813 F. Supp. 3d 1084 (C.D. Cal. 2025).....	17
<i>Biden v. Texas</i> , 597 U.S. 785 (2022).....	4, 16
<i>Biwot v. Gonzales</i> , 403 F.3d 1094 (9th Cir. 2005)	4, 6
<i>Campos v. Nail</i> , 43 F.3d 1285 (9th Cir. 1994)	5
<i>Castro-O’Ryan v. INS</i> , 847 F.2d 1307 (9th Cir. 1988)	6
<i>Chhoeun v. Marin</i> , 306 F. Supp. 3d 1147 (C.D. Cal. 2018).....	19
<i>Coca-Cola Bottling Co. of Elizabethtown v. Coca-Cola Co.</i> , 98 F.R.D. 254 (D. Del. 1983)	16, 17
<i>Corner Post, Inc. v. Bd. of Governors of Fed. Reserve Sys.</i> , 603 U.S. 799 (2024) (Kavanaugh, J., concurring)	18
<i>DHS v. Thuraissigiam</i> , 591 U.S. 103 (2020).....	11
<i>Food & Drug Administration v. Alliance for Hippocratic Medicine</i> , 602 U.S. 367 (2024) (<i>Alliance</i>)	2, 3

1	<i>Garland v. Aleman Gonzalez,</i>	
2	596 U.S. 543 (2022).....	16, 18
3	<i>Haitian Evangelical Clergy Ass’n v. Trump,</i>	
4	789 F. Supp. 3d 255 (E.D.N.Y. 2025).....	17, 18
5	<i>Havens Realty v. Coleman,</i>	
6	455 U.S. 363 (1982).....	3
7	<i>Immigrant Defs. L. Ctr. v. Noem,</i>	
8	145 F.4th 972 (9th Cir. 2025).....	<i>passim</i>
9	<i>Imperial Sovereign Court of Montana v. Knudsen,</i>	
10	170 F.4th 820 (9th Cir. 2026).....	14
11	<i>J.G.G. v. Trump,</i>	
12	No. 25-cv-766, 2026 WL 391937 (D.D.C. Feb. 12, 2026)	19
13	<i>Judulang v. Holder,</i>	
14	565 U.S. 42 (2011).....	10
15	<i>Kariye v. Mayorkas,</i>	
16	650 F. Supp. 3d 865 (C.D. Cal. 2022).....	15
17	<i>Las Americas Immigrant Advocacy Center v. Wolf,</i>	
18	507 F. Supp. 3d 1 (D.D.C. 2020).....	8, 10
19	<i>Mendez v. INS,</i>	
20	563 F.2d 956 (9th Cir. 1977)	18
21	<i>Mothershed v. Justices of Supreme Court,</i>	
22	410 F.3d 602 (9th Cir. 2005)	14
23	<i>Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.,</i>	
24	463 U.S. 29 (1983).....	9, 10
25	<i>Nat’l TPS All. v. Noem,</i>	
26	166 F.4th 739 (9th Cir. 2026).....	17, 18
27	<i>Nielsen v. Preap,</i>	
28	586 U.S. 394 (2019).....	16
	<i>O.A. v. Trump,</i>	
	404 F. Supp. 3d 109 (D.D.C. 2019).....	8

1	<i>Orantes-Hernandez v. Thornburgh,</i>	
2	919 F.2d 549 (9th Cir. 1990)	5
3	<i>Oshodi v. Holder,</i>	
4	729 F.3d 883 (9th Cir. 2013) (en banc)	4
5	<i>Reed v. Town of Gilbert, Ariz.,</i>	
6	576 U.S. 155 (2015).....	14
7	<i>Refugee & Immigrant Ctr. for Educ. & Legal Servs. v. Mullin,</i>	
8	No. 25-5243, 2026 WL 1110616 (D.C. Cir. Apr. 24, 2026)	17
9	<i>Rodriguez v. Hayes,</i>	
10	591 F.3d 1105 (9th Cir. 2010)	16, 17
11	<i>Sanchez Cruz v. Mullin,</i>	
12	--- F. Supp. 3d ----, No. 25-cv-13347, 2026 WL 1298529 (E.D. Mich.	
13	May 12, 2026).....	19
14	<i>Sorrell v. IMS Health Inc.,</i>	
15	564 U.S. 552 (2011).....	13
16	<i>Steffel v. Thompson,</i>	
17	415 U.S. 452 (1974).....	17
18	<i>Texas v. United States,</i>	
19	40 F.4th 205 (5th Cir. 2022)	17
20	<i>Torres v. DHS,</i>	
21	411 F. Supp. 3d 1036 (C.D. Cal. 2019) (Bernal, J.)	7
22	<i>United States v. Rivera-Valdes,</i>	
23	157 F.4th 978 (9th Cir. 2025)	12
24	<i>Usubakunov v. Garland,</i>	
25	16 F.4th 1299 (9th Cir. 2021)	6
26	<i>Vilchez v. Holder,</i>	
27	682 F.3d 1195 (9th Cir. 2012)	11, 12
28	<i>Walters v. Reno,</i>	
	145 F.3d 1032 (9th Cir. 1998)	18, 19

1	<i>Ward v. Rock Against Racism,</i>	
2	491 U.S. 781 (1989).....	15

Statutes

4	5 U.S.C. § 706.....	4, 5, 7
5	8 U.S.C. § 1158.....	4, 5, 11
6	8 U.S.C. § 1182(d)(5)(A).....	19
7	8 U.S.C. § 1225.....	<i>passim</i>
8	8 U.S.C. § 1229a(b)(4).....	4, 8, 11
9	8 U.S.C. § 1252(f)(1).....	16, 17, 18
10	8 U.S.C. § 1362.....	4, 11
11	APA.....	<i>passim</i>
12	INA	1, 4, 6
13	Refugee Act	5

Other Authorities

16	First Amendment to the U.S. Constitution	12, 15
17	Fed. R. Civ. P. 23(b)(2)	17
18	H.R. CONF. REP. 96-781 (1980), <i>as reprinted in</i> 1980 U.S.C.C.A.N.	
19	160	5
20	S. Rep. No. 96-256 (1980), <i>as reprinted in</i> 1980 U.S.C.C.A.N. 141.....	5

INTRODUCTION

Defendants’ Opposition to Plaintiffs’ Motion for Summary Judgment makes one thing crystal clear: Defendants have no basis to rebut the mountain of evidence demonstrating that their implementation of MPP 1.0 violated the Immigration and Nationality Act (INA), the Administrative Procedure Act (APA), and the U.S. Constitution, subjecting Plaintiffs and Class Members to serious harm. Rather than dispute Plaintiffs’ evidence, Defendants principally rely on arguments this Court and the Ninth Circuit have rejected. Because Defendants’ arguments—new and old—are unavailing and the undisputed evidence favors Plaintiffs, the Court should grant Plaintiffs’ summary judgment, deny Defendants’ motion for summary judgment, enter an order vacating MPP 1.0, and grant injunctive relief to Plaintiff Chepo Doe.

I. Organizational Plaintiffs Have Established Standing by Demonstrating That MPP 1.0 Impacted Their Core Business Activities.

Based on the same evidence presented here, the Ninth Circuit concluded that Plaintiff Immigrant Defenders Law Center (ImmDef) was injured by MPP 1.0 because it “had to expend resources to counteract and offset the barriers that MPP imposed” in order to “*continue* carrying out its core activities and longstanding mission.” *Immigrant Defs. L. Ctr. v. Noem*, 145 F.4th 972, 988 (9th Cir. 2025) (*ImmDef*) (emphasis in original). Defendants do not dispute that ImmDef’s core mission is to provide direct representation, counseling, and legal assistance to noncitizens in removal proceedings in and around southern California, with the goal of providing universal representation; nor do they dispute that, to represent individuals subjected to MPP 1.0, ImmDef had to hire additional staff, engage in cross-border travel, purchase international telephone plans, and rent confidential meeting spaces. ECF 457-1, Plaintiffs’ Response to Defendants’ Statement of Genuine Dispute (“PSUF”), 136–37. Defendants also do not dispute that Plaintiff Jewish Family Service of San Diego’s (JFSSD) core mission is to provide “holistic, culturally competent, trauma-informed, quality legal and other

1 supportive services to the immigrant community in San Diego and Imperial Counties.”
2 PSUF 138. They do not dispute that “[b]ecause many asylum seekers appearing in the
3 San Diego court were subjected to MPP 1.0, [JFSSD] felt compelled to represent them
4 in order to fulfill this part of [their] mission.” PSUF 140. Further, it is undisputed that
5 in response to MPP 1.0, JFSSD had to: establish cross-border infrastructure to receive
6 calls from individuals subjected to MPP 1.0, reduce representation of individuals in the
7 San Diego area, and create Know Your Rights programs for those subjected to MPP
8 1.0. ECF 439-6 (“DSUF”), 59. For the reasons explained in Plaintiffs’ Motion, these
9 undisputed facts establish that the implementation of MPP 1.0 undermined
10 Organizational Plaintiffs’ core business activities; they therefore have standing. ECF
11 450 (“Pltfs.’ Mot.”), 12–14.

12 Unable to dispute the facts, Defendants assert mystifying claims about the
13 controlling law on organizational standing. First, they assert that Organizational
14 Plaintiffs’ allegation in the Second Amended Complaint that they diverted resources in
15 response to MPP 1.0 precludes organizational standing because *Food & Drug*
16 *Administration v. Alliance for Hippocratic Medicine*, 602 U.S. 367 (2024) (*Alliance*),
17 “rejected” the diversion of resources theory of standing. ECF 455 (Defs.’ Opp.), 2. In
18 fact, evidence that a government action “required” an organization to “divert resources”
19 in order to continue its core business activities *supports* a finding that the government’s
20 conduct had “a significant and direct detrimental effect on the organizational plaintiffs’
21 ‘core business activities’” and is sufficient to satisfy standing requirements under
22 *Alliance. Refugee & Immigrant Ctr. for Educ. & Legal Servs. v. Noem*, 793 F. Supp. 3d
23 19, 67–69 (D.D.C. 2025), *aff’d*, --- F.4th ----, 2026 WL 1110616 (D.C. Cir. Apr. 24,
24 2026); *see ImmDef*, 145 F.4th at 988 (citing evidence that ImmDef “divert[ed] staff
25 resources away from other projects towards MPP-related projects to continue carrying
26 out its core business activities and longstanding mission” to support finding that
27 ImmDef satisfied the standing requirements under *Alliance*).

1 Second, Defendants cite only a dissenting opinion to argue that prior Ninth
2 Circuit precedent interpreting *Havens Realty v. Coleman*, 455 U.S. 363 (1982), is
3 effectively overruled by *Alliance*. Defs.’ Opp. at 2 (citing *ImmDef*, 145 F.4th at 1001
4 (Nelson, J., dissenting)) (internal quotation marks omitted). But the Ninth Circuit
5 rejected outright the *ImmDef* dissent’s assertion that *Alliance* effectively overruled prior
6 case law interpreting *Havens*. *ImmDef*, 145 F.4th at 988 (noting that *Alliance*
7 “reinforced the holding in” *Havens* by reiterating that “when a defendant’s actions
8 ‘directly affect[] and interfere[] with’ a plaintiff’s ‘core business activities,’ then the
9 plaintiff may assert organizational standing”). Even if Defendants’ argument were
10 correct, it is irrelevant because Plaintiffs do not rely on any pre-*Alliance* cases
11 interpreting *Havens*. Instead, Plaintiffs rely on *ImmDef*, which directly applied
12 *Alliance*’s holding to the facts of this case.

13 Finally, Defendants argue that Organizational Plaintiffs lack standing because
14 “[n]either engaged in cross-border work prior to MPP.” Defs.’ Opp. at 3. But this fact
15 also supports Organizational Plaintiffs’ standing, as both *ImmDef* and JFSSD were
16 forced to “expand[] [their] legal representation across the U.S.-Mexico border to
17 *continue* carrying out [their] core activities and longstanding mission[s].” *ImmDef*, 145
18 F.4th at 988. By returning Organizational Plaintiffs’ would-be clients to Mexico instead
19 of permitting them to seek asylum from within the United States, Defendants
20 “perceptibly impaired [Plaintiffs’] ability to provide” legal representation services to
21 individuals in and around southern California (*ImmDef*) and to the immigrant
22 community in San Diego and Imperial Counties (JFSSD). *Alliance*, 602 U.S. at 395.

23 Accordingly, Defendants’ contrary claims fail.

24 **II. Defendants Fail to Rebut Plaintiffs’ Copious Evidence That the**
25 **Implementation of MPP 1.0 Was Arbitrary, Capricious, and Not in**
26 **Accordance with Law.**

A. Plaintiffs Challenge the Implementation of the MPP 1.0 Policy, Not the Legality of the Statutory Provision Permitting Contiguous-Territory Return

Defendants’ APA defense rests on a false premise: because 8 U.S.C. § 1225(b)(2)(C) authorizes contiguous-territory return in some circumstances, any implementation of that authority is lawful. Defs.’ Opp. at 4–6. Plaintiffs do not challenge the legality of § 1225(b)(2)(C) itself. Rather, Plaintiffs challenge Defendants’ implementation of this provision through the MPP 1.0 policy, which imposed numerous extra-statutory restrictions and denied MPP 1.0 respondents meaningful access to the asylum process and to counsel.

Nor does *Biden v. Texas* help Defendants. That case recognized that § 1225(b)(2)(C) confers discretionary authority to return certain noncitizens to Mexico during their removal proceedings. 597 U.S. 785, 801–02 (2022). It did not hold that DHS may implement that authority in a manner that makes the right to apply for asylum or the right to counsel illusory. The APA forbids agency action that is “not in accordance with law,” “short of statutory right,” or “arbitrary [and] capricious.” 5 U.S.C. § 706(2)(A), (C). That is precisely what Plaintiffs challenge here: not contiguous-territory return in the abstract, but MPP 1.0’s actual implementation.

The INA’s provisions must be read as a “harmonious whole rather than at war with one another”; one provision cannot trump another. ECF 261 (Order Denying Defs.’ Mot. to Dismiss & Granting Pltfs’ Mot. for Class Certification), 34. Section 1225(b)(2)(C) does not license Defendants to nullify Congress’s separate guarantees that noncitizens may apply for asylum, 8 U.S.C. § 1158(a)(1), present evidence in support of that claim, *id.* §§ 1158(b)(1)(B), 1229a(b)(4)(B), and obtain counsel at no expense to the government, *id.* §§ 1158(d)(4), 1229a(b)(4)(A), 1362.¹ As the Ninth

¹ Defendants are wrong to suggest that the INA protects access to counsel only *during* removal proceedings. *See* Defs.’ Opp. at 5. Congress separately guaranteed noncitizens a meaningful opportunity to apply for asylum and present evidence supporting that

(Footnote Cont’d on Following Page)

1 Circuit already explained, the government’s authority under § 1225(b)(2)(C) “must be
2 exercised in accordance with the INA’s other provisions.” *ImmDef*, 145 F.4th at 993.

3 Defendants’ response confirms the point. They do not meaningfully dispute
4 Plaintiffs’ extensive evidence of the results of MPP 1.0’s implementation. Instead, they
5 insist that formal availability of removal proceedings, irrelevant pro bono lists, and
6 limited pre-hearing attorney access satisfied the INA’s requirements. But statutory
7 rights cannot be preserved on paper while destroyed in practice. *See ImmDef*, 145 F.4th
8 at 992.

9 **B. Defendants’ Implementation of MPP 1.0 Violated the Uniform**
10 **Procedures for Seeking Asylum and Obstructed the Statutory Right**
11 **to Access Counsel**

12 Defendants’ contrary-to-law argument is overly formalistic; they defend MPP 1.0
13 on the basis that the asylum standards applied by immigration judges were the same in
14 both MPP 1.0 and non-MPP proceedings. Defs.’ Opp. at 4–5. Plaintiffs do not argue
15 that immigration judges applied a different legal standard, but rather that MPP 1.0
16 prevented asylum seekers from meaningfully accessing the asylum process and
litigating their claims—which violates § 1158.

17 Congress created a uniform asylum system in which noncitizens physically
18 present in or arriving in the United States “may apply for asylum.” 8 U.S.C.
19 § 1158(a)(1), (d)(1).² That right includes the ability to develop claims, present evidence,

20
21 claim; those guarantees cannot be rendered illusory by policies that effectively deny
22 access to counsel during the preparation of an asylum claim or hearing testimony. *See*
23 8 U.S.C. §§ 1158(a)(1), 1158(b)(1)(B); *Oshodi v. Holder*, 729 F.3d 883, 889–90 (9th
24 Cir. 2013) (en banc) (recognizing asylum applicant’s right to a meaningful opportunity
to present testimony and evidence); *Biwot v. Gonzales*, 403 F.3d 1094, 1098–99 (9th
25 Cir. 2005) (explaining the statutory right to counsel must be meaningfully effectuated).

26 ² Congress enacted the Refugee Act to establish a “uniform procedure for passing upon
27 an asylum application.” S. Rep. No. 96-256, at 9 (1980), *as reprinted* in 1980
U.S.C.C.A.N. 141, 149; *see also Orantes-Hernandez v. Thornburgh*, 919 F.2d 549, 555
(9th Cir. 1990) (recognizing Congress’s intent to create a “uniform procedure”); H.R.

(Footnote Cont’d on Following Page)

1 pursue reopening and appeals, and obtain counsel. *See Augustin v. Sava*, 735 F.2d 32,
2 37 (2d Cir. 1984); *Campos v. Nail*, 43 F.3d 1285, 1288 (9th Cir. 1994). It is not enough
3 for Defendants to assert that MPP 1.0 respondents could theoretically file asylum
4 applications.

5 The record shows that MPP 1.0 imposed conditions tantamount to denial of
6 asylum access. Defendants returned asylum seekers to dangerous Mexican border towns
7 where they faced kidnapping, torture, rape, assault, and disappearance. PSUF 32–39.
8 They did so despite knowing that the U.S. Department of State had designated the state
9 of Tamaulipas as “Do Not Travel,” that [REDACTED]

10 [REDACTED], and that organized crime preyed on migrants awaiting their
11 hearings in the United States. PSUF 2–6, 34–41. MPP 1.0 respondents also lacked stable
12 housing, reliable mail, phones, internet, and transportation to court. PSUF 42–54. Many
13 were required to travel through dangerous areas in the dark to reach ports of entry, and
14 a respondent who appeared late or at the wrong port would miss court. PSUF 25–31.

15 The consequences of MPP 1.0 were predictable and devastating. Only about 7%
16 of MPP respondents had counsel, compared to 80% of all asylum seekers in U.S.
17 immigration courts. PSUF 111. Only 732 out of approximately 67,000 MPP
18 respondents received relief—1.1%. PSUF 112. Among the roughly 93% of
19 unrepresented MPP respondents, not one obtained relief. PSUF 115. MPP 1.0
20 respondents were substantially more likely to receive *in absentia* removal orders or have
21 their cases terminated than comparable non-MPP respondents. PSUF 118, 133–34. That
22 is not a uniform asylum process. It is a geographically segregated process in which
23

24 CONF. REP. 96-781, at 20 (1980), as reprinted in 1980 U.S.C.C.A.N. 160, 161
25 (explaining that the Refugee Act established “a new uniform asylum procedure”). MPP
26 1.0 departed sharply from that framework by subjecting individuals returned to Mexico
27 to materially different procedures for and barriers to pursuing asylum claims than those
28 confronting asylum applicants physically present in the United States or those coming
to any other U.S. border.

1 asylum seekers subjected to MPP 1.0 had significantly less access to the protections
2 Congress mandated than those in non-MPP immigration proceedings.

3 Defendants' right-to-counsel argument fails for the same reason. They argue that
4 the INA requires only that noncitizens be "permitted" to have counsel if they can find
5 someone willing to represent them. Defs.' Opp. at 5–6. But the statutory right to counsel
6 is violated when government action makes representation effectively unattainable. *See*
7 *Usubakunov v. Garland*, 16 F.4th 1299, 1305–07 (9th Cir. 2021); *Biwot*, 403 F.3d at
8 1098–1100; *Castro-O'Ryan v. INS*, 847 F.2d 1307, 1312 (9th Cir. 1988). This Court
9 has likewise recognized that restrictions on confidential calls, attorney meetings, and
10 access to counsel can violate the statutory right. *Torres v. DHS*, 411 F. Supp. 3d 1036,
11 1060–61 (C.D. Cal. 2019) (Bernal, J.).

12 MPP 1.0 did exactly that. Defendants gave MPP 1.0 respondents non-MPP-
13 specific EOIR pro bono lists that identified U.S.-based providers tied to U.S. court
14 locations. PSUF 78–79. Many listed organizations could not receive international calls,
15 and [REDACTED]
16 [REDACTED]. PSUF 80–84. Demand vastly exceeded capacity
17 because DHS concentrated nearly 67,000 MPP cases in four immigration courts near
18 the border. PSUF 85–86, 126. Meanwhile, DHS knew both that Mexican law prohibited
19 U.S.-licensed attorneys from practicing law in Mexico, and that Mexican officials could
20 not "knowingly endorse" such practice, but nevertheless failed to issue guidance or
21 [REDACTED]. PSUF 87–91.

22 The limited procedures for attorney access in the United States were also
23 insufficient. MPP 1.0 respondents could enter the United States only for hearings and
24 remained under ICE custody and control during their brief time in the United States.
25 PSUF 60, 62. Unrepresented MPP 1.0 respondents were not allowed to approach or
26 speak to attorneys in court. PSUF 63. Represented respondents were limited to a
27 nominal one-hour, pre-hearing consultation, which [REDACTED] and often lasted
28

1 less than an hour in practice. PSUF 65–67. Meeting spaces generally were not
2 confidential because ICE officers—employed by the same agency as opposing counsel
3 in immigration court—were present or observing, and attorneys often could not use
4 laptops or electronics. PSUF 71–74. MPP 1.0 respondents could not speak with counsel
5 after hearings. PSUF 75.

6 Defendants characterize these barriers as merely “inconveniencing the right to
7 counsel.” Defs.’ Opp. at 5. These components of MPP 1.0’s implementation were not
8 inconveniences; they were government-created structural impediments to counsel. They
9 prevented MPP 1.0 respondents from finding lawyers, communicating confidentially,
10 preparing evidence, and meaningfully presenting claims. DHS later acknowledged that
11 MPP respondents faced multiple challenges accessing counsel and that the policy had
12 “inherent problems” that “no amount of resources” could sufficiently fix. PSUF 130,
13 135.

14 These government-imposed obstacles to representation in full removal
15 proceedings distinguish this case from *Las Americas Immigrant Advocacy Center v.*
16 *Wolf*, 507 F. Supp. 3d 1 (D.D.C. 2020), on which Defendants rely. *Las Americas*
17 involved a detention-placement policy for individuals awaiting credible fear interviews
18 or review of negative credible fear determinations. *Id.* at 18, 34. The court made a stark
19 distinction between the limited consultation rights available during expedited removal
20 screening, *see* 8 U.S.C. § 1225(b)(1)(B)(iv), and the substantially more robust statutory
21 protections afforded respondents in full removal proceedings, including the right to be
22 “represented . . . by counsel of the [noncitizen]’s choosing,” 8 U.S.C. § 1229a(b)(4)(A).
23 507 F. Supp. 3d at 25–26, 28, 32; *see also O.A. v. Trump*, 404 F. Supp. 3d 109, 119
24 (D.D.C. 2019). Because credible fear screening is intended to apply a “low bar” for
25 asylum applicants and determinations are based solely upon the applicant’s statements
26 and representations during the interview, the *Las Americas* court found that “the
27 statutory scheme . . . does not guarantee or necessarily facilitate extensive pre-interview

1 preparation by noncitizens who are subject to expedited removal.” 507 F. Supp. 3d at
2 12, 19. The *Las Americas* court concluded that detention in CBP facilities did not
3 categorically deny access to counsel in the context of expedited removal. *Id.* at 36–38.
4 But *Las Americas* did not involve a policy that expelled asylum seekers placed in full
5 removal proceedings to dangerous Mexican border towns for prolonged periods under
6 conditions that deprived them of meaningful access to communication, transportation,
7 shelter, and counsel. Defendants therefore misconstrue *Las Americas*: the case upheld
8 certain limitations on consultation in a context where Congress itself provided fewer
9 procedural protections, whereas MPP imposed dramatically greater obstacles on
10 respondents to whom Congress expressly granted substantially more.

11 **C. Defendants’ Implementation of MPP 1.0 Failed to Consider Crucial**
12 **Impacts of the Policy**

13 MPP 1.0 is arbitrary and capricious because Defendants failed to consider
14 critical, obvious consequences of the policy. An agency acts arbitrarily when it “entirely
15 fail[s] to consider an important aspect of the problem” or offers an explanation contrary
16 to the evidence before it. *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*,
17 463 U.S. 29, 43 (1983). The agency must examine relevant data and articulate a rational
18 connection between the facts and the decision made. *ImmDef*, 145 F.4th at 992. “Merely
19 saying something ‘was considered is not enough to show reasoned analysis.’” *Id.*

20 Defendants say DHS considered the “migration crisis,” asylum backlog, and
21 efficiency goals. Defs.’ Opp. at 6–8. But identifying a policy objective is not the same
22 as considering the policy’s impact on statutory rights. DHS had to consider how MPP
23 1.0 would affect asylum seekers’ ability to apply for asylum, attend hearings, retain
24 counsel, communicate with counsel, prepare evidence, and pursue appeal or
25 reopening—all fundamental components of the asylum process. The administrative
26 record contains no reasoned analysis of those issues or their consequences, and
27 Defendants do not indicate otherwise.

1 That omission is fatal. Defendants knew before implementing MPP 1.0 that
2 asylum seekers would be forced to remain in Mexican border towns that the U.S.
3 government knew were dangerous. PSUF 1–6. They knew MPP respondents would
4 need to navigate these towns, unstable shelter; unreliable mail, phone, and internet
5 access; and dangerous travel conditions to attend their hearings. PSUF 25–54. They
6 knew cross-border representation raised serious legal, logistical, and safety barriers.
7 PSUF 87–103. [REDACTED]

8 [REDACTED]. PSUF 92. Later, DHS’s own Red
9 Team identified significant deficiencies and recommended reforms to facilitate access
10 to counsel, create reliable communication mechanisms, and ensure safe living
11 conditions in Mexico, which confirmed stakeholders’ concerns. PSUF 121–24.

12 Defendants’ reliance on *Las Americas* is again misplaced. There, the court found
13 that DHS considered the “migration crisis,” increasing asylum claims, limited detention
14 resources, and efficiency objectives in adopting the challenged detention-placement
15 policy. 507 F. Supp. 3d at 36–38. Here, by contrast, the record contains no indication
16 that Defendants considered the specific barriers that made MPP 1.0 unlawful: cross-
17 border barriers to attorney access, Mexican legal restrictions on U.S. attorneys, lack of
18 confidential meeting space, dangerous travel routes to ports of entry, inadequate notice
19 of hearing dates, and the predictable effect of these factors on hearing attendance and
20 asylum outcomes.

21 Nor can Defendants rely on post hoc assertions that MPP 1.0 discouraged non-
22 meritorious claims or reduced border encounters. Defs.’ Opp. at 8. APA review requires
23 the agency to have considered the relevant factors by the time it acted. *State Farm*, 463
24 U.S. at 43. And even if MPP 1.0 served some legitimate enforcement objective, an
25 agency may not pursue efficiency by disregarding rights Congress guaranteed. *See*
26 *Judulang v. Holder*, 565 U.S. 42, 53 (2011).

1 The record leaves no genuine dispute. MPP 1.0 rendered access to asylum and
2 counsel illusory for tens of thousands of people, and Defendants failed to meaningfully
3 consider those consequences in implementing the policy. The policy was arbitrary,
4 capricious, and contrary to law.

5 **III. Defendants Fail to Engage with Plaintiffs’ Evidence That the**
6 **Implementation of MPP 1.0 Violated Individuals’ Due Process Rights**

7 The implementation of MPP 1.0 obstructed Individual Plaintiffs’ and Class
8 Members’ access to counsel; trapped them in dangerous conditions; hindered their
9 communication, including by mail and the internet; and impeded their ability to seek
10 reopening of their proceedings or appeal removal decisions. *See* Pltfs.’ Mot. at 27–33.
11 MPP 1.0 accordingly violated Individual Plaintiffs’ and Class Members’ due process
12 right to a “full and fair opportunity to be represented by counsel, to prepare an
13 application for . . . relief, and to present testimony and other evidence in support of the
14 application. . . .” *Vilchez v. Holder*, 682 F.3d 1195, 1199–1200 (9th Cir. 2012) (internal
15 quotation marks omitted).

16 Defendants’ Opposition fails entirely to engage with Plaintiffs’ factual³ and legal
17 analyses. Instead, they rehash, in cursory fashion, their already-rejected argument that
18 Individual Plaintiffs and Class Members are not entitled to due process rights, relying

19 ³ Defendants’ Opposition does not even mention the facts discussed in Plaintiffs’
20 Motion to support their due process claims, much less attempt to dispute them.
21 Moreover, Defendants’ Responses to Plaintiffs’ SUF do not meaningfully dispute any
22 relevant statements of fact. *See* PSUF, 2, 4–6, 33–38, 40–56, 129–35. It is undisputed
23 that Defendants were aware of dangerous conditions in Mexico, including pervasive
24 violence against MPP 1.0 respondents. *See id.* at 2, 4–6, 33–38, 40–41. It is also
25 undisputed that at least some MPP 1.0 respondents did not have access to stable housing
26 or shelter space in Mexico, *see id.* at 42–47; that at least some MPP 1.0 respondents
27 were unable to communicate with the courts or with counsel, *id.* 48–56; and that MPP
28 1.0’s obstacles to accessing counsel, the threats of violence and other dangerous
conditions in Mexico, the lack of reliable shelter, and inadequate notice of hearings led
Secretary Mayorkas to conclude that “there are inherent problems with [MPP 1.0] that
no amount of resources can sufficiently fix.” *Id.* at 129–35.

1 on *DHS v. Thuraissigiam*, 591 U.S. 103, 114–15 (2020). Defs.’ Opp. at 8–10; *see also*
2 ECF 439 (Defs.’ Mot. for Summary Judgment), 22–23. This Court already rejected that
3 argument after finding *Thuraissigiam*’s reasoning inapplicable to Plaintiffs in this case,
4 and Defendants do not even attempt to demonstrate why the outcome should be any
5 different now. *See* ECF 261 at 39–40 (Order Denying Defendants’ Motion to Dismiss).

6 As this Court has previously explained, *Thuraissigiam* “concerned the expedited
7 removal process” and “did not address the regular removal process that people like
8 Individual Plaintiffs were placed into when subjected to MPP.” *Id.* at 39. The regular
9 removal process is distinguishable because “[i]ndividuals in regular removal
10 proceedings enjoy far more robust due process protections because Congress has
11 conferred additional statutory rights on them.” *Id.* (citing 8 U.S.C. §§ 1158(a)(1), (d)(4),
12 1229a(b)(4), 1362). Defendants do not dispute that Congress mandated that individuals
13 in removal proceedings have the right to access counsel, prepare an application for
14 relief, present evidence in support of their application in full and fair hearings, and
15 receive adequate notice of hearings. *See, e.g., Vilchez*, 682 F.3d at 1199–1200; *United*
16 *States v. Rivera-Valdes*, 157 F.4th 978, 987 (9th Cir. 2025). Because Defendants failed
17 to refute Plaintiffs’ factual and legal arguments establishing that MPP 1.0’s
18 implementation violated these rights, Plaintiffs are entitled to summary judgment on
19 their due process claims.

20 **IV. Defendants Mischaracterize Plaintiffs’ First Amendment Claims**

21 **A. MPP 1.0 Regulates Protected Attorney-Client Speech**

22 Contrary to Defendants’ assertions, *see* Defs.’ Opp. at 10, the undisputed facts
23 establish that the implementation of MPP 1.0 involved more than just placing MPP 1.0
24 respondents in Mexico. *See, e.g.,* PSUF 26, 62. It also involved transporting MPP 1.0
25 respondents to their hearings and maintaining custody over them in the United States:
26 “[ICE Enforcement and Removal Operations (ERO)] would have had custody and
27 control over MPP 1.0 respondents after they were processed at the [port of entry (POE)]

1 and turned over from CBP custody and until they were returned to the POE to return to
2 Mexico.” PSUF, Defs.’ Response to PSUF 62. Defendants exerted control over MPP
3 1.0 respondents’ attorney-client communications during their time in the United States.

4 *See, e.g.*, PSUF 66 [REDACTED]

5 [REDACTED] And those attorney-client
6 communications are protected speech. *See* Pltfs.’ Mot. at 34–35. Notably, Defendants
7 do not contest Organizational Plaintiffs’ right to advise potential and existing clients or
8 Individual Plaintiffs’ and Class Members’ right to retain and consult attorneys.

9 **B. MPP 1.0 Unlawfully Restrained Protected Speech Between Attorneys**
10 **and Existing and Potential Clients**

11 The undisputed facts establish that MPP 1.0 placed unlawful restrictions on
12 Plaintiffs’ protected speech. Defendants assert without any justification that any
13 limitations on attorney-client communications would have been explicitly
14 acknowledged in either the “MPP guiding principles” or the “MPP standard operating
15 procedures.” *See* Defs.’ Opp. at 10. But the MPP 1.0 implementation guidance consists
16 of more than just those two documents. Defendants ignore, for example, the Archived
17 DHS Guidance on MPP (ECF 450-7, Ex. 39, AR 497), stating that “[t]o facilitate access
18 to counsel, [noncitizens] in MPP are instructed to arrive at the designated [POE] . . . at
19 . . . a time early enough to be processed at the POE and arrive at court before their
20 scheduled hearings to meet with their *retained* attorneys or accredited representatives”
21 (emphasis added); the February 12, 2019 MPP Protocols Guidance (ECF 450-6, Ex. 33,
22 AR 2278), stating “ERO will depart from the POE with the [noncitizen] at a time
23 sufficient to ensure arrival at the immigration court not later than one hour before his or
24 her scheduled hearing time in order to afford the [noncitizen] the opportunity to meet
25 in-person with his or her legal representative”; and a template MPP tear sheet (ECF
26 450-7, Ex. 38, AR2294), indicating that MPP 1.0 respondents “may arrange to meet
27 with their counsel in-person, in the United States, at [their] assigned court facility, prior
28 to that hearing”). These documents, among others, establish Defendants’ MPP 1.0

1 restrictions on protected speech, including the one-hour limit on attorney-client
2 communications, PSUF 65; and the ban on attorneys speaking with potential clients,
3 PSUF 63, 69.

4 MPP 1.0 imposed specific, content-based restrictions on protected expression; it
5 “[did] not simply have an effect on speech, but [was] directed at certain content and
6 [was] aimed at particular speakers.” *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 567
7 (2011). MPP 1.0 is not like an ordinance prohibiting outdoor fires that would restrict
8 the protected activity of flag burning only incidentally, *see* Defs.’ Opp. at 10; here, the
9 restriction of protected speech, i.e. attorney-client/potential client communications, was
10 entirely the point. Not only did Defendants regulate when, where, for how long, and
11 with whom represented MPP 1.0 respondents could meet in the United States, *see* Pltfs.’
12 Mot. at 35, Defendants also effectively banned unrepresented MPP 1.0 respondents’
13 consultations with potential counsel. PSUF 63, 69.

14 The one-hour restriction is not an “incidental impact of logistics.” Defs.’ Opp. at
15 11. The record does not establish how logistics led to the one-hour restriction or why
16 that timing was deemed sufficient for these meetings. And the one-hour limit did not
17 apply to all MPP 1.0 respondents consistently, contrary to Defendants’ assertions. *Id.*
18 MPP 1.0 imposed different restrictions based on whether the respondent was
19 represented or not. *See e.g.*, DSUF 41 (“ERO would permit attorneys to meet with their
20 clients even if there was not a signed EOIR-28, so long as they could validate the
21 attorney-client relationship”). This restriction “favor[s] some speakers over others [and]
22 demand[s] strict scrutiny.” *See Imperial Sovereign Court of Montana v. Knudsen*, 170
23 F.4th 820, 848 (9th Cir. 2026) (citing *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 170
24 (2015)).⁴

25 _____
26 ⁴ Defendants misconstrue Plaintiffs’ content-based argument. *See* Defs.’ Opp. at 11–12.
27 Plaintiffs do not argue that MPP 1.0’s restrictions are facially content-based as in *Reed*,
28 which held that a town’s code was content-based because it imposed differing

(Footnote Cont’d on Following Page)

C. At minimum, MPP 1.0 imposed unreasonable time, place, and manner restrictions

Even if viewed as content-neutral, Defendants’ restrictions on MPP 1.0 respondents’ communications with counsel were unreasonable time, place, and manner restrictions. Time, place, and manner restrictions are reasonable only if they are “justified without reference to the content of the regulated speech,” are “narrowly tailored to serve a significant governmental interest,” and “leave open ample alternative channels for communication of the information.” *Mothershed v. Justices of Supreme Court*, 410 F.3d 602, 611 (9th Cir. 2005) (internal quotation marks omitted).

Defendants’ speech restrictions are not narrowly tailored. MPP 1.0 entirely restricted all communication by unrepresented individuals with potential counsel and severely limited communication by represented individuals with counsel. *See, e.g., Ward v. Rock Against Racism*, 491 U.S. 781, 799 (1989) (explaining that “narrowly tailored” regulations must “promote[] a substantial government interest that would be achieved less effectively absent the regulation,” and must not “burden substantially more speech than is necessary to further the government’s legitimate interests”) (citation and internal quotation marks omitted). The undisputed record demonstrates that less restrictive options were available, including establishing or facilitating channels of communication between MPP 1.0 respondents and their counsel, *see* PSUF 122, and paroling MPP 1.0 respondents into the United States between hearings to meet with counsel, *see* PSUF 92.

Defendants argue that the challenges in communicating with someone in another country are justified by the Government’s compelling interest in “protecting its

restrictions based on a sign’s communicative content. *See* Pltfs.’ Mot. at 35. *Reed* recognized that some facial distinctions are “more subtle, defining regulated speech by its function or purpose,” and that even laws that are facially content-neutral will be considered content-based regulations of speech if they “cannot be justified without reference to the content of the regulated speech.” *Reed*, 576 U.S. at 163–64 (internal quotation marks omitted).

1 borders.” *See* Defs.’ Opp. at 11 (citing *Kariye v. Mayorkas*, 650 F. Supp. 3d 865, 909
2 (C.D. Cal. 2022)). But the record does not establish the existence of a border or
3 “migration crisis.” *See* PSUF 7, 8. And *Kariye* is inapposite because that case was
4 brought under the Free Exercise Clause of the First Amendment, and the Government’s
5 compelling interest there was national security. *See Kariye*, 650 F. Supp. 3d at 895
6 (noting the government’s self-identified compelling interest in “protecting its borders
7 and preventing and investigating potential acts of terrorism”) (emphasis added). Here,
8 Defendants both fail to explain how their restrictions on attorney-client interactions
9 were “narrowly tailored” to further their interest in protecting the border and ignore the
10 significant barriers to attorney-client/potential client communications outside of court.
11 *See* Pltfs.’ Mot. at 40.

12 **V. The Requested Relief Is Squarely Within this Court’s Jurisdiction to Grant**

13 **A. Aleman Gonzalez Does Not Bar Plaintiffs’ Requested Relief**

14 Defendants continue to regurgitate unavailing arguments as to why 8 U.S.C.
15 § 1252(f)(1) precludes vacatur and declaratory relief. Defs.’ Opp. at 12–13. This Court
16 can and should issue declaratory and APA relief.

17 First, Defendants’ arguments as to the unavailability of declaratory relief as
18 “coercive” and precluded by 1252(f)(1) overstate *Aleman Gonzalez*’s reading of the
19 statute. *Aleman Gonzalez* clarified that 1252(f)(1) prohibits classwide *injunctive* relief
20 that would “enjoin or restrain” the operation of particular statutes—and explicitly did
21 not extend that prohibition to other forms of relief. *Garland v. Aleman Gonzalez*, 596
22 U.S. 543 (2022); *see Biden v. Texas*, 597 U.S. 785, 798–99 (2022) (Section 1252(f)’s
23 “title . . . makes clear the narrowness of its scope”); *see also Nielsen v. Preap*, 586 U.S.
24 394, 402 (2019) (noting that whether the district court “had jurisdiction to enter such an
25 injunction is irrelevant because the District Court had jurisdiction to entertain the
26 plaintiffs’ request for declaratory relief”).

1 Most critically, “that argument is foreclosed by circuit precedent holding that
2 § 1252(f)(1) does not ‘bar classwide declaratory relief.’” *Al Otro Lado v. EOIR*, 138
3 F.4th 1102, 1123–24 & n.13 (9th Cir. 2025). In *Rodriguez v. Hayes*, the Ninth Circuit
4 explained that “declaratory relief has long been recognized as distinct in purpose from
5 and ‘milder’ in remedy than injunctions,” and classwide declaratory relief is “a
6 congressionally contemplated part of the statutory scheme.” 591 F.3d 1105, 1120 (9th
7 Cir. 2010) (citation omitted). Defendants’ only support comes from *Coca-Cola Bottling*
8 *Co. of Elizabethtown v. Coca-Cola Co.*, 98 F.R.D. 254, 751 (D. Del. 1983), which is
9 distinguishable and no reason to disregard Ninth Circuit precedent established after that
10 case. *Coca-Cola* does not suggest that “any declaratory relief issued to a 23(b)(2) class
11 should be equivalent to an injunction”; rather, it rejected class certification because
12 injunctive relief—and declaratory relief—would be available to *class members* “only
13 after resolution of the many individual issues facing each class member.” *Id.*⁵

14 Second, despite Defendants’ repeated protests, no court has adopted their
15 expansive reading of 1252(f)(1) to apply to APA relief. Every court to examine the issue
16 has held that § 1252(f)(1) does not bar APA relief under 5 U.S.C. § 706(2). *See, e.g.,*
17 *Refugee & Immigrant Ctr. for Educ. & Legal Servs. v. Mullin*, No. 25-5243, 2026 WL
18 1110616, at *26 (D.C. Cir. Apr. 24, 2026); *Nat’l TPS All. v. Noem*, 166 F.4th 739, 758–
19 61 (9th Cir. 2026) [hereinafter, “*NTPSA III*”]; *Texas v. United States*, 40 F.4th 205, 219
20 (5th Cir. 2022); *Haitian Evangelical Clergy Ass’n v. Trump*, 789 F. Supp. 3d 255, 270–

21
22 ⁵ Rule 23(b)(2) authorizes certification of classes that seek “final injunctive relief *or*
23 corresponding declaratory relief.” Fed. R. Civ. P. 23(b)(2) (emphasis added). Although
24 1252(f)(1) prohibits injunctive relief on a classwide basis, a Class may seek
25 “corresponding declaratory relief” under Rule 23(b)(2), which would allow them to
26 subsequently and individually seek to vindicate their rights through individual
27 injunctive relief. *See* Defs.’ Opp. 12–13; *Rodriguez*, 591 F.3d at 1120; *see also Steffel*
28 *v. Thompson*, 415 U.S. 452, 472 (1974) (“The only occasions where this Court has . . .
found that a preclusion of injunctive relief inevitably led to a denial of declaratory relief
have been cases in which principles of federalism militated altogether against federal
intervention in a class of adjudications.”).

72 (E.D.N.Y. 2025); *Bautista v. Santacruz*, 813 F. Supp. 3d 1084, 1110–17 (C.D. Cal. 2025). Defendants’ argument, by contrast, is devoid of caselaw in support. Defendants’ tried-and-rejected arguments lack merit.

As noted *supra*, the Ninth Circuit has, on numerous occasions, rejected any interpretation of 1252(f)(1)’s prohibition on injunctive relief to apply to APA remedies. The Ninth Circuit has reiterated that the “plain text of § 1252(f)(1)’s judicial review bar is limited to injunctive relief,” and vacatur is different from injunctions. *NTPSA III*, 166 F.4th at 759. In *NTPSA III*, the Court noted that the Supreme Court’s own definitions of “enjoin” and “restrain,” which refer to injunctions (“a judicial order that tells someone what to do or not to do”) are “difficult to square with the plain meaning of a ‘set aside,’” which means to “cancel, annul, or revoke.” *Id.* at 760 (cleaned up); *compare Aleman Gonzalez*, 596 U.S. at 549, with *Corner Post, Inc. v. Bd. of Governors of Fed. Reserve Sys.*, 603 U.S. 799, 829 (2024) (Kavanaugh, J., concurring).

Crucially, courts are in agreement that APA relief and injunctive relief are different remedies, which act on different entities and come with different consequences. While injunctions “prohibit an agency from taking a certain action at all, ever,” vacatur “set[s] aside unlawful agency actions without foreclosing future agency actions.” *Haitian Evangelical Clergy Ass’n*, 789 F. Supp. 3d at 271; *see also NTPSA III*, 166 F.4th at 760 (noting that vacatur “does nothing but re-establish the status quo absent the unlawful agency action”) (quoting *Texas v. United States*, 40 F.4th at 220). Because “Congress knows . . . how to limit relief under the APA in other statutory schemes,” *ImmDef*, 145 F.4th at 990, and did not do so in 1252(f)(1), “[s]et aside relief under the APA is thus not barred by § 1252(f)(1).” *NTPSA III*, 166 F.4th at 760–61.

B. Plaintiff Chepo Doe Is Entitled to Meaningful Equitable Relief

Finally, this Court can and should order Plaintiff Chepo Doe’s return to the United States to remedy his being subjected to the unlawful MPP 1.0 implementation and related deprivation of fair access to the U.S. asylum system. *See* Defs.’ Opp. at 14;

1 *Walters v. Reno*, 145 F.3d 1032, 1050 (9th Cir. 1998) (ordering return to the United
2 States of class members denied notice, as “allowing class members to reopen their
3 proceedings is basically meaningless if they are unable to attend the hearings that they
4 were earlier denied”); *Mendez v. INS*, 563 F.2d 956, 959 (9th Cir. 1977) (ordering return
5 to the United States to “permit appellant to pursue any administrative and judicial
6 remedies to which he is lawfully entitled”).

7 Defendants attempt to distinguish this case on its facts, but Chepo Doe neither
8 “voluntarily returned” to El Salvador nor has he “remained there without incident.” *See*
9 Defs.’ Opp. at 14. After Defendants subjected Mr. Doe and his daughter to MPP 1.0 for
10 nearly ten months, Mr. Doe’s daughter developed necrotizing pancreatitis, a rare
11 condition for young people that can result from stress. *See* Dkt. 450-7, Pltfs.’ Ex. 66
12 ¶ 24. Mr. Doe was compelled to return to El Salvador to obtain emergency surgery “to
13 save [his] daughter’s life” after they were refused healthcare in Mexico based on their
14 immigration status. *Id.* ¶¶ 21–26; PSUF 141–42. Following their return, Mr. Doe and
15 his family lived in hiding at their church and received death threats from members of
16 the Barrio 18 gang. *See* ECF 450-7, Pltfs.’ Ex. 66 ¶ 17. Six years later, he and his family
17 continue to live at the church; he “continue[s] to fear the gangs” and has “heard that
18 they have been looking for [him].” *Id.*, Pltfs.’ Ex. 73 ¶ 10.

19 Mr. Doe does not point to the motion to reopen statute as the basis for his return
20 to the United States, *contra* Defs.’ Opp. at 14; rather, he asks the Court to use its
21 equitable authority to order his return to enable him to fairly access the U.S. asylum
22 system, as he would have absent Defendants’ unlawful implementation of MPP 1.0. *See*
23 *Chhoeun v. Marin*, 306 F. Supp. 3d 1147, 1163 (C.D. Cal. 2018) (granting protection
24 from removal for individuals to file motions to reopen within the United States).
25 Moreover, Defendants’ authority to detain applicants for admission under 8 U.S.C.
26 § 1225 in no way undermines this Court’s independent judicial authority to order an
27 individual’s return to the United States. *See, e.g., J.G.G. v. Trump*, No. 25-cv-766, 2026

1 WL 391937, at *1–2 (D.D.C. Feb. 12, 2026) (requiring government to facilitate
2 noncitizens’ return to United States by providing commercial flight boarding letter);
3 *Sanchez Cruz v. Mullin*, --- F. Supp. 3d ----, No. 25-cv-13347, 2026 WL 1298529, at *7
4 (E.D. Mich. May 12, 2026) (ordering issuance of a travel document or a commercial
5 flight boarding letter and finding that such facilitation would not require the grant of
6 any substantive immigration benefits).

7 Finally, Defendants’ argument that parole serves no humanitarian interest ignores
8 both the facts of Mr. Doe’s own case, *see supra*, and the second prong of the statutory
9 standard, *see* 8 U.S.C. § 1182(d)(5)(A). “[P]arole for the purpose of remedying a
10 constitutional violation clearly works a ‘significant public benefit.’” *Walters*, 145 F.3d
11 at 1051. Indeed, DHS’s longstanding Policy Directive 11061.1 establishes a process for
12 facilitating the return of even *lawfully* removed noncitizens in appropriate cases.⁶

13 CONCLUSION

14 For the foregoing reasons, and for the reasons outlined in Plaintiffs’ Motion for
15 Summary Judgment and in Opposition to Defendants’ Motion for Summary Judgment,
16 the Court should enter an order granting summary judgment to Plaintiffs and issuing
17 the requested relief.

18
19 Dated: May 22, 2026

ARNOLD & PORTER KAYE SCHOLER LLP

20 By: /s/ Allyson C. Myers
21 MATTHEW T. HEARTNEY
22 DANIEL S. SHIMELL
23 ALLYSON C. MYERS

24 Attorneys for Plaintiffs

25
26 ⁶ U.S. ICE, Directive 11061.1: Facilitating the Return to the United States of Certain
27 Lawfully Removed Aliens (Feb. 24, 2012), available at
28 https://www.ice.gov/doclib/foia/dro_policy_memos/11061.1_current_policy_facilitating_return.pdf.

1 Dated: May 22, 2026

CENTER FOR GENDER & REFUGEE
STUDIES

3 By: /s/ Melissa Crow
4 MELISSA CROW

5 Attorneys for Plaintiffs

7 Dated: May 22, 2026

SOUTHERN POVERTY LAW CENTER

8 By: /s/ Arthur Ago
9 ARTHUR AGO

10 Attorneys for Plaintiffs

12 Dated: May 22, 2026

NATIONAL IMMIGRATION PROJECT
OF THE NATIONAL LAWYERS GUILD

14 By: /s/ Stephanie M. Alvarez-Jones
15 STEPHANIE M. ALVAREZ-JONES
16 VICTORIA F. NEILSON
17 TESS HELLGREN

Attorneys for Plaintiffs

18 Dated: May 22, 2026

INNOVATION LAW LAB

20 By: /s/ Rosa Saavedra Vanacore
21 ROSA SAAVEDRA VANACORE
22 STEPHEN W. MANNING
23 JORDAN CUNNINGS
24 KELSEY PROVO

Attorneys for Plaintiffs

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

The undersigned, counsel of record for Plaintiffs, certifies that this brief contains 20 pages, which complies with the Court's Order to Modify Scheduling Order and Page Limits for Summary Judgment Briefing, ECF 435.

Dated: May 22, 2026

ARNOLD & PORTER KAYE SCHOLER LLP

By: /s/ Allyson C. Myers
ALLYSON C. MYERS

Attorneys for Plaintiffs