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15
16 **UNITED STATES DISTRICT COURT**
17 **CENTRAL DISTRICT OF CALIFORNIA - EASTERN DIVISION**

18 IMMIGRANT DEFENDERS LAW
19 CENTER, *et al.*,

20 Plaintiffs,

21 v.

22 KRISTI NOEM, *et al.*,

23 Defendants.

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

**DEFENDANTS' EX PARTE
APPLICATION TO STAY THE
STAY OF AGENCY ACTION
UNDER 5 U.S.C. § 705;
MEMORANDUM OF
POINTS AND AUTHORITIES;
[PROPOSED] ORDER**

Honorable Jesus G. Bernal
United States District Judge

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EX PARTE APPLICATION

Defendants, through their undersigned counsel, hereby apply *ex parte* pursuant to Local Rule 7-19 for an Order from this Court to stay, pending appeal, its order staying reimplementa-tion of the Migrant Protection Protocols (“MPP”) policy nationwide. This *ex parte* application is based upon this application and accompanying memorandum of points and authorities. A proposed order has been lodged with the Court. **Urgency:** This order is sought by means of an *ex parte* application because there is insufficient time to file a noticed motion. Plaintiff’s counsel indicated on April 17, 2025, that they were unwilling to stipulate to a two-week stay of this Court’s order and opposed Defendants’ *ex parte* application. **Notice:** Notice was provided to Plaintiff’s counsel via email and telephone on April 17 and 21, 2025, respectively. Defendants agreed to an additional 24 hours (until April 23, 2025) for Plaintiff to respond.

Dated: April 21, 2025

Respectfully submitted,

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 MPP is a Department of Homeland Security (“DHS”) policy adopted in 2019 that
4 applies to aliens arriving in the United States by land from Mexico illegally or without
5 proper documents. MPP exercises DHS’s express authority to return aliens temporarily
6 to Mexico during their removal proceedings under 8 U.S.C. § 1225(b)(2)(C).
7 On February 11, 2025, Immigrant Defenders Law Center (“ImmDef”), one of the
8 organizational Plaintiffs in the underlying lawsuit, filed an *ex parte* application for a
9 nationwide stay of the reimplementation of the 2019 MPP policy under 5 U.S.C. § 705
10 of the Administrative Procedure Act (“APA”) pending a ruling on the merits.
11 On April 16, 2025, this Court granted ImmDef’s *ex parte* application. Defendants now
12 bring this *ex parte* application for a stay. Because Defendants have made a strong
13 showing of success on the merits and the balance of harm strongly favors Defendants,
14 this Court should grant this application and stay its order staying the reimplementation
15 of MPP pending appeal to the United States Court of Appeals for the Ninth Circuit.
16 Alternatively, this Court should stay its order pending Defendants’ filing of a stay
17 motion with the Ninth Circuit. Finally, if this Court declines to stay its order, it should
18 at least narrow its scope to the Central District of California to tailor the remedy to the
19 specific harm allegedly shown.

20 **STANDARD**

21 To evaluate whether to issue a stay pending appeal, courts consider four factors:
22 “(1) whether the stay applicant has made a strong showing that he is likely to succeed
23 on the merits; (2) whether the applicant will be irreparably injured absent a stay;
24 (3) whether issuance of the stay will substantially injure the other parties interested in
25 the proceeding; and (4) where the public interest lies.” *Nken v. Holder*, 556 U.S. 418,
26 434 (2009). The first two factors “are the most critical[,]” and the final factors merge
27 where, as here, the government is a party. *Id.* at 434–35.

1 **ARGUMENT**

2 **I. Defendants are likely to succeed on the merits.**

3 **A. ImmDef lacks standing and its claims are outside the INA’s “zone of interest.”**

4 First, *Food & Drug Administration v. Alliance for Hippocratic Medicine*,
5 602 U.S. 367 (2024), forecloses ImmDef from establishing standing. This Court’s
6 conclusion that ImmDef’s core business activities have remained the same apart from,
7 prior to, and after MPP’s implementation and are directly affected by MPP’s
8 reinstatement (ECF No. 405 at 12–13) misreads the principles in *Hippocratic Medicine*
9 and *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982). In both cases, the Supreme
10 Court analyzed the core activities of the organizations as they existed at the time of the
11 defendants’ conduct and determined whether the conduct affected those activities. *See*
12 *Hippocratic Medicine*, 602 U.S. at 379 (noting that, prior to the defendant’s conduct,
13 the plaintiff organization was engaged in providing “counseling and referral services
14 for low-and moderate-income homeseekers,” and that the defendant’s actions
15 “perceptibly impaired” the organization’s ability to provide those services).
16 Accordingly, those activities must have existed before the defendants acted. Here,
17 ImmDef’s own evidence shows that it engaged in acts outside of its preexisting core
18 business activities in response to MPP, and that is precisely the type of voluntary
19 activities *Hippocratic Medicine* determined was insufficient to establish standing. *See*,
20 *e.g.*, ECF No. 261 at 31 (quoting ECF No. 175, Second Amended Complaint (“SAC”)
21 ¶ 273) (“In response to Defendants’ implementation of the Protocols in January 2019,
22 ImmDef established its Cross Border Initiative (‘CBI’), which focuses on providing
23 direct representation, pro se assistance, and advocacy to individuals subjected to
24 MPP.”); ECF No. 371-1 at 28 (stating that “in order to represent its clients competently
25 and serve asylum seekers subjected to MPP, ImmDef had to reallocate staff time, expend
26 significant time and financial resources, send its staff to Mexico, and a rent a new office,
27 all at the expense of its core programs”), 17 (“During the first implementation of MPP
28 1.0, ImmDef faced serious impediments to carrying out its core business activities of

1 representing and providing other types of legal services to noncitizens in and around
2 southern California who were facing removal” because, “[t]o represent asylum seekers
3 forced to remain in Mexico,” it conducted “routine travel to Mexico to consult with
4 ImmDef’s clients [which] was costly, time-intensive, and detracted from other legal
5 work.”).

6 Second, the Court’s conclusion that ImmDef’s claims fall within the INA’s “zone
7 of interest” because their claims are not so marginally related to or inconsistent with the
8 purpose implicit in the statute such that a suit would be foreclosed (ECF No. 405 at
9 13-14) renders the “zone of interest” requirement toothless. Nothing in the asylum
10 statute (8 U.S.C. § 1158(a)) suggests that nonprofit organizations aiding individuals
11 subject to MPP (*see* SAC ¶¶ 271, 273) have any cognizable interests of their own in
12 connection with an individual alien’s eligibility for asylum. Indeed, § 1158 neither
13 regulates ImmDef’s conduct nor creates any benefits for which it is eligible. *See INS*
14 *v. Legalization Assistance Project*, 510 U.S. 1301, 1302, 1305 (1993) (O’Connor, J., in
15 chambers) (concluding that relevant INA provisions were “clearly meant to protect the
16 interests of undocumented aliens, not the interests” of “organizations that provide legal
17 help to immigrants” and that the fact that a “regulation may affect the way an
18 organization allocates its resources ... does not give standing to an entity which is not
19 within the zone of interests the statute meant to protect.”). Moreover, this Court’s
20 continued reliance on *East Bay Sanctuary Covenant v. Trump*, 932 F.3d 742 (9th Cir.
21 2018) (“*East Bay I*”), is misplaced, as *East Bay I* never considered 8 U.S.C. § 1252,
22 which manifests Congress’s intent to strictly limit challenges to removal-related activity
23 to claims raised by individual aliens in removal proceedings. *See J.E.F.M. v. Lynch*,
24 837 F.3d 1026, 1031 (9th Cir. 2016) (“Taken together, § 1252(a)(5) and § 1252(b)(9)
25 mean that any issue—whether legal or factual—arising from any removal-related
26 activity can be reviewed only through the PFR process.”).

1 **B. ImmDef’s claims are not ripe for judicial review.**

2 Contrary to the Court’s conclusion (ECF No. 405 at 14–15), ImmDef’s claims
3 are not ripe. Courts are “reluctant to apply injunctive and declaratory judgment remedies
4 to administrative determinations *unless the effects of the administrative action*
5 *challenged have been felt in a concrete way* by the challenging parties.” *United States*
6 *v. Texas*, 599 U.S. 670, 677 (2023) (cleaned up) (emphases added). This Court found
7 that it did “not require substantial factual development to gauge how the
8 reimplementaion of MPP 1.0 will impact ImmDef’s core business activities once it
9 begins to take effect,” ECF No. 405 at 15–16, but MPP has been reinstated for almost
10 three months now, and ImmDef has not identified any actual or concrete injury. *See*
11 *Lujan v. Nat’l Wildlife Fed.*, 497 U.S. 871, 891 (1990) (stating that a controversy
12 concerning a regulation is not ordinarily ripe for review under the APA until the
13 regulation has been applied to the claimant’s situation by some concrete action). Stated
14 differently, MPP has been in effect but ImmDef has not felt the effects of this
15 administrative action. Importantly, ImmDef has identified *no individuals* who have been
16 subjected to MPP, or pled actual experiences with MPP, after its reinstatement.

17 **C. ImmDef’s ex parte motion is procedurally barred.**

18 ImmDef’s *ex parte* motion remains procedurally barred. This Court’s conclusion
19 that the reimplementaion of MPP presents a threat of immediate or irreparable injury
20 to the Terminated Case Subclass (ECF No. 405 at 9) overlooks that ImmDef has not
21 identified anyone, let alone a member of the Terminated Case Subclass, who has been
22 subjected to MPP since its reinstatement in January 2025. *See* ECF No. 378 at 11–12.
23 Respectfully, that an individual “could be” subject to MPP is speculative and does not
24 present a threat of immediate or irreparable injury to ImmDef. ECF No. 405 at 9.

25 **D. ImmDef’s stay request is not justiciable.**

26 First, 8 U.S.C. § 1252(f)(1) bars jurisdiction to stay an agency action directing
27 how DHS will implement § 1225(b)(2)(C). The Court determined that § 1252(f)(1) did
28 not bar its ability to stay an agency action, in short, because unlike an injunction, a stay

1 “is ultimately not coercive” and merely reinstates the status quo “absent the unlawful
2 agency action” (ECF No. 405 at 16–18). And even if § 705 were to implicate injunctive
3 relief, the Court concluded it could still grant a stay because it found that ImmDef
4 challenged the implementation of the policy, not the statute itself. *Id.* at 18. But the
5 Court is incorrect. The relief the Court granted plainly enjoins and restrains DHS’s
6 implementation of 8 U.S.C. § 1225(b)(2)(C). And § 1252(f)(1) explicitly bars such
7 relief. The Supreme Court held—in a case challenging *DHS’s implementation of MPP*
8 and § 1225(b)(2)(C)—that § 1252(f)(1) “generally prohibits lower courts from entering
9 injunctions that order federal officials to take or to refrain from taking actions to
10 enforce, implement, or otherwise carry out the specified statutory provisions.” *Biden*
11 *v. Texas*, 597 U.S. 785, 797 (2022) (quoting *Garland v. Aleman Gonzalez*, 596 U.S. 543,
12 544 (2022)). Section 1225(b)(2)(C) is one of the statutory provisions § 1252(f)(1)
13 covers. Section 1252(f)(1) thus eliminates any court’s (other than the Supreme Court’s)
14 authority to issue coercive orders enjoining or restraining implementation of
15 § 1225(b)(2)(C).

16 The instant order, which postpones agency action under § 705, is such a coercive
17 order. It restrains DHS’s actions with respect to how it will implement § 1225(b)(2)(C)
18 and is thus analogous to a preliminary injunction, in that, an order under § 705 purports
19 to maintain the status quo pending resolution of the merits. And the instant order
20 “order[s] federal officials to take or *to refrain from taking* actions to enforce, implement,
21 or otherwise carry out the specified statutory provisions.” *Texas*, 597 U.S. at 797
22 (emphasis added); *see* Black’s Law Dictionary (10th ed. 2014) (defining injunction as
23 “[a] court order commanding or preventing an action”).

24 Further, § 705 does not create a new form of remedy that is distinct from an
25 injunction. Instead, it preserves traditional equitable relief. *See Scripps-Howard Radio*
26 *v. FCC*, 316 U.S. 4, 16–17 (1942); ECF No. 378 at 23.

27 The Court (like ImmDef) relies heavily on *Nken v. Holder*, 556 U.S. 418 (2009),
28 in attempting to distinguish stays from injunctions. *See* ECF Nos. 371-1 at 28 and 405

1 at 17 (both quoting *Nken*, 556 U.S. at 428). But, as Defendants have explained (ECF
2 No. 378 at 23–24), *Nken* simply does not apply here. Thus, the instant order is no
3 different from an injunction. And even if the “stay” were not akin to an injunction,
4 § 1252(f) bars not only orders that “enjoin” relevant agency action implementing the
5 INA but also those that “restrain”—which the “stay” sought here plainly does. *See*
6 *Aleman Gonzalez*, 596 U.S. at 544.

7 Second, although the Court’s order grants ImmDef’s “emergency relief to stay
8 Defendants’ reimplementation of MPP” (ECF No. 405 at 8), the order is ambiguous
9 regarding the action the Court is staying: the reimplementation of MPP since January
10 2025, or the 2019 version of MPP and the relevant guidance documents since announced
11 in 2018 (that is, MPP itself). *See* ECF Nos. 378 at 10–12, 405 at 1–4. Insofar as the
12 Court’s “reimplementation of MPP” language refers to MPP as DHS reinstated in
13 January 2025, that action is not justiciable because it is not a final agency action (nor a
14 legal directive) capable of being stayed. *See Lujan*, 497 U.S. at 882 (“When, as here,
15 review is sought not pursuant to specific authorization in the substantive statute, but
16 only under the general review provisions of the APA, the ‘agency action’ in question
17 must be ‘final agency action.’”). For an agency’s decision to be considered final, (i) the
18 action “must mark the ‘consummation’ of the agency’s decisionmaking process;” and
19 (ii) “the action must be one by which ‘rights or obligations have been determined,’ or
20 from which ‘legal consequences will flow.’” *Bennett v. Spear*, 520 U.S. 154, 177 (1997).
21 Under that standard, the reinstatement of MPP in January 2025 neither marks the
22 consummation of any agency decisionmaking process (the policy is from 2019), nor
23 does it create any substantive rules or rights, nor constitute an action from which legal
24 consequences will flow. Indeed, ImmDef makes no such claims in its *ex parte*
25 application. *See* ECF No. 371-1; *Am. Tort Reform Ass’n v. OSHA*, 738 F.3d 387, 395
26 (D.C. Cir. 2013) (“The APA only provides for judicial review of ‘final agency action’
27 and ... statements of policy generally do not qualify because they are not finally
28 determinative of the issues or rights to which [they are] addressed.”).

1 Insofar as the language “reimplementation of MPP” refers to MPP itself, the stay
2 request is not justiciable because ImmDef’s claims do not challenge the validity of MPP
3 itself. Instead, the claims challenge DHS’s execution of MPP and its effect on ImmDef’s
4 business and on the Individual Plaintiffs’ ability to apply for asylum and their access to
5 counsel. *See* ECF No. 371-1 at 9–18. Such claims can only be challenged as actually
6 applied. Notably here, ImmDef has not shown any concrete injuries because of MPP
7 itself. *See* ECF No. 399 at 4–9. Moreover, in 2020, the Supreme Court stayed an
8 injunction of MPP itself. *See Wolf v. Innovation L. Lab*, No. 19A960, 140 S. Ct. 1564
9 (Mar. 11, 2020) (mem.); *Innovation Law Lab v. Wolf*, No. 19-15716, 2020 WL 964402
10 (9th Cir. Feb. 28, 2020). Finally, the Court incorrectly determined that it could stay the
11 already-effective MPP policy. *See* ECF No. 378 at 24–26. An order staying a policy
12 after it has already gone into effect thus does not preserve the status quo, but rather,
13 *alters* it. *See, e.g., Ne. Ohio Coal. for Homeless & Serv. Emps. Int’l Union, Loc. 1199*
14 *v. Blackwell*, 467 F.3d 999, 1006 (6th Cir. 2006) (explaining an order “preventing the
15 implementation of new regulations” would “disturb[]” rather than preserve “the status
16 quo”); *Off. of Pers. Mgmt. v. Am. Fed’n of Gov’t Emps., AFL-CIO*, 473 U.S. 1301, 1305
17 (1985) (had the district court issued an order stopping rule from taking effect that would
18 alter the “status quo”). Indeed, the Court’s unsupported declaration that the relevant
19 “status quo” was “the state of MPP 1.0 prior to the Reinstatement Announcement—i.e.,
20 effectively terminated although the October 29 Memoranda remain stayed” (ECF No.
21 405 at 19), illustrates the subjective nature of selecting which “status quo” to restore.
22 Notably, an order seeking to preserve the status quo prior to an agency action is in effect
23 no different than an injunction. *See, e.g., RMS NA, Inc. v. RMS (AUS) Pty Ltd*, No.
24 24-CV-01366-AJB-MMP, 2024 WL 4869193, at *2 (S.D. Cal. Oct. 21, 2024)
25 (discussing prohibitory and mandatory injunctions); *accord D&G Holdings, LLC v.*
26 *Sylvia Mathews Burwell*, 156 F. Supp. 3d 798, 811 (W.D. La. 2016) (movant seeks “a
27 status quo injunction under 5 U.S.C. § 705”); *Sierra Club v. Jackson*, 833 F. Supp. 2d
28 11, 19 (D.D.C. 2012) (similar). Thus, any order to “preserve status or rights,” 5 U.S.C.

1 § 705, is also an order “enjoin[ing]” or “restrain[ing]” “the operation” of § 1225 that is
2 barred by § 1252(f) for the reasons noted above.

3 Regardless of the label affixed to the instant order, in effect, it counters the court’s
4 order in *Texas v. Biden*, 646 F. Supp. 3d 753 (N.D. Tex. 2022), which stayed Secretary
5 Mayorkas’s October 29 Memoranda and corresponding decision to terminate MPP
6 pending final resolution of the merits of that case. *See* 646 F. Supp. 3d at 764, 781.
7 Therefore, the instant order highlights the multitude of problems inherent in a court
8 staying agency action already in effect and in issuing such relief on a nationwide basis.

9 Further, there is no APA cause of action here because the Secretary’s exercise of
10 authority under § 1225(b)(2)(C)—the basis for MPP—is entirely discretionary. *Texas*,
11 597 U.S. at 802–04. The APA precludes review of “administrative decisions that courts
12 traditionally have regarded as ‘committed to agency discretion.’” *Texas v. United States*,
13 809 F.3d 134, 165 (5th Cir. 2015) (quoting *Lincoln v. Vigil*, 508 U.S. 182, 191 (1993));
14 *see* 5 U.S.C. § 701(a)(2); *Arizona v. United States*, 567 U.S. 387, 396 (2012). And
15 Congress provided “no court shall have jurisdiction to review ... any other decision or
16 action ... the authority for which is specified ... to be in the discretion of the ...
17 Secretary.” 8 U.S.C. § 1252(a)(2)(B)(ii).

18 **E. MPP does not involve content-based restrictions on speech.**

19 This Court’s findings regarding Defendants’ alleged limitations on ImmDef’s
20 protected speech under the First Amendment (ECF No. 405 at 24) oversells Defendants’
21 ability to control ImmDef’s actions. ImmDef bases its claim “not on express restrictions
22 on attorney speech or expressive conduct, but an administrative decision that impacts
23 [its] ability to provide legal services to their clients.” *Arroyo v. DHS*, No. SCV 19-815
24 JGB-SHKx, 2019 WL 2912848, at *20 (C.D. Cal. June 20, 2019). But content-neutral
25 restrictions like these “are permissible when they are ‘narrowly tailored to serve a
26 significant governmental interest, and ... leave open ample alternative channels for
27 communication of the information.” *Id.* at *21 (citation omitted). Here, Congress
28 permitted contiguous-territory return. And ImmDef may still provide legal services to

1 existing clients, and communicate with, or advise, potential clients in Mexico. The First
2 Amendment does not give ImmDef the right to speak with existing, let alone potential
3 clients, whenever and wherever it wants. Further, the Court’s conclusion that MPP will
4 again impose barriers on ImmDef’s ability to consult with clients and potential clients
5 (ECF No. 405 at 21–24) does not account for ImmDef’s failure to identify any client
6 subject to MPP since it was reinstated in January 2025.

7 **F. 8 U.S.C. § 1252(a)(5) and (b)(9) bar ImmDef’s right-to-counsel and asylum**
8 **claims because they are inextricably linked to removal proceedings.**

9 This Court’s finding that “Individual Plaintiffs do not directly challenge the bases
10 for their orders of removal but rather seek to avail themselves of the administrative
11 system that exists to litigate their immigration cases, rendering their claims independent
12 of or collateral to the removal process,” (ECF No. 405 at 20–21) impermissibly skirts
13 the jurisdictional bars in 8 U.S.C. § 1252(a)(5) and (b)(9). ImmDef and Individual
14 Plaintiffs bring their claims under the INA provisions affording the rights to counsel
15 and to apply for asylum, accordingly, these rights are limited to the “proceeding[s]
16 brought to remove” the aliens and thus “aris[es] from those proceedings. 8 U.S.C.
17 § 1252(b)(9); *see E.O.H.C. v. Sec’y United States Dep’t of Homeland Sec.*, 950 F.3d
18 177, 187 (3d Cir. 2020) (concluding that § 1252(b)(9) barred review of the statutory
19 right-to-counsel claim but not the constitutional one). Moreover, contrary to the Court’s
20 finding (ECF No. 405 at 21), no relationship exists between the injury claimed in the
21 *ex parte* application and the SAC. Although the SAC claimed that past decisions
22 continued to cause ongoing injury (ECF No. 405 at 21), ImmDef has not alleged any
23 injuries from December 2021 until January 2025, when MPP was reinstated, to now,
24 nearly three months later. *See* ECF No. 379. Instead, “[s]ince MPP 1.0 ended in the
25 summer of 2021, ImmDef has reprioritized and expanded its legal representation
26 programs for noncitizen children and adults in and around southern California.” ECF
27 No. 371-3, ¶ 16. At bottom, ImmDef cannot pursue prospective relief with respect to
28 MPP because its allegations of harm and the certified class it represents are limited to

1 individuals subject to MPP before June 2021 and are seeking relief for past harms. And
2 no relationship exists between the injury claimed here versus that claimed in the SAC.

3 **G. MPP does not violate the INA’s right to counsel in removal proceedings.**

4 This Court’s conclusion that “the INA mandates that asylum seekers have
5 meaningful access to counsel, including the right to contact counsel and the time, space,
6 and ability to consult with counsel safely and confidentially” (ECF No. 405 at 27)
7 expands the right beyond that afforded by Congress. First, aliens seeking admission
8 have only those rights that “Congress has provided by statute.” *DHS v. Thuraissigiam*,
9 591 U.S. 103, 140 (2020). And in § 1229a removal proceedings, Congress gave aliens
10 the “privilege of being represented, at no expense to the Government, by counsel of the
11 alien’s choosing who is authorized to practice in such proceedings[.]” 8 U.S.C.
12 § 1229a(b)(4)(A); *see* 8 U.S.C. §§ 1158(d)(1), 1362. As the “authorized to practice”
13 requirement shows, that statutory right only extends to proceedings conducted by
14 immigration judges under § 1229a removal proceedings in the United States. 8 U.S.C.
15 §§ 1158(d)(1), 1229a(b)(4)(A), 1362; *see Orozco-Lopez v. Garland*, 11 F.4th 764, 778–
16 79 (9th Cir. 2021). Second, MPP does not “force[] aliens to remain in Mexico pending
17 their removal proceedings; the INA expressly authorizes contiguous-territory return.
18 Accordingly, the decision to exercise that authority cannot give rise to an APA suit for
19 violating a separate statutory provision regarding counsel.

20 **H. MPP does not violate the INA’s right to apply for asylum.**

21 The Court’s finding that 8 U.S.C. § 1225(b)(2)(C) does not “mention asylum at
22 all” (ECF No. 405 at 23) fails to consider the statutory language “pending a proceeding
23 under section 1229a of this title,” which is removal proceedings wherein aliens apply
24 for asylum. *See generally* 8 U.S.C. § 1229a. Accordingly, it was *Congress* that
25 determined that aliens arriving on land from Mexico can be permitted to await removal
26 proceedings while in Mexico (which includes the adjudication of their asylum
27 applications during such proceedings), irrespective of any alleged difficulties that such
28 returns might pose for the aliens or their lawyers. Indeed, because the INA explicitly

1 permits expulsion to contiguous countries during the pendency of removal hearings,
2 ImmDef cannot establish a violation of the INA. Moreover, ImmDef, an organization,
3 is not applying for asylum (it cannot); it seeks to help others do so. And the gravamen
4 of its claim is that individual Plaintiffs were (and, thus, will be) deprived of *meaningful*
5 *access* to apply for asylum—not the *inability* to apply for asylum. ECF No. 371-1 at
6 21–24. But, again, aliens seeking admission to the U.S. have only those rights that
7 “Congress has provided by statute.” *Thuraissigiam*, 591 U.S. at 140 (citation omitted).
8 Congress permitted asylum applications, but also permitted contiguous-territory return.
9 And the factual allegations in the SAC show that individual Plaintiffs were indeed able
10 to exercise this right by *applying for* asylum. See SAC at 41–70.

11 **II. The balance of harm strongly favors a stay.**

12 **A. The Court’s injunction irreparably harms the Government and the public**
13 **(factors 3 and 4).**

14 The Court’s order staying the reimplementations of MPP necessarily imposes
15 irreparable harm on the government and the public. The government “suffers a form of
16 irreparable injury” “[a]ny time [it] is enjoined by a court from effectuating statutes
17 enacted by representatives of its people.” *Maryland v. King*, 567 U.S. 1301, 1303 (2012)
18 (Roberts, C.J., in chambers) (citation omitted). That is particularly true here because
19 rules governing immigration “implement[] an inherent executive power.” *United States*
20 *ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 542 (1950) (“[I]t is not within the province
21 of any court, unless expressly authorized by law, to review the determination of the
22 political branch of the Government to exclude a given alien”). Indeed, a stay of MPP’s
23 reimplementations “is not merely an erroneous adjudication of a lawsuit between private
24 litigants, but an improper intrusion by a federal court into the workings of a coordinate
25 branch of the Government.” *INS v. Legalization Assist. Project*, 510 U.S. 1301, 1305-
26 06 (1993) (O’Connor, J., in chambers) (granting a stay).

27 Here, the Court asserted that “broad relief is appropriate to ensure uniformity
28 and consistency in enforcement” (ECF No. 405 at 31 (quoting *E. Bay Sanctuary*

1 *Covenant v. Biden*, 993 F.3d 640, 681 (9th Cir. 2021)). But “[a]ny remedy a judge
2 authorizes must not be ‘more burdensome [to the defendant] than necessary to redress
3 the complaining parties.’” *United States v. Texas*, 599 U.S. 670, 702 (2023) (Gorsuch,
4 J., concurring) (quoting *Califano v. Yamasaki*, 442 U. S. 682, 702 (1979)). “And faithful
5 application of those principles suggests that an extraordinary remedy like vacatur would
6 demand truly extraordinary circumstances to justify it. *Cf. S. Bray & P. Miller, Getting*
7 *Into Equity*, 97 N. D. L. Rev. 1763, 1797 (2022) (“[I]n equity it all connects—the
8 broader and deeper the remedy the plaintiff wants, the stronger the plaintiff’s story
9 needs to be.”) *Texas*, 599 U.S. at 702 (Gorsuch, J., concurring). Such extraordinary
10 circumstances are flatly absent from this case.

11 The relief the Court granted was overbroad. In purporting to set nationwide
12 policy, the Court disregarded Ninth Circuit precedent directing it to limit relief to
13 “redress only the injury shown as to [Plaintiffs].” *California v. Azar*, 911 F.3d 558, 584
14 (9th Cir. 2018). Such overbroad relief allows “one district court [to] make a binding
15 judgment for the entire country.” *Louisiana v. Becerra*, 20 F.4th 260, 263 (5th Cir.
16 2021). *See Labrador v. Poe*, 144 S. Ct. 921, 927 (2024) (Gorsuch, J., concurring)
17 (“[T]he ... universal injunction effectively transformed a limited dispute between a
18 small number of parties focused on one feature of a law into a far more consequential
19 referendum on the law’s every provision as applied to anyone.”). A “lack of percolation
20 has serious consequences for judicial decisionmaking.” *Ramos v. Wolf*, 975 F.3d. 872,
21 903–04 (9th Cir. 2020) (Nelson, J., concurring). Accordingly, at the very least, the Court
22 should stay the nationwide scope of its § 705 stay.

23 Notably, the Supreme Court has granted oral argument on the issue of whether
24 nationwide relief is permissible. *See Trump, President of the U.S., et al. v. CASA, Inc.,*
25 *et al.*, 604 U.S. __ (Order) (Apr. 17, 2025); *Trump, President of the U.S., et al. v.*
26 *Washington, et al.*, 604 U.S. __ (Order) (Apr. 17, 2025); *Trump, President of the U.S.,*
27 *et al. v. New Jersey, et al.*, 604 U.S. __ (Order) (Apr. 17, 2025). Thus, a stay of the
28 nationwide relief granted in this case is warranted.

1 **B. A stay pending appeal will not substantially harm ImmDef (factor 2).**

2 ImmDef has not alleged any current examples of individuals impacted by MPP.
3 *See generally* Transcript of Proceedings, Case No. 2:20-cv-09893-JGB-SHK, March
4 31, 2025 (“Tr.”) at 25–26; *see* ECF No. 371-1. ImmDef has only offered inadmissible
5 and speculative statements that they believe that they will encounter potential clients
6 impacted by MPP in the future, and therefore, be harmed in the future. *See* Tr. at 25:12–
7 17 (“And so in this posture, it’s this threat of imminent harm because at any moment,
8 right? The 2019 protocols are live, in effect. They just have not been—and no one has
9 been enrolled in them yet—or, I guess a couple of people. But at any moment that harm
10 will materialize for ImmDef.”). Instead, the injury alleged by ImmDef either stems from
11 the past, *see* ECF No. 371-1 n.21 (discussing how ImmDef had established standing
12 because it “has *shown* injury” previously) (emphasis added), and otherwise simply
13 speculates as to a future injury, Tr. at 25:12–17 (ImmDef discussing how MPP is “live”
14 and therefore, there is a “threat of imminent harm[.]”). Therefore, a stay would not
15 substantially injure ImmDef.

16 In sum, challenges to DHS’s discretion on how best to enforce immigration law
17 “invade a special province of the Executive.” *Reno v. Am.-Arab Anti-Discrimination*
18 *Comm.*, 525 U.S. 471, 489 (1999). Thus, the Court’s stay of MPP will cause direct,
19 irreparable injury to the interests of the government and the public. *See Nken*, 556 U.S.
20 at 435. As explained, Defendants have shown they will prevail on the merits of their
21 claims and ImmDef cannot show a stay of the order will substantially injure it. The
22 balance of equities clearly favors Defendants, and the Court should grant Defendants’
23 *ex parte* stay application.

CONCLUSION

For the foregoing reasons, this Court should grant a stay pending appeal. Alternatively, the Court should grant a stay pending Defendants’ filing a motion for stay with the Ninth Circuit. If the Court declines to do either, it should narrow the scope of its order to the specific harm allegedly shown.

Dated: April 21, 2025

Respectfully submitted,

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LOCAL RULE 11-6.2 CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Defendants, certifies that this memorandum of points and authorities does not exceed 25 pages, which complies with this Court’s Standing Order. ECF No. 114.

Dated: April 21, 2025

/s/ Alanna T. Duong
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