

**No. 25-2581**

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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**IMMIGRANT DEFENDERS LAW CENTER,  
Plaintiff-Appellee,**

**v.**

**KRISTI NOEM, ET AL.,  
Defendants-Appellants.**

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**ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA  
District Court Case No. 2:20-cv-09893**

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**EMERGENCY MOTION FOR STAY PENDING APPEAL PURSUANT TO  
CIRCUIT RULE 27-3 WITH RELIEF REQUESTED BY MAY 12, 2025**

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**YAAKOV M. ROTH  
Acting Assistant Attorney General  
Civil Division**

**DREW C. ENSIGN  
Deputy Assistant Attorney General**

**BRIAN C. WARD  
Acting Assistant Director**

**MICHAEL D. ROSS  
Trial Attorney**

**CARA E. ALSTERBERG  
CATHERINE M. RENO  
ALANNA T. DUONG  
Senior Litigation Counsel  
Office of Immigration Litigation  
Civil Division, U.S. Dept. of Justice  
P.O. Box 878, Ben Franklin Station  
Washington, DC 20044**

**Attorneys for  
Defendants-Appellants**

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**CIRCUIT RULE 27-3 CERTIFICATE**

Pursuant to Circuit Rule 27-3, Defendants-Appellants, through undersigned counsel, certify that the following information is required:

**(1) Telephone numbers and addresses of the attorneys for the parties**

**Counsel for Appellants Noem, et al.**

Yaakov M. Roth (yaakov.m.roth@usdoj.gov)  
Drew C. Ensign (drew.c.ensign@usdoj.gov)  
Brian C. Ward (brian.c.ward@usdoj.gov)  
Catherine M. Reno (catherine.m.reno@usdoj.gov)  
Cara E. Alsterberg (cara.e.alsterberg@usdoj.gov)  
Michael D. Ross (michael.d.ross@usdoj.gov)  
Alanna T. Duong (alanna.duong@usdoj.gov)  
Civil Division, U.S. Department of Justice  
P.O. Box 878, Ben Franklin Station, Washington, DC 20044  
Tel: (202) 305-7040

**Counsel for Appellee Immigrant Defenders Law Center**

Matthew T. Heartney (Matthew.Heartney@arnoldporter.com)  
Hannah R. Coleman (Hannah.Coleman@arnoldporter.com)  
Daniel S. Shimell (Daniel.Shimell@arnoldporter.com)  
Allyson C. Myers (Ally.Myers@arnoldporter.com)  
ARNOLD & PORTER KAYE SCHOLER LLP  
777 South Figueroa Street, 44th Floor, Los Angeles, CA 90017-5844  
Tel: (213) 243-4000

Melissa Crow (crowmelissa@uclawsf.edu)  
Anne Dutton (duttonanne@uclawsf.edu)  
CENTER FOR GENDER & REFUGEE STUDIES  
1121 14th Street, NW, Suite 200, Washington, D.C. 20005  
Tel: (202) 355-4471

Sirine Shebaya (sirine@nipnlg.org)  
Matthew Vogel (matt@nipnlg.org)  
Stephanie M. Alvarez-Jones (stephanie@nipnlg.org)

Victoria F. Neilson (victoria@nipnlg.org)  
NATIONAL IMMIGRATION PROJECT OF THE NATIONAL  
LAWYERS GUILD  
1201 Connecticut Ave. NW, Suite 531 #896645, Washington, D.C. 20036  
Tel: (617) 227-9727

Stephen W. Manning (stephen@innovationlawlab.org)  
Jordan Cummings (jordan@innovationlawlab.org)  
Kelsey Provo (kelsey@innovationlawlab.org)  
Tess Hellgren (tess@innovationlawlab.org)  
Rosa Saavedra Vanacore (rosa@innovationlawlab.org)  
INNOVATION LAW LAB  
333 SW 5th Ave, Suite 200, Portland, OR 97204  
Tel: (503) 922-3042

Efren C. Olivares (Efren.Olivares@splcenter.org)  
SOUTHERN POVERTY LAW CENTER  
150 E. Ponce de Leon Ave., Suite 340, Decatur, GA 30030  
Tel: (404) 821-6443

Kathleen X. Weng (Katie.Weng@arnoldporter.com)  
ARNOLD & PORTER KAYE SCHOLER LLP  
601 Massachusetts Avenue, N.W., Washington, D.C. 20001  
Tel: (202) 942-5000

**(2) Facts showing the existence and nature of the emergency**

As set forth more fully in the motion, the district court has entered an order under 5 U.S.C. § 705 of the Administrative Procedure Act staying the “reimplementation” of the Migrant Protection Protocols (“MPP”) policy nationwide pending a ruling on the merits of the underlying lawsuit. The order granted an *ex parte* application filed by Immigrant Defenders Law Center (“ImmDef”), one of the organizational Plaintiffs in the underlying lawsuit.

The district court incorrectly found that it had jurisdiction and issued a nationwide stay of an Executive Action that prevents the Government from using an important discretionary tool to secure the border. First, it incorrectly found ImmDef had established standing even though it engaged in acts outside of its preexisting core business activities in response to MPP, and that is precisely the type of voluntary activities *Food & Drug Administration v. Alliance for Hippocratic Medicine*, 602 U.S. 367 (2024), determined was insufficient to establish standing. Second, it determined ImmDef's claims were ripe despite ImmDef's failure to identify even one individual client or potential client subject to MPP. Third, it overlooked several jurisdictional bars, including: 8 U.S.C. § 1252(f)(1), which bars jurisdiction to stay an agency action directing how DHS will implement § 1225(b)(2)(C); and 8 U.S.C. § 1252(a)(5) and (b)(9), which preclude ImmDef's right-to-counsel and asylum claims because they are inextricably linked to removal proceedings. The district court also failed to recognize that 5 U.S.C. § 705 does not allow a court to stay agency action already in effect. And finally, it issued unwarranted nationwide relief.

### **(3) When and how counsel notified**

Counsel for Defendants-Appellants notified counsel for Plaintiff-Appellee by email on May 7, 2025, and counsel for Plaintiff-Appellee opposed the motion. Service will be effected by electronic service through the ACMS system.

**(4) Submissions to the district court**

The defendants requested a stay from the district court on April 21, 2025, which remains pending.

**(5) Decision requested by**

Appellants request a decision as soon as possible. The district court's nationwide stay went into effect on April 16, 2025. A decision on the motion for an administrative stay is requested by May 12, 2025, and a decision on the motion for a stay is requested as soon as possible.

Respectfully submitted,

/s/ Alanna T. Duong

ALANNA T. DUONG

Senior Litigation Counsel

U.S. Department of Justice

May 7, 2025

Attorney for Defendants-Appellants

**GENERAL ORDERS 3.3(g) AND 6.4(d) STATEMENT**

Pursuant to General Order 3.3(g), Defendants-Appellants, through undersigned counsel, hereby request that this Court determine that this case presents extraordinary circumstances that require it to be heard within a specified time period and ordered onto a specific calendar. Appellants make this request that this case be deemed an urgent case because the case involves factual circumstances requiring a prompt decision. It is an appeal from an order granting nationwide emergency relief that is preventing the Department of Homeland Security from using an important discretionary tool for securing the border.

Moreover, pursuant to General Order 6.4(d), Defendants-Appellants hereby request that this Court designate that a merits panel be immediately drawn and that the pending stay motion be referred for its resolution. Appellants make this request because this case involves issues of exceptional importance and is one in which the arguments presented in the stay motion and the merits of the case—for the sake of consistency—should be heard by the same panel.

Respectfully submitted,

/s/ Alanna T. Duong

ALANNA T. DUONG

Senior Litigation Counsel

U.S. Department of Justice

May 7, 2025

Attorney for Defendants-Appellants

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**EMERGENCY MOTION FOR STAY PENDING APPEAL PURSUANT TO  
CIRCUIT RULE 27-3 WITH RELIEF REQUESTED BY MAY 12, 2025**

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**INTRODUCTION**

The Migrant Protection Protocols (“MPP”) is a policy, first adopted in 2019, that applies to aliens arriving in the United States by land from Mexico illegally or without proper documents. MPP exercises the express authority of the Department of Homeland Security (“DHS”), under 8 U.S.C. § 1225(b)(2)(C), to return aliens temporarily to Mexico during their removal proceedings. Yet a district court issued a nationwide stay of this policy at the request of an organizational plaintiff that did not even demonstrate standing. Tellingly, the last time a court blocked MPP, the Supreme Court stayed that order. *Wolf v. Innovation L. Lab*, No. 19A960, 140 S. Ct. 1564 (Mar. 11, 2020) (mem.). This Court should now stay this one.

Then-Secretary of Homeland Security Nielsen adopted MPP in a January 2019 memorandum (the “2019 Memorandum”). Under MPP, certain “citizens and nationals of countries other than Mexico ... arriving in the United States by land from Mexico—illegally or without proper documentation—may be returned to Mexico ... for the duration of their Section [1229a] removal proceedings.” 84 Fed. Reg. 6811 (Feb. 28, 2019). That is exactly what § 1225(b)(2)(C) authorizes.

In 2020, Plaintiffs filed a class action complaint challenging MPP and seeking to enjoin the government from implementing policies affecting asylum seekers at the U.S.-Mexico border. But the case did not result in any relief until very recently. In the meantime, the Biden Administration twice attempted to terminate MPP, but several States sued and won an injunction requiring the government to retain MPP until it was lawfully rescinded. *Texas v. Biden*, 554 F. Supp. 3d 818, 857-58 (N.D. Tex. 2021). That litigation remains ongoing, with a stay in place blocking the Biden-era memoranda seeking to terminate MPP. *See Texas v. Biden*, No. 2:21-cv-00067-Z (N.D. Tex.). Yet, due to Mexico’s unwillingness to accept aliens, MPP was never actually applied on the ground.

In January 2025, DHS announced that the conditions preventing application of MPP on the ground had changed. Consistent with court ordered obligations, DHS then began applying the 2019 MPP policy. The district court in this action then granted a nationwide stay under § 705 of the Administrative Procedure Act

(“APA”), treating DHS’s actions as a discrete agency policy subject to judicial review. The government, in turn, now seeks to stay that order so that MPP can finally proceed.

The district court’s order is flawed on multiple grounds and the government is likely to prevail on appeal. At the threshold, Plaintiff Immigrant Defenders Law Center (“ImmDef”) improperly tried to spend its way into standing, contrary to *FDA v. Alliance for Hippocratic Medicine*, 602 U.S. 367 (2024), even though ImmDef has not identified any harm flowing from MPP’s “reimplementation” in January 2025. On the merits, the district court’s order is impermissible under 8 U.S.C. § 1252(f), as it restrains how DHS will implement its discretionary authority under 8 U.S.C. § 1225(b)(2)(C). Regardless, there is no legal basis for a stay because the “reimplementation” of MPP is not a discrete agency action—and even if it were, MPP is statutorily authorized and raises no constitutional concerns. As for the balance of equities, the court’s order interferes with the government’s enforcement of federal immigration law, while ImmDef failed to demonstrate any irreparable harm. This Court should thus grant the government’s motion to stay pending appeal.

## **BACKGROUND**

A. MPP invokes DHS’s express authority under the Immigration and Nationality Act (“INA”), 8 U.S.C. 1101 *et seq.*, to return aliens temporarily to Mexico during the pendency of their removal proceedings. Congress provided that, “[i]n the case of an alien described in [Section 1225(b)(2)(A)] who is arriving on land (whether or not at a designated port of arrival) from a foreign territory contiguous to the United States, the [Secretary of Homeland Security] may return the alien to that territory pending a proceeding under section 1229a of this title.” 8 U.S.C. § 1225(b)(2)(C).

In doing so, Congress codified the government’s “long-standing practice” of requiring certain aliens arriving from Mexico or Canada to await immigration proceedings there, and expanded “beyond that historical practice” by authorizing the temporary return of any applicant for admission arriving on land from those contiguous countries. *Matter of M-D-C-V-*, 28 I. & N. Dec. 18, 25 26 & n.10 (BIA 2020) (discussing pre-IIRIRA practice and 1997 adoption of regulations codified at 8 C.F.R. §§ 235.3(d) and 1235.3(d)). Contiguous-territory-return authority enables DHS to avoid detaining those aliens throughout their removal proceedings, “at considerable expense,” or else “allow[ing them] to reside in this country, with the attendant risk that [they] may not later be found.” *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 108 (2020).

**B.** Legal challenges ensued. Notably, after a divided panel of this Court affirmed another district court’s preliminary injunction of MPP in 2020, the Supreme Court stayed that injunction. *See Wolf v. Innovation L. Lab*, No. 19A960, 140 S. Ct. 1564 (Mar. 11, 2020) (mem.); *Innovation L. Lab v. Wolf*, No. 19-15716, 2020 WL 964402 (9th Cir. Feb. 28, 2020). Due to changes in administration, however, those cases were never finally resolved on the merits.

Instead, in 2021, the Biden Administration suspended new enrollments in MPP, and on June 1, 2021, then-Secretary Mayorkas issued a memorandum seeking to terminate MPP (“June 1 Memorandum”). *See* Dkt. 261 at 7 (“MTD Order”).

In April of 2021, Texas and Missouri challenged the temporary suspension of MPP, and after holding a consolidated hearing and bench trial on the merits, a district court enjoined DHS from implementing or enforcing the June 1 Memorandum. *Texas v. Biden*, 554 F. Supp. 3d 818, 828, 857-58 (N.D. Tex. 2021). The court held that the termination of MPP violated the APA because DHS ignored several critical factors (including MPP’s benefits, warnings that MPP’s suspension would lead to a resurgence of illegal border crossings, and the costs to the states, as well as more limited policies than full termination) and the reasons DHS gave were arbitrary. *Id.* at 848-51. Further, it concluded that DHS failed to consider or acknowledge the effect terminating MPP would have on its compliance with its mandatory detention



obligations in § 1225 and held that terminating MPP in fact caused it to violate § 1225. *Id.* at 851-52.

The government appealed, and on October 29, 2021, then-Secretary Mayorkas issued new memoranda terminating MPP and immediately rescinding all prior MPP memoranda (“October 29 Memoranda”). *See* MTD Order 6. The Fifth Circuit upheld the district court’s injunction regarding the June 1 Memorandum. *Texas v. Biden*, 20 F.4th 928, 1004 (5th Cir. 2021), *as revised* (Dec. 21, 2021). It also held that the October 29 Memoranda did not moot the case and that ordinary appellate principles barred its review in the first instance of the merits of that second effort to terminate MPP. *Id.* at 941-43.

The Supreme Court granted certiorari and remanded the case. *Biden v. Texas*, 597 U.S. 785, 794, 814 (2022). The Court held, *inter alia*, that the injunction violated 8 U.S.C. § 1252(f)(1), which “generally prohibits lower courts from entering injunctions that order federal officials to take or to refrain from taking actions to enforce, implement, or otherwise carry out the specified statutory provisions.” *Id.* at 797-98; *see Garland v. Aleman Gonzalez*, 596 U.S. 543, 550 (2022) (holding that § 1252(f)(1) “is best understood to refer to the Government’s efforts to enforce or implement” the statutory provisions and the “operation of the provisions” language is a reference “not just to the statute itself but to the way that [it is] being carried out”).

On remand, in August 2022, the Texas district court vacated the injunction, but in December 2022, it stayed the October 29 Memoranda and corresponding decision to terminate MPP. *Texas v. Biden*, 646 F. Supp. 3d 753, 764, 781 (N.D. Tex. 2022). The government thereafter voluntarily dismissed its appeal, thereby acquiescing to keeping MPP in legal effect. *Texas v. Biden*, No. 23-10143, 2023 WL 5198783 (5th Cir. May 25, 2023). However, DHS also indicated that facts on the ground “render[ed] restarting MPP impossible.” Defs.’ Supp. Res. Br. at 10, *Texas v. Biden*, 2:21-cv-67 (N.D. Tex. Oct. 6, 2023). The October 29 Memoranda (attempting to terminate MPP) remain stayed, and litigation is ongoing regarding their legality. *See generally Texas*, No. 2:21-cv-00067-Z.

C. Although the 2019 Memorandum has been in effect for years as a result of the Texas litigation, MPP was not actually applying MPP on the ground until January 2025, when DHS announced that the situation at the border had changed and the facts on the ground were favorable to resuming MPP. *See* Dkt. 405 (“Ex Parte Order”).

This litigation was originally filed in October 2020, in MPP’s early days, by ImmDef, another organization, and eight aliens. MTD Order 1-2. ImmDef filed its Second Amended Complaint in December 2021, after the Texas district court’s injunction. *Id.* at 2-3. It raised six claims: five challenged the prior Trump

administration's implementation of the original MPP while the last claim challenged the Biden Administration's termination of the MPP wind-down. *See id.* at 3.

In February 2025, ImmDef—alone amongst Plaintiffs—moved for an emergency order staying Defendants' reimplementations of MPP. The court granted that relief. It concluded that ImmDef had standing because MPP's "reimplementation" directly affected ImmDef's core business activities, and that its application was ripe. *See Ex Parte Order* 10-16. The court also concluded that 8 U.S.C. § 1252(f)(1)'s jurisdictional bar was inapplicable because the court was issuing a stay, not an injunction, and because ImmDef was challenging the implementation of a policy, not the statute itself. *Id.* at 16-19. And the court held that 8 U.S.C. § 1252(a)(5) and (b)(9) did not bar ImmDef's claims because those claims were independent of or collateral to the removal process. *Id.* at 20-21.

As for ImmDef's likelihood of success on the merits, the district court found that MPP will impose barriers on ImmDef's ability to consult with current and potential clients, in violation of the First Amendment. *Id.* at 21-22. Further, it found that MPP interfered with asylum seekers' access to counsel, and that "trapping" individuals in Mexico prevents them from applying for asylum, contrary to the statute. *Id.* at 22-27. Concluding that the balance of harms also weighed in ImmDef's favor, the court issued a nationwide stay of the "reimplementation" of MPP. *Id.* at 30-32.

## **ARGUMENT**

### **I. The district court’s order is appealable.**

The district court’s order is appealable under 28 U.S.C. § 1292(a)(1). The fact that an order is denominated as a “stay” rather than an “injunction” does not control. “It is the essence of the order, not its moniker, that determines ... jurisdiction.” *Bennett v. Medtronic, Inc.*, 285 F.3d 801, 804 (9th Cir. 2002); *see Negrete v. Allianz Life Ins. Co. of N. Am.*, 523 F.3d 1091, 1097 (9th Cir. 2008) (“[W]e are not bound by what a district court chooses to call an order”).

Despite being labeled a “stay” of agency action, the district court’s order restrains DHS’s actions in implementing 8 U.S.C. § 1225(b)(2)(C), and applies nationwide. Thus, the order “has the ‘practical effect’ of granting or denying an injunction.” *Abbott v. Perez*, 585 U.S. 579, 594 (2018); *see also, e.g., Dep’t of Educ. v. California*, 145 S. Ct. 966, 968 (2025) (concluding that temporary restraining order was appealable because it carried “hallmarks of a preliminary injunction”); *Wyoming v. DOI*, No. 18-8027, 2018 WL 2727031, at \*1 (10th Cir. June 4, 2018) (stay of final rule under 5 U.S.C. § 705 was appealable); *All. for Hippocratic Med. v. FDA*, No. 23-10362, 2023 WL 2913725, at \*3 n.3 (5th Cir. Apr. 12, 2023) (unpub.) (stay of drug approval under 5 U.S.C. § 705 was appealable). Further, the order was entered after adversarial presentation, and no other interim relief that could give rise to an appeal is contemplated. Moreover, the order provides ImmDef

with “some or all of the relief” it ultimately seeks in the litigation. The Court thus plainly has jurisdiction over this interlocutory appeal.

## **II. This Court should stay the district court’s nationwide order.**

Courts consider four factors in assessing a motion for stay pending appeal: (1) the movant’s likelihood of prevailing on the merits of the appeal, (2) whether the movant will suffer irreparable harm absent a stay, (3) the harm that other parties will suffer if a stay is granted, and (4) the public interest. *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987). When the government is a party, its interests and the public interest “merge.” *Nken v. Holder*, 556 U.S. 418, 435 (2009).

Here, because ImmDef lacks standing, the INA bars the district court’s order, and MPP is lawful and constitutional, the government is likely to succeed on appeal. And the balance of harms favors the government too: The district court’s order commandeers the Executive Branch’s power to enforce the immigration laws, whereas ImmDef has not demonstrated any concrete harm from MPP, or even identified any individuals subject to MPP after its reinstatement.

### **A. ImmDef lacks Article III standing.**

Supreme Court precedent forecloses a finding that ImmDef has organizational standing to challenge MPP. For that reason alone, the government is likely to prevail on appeal. *See Munaf v. Geren*, 553 U.S. 674, 691 (2008) (noting that jurisdictional

issues can make success on the merits “more unlikely due to potential impediments to even reaching the merits” (emphasis omitted)).

An organization asserting standing based on its own alleged injuries must show: “(1) that it has been injured or will imminently be injured, (2) that the injury was caused or will be caused by the defendant’s conduct, and (3) that the injury is redressable.” *Alliance*, 602 U.S. at 395-96. In *Alliance*, the Court rejected the notion that, under *Havens Realty v. Coleman*, 455 U.S. 363 (1982), an organization has standing whenever it “diverts its resources in response to a defendant’s actions.” *Alliance*, 602 U.S. at 395. Rather, “an organization that has not suffered a concrete injury caused by a defendant’s action cannot spend its way into standing simply by expending money to gather information and advocate against the defendant’s action.” *Id.* at 394. *Alliance*’s rationale makes clear that an organization cannot change its core business activities in response to a government policy as a maneuver to establish standing. *See id.* Stated differently, its activities must be assessed as they existed prior to adoption of the challenged policy. *See id.*

*Alliance* also reaffirms that standing to pursue prospective relief cannot be grounded on “speculative” future injuries. *Id.* at 390. A plaintiff seeking prospective relief must show a threat of future injury that is “actual and imminent, not conjectural or hypothetical.” *Summers v. Earth Island Inst.*, 555 U.S. 488, 493 (2009). Past wrongs may serve as evidence of a “real and immediate threat of repeated injury,”

but they are insufficient on their own to support standing for prospective relief. *City of Los Angeles v. Lyons*, 461 U.S. 95, 102-03 (1983). Along with past wrongs, the organization must allege either “continuing, present adverse effects” or a “sufficient likelihood that [it] will again be wronged in a similarly way.” *Id.* (citing *O’Shea v. Littleton*, 414 U.S. 488, 495-96 (1974) (recognizing that past harm “[d]oes not in itself show a present case or controversy regarding injunctive relief, however, if unaccompanied by any continuing, present adverse effects”).

Under this framework, ImmDef must show that MPP “directly” affected its pre-existing “core business activities.” *Alliance*, 603 U.S. at 395. ImmDef failed to make this showing. Its own evidence shows that, *in response to MPP*, it engaged in acts beyond its preexisting core business activities; that is precisely the type of voluntary activity that *Alliance* determined was insufficient to establish standing. Specifically, ImmDef concededly did not represent people outside the United States (or even much beyond Los Angeles and Orange County) before MPP. Dkt. 175 ¶¶ 272-74. It began doing so only in response to MPP. *See, e.g., id.* ¶ 273 (“In response to Defendants’ implementation of the Protocols in January 2019, ImmDef established its Cross Border Initiative (‘CBI’), which focuses on providing direct representation, pro se assistance, and advocacy to individuals subjected to MPP.”); Dkt. 371-1 at 17 (stating that, in response to MPP, ImmDef began “travel[ling] to Mexico to consult with ImmDef’s clients [which] was costly, time-intensive, and

detracted from other legal work”), 28 (repeating that, in response to MPP, ImmDef began “to reallocate staff time, expend significant time and financial resources, send its staff to Mexico, and a rent a new office, all at the expense of its core programs”). *Alliance* renders this theory of standing untenable. Because ImmDef’s shift to representing individuals outside the U.S. came *in response to* MPP, it cannot establish standing to *challenge* MPP.

The district court’s conclusion that ImmDef’s core business activities have remained the same apart from, prior to, and after MPP’s implementation misreads *Alliance* and *Havens Realty*. In both cases, the Supreme Court analyzed the organizations’ core activities as they existed at the time of the challenged conduct and determined whether the conduct affected those prior activities. *See Alliance*, 602 U.S. at 379 (noting that, prior to defendant’s conduct, plaintiff organization was engaged in “counseling and referral services for low-and moderate-income homeseekers,” and defendant’s actions “perceptibly impaired” the organization’s ability to provide those services). Accordingly, those activities must have existed *before* the defendants acted. Because ImmDef failed to show that MPP directly affected its core business activities—and instead showed only that it changed its behavior as a result of MPP—it does not have standing.

In all events, ImmDef has not alleged any current examples of individuals impacted by MPP, which fatally undermines its claim of organizational standing.



*See* App., Transcript of March 31 Proceedings (“Tr.”) at 25-26. It has only offered inadmissible and speculative statements that it *believes* it will encounter *potential* clients impacted by MPP in the *future*. *See, e.g.*, Tr. at 25 (“The 2019 protocols are live, in effect. They just have not been -- and no one has been enrolled in them yet -- or, I guess, a couple of people. But at any moment that harm will materialize for ImmDef.”). ImmDef’s claims of future harm are thus just as speculative as the doctors’ speculation that they would encounter more patients with mifepristone complications in the future that the Supreme Court found insufficient in *Alliance*, 602 U.S. at 391-92. ImmDef’s speculation as to a future injury, *see* Tr. at 25, is not “*certainly* impending” and is therefore insufficient to establish standing, *Clapper v. Amnesty Int’l*, 568 U.S. 398, 409 11-12 (2013).

**B. The nationwide stay clearly violates 8 U.S.C. § 1252(f)(1).**

Even if ImmDef has standing, § 1252(f)(1) forecloses the relief issued by the district court. That provision strips courts “(other than the Supreme Court)” of “jurisdiction or authority” to “enjoin or restrain the operation of” certain provisions of the INA, 8 U.S.C. § 1252(f)(1). “Section 1252(f)(1) thus prohibits federal courts from granting classwide injunctive relief against the operation of §§ 1221-123[2].” *Jennings v. Rodriguez*, 583 U.S. 281, 312 (2018). The Supreme Court has specifically held that § 1252(f) bars orders that restrain operation of § 1225(b)(2)(C), which is the statutory authority for MPP. *Texas*, 597 U.S. at 797.

The district court reasoned that § 1252(f)(1) did not bar its ability to *stay* an agency action, because unlike an injunction, a stay “is ultimately not coercive” and merely reinstates the status quo. Ex Parte Order 17-18. But a stay is just as coercive as an injunction, which is also designed to restore the status quo. Section 1252(f)(1) “generally prohibits lower courts from entering injunctions that *order federal officials to take or to refrain from taking actions to enforce, implement, or otherwise carry out the specified statutory provisions.*” *Texas*, 597 U.S. at 797 (emphasis added). The district court’s order here, which bars the agency from exercising its contiguous-territory return authority under 8 U.S.C. § 1225(b)(2)(C), does exactly that: It restrains DHS with respect to how it will implement § 1225(b)(2)(C) and is thus analogous to a preliminary injunction.

Tellingly, as the district court acknowledged, the standard for a § 705 stay is substantially the same as the standard for issuance of a preliminary injunction; that is because they operate in very similar fashion. Ex Parte Order 8. Styling the order as a stay rather than an injunction does not change its practical effect—or its legal implications. *Cf. Abbott*, 585 U.S. at 595 (“[W]e have not allowed district courts to shield their orders from appellate review by avoiding the label injunction.”) (cleaned up); *California v. Grace Brethren Church*, 457 U.S. 393, 408 (1982) (statute barring court orders that “suspend or restrain” tax collection stripped jurisdiction to enter injunctions or declaratory relief).

Further, § 705 does not create a new form of remedy that is distinct from an injunction. Instead, it preserves traditional equitable relief. *See Scripps-Howard Radio v. FCC*, 316 U.S. 4, 16-17 (1942). The district court relied heavily on *Nken*, 556 U.S. at 418, in attempting to distinguish stays from injunctions. It reasoned that a stay provides relief by “suspending the source of authority to act – the order or judgment in question – not by directing an actor’s conduct.” Ex Parte Order 17. That is true but, again, the practical effect is the same—suspending DHS’s authority to use its authority under § 1225(b)(2)(C) is no different than an injunction directing the agency not to use that authority. *Cf.* Black’s Law Dictionary (12th ed. 2024) (defining injunction as “[a] court order commanding or preventing an action”). The statute thus forecloses both forms of relief in this type of case.

Even if the “stay” were not akin to an injunction, § 1252(f) bars not only orders that “enjoin” relevant agency action implementing the INA but also those that “restrain”—which the “stay” sought here plainly does. *See Aleman Gonzalez*, 596 U.S. at 549 (“restrain” means to “check, hold back, or prevent (a person or thing) from some course of action,” to “inhibit particular actions,” or to “stop (or perhaps compel)” action) (cleaned up). Thus, regardless of the label, the district court’s order impermissibly “restrain[s]” the Secretary from exercising her authority under the contiguous-territory statute.

Finally, the district court reasoned that, even if § 705 were a form of injunctive relief, it could still grant a stay because ImmDef challenged the *implementation of the policy*, not the *statute itself*. Ex Parte Order 18. That is indefensible. Section 1252(f)(1) bars district courts from enjoining or restraining “the operation of” the specified statutes, “[r]egardless of the nature of the action or claim.” The district court’s order barred the operation of § 1225’s contiguous-territory-return provision. That is nothing like an incidental or “collateral effect” of a permissible injunction, as the district court dismissively claimed. Ex Parte Order 18.

**C. There is no valid basis to stay MPP or its “reimplementation.”**

There are numerous further defects in the district court’s order. The court purported to stay the reimplementation of MPP since January 2025. But such a challenge is not justiciable because DHS’s “reimplementation” was merely continuation of an existing policy in light of changed circumstances. The APA permits challenges only to final agency action. *See Lujan v. Nat’l Wildlife Fed.*, 497 U.S. 871, 882 (1990). A final agency action is one that “mark[s] the ‘consummation’ of the agency’s decisionmaking process;” and “by which ‘rights or obligations have been determined,’ or from which ‘legal consequences will flow.’” *Bennett v. Spear*, 520 U.S. 154, 177 (1997); *see* 5 U.S.C. § 551(13). MPP’s resumption in January 2025 neither marked the consummation of any agency decisionmaking process (the policy is from 2019), nor did it create any substantive

rules or rights or constitute an action from which legal consequences will flow. Rather, it merely reflected compliance with a court order from the Texas district court, *Texas*, 646 F. Supp. 3d at 764, 781, following changed factual circumstances at the border. As a legal matter, MPP itself was never wound down or terminated, because the prior administration’s attempts to rescind it were stayed. Framing the challenge as directed at “reimplementation” is thus a dead end.

ImmDef cannot fall back by reframing the challenge or relief as targeting the 2019 MPP itself. That is not what the district court said it was doing, nor the relief it understood ImmDef to seek. Instead, it consistently spoke of staying MPP “reimplementation.” *See, e.g.*, Ex Parte Order 7 (describing the challenge as to “the manner in which Defendants implemented MPP”), 8 (ImmDef seeks “to stay Defendants’ reimplementation of MPP”). That was an understandable choice, given that the Supreme Court had stayed an injunction against the 2019 MPP itself. *See Wolf*, 140 S. Ct. 1564.

Regardless of which agency action the court thought it was staying, there was no legal basis for that order. The district court’s lead theory was that implementation of MPP impermissibly restricted ImmDef’s speech by guaranteeing only limited in-person time to communicate with a client immediately before a hearing. Ex Parte Order 21-24. At most, MPP places incidental, content-neutral restrictions on communication, which 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). The district court’s conclusion ignored the government’s strong interest in MPP as a key tool in pursuit of its “compelling interest in protecting its borders.” *Kariye v. Mayorkas*, 650 F. Supp. 3d 865, 909 (C.D. Cal. 2022) (collecting cases). It also ignored that MPP leaves open ample alternative channels for ImmDef to communicate with current or potential clients in the months, weeks, and days prior to the hearing date; thus, MPP and its implementing guidance place *no* restrictions on attorney-client communications in advance of a hearing. *See* Dkt. 378 at 18-19.

The district court also concluded that ImmDef would likely succeed on its arguments that MPP violated two statutory rights: the right to seek asylum (Ex Parte Order 24-26) and the right to counsel (*id.* at 26-27). The asylum argument stems from a provision permitting aliens who are “physically present in the United States” to apply for asylum. 8 U.S.C. § 1158(a)(1); *see* Ex Parte Order 25. And the right-to-counsel argument stems from the inconvenience associated with the alien’s location in another country. *See* Ex Parte Order 26-27. Neither argument holds water, because both misread the statute and then also impermissibly construe statutory provisions within the INA to conflict with each other.

To start, nothing in the INA guarantees or requires that the government actively *facilitate* an alien’s access to counsel or ability to apply for asylum, as the

district court apparently thought. *See* Dkt. 378 at 21-25. There is thus no basis to treat MPP’s indirect burdens on those rights as inconsistent with the statute. More fundamentally, MPP and its implementation do not themselves restrict communications between counsel and aliens, or bar aliens from applying for asylum. Instead, both supposed *violations* of the INA arise from inevitable consequences of returning an alien to a contiguous territory—which the INA specifically *allows*. In other words, the district court read these statutory rights to inherently clash with the statutory authority to return an alien to a contiguous territory, which will inevitably mean the alien is not physically present in the United States and will entail some additional measure of inconvenience. That effort to read the contiguous-territory return authority out of the INA was obvious error. *See, e.g., Cty. of Yakima v. Confederated Tribes & Bands of Yakima Indian Nation*, 502 U.S. 251, 265-66 (1992) (courts must not read conflicts into “statutes [that] are capable of co-existence”).

In short, after blowing through Article III and statutory barriers to relief, the district court was confused about which agency action it was enjoining, and offered no coherent basis for enjoining anything. The government is therefore likely to prevail on appeal.

**D. The balance of harms weighs in favor of staying the order.**

A “stay” of MPP will cause direct, irreparable harm the government and the public. The government “suffers a form of irreparable injury” “[a]ny time [it] is enjoined by a court from effectuating statutes enacted by representatives of its people.” *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers) (citation omitted). That is particularly true here because rules governing immigration “implement[] an inherent executive power.” *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 542 (1950) (“[I]t is not within the province of any court, unless expressly authorized by law, to review the determination of the political branch of the Government to exclude a given alien”); *Trump v. Hawaii*, 585 U.S. 667, 684 (2018) (explaining that 8 U.S.C. § 1182(f) “exudes deference” to the President and “vests [him] with ample power to impose entry restrictions in addition to those elsewhere enumerated in the INA”) (cleaned up). Indeed, a stay of MPP “is not merely an erroneous adjudication of a lawsuit between private litigants, but an improper intrusion by a federal court into the workings of a coordinate branch of the Government.” *INS v. Legalization Assist. Project*, 510 U.S. 1301, 1305-06 (1993) (O’Connor, J., in chambers) (granting a stay); see *Texas*, 597 U.S. at 805-06 (addressing the “significant burden” and serious “foreign affairs consequences of mandating” how the Executive can “exercise” its “contiguous-territory return” authority in § 1225(b)(2)(C)).



In contrast, a stay will not substantially harm ImmDef. As stated, ImmDef has not alleged any current examples of individuals impacted by MPP. *See* Tr. at 25-26. Because its alleged injury either stems from the past, or speculates as to a future injury, a stay would not substantially injure ImmDef.

### **III. At minimum, the district court’s order is overbroad.**

If nothing else, the nationwide scope of the district court’s order was an abuse of discretion, and this Court should narrow it. *See East Bay Sanct. Cov. v. Barr*, 934 F.3d 1026, 1029 (9th Cir. 2019) (granting a stay “insofar as the injunction applies outside the Ninth Circuit, because the nationwide scope of due injunction is not supported by the record as it stands”). Granting universal relief simply because MPP applies nationwide “would turn broad injunctions into the rule rather than the exception,” but “all injunctions—even ones involving national policies—must be ‘narrowly tailored to remedy the specific harm shown.’” *Id.*

The district court’s order illustrates yet another problem of universal relief: its stay of MPP’s “reimplementation” is in tension with another district-court-issued nationwide stay. As explained, in *Texas v. Biden*, a district court stayed the October 29 Memoranda *terminating* MPP pending final resolution of the merits of that case. 646 F. Supp. 3d at 764, 781. This new stay highlights the many problems inherent in a court staying agency action already in effect and in issuing such relief on a

nationwide basis: The government is now subject to conflicting nationwide stays that prevent DHS both from *using* MPP and from *ending* it.

### **CONCLUSION**

The Court should stay the district court's order pending appeal.

Respectfully submitted,

/s/Alanna T. Duong

ALANNA T. DUONG

Senior Litigation Counsel

Office of Immigration Litigation

Civil Division, U.S. Dept. of Justice

P.O. Box 878, Ben Franklin Station

Washington, DC 20044

Tel: (202) 305-7040

alanna.duong@usdoj.gov

YAAKOV M. ROTH

Acting Assistant Attorney General

Civil Division

DREW C. ENSIGN

Deputy Assistant Attorney General

BRIAN C. WARD

Acting Assistant Director

CARA E. ALSTERBERG

CATHERINE M. RENO

Senior Litigation Counsel

MICHAEL D. ROSS

Trial Attorney

May 7, 2025

Attorneys for Defendants-Appellants

**CERTIFICATE OF COMPLIANCE**

Pursuant to Federal Rule of Appellate Procedure 27(d)(2)(A), I certify that the foregoing was prepared using 14-point Times New Roman type, is proportionally spaced and contains 5,127 words, exclusive of the tables of contents and citations, and certificates of counsel.

*/s/ Alanna T. Duong*  
ALANNA T. DUONG  
Senior Litigation Counsel  
U.S. Department of Justice

May 7, 2025

Attorney for Defendants-Appellants

**CERTIFICATE OF SERVICE**

I certify that on May 7, 2025, I filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate ACMS system. I further certify that all participants in the case are registered ACMS users and that service will be accomplished through that system.

*/s/ Alanna T. Duong*  
ALANNA T. DUONG  
Senior Litigation Counsel  
U.S. Department of Justice

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

- - -

HONORABLE JESUS G. BERNAL, DISTRICT JUDGE PRESIDING

- - -

IMMIGRANT DEFENDERS LAW CENTER, )  
et al., )

Plaintiffs, )

vs. )

No. CV-20-9893-JGB

KRISTI NOEM, et al., )

Defendants. )

REPORTER'S TRANSCRIPT OF MOTION PROCEEDINGS

Riverside, California

Monday, March 31, 2025

9:05 a.m.

PHYLLIS A. PRESTON, CSR, FCRR  
Federal Official Court Reporter  
United States District Court  
3470 Twelfth Street  
Riverside, California 92501  
stenojag@aol.com

1 APPEARANCES:

2  
3 For the Plaintiffs:

4 NATIONAL IMMIGRATION PROJECT  
5 BY: **STEPHANIE ALVAREZ-JONES**  
6 1763 Columbia Road NW, Suite 175,  
7 No. 896645  
8 Washington, DC 20009

9 ARNOLD & PORTER KAYE SCHOLER LLP  
10 BY: **DANIEL SHIMELL**  
11 777 South Figueroa Street, 44th Floor  
12 Los Angeles, California 90017-584

13 For the Defendants:

14 U.S. DEPARTMENT OF JUSTICE  
15 BY: **ALANNA DUONG**  
16 P.O. Box 848, Ben Franklin Station  
17 Washington, DC 20044

18 UNITED STATES ATTORNEYS OFFICE  
19 BY: **CHRISTINA MARQUEZ**  
20 **MATTHEW SMOCK**  
21 300 North Los Angeles Street, Suite 7516  
22 Los Angeles, California 90012  
23  
24  
25

1 MONDAY, MARCH 31, 2025; RIVERSIDE, CALIFORNIA

2 -o0o-

3 THE CLERK: This is Item No. 1, Case No. CV 20-9893,  
4 Immigration -- excuse me -- Immigrant Defenders Law Center, et  
5 al., v. Kristi Noem, et al.

09:05

6 Counsel, please state your appearances.

7 MS. ALVAREZ-JONES: Good morning. Stephanie  
8 Alvarez-Jones for the plaintiff Immigrant Defenders Law Center  
9 or Immdef --

10 THE COURT: Good morning.

09:05

11 MS. ALVAREZ-JONES: -- from the National Immigration  
12 Project.

13 THE COURT: Good morning.

14 MR. SHIMELL: Good morning, Your Honor. Daniel  
15 Shimmel from the law firm of Arnold & Porter also on behalf of  
16 plaintiffs.

09:06

17 THE COURT: Good morning.

18 MR. SMOCK: Good morning, Your Honor. Assistant  
19 United States Attorney Matthew Smock for defendants.

20 THE COURT: Good morning.

09:06

21 MS. MARQUEZ: Good morning, Your Honor. Christina  
22 Marquez on behalf of the defendants.

23 THE COURT: Good morning.

24 MS. DUONG: Good morning, Your Honor. Alanna Duong  
25 for the defendants.

09:06

1 THE COURT: Good morning. Very well. So the matter  
2 is on calendar on an ex parte application filed by the  
3 plaintiff seeking stay of the reimplementation of the Migrant  
4 Protocols, what's normally been referred to as MPP 1.0,  
5 originally instituted and implemented in 2019. The Court has  
6 previously certified a class and three subclasses in this  
7 matter and has made some rulings which would be relevant to the  
8 issues of today.

09:06

9 On January 21st, 2025, the current administration  
10 announced its intent to reimplement MPP policy and what they  
11 described as a brief statement, which is sort of what I want to  
12 talk about a little bit. The quote is: "The situation at the  
13 border has changed and the facts on the ground are favorable to  
14 resuming implementation of the 2019 MPP policy."

09:07

15 So it may or may not be relevant to the issues in  
16 this motion, but does the government have any idea what those  
17 circumstances are that have changed? And I know that the  
18 policy was implemented -- suspended because of Mexico's, I  
19 guess, not allowing the return of certain immigrants to its  
20 territory pending the resolution of the asylum applications.  
21 Are those the facts that have changed?

09:07

09:07

22 MS. DUONG: Your Honor, the government -- my client  
23 has not represented what, the situation on the ground, has  
24 changed so that they re -- are reimplementing MPP, Your Honor.

25 THE COURT: So is it clear that you don't know what

09:08

1 those facts are that have changed that allowed for the  
2 reimplementations of this policy?

3 MS. DUONG: Yes, Your Honor. We do not know. The  
4 government has not -- the clients have not provided the  
5 government that information, Your Honor.

09:08

6 THE COURT: And do you agree that implicit in that  
7 statement is that but for those changes and the favorable  
8 conditions on the ground the policy would not be reimplemented?

9 MS. DUONG: Your Honor, I can't answer that question.  
10 Our clients' decision whether to implement MPP was based on  
11 situations that have changed on the ground. And what those  
12 factors are, I'm not going to opine on them. I don't have that  
13 information so I will not opine on them, Your Honor.

09:08

14 THE COURT: But certainly those were the basis for  
15 reimplementing the policy. Well, two things, change in  
16 circumstances and the favorable conditions on the ground. So  
17 implicit in that sentence is that but for those two new changes  
18 the policy would not be reimplemented.

09:08

19 MS. DUONG: Yes, Your Honor, that was provided in the  
20 explanation that DHS provided to reimplement MPP.

09:09

21 THE COURT: Yet we have no information as to what  
22 those two things are; the changed circumstances or the  
23 favorable conditions on the ground.

24 MS. DUONG: The government currently does not have  
25 that information, Your Honor. But for purposes of the motion

09:09



1 for stay that's before this Court, it was not something that we  
2 have, Your Honor. We don't bear the burden for the emergency  
3 stay motion.

4 THE COURT: Right. I understand your position.

5 Okay. So moving on then, there are several issues 09:09  
6 that are brought up in this motion. The motion -- the ex parte  
7 application is made under Section 705 which governs the stay.  
8 It's basic function is to preserve the status of rights that  
9 are currently there pending resolution or the conclusion of the  
10 review proceedings, and the factors to be considered 09:10  
11 substantially overlap with the *Winter* factors for a preliminary  
12 injunction. So in opposition to the request to stay, the  
13 government raises several procedural issues and several  
14 substantive issues. So we'll just take those in turn.

15 The first argument that the government makes is the 09:10  
16 -- whatever the reimplementation of the 2019 MPP policy is or  
17 is based on, it does not affect the rights of any member of the  
18 class or the three subclasses which have been certified by this  
19 Court. So what is your response to that argument?

20 MS. ALVAREZ-JONES: Good morning, Your Honor. And 09:10  
21 just to note, I will be addressing the procedural issues and my  
22 co-counsel will --

23 THE COURT: Very well. Can you do so at the lectern,  
24 please.

25 MS. ALVAREZ-JONES: Of course. So I think, Your 09:10

1 Honor, the easy answer to that question is that the motion is  
2 brought on behalf of the one organizational plaintiff,  
3 Immigrant Defenders Law Center. As is explained in our papers,  
4 the harm is to ImmDef. The harm alleges to Immdef in their  
5 ability to be able to effectively do their mission, which is to 09:11  
6 provide universal representation or attempt to provide  
7 universal representation to noncitizens in removal proceedings  
8 in and around Southern California.

9 THE COURT: So your response is because the rights of  
10 the organization and not the plaintiffs are what's at stake in 09:11  
11 seeking the stay, that that's still a proper basis upon which  
12 to grant the stay, correct?

13 MS. ALVAREZ-JONES: That's right, Your Honor.

14 THE COURT: So, I mean, I understand the argument and  
15 legally it makes a lot of sense, but isn't it a little bit at 09:11  
16 the tail wagging the dog where none of the people whose rights  
17 would be directly affected by the implementation of the policy  
18 are seeking relief and only the organization is?

19 MS. ALVAREZ-JONES: Well, Your Honor, the individual  
20 plaintiffs in this matter and the certified class is, you know, 09:12  
21 defined as individuals who were subjected to the initial  
22 version of MPP, the 2019 version.

23 THE COURT: Right.

24 MS. ALVAREZ-JONES: But organizational plaintiff  
25 ImmDef here is the one that has alleged harm; that would be 09:12

1 harmed in their ability to do -- to do their services. And so,  
2 of course, right? We would -- we would assert that any  
3 implementation of the 2019 protocol will harm individual  
4 noncitizens who are placed into the protocols. But for the  
5 purposes of the motion, it is sufficient for the organizational  
6 plaintiff ImmDef.

09:12

7 THE COURT: So as to the people that are members of  
8 the class and the subclasses, your position is that they would  
9 not be affected at all; their rights would not be impacted at  
10 all by a reimplementations of the 2019 policy?

09:12

11 MS. ALVAREZ-JONES: I think that would be a question  
12 for the government, Your Honor, because it is -- I suppose it  
13 could be possible that an individual in the class could again  
14 be placed in -- in the protocols, but that would be subject to  
15 how -- you know, that -- so I guess technically the answer is  
16 yes, right? An individual in the class who is outside of the  
17 United States could again, you know, approach the border, and  
18 seek asylum, and be placed in these new -- in the  
19 reimplementations of the protocols.

09:13

20 THE COURT: So do you still have clients which are  
21 members of either of the class or the three subclasses which  
22 remain outside of the United States seeking asylum  
23 applications?

09:13

24 MS. ALVAREZ-JONES: Yes, Your Honor. Chepo Doe  
25 remains in hiding in Isabela.

09:13

1 THE COURT: And that's one of the 12 named  
2 plaintiffs?

3 MS. ALVAREZ-JONES: Yes, Your Honor.

4 THE COURT: Any others that you can think of at this  
5 time?

09:14

6 MS. ALVAREZ-JONES: No, Your Honor.

7 THE COURT: So isn't it true that if the policy -- so  
8 at this point, why isn't he in the United States seeking his  
9 asylum application? Has that order been denied?

10 MS. ALVAREZ-JONES: He has not been able to enter the  
11 United States, Your Honor. He did apply for parole and that  
12 was denied.

09:14

13 THE COURT: I see. But he didn't enter and then was  
14 removed?

15 MS. ALVAREZ-JONES: No, Your Honor, no. So he was in  
16 --

09:14

17 THE COURT: He never entered?

18 MS. ALVAREZ-JONES: That's -- I mean, yes, he entered  
19 for the purposes of the "Remain in Mexico" protocols, and so he  
20 was in removal proceedings in San Diego but received an in  
21 absentia removal order when he had to return to home country to  
22 get medical care for his daughter.

09:14

23 THE COURT: I see. So as far as you know at this  
24 point, there's just one of the named 12 plaintiffs that would  
25 be potentially affected by the reimplementations of the policy.

09:14

1 Are all the other, the 11 named plaintiffs, are they currently  
2 within the United States?

3 MS. ALVAREZ-JONES: So at this point, Your Honor, one  
4 plaintiff has been dismissed, so we are working with 11 named  
5 plaintiffs.

09:15

6 THE COURT: Right. Okay.

7 MS. ALVAREZ-JONES: And so of those 10 are in the  
8 United States, yes.

9 THE COURT: I see. And if this policy is  
10 reimplemented, wouldn't it be possible that those 10 named  
11 plaintiffs would then have to be removed to Mexico or  
12 elsewhere?

09:15

13 MS. ALVAREZ-JONES: It is. It is possible. There  
14 removal I don't think would be under the -- done under the  
15 protocols. It could be done under something else.

09:15

16 THE COURT: Why couldn't it be done under the  
17 protocol?

18 MS. ALVAREZ-JONES: Your Honor, because my -- well,  
19 the implementation -- the 2019 protocols, which is the version  
20 that we're operating under again, operated to place individuals  
21 who either presented at a port of entry or who were apprehended  
22 shortly after crossing into the -- into the protocols again.  
23 And so I suppose it's possible that they could be reenrolled  
24 into the "Remain in Mexico" protocols, but at least as how it  
25 was originally implemented. It would seem unlikely, but again,

09:15

09:16

1 that's information that the government would have.

2 THE COURT: Is there -- you know, I've read a lot  
3 about the Texas procedures. Is that litigation still pending?

4 MS. ALVAREZ-JONES: It has been administratively  
5 closed, Your Honor. I believe the last filing was in late 09:16  
6 January where the parties filed a like joint motion or joint  
7 status update which calls into question, you know, the true  
8 controversy of the case at this point because they were both --  
9 the Court found that they both would not be injured because  
10 they asserted that MPP would have been -- would be in place. 09:16

11 THE COURT: It was the government driving that  
12 litigation in that case, correct?

13 MS. ALVAREZ-JONES: The plaintiffs are Texas in that  
14 case and Missouri, I believe, Your Honor.

15 THE COURT: All right. So what is your -- what is 09:16  
16 your response to that? She -- counsel has basically asserted  
17 that the organization has standing and; therefore, this motion  
18 -- this application is sort of proper to be decided even if the  
19 members of the subclasses and the class are not?

20 MS. DUONG: Your Honor, if I can address a few other 09:17  
21 things. Our position is the organization does not have  
22 standing. Immigrant Defenders does not have standing under  
23 *Hippocratic Medicine*, and I will be more than happy to discuss  
24 that with the Court.

25 For some of the other things that the Court and 09:17

1 petitioner and counsel spoke about, individuals who are --  
2 would be returned to -- individuals who were previously subject  
3 to MPP under the prior version, the class, June 1st, 2021,  
4 those individuals would not be subject to the new version of  
5 MPP because MPP is based on 1225(b) (2) (c), which is the  
6 continuous return territory for individuals in removal  
7 proceedings.

09:17

8 If an individual is already in removal proceedings  
9 and then they have their removal order reinstated, they would  
10 not be in removal proceedings, Your Honor. They would be in  
11 like withholding of -- withholding only proceedings. And so  
12 there is a distinction there that does make a difference in  
13 this case. For the --

09:18

14 THE COURT: So the bottom line that you are saying is  
15 that it is very unlikely that any member of the class or  
16 subclasses would be affected by the reimplementation of the  
17 policy?

09:18

18 MS. DUONG: Yes, Your Honor. One is because the  
19 subclass -- the classes and the subclass are defined by  
20 individuals subject to MPP prior to June 1st, 2021.

09:18

21 THE COURT: Right.

22 MS. DUONG: And the current version of MPP was  
23 implemented in January 2025.

24 THE COURT: Right.

25 MS. DUONG: Right now we don't -- one of our

09:18

1 positions is ImmDef has not defined any client or individual  
2 who is subject to the current version of MPP, and that's one of  
3 the reasons why we believe that ImmDef does not have standing.  
4 That fact goes to several of our defenses.

5 THE COURT: So the question whether somebody is -- an 09:18  
6 individual is affected, does that answer the question whether  
7 an individual would be affected if the policy is reimplemented?  
8 You're saying that even if it's reimplemented, it's unlikely  
9 that any member of any class or subclass would be affected?

10 MS. DUONG: Not any class or any subclass, Your 09:19  
11 Honor, just the classes that are defined in this case.

12 THE COURT: Right.

13 MS. DUONG: Because they are defined --

14 THE COURT: That's what I'm referring to.

15 MS. DUONG: Yes, because the classes that are defined 09:19  
16 in this case are individuals subject to MPP prior to June 2021,  
17 and MPP is for individuals in removal proceedings. We know  
18 that there's one individual who has an in absentia removal  
19 order who is in El Salvador. My understanding is, I believe  
20 the others, but one class member, is in DHS detention. So he 09:19  
21 is in the United States, and the others have all been humanitar  
22 -- have received parole into the United States.

23 THE COURT: I see.

24 MS. DUONG: And so that's why our position is there  
25 is no -- there has been no class member -- there has been no 09:19



1 identification of an individual who would be -- who is subject  
2 to the current version of MPP, Your Honor.

3 THE COURT: I understand. Okay. So go ahead and  
4 speak about the -- sort of your arguments that some Supreme  
5 Court precedent, especially *Hippocratic Medicine*, does not  
6 allow for the standing of the plaintiff in this case.

7 MS. DUONG: Yes, Your Honor. Our position is  
8 *Hippocratic Medicine* controls this case. It is -- the Supreme  
9 Court clarified in that case that to establish standing the  
10 organization has to show that our government action, MPP,  
11 directly affected the organization's preexisting core  
12 activities and that it is apart from -- that effect is apart  
13 from their response to the government action.

14 The situation here is we have -- yes, we have a 2019  
15 policy, but we have claims of injuries based on 2021 when the  
16 second complaint was filed. Here we're in 2025 with this new  
17 implementation of MPP. When you look at the declarations, the  
18 two declarations that are provided in the -- with the motion,  
19 Your Honor, you see claims of past harm and then the  
20 allegations of future harm, future injury is: We will do this;  
21 we will we do that; we plan to do that; but there's not other  
22 incidents -- no other evidence indicating that, no other  
23 allegations or evidence indicating that under this current  
24 version of MPP that was reinstated in January 2025, that  
25 plaintiffs have suffered injury to their core activities.

09:20

09:20

09:20

09:21

09:21

1 THE COURT: So you're saying that even though the  
2 declarations talk about these expanded costs and services and  
3 travel that Immigrant Defenders had to sort of take on because  
4 of the removed people, that because no member of the class or  
5 subclasses, as defined in this case, would be subject to the 09:21  
6 renewed policy that it doesn't go to their core business  
7 services?

8 MS. DUONG: No, Your Honor. It's two -- we're making  
9 two separate -- the government is making two separate points.  
10 One of which is plaintiff ImmDef has not identified any 09:22  
11 individuals subject to the current version of MPP.

12 THE COURT: Right.

13 MS. DUONG: Our second argument is the previous -- we  
14 recognize the Court's previous ruling on standing.

15 THE COURT: Right. 09:22

16 MS. DUONG: But since the Court's ruling there has  
17 been *Hippocratic Medicine*. And *Hippocratic Medicine* is talking  
18 about you can't divert -- an organization cannot divert  
19 resources, cannot spend its way into standing, and a broad  
20 mission statement is insufficient even under *Havens Realty* to 09:22  
21 establish standing. And here --

22 THE COURT: So *Hippocratic Medicine* spoke about sort  
23 of core business services.

24 MS. DUONG: Yes.

25 THE COURT: You're trying to define that further by 09:22

1 saying preexisting core business activities. Does *Hippocratic*  
2 *Medicine* say "preexisting"?

3 MS. DUONG: My understanding is it does, Your Honor.  
4 Unless I'm --

5 THE COURT: Because, I mean, we get down to the 09:23  
6 definition of what core business activities are, right? So the  
7 Immigrant Defenders are going to define their core business  
8 activities as representing people in need of immigration help  
9 and asylum and other proceedings. If that definition is  
10 adopted, then they're obviously within the affected zone of 09:23  
11 their core business activities regardless whether they're  
12 engaged in that yet because there hasn't been the opportunity  
13 to do so.

14 MS. DUONG: Your Honor, we do disagree with that  
15 because their core -- like they've said in their filings, that 09:23  
16 their core work is to represent noncitizens in removal  
17 proceedings with the goal of providing universal  
18 representation. That is their broad mission statement. That's  
19 broad, Your Honor. If this Court or any court finds that that  
20 mission statement is sufficient to establish standing then any 09:24  
21 organization that is in any way affected or had its goals  
22 frustrated by a government action could have standing, Your  
23 Honor.

24 There's no limiting principle here. And so that's --  
25 in *Hippocratic Medicine* the court -- the Supreme Court looked 09:24

1 at, well, what else is the -- it's not just the core mission  
2 activity. It's whether that core mission activity has been  
3 directly affected by the government action. And here it  
4 hasn't, Your Honor.

5 What happened was, as for the declarations provided,  
6 everything that petitioners did, including expanding their  
7 geographical reach to San Diego, hiring staff for San Diego and  
8 then acquiring a permanent office, all of that was in response  
9 to MPP. Prior to MPP they -- their concentration was, yes,  
10 representing individuals in removal proceedings, but it was in  
11 the greater Los Angeles area. They were -- in response to MPP,  
12 they took these actions, and that under *Hippocratic Medicine*  
13 does not show that their preexisting core activities were  
14 affected by government action, Your Honor.

15 THE COURT: Well, wouldn't it be the case that the  
16 fact that they were -- they would say, I suppose, that they  
17 were forced to open offices near the border to access the  
18 clients which they previously had which previously resided in  
19 the Central District of California.

20 MS. DUONG: Well, Your Honor, I think there's -- the  
21 hypothetical contains a lot of change, Your Honor, where we  
22 don't know those individuals coming into the United States, if  
23 they weren't subject to MPP, we don't know whether they would  
24 have gone to the Los Angeles area. We know that when  
25 individuals come into port of entries they go everywhere within

1 the United States. And so to say that because -- to say that  
2 they lost a client because these individuals came through the  
3 southern border, I don't think is -- I think it's speculative,  
4 Your Honor, and I don't think that's enough for petitioner to  
5 establish their standing.

09:25

6 THE COURT: All right. Well, that's a good point.  
7 Let me hear from plaintiffs' counsel on that. So the argument  
8 is that, you know, your core business activities have to do  
9 with representing people in sort of removal proceedings, not  
10 necessarily asylum seekers, and not necessarily people that  
11 were or will be subject to the MPP protocols.

09:26

12 MS. ALVAREZ-JONES: That's right, Your Honor. I  
13 think -- you know, I think that *Hippocratic Medicine* certainly  
14 cabined the reach of *Havens*, but ImmDef is within the context  
15 that -- of *Havens* that the Supreme Court still upheld in  
16 *Hippocratic Medicine*. What *Hippocratic Medicine* was really  
17 targeting was organizations, plaintiffs in those cases that  
18 were spending on advocacy to oppose the, you know, the  
19 challenged action in that case.

09:26

20 And here, as is *Havens*, ImmDef is not an advocacy  
21 only, right? As Your Honor was saying, their mission is to  
22 represent noncitizens in and around Southern California. By  
23 the fact of some of those individuals now being stuck in  
24 Mexico, those were then clients that they had to, you know,  
25 undertake additional steps to now reach, right? They had to

09:26

09:27

1 then find private meeting spaces in Mexico, risk, you know,  
2 personal harm traveling to and from, establish an office, hire  
3 more staff. And it's not because this was a new -- this isn't  
4 a new, you know process, Your Honor. To the extent that  
5 preexisting is here -- and I'm also not seeing it in 09:27  
6 *Hippocratic Medicine*, though I can sit back for a minute and  
7 see if I see it there. But in terms of preexisting, it was  
8 preexisting because the mission was and the work is to  
9 represent noncitizens in removal proceedings and they were  
10 continuing to do so on -- upon the implementation of MPP in 09:28  
11 2019.

12 And I think just to go back to some of the earlier  
13 points, Your Honor. Yes, the declarations do talk about past  
14 harms, but they're illustrative to the exact same kind of harms  
15 that ImmDef is going to experience once MPP is again 09:28  
16 reimplemented. All we have to go off from the government,  
17 their own statements, is that what was in 2019 exists again.  
18 Even the operational guidance from 2019 is what the government  
19 has said is currently operational, and so there's no reason to  
20 believe that anything will be different. And so the harms are 09:28  
21 very illustrative of what happened in 2019 and 2020. Those  
22 harms are going to be the same harms that ImmDef experiences  
23 again as it seeks to represent existing clients and future  
24 potential clients.

25 THE COURT: So is it your position that your standing 09:28

1 argument relies on the representation of both existing and  
2 future or just future?

3 MS. ALVAREZ-JONES: At this moment it would be  
4 future, Your Honor, because there's -- at the moment, there is  
5 no individual that ImmDef is aware of in MPP.

09:29

6 THE COURT: So the argument would be the same as if  
7 we were back, you know, three years ago, right? That you are  
8 in the position where your services and the access to the  
9 clients that you may have, if this policy is reimplemented,  
10 would be the lack of access to that and you would be carrying  
11 on the same work as you did before in which you establish  
12 standing.

09:29

13 MS. ALVAREZ-JONES: Exactly, Your Honor. Exactly.  
14 And, you know, again, ImmDef is not an exclusively advocacy  
15 organization. It's not spending money here to fight MPP. It's  
16 spending money and expending resources to continue representing  
17 clients.

09:29

18 THE COURT: Okay.

19 MS. ALVAREZ-JONES: I did want to clarify one quick  
20 point that we were about the class. Opposing counsel is  
21 correct, right? That generally individuals who have removal  
22 orders were not placed in -- not enrolled in MPP and so that  
23 would take out the in absentia subclass and the final order  
24 subclass who do have final orders of removal. But the  
25 terminated subclass, those individuals did not have removal

09:30

09:30

1 orders and so there is a role in which an individual was --  
2 received their -- their case was terminated. They did not have  
3 a removal order and so they could be reenrolled into MPP.

4 THE COURT: Okay. I understand. There's also  
5 arguments regarding zone of interest and ripeness. You want to  
6 address those? 09:30

7 MS. DUONG: Yes, Your Honor. We -- for the zone of  
8 interest, Your Honor, we do. This is outside of the zone of  
9 interest because, as Your Honor touched on, the claims that  
10 petitioners are basing -- Immigrant Defenders are basing their 09:31  
11 claims on are INA statutory provisions, Your Honor. And so  
12 that is -- that is rights that are provided by noncitizens and  
13 it is -- that is -- that because it's outside of those statutes  
14 that's why our position is that Immigrant Defenders is not  
15 within the zone of interest of those statutes. 09:31

16 And then --

17 THE COURT: I don't know if I understand that  
18 argument. Can you repeat that for me.

19 MS. DUONG: Yes, Your Honor. Because -- because the  
20 -- because the statutes that are the basis of petitioners -- 09:31  
21 because the statutes that are the basis of the petitioners'  
22 claims are the statutory provisions under the INA, the APA does  
23 not -- one, the APA does not provide a cause of actions for  
24 those -- those rights because they belong to the noncitizen and  
25 not to petitioner. And then also our position is 1252(a)(5) 09:32



1 and (b) (9) bars the --

2 THE COURT: Right, because the Court lacks  
3 jurisdiction to entertain any decision related to removal  
4 proceedings.

5 MS. DUONG: Yes. So our zone of interests arguments  
6 are all intertwined in that argument, Your Honor. We can move  
7 to that if --

8 THE COURT: Go ahead.

9 MS. DUONG: And then for our ripeness argument our  
10 position is, Your Honor, this action is not ripe for review and  
11 this is -- we are in 2025 and this Court's -- this Court's  
12 adjudication of this emergency stay motion for the  
13 reimplementing of MPP should be based on the record -- the  
14 situation now from January to now, and it's been -- it's been  
15 two months, Your Honor, that MPP has been restarted and  
16 petitioners have not updated their -- the Court with additional  
17 like actual injuries because of the restart of MPP though.

18 THE COURT: Right. So I would sort of normally agree  
19 with you, but the difference is that here we have a history in  
20 which the same policy I found led to harms which could be  
21 addressed and that the institutional plaintiffs have standing  
22 to address those harms. If the policy, the same exact policy  
23 including the guidances are going to be reimplemented, why  
24 shouldn't I find that it would likely be the same thing as it  
25 was back in 2019?

09:32

09:32

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09:33

09:33

1 MS. DUONG: Because we're not in 2019, Your Honor.  
2 We're not in 2021 either. We're in 2025 and that's what we  
3 have --

4 THE COURT: What would be the difference --

5 MS. DUONG: The difference --

09:33

6 THE COURT: -- if the same policy is going to be  
7 reimplemented?

8 MS. DUONG: The same policy will be reimplemented,  
9 Your Honor, but now we're in 2025 and the situation is  
10 different. Whether and how DHS implements MPP will not -- we  
11 don't know whether it will be the same.

09:33

12 THE COURT: If the guidance is going to be the same,  
13 why shouldn't I assume that the result is going to be the same?  
14 The policy is the same, the guidance is the same, why wouldn't  
15 I assume that the result is going to be the same?

09:33

16 MS. DUONG: Because, Your Honor, there is -- well,  
17 one is petitioner has not identified -- in the two months that  
18 MPP has been reinstated, petitioner has not identified the harm  
19 that they claim that they will experience, would experience,  
20 and they have not identified an individual. So to say that  
21 this situation is the same as the past, it's not because we  
22 don't have those facts indicating that it is the same even  
23 though it's been in place for two months, Your Honor.

09:34

24 We know that before when MPP was reimplemented that  
25 petitioners indicated in response to MPP they -- even be -- I

09:34

1 believe it was in 2019 when it was announced, ImmDef indicated  
2 that it was -- it had taken action; it would take action; and  
3 it did. But here we don't have that, Your Honor. In the two  
4 months that MPP has been in place, it's not the same though.  
5 That's -- we don't have any alleged -- we don't have any harm 09:34  
6 based on it. We don't have any citizens subject to it, that's  
7 the thing.

8 THE COURT: To your knowledge, have -- insofar as  
9 that 2019 has been reimplemented for two months now, you say,  
10 what has been -- has anybody been removed in the same way that 09:35  
11 they were back in 2019 to a contiguous country pending the  
12 petition for asylum?

13 MS. DUONG: I don't know whether -- I don't know the  
14 numbers, Your Honor. I don't know whether anyone has been  
15 removed, I don't. I do know that MPP has been used on a 09:35  
16 limited basis because DHS -- due to DHS using other  
17 authorities, Your Honor.

18 THE COURT: Due to what?

19 MS. DUONG: Due to DHS using other authorities, Your  
20 Honor. 09:35

21 THE COURT: I see. And do you know whether or not  
22 Mexico has re-agreed to have the asylum seekers be housed in  
23 their territory?

24 MS. DUONG: I do not know that information, Your  
25 Honor. 09:35

1 THE COURT: Let me hear from counsel. How do you  
2 address that? So their seems to be, as far as the government  
3 knows, no harm as a result of the reimplementation of the  
4 policy yet. So on what basis would I find that there is  
5 irreparable harm if I don't grant the stay?

09:36

6 MS. ALVAREZ-JONES: Your Honor, we're operating off  
7 of the information the government has. And in 20 -- sorry,  
8 January 21st they announced the immediate reimplementation of  
9 MPP and so that's -- under that basis ImmDef moved for the 705  
10 stay. Now to the extent it has not yet fully been  
11 reimplemented, operationalized, you know, it's something that  
12 ImmDef has been looking out for but it has not yet seen. And  
13 so in this posture, it's this threat of imminent harm because  
14 at any moment, right? The 2019 protocols are live, in effect.  
15 They just have not been -- and no one has been enrolled in them  
16 yet -- or, I guess, a couple of people. But at any moment that  
17 harm will materialize for ImmDef.

09:36

09:36

18 THE COURT: What efforts have you made, if any, to  
19 ascertain whether people have been enrolled as part of the  
20 reimplementation of the policy?

09:37

21 MS. ALVAREZ-JONES: So ImmDef received information I  
22 believe in early March that there was going to be a docket of  
23 individuals enrolled in MPP at the San Diego Immigration Court.  
24 I believe it was March 11th. ImmDef staff went to San Diego  
25 Immigration Court on March 11th, but there were no MPP cases.

09:37

1 I believe the information that they received was that the NTAs  
2 and notices to appear that the immigration charging documents  
3 were never filed. So that's the latest information that we  
4 have. But, Your Honor, I think, again, the posture here is  
5 defendants say that it is operational, and so at any moment  
6 ImmDef is going to be harmed by the fact that it is going to  
7 lose access to clients and it's going to lose access to future  
8 clients.

09:37

9 THE COURT: So I guess that dovetails nicely to the  
10 subject of arguments for counsel. So can you address the  
11 standards for the granting of the stay which are similar to the  
12 ones if not identical to the ones in the preliminary  
13 injunction. Obviously here irreparable harm is the contested  
14 issue, so can you address that more fully.

09:38

15 MR. SHIMELL: Certainly, Your Honor. And to the  
16 first point, yes, there does need to be irreparable harm as  
17 well as a showing of likelihood of prevailing on the merits as  
18 well as a balancing of equities. Our position, as it will  
19 become clear, is that all of those weigh very heavily in  
20 plaintiffs' favor.

09:38

09:38

21 To address the irreparable harm question, as the  
22 Court has already pointed out and as my co-counsel has already  
23 alluded to, we have the same guidance; we have the same policy;  
24 we are going to see the same result; we've seen this movie  
25 before; we know exactly what MPP is going to look like when

09:38

1 it's reimplemented. And the fact that there has potentially  
2 not been anyone harmed by the policy as yet is exactly why  
3 we're here, Your Honor. ImmDef is here today requesting 705  
4 stay to prevent the concrete irreparable injury that we've seen  
5 in the past and that we know we will experience in the future. 09:39

6 So moving to the irreparable harms, I think these can  
7 be sort of divided roughly into four different groups. The  
8 government's focus and what we've talked quite a bit about  
9 already is the financial harm, burdens on the organization to  
10 hire additional staff, to find confidential meeting spaces in 09:39  
11 Mexico, and to purchase international phone plans, other means  
12 of communication.

13 But there are three other components of this. One of  
14 them is opportunity costs. There's also risks to staff. And  
15 finally, I would argue that there is just a core impediment of 09:39  
16 ImmDef's ability to act as counsel. So it's separate and apart  
17 or, rather, layered on top of its core mission of providing  
18 universal representation. Implicit in that is that they have  
19 to be able to act as attorneys. They have to be able to  
20 develop those relationships with their clients. They have to 09:39  
21 be able to interview them, seek witnesses, investigate. And  
22 the barriers that were in place that prevented that from  
23 occurring during the 2019 policy are going to repeat themselves  
24 here, and that's part of the harm that we're trying to -- that  
25 we're trying to prevent by the 705 stay. 09:40

1 THE COURT: So you talk about the four factors. You  
2 talk about opportunity costs. Does that mean that because they  
3 have to devote resources to this they can't do other work? Or  
4 what do you mean by "opportunity costs"?

5 MR. SHIMELL: I think that's right, Your Honor. So 09:40  
6 the overarching goal, as my co-counsel has already pointed out,  
7 is, you know, we're seeking -- ImmDef is seeking to provide  
8 universal representation for everyone or anyone that needs  
9 counsel in an immigration proceeding. So the additional  
10 burdens that are going to be placed on MPP to represent asylum 09:40  
11 seekers in particular or really anyone that's subject to MPP  
12 1.0, that's going to take time away from their ability to  
13 attend hearings on other cases; it's going to take time away  
14 from their ability to be in the office to take phone calls or  
15 to talk to other potential clients that may be in the United 09:40  
16 States on other matters unrelated to MPP.

17 So all of that -- it's -- I don't think that it's  
18 fair to say that there's fungibility in clients. In other  
19 words, ImmDef's mission is to take its clients where and how it  
20 finds them. It's going to do its best and it's going to 09:41  
21 represent these clients that are in MPP 1.0 if it's  
22 reimplemented, but that is going to take away from their  
23 ability to represent other clients that aren't.

24 THE COURT: I have a couple questions about the four  
25 factors you mentioned. One is to the extent that ImmDef has 09:41

1 already expended resources, for example, hired more staff or  
2 opened the satellite office in San Diego; isn't that already in  
3 place and therefore there would be no additional harm if the  
4 policy was reimplemented or has that office been closed?

5 MR. SHIMELL: I believe that office is still open so 09:41  
6 that component of its response to MPP 1.0 would not need to be  
7 redone. But all of the remaining factors that we've already  
8 alluded to, having to cross the border oftentimes in dangerous  
9 conditions, having to take time away from the office, having to  
10 hire additional staff, you know, and in a climate where funding 09:42  
11 is quite frankly rapidly evaporating for these kinds of things  
12 not only from the federal government but from other sources.  
13 All of that is going to have a disparate impact and that's not  
14 going to change even though they do still have their San Diego  
15 office. 09:42

16 THE COURT: The other thought that I had just now and  
17 I don't know the answer to this. Do you foresee any conflict  
18 of interest in providing both direct representation to people  
19 who may not be members of the class and representing a class in  
20 litigating this case? 09:42

21 MR. SHIMELL: That's a good question, Your Honor. I  
22 don't see one at the moment and I certainly don't see one that  
23 couldn't be -- that couldn't be avoided through, you know, a  
24 knowing and intelligent written waiver. I'm not sure that I'm  
25 seeing a conflict of interest, Your Honor, no. 09:43



1 THE COURT: And the fourth factor you mentioned, is  
2 that what you were alluding to or something else? So you said  
3 resources, opportunity costs, the danger of travel by staff,  
4 and the fourth factor was?

5 MR. SHIMELL: Yes, Your Honor. The core ability to 09:43  
6 represent clients. So -- and this is something that we've  
7 alluded to and my co-counsel alluded to earlier, and I believe  
8 it's in the Cargioli declaration as well. Oftentimes under MPP  
9 1.0, if not all the time under MPP 1.0, our clients' attorneys  
10 were given very limited time to meet with their clients 09:43  
11 beforehand. And oftentimes if they didn't have a signed  
12 certificate or a signed notice of appearance, it would be  
13 denied by DHS the ability to even speak with people that are  
14 there and present in the immigration court seeking  
15 representation, but they would be prohibited. ImmDef attorneys 09:43  
16 would be prohibited from speaking with and advising those  
17 folks. So that's part of it.

18 The other part of it is just the fact that you can't  
19 really build a rapport with a client in an hour or less, and  
20 it's certainly hard to do that when there's no immediate 09:44  
21 access. They can't just walk into the office; they can't just  
22 pick up a phone; so the cross-border travel, all of that is  
23 going to impact the ability to actually develop a rapport,  
24 gather relevant information, and present a competent defense.

25 THE COURT: So I understand that. That's in the 09:44

1 details. So presume that those details change and the  
2 conditions under which and the length of those conferences with  
3 counsel are expanded to satisfy your interest and the client's  
4 interest, would that take away from your argument that there is  
5 institutional harm by reimplementation of the policy?

09:44

6 MR. SHIMELL: I think if that were the case then we  
7 would not be dealing with MPP 1.0. We would not be dealing  
8 with the 2019 program. What we have in front of us today, Your  
9 Honor, is a statement by plaintiffs that that exact policy,  
10 that prior policy, the 2019 policy, including the limitation on  
11 access to counsel, including the one-hour meeting time,  
12 including DHS response --

09:44

13 THE COURT: That's part of the guidance, the one-hour  
14 meeting time and the possible presence of ICE agents in the  
15 interview room?

09:45

16 MR. SHIMELL: I believe the one-hour meeting time is  
17 part of the guidance. Supposedly it's a guarantee of at least  
18 an hour, but in practice that's proven to be aspirational and  
19 it's oftentimes been less than that. I'm not aware -- I don't  
20 know offhand if the -- if the presence of ICE agents is part of  
21 that guidance policy or not. I apologize, Your Honor.

09:45

22 THE COURT: That's all right. So let me hear a  
23 response by the government as to those arguments regarding the  
24 presence of potential irreparable harm if or due to the  
25 reimplementation of the policy.

09:45

1 MS. DUONG: Your Honor, the four indications -- the  
2 four identifications of harm, this goes back to standing, Your  
3 Honor. This is -- I mean, petitioners are relying on past  
4 actions, past actions, and this is the same policy, and of  
5 course it's going to be the same, but it's their burden and 09:46  
6 they can't assume that everything will be the same. They  
7 aren't entitled to a presumption that everything will be the  
8 same, Your Honor. And they say it themselves. The opportunity  
9 cost is that they can't do anything else, and that's exactly  
10 what *Hippocratic Medicine* goes into when it talks about 09:46  
11 diversion of resources, Your Honor. They're diverting  
12 resources because of MPP and they can't do that to obtain  
13 standing, Your Honor. Everything else that they've done, San  
14 Diego, the San Diego and hiring of staff, that is all still in  
15 response to MPP, Your Honor, and they can't rely on that. 09:46  
16 They're not entitled to that. That same thing will happen now  
17 in 2025 with the restart of MPP.

18 THE COURT: But their argument would be that it was  
19 in response to MPP because that's the only way that they could  
20 accomplish their core business activities. So it's not a 09:46  
21 diversion of resources. It's a necessary expenditure to  
22 address a new playing field.

23 MS. DUONG: Well, Your Honor, that's -- I think  
24 that's a distinction that doesn't make a difference under  
25 *Hippocratic Medicine*, Your Honor, because what they were doing 09:47

1 before was representing individuals in removal proceedings in  
2 the Los Angeles area, and they expanded their geographical  
3 region, their hiring of the staff to reach the MPP population.  
4 And there was no indication in the record that prior to MPP  
5 they had clients that were in immigration court. I believe one 09:47  
6 of the declarations, and counsel can correct me, one of the  
7 declarations said that prior to MPP, they didn't appear before  
8 the San Diego Immigration Court. What they did was most of  
9 their motion for change of venue were to Los Angeles and most  
10 of them were granted. So they didn't appear in San Diego, Your 09:47  
11 Honor. It was in response to MPP that they started appearing  
12 in the San Diego Immigration Court. It was in response to MPP.

13 THE COURT: Presumably those were the same clients  
14 that would otherwise but for the implementation of the policy  
15 would appear in immigration court in Los Angeles. 09:47

16 MS. DUONG: We don't know that, Your Honor. That's  
17 their burden to show, but we don't know that.

18 THE COURT: Are you saying that there wasn't anybody  
19 subject to the policy that would if -- in the absence of the  
20 policy would appear in immigration court in Los Angeles? 09:48

21 MS. DUONG: We don't know that information, Your  
22 Honor, and that's why -- and that's why their claim of injury  
23 is speculative, Your Honor. We don't have that --

24 THE COURT: We know there is an active immigration  
25 court in Los Angeles. We know that the immigration court 09:48

1 handles asylum cases. We also know that anybody who entered  
2 and was subject to the protocol would then be removed outside  
3 of the district and into another country. And it's probably  
4 likely that if it went to court, the court would not be in LA  
5 but in San Diego. So why wouldn't it be the same persons that  
6 would otherwise represent in LA that now are forced to  
7 represent in San Diego?

09:48

8 MS. DUONG: But we don't know whether that would have  
9 been ImmDef's clients, Your Honor. They haven't identified  
10 that client for the current version of MPP.

09:48

11 THE COURT: For the current version.

12 MS. DUONG: For the current version of MPP. Well,  
13 that goes to our diversion of resources, Your Honor. For the  
14 -- and I believe the other claims about not being able to build  
15 rapport and access to counsel, I mean, at the -- at the end of  
16 the day -- at the end of the day, Your Honor, plaintiffs do not  
17 have -- plaintiffs do not -- ImmDef does not have a First  
18 Amendment right to be able to access their clients or potential  
19 clients at any time at any place that they wish. What happens  
20 is that --

09:49

09:49

21 THE COURT: That's not what they're seeking though.  
22 You understand that. They're seeking reasonable access to  
23 clients, not one-hour limit and confined conditions in which  
24 they can't possibly properly counsel or build a rapport with  
25 their clients. That's what they're saying.

09:49

1 MS. DUONG: But, Your Honor, the only thing that  
2 they're bringing forth is that one-hour limit, Your Honor.  
3 They can still talk to their client and build rapport to your  
4 clients when their client is in Mexico, Your Honor. There is  
5 no limitations for them to be able to access their clients. 09:49

6 THE COURT: Sure there is limitations. They have to  
7 travel to Mexico and expose themselves to further expense and  
8 possible harm.

9 MS. DUONG: But the government did not impose those  
10 limitations, Your Honor. We didn't create those -- we didn't 09:49  
11 create the conditions in Mexico. DHS, under its discretionary  
12 authority, returned these noncitizens to Mexico. After their  
13 return to Mexico the noncitizens can do -- are free to do what  
14 they want. They can leave Mexico. They can go anywhere in  
15 Mexico. They can still talk to their clients. The only thing 09:50  
16 that DHS did was, under its discretionary authority, sent these  
17 noncitizens -- returned these noncitizens to Mexico.

18 THE COURT: I mean, we're going around in circles.  
19 Obviously their argument would be that by doing so, you  
20 improperly interfere with the attorney/client relationship. It 09:50  
21 may be harder for them to be represented outside of the country  
22 than otherwise in the country.

23 MS. DUONG: Well, Your Honor, if --

24 THE COURT: I understand. But I've heard these  
25 arguments before and you know what my position is on those. 09:50

1 MS. DUONG: Yes, Your Honor, we do.

2 THE COURT: Thank you. Anything else by either side?

3 So the only question that remains, if I may -- so  
4 maybe some additional briefing would be helpful to me to  
5 ascertain whether there's any precedent for -- in this context 09:51  
6 where there hasn't been any actual irreparable harm identified  
7 and the circumstances are such that irreparable harm can be  
8 predicted from past implementation of the policy but it's not  
9 an actual harm. Does that make a difference in my  
10 determination on whether or not I should issue the stay? 09:51

11 And going back to the *Hippocratic Medicine* standard,  
12 address the issues involving whether or not the poor business  
13 activities are affected and whether the word "preexisting"  
14 should be attached to the decision in *Hippocratic Medicine* and  
15 how that plays into this case. So if both sides want to 09:51  
16 provide simultaneous briefing on those two issues in a brief of  
17 no more than 12 pages in length, submit it by a week from  
18 today.

19 MS. ALVAREZ-JONES: I'm sorry, a week from today,  
20 Your Honor? 09:52

21 THE COURT: Yeah, that would be appreciated.

22 Very well. I think for today we're done. Thank you  
23 for your presence here and thank you for your arguments.  
24 They've been helpful.

25 MS. DUONG: Thank you, Your Honor. 09:52

MS. ALVAREZ-JONES: Thank you, Your Honor.

(Proceedings concluded.)

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CERTIFICATE OF OFFICIAL REPORTER

I, PHYLLIS A. PRESTON, FEDERAL OFFICIAL REALTIME COURT REPORTER, IN AND FOR THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, DO HEREBY CERTIFY THAT PURSUANT TO SECTION 753, TITLE 28, UNITED STATES CODE THAT THE FOREGOING IS A TRUE AND CORRECT TRANSCRIPT OF THE STENOGRAPHICALLY REPORTED PROCEEDINGS HELD IN THE ABOVE-ENTITLED MATTER AND THAT THE TRANSCRIPT PAGE FORMAT IS IN CONFORMANCE WITH THE REGULATIONS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES.

DATED THIS 3RD DAY OF APRIL, 2025

/s/ PHYLLIS A. PRESTON

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PHYLLIS A. PRESTON, CSR No. 8701, FCRR  
FEDERAL OFFICIAL COURT REPORTER

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