

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

AL OTRO LADO, INC., et al.,
Plaintiffs,
v.
DONALD J. TRUMP, President of the
United States, in his official capacity, et
al.,
Defendants.

Case No.: 3:25-cv-01501-RBM-DDL

**ORDER DISMISSING PLAINTIFFS’
COMPLAINT WITH LEAVE TO
AMEND**

[Docs. 45, 57]

Individual Plaintiffs Maria Doe, Jessica Doe, Fernando Doe, Ali Doe, Eduardo Doe, Jean Doe, Rous Doe, Diana Doe, Anahi Doe, and Dragon Doe (“Individual Plaintiffs”) and Plaintiffs Al Otro Lado, Inc. and Haitian Bridge Alliance (“Organizational Plaintiffs”) (“collectively “Plaintiffs”) brought this class action to challenge Proclamation No. 10888, 90 Fed. Reg. 8333 (Jan. 20, 2025) (“Proclamation”) that Plaintiffs allege prevents noncitizens from accessing the U.S. asylum process provided for in 8 U.S.C. § 1158(a)(1), at ports of entry (“POE”) along the U.S.-Mexico border. (Compl. [Doc. 1] ¶¶ 2, 5–6, 8–14.¹) The action also challenges the January 20, 2025 cancellation of all pending CBP One

¹ The Court cites the paragraph numbers of the Complaint and the CM/ECF electronic pagination for all other cites to the record.

1 appointments and disabling of the scheduling function in the mobile application that
2 provided the only avenue for most noncitizens to seek asylum at a POE on the U.S.-Mexico
3 border. (*Id.* ¶¶ 3, 6–7, 13–14.)

4 Defendants filed a Motion to Dismiss. (Doc. 45.) Plaintiffs filed an Opposition.
5 (Doc. 54.²) Defendants filed a Reply. (Doc. 60.) When the United States Supreme Court
6 issued its decision in *Mullin v. Al Otro Lado*, 609 U.S. ___, 146 S. Ct. 2079 (2026) (“*Al*
7 *Otro Lado I*”) on June 25, 2026, the Court ordered the parties to file supplemental briefing
8 addressing its impact on this case. (Doc. 69.) Defendants’ Supplemental Brief was filed
9 on July 28, 2026 (Doc. 72) and Plaintiff’s Supplemental Brief was filed on August 28, 2026
10 (Doc. 75).

11 I. BACKGROUND

12 A. Allegations of the Complaint

13 The Complaint alleges that on January 20, 2025, Defendants cancelled
14 approximately 30,000 CBP One appointments including some for Individual Plaintiffs to
15 present themselves at a POE to access the U.S. asylum process and issued the Proclamation
16 suspending access to asylum at the U.S.-Mexico border in violation of 8 U.S.C.
17 § 1158(a)(1). (Compl. ¶¶ 1–4, 6–13, 16, 88, 94.)

18 The Complaint asserts that because CBP One was the only way to access the asylum
19 process at the U.S.-Mexico border from May 2023 through January 20, 2025 noncitizens
20 relied on access through it as they waited in Mexico for their appointment or tried to get an
21 appointment. (*Id.* ¶¶ 3–5, 12, 83, 94, 203, 206.) The January 20, 2025 cancellations and
22 disabling of the scheduling functionality of CBP One eliminated the only way for those
23 seeking asylum at the U.S.-Mexico border to access the asylum process. (*Id.* ¶¶ 70–80, 88,
24 90–95.)

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27 ² The Court **GRANTS** the Consent Motion of Constitutional Accountability Center for
28 Leave to File Amicus Curiae Brief in Support of Plaintiff’s Opposition to the Motion to Dismiss. (Doc. 57.)

1 The Proclamation followed the same day. (*Id.* ¶¶ 96–102.) It states that until the
2 President “issue[s] a finding that the invasion at the southern border has ceased,” the “entry
3 into the United States of such aliens, [i.e. ‘aliens engaged in the invasion across the
4 southern border’] be suspended.” 90 Fed. Reg. 8335 (Jan. 20, 2025). It also precludes
5 those without “sufficient medical information and reliable criminal history and background
6 information” entry into the United States and restricts their access to asylum. *Id.* A
7 February 28, 2025 implementation memorandum from the CBP Office of Field Operations
8 (“OFO Implementation”) that followed indicates that “[a]liens subject to the Proclamation
9 shall not be permitted to cross the international border.” (Doc. 1-2 at 5; Compl. ¶¶ 103–
10 106.)³ The OFO explicitly states that “[a]n undocumented alien who claims or manifests
11 a fear at the international border line to CBP personnel is not excepted from the
12 Proclamation[’s]” suspension of entry. (Doc. 1-2 at 5.) Plaintiffs allege that the
13 cancellation of all CBP One appointments, the Proclamation, and the OFO Implementation
14 (collectively referred to as the “Asylum Shutdown Policy”) has effectively shut down
15 asylum access at the U.S.-Mexico border in violation of § 1158. (Compl. ¶ 11
16 (“restrict[ing] noncitizens who fail to provide the aforementioned medical, criminal, and
17 background information from invoking the provisions of the Immigration and Nationality
18 (“INA”) that would permit their continued presence in the United States—including 8
19 U.S.C. § 1158”); ¶ 13 (asserting Defendants’ “have a statutory obligation to provide access
20 to the U.S. asylum process”).)

21 Plaintiffs assert that the cancellation of all CBP One appointments, the lack of any
22 other means to access the asylum process, and the prohibition on any noncitizen being
23 permitted to physically enter the United States from Mexico, including those seeking
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26 ³ The previous bullet point of the Memorandum defined those not subject to the
27 Proclamation as “U.S. citizens (USCs) and Lawful Permanent Residents (LPRs);
28 Unaccompanied alien children (UAC); and Aliens with valid entry documents or
authorizations (e.g. visa, ESTA, or who otherwise provide sufficient medical information
or reliable criminal history information).” (Doc. 1-2 at 5.)

1 asylum based on fear, has resulted in the denial of access to the asylum process provided
2 by law in 8 U.S.C. § 1158(a)(1). (*Id.* ¶¶ 1–2, 11–14 (introduction); *id.* ¶¶ 45–47, 51–52,
3 54–55 (asylum statutory protections); *id.* ¶¶ 56–58, 60, 63 (suspense of entry in 8 U.S.C.
4 § 1182(f) violates INA); *id.* ¶¶ 98, 102 (Proclamation restricts § 1158); ¶¶ 170–76, 178–
5 182, 184, 191, 207, 211.)

6 The Complaint asserts six causes of action: (1) Violation of the Immigration and
7 Nationality Act, 8 U.S.C. § 1158; (2) Violation of the Administrative Procedure Act
8 (“APA”), 5 U.S.C. § 706(2)(A), (C) (Contrary to Law); (3) Violation of the APA, 5 U.S.C.
9 § 706(2)(A) (Arbitrary & Capricious); (4) Agency Action Without Observance of
10 Procedures Required by Law, APA, 5 U.S.C. § 553, 706(2)(D); (5) APA, 5 U.S.C.
11 § 706(2)(A) (Arbitrary & Capricious);⁴ and (6) Ultra Vires. (Compl. ¶¶ 169–212.)

12 II. DISCUSSION

13 A. Briefing on the Motion to Dismiss Referencing *Al Otro Lado I*

14 Plaintiffs acknowledged in their Opposition to the Motion to Dismiss that the
15 Supreme Court had granted certiorari to hear *Al Otro Lado I*. (Doc. 54 at 34 n.22 (“The
16 recent grant of certiorari in a similarly named but substantively distinct case, will not
17 impact the resolution of this motion.”) Defendants, in reiterating their argument that the
18 Asylum Shutdown Policy did not conflict with § 1158(a)(1), explained that “if the Supreme
19 Court decides that [an alien stopped on the Mexican side of the U.S.-Mexico border] is not
20 covered by § 1158(a)(1), Plaintiffs’ claims that the [Asylum Shutdown Policy] are
21 inconsistent with the asylum statute cannot possibly succeed.” (Doc. 60 at 10.)

22 On June 25, 2026, the Supreme Court issued its decision in *Al Otro Lado I*. The
23 Court ordered supplemental briefing on the impact of *Al Otro Lado I* on this case. (Doc.
24 69.) After an extension of the briefing deadlines at the parties’ request (Docs. 70–71),
25 Defendants filed their supplemental brief on July 28, 2026 (Doc. 72) and Plaintiffs filed
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28 ⁴ The fourth and fifth causes of action are brought specifically based on the cancellation of
CBP One appointments.

1 their supplemental brief on August 28, 2026 (Doc. 75).

2 **B. Supplemental Briefing**

3 **1. Defendants’ Supplemental Briefing**

4 Per the Court’s supplemental briefing order, Defendants filed their supplemental
5 brief first. (Doc. 72.) Defendants accurately note that “[m]any of Plaintiffs’ claims in this
6 case are expressly premised, in whole or in part, on the argument that the asylum statute
7 [§ 1158] creates a ‘statutory obligation’ to provide access to the U.S. asylum process to
8 [noncitizens] in Mexico who seek to cross the border as a [POE].” (*Id.* at 1 (citing Compl.
9 ¶¶ 2, 13, 46–47, 58, 63–64, 170–72, 181–82.)) Defendants assert that *Al Otro Lado I*
10 “rejected this premise” and “held that ‘an alien who is standing in Mexico does not arriv[e]
11 in the United States’ [including under the asylum statute, § 1158(a)(1)] by attempting, and
12 failing to set foot in this country.” (*Id.* at 2 (quoting *Al Otro Lado I*, 146 S. Ct. at 2090)
13 (alteration in brief).) Defendants argue the claims premised “on a purported entitlement to
14 access the asylum process fail to state a claim and that the Organizational Plaintiffs lack
15 statutory standing.” (*Id.*) Defendants argue the Supreme Court’s interpretation of
16 § 1158(a)(1) demonstrates the INA does not entitle the Individual Plaintiffs to apply for
17 asylum and Plaintiffs’ “first, second, third, and sixth claims fail as a matter of law, because
18 the Supreme Court has now clearly held that the asylum statute does not bestow any right
19 to apply for asylum on those standing in Mexico,” making the Asylum Shutdown Policy
20 “consistent with 8 U.S.C. §§ 1158 and 1182.” (*Id.* at 3.)

21 Defendants argue that after *Al Otro Lado I*, the Organizational Plaintiffs are not
22 within the relevant zone of interests for purposes of standing. (*Id.* at 4–5.) Essentially,
23 Defendants assert that because *Al Otro Lado I* narrowed § 1158 to only those physically in
24 the United States, “§ 1158’s zone of interest has necessarily narrowed.” (*Id.* at 4.) Because
25 the Organizational Plaintiffs’ actions are outside the United States, they fall outside
26 § 1158’s zone of interests. (*Id.* at 5.)

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Defendants argue Plaintiffs first claim (Violation of the INA, 8 U.S.C. § 1158) and second claim (Violation of the APA, 5 U.S.C. § 706(2)(A), (C), Contrary to Law) must be dismissed because *Al Otro Lado I* “interpreted ‘arrives in the United States’ [in § 1158(a)(1)] to require ‘cross[ing] the border.’” (*Id.* at 5.) This means Plaintiffs cannot bring a claim based on the Asylum Shutdown Policy violating § 1158 because “§ 1158 does not create any right of [noncitizens] in Mexico to be processed for asylum.” (*Id.* at 6.) Defendants also assert Plaintiffs’ third claim (Violation of the APA, 5 U.S.C. § 706(2)(A), Arbitrary & Capricious) must also be dismissed because after *Al Otro Lado I* the Asylum Shutdown Policy “is rational and consistent with §§ 1158 and 1182.” (*Id.* at 6–9.) Similarly, Defendants argue the sixth claim (Ultra Vires Action) must also fail because the Asylum Shutdown Policy is consistent with, rather than in conflict with, § 1158. (*Id.* at 8.)

2. Plaintiffs’ Supplemental Briefing

Plaintiffs argue *Al Otro Lado I* did not impact their zone of interests because the case “did not address the zone of interests test at all.” (Doc. 75 at 11–12.) Plaintiffs also assert that the relevant statute for assessing their zone of interests for this case should be § 1182(f) rather than § 1158 because “Plaintiffs’ remaining claims turn primarily on the limits of the authority § 1182(f) confers on the Executive branch.” (*Id.* at 14.)

Plaintiffs concede *Al Otro Lado I* forecloses their first claim. As to Plaintiffs’ second and sixth claims, Plaintiffs argue Defendants only addressed the “not in accordance with law” portion of these claims and since they can both be split or parsed to dismiss the “not in accordance with law” portions that rely on § 1158(a)(1), Plaintiffs should be allowed to proceed with them on a “not authorized by any source of law” or “in excess of statutory authority” basis. (*Id.* at 7.) Plaintiffs again argue that because *Al Otro Lado I* was not an arbitrary and capricious case it does not impact the third claim. Plaintiffs also argue *Al Otro Lado I* does not make the Asylum Shutdown Policy any more reasonable. (*Id.* at 9–10.)

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1 **3. Complaint’s Reliance on § 1158**

2 Despite Plaintiffs’ attempts to downplay the significance of § 1158 to their claims,
3 as currently pled, it is the foundation of the case. The first paragraph of the Complaint
4 identifies § 1158(a)(1) as “enshrining the United States’ commitment to provide protection
5 to individuals fleeing persecution” (Compl. ¶ 1) and then asserts “[t]his case challenges
6 actions by Defendants that override the plain text of 8 U.S.C. § 1158(a)(1) by unlawfully
7 shutting down access to asylum at ports of entry along the U.S.-Mexico border.” (*Id.* ¶ 2.)
8 Similarly, the first paragraphs of the Legal Background section of the Complaint identify
9 § 1158(a)(1) as “mak[ing] the right to apply for asylum available to noncitizens” and
10 “affording this right to noncitizens who are not yet physically present in the United States.”
11 (*Id.* ¶¶ 46–47.) The section concluded “[i]n sum, 8 U.S.C. § 1158(a)(1) requires access to
12 POEs for people seeking asylum and mandates that all such individuals be given access to
13 a process to seek asylum.” (*Id.* ¶ 55.) In short, § 1158(a)(1) is the primary right Plaintiffs
14 have argued the Asylum Shutdown Policy violates. However, as the parties’ briefing
15 acknowledges, post-*Al Otro Lado I*, 1158 provides noncitizens no right to access the
16 asylum process in Mexico. *Al Otro Lado I*, 146 S. Ct. at 2091.

17 Plaintiffs also argue the Asylum Shutdown Policy exceeds the scope of § 1182(f)’s
18 power, but even that is also alleged to be a violation of § 1158. (*Id.* ¶ 58 (“Section [1182(f)]
19 does not authorize the President to violate or abrogate other provisions of the INA, such as
20 § 1158.”); *id.* ¶ 63 (Section 1182(f) “does not encompass the power to suspend the
21 operation of § 1158, which gives noncitizens the right to apply for asylum.”).) Paragraph
22 after paragraph describes how the Asylum Shutdown Policy deprives Plaintiffs access to
23 the U.S. asylum process provided for in § 1158. (*Id.* ¶¶ 1–2, 11–14, 45–47, 51–52, 54–55,
24 56–58, 60, 63, 98, 102, 170–76, 178–182, 184, 191, 207, 211.)

25 Plaintiffs wisely concede that their first claim and portions of the second and sixth
26 claims are foreclosed. *Al Otro Lado I* has indisputably impacted the basic underpinning of
27 this case—§ 1158. Given these claims’ direct reliance on § 1158 as entitling noncitizens
28 outside the United States access to the asylum process, dismissal of these claims or portions

1 of claims is warranted. However, this still leaves pleading and briefing issues. Defendants
2 have not had an opportunity to address Plaintiffs' argument that two of the claims should
3 be parsed and a portion allowed to proceed. Additionally, parts of the Complaint—with
4 their heavy reliance on § 1158 providing asylum access to those outside the United
5 States—are essentially invalidated in light of *Al Otro Lado I*. 146 S. Ct. at 2090. This
6 leaves the Court attempting to account for or disregard a fairly substantial portion of the
7 allegations of Complaint in assessing whether Plaintiffs claims are sufficiently pled to
8 survive dismissal under Rule 12(b)(6). Additionally, because the Motion to Dismiss was
9 briefed before *Al Otro Lado I* was decided, the Court is attempting to make this assessment
10 with outdated briefing.

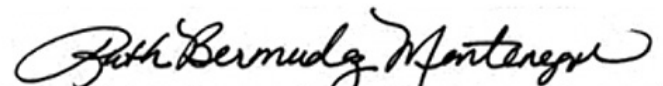
11 Given the Complaint's reliance on § 1158 and the impact of *Al Otro Lado I* on
12 § 1158, the Court **DISMISSES** the Complaint with leave amend. Fed. R. Civ. P. 15(a)(2)
13 ("The court should freely give leave when justice so requires.").

14 **III. CONCLUSION**

15 Having considered the Complaint, the parties' initial briefing, the United States
16 Supreme Court's decision in *Al Otro Lado I*, and the parties' supplemental briefing, the
17 Court finds that Plaintiffs must file an amended complaint. Accordingly, the Complaint is
18 **DISMISSED** with leave to file an amended complaint on or before **October 28, 2026** and
19 Defendants' Motion (Doc. 45) is **DENIED as moot**.

20 **IT IS SO ORDERED.**

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22 Dated: September 30, 2026

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24 HON. RUTH BERMUDEZ MONTENEGRO
25 UNITED STATES DISTRICT JUDGE
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