TRACY L. WILKISON
United States Attorney
DAVID M. HARRIS
Assistant United States Attorney
Chief, Civil Division
JOANNE S. OSINOFF
Assistant United States Attorney
Chief, General Civil Section
JASON K. AXE (Cal. Bar No. 187101)
MATTHEW J. SMOCK (Cal. Bar No. 293542)
Assistant United States Attorneys
Federal Building, Suite 7516
300 North Los Angeles Street
Los Angeles, California 90012
Telephone: (213) 894-8790/0397
Facsimile: (213) 894-7819
E-mail: Jason.Axe@usdoj.gov
E-mail: Matthew.Smock@usdoj.gov
Attorneys for Defendants

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

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

Plaintiffs,

v.

ALEJANDRO MAYORKAS, Secretary, Department of Homeland Security, et al.,

Defendants.

Case No. 2:20-cv-09893 JGB (SHKx)

DEFENDANTS' REPLY IN SUPPORT OF THEIR MOTION TO DISMISS SECOND AMENDED COMPLAINT PURSUANT TO FED. R. CIV. P. 12(B)(1) & 12(B)(6)

Hearing Date: March 21, 2022
Hearing Time: 9:00 a.m.
Ctrm: Riverside, Courtroom 1
Hon. Jesus G. Bernal

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I. INTRODUCTION

In opposition, Plaintiffs fail to overcome the grounds for dismissal set forth in Defendants' Motion. Plaintiffs' SAC is subject to dismissal for the reasons stated in the Motion and as set forth further below.

II. ARGUMENT

A. The Complaint Should be Dismissed Because it Seeks Relief that Conflicts with the *Texas* Injunction

As Plaintiffs acknowledge, the *Texas* injunction "prohibits Defendants from implementing the Department of Homeland Security's ('DHS') June 1, 2021 Memorandum." Dkt. 207 at 18; *see also Texas v. Biden*, 2021 WL 3603341, at *27 (N.D. Tex. Aug. 13, 2021) ("Defendants . . . are hereby **PERMANENTLY ENJOINED** and **RESTRAINED** from implementing or enforcing the June 1 Memorandum," and "[t]he June 1 Memorandum is **VACATED** in its entirety . . . ."). That memorandum, vacated in its entirety, stated that "DHS personnel should continue to participate in the ongoing phased strategy for the safe and orderly entry into the United States of individuals enrolled in MPP."[1] Therefore, Terminated Plaintiffs and *In Absentia* Plaintiffs, who were potentially eligible for the prior wind-down process and processing into the United States, were indeed "covered by the termination memo enjoined by the *Texas* case," Dkt. 207 at 19, and their ordered *en masse* return would potentially conflict with the *Texas* injunction.

In addition, Plaintiffs acknowledge that the "Fifth Circuit's concern was that, absent a new version of MPP, the government was 'propos[ing] to parole every [noncitizen] it cannot detain [into the United States]." Dkt. 207 at 20-21. Although Plaintiffs describe the number of individuals at issue in this litigation as "limited by the class and subclass definitions," Dkt. 207 at 21, Plaintiffs' estimate of that number is as

[1] Secretary of Homeland Security Alejandro N. Mayorkas, Termination of the Migrant Protection Protocols Program (June 1, 2021), available at: https://www.dhs.gov/sites/default/files/publications/21_0601_termination_of_mpp_program.pdf.

many as *42,788* members of the proposed classes. Dkt. 205-1 at 19.

Finally, Plaintiffs are incorrect that their claims are not subject to dismissal based on the remedies they request. Dkt. 207 at 21. Complaints are subject to dismissal for failure to plausibly allege entitlement to a remedy and a plausible remedy, which are elements to any claim. *See* Fed. R. Civ. P. 12(b)(6) (dismissal for "failure to state a claim *upon which relief can be granted*" (emphasis added)); *see, e.g.*, *Banks v. R.C. Bigelow, Inc.*, 536 F. Supp. 3d 640, 649 (C.D. Cal. 2021) (dismissing claims for equitable relief under California laws with prejudice for failure to allege adequate remedies at law); *U.S. v. Innovative Biodefense, Inc.*, 2019 WL 2428672, at *4 (C.D. Cal. June 5, 2019) ("The Government has alleged sufficient facts to plausibly show that it is entitled to the requested statutory injunction against Barough."); *Byam v. Cain*, 2019 WL 3779508, at *1 n.1 (D. Or. Aug. 12, 2019) (dismissing claims for injunctive relief where injunctive relief barred by statute); *see also Friends of the Earth, Inc. v. Laidlaw Envt'l Servs., Inc.*, 528 U.S. 167, 185 (2000) ("[A] plaintiff must demonstrate standing separately for each form of relief sought.").

B. <u>The SAC Asserts Moot Claims</u>

In their Opposition, Plaintiffs contend that, despite challenging the *prior administration's* past implementation of a now defunct version of MPP, Claims 1-3 & 5-6 are not moot because they continue to suffer "ongoing injuries." Dkt. 207 at 23. But Plaintiffs do not describe the nature of those "ongoing injuries" in the SAC or their opposition beyond mere conclusory assertions, which do not suffice to establish an Article III case or controversy. *See Escobar v. Brewer*, 461 F. App'x 535, 535-56 (9th Cir. 2011) ("Mere conclusory allegations are not enough to establish the 'concrete and particularized' injury required for standing under Article III." (citing *Carrico v. City & Cnty. of S.F.*, 656 F.3d 1002, 1006 (9th Cir. 2011)). Plaintiffs cannot claim that the "ongoing injuries" they purportedly suffer relate to the past injuries they allege (e.g., inability to secure counsel or communicate with counsel before hearings *during removal*

proceedings) because they are no longer in removal proceedings.[2] Instead, all Plaintiffs can claim (and what they appear to be claiming) is that they suffer "ongoing injuries" merely because they remain outside the United States. Yet, their current presence outside the United States is not the result of any allegedly unlawful prior practices of Defendants, but rather the result of the initial decision to return them to Mexico—a decision Plaintiffs do not and cannot claim was unlawful. *See* Dkt. 207 at 36 ("Plaintiffs do not challenge the authority conveyed by Congress in § 1225(b)(2)(C) . . . ."); SAC at 85-97 (alleging impediments to access to counsel and asylum and violations of the First Amendment *after* their return to Mexico). In short, Plaintiffs' conclusory allegations of "ongoing injuries" do not save Claims 1-3 & 5-6, which complain of and attempt to address obsolete practices and circumstances, from dismissal on mootness grounds. The issues presented by these claims are "no longer live." *Am. Diabetes Ass'n v. United States Dep't of the Army*, 938 F.3d 1147, 1152 (9th Cir. 2019).

Plaintiffs' argument regarding their request for declaratory relief is also unavailing. Plaintiffs have cited no authority for the proposition that policies and practices no longer in effect are the proper subject of declaratory relief. In fact, the case Plaintiffs partially quote in their opposition dispels such a notion, when quoted in full. "A case or controversy exists justifying declaratory relief only when 'the challenged government activity ... is not contingent, **has not evaporated or disappeared**, and, by its continuing and brooding presence, casts what may well be a substantial adverse effect on the interests of the petitioning parties.'" *Headwaters, Inc. v. Bureau of Land Mgmt. Medford Dist.*, 893 F.2d 1012, 1015 (9th Cir. 1989) (citation omitted) (emphasis added). A "concrete controversy" does not exist over the lawfulness of the original implementation of MPP just because Plaintiffs say so. Quite the contrary, as Defendants have explained previously, they do not defend the original implementation of MPP as a

[2] Indeed, just a few paragraphs later, Plaintiffs disclaim any connection between their purported past and continuing injuries, representing that Plaintiffs "do not ask this Court to review their final orders of removal or reopen their proceedings." Dkt. 207 at 24.

policy matter, have not reimplemented the original MPP, and have no intention of doing so. No "live controversy" exists.

Finally, as of the date of this filing, at least five Individual Plaintiffs have been granted humanitarian parole and paroled into the United States, as Plaintiffs recently reported to the Court in their Class Certification Motion. Dkt. 205-1 at 10. In other words, these Individual Plaintiffs (Ariana Doe, Dania Doe, Reina Doe, Carlos Doe, and Yesenia Doe) have already received the ultimate relief they seek through this lawsuit (return to the United States). Their claims are therefore moot and should be dismissed for this additional reason. *See, e.g.*, *Marsh v. AFSCME Local 3299*, 2020 WL 4339880, at *10 (E.D. Cal. July 28, 2020) (dismissing claims of those named plaintiffs whose claims were moot).

C. Plaintiffs' Claims Are Jurisdictionally Barred by 8 U.S.C. § 1252

1. Plaintiffs' Claims Are Barred by 8 U.S.C. § 1252(d)

Removal Order Plaintiffs contend that Section 1252(d) does not bar the Court's jurisdiction because they do not seek the Court's review of their final orders of removal or for the Court to reopen their proceedings. Dkt. 207 at 24-25. Instead, they contend that they only seek to declare the original MPP, as implemented, unlawful, and they seek injunctive relief requiring their return to the United States. *Id.* at 24-25. But because the Removal Order Plaintiffs are challenging neither the fairness of the removal process to which they were subjected nor the lawfulness of the initial decision to return them to Mexico pursuant to Section 1225(b)(2)(C),[3] Plaintiffs have no possible legal basis to obtain the declaratory or injunctive relief they request. Exhaustion is required in more than just cases seeking review of removal orders. It is also required in cases seeking review of the alleged fairness associated with removal proceedings or reopening of immigration proceedings—which all of Plaintiffs' claims squarely do. For example, in *Singh v. Holder*, 538 F. App'x 784 (9th Cir. 2013), the Ninth Circuit found that the

[3] *See* Dkt. 207 at 36 ("Plaintiffs do not challenge the authority conveyed by Congress in § 1225(b)(2)(C) . . . .").

petitioner was required, but failed, to administratively exhaust his claim for ineffective assistance with his motion to reopen—which was not a challenge to a final removal order. *See also Singh v. Napolitano*, 649 F.3d 899 (9th Cir. 2011) (per curiam). Regardless, Plaintiffs have avenues available, such as appeals to the BIA, motions to reopen, and petitions to review, to challenge the process afforded them during their respective removal proceedings, including the very access to counsel and asylum claims Plaintiffs bring here. *See, e.g.*, *Balderas-Jaramillo v. Sessions*, 708 F. App'x 439, 441 (9th Cir. 2018) ("[T]his court has held that 8 U.S.C. § 1252(d)(1) requires exhaustion of due-process-style claims that are 'procedural in nature,' such as 'absence of counsel and lack of opportunity to present a case.'") (quoting *Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004)). Under the INA, a class action lawsuit in this Court is not the correct venue to press these claims in the first instance.

2. Plaintiffs' Claims Are Barred by 8 U.S.C. § 1252(b)(9)

Removal Order Plaintiffs contend that Section 1252(b)(9) does not bar their claims because (1) they "challenge how the implementation of MPP 1.0 has prevented them from meaningfully accessing the removal process itself, rather than the processes by which their removability was determined," (2) are currently seeking to "avail themselves of the administrative system that exists to litigate meritorious motions to reopen," and (3) the relief Plaintiffs seek is "unavailable in removal proceedings." Dkt. 207 at 25-28. Removal Order Plaintiffs do not avoid Section 1252(b)(9)'s bar.

First, the distinction Plaintiffs attempt to draw between "meaningfully accessing the removal process itself" and "the processes by which their removability was determined" finds no support in Ninth Circuit case law. Right to counsel and similar claims that "arise from" removal proceedings, and are not "independent or ancillary to the removal proceedings," must be channeled through the petition for review process. *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1032-33 (9th Cir. 2016). All of Removal Order Plaintiffs' claims unquestionably "arise from" their removal proceedings, even if their claims are considered as lack of "access" claims. *See, e.g.*, SAC ¶¶ 345-46 (original

MPP "subverted and violated the right to access counsel" afforded to Plaintiffs in removal proceedings pursuant to 8 U.S.C. §§ 1229a(b)(4)(A) and 1362), 358 ("The Protocols and their implementation have also imposed systemic obstacles to the Fifth Amendment rights of Individual Plaintiffs and similarly situated individuals by obstructing their ability to collect evidence and to communicate with potential witnesses and experts, as necessary to meaningfully prepare and present their claims for relief [in removal proceedings].").

For this reason, Plaintiffs' attempt to distinguish this Court's decision in *Arroyo v. U.S. Dep't of Homeland Security*, 2019 WL 2912848 (C.D. Cal. June 20, 2019), is unavailing. Just as the unrepresented plaintiffs in *Arroyo* "alleged that separation from family members implicated their rights to present evidence and have a full and fair hearing in their removal processes," Dkt. 207 at 27, Plaintiffs here allege that "separation from" the United States "implicated their rights to present evidence and have a full and fair hearing in their removal processes." *Id.*; *see* SAC ¶¶ 354-360 (alleging violation of the "right to a full and fair hearing in their removal cases" and violation of "the right to effective assistance of counsel" under the Due Process Clause because, among other things, the original implementation of MPP "obstruct[ed] their ability to collect evidence and to communicate with potential witnesses and experts"). Fundamentally, Plaintiffs complain that their removal proceedings were unfair because they were not sufficiently able to pursue asylum claims during their removal proceedings and were, instead, ordered removed.

Likewise, Plaintiffs' attempt to distinguish *J.E.F.M.* fails. Plaintiffs argue that it "pre-dated the Supreme Court's decision in *Jennings*, which adopted a narrower reading of § 1252(b)(9)." Dkt. 207 at 26 n.13 *Jennings* did not adopt a narrower reading of Section 1252(b)(9), much less a narrower reading that would matter *in this case*. *Jennings* was a habeas case in which the Supreme Court concluded, in a plurality opinion authored by Justice Alito, that § 1252(b)(9) should not be read so broadly as to limit habeas "claims of prolonged detention" that would be "effectively unreviewable" in

a petition for review (PFR) to the court of appeals under § 1252(b)(9). 138 S. Ct. 830, 840 (2018) (plurality opinion). Justice Alito's opinion simply noted that claims completely collateral to proceedings in immigration court, like "detention" claims, claims based on "conditions of confinement," and state-law claims based on criminal or tort law unlike the claims here, are beyond the Section 1252(b)(9) bar. *Id.* at 840. It explained further that "cramming judicial review of those questions into the review of final removal orders would be absurd" because these claims do not arise from actions in the removal proceedings. *Id*.

The plurality opinion specifically distinguished cases like this one challenging "any part of the process by which [an alien's] removability will be determined." *Id*.; *see also id*. at 841 n.3 ("the question is … whether the legal questions in this case arise from" "an action taken to remove an alien"). Nothing in *Jennings* narrows § 1252(b)(9)'s application to challenges to things that do occur in immigration court or overturns *J.E.F.M.* *See, e.g., Alvarez v. Sessions*, 338 F. Supp. 3d 1042, 1048-49 (N.D. Cal. 2018) (noting that it does not require "an expansive interpretation of § 1252(b)(9)'s 'arising from' language to find that" "issues related to legal representation during removal proceedings" "fall squarely within the purview of the provision," and that *J.E.F.M.*'s holding remains good law post-*Jennings*); *Rueda Vidal v. DHS*, 2019 WL 7899948, at *11, n.17 (C.D. Cal. Aug. 28, 2019), *reversed on other grounds*, *Rueda Vidal v. Bolton*, 822 F. App'x 643 (9th Cir. 2020) (*J.E.F.M*. remains "binding circuit precedent" following *Jennings*)

Second, Removal Order Plaintiffs' focus on the remedies they are seeking, which they claim are to "avail themselves of the administrative system" and "unavailable in removal proceedings," is misplaced. Section 1252(b)(9)'s bar is based on the "questions of law and fact" to be reviewed, not the nature of the remedies pursued. Here, all of Plaintiffs' claims ask the Court to decide "questions of law and fact . . . arising from . . . proceeding[s] brought to remove" them. 8 U.S.C. § 1252(b)(9). And while the specific extraordinary relief Plaintiffs request—return to the United States—may not be available

"in removal proceedings," that does not mean Removal Order Plaintiffs are without an adequate remedy or judicial review. *See J.E.F.M.*, 837 F.3d at 1031 (Section 1252(b)(9) is not "a jurisdiction-stripping statute[] that, by [its] terms, foreclose[s] *all* judicial review of agency actions," but instead "channel[s] judicial review over final orders of removal to the courts of appeals"). For example, Reina and Carlos Doe allege that they appeared for several hearings, were unable to obtain counsel, and eventually their asylum claims were denied and they were subject to final removal orders. SAC ¶¶ 240-249. Reina and Carlos Doe may exhaust their administrative remedies[4] and file a petition for review before the Court of Appeals, which has the power to order a new hearing should it agree with their claims that their rights to access counsel and the asylum system were violated. *See, e.g.*, *Usubakunov v. Garland*, 16 F. 4th 1299, 1307 (9th Cir. 2021) (remanding for new merits hearing where petitioner was "wrongly denied assistance of counsel").

3. Plaintiffs' Claims Are Barred by 8 U.S.C. § 1252(a)(2)(B)(ii)

In their opposition, Plaintiffs contend that they are not challenging "discretionary decisions" made under Section 1225(b)(2)(C), but rather that Defendants exceeded that discretion and acted *ultra vires* by implementing Section 1225(b)(2)(C) in a way that "violated Plaintiffs' rights under the INA, the APA, and the Constitution." Dkt. 207 at 29-30. But nowhere in their SAC or opposition do Plaintiffs identify how Defendants purportedly exceeded the discretion afforded them through Section 1225(b)(2)(C) by simply returning the Individual Plaintiffs and proposed classes to Mexico. Nor can they. Section 1225(b)(2)(C) does not prescribe limits on the discretionary authority, and because courts interpret Congress's statutes as a "harmonious whole rather than at war with one another," *Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612, 1619 (2018), the exercise of that discretion cannot be considered "*ultra vires*" or violate the INA's more general

[4] As noted in the Motion, Plaintiffs claim their present circumstances make it difficult to move to reopen. But, at most, this argument could be pursued on an appeal through a petition for review, not here in a class action brought in District Court. Dkt. 189 at 23.

right to apply for asylum.[5]

Next, Plaintiffs argue that Section 1252(a)(2)(B)(ii) does not "restrict this Court's equitable power." Dkt. 207 at 31. Even if that were true, in this case, the Court could not order Plaintiffs' parole back into the United States without reviewing the discretionary decision to return Plaintiffs to Mexico. 8 U.S.C. § 1252(a)(2)(B)(ii). Plaintiffs' only claimed ongoing injury is their current presence outside the United States, which Plaintiffs allege resulted from their initial discretionary return to Mexico. In order to remedy Plaintiffs' return to Mexico through parole into the United States, the Court would need to determine that their return to Mexico was unlawful, which, as explained above and in the Motion, is beyond the Court's jurisdiction. More fundamentally, and setting aside Section 1252(a)(2)(B)(ii), Plaintiffs do not address this Court's lack of authority to order Plaintiffs' parole into the United States, which is a power vested in the Executive Branch. *See Torres v. Barr*, 976 F.3d 918, 931–32 (9th Cir. 2020) ("parole authority . . . is delegated solely to the Secretary of Homeland Security"); *Rodriguez v. Robbins*, 715 F.3d 1127, 1144 (9th Cir. 2013) ("parole process is purely discretionary"); *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 543 (1950) (power to admit or exclude is a sovereign prerogative vested in the political branches, and "it is not within the province of any court, unless expressly authorized by law, to review [that] determination"); *Harisiades v. Shaughnessy*, 342 U.S. 580, 588–89 (1952) (control of movement across the borders and determinations as to which persons may enter the United States implicate foreign relations, which are "exclusively entrusted to the political branches of government"); *Jean v. Nelson*, 727 F.2d 957, 977 (11th Cir. 1984), *aff'd*, 472 U.S. 846 (1985) ("Congress has delegated remarkably broad discretion

[5] As stated in the Motion (Dkt. 189 at 32 n.22, 37), Plaintiffs cannot claim an *ultra vires* act or violation of the right to apply for asylum as a result of Section 1225(b)(2)(C) for the additional reason that 8 USC § 1158(a)(1) itself contemplates that noncitizens may apply for asylum in accordance with the provisions of that section "or, where applicable, section 1225(b)," *i.e.*, 1225(b)(2)(C). Section 1158(d)(7), moreover, provides that "[n]othing in this subsection shall be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United Sates or its agencies or officers or any other person."

to executive officials under the INA, and these grants of statutory authority are particularly sweeping in the context of parole."). The Court should therefore dismiss Plaintiffs' claims to the extent they seek return to the United States as relief.

4. Plaintiffs' Claims for Injunctive Relief Are Barred by 8 U.S.C. § 1252(f)(1)

In their opposition, Plaintiffs contend that the law of the case doctrine prevents dismissal of their claims. But first, the law of the case doctrine does not apply to jurisdictional questions, as the Court must be certain at all stages of the litigation that it has jurisdiction. *See* Fed. R. Civ. P. 12(h)(3) ("If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action."); *Moe v. U.S.*, 326 F.3d 1065, 1070 (9th Cir. 2003) ("Jurisdiction is at issue in all stages of a case."). And second, the Court's prior order addressed a prior iteration of the complaint that, for Section 1252(f)(1) purposes, was materially different from the operative SAC. At the time, the original complaint—which alleged that all individual plaintiffs and proposed class members were *currently in removal proceedings*—was operative. *See* Dkt. 1 at 6-7. And the Court noted in its Order that "[t]he Ninth Circuit has suggested that this jurisdictional bar does not apply where all individuals in a putative class are individuals against whom removal proceedings have been initiated." *See* Dkt. 135 at 6. Here, by contrast, and as noted in the Motion, *none* of the Individual Plaintiffs or proposed class members are currently in removal proceedings—which bars classwide injunctive relief under Ninth Circuit precedent. *See* Dkt. 189 at 31; *Padilla v. Immigr. and Customs Enf't*, 953 F.3d 1134, 1151 (9th Cir. 2020), *vacated on other grounds*, 141 S. Ct. 1041 (2021) (recognizing availability of classwide injunctive relief in the narrow circumstance where "the class is composed of individual noncitizens, each of whom is in removal proceedings and facing an immediate violation of their rights"). Plaintiffs are therefore also incorrect in claiming they meet Section 1252(f)(1)'s exception for being "individual [noncitizens] against whom proceedings . . . have been initiated." Dkt. 207 at 32; *see Padilla* at 1150 ("Congress adopted § 1252(f)(1) after a period in which organizations

and classes of persons, *many of whom were not themselves in proceedings*, brought preemptive challenges to the enforcement of certain immigration statutes." (emphasis added)). Under the majority's reasoning in *Padilla*, these future claimants are precisely the noncitizens that Congress, in enacting Section 1252(f)(1), wanted to prevent from filing cases in federal court.

Plaintiffs also contend that their claims are outside the scope of Section 1252(f)(1) because their claims "allege[] action outside the government's statutory or constitutional authority." Dkt. 207 at 32. Plaintiffs miss the mark and confuse the issues. Under *Rodriguez v. Hayes*, 591 F.3d 1105, 1120 (9th Cir. 2009), the question is not what past actions the plaintiff complains of, but what the plaintiff "seeks to enjoin." *Id.* at 1120. Here, Plaintiffs do not "seek[] to enjoin conduct that allegedly is not even authorized by statute." *Id.* Nor could they. They complain of past circumstances associated with the original implementation of MPP that is no longer in effect. Instead, Plaintiffs seek return to the United States as a remedy for these past circumstances. But in so doing, they seek to enjoin the operation of (a) valid removal orders and (b) the Government's initial decision to return them to Mexico pursuant to Section 1225(b)(2)(C). Yet, Plaintiffs *concede* that these contiguous return and removal actions are not "outside the government's statutory or constitutional authority." *See* Dkt. 207 at 36 ("Plaintiffs do not challenge the authority conveyed by Congress in § 1225(b)(2)(C) . . . ."), 24 ("Plaintiffs do not ask this Court to review their final orders of removal or reopen their proceedings . . . ."). As such, this is squarely a case in which Plaintiffs seek "to "enjoin or restrain the operation of part IV of [Subchapter II]," namely, 8 U.S.C. § 1225(b)(2)(C) (providing for return of noncitizens to contiguous territory), and 8 U.S.C. §§ 1229, 1229a, and 1231 (providing for removal of noncitizens subject to orders of removal). 8 U.S.C. § 1252(f).[6]

[6] As noted in the Motion, the Government anticipates that the Supreme Court will further interpret Section 1252(f)(1) as it relates to class actions in its forthcoming opinion in *Garland v. Gonzales*, No. 20-322.

D. Organizational Plaintiffs Lack Standing to Pursue their Claims

1. Organizational Plaintiffs Have Not Sufficiently Alleged Organizational Harm

In their opposition, Organizational Plaintiffs appear to concede that they "chose to alter their activities following the implementation of MPP 1.0" and provide "Significant legal services to assist noncitizens in Mexico." Dkt. 207 at 34. This alone requires dismissal of Organizational Plaintiffs' claims. *See East Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 663 (9th Cir. 2021) ("*EBSC III*") (an organizational plaintiff must show the defendant's action "frustrated its mission and caused it to divert resources in response to that frustration of purpose" and was "perceptibly impaired" in its ability to perform its services, and cannot "manufacture the injury by incurring litigation costs or simply choosing to spend money fixing a problem that otherwise would not affect the organization at all") (citations omitted).

Plaintiffs argue that standing may exist where a "non-profit legal services organization would lose clients had it not diverted resources," and "organizational plaintiffs were forced to overhaul their programs to adhere to their missions." Dkt. 207 at 34. But Organizational Plaintiffs do not allege (or even assert in their opposition) that they were forced to overhaul their programs, or set forth facts similar to the plaintiffs in *EBSC III*, where an organizational plaintiff stood to lose "80 percent of its clients" absent diversion and the organizational plaintiffs all stood to lose their funding sources. *Id.* at 663-64. Here, neither Organizational Plaintiff alleges any loss of clients related to Defendants' actions at issue in this litigation.

Organizational Plaintiffs also do not explain why they were "forced" to do anything in response to MPP. ImmDef's focus was on services connected to immigration court proceedings in Los Angeles County, and Jewish Family Service's focus was on immigrant services in San Diego and Imperial Counties. SAC ¶¶ 272, 288. Unlike in *EBSC III*, where a rule threatened the existence of affirmative asylum applications, the demand for the services the Organizational Plaintiffs customarily

provided did not disappear or even lessen as a result of the original MPP's implementation. And Organizational Plaintiffs do not allege otherwise in the SAC.

Finally, contrary to their assertions, Organizational Plaintiffs have not alleged that the termination of the wind-down of MPP affected them in any way. Dkt. 207 at 34. Organizational Plaintiffs merely cite conclusory assertions that they continue to "divert resources" without providing any factual detail, or even any suggestion that this purported diversion has anything to do with the termination of the wind-down. Such conclusory allegations do not suffice to establish Article III standing for purposes of Organizational Plaintiffs' Fourth Claim. *See Escobar v. Brewer*, 461 F. App'x 535, 535-56 (9th Cir. 2011) ("Mere conclusory allegations are not enough to establish the 'concrete and particularized' injury required for standing under Article III." (citing *Carrico v. City & Cnty. of S.F.*, 656 F.3d 1002, 1006 (9th Cir. 2011)).

2. Organizational Plaintiffs Are Outside the Zone of Interests

In their opposition, Organizational Plaintiffs contend only that they are in the zone of interests of the INA generally and that they are "non-profit organizations that provide legal services to noncitizens." Dkt. 207 at 35. Such generalized assertions of the INA's overall purpose and the Organizational Plaintiffs' purposes do not suffice, even under the case law Organizational Plaintiffs cite. "[T]he relevant purpose is not that of the entire INA; it is 'by reference to the particular provision of law upon [] which the plaintiff relies." *EBSC III*, 993 F.3d at 667-68. Nowhere do Organizational Plaintiffs explain how, as "non-profit organizations that provide legal services to noncitizens," they fall within the zone of interests of the specific provisions of the statutory provisions they cite 8 U.S.C. §§ 1158(a)(1), 1158(d)(4), 1229a(b)(4), 1229a(b)(5)(C), 1229a(c)(5), 1229a(c)(7), & 1362. This case is therefore unlike *EBSC III*, where the organizational plaintiffs' specific purpose was, unlike here, "to help individuals apply for and obtain asylum," and the statutory provision relied upon, Section 1158(b), had the purpose of shaping "asylum eligibility requirements for migrants." *EBSC III*, 993 F.3d at 668. Here, by contrast, Organizational Plaintiffs assert only generalized immigration

purposes—not removal or asylum proceeding-specific purposes—and the statutes they rely upon provide for procedural rights of individuals, rather than eligibility criteria or substantive rights. Individuals can address those rights in removal proceedings, appeals to the BIA, and then to the federal courts of appeals. *See* 8 U.S.C. §§ 1252(a)(5), (b)(9). For these reasons, and the reasons stated in Defendants' Motion, Organizational Plaintiffs' First, Second, and Fourth Claims under the APA are subject to dismissal.

E. Plaintiffs' First Claim (APA – Right to Apply for Asylum) Fails

As an initial matter, Plaintiffs do not identify any current actions purportedly violating any right to apply for asylum beyond the Individual Plaintiffs' and proposed classes' continued presence outside the United States. Therefore, their First Claim, seeking only declaratory and injunctive relief, is moot.

Plaintiffs concede that the Individual Plaintiffs' and proposed classes' return to Mexico was authorized and does not conflict with the right to apply for asylum. Dkt. 207 at 36. However, Plaintiffs then argue that the right to apply for asylum was violated in these circumstances. *Id.* at 37 ("Whatever latitude Defendants have in implementing § 1225(b)(2)(C), they cannot do so in a manner that subverts § 1158 or the uniformity principle."). But Plaintiffs do not identify anything the Government did beyond returning the Individual Plaintiffs and proposed classes to Mexico that violated the right to apply for asylum. *Id.* at 36-38. Nor do they identify anything the Government *failed to do* once Individual Plaintiffs and the proposed classes were returned to Mexico that violated the right to apply for asylum. *Id.* Plaintiffs' as-applied challenge to the implementation of original MPP under Section 1225(b)(2)(C) fails.

Finally, contrary to their assertions, Organizational Plaintiffs do not have standing to assert this claim. ImmDef alleges that it represented one Individual Plaintiff, and Jewish Family Service alleges that it previously represented 130 potential members of the proposed class in original MPP. SAC ¶¶ 159, 294. While Plaintiffs include generalized and conclusory assertions regarding difficulties of counsel accessing clients, neither Organizational Plaintiff alleges any specific facts concerning any of their 131

representations, much less facts demonstrating the right to apply for asylum was violated in any one of those representations. Nor do they allege that they continue to represent these specific 131 individuals as would be necessary for their claims seeking injunctive and declaratory relief.

F. Plaintiffs' Second Claim (APA – Access to Counsel) Fails

In their opposition, Plaintiffs do not address, and therefore concede, that (a) there is no private right of action under Section 1158(d)(4), and (b) that Sections 1229a(b)(4)(A) and 1362 do not create a right that is violated by Congress's authorization of contiguous-territory return. Moreover, Plaintiffs do not identify any current actions purportedly violating any statutory right to counsel. Therefore, their Second Claim, seeking only declaratory and injunctive relief, is moot.

Plaintiffs do contend that they have alleged that Defendants have "obstructed" the right to counsel in connection with the original implementation of MPP. Dkt. 207 at 38-39. But the specific allegations in the SAC do not. Plaintiffs allege no restrictions or Government-created impediments on attorney-client communications at any time while Individual Plaintiffs and the proposed classes remained in Mexico during the original implementation of MPP, and they also acknowledge that Defendants facilitated such communication by providing Individual Plaintiffs and class members with meeting rooms before immigration hearings. Nothing in the INA requires the provision of attorney-client meeting rooms for a specified amount of time before immigration hearings or the facilitation of communications between non-detained noncitizens and their attorneys.[7]

[7] Plaintiffs do allege that one of the twelve named plaintiffs, Chepo Doe, was told not to speak to prospective attorneys during his hearing. SAC ¶¶ 156-57. This is not a restriction on attorney-client communication, but is at most, a restriction on a prospective attorney-client communication. Moreover, the SAC does not allege this was (a) a generally applicable policy or practice of the original implementation of MPP, or (b) the experience of any other Individual Plaintiff or proposed class member. And this claim of what occurred in immigration court during immigration court proceedings is precisely the type of claim that must be challenged through the petition for review process. *See supra* Section II.C.2. Such a claim is not properly brought as a class claim for declaratory and injunctive relief.

The cases Plaintiffs cite do not suggest otherwise, or otherwise suggest the right to counsel was violated. In *Torres v. U.S. Dep't of Homeland Security*, 411 F. Supp. 3d 1036 (C.D. Cal. 2019), this Court found that the plaintiffs, who were in ICE custody, had alleged a violation of the right to access counsel because the plaintiffs, who were in ICE custody, had alleged more than just "telephone restrictions" and instead had alleged "restrictions on telephone access as well as difficulty with legal mail, in-person meetings, and numerous other obstacles." *Id.* at 1060. Here, by contrast, the Individual Plaintiffs and proposed classes were not in the custody of ICE in Mexico while enrolled in MPP, and they were provided with at least some access to counsel before immigration hearings. For unrepresented Plaintiffs, such circumstances are not "tantamount to a denial of counsel," and for represented plaintiffs, there was no "interefer[ence] with 'established, on-going attorney-client relationship[s].'" *Id.* at 1060-61. *Escobar-Grijalva v. I.N.S.*, 206 F.3d 1331 (9th Cir. 2000), involved an immigration judge requiring a non-citizen to proceed with an asylum merits hearing "represented" by an attorney the applicant had never even met, while Plaintiffs here do not sue EOIR or allege any immigration judges violated their duties under the INA. And *Jie Lin v. Ashcroft*, 377 F.3d 1014 (9th Cir. 2004), did not even involve a denial of counsel claim, but rather an ineffective assistance claim. *Id.* at 1025.[8]

Finally, Organizational Plaintiffs lack standing to assert this claim for the same reason they lack standing to assert their First Claim. *See supra* Section II.E.

G. Plaintiffs' Third Claim (5th Am. Due Process – Indiv. Plaintiffs) Fails

In their opposition, Plaintiffs claim that they are entitled to Fifth Amendment protections because they were momentarily in the United States appearing at immigration court hearings. But as Defendants explained in their Motion, although noncitizens who have not established domicile within the United States have procedural

[8] Both *Escobar-Grijalva* and *Jie Lin* were also presented in petitions for review before the Ninth Circuit, rather than collateral challenges brought in District Court. *See Escobar-Grijalva*, 206 F.3d at 1331; *Jie Lin*, 337 F.3d at 1019.

Fifth Amendment rights, they do so only to the extent provided by Congress in the INA: "[w]hatever the procedure authorized by Congress is, it is due process as far as [a noncitizen] denied entry is concerned." Dkt. 189 at 41 (citing *Dep't of Homeland Sec. v Thuraissigiam*, 140 S. Ct. 1959, 1982 (2020) (applying rule to noncitizen who had made it 25 yards onto U.S. soil before being apprehended) (quotation marks and citation omitted)).

None of the cases Plaintiffs cite provide for Fifth Amendment rights *beyond* those afforded in the INA to noncitizens who have not established domicile within the United States. To the contrary, in *Al Otro Lado v. Mayorkas*, 2021 WL 3931890 (S.D. Cal. Sept. 2, 2021), the Court granted the plaintiffs summary judgment on a Fifth Amendment claim because "[t]he Court determined that turning asylum seekers away from POEs constitutes an unlawful exercise of Defendants' authority *under the INA* to inspect and refer asylum seekers both on U.S. soil and outside the international boundary line who are arriving at POEs." *Id.* at *20 (emphasis added). In *Usubakunov v. Garland*, 16 F. 4th 1299 (9th Cir. 2021), the Ninth Circuit considered a right to counsel claim within the confines of the protections codified in the INA for a petitioner who "arriv[ed] in the United States" around October 31, 2017, and remained detained in the United States through 2018 and his BIA appeal. *Id.* at 1301-03. The Ninth Circuit concluded that the petitioner's right to counsel was violated because he was denied a continuance to find counsel; it did not recognize any procedural rights beyond the scope of the INA. *Id.* at 1307; *see* 8 C.F.R. § 1003.29 (providing for continuance for "good cause" shown); 8 U.S.C. §§ 1362 & 1229a(b)(4)(A) (providing for right to counsel in removal proceedings); *see also Reno v. Flores*, 507 U.S. 292, 294, 301-09 (1993) (considering, but rejecting, Fifth Amendment claims of noncitizen "juveniles . . . *arrested and held in INS custody pending their deportation hearings*" (emphasis added)). And for the reasons stated in the Motion and above, Plaintiffs have not alleged any violations of the INA.

Plaintiffs also contend that they may bring a Fifth Amendment claim alongside

APA claims. Dkt. 207 at 42. While Plaintiffs are correct there is no prohibition on asserting constitutional claims alongside APA claims, Plaintiffs' Third Claim fails for the same reasons as their Second Claim (statutory access to counsel): Plaintiffs' Third Claim challenges the same conduct and asserts the same injury as their Second Claim, and Plaintiffs may not seek due process protections beyond those afforded by the INA.

H. Plaintiffs' Fourth Claim (APA – Unlawful Cessation of MPP Wind Down) Fails[9]

Plaintiffs incorrectly argue that the termination of the wind down was a "final" decision because it was a "deliberate" and "conscious" decision. Dkt. 207 at 43. The fact that a decision is "deliberate" and "conscious" does not mean that it is "final" for the purposes of the APA; many agency decisions are deliberate and conscious but nonetheless nonfinal.[10] *See, e.g.*, *Gem Cnty. Mosquito Abatement Dist. v. E.P.A.*, 398 F. Supp. 2d 1, 11 (D.D.C. 2005) (interim guidance concluding that a permit not required when pesticide is applied to waters of the United States in two circumstances not a "final" agency action). If Plaintiffs' logic were accepted, the word "final" in the APA would have no meaning. 5 U.S.C. § 704; *Hibbs v. Winn*, 542 U.S. 88, 101 (2004) ("A statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant . . . ."). The distinction the United States Supreme Court has drawn between "final" and "merely tentative or interlocutory" agency decisions would also be rendered meaningless. *See Bennett v. Spear*, 520 U.S. 154, 177-78 (1997). While a "deliberate" and "conscious" decision may be a necessary condition to meet the first prong of the *Bennett* test, it is not a sufficient one. *Id.*

The Government's decision to comply with a Court's injunction—whether that

[9] As noted previously in Section II.A, this claim rests on the incorrect premise that the *Texas v. Biden* injunction does not apply to the relief the Individual Plaintiffs and proposed class seeks. Plaintiffs' Fourth Claim should be dismissed for this reason alone.

[10] A decision is, by definition, conscious and deliberate. *See* https://www.dictionary.com/decision ("1 the act or process of deciding; determination, as of a question or doubt, by making a judgment . . . 2 the act of or need for making up one's mind . . . .").

decision was "erroneous[]" or not—is not an "agency action" at all, but simply the following of a court's action. At most, especially when considering the Government's stated intention to terminate MPP once the injunction is lifted, coupled with an appeal from that injunction, it is a "merely tentative or interlocutory" action, just as is interim guidance. *Bennett*, 520 U.S. at 177-78; *see, e.g.*, *Gem Cnty. Mosquito Abatement Dist.*, 398 F. Supp. 2d at 11 (EPA interim guidance was "just that: interim guidance," and not final agency action, where it was issued immediately to "regional administrators after certain cases from the Ninth Circuit cast uncertainty upon NPDES permitting requirements" and remained "subject to notice and comment prior to consummation of the agency decision-making process").

Plaintiffs' claim of a "final" agency action is even weaker than that of a plaintiff who challenges in interim rule. Plaintiffs do not identify any document in the SAC they contend constitutes the "final" agency action, or even any "agency" action. Instead, they only speculate that the Government made a decision beyond that of the *Texas* court and about the Government's reasoning for the alleged "agency" decision. *See* SAC ¶¶ 6 ("DHS's wind-down of MPP was abruptly halted in August 2021 . . . ."), 364 ("Upon information and belief, Defendants did so in a mistaken belief that the *Texas v. Biden* injunction required cessation of processing . . . ."); *Bark v. United States Forest Serv.*, 37 F. Supp. 3d 41, 50 (D.D.C. 2014) (concluding on summary judgment that plaintiffs had not shown final agency action where they "point[ed] to no written rules, orders, or even guidance documents of the [defendants] that set forth the supposed policies challenged here" but instead "attached a 'policy' label to their own amorphous description [agency's] practices").

Rather than actually address Defendants' argument that no legal consequences flow because no "rights or obligations" were created in the first instance (Dkt. 189 at 44), Plaintiffs dismiss it in a footnote as an issue "not before the Court." Dkt. 207 at 43 n.23. Plaintiffs fail to meet the second prong of the *Bennett* test for this reason alone. Moreover, while the Terminated and *In Absentia* Individual Plaintiffs allege they have

been affected in being required to remain outside the United States, their presence outside the United States is not a resultant "legal consequence." *Bennett*, 520 U.S. at 177-78. The *In Absentia* Plaintiffs still have the same right to move to rescind or reopen, appeal to the Board of Immigration Appeals, or file a petition for review before the United States Court of Appeals as any other asylum applicants with similarly situated procedural case postures. Dkt. 205 at 17. Similarly, the Terminated Plaintiffs still have the same right to move to remand or reopen, present themselves at a port of entry and request asylum, or request that DHS issue a new Notice to Appear as any other asylum applicants with similarly situated procedural case postures. *Id*.

I. Plaintiffs' Fifth Claim (First Amendment – Indiv. Plaintiffs) Fails

In their opposition, Plaintiffs argue at length that the original implementation of MPP placed restrictions on Individual Plaintiffs' speech. But Plaintiffs' claims about the original implementation of MPP—which is no longer in effect—are moot, and Plaintiffs' First Amendment claim as it relates to the original implementation of MPP is subject to dismissal for this reason alone. *See* Dkt. 189 at 19-21.

Furthermore, Plaintiffs offer no case support for their argument that First Amendment rights extend to the Individual Plaintiffs at issue here, who have never been admitted into or established domicile in the United States. Instead, they attempt to cabin *Verdugo-Urquidez* and ask the Court to extend the First Amendment to this context. Plaintiffs' attempt to do so fails. Plaintiffs argue that *Verdugo-Urquidez* involved the Fourth Amendment, and not the First Amendment, and that its holding was based on the Fourth Amendment's limiting reach to "the people." Dkt. 207 at 48. But the Supreme Court has made clear that the First Amendment does not protect noncitizens outside the territory of the United States.. *See Agency For Int'l Dev. V. Alliance for Open Society Int'l, Inc.*, 140 S. Ct. 2082, 2086 (2000) ("[F]oreign citizens outside U.S. territory do not possess rights under the U.S. Constitution."); *United States ex rel. Turner v. Williams*, 194 U.S. 279, 292 (1904) (holding that an excludable alien is not entitled to First Amendment rights, because '[h]e does not become one of the people to whom these

things are secured by our Constitution by an attempt to enter forbidden by law").

Plaintiffs also have *not* identified any actionable speech restrictions that the original implementation of MPP created. Instead, Plaintiffs allege that they were provided "with, at most, a single hour before court appearances" to consult with attorneys. SAC ¶ 376. That is not a restriction on speech at all, but rather, an alleged failure of the Government to sufficiently accommodate or facilitate the speech of unadmitted noncitizens, who were in custody while in the United States for the limited purpose of appearing for immigration court hearings. For this reason, this case is just like *Arroyo v. U.S. Dep't of Homeland Security*, 2019 WL 2912848, at *21 (C.D. Cal. 2019). There, as here, Plaintiffs merely allege that a custody arrangement affected Plaintiffs' ability to consult with their attorneys: there, custody transfers, and here, a limited amount of time in a room before hearings where Plaintiffs could use that time to consult with attorneys. *See* 2019 WL 2912848, at *21.[11]

Additionally, Plaintiffs identify nothing in the SAC alleging, much less plausibly demonstrating, any direct and deliberate Government obstruction to Plaintiffs' access to courts. As stated in Defendants' Motion, Plaintiffs challenge a policy that does not regulate court access at all. And in their opposition, Plaintiffs merely cite numerous allegations complaining of the incidental (and largely attenuated) effects of the policy on their access to immigration court—none of which constitutes direct and deliberate Government action as necessary to state an access to the courts claim. Dkt. 189 at 45; *see, e.g.*, SAC ¶¶ 62, 113-14, 128, 139-40, 154, 190-92, 194, 204-05, 219-20, 229-32, 244-46, 259-60, (alleged insufficiency of the LSP list provided by immigration court),

[11] Plaintiffs do allege that one of the twelve named plaintiffs, Chepo Doe, was told not to speak to attorneys during his hearing. SAC ¶¶ 156-57. While this could potentially be construed as a time, place, or manner restriction on speech, the SAC is devoid of any allegation that this was (a) a generally applicable policy or practice of original MPP, or (b) the experience of any other Individual Plaintiff or proposed class member. And this claim of what occurred in immigration court during immigration court proceedings is precisely the type of claim that must be challenged through the petition for review process. *See supra* Section II.C.2. Such a claim is not properly brought as a class claim for declaratory and injunctive relief.

63, 156-57 (allegedly insufficient accommodations for class members to meet with prospective attorneys), 97, 261-63 (allegedly dangerous and poor conditions in Mexico), 104-108, 130, 162-64, 178, 222, 251, 264-65, 282, 295, 300, 302, 307 (alleged difficulties in finding counsel, communicating with counsel, or otherwise pursuing asylum claims from Mexico).

Finally, to the extent any portion of Plaintiffs' Fifth Claim is not moot, Plaintiffs fail to identify any *current* restrictions Defendants are placing on Individual Plaintiffs' speech. Instead, Plaintiffs simply assert that "Defendants cause ongoing harm to Individual Plaintiffs" and "Defendants' restrictions have prevented them from communicating with and/or retaining potential counsel"—an apparent concession that mere current presence outside the United States is not a restriction on speech. Dkt. 207 at 48.

J. Plaintiffs' Sixth Claim (First Amendment – Org. Plaintiffs) Fails

As with the Individual Plaintiffs, Organizational Plaintiffs' First Amendment claim should be dismissed as moot. Like the SAC, Organizational Plaintiffs' opposition is focused exclusively on the implementation of MPP that is no longer in effect. *See* Dkt. 207 at 49-50.

Mootness aside, Organizational Plaintiffs' First Amendment claim fails on the merits. In their opposition, Organizational Plaintiffs contend they have pleaded (a) "that they represent certain Individual Plaintiffs," (b) "that they continue to provide legal services to putative class members," (c) that Defendants have "strictly limit[ed] the time they were allowed to provide legal services to existing clients," (d) that Defendants have "prohibit[ed] them from communicating with or advising potential clients," and (e) that Defendants have "forbid[den] them from conducting 'know your rights' presentations for MPP 1.0 respondents." Dkt. 207 at 49.

As an initial matter, Plaintiffs have not actually pled these restrictions in the SAC as Plaintiffs claim. With respect to the time Organizational Plaintiffs were permitted to consult with clients before hearings, this allegation involves only the amount allotted

before hearings for legal service providers, which, as explained above, is not a restriction on speech. With respect to communicating with potential clients, the allegations Plaintiffs cite demonstrate that there were no restrictions placed on speech. *See, e.g.*, *id.* ¶ 157 ("Chepo approached an attorney from Organizational Plaintiff ImmDef to ask for her help. Chepo spoke to the attorney for only a few minutes but gave her his contact information."). Instead, Organizational Plaintiffs' complaints are that the accommodation of one hour for attorney consultation before hearings was insufficient and it was not always met. *Id.* ¶ 299 ("Jewish Family Service rarely had the opportunity to meet with its clients for a full hour before their immigration court hearings due to a variety of factors, including CBP's slow processing at the port of entry and ICE's failure to transport individuals to the immigration court sufficiently in advance of their hearings."). And with respect to "know your rights" presentations, Jewish Family Service admits in the SAC that it was able to provide them "inside the courtrooms" without issue. *Id.* ¶ 297.

More critically, Organizational Plaintiffs have not alleged that any speech restrictions were placed on *them* in their prior client representations. Despite ImmDef's allegation that it previously represented one Individual Plaintiff and Jewish Family Service's allegation that it previously represented 130 potential members of the proposed class (SAC ¶¶ 159, 294), neither Organizational Plaintiff alleges a single instance where speech restrictions were imposed on them by the Government.

Finally, Plaintiffs have offered no argument likening the alleged restrictions here to those placed by governments in *NAACP v. Button* or *In re Primus*. Instead, they cite to *N.W. Immigrant Rights Project v. Sessions*, 2017 WL 3189032 (W.D. Wash. July 27, 2017), which is distinguishable. Like *Button* and *In re Primus*, the plaintiff in *N.W. Immigrant Rights Project* sought to enjoin the Government from enforcing a regulation that *prohibited* the plaintiff from "representing aliens unless and until the appropriate Notice of Entry of Appearance form is filed with each client that [plaintiff] represents." *Id.* at *2. Here, by contrast, Organizational Plaintiffs do not allege that Defendants

prohibited them from communicating with their clients at any point, much less prohibited them from *representing* their clients.

III. CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Court grant Defendants' Motion and dismiss Plaintiffs' SAC.

Dated: March 7, 2022

Respectfully submitted,

TRACY L. WILKISON
United States Attorney
DAVID M. HARRIS
Assistant United States Attorney
Chief, Civil Division
JOANNE S. OSINOFF
Assistant United States Attorney
Chief, General Civil Section

/s/ *Matthew J. Smock*
JASON K. AXE
MATTHEW J. SMOCK
Assistant United States Attorneys
Attorneys for Defendants