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11 UNITED STATES DISTRICT COURT
 12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

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

15 Plaintiff,

16 v.

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

18 Defendants.
 19

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

**DEFENDANTS' REPLY IN SUPPORT
 OF THEIR MOTION TO STAY CASE
 AND/OR HOLD CASE IN ABEYANCE**

Hearing Date: May 17, 2021
 Hearing Time: 9:00 a.m.
 Ctrm: Riverside, Courtroom 1
 20 Hon. Jesus G. Bernal
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1 **I. INTRODUCTION**

2 In their opposition, Plaintiffs principally argue that a stay is unwarranted because
3 the Organizational Plaintiffs, Individual Plaintiffs, and members of the proposed class
4 continue to face harms. However, the harms alleged in Plaintiffs’ opposition are wholly
5 distinct—both in their nature and purported cause—from the harms alleged in the
6 Complaint and the harms that form the basis of Plaintiffs’ “Emergency Motions.”

7 The Complaint and “Emergency Motions” are based on allegedly poor living
8 conditions in Mexico and problems in accessing counsel from Mexico as a result of the
9 Government’s implementation and execution of MPP. Plaintiffs’ opposition, on the
10 other hand, asserts new harms allegedly resulting from the pace of the *winding down* of
11 MPP. Those harms include Organizational Plaintiffs “experiencing ongoing harm due to
12 Defendants’ chaotic implementation of Phase One,” proposed class members being
13 “unable to register for Phase One because the online process is not accessible for those
14 without an internet connection,” proposed class members leaving “the border region
15 entirely, often as far as Chiapas,” and other harms caused by factors unrelated to MPP,
16 such as purportedly increasing crime in Tijuana. ECF No. 129 at 11, 14, 16. Plaintiffs
17 fail to explain the relevance of these harms to this Motion. Plaintiffs do not challenge
18 these harms in the Complaint or seek to remedy them through their “Emergency
19 Motions.” A stay will have no effect on these alleged harms, and thus, these alleged
20 harms do not provide a sound reason for denying a stay in this case.

21 Moreover, these newly raised harms only show that Plaintiffs’ complaints are a
22 moving target—first from reacting to the implementation of MPP to now reacting to the
23 Government’s efforts to *wind down* MPP through phase one¹ and in implementing the
24 Executive Order.² This only further demonstrates that a stay would be most efficient as

25
26 ¹ Press Release, U.S. Dep’t of Homeland Security, DHS Announces Process to
27 Address Individuals in Mexico with Active MPP Cases (Feb. 11, 2021), available at
28 <https://www.dhs.gov/news/2021/02/11/dhs-announces-process-address-individualsmexico-active-mpp-cases> (last accessed April 30, 2021).

² Executive Order No. 14010, 86 F.R. 8267 (Feb. 2, 2021).

1 the implementation of phase one (and any future phases) and the Executive Order
2 continue to be implemented by the Government over the next several months. If, at the
3 end of the stay, Plaintiffs are still unsatisfied with the results or the pace of the
4 Government’s efforts, they may respond accordingly, including by seeking to amend
5 their claims.

6 Beyond these newly asserted harms, Plaintiffs offer no sound reason for why a
7 stay should be denied. *First*, they argue that phase one has only provided partial relief to
8 date, but do not explain why the Court needs to get involved at this juncture in a process
9 already being undertaken by the Government to wind down the program Plaintiffs
10 challenge. Nor do they explain the preliminary relief the Court would grant at this
11 juncture, much less how it would be safer, more efficient, and more comprehensive than
12 the efforts the Government is already undertaking. *Second*, Plaintiffs do not explain why
13 a stay would be inefficient or prejudicial to a proposed class that consists of (1) members
14 whose claims have already resolved, (2) members whose claims will be resolved in a
15 matter of time, (3) members whose claims may be resolved in a future phase of the MPP
16 wind down process, and (4) members who never had justiciable live claims to begin
17 with. *And third*, Plaintiffs do not explain how they are uniquely situated from other
18 MPP-challenging plaintiffs in other cases across the country where pauses have been
19 placed on reaching the merits of MPP—including *E.A.R.R. v. U.S. Dep’t of Homeland*
20 *Sec.*, Case No. 3:20-cv-02146 (S.D. Cal.).

21 Staying this case for four months as the Government continues implementing
22 phase one and the Executive Order would be most efficient for the Court and the parties.

23 **II. ARGUMENT**

24 **A. Purported Continuing Harms to Plaintiffs Do Not Weigh Against a** 25 **Stay**

26 In their opposition, Plaintiffs detail purported harms members of the proposed
27 class currently suffer, but these purported harms (a) would not be created or exacerbated
28 by a stay in this case, and (b) are distinct from the harms alleged in the Complaint and

1 that formed the basis of Plaintiffs’ “Emergency Motions.” For these reasons, a stay
2 should not be denied based on the existence of these purported harms.

3 1. Purported Increasing Violence Near the California-Mexico Border

4 Plaintiffs characterize conditions in Mexico near the San Ysidro and Calexico
5 Ports of Entry as worsening, but the data they cite does not support their contentions.
6 For example, Plaintiffs claim that “violence has continued to rise in 2021” because
7 “[s]eventy-nine people were murdered in Tijuana in the first two weeks of 2021 alone.”
8 ECF No. 129 at 14. That murder rate, while high, does not reflect “increasing violence,”
9 but instead puts Tijuana on pace for a 2021 murder rate (1,922) that is consistent with or
10 even less than prior years: approximately 2,000 in 2020 and over 2,100 in 2019.^{3,4}

11 In any event, the purported continuing harms from conditions in Mexico do not
12 militate against a stay. These purported harms are not “damage which may result from
13 *the granting of a stay . . .*” *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1112 (9th Cir.
14 2005) (emphasis added). Instead, it is damage or harm Plaintiffs contend resulted from a
15 policy and program that the Government is winding down and in which the Government
16 is no longer enrolling any new individuals. Plaintiffs do not explain anywhere in their
17 opposition how a stay would create, increase, or perpetuate these harms. With or
18 without a stay, fewer and fewer proposed class members are subjected to these alleged
19 harms as more individuals are processed into the United States on a daily basis.⁵

20 _____
21 ³ Borderreport.com, *Tijuana On Track to Reach 2,000 Murders in 2020, Slightly*
22 *Fewer than the Previous Year* (Dec. 15, 2020), available at:
[https://www.borderreport.com/regions/mexico/tijuana-on-track-to-reach-2000-murders-](https://www.borderreport.com/regions/mexico/tijuana-on-track-to-reach-2000-murders-in-2020-slightly-fewer-than-the-previous-year/)
[in-2020-slightly-fewer-than-the-previous-year/](https://www.borderreport.com/regions/mexico/tijuana-on-track-to-reach-2000-murders-in-2020-slightly-fewer-than-the-previous-year/) (last accessed April 30, 2021).

23 ⁴ Updated media reports describing 223 homicides in Tijuana as of February 10,
24 2021, show the annualized rate continuing on pace below 2000 for the year 2021. San
25 Diego Union-Tribune, U.S. Man held in Tijuana on suspicion of killing 19-year old
26 employee at Adelita bar (Feb. 12, 2021), available at
[https://www.sandiegouniontribune.com/news/border-baja-california/story/2021-02-](https://www.sandiegouniontribune.com/news/border-baja-california/story/2021-02-12/tijuana-killing-bar)
[12/tijuana-killing-bar](https://www.sandiegouniontribune.com/news/border-baja-california/story/2021-02-12/tijuana-killing-bar) (223rd homicide of the year [annualized rate of 1985 per year])
(last accessed April 30, 2021).

27 ⁵ Defendants intend to submit a declaration prior to the May 17 hearing that
28 provides updated figures on (1) the number of individuals processed into the United
States to date pursuant to phase one, and (2) an estimate of the number of phase one-
eligible individuals yet to be processed into the United States.

1 2. Purported Increasing Violence Near the California-Mexico Border

2 Next, Plaintiffs describe new obstacles faced by the Organizational Plaintiffs as a
3 result of phase one, such as receiving “phone calls from individuals trapped in Mexico
4 who are panicked, confused, and desperate as a result of inconsistent messaging and
5 misinformation about Phase One” and spending “a significant amount of time at the port
6 of entry, where staff coordinate processing consistent with public health precautions and
7 address problems with documents that would otherwise prevent people processed in
8 Phase One from traveling to join their loved ones in the United States.” ECF No. 129 at
9 16-17. Not only are these asserted new harms not “damage which may result from
10 granting of a stay,” *Lockyer*, 398 F.3d at 1112, but they are also fundamentally different
11 from the organizational harm alleged in the Complaint and in the “Emergency Motions.”
12 As Plaintiffs explain, these alleged harms are the result of the Government’s efforts to
13 *wind down* MPP—not the implementation of MPP that formed the basis of the
14 Complaint and “Emergency Motions.”

15 These alleged harms do not warrant the denial of a stay. A stay would not worsen
16 any of these alleged harms. *See CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962)
17 (in ruling on a motion to stay, a court considers “the possible damage which may result
18 from the *granting of stay*” (emphasis added)). Rather, these alleged harms are transient
19 in nature and are likely to resolve on their own as the Government continues to
20 implement phase one and wind down MPP. Nor would the denial of a stay fix them.
21 These harms are not alleged in the Complaint, and Plaintiffs do not seek to rectify these
22 harms in the “Emergency Motions.”

23 Instead, these alleged harms only further support Defendants’ request for a stay.
24 Plaintiffs’ opposition reveals that their complaints are a moving target, from first
25 complaining about implementation of MPP to the Government’s efforts to now wind it
26 down. By granting a stay, the Government can continue its efforts to wind down MPP,
27 and if Plaintiffs are unsatisfied with the pace or result of that process several months
28 from now, they may proceed accordingly—including by seeking to amend the Complaint

1 to address current, rather than past, issues or filing renewed motions.

2 **B. The Absence of a Stay Could Prejudice All Parties**

3 In their Motion, Defendants identified prejudice to the Government, its
4 employees, its citizens, and proposed class members should this case proceed to the
5 merits, and if preliminary injunctive relief were to be issued that forces a reworking of
6 the process already underway to process MPP participants into the United States in an
7 “orderly, safe, and efficient” manner. In opposition, Plaintiffs argue that Defendants
8 “have offered only vague, unsupported statements” of prejudice, and that a preliminary
9 injunction “would simply require Defendants to comply with the law.” ECF No. 129 at
10 18. That assertion is itself vague, and Plaintiffs do not explain anywhere else in their
11 opposition what a preliminary injunction would look like at this juncture. While
12 Plaintiffs may be unsatisfied with the pace of progress in phase one, they do not deny
13 that progress has been made. *See id.* at 10 (“about 5,604 people had been processed into
14 the United States as of April 6, 2021”). Indeed, since the filing of the Motion, further
15 progress has been made. On April 13, DHS announced that, “[b]eginning the week of
16 April 19, cases will be processed at the Eagle Pass, TX port of entry.”^{6,7} On April 23,
17 2021, a seventh named Plaintiff, Anthony Doe, was processed into the United States.
18 And as of April 24, 2021, approximately 7,853 MPP participants had been processed
19
20

21 ⁶ U.S. Dep’t of Homeland Security, Migrant Protection Protocols, DHS Begins to
22 Process Individuals in MPP Into the United States to Complete their Immigration
23 Proceedings (Feb. 20, 2021; last published April 13, 2021), available at
<https://www.dhs.gov/migrant-protection-protocols> (last accessed April 29, 2021).

24 ⁷ Contrary to Plaintiffs’ contention, updates on phase one expanding to additional
25 ports of entry are highly relevant. The expansion of phase one to additional ports of
26 entry allows for the more individuals to be processed into the United States on a daily
27 basis. Moreover, while the Individual Plaintiffs and proposed class were initially
28 directed to present at the San Ysidro or Calexico ports of entry in connection with MPP,
it does not follow that these individuals will necessarily be directed to go to San Ysidro
again to be processed into the United States. *See id.* (“As a reminder, intake for this
process does not occur at the ports of entry, but through the <https://conecta.acnur.org>
website. Once registered, individuals will be instructed on where to go for staging and to
be scheduled for processing at the ports.”).

1 into the United States.^{8,9}

2 **C. A Stay Would Be Most Efficient and Further the Interests of Fairness**
3 **and Judicial Economy**

4 A stay would be most efficient because the Individual Plaintiffs and proposed
5 class fall into one of three categories, none of which require immediate resolution of the
6 claims on the merits: (1) individuals who have already safely been processed into the
7 United States (and thus have moot claims); (2) individuals who are phase one eligible
8 and are awaiting processing into the United States (and thus also have moot claims, or
9 otherwise claims that will become moot in a matter of time); and (3) individuals who are
10 past MPP participants (because they are subject to removal orders) and not eligible for
11 phase one (and thus have no live stake in the claims pled in the Complaint or relief
12 sought in the “Emergency Motions”).

13 1. Plaintiffs’ Claims, as Currently Pled, Are Moot

14 Plaintiffs appear to concede that the claims of the Individual Plaintiffs and
15 proposed class members who have already been processed into the United States are
16 moot, except that they may still seek declaratory relief and the Individual Plaintiffs “also
17 retain their interest in obtaining class certification and classwide relief.” ECF No. 129 at
18 23-24. Plaintiffs are incorrect on both points. First, declaratory relief is not appropriate
19 to challenge government actions that are no longer being implemented. *See Bd. of*
20 *Trustees of Glazing Health and Welfare Trust v. Chambers*, 941 F.3d 1195, 1199 (9th
21 Cir. 2019) (dismissing appeal as moot and remanding with instructions to dismiss
22 complaint seeking declaration that repealed legislation was invalid). Plaintiffs cite
23 *Biodiversity Legal Found. v. Badgley*, 309 F.3d 1166 (9th Cir. 2002), in support of their
24 position, but *Badgley* does not state or imply that declaratory relief may survive

25 _____
26 ⁸ Washington Post, *They missed their U.S. court dates because they were*
27 *kidnapped. Now they’re blocked from applying for asylum.* (Apr. 24, 2021), available at:
[https://www.washingtonpost.com/world/2021/04/24/mexico-border-migrant-asylum-](https://www.washingtonpost.com/world/2021/04/24/mexico-border-migrant-asylum-mpp/)
28 [mpp/](https://www.washingtonpost.com/world/2021/04/24/mexico-border-migrant-asylum-mpp/) (last accessed April 29, 2021).

⁹ As noted above, Defendants intend to submit a declaration in advance of the
May 17 hearing with updated figures.

1 mootness. To the contrary, *Badgley* articulates a test for determining whether a request
2 for declaratory relief is moot: “whether the facts alleged, under all the circumstances,
3 show that there is a substantial controversy, between parties having adverse legal
4 interests, of sufficient immediacy and reality to warrant the issuance of a declaratory
5 judgment.” *Id.* at 1174-75 (quotation marks and citations omitted). That test is not
6 satisfied here. Plaintiffs seek judicial declarations that MPP is unlawful, but the
7 Government is no longer enrolling new individuals in MPP and is currently in the
8 process of processing individuals in MPP into the United States.

9 And second, the seven Individual Plaintiffs who have been processed into the
10 United States do not retain a legally cognizable interest in “obtaining class certification
11 and classwide relief.” ECF No. 129 at 24. “A class representative whose individual
12 claim becomes moot may continue to represent the class if the class was duly certified
13 prior to mootness, or if the representative’s claim becomes moot after a denial of
14 certification,” but otherwise cannot “seek class action certification as a class
15 representative.” *Kennerly v. U.S.*, 721 F.2d 1252, 1260 (9th Cir. 1983) (“The mooting of
16 Kennerly’s individual claim for injunctive relief means that the appellant, Robert
17 Kennerly, is not in a position to seek class action certification as a class representative.”).

18 2. The Claims of Phase One-Eligible Individuals Are Moot

19 Contrary to Plaintiffs’ assertion, Defendants do not concede that the claims of
20 phase one-eligible individuals still in Mexico are not moot.¹⁰ These individuals are
21 eligible for the ultimate relief they seek through judicial intervention—return to the
22 United States. As such, the relief they sought in the Complaint that was previously
23 unavailable to them has now been made available to them. That is enough to render their
24 claims moot. There is no live controversy, notwithstanding the fact that their processing
25 into the United States has yet to occur. *See, e.g., Spencer-Lugo v. I.N.S.*, 548 F.2d 870,

26
27 ¹⁰ None of the named Individual Plaintiffs fall into this category. Seven of the
28 eight named Individual Plaintiffs have been processed into the United States. Anthony
Doe, the seventh named Individual Plaintiff was processed into the United States on
April 23, 2021 and issued an I-94.

1 870 (9th Cir. 1977) (claims challenging a “Multiple Accelerated Summary Hearing”
2 procedure became moot when INS *agreed* to “uncontestedly reopen [the plaintiffs’]
3 cases and thereby receive a full-blown individualized hearing before an Immigration
4 Judge”); *see also Samsung Elec. Co., Ltd. v. Rambus, Inc.*, 523 F.3d 1374, 1379 (Fed.
5 Cir. 2008) (where opposing party agreed to pay full amount of other party’s attorney’s
6 fees, the attorney’s fees issue became moot); *Rand v. Monsanto Co.*, 926 F.2d 596, 597–
7 98 (7th Cir. 1991) (when defendant agreed to pay the full amount of plaintiff’s demand,
8 no justiciable dispute remained). Indeed, the remaining complaint of this subcomponent
9 of the proposed class, namely, that “Defendants’ Phase One processing has so far been
10 chaotic and confusing,” is distinct and unrelated to the harms alleged in the Complaint.
11 *See* ECF No. 129 at 24.

12 At an absolute minimum, the claims of these individuals will become moot in a
13 matter of time. And regardless, it would be a waste of time litigating these individuals’
14 entitlement to relief for which these individuals are already eligible, thus warranting a
15 stay. *H’Shaka v. O’Gorman*, 758 F. App’x 196, 202 (2d Cir. 2019); *SolarCity*
16 *Corporation v. Salt River Project Agricultural Improvement and Power District*, 2016
17 WL 5109887, at *3 (D. Ariz. Sept. 20, 2016).

18 3. The Existence of Class Members Currently Ineligible for Phase One
19 Does Not Alter the Analysis

20 Plaintiffs argue that Jaqueline Doe and proposed class members who are subject to
21 orders of removal have live claims and standing because they “continue to face extreme
22 and irreparable harm from Defendants’ unlawful policies.” ECF No. 129 at 22-23. But
23 whether Jaqueline Doe and proposed class members similarly situated with her suffer
24 some harm in the abstract is irrelevant. For standing and mootness, the question is
25 whether these individuals have a personal live stake in the controversy that is before the
26 Court. *See Western Mining Council v. Watt*, 643 F.2d 618, 623 (9th Cir. 1981) (standing
27 requires a “personal stake in the outcome of *the controversy*” (emphasis added)); *Carney*
28 *v. Adams*, 141 S. Ct. 493, 498 (2020) (no standing from “abstract and generalized

1 harm”); *Am. Diabetes Ass’n v. United States Dep’t of the Army*, 938 F.3d 1147, 1152
2 (9th Cir. 2019) (“A case becomes moot . . . when . . . the parties lack a legally cognizable
3 interest *in the outcome*.” (emphasis added)).

4 These proposed class members do not have such a personal and live stake in this
5 controversy. Plaintiffs’ first claim challenges MPP insofar as it makes it difficult for
6 individuals to apply for asylum as they remain in Mexico *pending* removal proceedings
7 in the United States. Compl., ¶¶ 3, 57 (“Under the Return Policy, DHS forces certain
8 asylum-seeking individuals and families from non-contiguous countries . . . to return to
9 Mexico *for the duration of their immigration proceedings*.” (emphasis added)), 246,
10 250-260. Their second claim challenges MPP’s purported “Hearing Suspension
11 Directive” under which “Defendants have repeatedly postponed Individual Plaintiffs’
12 removal proceedings.” *Id.*, ¶ 265. Their third, fifth and sixth claims challenge MPP’s
13 purported “Deprivation of Counsel Policy,” which allegedly makes it difficult for the
14 Individual Plaintiffs to access counsel in connection with their *pending* removal
15 proceedings while in Mexico pursuant to MPP. *See id.*, ¶ 298 (“Represented Individual
16 Plaintiffs are left with, at most, a single hour before court appearances, which . . . is
17 insufficient to obtain comprehensive advice regarding the legal issues surrounding their
18 asylum claims). And their eighth and ninth claims challenge conditions in Mexico for
19 individuals *currently in MPP* who Plaintiffs claim are in “constructive custody” of the
20 United States because they are required to stay in Mexico. *See id.*, ¶¶ 57 (Return Policy
21 requires “return to Mexico *for the duration of their immigration proceedings*” (emphasis
22 added)), 60 (“The government considers individuals subject to MPP to be in custody for
23 the duration of their placement in Mexico.”), 319-333. All of these claims concern
24 individuals who are currently in MPP (*i.e.*, remaining in Mexico pending active removal
25 proceedings in the United States), not individuals previously in MPP and then later
26 subject to orders of removal. This subgroup of past MPP participants have no standing
27 to complain of difficulties in applying for asylum or accessing counsel while in MPP or
28 conditions in Mexico.

1 Plaintiffs argue that Jacqueline Doe and other proposed class members with
2 removal orders have standing and live claims because they are included in the class
3 definition. But an individual’s inclusion in a class definition, by itself, does not mean
4 that individual satisfies Article III’s requirements, especially where the Court has not
5 accepted the proposed class definition. *See Genesis Healthcare Corp. v. Symczuk*, 569
6 U.S. 66, 75 (2013) (“a putative class acquires an independent legal status” only when it
7 is certified under Rule 23); *see also, e.g., Moore v. Apple Inc.*, 309 F.R.D. 532, 542-43
8 (N.D. Cal. Aug. 4, 2015) (denying certification of proposed class that was “overbroad . .
9 . because it necessarily includes individuals who could not have been injured by
10 Defendant’s alleged wrongful conduct as a matter of law”).

11 Since Plaintiffs’ claims and their “Emergency Motions” do not concern past MPP
12 participants with removal orders, the alleged separate harms these individuals face do not
13 provide a basis for denying a stay. Proceeding with the current litigation will not address
14 the alleged separate harms of this group of individuals because the litigation does not
15 concern them.

16 **D. A Stay Would Simplify the Issues, Proof, and Questions of Law in this**
17 **Case**

18 Next, Plaintiffs argue that the issues will not be simplified because “thousands of
19 asylum seekers” are not eligible for phase one. ECF No. 129 at 25. But the opposite is
20 true. First, as stated in the Motion and above, Defendants’ position is that these
21 individuals do not have live claims. Plaintiffs contend otherwise. A stay would likely
22 avoid the necessity of resolving this question. Following a stay, and after the
23 Government has additional time to implement the Executive Order, the complaints of
24 these individuals will either resolve or these individuals can then pursue simplified
25 claims that actually apply to them—as individuals originally placed in MPP, sent to
26 Mexico, and subject to removal orders.

27 And second, as Defendants indicated in their Motion, the Government has not yet
28 determined what, if anything, it will do with past MPP participants who are subject to

1 orders of removal. The Government has not ruled out reopening such proceedings and
2 processing these individuals into the United States in future phases. Rather than
3 litigating the uncertain claims of this class of individuals now, it would be far more
4 efficient to stay this case in order to give the Government time to further its efforts to
5 wind down MPP. This process will either resolve these individuals' claims or not, and if
6 it does not, these individuals may pursue more simple and streamlined claims
7 challenging their inability to return to the United States.

8 **E. A Stay Would Further the Interests of Judicial Comity**

9 As Defendants explained in their Motion, pauses have been placed on multiple
10 MPP challenges across the country. Plaintiffs attempt to distinguish these cases on the
11 grounds that some involved pauses agreed-upon by the parties, some were appeals, and
12 some were continuances of deadlines rather than stays. But Plaintiffs fail to explain why
13 any of these distinctions matter. And they do not. Courts have little interest in deciding
14 the merits of challenges to an MPP program that is currently being wound down.
15 Moreover, plaintiffs in other cases have also apparently seen that there is no immediate
16 need to press forward with claims challenging MPP policies, given the Government's
17 efforts to wind down MPP. Plaintiffs here have not explained why they are uniquely
18 situated from other plaintiffs and classes of plaintiffs previously placed in MPP, such
19 that this case should proceed on a different course.

20 Plaintiffs cite *E.A.R.R. v. U.S. Dep't of Homeland Sec.*, Case No. 3:20-cv-02146
21 (S.D. Cal.), in support of their argument that a stay should be denied here. *E.A.R.R.*,
22 ECF No. 129 at 26. On February 19, 2021, the court in *E.A.R.R.* denied Defendants'
23 motion to stay that had been filed on December 22, 2020. *E.A.R.R.*, ECF No. 23, 45.
24 However, in *E.A.R.R.*, the court, in its order denying the stay, explicitly declined to
25 consider Defendants' assertion at oral argument that the case should be stayed pending
26 the DHS Secretary's review of the MPP program, as directed in Executive Order No.
27 14010, because that issue had not been briefed. *E.A.R.R.*, ECF No. 45 at 3 n.1. The
28 denial order also did not address DHS's announced intention to "process into the United

1 States certain individuals who had been returned to Mexico under the Migrant Protection
2 Protocols (MPP) and have pending cases before the Executive Office for Immigration
3 Review,” as announced in the February 11, 2021 press release. *E.A.R.R.*, ECF No. 43-1.

4 Nonetheless, neither the court nor the plaintiffs in *E.A.R.R.* have moved hurriedly
5 in that case since the denial of the motion for stay. The plaintiffs’ motions for
6 preliminary injunction and class certification have been pending since December, and
7 the defendants’ motion to dismiss has been pending since February. *See E.A.R.R.*, ECF
8 Nos. 24, 49. On March 26, 2021, the court issued an order extending the hearing date on
9 both motions to June 9, 2021. *E.A.R.R.*, ECF No. 55. On April 27, 2021, the parties
10 filed another joint motion to extend the dates in that case, including the motion hearings,
11 as they engaged in settlement negotiations. *E.A.R.R.*, ECF No. 56.

12 Therefore, the litigation of Plaintiffs’ claims on the merits—including on
13 Plaintiffs’ “Emergency Motions” and Defendants’ anticipated motion to dismiss—
14 should be paused for a reasonable time as the Government continues to implement the
15 Executive Order and phase one.

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1 **III. CONCLUSION**

2 For the foregoing reasons, Defendants respectfully request that the Court stay this
3 action for four months and order the parties to submit a joint status report within thirty
4 (30) days of the stay being entered, and every thirty (30) days thereafter until the stay is
5 lifted. Alternatively, Defendants respectfully request that the Court hold all case
6 deadlines and hearings in the case in abeyance for a period of four months.

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9 Dated: May 3, 2021

Respectfully submitted,

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