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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

IMMIGRANT DEFENDERS LAW CENTER, *et al.*,

Plaintiffs,

v.

CHAD WOLF, *et al.*,

Defendants.

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

PLAINTIFFS' *CORRECTED* REPLY IN SUPPORT OF EMERGENCY MOTION FOR PRELIMINARY INJUNCTION

Judge: Honorable Jesus G. Bernal
Date: December 14, 2020
Time: 9:00 a.m.
Crtrm: 1

Action Filed: October 28, 2020

[Caption Page Continued - Additional Attorneys for Plaintiffs and putative class members]

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INTRODUCTION

Plaintiffs move for emergency relief in order to protect their right to apply for asylum and their ability to provide meaningful legal services. As Plaintiffs satisfy all preliminary injunction criteria and Defendants' opposition is unpersuasive, the Court should grant Plaintiffs' request. The Supreme Court's order in *Wolf v. Innovation Law Lab*, 140 S. Ct. 1564 (Mar. 11, 2020), is not implicated because the issues raised in the government's petition for certiorari are distinct, 2020 WL 6121563 (Oct. 19, 2020), and the relief requested here is compatible with protecting the public health.

ARGUMENT

I. THIS COURT HAS JURISDICTION OVER PLAINTIFFS' CLAIMS

A. 8 U.S.C. § 1252(a)(2)(B)(ii) does not preclude jurisdiction.

Defendants' argument regarding 8 U.S.C. § 1252(a)(2)(B)(ii) is wrong for two reasons. First, Section 1252(a)(2)(B)(ii) bars judicial review of purely discretionary decisions, but federal courts retain jurisdiction to decide questions of law. *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017) (Section 1252(a)(2)(B)(ii) "restricts jurisdiction only with respect to the executive's exercise of discretion," not "questions of law" (internal quotation marks and citations omitted)). This case raises a threshold legal issue—namely, whether Defendants have authority to apply 8 U.S.C. § 1225(b)(2)(C) in a manner that violates the plain language of that provision, as well as numerous other provisions of the INA, the APA, and the Constitution. "Even if a statute gives the [executive] discretion, . . . the courts retain jurisdiction to review whether a particular decision is *ultra vires* the statute in question." *Spencer Enters., Inc. v. United States*, 345 F.3d 683, 689 (9th Cir. 2003).

As Defendants concede, any discretion granted in 8 U.S.C. § 1225(b)(2)(C) "must be read to cohere with, not conflict with, the generic right to apply for asylum and have representation by counsel in that proceeding." PI Opp., ECF 88 at 10. Plaintiffs allege that Defendants' implementation of the Migrant Protection Protocols ("MPP" or "Protocols") violates the substantive right to apply for asylum, *see* 8

U.S.C. § 1158(a)(1), and the right to access counsel in asylum proceedings, *see* 8 U.S.C. §§ 1158(d)(4), 1229a(b)(4)(A), 1362. Since Defendants have no discretionary authority to violate these laws, 8 U.S.C. § 1252(a)(2)(B)(ii) does not bar judicial review.

Second, Section 1252(a)(2)(B)(ii) does not bar judicial review of asylum claims – it contains an exception for "the granting of relief under section 1158(a)." PI Opp. at 6. This exception removes discretionary decisions regarding asylum applications from the sweep of Section 1252(a)(2)(B)(ii). *Kucana v. Holder*, 558 U.S. 233, 247 n.13 (2010). To the extent that Defendants argue that their application of Section 1225(b)(2)(C) includes the discretion to illegally subvert the asylum process, Section 1252(a)(2)(B)(ii) does not apply because of this express exclusion.[1]

B. 8 U.S.C. § 1252(b)(9) does not preclude jurisdiction.

The Ninth Circuit has construed 8 U.S.C. § 1252(b)(9) to encompass only the review of final removal orders and those issues that "are bound up in and an inextricable part of" the removal process. *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1032-33 (9th Cir. 2016).[2] "[C]laims that are independent of or collateral to the removal process" fall outside the scope of § 1252(b)(9). *Id.* at 1032; *see Singh v. Gonzales*, 499 F.3d 969, 979 (9th Cir. 2007) (district court had jurisdiction over ineffective assistance of counsel claim where it was the only avenue for judicial review).

In *Jennings v. Rodriguez*, a Supreme Court plurality warned of the "staggering results" of broadly interpreting Section 1252(b)(9). 138 S. Ct. 830, 840 (2018). The plurality explained that Section 1252(b)(9) precludes district court review only of challenges by individual respondents to removal orders, decisions to detain or seek

[1] Defendants cite *Gebhardt v. Nielsen*, 879 F.3d 980, 987 (9th Cir. 2018), for the proposition that "[r]eturn decisions pursuant to Section 1225(b)(2)(C) are squarely in the discretion of the Secretary and therefore unreviewable." PI Opp. at 6-7. But *Gebhardt* concerns a separate jurisdictional provision related to immigrant visa petitions that uses distinct language of "sole and unreviewable discretion." 8 U.S.C. § 1154(a)(1)(A)(viii)(I).

[2] By its terms, § 1252(b) applies "[w]ith respect to review of an order of removal under subsection (a)(1)," which refers to judicial review of a final order of removal.

removal, or "any part of the process by which their removability will be determined." *Id.* It then reasoned that Section 1252(b)(9) did not preclude review of the respondents' challenge to prolonged detention. 138 S. Ct. at 840.

As in *Jennings*, the claims in this case fall outside the scope of § 1252(b)(9). Organizational Plaintiffs Immigrant Defenders ("ImmDef") and Jewish Family Service of San Diego ("JFS") are not subject to detention, removal, or the removal process, and do not challenge individual removal orders or the process in which any individual's removability is determined. Instead, their claims arise from the Protocols' implementation, which unlawfully interferes with their ability to deliver meaningful legal assistance to current and potential clients subjected to MPP.

Nor does Section 1252(b)(9) divest this Court of jurisdiction over Individual Plaintiffs' claims, which are ancillary to the removal process. As in *Jennings*, Individual Plaintiffs do not challenge removal orders, Defendants' decisions to detain them or seek their removal, or any part of the process for determining their removability. *See* 138 S. Ct. at 841. Rather, Individual Plaintiffs' claims arise from the conditions of custody to which Defendants have relegated them during their removal proceedings. *See* Compl., ECF 1 ¶¶ 59-62; Brief of Amicus Curiae Immigration Law Professors ("Professors Amicus"), ECF 79-2 at 1-6. Through their unlawful policies, Defendants have trapped Individual Plaintiffs in unsafe conditions in Mexico, thereby obstructing their ability to identify, retain, or consult with counsel. *See* Compl. ¶¶ 111-116; Brief of Amicus Curiae Association of Pro Bono Counsel ("Pro Bono Amicus"), ECF 76-2 at 6-10.

Conditions of confinement cases are beyond the scope of Section 1252(b)(9). *See, e.g., Torres v. DHS*, 411 F. Supp. 3d 1036, 1048 (C.D. Cal. 2019) (Bernal, J.). Here, as in *Torres*, Individual Plaintiffs' INA and due process claims "are based on a right protecting the attorney-client relationship from undue burden or interference." *Id.* at 1048. Moreover, the conditions of Individual Plaintiffs' custody do not turn on the facts of any particular removal proceeding. *Id.* at 1048-49.

Indeed, Individual Plaintiffs' need for legal representation is not limited to their removal proceedings. Because hearings are unlikely to take place in the foreseeable future, they urgently need legal assistance to request parole, file habeas petitions, obtain non-refoulement interviews, seek bond hearings, or file petitions for affirmative relief. Because all these endeavors are distinct from the removal process, Individual Plaintiffs' claims are not barred by Section 1252(b)(9).

Courts in the Ninth Circuit have repeatedly affirmed that Section 1252(b)(9) does not preclude jurisdiction "where a claim could not have been litigated in removal proceedings and the noncitizen would otherwise 'have had no legal avenue to obtain judicial review of [the] claim.'" *Inland Empire-Immigr. Youth Collective v. Nielsen*, Case No. EDCV 17-2048 PSG (SHKx), 2018 WL 4998230 at *14 (C.D. Cal. Apr. 19, 2018) (quoting *J.E.F.M.*, 837 F.3d at 1032). Because Individual Plaintiffs seek broad-based injunctive relief that could not be obtained through a petition for review, § 1252(b)(9) does not preclude jurisdiction over their claims.

II. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS OF THEIR APA CLAIMS

A. Plaintiffs are likely to succeed on their claim that Defendants' implementation of the Protocols violates the right to apply for asylum under 8 U.S.C. § 1158(a)(1).

Defendants contend that Plaintiffs' First Claim will fail because Congress has provided for contiguous return in the statute. But Defendants err in conflating agency action violating the right to asylum with congressional action authorizing contiguous return in Section 1225(b)(2)(C). The statutory text of Section 1225(b)(2)(C) does not reference the right to apply for asylum, and nothing in the statutory scheme suggests Congress intended to subvert the right to apply for asylum under Section 1158 or the uniformity principle for treatment of asylum applications. It would be strikingly odd for Congress to amend the "historic" purpose of the Refugee Act without mentioning or referencing the asylum statute. *See* Refugee Act of 1980, Pub. L. No. 96-212, § 101(a), 94 Stat. 102 (1980).

Whatever latitude Defendants have in implementing Section 1225(b)(2)(C), they cannot do so in a manner that subverts Section 1158 or the uniformity principle. *See, e.g.*, Brief of Amicus Curiae Refugees International, ECF 77-1 at 7.

Contrary to Defendants' argument that Plaintiffs failed to establish that the Protocols violated their right to apply for asylum, *see* PI Opp. at 10, Plaintiffs have substantiated these allegations at length. Some Individual Plaintiffs have struggled to file their asylum applications without the assistance of counsel and are unsure if they succeeded or did so correctly. *See* Decl. of Jaqueline Doe, ECF 46 ¶ 47; Decl. of Anthony Doe, ECF 43 ¶ 24. Moreover, the right to counsel is broader than the mere ability to file an application for asylum, encompassing also the right to notice of the right to counsel and the right to access information in support of an asylum application. *See* 8 U.S.C. §§ 1229a(b)(4)(A), 1362, 1158(d)(4), 1158(b)(1)(B); *Torres*, 411 F. Supp. 3d at 1061. Plaintiffs who do have asylum applications on file are unable to communicate freely with their attorneys and cannot gather crucial evidence to support their claims. *See* Decl. of Daniel Doe, ECF 39 ¶¶ 29-32; Decl. of Benjamin Doe, ECF 41 ¶¶ 25-27; Decl. of Feliza Doe, ECF 45 ¶¶ 30-35.

B. Plaintiffs are likely to succeed on their claim that Defendants' implementation of the Protocols violates 8 U.S.C. § 1225(b)(2)(C).

Plaintiffs are likely to succeed on this claim because Defendants' implementation of the Return Policy while proceedings are suspended contravenes the plain language of the INA. While hearings are suspended, Defendants cannot simultaneously enforce the Return Policy because Section 1225(b)(2)(C) does not authorize returns for suspended proceedings. Compl. ¶¶ 265-69. Defendants concede that all MPP hearings are suspended for an indefinite period of time. *See* Coleman Decl., Ex. M, ECF 53-13; McCament Decl., ECF 89 ¶ 9 (explaining that "instead of identifying a [specific] date upon which hearings would resume, DHS and DOJ laid out factors that will be used to determine when to resume hearings for [noncitizens] subject to MPP."). Not only does the hearing suspension lack a fixed date for

resumption, but the criteria for resuming hearings are unlikely to be met in the foreseeable future. *See* Reingold Decl., ECF 51 ¶¶ 16, 27, 29.

Defendants' assertion that the Return Policy complies with Section 1225(b)(2)(C)'s "pending a proceeding" requirement because individuals are assigned a hearing date and a final order of removal has not been entered is without merit. PI Opp. at 13-14.[3] First, Defendants have plainly stated that the assignment of a hearing date is *not* the relevant indicator as to when proceedings will resume, and thus it has no bearing on whether a proceeding is pending for Section 1225(b)(2)(C) purposes. *See* McCament Decl. ¶ 9. This is corroborated by the experience of five of the Individual Plaintiffs whose assigned dates have been yet again changed. Manning Decl. (Nov. 29, 2020), ¶ 4 (a), (b), (e), (f), (g). And Defendants' reliance on 8 C.F.R. § 1241.1 is inapposite. The regulation defines when an "order of removal" is considered final, but does not define "pending a proceeding" in or outside the Section 1225(b)(2)(C) context. The indefinite suspension of the hearings "prevent[s]" individuals' proceedings "from moving forward." *See Meza Morales v. Barr*, 973 F.3d 656, 664 (7th Cir. 2020).

C. Plaintiffs are likely to succeed on their claims that Defendants' implementation of the Protocols violates the INA right to counsel.

1. The Return Policy and the Deprivation of Counsel Policy violate the statutory right to counsel.

While contiguous-territory return is specified under Section 1225(b)(2)(C), the Protocols are not. Plaintiffs are likely to succeed on the merits of their Third and Fourth Claims that, in operation, the Protocols obstruct the right to counsel provided by the INA. Defendants' contrary position is wrong for several reasons.

First, Defendants do not dispute that nearly every individual impacted by the Protocols is unrepresented. Qureshi Decl., ECF 54 ¶ 6 (93% of individuals subjected

[3] Plaintiff Jaqueline Doe has a final order of removal entered *in absentia* as defined in the regulation because the Defendants prevented her from attending her hearing. Decl. of Jaqueline Doe ¶ 40.

to MPP are unrepresented). For the few who are represented, the Protocols limit access to counsel to as little as a single one-hour period before a hearing. PI Mot., ECF 36-1 at 7-8. This is compelling evidence that the Protocols obstruct the right to counsel.

Second, Defendants mistakenly conflate "contacting" counsel with the statutory right to counsel. PI Opp. at 15-16. But the statutory right to counsel is significantly broader. It includes communicating in a language that both the client and attorney understand; accessing a confidential space in which to speak with an attorney; meeting an attorney with enough time to exchange information, review case details, and prepare to meet important deadlines and objectives, *see, e.g.*, *Lin v. Ashcroft*, 377 F.3d 1014, 1025 (9th Cir. 2004) (describing these as "principles [that] apply to all asylum claims"); and meeting in a manner that does not put the client or the attorney in danger and enables trust-building, *see, e.g.*, *Escobar-Grijalva v. INS*, 206 F.3d 1331, 1335 (9th Cir. 2000).

Third, Defendants fail to address their obligation to affirmatively provide access to counsel to individuals subjected to the Protocols who are considered detained. *See* Professors Amicus at 1-6; PI Mot. at 4-6. Their failure to grapple with *Torres*, 411 F. Supp. 3d 1036, is a telling omission. Plaintiffs have submitted substantial evidence that the Return Policy and Deprivation of Counsel Policy, separately and in tandem, operate to structurally obstruct meaningful access to counsel. *See* Decl. of Feliza Doe ¶¶ 30-33 (lack of private space); Decl. of Daniel Doe ¶ 29 (unreliable phone and messaging services); Decl. of Anthony Doe ¶¶ 15, 17-18 (no attorney available to take his case while he is in Mexico).

2. Organizational Plaintiffs have standing to bring this claim and fall within the zone of interests of 8 U.S.C. § 1158(a)(1).

Plaintiffs have Article III standing because they have suffered an injury in fact to a legally protected interest, and that injury is "fairly traceable" to

Defendants' alleged misconduct and "likely to be redressed by the requested relief." *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 590 (1992).

Defendants mischaracterize the nature of Organizational Plaintiffs' legally protected interest.[4] *See* PI Opp. at 19-20. The Supreme Court has recognized that organizations' interests in their own missions and resources are judicially cognizable. *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 n.20 (1982). Accordingly, the Ninth Circuit has repeatedly held that organizational plaintiffs have standing where they allege that defendants impaired their missions to serve asylum-seeking clients and caused organizational resources to be diverted. *See, e.g.*, *El Rescate Legal Servs., Inc. v. Exec. Off. of Immigr. Rev.*, 959 F.2d 742, 748 (9th Cir. 1991); *E. Bay Sanctuary Covenant v. Trump*, 932 F.3d 742, 766 (9th Cir. 2018) ("*EBSC I*"); *E. Bay Sanctuary Covenant v. Trump*, 950 F.3d 1242, 1265-70 (9th Cir. 2020) ("*EBSC II*"). Here, Organizational Plaintiffs are legal advocacy organizations whose missions include providing meaningful pro bono legal services to noncitizens in removal proceedings, including asylum seekers. *See* Decl. of Lindsay Toczylowski ("Toczylowski Decl."), ECF 36-2 ¶¶ 5-12; Decl. of Luis Gonzalez ("Gonzalez Decl."), ECF 38 ¶¶ 3-10. They thus have a legally protected interest in using their organizational resources to achieve this mission.

Defendants claim that Organizational Plaintiffs have "manufacture[d]" their alleged injury. *See* PI Opp. at 17-18. On the contrary, Defendants' unlawful implementation of the Protocols has harmed Organizational Plaintiffs by frustrating their *existing* missions and forcing them to divert organizational resources.[5] ImmDef's mission is "to create a public defender system for immigrants facing

[4] Defendants also mischaracterize Plaintiffs' access to counsel claims. As described in Section II.A. *supra*, Plaintiffs do not challenge "Congress's decision to create contiguous-territory return." *See* PI Opp. at 17. Instead, Plaintiffs challenge Defendants' unlawful implementation of the Protocols, which violates the INA's right to counsel provisions and thus cannot be a lawful exercise of their delegated power under 8 U.S.C. § 1252(b)(2)(C).

[5] Contrary to Defendants' suggestion, *see* PI Opp. at 20, Organizational Plaintiffs' harms are not remediable through removal proceedings. *See* Section I.B., *supra*.

deportation." Toczylowski Decl. ¶ 5. It thus "felt compelled to assist and represent individuals placed in MPP" to fulfill its mission of "expanding access to representation to any and all noncitizens in removal proceedings." *Id.* ¶ 14. JFS was founded to provide "humanitarian assistance at the border," and its core mission includes "legal representation and support for immigrants, refugees, and asylum seekers," such as "seeking to ensure that vulnerable individuals will be able to receive . . . the right to counsel." Gonzalez Decl. ¶ 3. Thus JFS began representing asylum seekers subject to MPP, "as it was clear legal representation for this group of extremely vulnerable asylum seekers was nearly nonexistent." *Id.* ¶ 6. Both organizations have diverted resources from other programs, Toczylowski Decl. ¶ 21; Gonzalez Decl. ¶¶ 17, 26-28; redirected staff and hired new staff, Toczylowski Decl. ¶¶ 17-19; Gonzalez Decl. ¶¶ 14-15; and expended significant funds on new operations, Toczylowski Decl. ¶¶ 19-20, and cross-border communication infrastructure, Gonzalez Decl. ¶ 18.[6] Because Defendants' unlawful implementation of the Protocols "has 'perceptibly impaired' their ability to perform the services they were formed to provide," *see EBSC II*, 950 F.3d at 1266, Organizational Plaintiffs have alleged harms sufficient for organizational standing.

Finally, Plaintiffs' interests easily meet the APA's "lenient" zone-of-interests test because they are, at the very least, "'marginally related to' and 'arguably within' the scope of the" INA.[7] *See EBSC II*, 950 F.3d at 1270 (quoting *Patchak*, 567 U.S. at 224). As described *supra*, Plaintiffs are nonprofit legal advocacy organizations who seek to protect their missions of providing meaningful pro bono

[6] Defendants note that prior to MPP, neither Organizational Plaintiff engaged in significant legal services to assist noncitizens in Mexico. PI Opp. at 18 n.3. This is unsurprising, as prior to MPP, asylum seekers in removal proceedings were not returned to Mexico to await their hearings, meaning cross-border work was not necessary for Plaintiffs to achieve their missions of representing these individuals.

[7] The INA is the relevant statute for all Plaintiffs' APA claims. When the APA is the basis of a cause of action, the relevant zone of interests is the "interests to be protected or regulated by the statute that [the plaintiff] says was violated." *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, 567 U.S. 209, 224 (2012).

legal assistance to noncitizens fleeing persecution. The Ninth Circuit has repeatedly held that the interests of similar nonprofit legal organizations fall squarely within the INA's zone of interests. *See EBSC I*, 932 F.3d at 767-69; *EBSC II*, 950 F.3d at 1270. And, contrary to Defendants' assertions, PI Opp. at 12-13, *INS v. Legalization Assistance Project of L.A. County*, 510 U.S. 1301, 1305 (1993) (O'Connor, J., in chambers) does not hold otherwise. *See EBSC I*, 932 F.3d at 769 n.10 (finding Justice O'Connor's opinion to be "non-binding and concededly 'speculative[]'").[8]

III. PLAINTIFFS ARE LIKELY TO SUFFER IRREPARABLE HARM ABSENT AN INJUNCTION

Defendants misconstrue Plaintiffs' alleged harms, which flow directly from their claims. Individual Plaintiffs challenge Defendants' unlawful policies, which have trapped them indefinitely in Mexico under dangerous conditions that threaten their safety, deprive them of access to basic needs, and effectively preclude meaningful access to counsel. PI Mot. at 12-15 (identifying the harms Individual Plaintiffs have faced), 17-18 (describing Plaintiffs' claim that Defendants' decision to continue implementing the Return Policy despite the Hearing Suspension Directive violates the law). Individual Plaintiffs' exposure to these ongoing harms unlawfully interferes with their statutory right to seek asylum. *See id.* at 18-21. Release into the United States and access to legal representation are necessary to mitigate the risks of these irreparable harms and protect Individual Plaintiffs' rights, both through formal mechanisms such as requests for non-refoulement interviews or humanitarian parole, *see id.* at 22, and through other types of assistance, like housing, food, and medical care, *see* Decl. of Margaret Cargioli, ECF 37 ¶ 10.[9]

[8] Moreover, the case also addresses the zone of interests of an entirely different statute. *See Al Otro Lado, Inc. v. Nielsen*, 327 F. Supp. 3d 1284, 1300 (S.D. Cal. 2018).

[9] Defendants mistakenly assert that Organizational Plaintiffs have not suffered harm because their diversion of resources to assist individuals in MPP was "by choice." *See* PI Opp. at 21. Organizational Plaintiffs' diversion of resources and frustration of mission stem directly from Defendants' flawed policies. *See* Section II.C.2., *supra*.

Plaintiffs' timeline for filing the instant case and motion for preliminary injunction does not undercut their claim of irreparable harm. *See Arc of Cal. v. Douglas*, 757 F.3d 975, 991 (9th Cir. 2014). The cases Defendants cite for the proposition that Plaintiffs have "sle[pt] on their rights" are inapposite. *See* PI Opp. at 20.[10] Here, Plaintiffs' timing is a manifestation of the very harms Individual Plaintiffs allege—namely, insurmountable barriers to communicating with counsel, including lack of confidential space for communication, unreliable access to internet or cell phone minutes, unstable phone connections, and Individual Plaintiffs' need to prioritize their physical safety and basic needs.

IV. THE BALANCE OF THE EQUITIES AND THE PUBLIC INTEREST TIP SHARPLY IN FAVOR OF GRANTING A PRELIMINARY INJUNCTION

Defendants argue that the public interest tips against granting a preliminary injunction because the Protocols are "a vital tool in combatting the humanitarian crisis at the U.S.-Mexico border." PI Opp. at 21. But Defendants' continued implementation of the Protocols has itself created a crisis at the border, in which individuals forced to remain in Mexico are subject to substantial harm and even death while being denied their right to access the U.S. asylum system. Plaintiffs have suffered sexual assault, violence, and attempted kidnappings as a direct result of being subjected to the Protocols; such violence is sadly common for those similarly situated. *See* Decl. of Hannah Doe, ECF 40 ¶ 13; Decl. of Benjamin Doe, ECF 41 ¶ 19; *see also* Human Rights First, Report on Publicly Reported MPP Attacks (May 13, 2020), *available at* https://bit.ly/3jCFu5k. For this reason, too, Plaintiffs meet the heightened standard for a mandatory injunction, since "extreme or very serious damage" will result absent relief and the harm cannot be remedied

[10] *Compare Li v. Home Depot USA Inc.*, Case No. SACV 12-2151 AG (RNBx), 2013 WL 12120065, at *3 (C.D. Cal. 2013) (delay of three months for a breach of contract suit between companies); *First Franklin Fin. Corp. v. Franklin First Fin., Ltd.*, 356 F. Supp. 2d 1048, 1055 (N.D. Cal. 2005) (delay of three months in suit between financial institutions) *with* PI Mot. at 12-15 (describing the worsening harms Individual Plaintiffs are suffering and lack of resources to meet their basic needs).

by damages. *Hernandez*, 872 F.3d at 999. And, as argued *supra*, Plaintiffs' success on the merits is not "doubtful." *See id.*

Defendants argue that an injunction would improperly interfere with foreign relations. PI Opp. at 21. But injunctions are not uncommon in litigation challenging immigration policies. Indeed, the statistics Defendants cite are pulled from information supporting another regulation attempting to obstruct the right to seek asylum that was blocked by the federal courts.[11] *See EBSC I*, 932 F.3d at 754; 139 S. Ct. 782 (denying stay). The laws protecting the right to seek humanitarian protection remain the laws; the Court should not allow Defendants to unlawfully subvert them.

Finally, the Plaintiffs have moved for relief that is, by definition, compatible with public health measures and causes no operational challenges for Defendants. PI Mot. at 1; Compl. at 80, ¶ (f). Thus, Defendants' opposition on this basis does not alter the equitable analysis.[12]

V. CONCLUSION

For the foregoing reasons, this Court should grant Plaintiffs' request for preliminary injunctive relief.

[11] Moreover, the government often relies on misleading figures to overreport the number of persons who fail to file asylum applications or attend court. *See* Aaron Reichlin-Melnick, *Trump's Bad Immigration Math: 'In absentia' rates grossly overstate asylum-seekers' propensity to skip court*, WALL STREET JOURNAL, July 7, 2019, https://www.wsj.com/articles/trumps-bad-immigration-math-11564526852.

[12] The temporary measures suspending entry at the southern border may not even apply to individuals subject to MPP. *See* Control of Communicable Diseases; Foreign Quarantine: Suspension of the Right To Introduce and Prohibition of Introduction of Persons Into United States From Designated Foreign Countries or Places for Public Health Purposes, 85 Fed. Reg. 56424-01 (Sept. 11, 2020) (creating exceptions for individuals who hold valid travel documents and arrive at a port of entry, and for persons with significant humanitarian interests); *see also. P.J.E.S. v. Wolf*, 2020 WL 6770508 (D.D.C. Nov. 18, 2020) (finding restrictions unlawful as applied to unaccompanied minors). Health experts have also disavowed the public health rationale for these restrictions. *See* Letter from Public Health Experts to Alex Azar and Robert R. Redfield (May 18, 2020), *available at* https://www.publichealth.columbia.edu/sites/default/files/public_health_experts_letter_05.18.2020.pdf.

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