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19 **UNITED STATES DISTRICT COURT**
20 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
21 **WESTERN DIVISION**

22 IMMIGRANT DEFENDERS LAW
23 CENTER; *et al.*,

24 Plaintiffs,

25 v.

26 U.S. DEPARTMENT OF HOMELAND
27 SECURITY; *et al.*,

28 Defendants.

Case No. 2:21-cv-00395-FMO-RAO

**MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT OF PLAINTIFFS’
MOTION FOR PRELIMINARY
INJUNCTION**

Date: June 17, 2021

Time: 10:00 a.m.

Ctrlm: 6D

Judge: Hon. Fernando M. Olguin

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TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION	1
BACKGROUND	2
A. The TVPRA Grants All Unaccompanied Children Inalienable Rights and Protections Regardless of Prior Immigration History	2
B. Defendants Are Responsible for Implementing the TVPRA	3
C. Plaintiffs Are LSPs That Help Fulfill Congress’s Intent to Ensure Unaccompanied Children Are Afforded Their TVPRA Rights	4
D. DHS Violates the TVPRA and its MPP Policy By Subjecting Unaccompanied Children to MPP	5
1. Many MPP-Unaccompanied Children Do Not Receive NTAs Reflecting their Most Recent Entry	6
2. MPP-Unaccompanied Children Are Not Promptly Released	7
3. MPP-Unaccompanied Children Are Ordered Removed <i>in</i> <i>Absentia</i> While in ORR Custody.....	7
4. MPP-Unaccompanied Children Are Prosecuted Under MPP and Deprived Their TVPRA Rights and Protections	8
5. MPP-Unaccompanied Children Are Not Safely Repatriated	10
6. MPP-Unaccompanied Children Have Not Had Guaranteed Access to Affirmative Asylum	11
E. Despite the End of MPP, the Harm to Plaintiffs and MPP- Unaccompanied Children is Ongoing	11
ARGUMENT	12
I. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS	12
A. Defendants’ Practice Violates the APA.....	12

1
2
3
4
5
6
7
8
9
10
11
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14
15
16
17
18
19
20
21
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23
24
25
26
27
28

- 1. Defendants’ Practice Is Arbitrary, Capricious, and Not in Accordance with Law 13
- 2. Defendants’ Practice Violates the *Accardi* Doctrine..... 16
- B. Defendants’ Practice Violates the Due Process Clause of the Fifth Amendment to the U.S. Constitution 18
 - 1. Defendants’ Practice Interferes with MPP-Unaccompanied Children’s Protected Liberty and Property Interests 18
 - 2. The *Mathews* Factors Weigh in Plaintiffs’ Favor..... 19
- II. PLAINTIFFS AND THEIR CLIENTS WILL SUFFER IRREPARABLE HARM ABSENT RELIEF 21
 - 1. Plaintiffs Suffer Irreparable Harm..... 21
 - 2. Plaintiffs’ Young Clients Suffer Irreparable Harm 22
- III. THE BALANCE OF EQUITIES AND THE PUBLIC INTEREST WEIGH IN FAVOR OF AN INJUNCTION 23
- IV. A NATIONWIDE INJUNCTION IS APPROPRIATE..... 23
- CONCLUSION..... 25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
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21
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23
24
25
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 4 993 F.3d 640 (9th Cir. 2021) 21, 23, 24, 25
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 13 *Flores-Chavez v. Ashcroft*,
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 18 419 U.S. 565 (1975) 19
 19 *Hawaii v. Trump*,
 20 878 F.3d 662 (9th Cir. 2017) 25
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 22 924 F.3d 503 (9th Cir. 2019) 17
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 24 352 F. Supp. 3d 559 (E.D. Va. 2018) 15
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 695 F.3d 990 (9th Cir. 2012) 23
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 926 F.2d 162 (2d Cir. 1991) 17
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 408 U.S. 471 (1972) 19
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 8 908 F.3d 476 (9th Cir. 2018) 25
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 10 715 F.3d 1127 (9th Cir. 2013) 24
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 27 555 U.S. 7 (2008) 12
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 955 F.3d 802 (9th Cir. 2020) 19
Zhang v. Slattery,
 840 F. Supp. 292 (S.D.N.Y. 1994) 18

STATUTES

5 U.S.C. § 701 13
 5 U.S.C. § 704 13
 6 U.S.C. § 279 2
 8 C.F.R. § 1239.1 2

1 8 U.S.C. § 1158.....passim
2 8 U.S.C. § 1225..... 8
3 8 U.S.C. § 1229..... 2
4 8 U.S.C. § 1232.....passim

OTHER AUTHORITIES

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INTRODUCTION

1
2 This case concerns the fundamental rights and safety of the most vulnerable:
3 unaccompanied immigrant children. The Trafficking Victims Protection
4 Reauthorization Act (“TVPRA”) endowed *all* unaccompanied children with robust
5 protections to guarantee their security, welfare, and right to seek immigration relief.

6 **Denial of Rights.** Despite this nondiscretionary mandate, Defendants the
7 U.S. Department of Homeland Security (“DHS”), the U.S. Department of Health
8 and Human Services (“HHS”), and their sub-agencies deny these rights to “MPP-
9 unaccompanied children”—those who (i) were first trapped in Mexico under the
10 Trump Administration’s Migrant Protection Protocols (“MPP”), and (ii) later
11 tragically separated from their parents and entered the United States alone. Instead
12 of affording kids the same statutory protections as all other unaccompanied children,
13 Defendants use the stigma of their prior MPP status as a basis for denying access to
14 affirmative asylum, safe placement, and statutory and procedural safeguards.

15 **Violation of Defendants’ Own Policies.** In addition to violating the
16 TVPRA, Defendants’ practice also contradicts DHS’s stated policy that
17 unaccompanied children are exempt from MPP. And although Defendants tout
18 recent executive actions to halt *new* MPP enrollments, those changes are irrelevant
19 to MPP-unaccompanied children. These kids have been unable to escape MPP.

20 **Irreparable Harm.** Plaintiffs are legal services providers (“LSPs”) whose
21 mission is to ensure *all* unaccompanied children can access their TVPRA-
22 guaranteed rights. In fending off Defendants’ attempts to strip TVPRA-protections
23 from hundreds of MPP-unaccompanied children, Plaintiffs have been forced to
24 divert resources away from their missions and to engage in extensive and
25 unprecedented legal process. Plaintiffs are irreparably harmed by Defendants’
26 unlawful practices, which continue today under the Biden administration.

27 **Simple Remedy.** This ongoing problem is easily solved. It does not require
28 unique policy solutions. It requires only that Defendants follow the law. Defendant

1 USCIS appears to recognize as much: in response to this litigation, USCIS updated
2 its guidance to confirm *all* unaccompanied children—even those with MPP removal
3 orders—are entitled to access affirmative asylum under the TVPRA.¹ Defendants
4 refuse, however, to guarantee that MPP-unaccompanied children will have full
5 access to the affirmative asylum process and not be subject to further MPP
6 proceedings and removals while exercising their rights. The TVPRA requires that all
7 Defendants comply with their obligations to vulnerable unaccompanied children.

8 **An Injunction Is Essential.** Defendants’ unexplained decision to subject
9 MPP-unaccompanied children to MPP and deny them TVPRA rights is arbitrary and
10 capricious and contrary to law in violation of the APA. Moreover, it denies these
11 children their liberty interest in TVPRA-entitlements in violation of the Due Process
12 Clause. Because Defendants’ Practice (defined below) threatens irreparable harm to
13 Plaintiffs’ organizational mission and to MPP-unaccompanied children, and the
14 public interest favors an injunction, the Court should enjoin Defendants.

15 **BACKGROUND**

16 **A. The TVPRA Grants All Unaccompanied Children Inalienable** 17 **Rights and Protections Regardless of Prior Immigration History**

18 In 2008, Congress passed the TVPRA to protect unaccompanied children²
19 from trafficking, exploitation, and other dangers. The TVPRA provides a suite of
20 substantive and procedural rights to safeguard the health and welfare of
21 unaccompanied children as they navigate the immigration process. These rights are
22 mandatory and apply without exception to all unaccompanied children. *See* 8
23 U.S.C. §§ 1229; 1232; 8 C.F.R. § 1239.1(a).

24 ¹ Plaintiffs move against all Defendants except U.S. Citizenship and Immigration
25 Services (“USCIS”) and Tracy Renaud. While USCIS’s action does not resolve
26 Plaintiffs’ claims, it obviates the need for preliminary relief from those Defendants.

27 ² An unaccompanied child “has no lawful immigration status in the United States;”
28 has not turned 18 years old; and has “no parent or legal guardian in the United States
[] available to provide care and physical custody.” 6 U.S.C. § 279(g).

1 Relevant here, the TVPRA guarantees unaccompanied children access to
2 counsel “to the greatest extent practicable”; exempts children from typical deadlines
3 for seeking asylum; and grants USCIS initial jurisdiction of an unaccompanied
4 child’s asylum application that shall be governed by regulations accounting for the
5 “specialized needs” of unaccompanied children throughout the asylum process. 8
6 U.S.C. §§ 1158 (a)(2)(E), (b)(3)(C); 1232(c)(5), (d)(8); *see also* Ex. A.³ The
7 TVPRA also protects unaccompanied children from reinstatement of prior removal
8 orders and offers a second opportunity to seek asylum and other affirmative relief in
9 age-appropriate proceedings under Section 240 of the Immigration and Nationality
10 Act. 8 U.S.C. § 1232(a)(5)(D). If a child is ordered removed, DHS and HHS must
11 ensure “safe and sustainable repatriation” to the child’s home country, including
12 placement with the child’s family or guardian. *Id.* §§ 1232(a)(2), (a)(5), (c)(1).

13 In creating these rights, Congress’s purpose was “quite clearly to give
14 unaccompanied minors more protection, not less” than that available to similarly-
15 situated adults—avoiding to the greatest extent possible the chance the United States
16 would return these children to danger. *Flores v. Sessions*, 862 F.3d 863, 880 (9th
17 Cir. 2017) (quoting H.R. Rep. 110-430, at 57 (2007)). As Senator Feinstein noted,
18 the TVPRA represented an “important step” to protecting “the most vulnerable” and
19 to fulfilling the country’s “special obligation to ensure that these children are treated
20 humanely and fairly.” 154 Cong. Rec. S10886 (daily ed. Dec. 10, 2008).

21 **B. Defendants Are Responsible for Implementing the TVPRA**

22 Recognizing the difficulty unaccompanied children face in navigating the
23 complex U.S. immigration system, Congress also required DHS and HHS to
24 develop policies to enable these children to access those rights and processes
25 mandated by the TVPRA. *See, e.g.*, 8 U.S.C. § 1232(a)(1), (c)(1), (d)(8).

26 DHS executes its TVPRA obligations through its sub-agencies Immigration

27 ³ All Exhibits (“Ex.”) are attached to the Declaration of Stephen Blake, filed
28 concurrently herewith.

1 Customs and Enforcement (“ICE”), Customs and Border Protection (“CBP”),
2 Enforcement and Removal Operations (“ERO”), and USCIS, each of which has
3 implemented its own TVPRA-specific policies. Relevant here, ICE, CBP, and ERO
4 must comply with the procedures set forth in the Juvenile and Family Residential
5 Management Unit Field Office Coordinator Handbook (“JFRM”). Among other
6 things, the JFRM requires: (i) CBP to identify and designate an unaccompanied
7 child upon apprehension, and log such findings in shared databases (Ex. B); (ii)
8 ERO to quickly transfer the child to ORR after issuance of a legally sufficient
9 charging document, or Notice to Appear (“NTA”) (*id.*); (iii) ERO to notify ICE of
10 the child’s custody status and location, (Ex. D); and (iv) where appropriate, ERO to
11 safely repatriate a child to her country of origin (Ex. B).

12 HHS executes its TVPRA duties through its sub-agency Office of Refugee
13 Resettlement (“ORR”), which is responsible for sheltering unaccompanied children.
14 ORR’s policy manual requires that ORR place children in the “least restrictive
15 setting” and promptly release them to a suitable sponsor. 8 U.S.C. § 1232(c)(2)(A).

16 **C. Plaintiffs Are LSPs That Help Fulfill Congress’s Intent to Ensure**
17 **Unaccompanied Children Are Afforded Their TVPRA Rights**

18 To effectuate Congress’s mandate that unaccompanied children have counsel
19 to the greatest extent practicable, ORR sub-contracts with non-profit LSPs like
20 Plaintiffs. 8 U.S.C. § 1232(c)(5); Ex. E. Plaintiffs together serve the majority of the
21 tens of thousands of unaccompanied children who enter annually. Ex. F. Plaintiffs
22 pursue immigration relief for these children under the TVPRA and help ensure due
23 process in their immigration proceedings. Ex. G; ImmDef Decl. I ¶ 13; ProBAR
24 Decl. ¶ 4; RAICES Decl. ¶ 7; Door Decl. ¶ 7.⁴

25 _____
26 ⁴ “ImmDef Decl. I” refers to the Declaration of Yliana Johansen-Mendez; “ImmDef
27 Decl. II” refers to the Declaration of Marion Donovan-Kaloust; “ProBAR Decl.”
28 refers to the Declaration of Carly L. Salazar; “RAICES Decl.” refers to the
Declaration of Michelle Garza; “Door Decl.” refers to the Declaration of Hannah P.
Flamm; “NIJC Decl.” refers to the Declaration of Ashley Huebner; “KIND Decl.”
refers to the Declaration of Maria Odom; ; “Young Center Decl.” refers to the

1 Plaintiffs first interface with unaccompanied children after they enter ORR
2 custody. If a child meets Plaintiffs’ criteria for representation, Plaintiffs begin
3 evaluating the child’s eligibility for relief, preparing applications for relief, and
4 appearing as counsel for the child in TVPRA proceedings. Door Decl. ¶¶ 7-9;
5 ImmDef Decl. I ¶¶ 13-15. Plaintiffs’ resources, staffing, and programs are designed
6 to serve high volumes of children who require trauma-sensitive assistance and
7 representation in their immigration proceedings. Door Decl. ¶¶ 48-53; ImmDef
8 Decl. II ¶ 19; ProBAR Decl. ¶¶ 3-7. Plaintiffs have built their service models
9 around the expectation that Defendants will adhere to their statutory duties under the
10 TVPRA for all unaccompanied children, regardless of immigration history. *Id.*

11 **D. DHS Violates the TVPRA and its MPP Policy By Subjecting**
12 **Unaccompanied Children to MPP**

13 In January 2019, DHS began implementing the Migrant Protection Protocols,
14 a policy under which asylum seekers at the border received NTAs ordering them to
15 appear in stripped-down immigration court proceedings (referred to in the FAC as
16 MPP-NTAs) and then were immediately returned to Mexico. MPP drove those
17 searching for safety into squalid camps and an ever-present threat of danger,
18 including kidnapping for ransom, rape, assault, exposure to the elements, and
19 malnutrition. Exs. L; M; I. This government-created humanitarian disaster forced
20 some children to separate from their families and later reenter the United States on
21 their own. Ex. I. As a result, Plaintiffs began encountering unaccompanied children
22 who were previously in MPP proceedings as derivatives of adult family members:
23 MPP-unaccompanied children. ImmDef Decl. I ¶ 17; RAICES Decl. ¶ 13.

24 After implementing MPP, DHS unequivocally proclaimed that
25 “[u]naccompanied [] children . . . will not be subject to MPP.” Exs. C, J–K. But
26 that is not the reality. As discussed below, Defendants subject MPP-unaccompanied

27 _____
28 Declaration of Mari Dorn-Lopez; and “GHIRP Decl.” refers to the Declaration of Elizabeth Sanchez-Kennedy. All declarations are filed with this Motion.

1 children to MPP and, in so doing, deny them their rights under the TVPRA by,
2 among other things, (i) failing to issue legally sufficient NTAs based on the child’s
3 most recent entry; (ii) unreasonably delaying a child’s release to a sponsor; (iii)
4 ordering a child removed *in absentia* in MPP proceedings while the child is in ORR
5 custody; (iv) enforcing MPP removal orders while the child is in ORR custody; (v)
6 failing to safely repatriate children removed from the U.S.; and (vi) failing to ensure
7 a child’s access to affirmative asylum (collectively referred to as the “Practice”).
8 ImmDef Decl. I ¶¶ 19-27; RAICES Decl. ¶¶ 8, 13-22, 40-53, 65-68. This Practice
9 has led to more than 700 children—some as young as five—being denied TVPRA
10 rights. Ex. L; ProBAR Decl. ¶ 6. Plaintiffs have and continue to be forced to divert
11 scarce resources and undertake extraordinary measures to defend these vulnerable
12 children from Defendants’ unlawful Practice. Door Decl. ¶¶ 48-73; ImmDef Decl.
13 II ¶¶ 32-67; RAICES Decl. ¶¶ 58-64.

14 **1. Many MPP-Unaccompanied Children Do Not Receive NTAs**
15 **Reflecting their Most Recent Entry**

16 After CBP designates a child “unaccompanied,” ERO must issue and serve a
17 new, legally sufficient NTA (referred to in the FAC as a TVPRA-NTA) on the child
18 before initiating transfer to ORR custody. Ex. B. Before MPP, Plaintiffs could
19 generally rely on ERO to issue and serve all unaccompanied children, even those
20 with prior entries or removal orders, with properly executed NTAs reflecting their
21 most recent entry and “unaccompanied” status. ImmDef Decl. II ¶ 13; ProBAR
22 Decl. ¶¶ 9-13. Plaintiffs rely on an NTA for information about the child, her arrival,
23 and her immigration history, all of which is critical to Plaintiffs’ ability to provide
24 informed counsel, especially to tender-age children who cannot fully convey these
25 facts on their own. ProBAR Decl. ¶¶ 9-13; RAICES Decl. ¶ 25.

26 Beginning in Fall 2019, however, Plaintiffs noticed unaccompanied children
27 arriving in ORR custody without NTAs reflecting their most recent entry as
28 unaccompanied children. After extensive investigation, Plaintiffs discovered that

1 ERO was not consistently issuing and serving MPP-unaccompanied children new
2 NTAs. ImmDef Decl. I ¶¶ 20-21; ProBAR Decl. ¶¶ 11-13; RAICES Decl. ¶¶ 23-25;
3 Door Decl. ¶ 57; KIND Decl. ¶ 19. This failure, which continues today, deprives
4 Plaintiffs of information crucial to pursuing immigration relief. Door Decl. ¶¶ 57-
5 59; ImmDef Decl. II ¶¶ 25, 30; RAICES Decl. ¶¶ 23-29. ERO has yet to explain
6 this marked shift in practice, ProBAR Decl. ¶¶ 11-13; ImmDef Decl. II ¶¶ 24-25,
7 which has forced Plaintiffs to divert scarce resources toward investigating facts that
8 ERO should provide under its own TVPRA-implementing policies, Door Decl. ¶ 61;
9 ImmDef Decl. II ¶¶ 33-39; RAICES Decl. ¶¶ 23-29, 54-57.

10 **2. MPP-Unaccompanied Children Are Not Promptly Released**

11 The TVPRA requires ORR to promptly place unaccompanied children in the
12 “least restrictive setting” in the best interest of the child. 8 U.S.C. § 1232(c)(2)(A).
13 Plaintiffs expect ORR to release unaccompanied children with suitable sponsors
14 without unnecessary delay. Door Decl. ¶ 69; RAICES Decl. ¶ 51. For MPP-
15 unaccompanied children, however, ORR has delayed or outright refused to reunify
16 some children with sponsors, especially if a child has an MPP removal order.
17 ProBAR Decl. ¶ 29; ImmDef Decl. II ¶¶ 61-66; Door Decl. ¶ 69; RAICES Decl.
18 ¶¶ 51-53; KIND Decl. ¶ 17, NIJC Decl. ¶ 19. Prolonged periods in ORR detention
19 are traumatic for kids and force Plaintiffs to engage in burdensome “reunification
20 advocacy” and motion practice. ProBAR Decl. ¶ 29; ImmDef Decl. I ¶ 22.

21 **3. MPP-Unaccompanied Children Are Ordered Removed *in*** 22 ***Absentia* While in ORR Custody**

23 Defendants’ data-sharing policies ordinarily safeguard against issuance of *in*
24 *absentia* removal orders for unaccompanied children in federal custody: CPB must
25 log a child’s status in shared databases. ERO discloses a child’s custody status and
26 location to ICE, which then informs the immigration court so that the child will not
27 be ordered removed *in absentia*. ImmDef Decl. I ¶¶ 24-25. ICE typically moves to
28 change venue to the child’s current jurisdiction. *Id.*

1 In Plaintiffs’ experience, however, Defendants ignore these reporting
2 obligations for MPP-unaccompanied children. ImmDef Decl. I ¶¶ 24-25. As a
3 result, MPP immigration judges have repeatedly entered *in absentia* removal orders
4 against children who were in ORR custody when their hearings occurred. RAICES
5 Decl. ¶¶ 13-14, 40-47; ImmDef Decl. I ¶ 25; KIND Decl. ¶ 15. These children are
6 then at imminent risk of removal—indeed, some have been removed—before they
7 can exercise their TVPRA rights, including the right to apply for affirmative asylum
8 before USCIS. ProBAR Decl. ¶¶ 12, 19, 22-23, 28, 33; Door Decl. ¶¶ 20-21.

9 **4. MPP-Unaccompanied Children Are Prosecuted Under MPP**
10 **and Deprived Their TVPRA Rights and Protections**

11 MPP immigration proceedings are materially different from TVPRA
12 proceedings. MPP proceedings do not offer children the host of protections
13 guaranteed under the TVPRA: individuals subjected to MPP have no meaningful
14 access to counsel and cannot seek affirmative asylum before USCIS, and their cases
15 are not adjudicated under child-centric standards.⁵ Compare 8 U.S.C. §
16 1225(b)(2)(C), with 8 U.S.C. § 1158, 1232.

17 While Defendants purport to comply with the TVPRA by exempting
18 unaccompanied children from MPP, Defendants do not follow their own policy. To
19 the contrary, DHS prioritizes the summary removal of MPP-unaccompanied
20 children without providing them access to the full array of TVPRA benefits to
21 which they are entitled, including the opportunity to seek affirmative asylum before
22 USCIS under child-centric standards. RAICES Decl. ¶¶ 8, 48-53; ImmDef Decl. I
23 ¶¶ 26-27. As a result, Plaintiffs’ clients have repeatedly faced removal pursuant to
24 MPP removal orders, and Plaintiffs have been forced to engage in extensive and
25 duplicative litigation to prevent such removals. ProBAR Decl. ¶ 28; Door Decl.

26 _____
27 ⁵ The differences do not end there. For example, MPP NTAs can list the time and
28 location of hearings as “Facebook.” RAICES Decl. ¶ 34. MPP records and
transcripts are often impossible to obtain. *Id.* ¶¶ 37–38, 45.

1 ¶¶ 16-27; RAICES Decl. ¶¶ 15-22, 40-47, 60-64; ImmDef Decl. I ¶¶ 22-27, 31-38.

2 A single example illustrates the trauma these children face, the burden
3 Plaintiffs must undertake when their clients are prosecuted under MPP, and the
4 vastly divergent outcomes for children who are subjected to MPP rather than being
5 afforded their TVPRA rights: The Door represents an unaccompanied child,
6 A.D.R.S., who was enrolled in MPP with her mother after fleeing horrific violence
7 in Honduras. Door Decl. ¶¶ 28-31. After an MPP judge ordered them removed,
8 A.D.R.S. and her mother were tragically separated and this 14-year-old child
9 entered the United States alone as an “unaccompanied child.” *Id.* ¶ 33. When The
10 Door discovered A.D.R.S.’s MPP removal order, it filed several motions for relief,
11 including a motion to reopen A.D.R.S.’s MPP proceedings. *Id.* ¶¶ 34-42. DHS
12 opposed them all. *Id.* Within *hours* of the MPP court’s order denying the motion to
13 reopen (and before the denial was served on either party), ERO signed a warrant of
14 removal and then tried to remove A.D.R.S. at 3 a.m. that same night. *Id.* ¶¶ 36-37.
15 The Door engaged in emergency motion practice, obtaining a midnight temporary
16 restraining order barely before A.D.R.S.’s flight was scheduled to take off, and then
17 filing an emergency application for habeas relief and an appeal of the immigration
18 judge’s denial. *Id.* ¶¶ 37-43. This burdensome litigation was only necessary
19 because DHS subjected A.D.R.S. to MPP rather than afford her TVPRA rights. *Id.*
20 ¶¶ 45-46. A.D.R.S. was ultimately granted asylum when she was permitted to seek
21 relief in the child-centric process contemplated by the TVPRA—but she would have
22 never obtained such relief if The Door had left Defendants’ Practice unchecked and
23 diverted its resources to prevent removal. *Id.* ¶ 37, 43-44.

24 Thus, after immeasurable trauma and uncertainty, A.D.R.S. finally obtained
25 relief—but Plaintiffs still have not. For each “success” story like A.D.R.S.’s, there
26 are countless stories of children being denied their due process and statutory
27 protections. Because of the unpredictable process DHS has employed to remove
28 MPP-unaccompanied children with MPP removal orders, Plaintiffs have had to

1 undertake resource-intensive investigation and advocacy to discover removal orders
2 (ProBAR Decl. ¶¶ 15, 19-20; RAICES Decl. ¶¶ 13-30, 40-47, 54-65; ImmDef
3 Decl. I ¶¶ 29-38; ImmDef Decl. II ¶¶ 33-60; Door Decl. ¶¶ 55-58), and burdensome
4 litigation, including filing motions to reopen, change venue, or terminate MPP
5 proceedings, to safeguard their clients' ability to access relief under the TVPRA
6 (ProBAR Decl. ¶¶ 20-29; RAICES Decl. ¶¶ 16-39; ImmDef Decl. II ¶¶ 42- 46; Door
7 Decl. ¶¶ 59-61). Defendants' actions have strained Plaintiffs' staffing and diverted
8 resources away from other clients. ProBAR Decl. ¶¶ 29-32; RAICES Decl. ¶¶ 14,
9 27, 54-64; ImmDef Decl. II ¶¶ 43, 57, 68-74; Door Decl. ¶¶ 71-73.

10 **5. MPP-Unaccompanied Children Are Not Safely Repatriated**

11 The TVPRA requires safe repatriation of unaccompanied children who either
12 elect voluntary departure or whom DHS seeks to remove upon a child's exhaustion
13 of relief. 8 U.S.C. §§ 1232(a)(2), (c)(1), (a)(5). To ensure safe repatriation, ERO's
14 policies and procedures require a multi-step investigatory process that considers
15 country conditions, a child's kinship ties in his or her home country, and the
16 possibility of safe return. Ex. B. For MPP-unaccompanied children, however,
17 Plaintiffs are informed and believe that ERO fails to undertake even the most
18 rudimentary precautionary measures, such as consulting the child's attorney or
19 referencing the State Department's Country and Trafficking Reports. *See* GHIRP
20 Decl. ¶ 9. This exposes children to dangerous conditions upon return to their
21 countries of origin and ignores that the child's family may be in Mexico awaiting
22 MPP proceedings. *See* GHIRP Decl. ¶¶ 9, 12, 14. Defendants are effectively
23 "removing very young children to no one," and threatening these children's welfare.
24 KIND Decl. ¶ 24. Defendants' failure also requires Plaintiffs to intervene and
25 undertake extreme efforts to ensure a child's safety. ProBAR Decl. ¶ 28; Door
26 Decl. ¶¶ 16-24; GHIRP Decl. ¶¶ 6, 8, 10-11, 13, 15; Young Center Decl. ¶¶20-21,
27 36-38, 40-46.

1 **6. MPP-Unaccompanied Children Have Not Had Guaranteed**
2 **Access to Affirmative Asylum**

3 The TVPRA requires USCIS to take initial jurisdiction over asylum
4 applications by *all* unaccompanied children. 8 U.S.C. § 1158(b)(3)(C). Indeed, in
5 response to this lawsuit, USCIS issued updated guidance clarifying that it will
6 accept initial jurisdiction over asylum applications filed by individuals in removal
7 proceedings or with final removal orders if the applicant is under the age of eighteen
8 or submits documentation reflecting the applicant’s status as an unaccompanied
9 child. Ex. N. USCIS’s recent guidance makes clear that applications filed by
10 unaccompanied children “enrolled in [MPP] should be processed in the same way”
11 as applications filed by other unaccompanied children, *even if* the MPP-
12 unaccompanied child has a final removal order at the time of submission. *Id.* In
13 short, USCIS concedes that *all* unaccompanied children are entitled to the
14 affirmative asylum procedure required by the TVPRA.

15 However, this recent concession that MPP-unaccompanied children have
16 affirmative asylum rights is meaningless in practice because Defendants continue to
17 subject such children to MPP proceedings and removals *before* affirmative asylum
18 claims can be heard. ImmDef Decl. I ¶ 27; Door Decl. ¶¶ 28-32; RAICES Decl.
19 ¶¶ 48-50. Nor does USCIS’s acknowledgment of its statutory duty remedy the harm
20 to Plaintiffs, who still must race against the clock to prepare asylum applications—
21 without the benefit of the extended TVPRA timeline—before Defendants summarily
22 remove vulnerable children under MPP. *Id.*

23 **E. Despite the End of MPP, the Harm to Plaintiffs and MPP-**
24 **Unaccompanied Children is Ongoing**

25 The Biden Administration’s suspension of new enrollments in MPP and
26 related executive policy changes offer Plaintiffs and MPP-unaccompanied children
27 no aid. The MPP wind down does not apply to unaccompanied children who were
28 previously enrolled in MPP and Defendants continue to enforce MPP orders against

1 these children. Plaintiffs still must divert resources to defend their clients to ensure
2 they are afforded their rights under the TVPRA. ImmDef Decl. II ¶ 80; Door Decl.
3 ¶ 73; RAICES Decl. ¶¶ 65-68; KIND Decl. ¶ 9. Indeed, as recently as April 2021,
4 ProBAR has had to defend against removal of an MPP-unaccompanied child under
5 an MPP removal order. ProBAR Decl. ¶ 35. Plaintiffs have no reason to believe
6 that Defendants’ Practice will end and will continue to suffer organizational harm
7 while serving these vulnerable children.

8 **ARGUMENT**

9 Preliminary injunctive relief is warranted if at least one Plaintiff shows that:
10 (1) they are likely to succeed on the merits; (2) they are likely to suffer irreparable
11 harm without preliminary relief; (3) the balance of equities tips in their favor; and
12 (4) an injunction is in the public interest. *Winter v. Nat. Res. Def. Council*, 555 U.S.
13 7, 20 (2008). Alternatively, “serious questions going to the merits and a balance of
14 hardships that tips sharply towards the plaintiff can support issuance of a
15 preliminary injunction, so long as the plaintiff also shows that there is a likelihood
16 of irreparable injury and that the injunction is in the public interest.” *All. for the*
17 *Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011).

18 **I. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS**

19 All unaccompanied children, regardless of their immigration history, are
20 entitled to the protections set forth in the TVPRA and Defendants’ implementing
21 policies. The TVPRA expressly charges Defendants with nondiscretionary duties to
22 provide these rights to unaccompanied child in their custody. Defendants’ Practice
23 deprives MPP-unaccompanied children of these protections, burdening Plaintiffs
24 and harming their vulnerable clients.

25 **A. Defendants’ Practice Violates the APA**

26 Defendants’ Practice violates the APA for two independent reasons. *First*,
27 Defendants’ conduct is arbitrary, capricious, and contrary to law because
28 Defendants refuse to enforce or enact policies to ensure all unaccompanied children

1 may access their rights under the TVPRA. FAC ¶¶ 243-50. *Second*, Defendants fail
2 to comply with existing policies requiring them to secure TVPRA rights for *all*
3 unaccompanied children and to exempt unaccompanied children from MPP, in
4 violation of the *Accardi* doctrine. *Id.* ¶¶ 251-57. Either one of these grounds is
5 sufficient to satisfy Plaintiffs’ burden. *See Fin. Exp. LLC v. Nowcom Corp.*, 564 F.
6 Supp. 2d 1160, 1168 (C.D. Cal. 2008).⁶

7 **1. Defendants’ Practice Is Arbitrary, Capricious, and Not in**
8 **Accordance with Law**

9 The Court should “set aside” Defendants’ Practice because it is “arbitrary,
10 capricious, [and] otherwise not in accordance with law.” 5 U.S.C. § 706(2). *First*,
11 Defendants’ Practice is “not in accordance with law” because it deprives MPP-
12 unaccompanied children of their rights under the TVPRA. The TVPRA grants
13 procedural and substantive protections to unaccompanied children and charges
14 Defendants with developing or enforcing policies to enable *all* unaccompanied
15 children to access those rights. *See generally* 8 U.S.C. § 1232; *see also* 8 U.S.C.
16 §§ 1158(a)(2)(E), (b)(3)(C), 1232(a)(1), (a)(5)(D), (c)(2)(A), (d)(8). Defendants,
17 however, have not met their “special obligation to ensure that [unaccompanied]
18 children are treated humanely and fairly.” 154 Cong. Rec. S10886 (daily ed. Dec.
19 10, 2008). Defendants instead have taken affirmative steps to deny MPP-

20 _____
21 ⁶ The threshold requirements for APA relief are satisfied here. *See* 5 U.S.C.
22 §§ 701(a), 704. Defendants’ conduct is not preliminary—Defendants have failed to
23 issue and serve new NTAs reflecting the most recent entries of MPP-
24 unaccompanied children, have delayed their reunification with sponsors, and have
25 removed unaccompanied children pursuant to MPP orders, *see* Door Decl. ¶ 21;
26 RAICES Decl. ¶¶ 20, 63; ImmDef Decl. I ¶¶ 20-21—and those actions have
27 resulted in serious legal consequences. *See Bennett v. Spear*, 520 U.S. 154, 177-78
28 (1997); *Columbia Riverkeeper v. U.S. Coast Guard*, 761 F.3d 1084, 1095 (9th Cir.
2014) (“even if the agency does not label its decision or action as final” it may still
be subject to APA review if “immediate compliance with its terms is expected.”
(citation omitted)). No statute bars review of these claims. *See Bowen v. Mich.*
Acad. of Family Physicians, 476 U.S. 667, 670-71 (1986).

1 unaccompanied children their rights under the TVPRA. As Plaintiffs’ experience
2 shows, Defendants’ Practice has been to refuse to enforce or adopt policies to ensure
3 MPP-unaccompanied children: (i) access to the adjudication process set forth in the
4 TVPRA including affirmative asylum adjudication by USCIS free of any filing
5 deadline, relief from reinstatement of prior removal orders, and the right to new
6 Section 240 proceedings that address the unique needs of unaccompanied children
7 (8 U.S.C. §§ 1158(a)(2)(E), (b)(3)(C); 1232(a)(5)(D), (d)(8); ImmDef Decl. I ¶¶ 26-
8 27; ImmDef Decl. II ¶ 78; RAICES Decl. ¶¶ 48-50; Door Decl. ¶¶ 20-21);
9 (ii) placement in the least restrictive setting (8 U.S.C. § 1232(c)(2)(A); ImmDef
10 Decl. I ¶¶ 22-23; ImmDef Decl. II ¶¶ 61-66; RAICES Decl. ¶¶ 51-53; Door Decl. ¶
11 20); (iii) access to informed counsel throughout their proceedings (8 U.S.C. §
12 1232(c)(5); RAICES Decl. ¶¶ 23-47); and (iv) when necessary, safe repatriation to
13 their country of origin (8 U.S.C. §§ 1232(a)(2), (c)(1), (a)(5); ProBAR Decl. ¶ 28;
14 GHIRP Decl. ¶ 9). *See Ramirez v. U.S. Immigr. & Customs Enft*, 471 F. Supp. 3d
15 88, 191 (D.D.C. 2020) (“ICE has acted ... ‘otherwise not in accordance with law’ by
16 failing to follow procedures made necessary by Section 1232(c)(2)(B) and to take
17 into account the factors that the statute requires.”).⁷

18 **Second**, Defendants’ conduct is arbitrary and capricious because Defendants
19 have offered no explanation for their Practice or provided any reason for deviating

20 _____
21 ⁷ Defendants’ Practice, which prioritizes the prosecution of MPP-unaccompanied
22 children over Defendants’ duties to ensure the safety, welfare, and rights of kids,
23 also runs directly contrary to Congressional intent. *See Flores*, 862 F.3d at 880
24 (“The overarching purpose of the ... TVPRA was quite clearly to give
25 unaccompanied minors more protection, not less.”); *J.E.C.M. by & Through His
26 Next Friend Saravia v. Lloyd*, 352 F. Supp. 3d 559, 584 (E.D. Va. 2018) (“A policy
27 that systematically elevates immigration enforcement over child welfare... is flatly
28 inconsistent with ORR’s statutory responsibility to care for unaccompanied
minors...”). Indeed, the Practice results in a severely truncated time for MPP-
unaccompanied children to seek asylum and the reinstatement of prior removal
orders in such summary fashion that MPP-unaccompanied children effectively enjoy
fewer protections and less process than the INA affords adults.

1 from their existing policies. DHS policy is clear: unaccompanied children shall not
2 be subject to MPP. Ex. C. Without explanation, Defendants do the exact opposite:
3 subject unaccompanied children to prior MPP proceedings. *See supra* at 8-10. But
4 agencies cannot “depart from a prior policy *sub silentio* or simply disregard rules
5 that are still on the books.” *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502,
6 515 (2009). Any such departure requires the agency to “provide reasoned
7 explanation for its action ... display[ing] awareness that it *is* changing position.” *Id.*
8 (emphasis in original); *see also Encino Motorcars, LLC v. Navarro*, 136 S.Ct. 2117,
9 2125 (2016) (“[W]here the agency has failed to provide even [a] minimal level of
10 analysis, its action is arbitrary and capricious.”). Defendants have provided no
11 explanation, let alone a “reasoned” one, for this reversal.

12 ***Third***, Defendants’ failure to consider Plaintiffs’ reliance interests on
13 predictable, equitable, and lawful treatment of all unaccompanied children under the
14 TVPRA and Defendants’ implementing policies is arbitrary and capricious. “When
15 an agency changes course, as DHS did here, it must be cognizant that longstanding
16 policies may have engendered serious reliance interests that must be taken into
17 account.” *Dep’t of Homeland Sec. v. Regents of the Univ. of California*, 140 S. Ct.
18 1891, 1913 (2020) (citations omitted). Plaintiffs high-volume practices and mission
19 statements were built on the assumption that Defendants will honor the TVPRA’s
20 guarantee of a child-sensitive framework, an extended timeline to seek asylum, and
21 multiple avenues to seek relief. *See supra* at 5. Defendants’ Practice, however,
22 obstructs this framework, forcing Plaintiffs into a time-consuming, emergency
23 posture. “[B]ecause DHS was ‘not writing on a blank slate,’ . . . it was required to
24 assess whether there were reliance interests, determine whether they were
25 significant, and weigh any such interests against competing policy concerns.”
26 *Regents*, 140 S. Ct. at 1915. Defendants’ failure to do so here was “arbitrary and
27 capricious in violation of the APA.” *Id.*

1 **2. Defendants’ Practice Violates the *Accardi* Doctrine**

2 Defendants’ Practice must also be set aside because it violates Defendants’
3 own regulations and policies relating to unaccompanied children, including the
4 express policy that unaccompanied children are exempt from MPP. The Supreme
5 Court has made clear that an agency’s policies, guidelines, and practices are
6 judicially enforceable if they confer substantive rights, and that failure to follow
7 such policies may give rise to an APA claim. *See United States ex rel. Accardi v.*
8 *Shaughnessy*, 347 U.S. 260 (1954); *see also Battle v. FAA*, 393 F.3d 1330, 1336
9 (D.C. Cir. 2005) (“*Accardi* has come to stand for the proposition that agencies may
10 not violate their own rules and regulations to the prejudice of others.”); *Alcaraz v.*
11 *INS*, 384 F.3d 1150, 1162 (9th Cir. 2004) (“The legal proposition that agencies may
12 be required to abide by certain internal policies is well-established.”).⁸

13 Defendants violate their TVPRA regulations, policies, and procedures in
14 several distinct ways. **First**, Defendants violate their unambiguous official policy
15 that unaccompanied children shall not be subject to MPP. *See supra* at 8-10, 13-14;
16 *Innovation Law Lab v. McAleenan*, 924 F.3d 503, 506 (9th Cir. 2019) (“MPP is
17 categorically inapplicable to unaccompanied minors.”). As detailed above,
18 Defendants routinely subject MPP-unaccompanied children to MPP when: (i) ERO
19 transfers these children into ORR custody without NTAs reflecting their entry as
20 unaccompanied children; (ii) ORR refuses to promptly release these children to
21 eligible sponsors because of prior MPP removal orders; (iii) ICE refuses to move to
22 change venue for these children’s MPP immigration proceedings; and (iv) ERO
23 seeks to summarily remove children pursuant to MPP orders without ensuring safe

24 _____
25 ⁸ This tenet holds true regardless of the form the policy takes, and even if the policy
26 is more comprehensive than its statutory counterpart. *See Alcaraz*, 384 F.3d at 1162
27 (concerning an agency memoranda); *see also Church of Scientology of Cal. v.*
28 *United States*, 920 F.2d 1481, 1487 (9th Cir. 1990) (applying *Accardi* to IRS policy
statement and IRS Handbook); *Romeiro de Silva v. Smith*, 773 F.2d 1021, 1025 (9th
Cir. 1985) (noting that the INS could be bound by its “operations instructions”).

1 repatriation. *Supra* at 6-11.

2 **Second**, Defendants’ decision to prioritize a child’s MPP case violates a host
3 of their own TVPRA-implementing regulations and policies. As noted, Congress
4 required Defendants to develop policies to facilitate unaccompanied children’s
5 access to the rights and processes mandated by the TVPRA. *See, e.g.*, 8 U.S.C.
6 § 1232(a)(1), (c)(1), (d)(8). But Defendants violate these policies and regulations,
7 which cement children’s TVPRA rights, when: (i) ERO fails to issue and serve on
8 an MPP-unaccompanied child a new legally sufficient NTA reflecting her most
9 recent entry before transferring custody of the child to ORR; (ii) ORR unnecessarily
10 delays a child’s release to a suitable sponsor; (iii) ICE, ERO, and CBP ignore their
11 case management obligations and fail to apprise each other of a child’s
12 “unaccompanied” designation and custody status; (iv) ERO removes a child before
13 she has exhausted all rights to a child-centric asylum interview and subsequent 240
14 immigration court hearing; and (v) ERO fails to ensure a child’s safe repatriation.
15 *Supra* at 6-11; *see also* ImmDef Decl. I ¶¶ 20-25; ImmDef Decl. II ¶¶ 25, 28-31;
16 Door Decl. ¶¶ 19-26, 35-42; RAICES Decl. ¶¶ 31-53; NIJC Decl. ¶ 19.

17 Each failure by Defendants to abide by their own policies and regulations in
18 their treatment of MPP-unaccompanied children amounts to an *Accardi* violation.
19 *See Montilla v. INS*, 926 F.2d 162, 170 (2d Cir. 1991) (*Accardi* violation where INS
20 failed to follow its own rules for right to counsel in deportation hearing); *Torres v.*
21 *U.S. Dep’t of Homeland Sec.*, No. 17cv1840 JM (NLS), 2017 WL 4340385, at *5
22 (S.D. Cal. Sept. 29, 2017) (granting preliminary injunction for *Accardi* claim based
23 on DHS failure to follow Deferred Action for Childhood Arrival program rules);
24 *Zhang v. Slattery*, 840 F. Supp. 292, 296 (S.D.N.Y. 1994) (requiring that INS adhere
25 to internal procedures). Moreover, each decision by Defendants to “change the rules
26 in the middle of the game” rather than follow existing policy has denied MPP-
27 unaccompanied children their rights under the TVPRA, undermined Plaintiffs’
28 missions, and forced Plaintiffs to divert resources toward addressing this unlawful

1 conduct. *Black v. Romano*, 471 U.S. 606, 621-22, 622 n.18 (1985) (Marshall, J.,
2 concurring) (describing *Accardi* as member to a body of caselaw that ensures the
3 “norm of regularity in governmental conduct.”); ProBAR Decl. ¶¶ 32-34; ImmDef
4 Decl. I ¶¶ 19, 39-45; ImmDef Decl. II ¶¶ 31, 80; Door Decl. ¶¶ 19-26, 35-42, 55-73;
5 RAICES Decl. ¶¶ 54-64. The Court should enjoin Defendants’ Practice.

6 **B. Defendants’ Practice Violates the Due Process Clause of the Fifth**
7 **Amendment to the U.S. Constitution**

8 By treating MPP-unaccompanied children as MPP respondents, Defendants
9 have deprived these children of their constitutionally protected property interest in
10 statutory entitlements under the TVPRA and exposed them to a high risk of
11 erroneous removal without adequate safeguards. *See* U.S. Const. amend. V.
12 Defendants thus deny MPP-unaccompanied children procedural due process, a
13 constitutional injury that has forced Plaintiffs to divert substantial and otherwise-
14 accounted-for organizational resources to MPP-unaccompanied children who
15 require immediate defensive representation that strains Plaintiffs’ capacity and
16 expertise. *See* ImmDef Decl. I ¶¶ 39-45; ImmDef Decl. II ¶¶ 40-41; RAICES Decl.
17 ¶¶ 54-64; ProBAR Decl. ¶¶ 31-35; Door Decl. ¶¶ 22-26, 35-42, 55-73.

18 The Ninth Circuit analyzes procedural due process claims in two steps,
19 looking first at whether there “exists a liberty or property interest which has been
20 interfered with by the [government],” and, second, whether that deprivation
21 occurred absent “adequate procedural safeguards.” *See United States v. Juvenile*
22 *Male*, 670 F.3d 999, 1014 (9th Cir. 2012), *cert. denied*, 568 U.S. 868 (2012).

23 **1. Defendants’ Practice Interferes with MPP-Unaccompanied**
24 **Children’s Protected Liberty and Property Interests**

25 The first step is satisfied here: Defendants’ Practice interferes with MPP-
26 unaccompanied children’s liberty and property interests. *See* U.S. Const. amend. V;
27 *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972) (focusing on “liberty or property”).

28 **First**, children in removal proceedings have a strong liberty interest in

1 avoiding wrongful deportation. *See C.J.L.G. v. Barr*, 923 F.3d 622, 639 (9th Cir.
2 2019) (Paez, J., concurring) (“Sending child asylum-seekers back to hostile
3 environments where they may have experienced persecution implicates a forceful
4 liberty interest.”); *Oshodi v. Holder*, 729 F.3d 883, 894 (9th Cir. 2013)
5 (“deportation is a ‘particularly severe penalty.’”). Defendants interfere with that
6 interest when they subject MPP-unaccompanied children to MPP proceedings, seek
7 to enforce MPP removal orders, and oppose Plaintiffs’ efforts to ensure MPP-
8 unaccompanied children can access their TVPRA rights. *See supra* at 7-10, 17-18.

9 **Second**, the unaccompanied children have a property interest in their
10 statutory entitlements under the TVPRA. *See supra* at 3, 18. Statutory entitlements
11 give rise to constitutionally protected property interests. *See Goss v. Lopez*, 419
12 U.S. 565, 572-73 (1975) (“[Constitutionally protected property interests] are created
13 and their dimensions are defined’ by an independent source such as state statutes or
14 rules entitling the citizen to certain benefits.”); *Zerezghi v. U.S. Citizenship &*
15 *Immigr. Servs.*, 955 F.3d 802, 808 (9th Cir. 2020) (protected interest in the grant of
16 an I-130 petition as a legislative entitlement).

17 By subjecting unaccompanied children to their prior MPP proceedings,
18 Defendants interfere with, if not outright deny, concrete and vested rights under the
19 TVPRA, such as applying for asylum before USCIS under no deadline, prompt
20 release to a sponsor, and full and fair child-centric process before being repatriated.
21 *See supra* at 8-10. MPP-unaccompanied children who are summarily removed may
22 have no opportunity to pursue these rights. *See, e.g.*, ProBAR Decl. ¶ 28.

23 **2. The Mathews Factors Weigh in Plaintiffs’ Favor**

24 The second step is governed by the three-step balancing framework set forth
25 in *Mathews v. Eldridge*, 424 U.S. 319, 334-35 (1976), which balances: (1) the nature
26 of the private interest impacted; (2) the risk of erroneous deprivation under the
27 current process and the probable value, if any, to additional safeguards; and (3) the
28 government interest at stake. These factors favor Plaintiffs.

1 The first *Mathews* factor heavily favors Plaintiffs. Unaccompanied children
2 have a “significant liberty interest” in avoiding deportation and in their statutory
3 entitlements under the TVPRA. *See supra* at 3, 18. The Ninth Circuit has found
4 significant private interests in non-discretionary grants of immigration benefits that
5 protect a person from imminent removal and family separation. *See Zerezghi*, 955
6 F.3d at 810 (weighing first *Mathews* factor in plaintiff’s favor). That rationale
7 applies with equal force here, and especially when these children not only are sent
8 back to dangerous conditions, but now are being removed to “no one,” as their
9 parents are often trapped in MPP. *See* GHIRP Decl. ¶ 9.

10 The second *Mathews* factor likewise favors Plaintiffs because MPP-
11 unaccompanied children face a profound risk of erroneous deprivation under
12 Defendants’ Practice, which could be mitigated with “additional or substitute
13 procedural safeguards.” *Mathews*, 424 U.S. at 335. Defendants’ conduct creates a
14 substantial risk that MPP-unaccompanied children will be removed without any
15 opportunity to exercise their TVPRA rights, including the right to access informed
16 counsel and affirmative asylum, Special Immigrant Juvenile Status, or voluntary
17 departure. *See Flores-Chavez v. Ashcroft*, 362 F.3d 1150, 1161 (9th Cir. 2004)
18 (child’s inability to seek immigration relief demonstrates the “substantial” risk of
19 erroneous *in absentia* removal); *Acewicz v. INS*, 984 F.2d 1056, 1062 (9th Cir.
20 1993) (right to counsel infringed when counsel “could have better marshalled
21 specific facts or arguments in presenting the petitioner’s case for asylum”).

22 The final *Mathews* factor also tips in Plaintiffs’ favor. Defendants cannot
23 claim a legitimate government interest in excluding from the TVPRA’s reach kids
24 who are plainly within the statute’s purview and protected by Defendants’ own
25 policies. *See Zerezghi*, 955 F.3d at 811 (focusing the government interest inquiry
26 on the government action at issue and not the broader interest in immigration
27 enforcement); *Flores-Chavez*, 362 F.3d at 1162 (dismissing as minimal any burden
28 on DHS if required to properly serve custodian or guardian).

1 **II. PLAINTIFFS AND THEIR CLIENTS WILL SUFFER IRREPARABLE**
2 **HARM ABSENT RELIEF**

3 **1. Plaintiffs Suffer Irreparable Harm**

4 In the Ninth Circuit, an organizational plaintiff may establish “irreparable
5 harm” through diversion of resources, frustration of mission, or non-speculative loss
6 of funding. *See Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013);
7 (organizational-standing analysis applies to irreparable harm factor); *see also*
8 *Winter*, 555 U.S. at 20; *E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 677-78
9 (9th Cir. 2021); *Sierra Club v. Trump*, 977 F.3d 853 (9th Cir. 2020). Here,
10 Defendants cause Plaintiffs to divert resources and frustrate Plaintiffs’ missions.
11 ImmDef Decl. I ¶¶ 39-46; Door Decl. ¶¶ 48-73; RAICES Decl. ¶¶ 54-64.

12 Defendants’ Practice has upended Plaintiffs’ high-volume legal services
13 model. Plaintiffs have been forced to overhaul their screening procedures, engage in
14 representation outside their established expertise, decline clients, and divert
15 resources. *See, e.g.*, RAICES Decl. ¶¶ 54-64; ImmDef Decl. I ¶¶ 39-46; Door Decl.
16 ¶¶ 48-73. For example, Plaintiff ProBAR, located in South Texas, has been forced
17 by Defendants’ Practice to service and represent MPP-unaccompanied child clients
18 moved outside its service area, including some who have been removed to other
19 countries while proceedings are still pending and/or have been reopened. ProBAR
20 Decl. ¶¶ 26, 30, 34. To do so, ProBAR has had to deploy additional resources. *Id.*

21 Before MPP, Plaintiffs allocated organizational resources to support their
22 representation of unaccompanied children in TVPRA proceedings. RAICES Decl.
23 ¶¶ 9-12, 54-57; ImmDef Decl. I ¶ 13; ImmDef Decl. II ¶ 19. Defendants’ Practice
24 has forced Plaintiffs to defend children in MPP proceedings—legal practice outside
25 of Plaintiffs’ established expertise and service models. RAICES Decl. ¶¶ 13-14, 54-
26 64; Door Decl. ¶ 69; ImmDef Decl. II ¶ 19. For example, ImmDef attorneys have
27 spent hours investigating the status of MPP hearings, filing motions to sever and
28 change venue, and otherwise straining to practice outside its experience and

1 jurisdiction. ImmDef Decl. II ¶¶ 57-60. Thus, in the “time it will take [Plaintiffs] to
2 adequately build programs to service [MPP-unaccompanied children denied TVPRA
3 protections], the organizations will suffer irreparable harm.” *See Doe v. Trump*, 288
4 F. Supp. 3d 1045, 1083 (W.D. Wash. 2017).

5 Plaintiffs must also enter representation of MPP-unaccompanied children they
6 would not otherwise represent because Defendants attempt to remove these children
7 before they are given a chance to be released to a sponsor or apply for asylum and
8 relief under the TVPRA. RAICES Decl. ¶¶ 13-14, 54-64; ImmDef Decl. I ¶ 31;
9 ImmDef Decl. II ¶¶ 40-41. Plaintiffs must turn resources away from other client
10 matters and dedicate substantial staff time toward conducting extended
11 investigations and preparing emergency filings to prevent clients’ removals. *Id.*; *see*
12 *also* Door Decl. ¶¶ 68-70. Plaintiffs’ staff have to work overtime and at times
13 around the clock to defend against Defendants’ unlawful treatment of MPP-
14 unaccompanied children. RAICES Decl. ¶¶ 47, 60-64; Door Decl. ¶¶ 70, 72;
15 ImmDef Decl. I ¶ 37; ImmDef Decl. II ¶¶ 43, 66, 71. In all these ways, Defendants’
16 Practice “harms [Plaintiffs] missions and causes [Plaintiffs] to divert resources from
17 advancing [their] mission[s] in order to help” the children targeted by Defendants.
18 *See Garcia v. City of Los Angeles*, 481 F. Supp. 3d 1031, 1049 (C.D. Cal. 2020).

19 **2. Plaintiffs’ Young Clients Suffer Irreparable Harm**

20 The severe and irreparable injury to Plaintiffs’ clients is equally probative. *E.*
21 *Bay Sanctuary Covenant v. Trump*, 349 F. Supp. 3d 838, 864 (N.D. Cal. 2018), *aff’d*,
22 950 F.3d 1242 (9th Cir. 2020), *and aff’d*, 993 F.3d 640 (9th Cir. 2021). As
23 demonstrated above, Defendants continue to deny MPP-unaccompanied children
24 due process, *see supra* at 18-19, and “deprivation of constitutional rights
25 unquestionably constitutes irreparable injury.” *Melendres v. Arpaio*, 695 F.3d 990,
26 1002 (9th Cir. 2012). Plaintiffs observe delays in release of MPP-unaccompanied
27 children from ORR shelters to relatives who can care for them; diminished and,
28 sometimes, extinguished ability to pursue asylum; and an imminent risk of removal.

1 *Supra* at 7-10, 13-15. This, too, constitutes irreparable harm. *See E. Bay*, 349 F.
2 Supp. 3d at 864 (“the right to bring an asylum claim is valuable” and “the threat of
3 deportation to the countries from which they have escaped” is an irreparable harm).

4 **III. THE BALANCE OF EQUITIES AND THE PUBLIC INTEREST**
5 **WEIGH IN FAVOR OF AN INJUNCTION**

6 “Where the government is a party to a case in which a preliminary injunction
7 is sought, the balance of the equities and public interest factors merge.” *Padilla v.*
8 *Immigr. & Customs Enf’t*, 953 F.3d 1134, 1141 (9th Cir. 2020).

9 Here, the public’s interest “is served by compliance with the APA.”
10 *California v. Azar*, 911 F.3d 558, 581 (9th Cir. 2018). The public has an undeniable
11 interest in ensuring that ““statutes enacted by [their] representatives’ are not
12 imperiled by executive fiat.” *E. Bay*, 993 F.3d at 679; *see League of Women Voters*
13 *of the U.S. v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016) (“[T]here is a substantial
14 public interest ‘in having governmental agencies abide by the federal laws that
15 govern their existence and operations.’”). Further, “it is always in the public interest
16 to prevent the violation of a party’s constitutional rights.” *Melendres*, 695 F.3d at
17 1002.⁹ The public interest is also served by ensuring that LSPs, tasked with
18 protecting statutory rights, can effectively perform their services. *See Flores*, 862
19 F.3d at 867 (“In enacting the . . . TVPRA, Congress desired to *better* provide for
20 unaccompanied minors.”).

21 Defendants “cannot suffer harm from an injunction that merely ends an
22 unlawful practice.” *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013).

23 **IV. A NATIONWIDE INJUNCTION IS APPROPRIATE**

24 Injunctive relief is necessary because Defendants have unlawfully denied
25 MPP-unaccompanied children their rights under the TVPRA and the Fifth

26 _____
27 ⁹ “[T]here is a public interest in preventing [noncitizens] from being wrongfully
28 *Holder*, 556 U.S. 418, 436 (2009); *E. Bay*, 993 F.3d at 678 (same).

1 Amendment, and in doing so have injured not only hundreds of children but also the
2 LSPs that serve them, like Plaintiffs. *Supra* at 5, 7-10, 13-15, 18-19.

3 The Ninth Circuit has recognized that “[d]istrict courts have ‘considerable
4 discretion’ in crafting suitable equitable relief.” *E. Bay*, 993 F.3d at 680; *see also*
5 *Bresgal v. Brock*, 843 F.2d 1163, 1169-70 (9th Cir. 1987). A nationwide injunction
6 of Defendants’ Practice is appropriate for multiple reasons.

7 **First**, a nationwide injunction is needed to protect Plaintiffs from continuing
8 to suffer irreparable harm caused by Defendants’ unlawful Practice. *Cf. Califano v.*
9 *Yamasaki*, 442 U.S. 682, 702 (1979) (“The scope of injunctive relief is dictated by
10 the extent of the violation established . . .”). Plaintiffs are LSPs based in
11 California, Texas, and New York that serve an ever-changing and moving
12 population of thousands of unaccompanied children annually in ORR facilities
13 across the country. *See* ProBAR Decl. ¶¶ 3-7; ImmDef Decl. I ¶ 9-10; Door Decl.
14 ¶¶ 3-7, 62. Because Plaintiffs “do not operate in a fashion that permits neat
15 geographic boundaries,” a more limited injunction “would not address the harm” to
16 Plaintiffs from Defendants’ unlawful actions. *E. Bay*, 993 F.3d at 680; *see also*
17 *Centro Legal de la Raza v. Exec. Office of Immigr. Review*, No. 21-cv-00463-SI,
18 2021 WL 916804, at *43 (N.D. Cal. Mar. 10, 2021) (same).

19 **Second**, the APA directs that a reviewing court “shall . . . set aside agency
20 action” that is found to be “arbitrary, capricious, . . . or otherwise not in accordance
21 with law[.]” 5 U.S.C. § 706(2)(A). The Ninth Circuit has applied this directive to
22 approve nationwide preliminary injunctions enjoining offending agency action. *See*
23 *E. Bay*, 993 F.3d at 681 (holding nationwide injunction of asylum eligibility rules
24 was not abuse of discretion, and noting “singular equitable relief is ‘commonplace’
25 in APA cases, and is often ‘necessary to provide the plaintiffs’ with ‘complete
26 redress’”); *accord Regents of the Univ. of Cal. v. U.S. Dep’t of Homeland Sec.*, 908
27 F.3d 476, 511 (9th Cir. 2018), *rev’d & vacated in part*, 140 S.Ct. 1891 (2020).

28 **Third**, a nationwide injunction will promote the “important ‘need for

1 uniformity in immigration policy.” *E. Bay*, 993 F.3d at 681. Defendants’
2 unlawful Practice is applied nationwide—affecting children served by Plaintiffs
3 throughout the country, and outside Plaintiffs’ service areas. An injunction must
4 match that unlawful policy’s scope. *E.g., id.* (“Different interpretations of
5 executive policy across circuit or state lines will needlessly complicate agency and
6 individual action in response to the United States’s changing immigration
7 requirements”); *Hawaii v. Trump*, 878 F.3d 662, 701 (9th Cir. 2017), *rev’d on*
8 *other grounds*, 138 S.Ct. 2392 (2018) (“Because this case implicates immigration
9 policy, a nationwide injunction was necessary to give Plaintiffs a full expression of
10 their rights.”). An order enjoining Defendants’ Practice only as to Plaintiffs or
11 certain jurisdictions would be “inimical to the principle of uniformity.” *Regents*,
12 908 F.3d at 512; *see Washington v. Trump*, 847 F.3d 1151, 1166-67 (9th Cir. 2017)
13 (“[A] fragmented immigration policy would run afoul of the constitutional and
14 statutory requirement for uniform immigration law and policy.”) (affirming
15 nationwide injunction).

16 CONCLUSION

17 Defendants defy both their TVPRA statutory duties and their own policies to
18 deny rights to vulnerable MPP-unaccompanied children, causing irreparable harm to
19 Plaintiffs and these children. The Court should enjoin Defendants’ Practice.

20 Dated: May 14, 2021

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