

1  
2  
3  
4  
5  
6  
7 UNITED STATES DISTRICT COURT  
8 CENTRAL DISTRICT OF CALIFORNIA  
9

10 IMMIGRANT DEFENDERS LAW  
11 CENTER, et al.,

12 Plaintiffs,

13 v.

14 U.S. DEPARTMENT OF HOMELAND  
15 SECURITY, et al.,

16 Defendants.  
17

Case No. CV 21-0395 FMO (RAOx)

**ORDER RE: REMEDIES**

**BACKGROUND**

18 This is an action challenging certain policies and conduct of the U.S. Department of  
19 Homeland Security (“DHS”), the Secretary of Homeland Security, U.S. Customs and Border  
20 Protection (“CBP”), the CBP Commissioner, U.S. Immigration and Customs Enforcement (“ICE”),  
21 the Director of ICE, U.S. Enforcement and Removal Operations (“ERO”), and the Acting Executive  
22 Associate Director of ERO, (collectively, “defendants” or “the government”), regarding  
23 unaccompanied noncitizen children who previously entered the United States with their families,  
24 were placed in removal proceedings with their families, were sent to Mexico to await their  
25 proceedings pursuant to the Migrant Protection Protocols (“MPP”) policy, and later returned to the  
26 United States without a parent or guardian – as unaccompanied children (hereinafter, “MPP-  
27 unaccompanied children”). (See Dkt. 14, Amended Complaint for Declaratory and Injunctive Relief  
28 (“FAC”) at ¶¶ 43-56).

1 The Immigrant Defenders Law Center (“ImmDef”), the Refugee and Immigrant Center for  
2 Education and Legal Services (“RAICES”), the South Texas Pro Bono Asylum Representation  
3 Project (“ProBar”), and The Door (collectively, “plaintiffs”), (see Dkt. 14, FAC at ¶¶ 17-42), filed this  
4 action seeking “to ensure that unaccompanied immigrant children” receive the “protections  
5 enshrined by the William Wilberforce Trafficking Victims Protection Reauthorization Act (“TVPRA”),  
6 [and] the Due Process Clause of the Fifth Amendment to the United States Constitution[.]” (Id.  
7 at ¶¶ 1 & 13); (see Dkt. 268, Pretrial Conference Order at 5). Plaintiffs are legal services providers  
8 asserting claims for violations of: (1) the Administrative Procedure Act (“APA”), 5 U.S.C. § 706,  
9 (see Dkt. 14, FAC at ¶¶ 234-264); and (2) the Due Process Clause. (See id. at ¶¶ 226-233); (Dkt.  
10 268, Pretrial Conference Order at 5).

11 The court held a bench trial and concluded that the government violated the APA and Due  
12 Process Clause. (See Dkt. 304, Findings of Fact and Conclusions of Law (“Liability Order”) at 26-  
13 27, 30). In its Liability Order, the court determined that the government’s policy (“Policy”) of  
14 subjecting MPP-unaccompanied children to their family’s previously initiated Immigration and  
15 Nationality Act (“INA”) § 240 proceeding,<sup>1</sup> including any pending proceeding and/or previously  
16 issued final removal order, violates: (1) the APA because it contravenes the TVPRA and is  
17 arbitrary and capricious; and (2) the Due Process Clause because it deprives  
18 MPP-unaccompanied children of their property interest in TVPRA protections by seeking to deport  
19 or deporting them before they have an opportunity to seek affirmative asylum. (See id. at 23, 26-  
20 27, 29-30). In this Order (“Remedies Order”), the court considers the appropriate remedy for  
21 these violations.<sup>2</sup>

22 ///

---

23  
24  
25 <sup>1</sup> INA § 240 is codified at 8 U.S.C. § 1229a(a), and removal proceedings under this provision  
26 are known as “§ 240 proceedings.” With the exception of references to INA § 240, all section  
references are to Title 8 of the United States Code.

27 <sup>2</sup> The court hereby reincorporates the findings and conclusions in its Liability Order. (See Dkt.  
28 304, Liability Order). Together, the prior Liability Order and this Order comprise the court’s  
complete findings of fact and conclusions of law. See Fed. R. Civ. P. 52(a).

**LEGAL STANDARD**

The APA provides, in relevant part, that “the reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; [or] (B) contrary to constitutional right, power, privilege or immunity[.]” 5 U.S.C. § 706(2). The Supreme Court has “long applied a strong presumption favoring judicial review of administrative action.” Mach Mining, LLC v. E.E.O.C., 575 U.S. 480, 489, 135 S.Ct. 1645, 1653 (2015); see also Sackett v. E.P.A., 566 U.S. 120, 128, 132 S.Ct. 1367, 1373 (2012) (“The APA . . . creates a presumption favoring judicial review of administrative action[.]”) (internal quotation marks omitted). When a court determines that agency action is unlawful, vacatur of the action is the “presumptive remedy under the APA.”<sup>3</sup> 350 Montana v. Haaland, 50 F.4th 1254, 1273 (9th Cir. 2022); see E. Bay Sanctuary Covenant v. Biden (E. Bay I), 993 F.3d 640, 681 (9th Cir. 2021) (“[W]hen a reviewing court determines that agency regulations are unlawful, the ordinary result is that the rules are vacated – not that their application to the individual petitioners is proscribed.”).

In addition, “[d]istrict courts have considerable discretion in crafting suitable equitable relief.” E. Bay I, 993 F.3d at 680 (internal quotation marks omitted); see Nat’l Wildlife Fed’n v. Nat’l Marine Fisheries Serv., 524 F.3d 917, 936 (9th Cir. 2008) (“The district court has broad latitude in fashioning equitable relief when necessary to remedy an established wrong[.]”). “Though the Supreme Court’s recent Trump v. CASA, Inc. decision explicitly declined to extend its holding to the APA context, its complete-relief principle for crafting injunctive relief provides some useful guidance[.]” Immigrant Defs. L. Ctr. v. Noem, 145 F.4th 972, 995 (9th Cir. 2025) (internal citation omitted).<sup>4</sup> Under the Court’s complete-relief principle, “the question . . . is whether an injunction will offer complete relief *to the plaintiffs before the court.*” CASA, 145 S.Ct. at 2557. “[O]ne

---

<sup>3</sup> The APA’s presumptive remedy of vacatur remains unaffected by the Supreme Court’s recent decision in Trump v. CASA, Inc., 145 S.Ct. 2540 (2025). See id. at 2554 n. 10 (“Nothing we say today resolves the distinct question whether the Administrative Procedure Act authorizes federal courts to vacate federal agency action.”).

<sup>4</sup> While Immigrant Defs. L. Ctr. v. Noem, 145 F.4th 972 (9th Cir. 2025) concerned preliminary injunctive relief, similar considerations likely inform permanent injunctive relief.

1 limitation on the district court's discretion to order injunctive relief is that, under the Judiciary Act  
2 of 1789, district courts likely lack authority to issue 'universal injunctions' – orders that 'prohibit  
3 enforcement of a law or policy against *anyone*' – to the extent '*broader* than necessary to provide  
4 complete relief to each plaintiff.'" Vasquez Perdomo v. Noem, 2025 WL 2181709, \*20 (9th Cir.  
5 2025) (quoting CASA, 145 S.Ct. at 2548, 2562-63). Accordingly, courts crafting injunctive relief  
6 should ensure that the remedy is "narrowly tailored to remedy the specific harm shown," E. Bay  
7 I, 993 F.3d at 680, such that it is not "broader than necessary to provide complete relief to each  
8 plaintiff with standing to sue." CASA, 145 S.Ct. at 2562-63; see California v. Azar, 911 F.3d 558,  
9 584 (9th Cir. 2018) ("The scope of the remedy must be no broader and no narrower than  
10 necessary to redress the injury[.]"); Califano v. Yamasaki, 442 U.S. 682, 702, 99 S.Ct. 2545, 2558  
11 (1979) ("[I]njunctive relief should be no more burdensome to the defendant than necessary to  
12 provide complete relief to the plaintiffs."). However, there may be "injuries for which it is all but  
13 impossible for courts to craft relief that is complete *and* benefits only the named plaintiffs." CASA,  
14 145 S.Ct. at 2557 n. 12. That is, there may be situations in which plaintiffs are entitled to complete  
15 relief and the only way to provide such relief is to enter an injunction that has the effect of  
16 incidentally benefitting nonparties. See id.; see also id. at 2558 ("In short, [t]he essence of equity  
17 jurisdiction has been the power of the Chancellor to do equity and to mould each decree to the  
18 necessities of the particular case.") (internal quotation marks omitted); Fed. R. Civ. P. 54(c)  
19 ("[F]inal judgment should grant the relief to which each party is entitled[.]").

20 Because APA cases challenge unlawful agency action – which may itself be wide-ranging  
21 – the scope of the appropriate remedy in this context may necessarily be broad in order to afford  
22 complete relief. See E. Bay I, 993 F.3d at 681 ("Because of the broad equitable relief available  
23 in APA challenges, a successful APA claim by a single individual can affect an entire regulatory  
24 program.") (internal quotation marks omitted); Texas v. United States, 40 F.4th 205, 229 n. 18 (5th  
25 Cir. 2022) ("In the context of immigration law, broad relief is appropriate to ensure uniformity and  
26 consistency in enforcement."); see, e.g., Washington v. Trump, 145 F.4th 1013, 1038-39 (9th Cir.  
27 2025) (affirming the district court's grant of a preliminary injunction and "its determination that a  
28

1 universal preliminary injunction is necessary to give the States complete relief on their claims”  
2 where it would be otherwise “impossible to avoid” certain harms to the plaintiff states).

### 3 DISCUSSION

4 Plaintiffs seek vacatur of the Policy, declaratory relief affirming MPP-unaccompanied  
5 children’s right to certain statutory protections under the TVPRA, and injunctive relief safeguarding  
6 those rights. (See Dkt. 307, Plaintiff’s Post-Trial Remedies Brief at 4-8). The court first addresses  
7 the justiciability questions raised by the government – whether plaintiffs have standing to seek  
8 prospective relief and whether judicial review is barred by various provisions in 8 U.S.C. § 1252.  
9 (See Dkt. 309, Memorandum of Points and Authorities in Opposition (“Opp.”) at 1-7). The court  
10 concludes, as it did before, that it has jurisdiction over plaintiffs’ claims. Next, the court grants  
11 plaintiffs’ Motion to Strike the government’s post-trial evidence. Finally, the court considers the  
12 remedies plaintiffs seek in this action.

#### 13 I. THRESHOLD CONSIDERATIONS.

##### 14 A. Article III Standing for Prospective Relief.

15 The court previously concluded that plaintiffs have standing to pursue their claims. (See  
16 Dkt. 304, Liability Order at 16-17). The court found that “defendants’ Policy has impaired their  
17 provision of legal representation to unaccompanied children – that is, the Policy ‘directly affected  
18 and interfered’ with their ‘core business activities.’” (Id. at 16). The government nevertheless  
19 argues that plaintiffs lack standing to seek prospective relief, including declaratory and injunctive  
20 relief. (See Dkt. 309, Opp. at 6-7).

21 “[A] plaintiff seeking prospective injunctive relief . . . must demonstrate that he has suffered  
22 or is threatened with a ‘concrete and particularized’ legal harm, coupled with ‘a sufficient likelihood  
23 that he will again be wronged in a similar way.’” Bates v. United Parcel Serv., Inc., 511 F.3d 974,  
24 985 (9th Cir. 2007) (internal citations omitted). “[P]ast injury does not provide standing to seek  
25 prospective injunctive relief ‘[a]bsent a sufficient likelihood that [the plaintiff] will again be wronged  
26 in a similar way[.]’” Gonzalez v. U.S. Immigr. & Customs Enf’t, 975 F.3d 788, 803 (9th Cir. 2020)  
27 (quoting City of Los Angeles v. Lyons, 461 U.S. 95, 111, 103 S.Ct. 1660, 1670 (1983)).  
28

1 Here, plaintiffs suffered an irreparable injury and have demonstrated a “real or immediate  
2 threat that [they] will be wronged again.” See Lyons, 461 U.S. at 111, 103 S.Ct. at 1670.  
3 Plaintiffs’ ability to represent prospective and current clients – that is, MPP-unaccompanied  
4 children – has been adversely impacted, and plaintiffs have demonstrated past, ongoing, and  
5 impending harms. (See Dkt. 304, Liability Order at 16-17). Their injuries are grounded in the  
6 Policy, which continues to impair plaintiffs’ provision of legal services. (See id.). Indeed, since  
7 the bench trial, the “number of MPP-unaccompanied children . . . has increased from the 1,245  
8 MPP-unaccompanied children defendants encountered as of December 15, 2021,” and the  
9 likelihood of future harm has only multiplied given that MPP has been reinstated.<sup>5</sup> (See id. at 12-  
10 13). It is thus clear that plaintiffs’ injuries are ongoing and likely to continue such that prospective  
11 relief is warranted. In short, there is nothing speculative about plaintiffs’ claims, and the court finds  
12 that plaintiffs have standing to seek prospective relief. See, e.g., Rodriguez v. Bostock, 349  
13 F.R.D. 333, 352 (W.D. Wash. 2025) (concluding that plaintiff facing “ongoing and prospective”  
14 injuries “when he commenced suit” had standing to seek both injunctive and declaratory relief).

15 B. Statutory Jurisdiction.

16 The court next considers the government’s arguments regarding the jurisdictional bars in  
17 8 U.S.C. §§ 1252(g), (b)(9), and (f)(1). (See Dkt. 309, Opp. at 1-6).

18 As a general matter, § 1252 governs “[j]udicial review of orders of removal.” See 8 U.S.C.  
19 § 1252. Here, plaintiffs do not seek review of any removal orders; rather, they seek review of  
20 government action under the APA and Due Process Clause. (See Dkt. 307, Plaintiffs Post-Trial  
21 Remedies Brief at 4-8) (detailing requests for vacatur, declaratory, and injunctive relief); (Dkt. 268,  
22 Pretrial Conference Order at ¶¶ 7-8). When a statute does not address “the type of grievance  
23 which the plaintiff seeks to assert, then the statute cannot prevent an APA suit.”  
24

---

25  
26 <sup>5</sup> The reinstatement of MPP is partly stayed pending appeal, but it remains in effect as to non-  
27 ImmDef clients. See Immigrant Defs. L. Ctr. v. Noem (“ImmDef II”), 145 F.4th 972, 996 (9th Cir.  
28 2025) (“[N]o current or future clients of ImmDef shall be enrolled in MPP during the pendency of  
this appeal.”). Moreover, the MPP litigation makes clear that the government intends to continue  
to implement MPP, and that plaintiffs’ injuries will remain ongoing and likely to recur.

1 Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak, 567 U.S. 209, 216, 132  
2 S.Ct. 2199, 2205 (2012) (internal quotation marks omitted).

3 Two of the provisions invoked by the government, § 1252(g) and (b)(9), bar judicial review  
4 of certain kinds of claims, not relief. See 8 U.S.C. § 1252(g), (b)(9). The court previously  
5 determined that it has jurisdiction to consider plaintiffs’ claims, notwithstanding these two  
6 provisions. (See Dkt. 304, Liability Order at 14-15); (Dkt. 45, Order on Motion to Dismiss at 11-  
7 16). Nevertheless, the court will again consider whether these two provisions bar plaintiffs’ claims  
8 or requested relief.

9 As for § 1252(f)(1), which limits certain kinds of injunctive relief, the court briefly addresses  
10 this provision to note that it does not bar plaintiffs’ requests for vacatur or declaratory relief. See  
11 infra at § I.B.3. Because § 1252(f)(1) is a limit on the scope of injunctive relief rather than a  
12 threshold jurisdictional bar, see Biden v. Texas, 597 U.S. 785, 798, 142 S.Ct. 2528, 2539 (2022)  
13 (“Section 1252(f)(1) deprives courts of the power to issue a specific category of remedies: those  
14 that ‘enjoin or restrain the operation of’ the relevant sections of the statute. . . . And Congress  
15 included that language in a provision whose title – ‘Limit on injunctive relief’ – makes clear the  
16 narrowness of its scope.”), the court considers this provision in greater depth when analyzing the  
17 appropriate scope of injunctive relief. See infra at § II.C.2.

18 **1. Section 1252(g).**

19 The government argues, (see Dkt. 309, Opp. at 4), that plaintiffs’ requested relief is barred  
20 by § 1252(g), which provides in relevant part that “no court shall have jurisdiction to hear any  
21 cause or claim by or on behalf of any alien arising from the decision or action by the Attorney  
22 General to commence proceedings, adjudicate cases, or execute removal orders against any alien  
23 under this chapter.” 8 U.S.C. § 1252(g).

24 Section 1252(g) seeks to limit “judicial constraints upon prosecutorial discretion” and thus  
25 “applies to only a limited subset of deportation claims.” Reno v. Am.-Arab Anti-Discrimination  
26 Comm., 525 U.S. 471, 485 n. 9, 487, 119 S.Ct. 936, 944 n. 9, 945 (1999); see Ibarra-Perez v.  
27 United States, 2025 WL 2461663, \*6 (9th Cir. 2025) (“The Court has characterized § 1252(g) as  
28 a ‘discretion-protecting provision.’”). “The provision applies only to three discrete actions that the

1 Attorney General may take: her decision or action to *commence* proceedings, *adjudicate* cases,  
2 or *execute* removal orders.” *Id.* at 482, 119 S.Ct. at 943 (internal quotation marks omitted). The  
3 Supreme Court has “not interpret[ed] this language to sweep in any claim that can technically be  
4 said to ‘arise from’ the three listed actions of the Attorney General[.]” and instead “read[s] the  
5 language to refer to just those three specific actions themselves.” *Jennings v. Rodriguez*, 583  
6 U.S. 281, 294, 138 S.Ct. 830, 841 (2018). Accordingly, “[s]ection 1252(g) does not divest courts  
7 of jurisdiction over cases that do not address prosecutorial discretion and address a purely legal  
8 question, which does not challenge the Attorney General’s discretionary authority.” *Doe v. Noem*,  
9 781 F.Supp.3d 1055, 1068 (E.D. Cal. 2025) (internal quotation marks omitted).

10 The Ninth Circuit has emphasized that § 1252(g) does not apply to claims that “do not arise  
11 from a decision or action by the Attorney General to commence proceedings, adjudicate cases,  
12 or execute removal orders against any alien, but instead constitute general collateral challenges  
13 to unconstitutional practices and policies used by the agency.” *Walters v. Reno*, 145 F.3d 1032,  
14 1052 (9th Cir. 1998) (internal citation marks omitted); *see Barahona-Gomez v. Reno*, 236 F.3d  
15 1115, 1118 (9th Cir. 2001) (same). The Ninth Circuit has thus recognized a “distinction between  
16 challenges to individual decisions covered by Section 1252(g) and broader due process  
17 challenges to policies and procedures employed by immigration officials[.]” *Castellar v. Nielsen*,  
18 2018 WL 786742, \*11 (S.D. Cal. 2018), and has “consistently held that district courts have  
19 jurisdiction when . . . [plaintiffs] do not directly challenge their orders of removal.” *Chhoeun v.*  
20 *Marin*, 306 F.Supp.3d 1147, 1158 (C.D. Cal. 2018) (citing *United States v. Hovsepian*, 359 F.3d  
21 1144, 1155 (9th Cir. 2004) (en banc)); *see also NWDC Resistance v. Immigr. & Customs Enf’t*,  
22 493 F.Supp.3d 1003, 1010 (W.D. Wash. 2020) (“Congress did not intend Section 1252(g) to ‘deny  
23 any judicial forum for a colorable constitutional claim[.]’”) (quoting *Webster v. Doe*, 486 U.S. 592,  
24 603, 108 S.Ct. 2047, 2054 (1988)); *Cath. Soc. Servs., Inc. v. Reno*, 134 F.3d 921, 927 (9th Cir.  
25 1997) (“[A] statute that completely immunizes a statute from constitutional attack would raise  
26 difficult constitutional issues.”).

27 Section 1252(g) therefore primarily applies to actions that challenge the Attorney General’s  
28 discretion over three discrete events in the context of individual removal proceedings, rather than

1 general collateral challenges that may ultimately affect removal proceedings. See Walters, 145  
2 F.3d at 1052 (concluding that § 1252(g) does not pose a bar to “general collateral challenges to  
3 unconstitutional practices and policies” where the plaintiffs’ “objective was not to obtain judicial  
4 review of the merits of their [immigration] proceedings, but rather to enforce their constitutional  
5 rights to due process in the context of those proceedings”); Am.-Arab Anti-Discrimination Comm.,  
6 525 U.S. at 482, 119 S.Ct. at 943 (rejecting the idea that “§ 1252(g) covers the universe of  
7 deportation claims”). Accordingly, a “district court may consider a purely legal question that does  
8 not challenge the Attorney General’s discretionary authority, even if the answer to that legal  
9 question – a description of the relevant law – forms the backdrop against which the Attorney  
10 General later will exercise discretionary authority.” Hovsepian, 359 F.3d at 1155.

11 The court previously concluded that § 1252(g) does not preclude jurisdiction over this case  
12 and sees no reason to revisit its conclusion. (See Dkt. 304, Liability Order at 15) (citing Dep’t of  
13 Homeland Sec. v. Regents of the Univ. of California, 591 U.S. 1, 19, 140 S.Ct. 1891, 1907 (2020))  
14 (“We have previously rejected as implausible the Government’s suggestion that § 1252(g) covers  
15 all claims arising from deportation proceedings or imposes a general jurisdictional limitation.”)  
16 (internal quotation marks omitted). Here, plaintiffs’ claims are not “challenges to individual  
17 decisions covered by Section 1252(g)[,]” Castellar, 2018 WL 786742, at \*11, and are instead  
18 “general collateral challenges to unconstitutional practices and policies used by the agency.” See  
19 Barahona-Gomez, 236 F.3d at 1118 (quoting Walters, 145 F.3d at 1052). Plaintiffs do not  
20 challenge the validity of any removal proceedings or orders, or any of the three discrete actions  
21 identified in § 1252(g). Rather, plaintiffs’ action involves “a purely legal question that does not  
22 challenge the Attorney General’s discretionary authority” to undertake the three discrete actions  
23 identified in § 1252(g). See Hovsepian, 359 F.3d at 1155.

24 An action seeking to require that the government provide MPP-unaccompanied children  
25 with their statutorily mandated TVPRA rights does not challenge the Attorney General’s  
26 discretionary decision to initiate proceedings, adjudicate cases, or execute removal orders. See,  
27 e.g., NWDC Resistance, 493 F.Supp.3d at 1011 (“A narrow reading of Section 1252(g) does not  
28 apply to constitutional challenges brought by one who is not the [noncitizen] subject to the three

discrete decisions articulated in that statute, or one who is not bringing a challenge to such actions on the [noncitizen's] behalf."); Barahona-Gomez, 236 F.3d at 1120-21 (concluding that § 1252(g) did not apply to challenge to the issuance of decisions granting suspension of deportation because the statute "does not remove from judicial review actions in violation of mandatory duties of IJs and the BIA conducted pursuant to the usual rules of administrative procedure"). The government cites no cases to the contrary. (See, generally, Dkt. 309, Opp.). Thus, guided by the Supreme Court's "instruction to interpret § 1252(g) narrowly," Hovsepian, 359 F.3d at 1155, "by the general rule to resolve any ambiguities in a jurisdiction-stripping statute in favor of the narrower interpretation, and by the strong presumption in favor of judicial review," Arce v. United States, 899 F.3d 796, 801 (9th Cir. 2018) (internal citation and quotation marks omitted), the court concludes that § 1252(g) does not bar plaintiffs' claims or requested relief. See, e.g., Chhoeun, 306 F.Supp.3d at 1159 (finding § 1252(g) did not preclude jurisdiction to consider "claims regarding due process violations" seeking "a day in court to comport with due process") (internal quotation marks omitted).

2. **Section 1252(b)(9).**

The government also argues that plaintiffs' requested relief is barred by 8 U.S.C. § 1252(b)(9). (See Dkt. 309, Opp. at 5).<sup>6</sup> This provision provides, in relevant part, that: "Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove [a noncitizen] from the United States under this subchapter shall be available only in judicial review of a final order under this section." 8 U.S.C. § 1252(b)(9). The purpose of this provision is to channel judicial review of claims that arise from the removal process to the appropriate court of appeal. See Am.-Arab Anti-Discrimination Comm., 525 U.S. at 478, 483 119 S.Ct. at 941, 943 (describing § 1252(b)(9) as a channeling provision); Singh v. Gonzales, 499 F.3d 969, 978 n. 11 (9th Cir.

---

<sup>6</sup> In its opposition, the government purports to quote from § 1252(b)(9) but instead quotes the text of § 1252(g). (See Dkt. 309, Opp. at 5). Apparently confused about which provision it is arguing about, the § 1252(b)(9) portion of its brief recycles arguments made as to § 1252(g) and fails to analyze the text of § 1252(b)(9). (See id.).

2007) (“Congress’ purpose in enacting § 1252(b)(9) in 1996 was simply to consolidate judicial review of immigration proceedings into one action in the court of appeals.”) (internal quotation marks omitted). “This statutory scheme was designed to limit all [noncitizens] to one bite of the apple with regard to challenging an order of removal.” Martinez v. Napolitano, 704 F.3d 620, 622 (9th Cir. 2012) (internal quotation marks omitted).

The court previously found that § 1252(b)(9) does not bar judicial review because the legal and factual questions in this case do not “aris[e] from any action taken or proceeding brought to remove an alien from the United States.” 8 U.S.C. § 1252(b)(9); (see Dkt. 304, Liability Order at 14-15) (citing Regents, 591 U.S. at 19, 140 S.Ct. at 1907) (“[Section] 1252(b)(9) does not present a jurisdictional bar where those bringing suit are not asking for review of an order of removal, the decision . . . to seek removal, or the process by which . . . removability will be determined. . . . And it is certainly not a bar where, as here, the parties are not challenging any removal proceedings.”) (internal quotation marks omitted)); see also E. Bay I, 993 F.3d at 666 (“[C]laims that are independent of or collateral to the removal process are not actions taken to remove an alien from the United States.”) (internal quotation marks omitted). The court again finds that § 1252(b)(9) poses no bar.

Plaintiffs do not ask “for review of an order of removal, the decision to seek removal, or the process by which removability will be determined.” Gonzalez, 975 F.3d at 810 (internal quotation marks omitted). Instead, plaintiffs challenge the Policy and its effects on their ability to provide advice and representation to MPP-unaccompanied children. The relief they seek – vacatur of the Policy and procedural safeguards to ensure TVPRA rights – does not challenge any removal decision or order and does not implicate the channeling purpose of § 1252(b)(9). See NWDC Resistance, 493 F.Supp.3d at 1012 (“[T]he Ninth Circuit distinguishes between impermissible indirect challenges to removal decisions and orders, and permissible independent claims.”); Las Americas Immigrant Advoc. Ctr. v. Trump, 475 F.Supp.3d 1194, 1209 (D. Or. 2020) (“Allowing organizational plaintiffs to bring claims alleging systemic problems, independent of any removal orders, that allegedly cause harms specific to those organizations does not thwart the purpose of § 1252(b)(9).”); Immigrant Defs. L. Ctr. v. Noem (“ImmDef I”), 781 F.Supp.3d 1011, 1044 (C.D.

1 Cal. 2025) (“[C]ourts in this Circuit have found that organizational plaintiffs’ claims are not barred  
2 under Section 1252(b)(9).”). Section “1252(b)(9) is a ‘targeted’ and ‘narrow’ provision that ‘is  
3 certainly not a bar where, as here, the parties are not challenging any removal proceedings.’”  
4 Gonzalez, 975 F.3d at 810 (quoting Regents, 591 U.S. at 19, 140 S.Ct. at 1907); see also  
5 Jennings, 583 U.S. at 292-94, 138 S.Ct. at 840-41 (cautioning that phrases like “arising from”  
6 should be read narrowly and rejecting an expansive reading of (b)(9) that would encompass any  
7 deportation-related claim).

8 Here, “it is enough to note that [plaintiffs] are not asking for review of an order of removal;  
9 they are not challenging the decision to detain them in the first place or to seek removal; and they  
10 are not even challenging any part of the process by which their removability will be determined.”  
11 Jennings, 583 U.S. at 294, 138 S.Ct. at 841. Thus, the bar does not apply to plaintiffs’ claims or  
12 requested relief. See, e.g., NWDC Resistance, 493 F.Supp.3d at 1013 (concluding § 1252(b)(9)  
13 did not bar APA and constitutional challenge to ICE policy or requested relief where the plaintiffs  
14 did not “seek review of any removal order and [we]re not challenging any part of the process by  
15 which their removability will be determined[]” and did not “seek to enjoin any specific removal  
16 proceeding, even if the injunction might ultimately have an impact on some removals[]”); ImmDef  
17 I, 781 F.Supp.3d at 1044 (concluding § 1252(b)(9) did not bar APA challenge where the plaintiffs’  
18 claims did “not directly challenge the bases for their orders of removal”).

19 **3. Section 1252(f)(1).**

20 Finally, the government argues that 8 U.S.C. § 1252(f)(1) bars all of plaintiffs’ requested  
21 relief. (See Dkt. 309, Opp. at 1-4). Section 1252(f)(1), entitled “[l]imit on injunctive relief[,]”  
22 provides that:

23 Regardless of the nature of the action or claim or of the identity of the party  
24 or parties bringing the action, no court (other than the Supreme Court) shall  
25 have jurisdiction or authority to enjoin or restrain the operation of the  
26 provisions of part IV of this subchapter, as amended by the Illegal  
27 Immigration Reform and Immigrant Responsibility Act of 1996, other than  
28

1 with respect to the application of such provisions to an individual alien against  
2 whom proceedings under such part have been initiated.

3 8 U.S.C. § 1252(f)(1).

4 Given the use of “enjoin or restrain” and the section’s title (“Limit on injunctive relief”), §  
5 1252(f)(1) has been understood to limit only the power to enter certain kinds of classwide  
6 injunctive relief. See Am.-Arab Anti-Discrimination Comm., 525 U.S. at 481, 119 S.Ct. at 942 (“By  
7 its plain terms, and even by its title, [§ 1252(f)(1)] is nothing more or less than a limit on injunctive  
8 relief.”). It does not bar or otherwise affect plaintiffs’ request for vacatur of the Policy or  
9 declaratory relief. See Al Otro Lado v. Exec. Off. for Immigr. Rev., 138 F.4th 1102, 1123 (9th Cir.  
10 2025) (holding that § 1252(f)(1) does not bar classwide declaratory relief and affirming the district  
11 court’s entry of such relief); Rodriguez v. Hayes, 591 F.3d 1105, 1119 (9th Cir. 2010), abrogated  
12 on other grounds by Jennings, 583 U.S. 281, 138 S.Ct. 830 (“Section 1252(f) was not meant to  
13 bar classwide declaratory relief. Congress knew how to say ‘declaratory relief’ in enacting the  
14 IIRIRA, but it chose not to use it in Section 1252(f).”); ImmDef I, 781 F.Supp.3d at 1040-41 (C.D.  
15 Cal. 2025) (collecting cases opining that § 1252(f) does not bar vacatur); Kidd v. Mayorkas, 734  
16 F.Supp.3d 967, 986 (C.D. Cal. 2024) (“[T]he Court can issue declaratory relief – which is not  
17 precluded by § 1252(f) – and also vacate and set aside Defendants’ unlawful policies and training  
18 materials under the APA.”).<sup>7</sup> Section 1252(f)(1) is not a threshold jurisdictional bar; it precludes  
19 only certain kinds of classwide injunctive relief – relief that enjoins or restrains the operation of  
20 certain provisions. See 8 U.S.C. § 1252(f)(1). The court thus considers § 1252(f)(1) in greater  
21 depth when it analyzes the appropriate remedy and scope of relief. See infra at § II.C.2.

22 ///

---

23  
24  
25 <sup>7</sup> See also Nat’l TPS All. v. Noem, 773 F.Supp.3d 807, 825-26, 829 (N.D. Cal. 2025)  
26 (discussing the difference between vacatur and injunctive relief, and observing that no court has  
27 found that § 1252(f)(1) applies to vacatur); Biden v. Texas, 597 U.S. at 798, 142 S.Ct. at 2539  
28 (Section 1252(f)(1)’s “title – ‘Limit on injunctive relief’ – makes clear the narrowness of its scope.”);  
California v. Arizona, 452 U.S. 431, 432, 101 S.Ct. 2445, 2445 (1981) (using “enjoined and  
restrained” to describe an injunction); Texas v. United States, 40 F.4th at 219 (noting that there  
are meaningful differences between an injunction and vacatur).

1 C. Plaintiffs' Motion to Strike Post-Trial Evidence.

2 Plaintiffs seek to strike three declarations, (see Dkt. 312, Motion to Strike Defendants'  
3 Declarations at 1), the government attached to its Opposition to plaintiffs' Remedies Brief. (See  
4 Dkt. 309, Opp. at 8 & 11); (Dkt. 309-1, Declaration of Byoung Park); (Dkt. 309-2, Declaration of  
5 Matthew S. Davies); (Dkt. 309-3, Declaration of Ricardo Moreno). The declarations, which  
6 constitute post-trial evidence, are untimely and improper.

7 The government chose not to call any witnesses or submit any evidence at trial, (see,  
8 generally, Dkt. 270, List of Exhibits and Witnesses at Trial); (Dkt. 284, Reporters Transcript of  
9 Bench Trial on November 7, 2023), and it has not provided an adequate justification as to why the  
10 court should consider its belated, post-trial evidence. (See, generally, Dkt. 314, Opposition to  
11 Plaintiffs' Motion to Strike). In any event, allowing such evidence at this stage of the case would  
12 prejudice plaintiffs. See, e.g., United States v. Sweeney, 2022 WL 17555626, \*4 (E.D. Cal. 2022)  
13 (declining to consider the government's post-trial evidence and ordering "the appropriate remedies  
14 based solely on the trial record and the post-trial briefing" where "[n]o party requested an  
15 evidentiary hearing"); United States v. Hill, 72 F.Supp.3d 1111, 1112 n. 2 (N.D. Cal. 2014)  
16 (granting motion to strike untimely declaration testimony submitted after evidentiary hearings on  
17 motion to suppress had concluded); Revolution Eyewear, Inc. v. Aspex Eyewear, Inc., 2008 WL  
18 6873811, \*3 (C.D. Cal. 2008), overruled on other grounds by Halo Elecs., Inc. v. Pulse Elecs., Inc.,  
19 579 U.S. 93, 107, 136 S.Ct. 1923, 1934 (2016) (concluding that post-trial declaration regarding  
20 company's ability to satisfy damages verdict was inadmissible where the party "never disclosed  
21 [the evidence] in discovery, nor in pretrial disclosures"); see also Elbert v. Howmedica, Inc., 143  
22 F.3d 1208, 1209 (9th Cir. 1998) ("[W]hen ruling on a Rule 50(b) motion, . . . [t]he record should  
23 be taken as it existed when the trial was closed."). In sum, plaintiffs' Motion to Strike Defendants'  
24 Declarations (Dkt. 312) is granted. The declarations attached to the government's opposition (Dkt.  
25 309) are hereby stricken. (See Dkt. 309-1, Declaration of Byoung Park); (Dkt. 309-2, Declaration  
26 of Matthew S. Davies); (Dkt. 309-3, Declaration of Ricardo Moreno).

27 ///

1 D. The Government had Adequate Notice of Plaintiffs' Requested Relief.

2 The government argues that plaintiffs "never previously requested the injunction they now  
3 seek, and they likewise never asked for vacatur until trial." (Dkt. 309, Opp. at 6). Specifically, the  
4 government contends that plaintiffs sought a different injunction in their motion for preliminary  
5 injunction than the permanent injunction they now seek, and that the "operative complaint did not  
6 request vacatur." (Id.). According to the government, plaintiffs should not be permitted to request  
7 either form of relief. (See id.). The government's contentions stretch the bounds of credibility and  
8 fail to account for the procedural history of this case. As an initial matter, the government has had  
9 notice of plaintiffs' requested relief for nearly two years. (See Dkt. 268, Pretrial Conference Order)  
10 (issued November 7, 2023). Further, plaintiffs' First Amended Complaint sought injunctive relief  
11 and at least implicitly identified the APA's presumptive remedy of vacatur. (See Dkt. 214, First  
12 Amended Complaint at ¶ 259 & Prayer for Relief). Their motion for preliminary injunction sought  
13 an injunction enforcing MPP-unaccompanied children's rights under the TVPRA. (See Dkt. 29,  
14 Plaintiffs' Motion for Preliminary Injunction at 1-2); (Dkt. 69, Plaintiffs' Renewed Motion for  
15 Preliminary Injunction at 2-3). However, instead of ruling on the motion for preliminary injunction,  
16 the court decided to advance the trial on the merits and consolidate it with the hearing on the  
17 motion for preliminary injunction. (See Dkt. 163, Minutes of Plaintiff's Renewed Motion for  
18 Preliminary Injunction); Fed. R. Civ. P. 65(a)(2). Thus, the fact that the relief plaintiffs sought in  
19 their motion for preliminary injunction may differ from the relief they seek as part of a permanent  
20 injunction is irrelevant to the notice question. It was only after the court advanced the trial on the  
21 merits and consolidated it with the hearing on the preliminary injunction that plaintiffs had to  
22 identify the permanent injunctive relief they sought – and they did. The parties' proposed pre-trial  
23 conference order, which the court adopted, expressly contemplated vacatur of the Policy and  
24 permanent injunctive relief. (See, e.g., Dkt. 264-1, Proposed Joint Pretrial Conference Order at  
25 17-18); (Dkt. 268, Pretrial Conference Order at 8.N-O) ("N. Should Defendants Policy be declared  
26 unlawful and vacated under the Administrative Procedure Act? O. Should declaratory and  
27 injunctive relief be issued to require Defendants to develop procedural safeguards that permit all  
28 MPP-unaccompanied children to access their constitutionally protected property rights in

1 affirmative asylum and voluntary departure[?]"). Plaintiffs' requested relief was within the scope  
2 of issues litigated at trial, and the court provided the parties an additional opportunity to separately  
3 brief the scope of the remedies after it made its liability findings. (See Dkt. 269, Minutes of Court  
4 Trial); (Dkt. 304, Liability Order at 30-31).

5 Moreover, even assuming the scope of the relief plaintiffs sought was not identified in the  
6 pretrial conference order, that would not change the result because the scope of relief warranted  
7 in a case evolves depending on the court's findings at trial, and the decision regarding the proper  
8 remedy and the scope of any injunctive relief ultimately rests with the court. See Fed. R. Civ. P.  
9 54(c) (A final judgment, other than a default judgment, "should grant the relief to which each party  
10 is entitled, even if the party has not demanded that relief in its pleadings."); Peterson v. Bell  
11 Helicopter Textron, Inc., 806 F.3d 335, 340 (5th Cir. 2015) ("Rule 54(c) authorizes district courts  
12 to grant any appropriate relief following a general prayer by the plaintiff, even if the plaintiff did not  
13 specifically seek it, but only where relief is otherwise legally permitted. . . . The discretion afforded  
14 by Rule 54(c) . . . assumes that a plaintiff's entitlement to relief not specifically pled has been  
15 tested adversarially, tried by consent, or at least developed with meaningful notice to the  
16 defendant."); Nat'l Wildlife Fed'n, 524 F.3d at 936 ("The district court has broad latitude in  
17 fashioning equitable relief when necessary to remedy an established wrong[.]"); see also Miller  
18 v. Safeco Title Ins. Co., 758 F.2d 364, 368 (9th Cir. 1985) ("A pretrial order, however, should be  
19 liberally construed to permit any issues at trial that are embraced within its language. Moreover,  
20 a pretrial order may be amended informally by a trial court's findings when facts supporting those  
21 findings were put before the court.") (internal citation and quotation marks omitted). In short, the  
22 government had more than adequate notice and multiple opportunities to address all remedies  
23 issues.

## 24 II. REMEDIES.

25 Having concluded that plaintiffs have standing, and that no jurisdictional bars apply to their  
26 claims, the court turns to plaintiffs' requested relief and the scope of the appropriate remedies.

27 ///

1 A. Vacatur.

2 The APA provides that a “reviewing court shall . . . hold unlawful and set aside agency  
3 action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or  
4 otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). In its Liability Order, the court found  
5 that the government’s Policy violates the APA because: (1) “the Policy directly conflicts with the  
6 protections enshrined in the TVPRA, and is therefore contrary to law”; and (2) it is arbitrary and  
7 capricious “because defendants failed to adequately explain their decision and consider an  
8 important aspect of the problem in developing the Policy[.]” (Dkt. 304, Liability Order at 18).

9 “[V]acatur is the presumptive remedy under the APA[.]” 350 Montana, 50 F.4th at 1273;  
10 see All. for the Wild Rockies v. U.S. Forest Serv., 907 F.3d 1105, 1121 (9th Cir. 2018) (noting that  
11 vacatur of “unlawful agency action normally accompanies a remand”); Cal. Wilderness Coal. v.  
12 U.S. Dep’t of Energy, 631 F.3d 1072, 1095 (9th Cir. 2011) (“When a court determines that an  
13 agency’s action failed to follow Congress’s clear mandate the appropriate remedy is to vacate that  
14 action.”); East Bay I, 993 F.3d at 681 (noting that the “typical response” to unlawful agency action  
15 is to “vacate the rule”).<sup>8</sup> Plaintiffs seek vacatur of the Policy to “return Plaintiffs, their clients, and  
16 Defendants to the *status quo ante* in which all unaccompanied children are entitled to the full  
17 protections of the TVPRA.” (Dkt. 307, Plaintiffs’ Post-Trial Remedies Brief at 5).

18 To determine whether vacatur is appropriate, courts “weigh the seriousness of the agency’s  
19 errors against ‘the disruptive consequences of an interim change that may itself be changed.’” Ctr.  
20 for Food Safety v. Regan, 56 F.4th 648, 663 (9th Cir. 2022) (internal quotation marks omitted).  
21 In weighing the seriousness of the errors, the court considers “whether the agency would likely  
22 be able to offer better reasoning or whether by complying with procedural rules, it could adopt the  
23 same rule on remand, or whether such fundamental flaws in the agency’s decision make it unlikely  
24 that the same rule would be adopted on remand.” Id. at 663-64.

---

25  
26  
27 <sup>8</sup> Although courts will, “on occasion, remand[] a rule without vacatur, . . . Defendants cite no  
28 authority suggesting that any remedy short of vacatur is appropriate here.” Refugee & Immigrant  
Ctr. for Educ. & Legal Servs. v. Noem, 2025 WL 1825431, \*50 (D.D.C. 2025).

1 Here, the relevant factors here counsel strongly in favor of vacatur. First, the agency's  
2 errors are severe and imperil the rights of a particularly vulnerable population – unaccompanied  
3 children. (See, e.g., Dkt. 304, Liability Order at 22-23, 28). Because the Policy impairs plaintiffs'  
4 ability to represent unaccompanied children, it implicates significant access to counsel concerns.  
5 See 8 U.S.C. § 1232(a)(5)(D)(iii), (c)(5) (providing that the government “shall ensure, to the  
6 greatest extent practicable . . . that all unaccompanied [noncitizen] children . . . have counsel to  
7 represent them in legal proceedings or matters and protect them from mistreatment, exploitation,  
8 and trafficking”); 8 U.S.C. § 1362 (providing that “[i]n any removal proceedings . . . the person  
9 concerned shall have the privilege of being represented (at no expense to the Government) by  
10 such counsel, authorized to practice in such proceedings, as he shall choose”). And because the  
11 Policy undermines plaintiffs' ability to help unaccompanied children access their statutorily-  
12 mandated protections, it increases the risk that such children will be deported unlawfully and  
13 frustrates significant public interests codified in the TVPRA. See Flores v. Sessions, 862 F.3d  
14 863, 880 (9th Cir. 2017) (“The overarching purpose of the . . . TVPRA was quite clearly to give  
15 unaccompanied minors more protection, not less. . . . [I]n passing the TVPRA, Congress sought  
16 to improve the procedures governing the treatment of unaccompanied minors.”); see also E. Bay  
17 Sanctuary Covenant v. Garland (E. Bay II), 994 F.3d 962, 983 (9th Cir. 2020) (“In 2008, in  
18 recognition of the vulnerability of unaccompanied minors seeking asylum, Congress amended the  
19 INA to provide them special protection.”); E. Bay I, 993 F.3d at 678 (“[T]he public has an interest  
20 in ensuring that we do not deliver [noncitizens] into the hands of their persecutors, and preventing  
21 [noncitizens] from being wrongfully removed, particularly to countries where they are likely to face  
22 substantial harm[.]”) (internal citations and quotation marks omitted).

23 Second, vacatur of the Policy would result in minimal disruptive consequences, as it would  
24 restore the status quo whereby all unaccompanied children receive the protections afforded to  
25 them by the TVPRA. Given the importance of these protections and the adverse impact the Policy  
26 has on plaintiffs, leaving the Policy in place risks further harm to plaintiffs and  
27 MPP-unaccompanied children. Vacating the Policy is likely to cause only minimal disruptive  
28 consequences given that MPP-unaccompanied children represent a relatively small population of

1 those encountered at the border, and the government already has procedures for screening  
2 unaccompanied children. (See Dkt. 304, Liability Order at 12-13) (detailing statistics); 8 U.S.C.  
3 § 1232(b) (providing for placement of unaccompanied minors in HHS’s custody and notification  
4 to HHS when a federal agency apprehends an unaccompanied minor or suspects that it has an  
5 unaccompanied minor in its custody). Under the circumstances, the seriousness of the agency’s  
6 errors requires vacatur to eliminate the government’s unlawful practices. And because the Policy  
7 directly conflicts with the TVPRA, it is unlikely that a similar Policy could be adopted on remand.  
8 See North Carolina v. EPA, 531 F.3d 896, 929 (D.C. Cir. 2008) (“[T]he threat of disruptive  
9 consequences cannot save a rule when its fundamental flaws foreclose [the agency] from  
10 promulgating the same standards on remand[.]”) (internal quotation marks omitted); Nat’l Fam.  
11 Farm Coal. v. EPA, 960 F.3d 1120, 1145 (9th Cir. 2020) (concluding that vacatur was necessary  
12 because “the fundamental flaws in the [agency’s] analysis are so substantial that it is exceedingly  
13 unlikely that the same rule would be adopted on remand”) (internal quotation marks omitted). In  
14 short, the court finds that the proper remedy in this case includes vacatur of the Policy. This  
15 remedy “will afford much – although not all – of the relief that Plaintiffs seek in this case.” Refugee  
16 & Immigrant Ctr., 2025 WL 1825431 at \*51.

17 B. Declaratory Judgment.

18 Plaintiffs seek declaratory relief to reaffirm the TVPRA rights of MPP-unaccompanied  
19 children, “resolve Plaintiffs’ continued uncertainty around application of the TVPRA in connection  
20 with MPP,” and “provide Defendants clarity regarding permissible future treatment of this  
21 vulnerable population of children,” particularly in light of the reinstatement of MPP. (See Dkt. 307,  
22 Plaintiffs’ Post-Trial Remedies Brief at 6-7).

23 The Declaratory Judgment Act, 28 U.S.C. § 2201, gives courts the authority to issue  
24 declaratory relief. See 28 U.S.C. § 2201 (“In a case of actual controversy within its jurisdiction,  
25 . . . any court of the United States . . . may declare the rights and other legal relations of any  
26 interested party seeking such declaration[.]”). “Declaratory relief is appropriate ‘(1) when the  
27 judgment will serve a useful purpose in clarifying and settling the legal relations in issue, and (2)  
28 when it will terminate and afford relief from the uncertainty, insecurity, and controversy giving rise

1 to the proceeding.” Carroll Shelby Licensing, Inc. v. Halicki, 138 F.4th 1178, 1189 (9th Cir. 2025)  
2 (quoting Small v. Allianz Life Ins. Co. of N. Am., 122 F.4th 1182, 1201 (9th Cir. 2024)); see also  
3 Trinh v. Homan, 466 F.Supp.3d 1077, 1094 (C.D. Cal. 2020) (“Typically, declaratory relief targets  
4 prospective conduct. Declaratory judgments are used to afford relief from the uncertainty,  
5 insecurity, and controversy giving rise to the proceeding.”) (internal quotation marks omitted).

6 Declaratory relief is warranted here, as it will clarify and settle the legal relations at issue  
7 between the government, plaintiffs, and MPP-unaccompanied children, and afford plaintiffs relief  
8 from the uncertainty giving rise to this proceeding. See, e.g., Kidd, 734 F.Supp.3d at 987 (“[T]he  
9 Court deems declaratory judgment to be appropriate in this case, as it will serve a useful purpose  
10 in clarifying and settling the legal relations between the parties.”) (internal quotation marks  
11 omitted); Al Otro Lado, 138 F.4th at 1123-24 (affirming grant of declaratory relief where district  
12 court stated that CBP policy violated certain provisions of the INA). As noted above, see supra  
13 at § I.A, plaintiffs have established the possibility of prospective harm such that a declaratory  
14 judgment is appropriate. See Trinh, 466 F.Supp.3d at 1094 (“What makes a declaratory judgment  
15 ‘a proper judicial resolution of a “case or controversy” rather than an advisory opinion – is in the  
16 settling of some dispute which affects the behavior of the defendant towards the plaintiff.”)  
17 (quoting Hewitt v. Helms, 482 U.S. 755, 761, 107 S.Ct. 2672, 2676 (1987)).

18 Plaintiffs request a declaration that “all unaccompanied children are entitled to: (1) the  
19 processing of asylum claims in the first instance through affirmative applications adjudicated by  
20 USCIS [United States Citizenship and Immigration Services] through a nonadversarial process;  
21 (2) extended timelines to develop claims for immigration relief, including exemption from the  
22 one-year deadline that applies to applications for asylum; (3) access to legal counsel; (4) to the  
23 extent that DHS seeks to remove an unaccompanied child, placement in new § 240 removal  
24 proceedings that employ child-sensitive procedures; (5) a guarantee that a child’s prior removal  
25 orders will not be reinstated; and (6) the ability to elect voluntary departure.” (Dkt. 307, Plaintiffs’  
26 Post-Trial Remedies Brief at 6). Plaintiffs also seek a declaration that due process “requires that  
27 unaccompanied children and their legal counsel receive reasonable notice of prior MPP ties in  
28

1 order to help facilitate their access to the procedural protections described above.” (Dkt. 307-1,  
2 Proposed Final Judgment and Permanent Injunction at 2-4).

3 In its Liability Order, the court found that the Policy was contrary to law because: (1) the  
4 use of the prospective “shall” in 8 U.S.C. § 1232(a)(5)(D)(i) requires placement in new § 240  
5 removal proceedings to the extent that DHS seeks to remove an unaccompanied child, (see Dkt.  
6 304, Liability Order at 23-24); (2) prosecuting § 240 proceedings or removing MPP-  
7 unaccompanied children before their affirmative asylum claims are adjudicated by USCIS violates  
8 the guarantee in 8 U.S.C. § 1158(b)(3)(C) that “[a]n asylum officer . . . shall have initial jurisdiction  
9 over any asylum application filed by an unaccompanied alien child,” (see Dkt. 304, Liability Order  
10 at 25-26); (3) prosecuting § 240 proceedings or removing MPP-unaccompanied children before  
11 they have the opportunity to apply for asylum renders their right to apply for affirmative asylum  
12 (and exemption from the one-year deadline) essentially meaningless, (see Dkt. 304, Liability Order  
13 at 25-26); (4) deeming MPP-unaccompanied children with a prior final removal order ineligible for  
14 voluntary departure violates 8 U.S.C. § 1232(a)(5)(D)(ii)’s guarantee that “[a]ny unaccompanied  
15 alien child sought to be removed . . . shall be . . . eligible for relief under . . . 8 U.S.C. [§] 1229c”  
16 – that is, voluntary departure – “at no cost to the child[.]” (See Dkt. 304, Liability Order at 25-26).  
17 The court also found that due process protects MPP-unaccompanied children’s statutory  
18 entitlements to TVPRA protections, including the right to apply for affirmative asylum with USCIS  
19 in the first instance, see 8 U.S.C. § 1158(b)(3)(C), and to seek voluntary departure before a  
20 removal order is issued. See id. at § 1232(a)(5)(D)(ii); (Dkt. 304, Liability Order at 29). Finally,  
21 the court concluded that defendants deny these property interests by failing to notify to  
22 MPP-unaccompanied children of their MPP status, and seeking to deport them before they have  
23 a meaningful opportunity to access the protections available to them under the TVPRA. (See Dkt.  
24 304, Liability Order at 29-30). In light of the court’s findings that the government’s Policy violates  
25 the APA, TVPRA, INA, and the Due Process Clause, the court will enter declaratory relief as set  
26 forth below.

27 ///

1 C. Injunctive Relief.

2 Finally, plaintiffs seek injunctive relief to “redress the informational vacuum created by the  
3 Policy at the core of Plaintiff’s due process claims,” and to “ensure that adequate safeguards are  
4 adopted to protect TVPRA rights and remedy ongoing harm to the Plaintiffs[.]” (Dkt. 307, Plaintiff’s  
5 Post-Trial Remedies Brief at 1). Plaintiffs request that the court enjoin defendants from enforcing  
6 the Policy and require the government to: (1) adopt safeguards to ensure that  
7 MPP-unaccompanied children are able to apply for affirmative asylum with USCIS, see 8 U.S.C.  
8 § 1158(b)(3)(C); (2) adopt safeguards to ensure that MPP-unaccompanied children are placed in  
9 new § 240 proceedings if the government seeks to remove them, see 8 U.S.C. § 1232(a)(5)(D)(i);  
10 (3) adopt safeguards to ensure that MPP-unaccompanied children can seek voluntary departure,  
11 see 8 U.S.C. § 1232(a)(5)(D)(ii); (4) identify MPP-unaccompanied children encountered by  
12 defendants and provide adequate and timely notice of MPP ties to plaintiffs and their counsel, the  
13 MPP-unaccompanied children, and the ORR shelters in which any such children are housed; (5)  
14 publish guidance on the procedures applicable to MPP-unaccompanied children, including an  
15 explanation of the safeguards adopted and the steps taken by the agencies to ensure compliance  
16 consistent with the TVPRA; and (6) file a Status Report every three months regarding compliance  
17 with the injunctive relief imposed by the court. (See Dkt. 307-1, Proposed Final Judgment and  
18 Permanent Injunction at 4-7).

19 The court first assesses whether an injunction is warranted, and then considers the scope  
20 of the injunction.

21 1. **Whether an Injunction is Warranted in this Case.**

22 Although vacatur is the presumptive remedy under the APA, courts also routinely issue  
23 injunctions in order to afford complete relief. See, e.g., Al Otro Lado, 138 F.4th at 1126-27 (largely  
24 affirming permanent injunction in immigration case); Galvez v. Jaddou, 52 F.4th 821, 826 (9th Cir.  
25 2022) (same). When appropriate, courts may order both vacatur and injunctive relief. See, e.g.,  
26 Refugee & Immigrant Ctr., 2025 WL 1825431, at \*55 (ordering vacatur of agency action and  
27 awarding injunctive relief); Scholl v. Mnuchin, 494 F.Supp.3d 661, 692 (N.D. Cal. 2020) (vacating  
28 unlawful policy and issuing permanent injunction); N. Plains Res. Council v. U.S. Army Corps of

1 Engrs, 460 F.Supp.3d 1030, 1036 (D. Mont. 2020) (vacating agency action and issuing injunctive  
2 relief); Pacito v. Trump, 772 F.Supp.3d 1204, 1218 (W.D. Wash. 2025) (setting aside agency  
3 action and issuing injunctive relief). However, “the Supreme Court has cautioned that a district  
4 court vacating an agency action under the APA should not issue an injunction unless doing so  
5 would ‘have [a] meaningful practical effect independent of its vacatur.’” Refugee & Immigrant Ctr.,  
6 2025 WL 1825431, at \*54 (quoting Monsanto Co. v. Geertson Seed Farms, 561 U.S. 139, 165,  
7 130 S.Ct. 2743, 2761 (2010)).

8 The court has identified both APA and due process violations, the latter of which will not  
9 be wholly remedied by vacatur of the Policy.<sup>9</sup> In carrying out its Policy, the government fails to  
10 notify MPP-unaccompanied children of their MPP status and often seeks to deport them quickly,  
11 thereby depriving them of a meaningful opportunity to access their rights under the TVPRA. (See  
12 Dkt. 304, Liability Order at 29-30). For instance, the court found that some MPP-unaccompanied  
13 children were deported before they could access the TVPRA protections to which they are entitled,  
14 (see id. at 13-14), including their right to seek asylum on a slower timeline and the right to have  
15 their applications adjudicated by USCIS. These actions and circumstances deprive MPP-  
16 unaccompanied children of TVPRA protections – and this deprivation constitutes a due process  
17 violation. See, e.g., United States v. Melendez-Castro, 671 F.3d 950, 954 (9th Cir. 2012) (finding  
18 that due process requires notice of the right to seek immigration relief and an opportunity to apply  
19 for relief); Orantes-Hernandez v. Meese, 685 F.Supp. 1488, 1504-05 (C.D. Cal. 1988) (finding that  
20 coercive practice violated constitutional right to due process and statutory right to apply for asylum  
21 and withholding).

---

22  
23  
24 <sup>9</sup> The court addressed plaintiffs’ due process claims in its Liability Order because these claims  
25 potentially entitled them to relief beyond vacatur of the Policy. (See, e.g., Dkt. 304, Liability Order  
26 at 29-30) (discussing lack of safeguards and notice); see also Al Otro Lado, 138 F.4th at 1123  
27 (quoting Lyng v. Nw. Indian Cemetery Protective Ass’n, 485 U.S. 439, 446, 108 S.Ct. 1319, 1320  
28 (1988) (The principle of constitutional avoidance “requires courts ‘to determine, before addressing  
[a] constitutional issue, whether a decision on that question could have entitled [the plaintiffs] to  
relief beyond that to which they were entitled on their statutory claims.’”). The court concludes that  
these claims warrant additional relief, and considers the appropriate remedy in this Order.

1 Under the circumstances, the court finds that additional safeguards are necessary to ensure  
2 MPP-unaccompanied children have a meaningful opportunity to access their rights under the  
3 TVPRA. While vacatur of the Policy will help ensure that the government does not subject MPP-  
4 unaccompanied children to their family's previously initiated § 240 proceeding, including any  
5 pending proceeding and/or previously issued final removal order, (see Dkt. 304, Liability Order at  
6 ¶ 26) (defining Policy), the manner in which the government carries out its Policy deprives  
7 MPP-unaccompanied children of their TVPRA rights. Accordingly, the court proceeds to consider  
8 whether plaintiffs have met the standard for a permanent injunction. See E. Bay I, 993 F.3d at 680  
9 (noting that the appropriate equitable remedy is that which is "necessary to give prevailing parties  
10 the relief to which they are entitled").

11 To obtain a permanent injunction, "[a] plaintiff must demonstrate: (1) that it has suffered an  
12 irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate  
13 to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff  
14 and defendant, a remedy in equity is warranted; and (4) that the public interest would not be  
15 disserved by a permanent injunction." eBay Inc. v. MercExchange, L.L.C., 547 U.S. 388, 391, 126  
16 S.Ct. 1837, 1839 (2006). "[T]he decision whether to grant or deny injunctive relief rests within the  
17 equitable discretion of the district courts, and . . . such discretion must be exercised consistent with  
18 traditional principles of equity[.]" Id. at 394, 126 S.Ct. at 1841.

19 The court is persuaded that the eBay factors are satisfied here. First, plaintiffs have  
20 suffered an irreparable injury. See eBay, 547 U.S. at 391, 126 S.Ct. at 1839. The government's  
21 Policy and related practices toward MPP-unaccompanied children have interfered with plaintiffs'  
22 core business activities. (See Dkt. 304, Liability Order at 16-17). That is, plaintiffs' provision of  
23 legal services, advice and/or representation to MPP-unaccompanied children has been adversely  
24 affected by the government's: (1) failure to notify MPP-unaccompanied children or their counsel  
25 of the children's MPP-status; (2) practice of often moving to quickly remove MPP-unaccompanied  
26 children; and (3) failure to afford plaintiffs' clients their rights under the TVPRA. (See id. at 13-14,  
27 16-17). The number of MPP-unaccompanied children encountered by defendants has increased,  
28 and DHS has attempted to, and has removed unaccompanied children who had meritorious claims

1 for immigration relief. (See id. at 13-14). Because the Policy remains in place and MPP has been  
2 reinstated, plaintiffs' injury is ongoing and prospective. See, e.g., ImmDef I, 781 F.Supp.3d at  
3 1033-34 (C.D. Cal. 2025) ("[T]he Court finds that ImmDef has provided ample evidence  
4 addressing how the reimplementation of MPP will irreparably harm its core business activities.");  
5 Vasquez Perdomo v. Noem, 2025 WL 1915964, \*15 (C.D. Cal. 2025) ("Government action that  
6 frustrates an organization's core missions gives rise to irreparable harm.") (citing E. Bay I, 993  
7 F.3d at 677-78). The record thus reflects that plaintiffs have suffered a significant, irreparable  
8 injury.<sup>10</sup>

9 Second, legal remedies are inadequate to redress plaintiffs' injury. See eBay, 547 U.S. at  
10 391, 126 S.Ct. at 1839. Here, any intangible or economic harms from the impact to plaintiffs' core  
11 business activities can only be addressed by equitable remedies. See E. Bay I, 993 F.3d at 677  
12 ("[W]here parties cannot typically recover monetary damages flowing from their injury – as is often  
13 the case in APA cases – economic harm can be considered irreparable. Intangible injuries may  
14 also qualify as irreparable harm, because such injuries generally lack an adequate legal remedy.")  
15 (internal citations and quotation marks omitted).

16 Third, considering the balance of hardships between the plaintiff and defendant, a remedy  
17 in equity is warranted. See eBay, 547 U.S. at 391, 126 S.Ct. at 1839. The hardships plaintiffs  
18 face are significant. When the government enforces the Policy, fails to notify  
19 MPP-unaccompanied children and their counsel of their MPP status, or seeks to remove  
20 MPP-unaccompanied children before they can access TVPRA protections, these actions deprive

---

21  
22 <sup>10</sup> The government also argues that "Plaintiffs face nothing like extreme damage from their  
23 voluntary decision to continue representing this small population of individuals." (Dkt. 309, Opp.  
24 at 10). But in asserting that "extreme damage" is required, the government "errs by relying on  
25 cases that concern mandatory preliminary injunctions" – in the case of a mandatory permanent  
26 injunction, a plaintiff "must show actual success on the merits," and therefore "need not show that  
27 extreme or very serious damage will result, as is required for mandatory preliminary injunctions."  
28 Edmo v. Corizon, Inc., 935 F.3d 757, 784 n. 13 (9th Cir. 2019) (internal quotation marks omitted).  
In any event, being unable to provide legal services or advice, or otherwise adequately represent  
your client – an unaccompanied minor – because they are deported before they can access  
procedural safeguards or critical information, no doubt represents a severe impairment of the  
attorney-client relationship.

1 children of their rights under the TVPRA and substantially impair plaintiffs' ability to represent  
2 current and prospective clients. As a practical matter, this means many MPP-unaccompanied  
3 children are not provided access to counsel to the greatest extent practicable, an opportunity to  
4 seek asylum beyond the typical one-year deadline, or the chance to have their application  
5 adjudicated by USCIS. See 8 U.S.C. § 1158(a)(2)(E), (b)(3)(C); 8 U.S.C. § 1232(a)(5)(D)(i)-(iii).  
6 The government thus violates the Due Process Clause because it deprives MPP-unaccompanied  
7 children of these rights and risks deporting – or actually deports – unaccompanied children to  
8 places where they may face unsafe conditions or persecution. It would make little sense for  
9 Congress to exempt unaccompanied children from the one-year deadline for seeking asylum, 8  
10 U.S.C. § 1158(a)(2)(E), and provide for access to counsel “to the greatest extent practicable[.]”  
11 8 U.S.C. § 1232(a)(5)(D)(iii), (c)(5), while simultaneously permitting the government to remove  
12 them before they have an opportunity to apply or obtain advice and/or representation from  
13 plaintiffs.<sup>11</sup> And it would render the TVPRA meaningless for these protections to be codified in the  
14 statute, but for MPP-unaccompanied children to lack meaningful access to them in practice.

15 The government argues that “the implementation and operational burden on DHS” of  
16 issuing new NTAs and commencing new proceedings “would be significant” and that “confusion”  
17 would arise. (Dkt. 309, Opp. at 11). The government also claims that any hardship to plaintiffs  
18 is minimal because plaintiffs have “adjusted their operations to address MPP-UAC; the harm they  
19 allege is now a thing of the past.” (*Id.*). Neither argument is persuasive. As an initial matter, the  
20 government’s suggestion that plaintiffs’ injuries have been remedied because they have taken  
21 steps to adjust to the government’s practices strains credulity – the due process and APA  
22 violations remain, MPP-unaccompanied children are still being denied their rights under the

---

23  
24  
25 <sup>11</sup> It does not appear that MPP-unaccompanied children can meaningfully access TVPRA  
26 protections after they have been removed from the United States, as the asylum process and  
27 TVPRA contemplate that children are present or arriving in the United States. See 8 U.S.C.  
28 §§ 1158, 1232; cf. *INS v. Cardoza-Fonseca*, 480 U.S. 421, 433, 107 S.Ct. 1207, 1214 (1987)  
(noting that “§ 1158 sets out the process by which refugees *currently in the United States* may be  
granted asylum”) (emphasis added).

1 TVPRA and likely being summarily removed, and plaintiffs' ability to provide advice and/or  
2 represent MPP-unaccompanied children continues to be impaired.

3 Further, the operational burden of identifying MPP-unaccompanied children should be  
4 minimal, as the government already appears to identify such children for removal purposes. Once  
5 these children have been identified, providing notice of their MPP status should not be  
6 burdensome. Although commencing new proceedings may increase costs, the TVPRA requires  
7 that unaccompanied children receive individualized proceedings, access to counsel, extended  
8 timelines to apply for asylum, and an opportunity to have their application adjudicated by USCIS.  
9 See 8 U.S.C. § 1158(a)(2)(E), (b)(3)(C); 8 U.S.C. § 1232(a)(5)(D)(i)-(iii). Related costs, if any, are  
10 not new, and the government's argument that complying with the law will be costly is not well-  
11 taken. See, e.g., Rodriguez v. Robbins, 715 F.3d 1127, 1146 (9th Cir. 2013) ("[E]ven if the  
12 government faced severe logistical difficulties in implementing the order[,] . . . they would merely  
13 represent the burdens of complying with the applicable statutes[.]"). Taken together, "any  
14 additional administrative costs to the government are far outweighed by the considerable harm  
15 to Plaintiffs' constitutional rights in the absence of the injunction." Hernandez v. Sessions, 872  
16 F.3d 976, 995–96 (9th Cir. 2017). "Faced with such a conflict between financial concerns and  
17 preventable human suffering," the court has "little difficulty concluding that the balance of  
18 hardships tips decidedly in plaintiffs' favor." Id. at 996 (quoting Lopez v. Heckler, 713 F.2d 1432,  
19 1437 (9th Cir. 1983)).

20 Finally, the public interests implicated by this case are significant and an injunction would  
21 serve, rather than disserve, the public interest.<sup>12</sup> See eBay, 547 U.S. at 391, 126 S.Ct. at 1839.  
22 Courts have identified a strong public interest in "preventing [noncitizens] from being wrongfully  
23 removed, particularly to countries where they are likely to face substantial harm," Nken v. Holder,  
24 556 U.S. 418, 436, 129 S.Ct. 1749, 1762 (2009), and in "ensuring that we do not deliver  
25 [noncitizens] into the hands of their persecutors." East Bay I, 993 F.3d at 678 (quoting

---

26  
27 <sup>12</sup> As to the fourth eBay factor, the government fails to address the significant public interests  
28 and, instead, offers the same argument about operational burdens discussed above. (See Dkt.  
309, Opp. at 11).

1 Leiva-Perez v. Holder, 640 F.3d 962, 971 (9th Cir. 2011) (per curiam)). “This concern is especially  
2 pressing here,” E. Bay II, 994 F.3d at 985, where, pursuant to the Policy, DHS has attempted to  
3 remove unaccompanied children who ultimately had meritorious claims for immigration relief. See,  
4 e.g., E. Bay I, 993 F.3d at 679 (expressing concern about the “wrongful removal” of  
5 asylum-seekers with meritorious claims); E. Bay II, 994 F.3d at 985 (same). The court cannot  
6 overlook the risk and significant public interest consideration that the government has removed  
7 or will remove MPP-unaccompanied children unlawfully to places where they fear persecution and  
8 may face harm. Further, the public has an interest in “ensuring that statutes enacted by [their]  
9 representatives are not imperiled by executive fiat.” E. Bay I, 993 F.3d at 679 (internal quotation  
10 marks omitted). But as things stand now, the government’s actions render the TVPRA largely  
11 meaningless for MPP-unaccompanied children. And merely vacating the Policy will be insufficient  
12 to remedy the due process violations. In short, the court finds that an injunction is necessary to  
13 remedy the due process violations.

## 14 2. Scope of Injunctive Relief.

15 The court next considers the appropriate scope an injunction, such that it is no “broader  
16 than necessary to provide complete relief” to plaintiffs, see CASA, 145 S.Ct. at 2562-63, and in  
17 light of the limit on injunctive relief in § 1252(f)(1).

18 Section 1252(f)(1) only applies to classwide injunctive relief that “enjoin[s] or restrain[s] the  
19 operation of the provisions of part IV of this subchapter” – that is, the specific, covered provisions  
20 of the INA. See 8 U.S.C. § 1252(f)(1). As used in § 1252(f)(1), “‘Part IV’ is a reference to the  
21 provisions titled Inspection, Apprehension, Examination, Exclusion, and Removal, which currently  
22 include 8 U.S.C. §§ 1221-1232[.]” Gonzalez, 975 F.3d at 812 (internal quotation marks omitted).  
23 Section 1252(f)(1) thus limits the authority of lower courts to enter classwide injunctive relief  
24 restraining the operation of §§ 1221-1232. See Jennings, 583 U.S. at 313, 138 S.Ct. at 851.  
25 However, § “1252(f)(1) does not apply to every section codified within the specified portion of the  
26 U.S. Code, but rather applies only to such sections that are also part of the INA.” Al Otro Lado,  
27 138 F.4th at 1125 n. 15.

1 Plaintiffs' requested injunction does not implicate any sections of the INA specified in  
2 § 1252(f)(1). The TVPRA is principally codified at § 1232, see Flores v. Sessions, 862 F.3d 863,  
3 870 (9th Cir. 2017), and the TVPRA provisions at issue are located in § 1232 and § 1158.<sup>13</sup>  
4 Section 1158 is not a covered provision because it is not part of the specified sections listed in §  
5 1252(f)(1). See Al Otro Lado, 138 F.4th at 1126-27 (noting that the asylum statute, § 1158, "is not  
6 covered by § 1252(f)(1)" and that "[a]t best, the law governing asylum is collateral to the process  
7 of removal").

8 Although § 1232 is located in Part IV of the relevant subchapter, it is not one of the covered  
9 provisions because § 1252(f)(1) applies only to Part IV "of title II [of the INA], as amended by  
10 [IIRIRA] of 1996." Galvez v. Jaddou, 52 F.4th 821, 830 (9th Cir. 2022) (internal quotation marks  
11 omitted) (quoting Pub. L. No. 104-208, Div. C, § 306(a)(2), 110 Stat. at 3009-611 (1996)). In  
12 Galvez, the Ninth Circuit held that § 1232(d)(2) "is not a provision of the INA even though it has  
13 been placed within Title 8, Chapter 12, Subchapter II of the United States Code" – nor is it a  
14 "provision of the INA as amended by the [IIRIRA] of 1996[.]" Id. at 830-31 (emphasis in original)  
15 (internal quotation marks omitted). The Galvez Court concluded that "the jurisdictional bar of  
16 § 242(f)(1) of the INA, codified at 8 U.S.C. § 1252(f)(1), does not apply to an order that enjoin[s]  
17 or restrain[s] the operation of § 235(d)(2) of the TVPRA, codified at 8 U.S.C. § 1232(d)(2)." Id. at  
18 831 (internal quotation marks omitted). The logic of Galvez applies with equal force here; if  
19 § 1232(d)(2) is not part of the INA as amended by the IIRIRA of 1996, and is not one of the  
20 provisions covered by § 1252(f)(1), then neither are the provisions of § 1232 relevant here – that  
21 is, 8 U.S.C. § 1232(a)(5)(D), (c)(5). The government concedes this point. (See Dkt. 146,  
22 Defendants' Supplemental Briefing re: Aleman Gonzalez at 3) ("Defendants concede that the  
23 specific statutory sections cited by Plaintiffs in their PI Motion that were enacted pursuant to the  
24 TVPRA (8 U.S.C. § 1232(a)(1, 2), (a)(5)(D), (c)(1), (c)(2)(A), (c)(5), and (d)(8)) are not covered  
25 by 8 U.S.C. § 1252(f)(1)."). Even so, the government contends that plaintiffs' requested injunctive

---

26  
27  
28 <sup>13</sup> The specific provisions at issue in this case include: 8 U.S.C. § 1232(a)(5)(D), (c)(5),  
§ 1158(a)(2)(E), (b)(3)(C). (See Dkt. 304, Liability Order at 21, 23-24).

1 relief is barred by § 1252(f)(1) because it has the effect of enjoining or restraining the operation  
2 of the covered provisions. (See Dkt. 309, Opp. at 1-4). The government's contention is  
3 unpersuasive.

4 Section 1252(f)(1) "generally prohibits lower courts from entering injunctions that order  
5 federal officials to take or to refrain from taking actions to enforce, implement, or otherwise carry  
6 out the specified statutory provisions." Garland v. Aleman Gonzalez, 596 U.S. 543, 550, 142 S.Ct.  
7 2057, 2065 (2022). However, courts may "enjoin the unlawful operation of a provision *that* is not  
8 specified in § 1252(f)(1) even if that injunction has some collateral effect on the operation of a  
9 covered provision." Id. at 553 n. 4, 142 S.Ct. at 2067 n. 4. The Ninth Circuit "has repeatedly held  
10 that § 1252(f)(1) does not prohibit an injunction simply because of collateral effects on a covered  
11 provision." Al Otro Lado, 138 F.4th at 1125; see also id. at 1126 (noting that "[t]he Supreme Court  
12 acknowledged [the Ninth Circuit's] collateral-effect rule in Aleman Gonzalez and left it  
13 undisturbed"). In other words, the fact that an injunction may affect some of the specified  
14 provisions does not necessarily mean it is barred by § 1252(f)(1). See, e.g., Gonzales v. DHS,  
15 508 F.3d 1227, 1233 (9th Cir. 2007) (concluding that an injunction implicating a non-covered  
16 provision merely had a collateral effect on DHS's operation of proceedings under covered  
17 provisions, and was not barred by § 1252(f)(1)); Gonzalez, 975 F.3d at 797-99, 812-15, 814 n. 17  
18 (same); Phila. Yearly Meeting of Religious Soc'y of Friends v. U.S. Dep't of Homeland Sec., 767  
19 F.Supp.3d 293, 319 (D. Md. 2025) ("Moreover, § 1252(f)(1) does not bar injunctions affecting  
20 DHS's authority pursuant to provisions of the INA outside of §§ 1221-1232 simply because of  
21 collateral effects on a covered provision[.]").

22 The question here is whether plaintiffs' requested injunction enjoins or restrains the  
23 operation of the covered provisions or merely has a collateral effect on them. Plaintiffs' requested  
24 injunction would enjoin defendants from enforcing the Policy and require the government to: (1)  
25 adopt safeguards to ensure that MPP-unaccompanied children are able to apply for affirmative  
26 asylum with USCIS, see 8 U.S.C. § 1158(b)(3)(C); (2) adopt safeguards to ensure that  
27 MPP-unaccompanied children are placed in new § 240 proceedings if the government seeks to  
28 remove them, see 8 U.S.C. § 1232(a)(5)(D)(i); (3) adopt safeguards to ensure that

1 MPP-unaccompanied children can seek voluntary departure, see 8 U.S.C. § 1232(a)(5)(D)(ii); (4)  
2 identify MPP-unaccompanied children encountered by defendants and provide adequate and  
3 timely notice of MPP ties to plaintiffs and their counsel, the MPP-unaccompanied children, and the  
4 ORR shelters in which any such children are housed; (5) publish guidance on the procedures  
5 applicable to MPP-unaccompanied children, including an explanation of the safeguards adopted  
6 and the steps taken by the agencies to ensure compliance consistent with the TVPRA; and (6) file  
7 a Status Report every three months regarding compliance with any injunctive relief imposed by  
8 the court. (See Dkt. 307-1, Proposed Final Judgment and Permanent Injunction at 4-7).

9 An injunction that requires the government to adopt safeguards to ensure MPP-  
10 unaccompanied children have a meaningful opportunity to access TVPRA protections has merely  
11 a collateral effect on a removal proceeding, even though it may alter the outcome of the  
12 proceeding. See, e.g., Al Otro Lado, 138 F.4th at 1125 (“[A] court may enter a classwide  
13 injunction regarding adjustment of status even though adjustment of status can change the  
14 outcome of a removal proceeding under a covered provision.”). For instance, an injunction  
15 ensuring that MPP-unaccompanied children can apply for affirmative asylum with an exemption  
16 from the one-year deadline and that their application be adjudicated by USCIS, arises out of  
17 provisions located in the asylum statute. See 8 U.S.C. § 1158(a)(2)(E), (b)(3)(C). Thus, these  
18 aspects of the requested injunction directly implicate a non-covered provision (the asylum statute)  
19 and their “one step removed” effect on a covered provision does not bring the injunction within the  
20 scope of § 1252(f)(1). See Al Otro Lado, 138 F.4th at 1125. The court need not, however,  
21 consider aspects of plaintiffs’ requested injunction where vacatur already provides an adequate  
22 remedy for the harm. See Monsanto, 561 U.S. at 165-66, 130 S.Ct. at 2761. The court thus  
23 declines to consider plaintiffs’ request to enjoin the Policy or require placement in new § 240  
24 proceedings, as vacatur of the Policy will ensure that the government does not subject MPP-  
25 unaccompanied children to prior proceedings.

26 The government also argues that plaintiffs’ requested injunction would enjoin or restrain the  
27 operation of §§ 1229, 1229a, 1229c and 1231, because it would require DHS to commence  
28 removal proceedings, prohibit DHS from prosecuting existing removal proceedings, and prohibit

1 DHS from enforcing unexecuted removal orders. (See Dkt. 309, Opp. at 1-4). The court  
2 considers each provision in turn.

3 First, the injunction does not restrain or interfere with § 1229, which governs the “[i]nitiation  
4 of removal proceedings.” Contrary to the government’s argument, (see Dkt. 309, Opp. at 2), the  
5 injunction would not prevent the issuance of NTAs. That is, the government may still issue NTAs  
6 to MPP-unaccompanied children, but it must also afford them the rights guaranteed to them by  
7 the TVPRA.

8 Second, the government argues that the injunction would restrain or interfere with § 1229a,  
9 which governs “[r]emoval proceedings,” because it would “compel the termination/dismissal of  
10 removal proceedings” for MPP-unaccompanied children. (See Dkt. 309, Opp. at 2). It is true that  
11 where existing proceedings are pending, plaintiffs seek that MPP-unaccompanied children be  
12 placed in new proceedings. (See Dkt. 307-1, Proposed Final Judgment and Permanent Injunction  
13 at 5-6). But § 1232(a)(5)(D)(i) indicates that unaccompanied children are entitled to placement  
14 in new proceedings. See 8 U.S.C. § 1232(a)(5)(D)(i) (providing that “[a]ny unaccompanied alien  
15 child sought to be removed . . . shall be . . . placed in removal proceedings under section 240”);  
16 (Dkt. 304, Liability Order at 23) (analyzing this provision). The government does not precisely  
17 explain how this would prevent operation of § 1229a, though it presumably means to say that  
18 implicit in the authority of immigration judges under § 1229a to “conduct proceedings” is also the  
19 authority to continue these proceedings. But there is nothing in § 1229a that indicates the  
20 government must proceed with ongoing removal proceedings. Although § 1229a(a)(3) provides  
21 that “a proceeding under this section shall be the sole and exclusive procedure for determining  
22 whether an alien may be admitted to the United States[,]” this is so “[u]nless otherwise specified  
23 in this chapter[,]” 8 U.S.C. § 1229a(a)(3), and the TVPRA specifies otherwise. See 8 U.S.C. §  
24 1232(a)(5)(D)(i). Placement in new proceedings does not interfere with the government’s  
25 implementation of § 1229a. MPP-unaccompanied children can be placed in removal proceedings,  
26 but they are entitled, consistent with both § 1229a and § 1232(a)(5)(D)(i), to TVPRA protections  
27 while in those proceedings. See *Al Otro Lado*, 138 F.4th at 1114 (“It is a fundamental canon of  
28 statutory construction that the words of a statute must be read in their context and with a view to

1 their place in the overall statutory scheme.”) (quoting Sturgeon v. Frost, 577 U.S. 424, 438, 136  
2 S.Ct. 1061, 1070 (2016)). In other words, the government may seek to remove  
3 MPP-unaccompanied children, but it cannot read other provisions – which are not covered by  
4 § 1252(f)(1) – out of the statutory scheme. In any event, the court need not enjoin the government  
5 from enforcing the Policy or require placement in new proceedings because vacatur of the Policy  
6 remedies the issue of the government subjecting MPP-unaccompanied children to pending or prior  
7 proceedings.<sup>14</sup>

8 Third, an injunction requiring that MPP-unaccompanied children be permitted to seek  
9 voluntary departure does not enjoin or restrain the operation of § 1229c or the Attorney General’s  
10 discretion, (see Dkt. 309, Opp. at 3), as the decision to grant such relief still rests with the Attorney  
11 General. The injunction would merely require that MPP-unaccompanied children be allowed to  
12 seek such relief, not that it be granted.

13 The remaining provisions of plaintiffs’ requested injunction do not run afoul of § 1252(f)(1).  
14 Requiring the government to: (1) adopt safeguards to ensure that MPP-unaccompanied children  
15 are able to apply for affirmative asylum with USCIS and seek voluntary departure; (2) adopt  
16 safeguards to identify MPP-unaccompanied children and notify them, ORR, plaintiffs and their  
17 counsel of the MPP-unaccompanied children’s status; (3) publish guidance about the adopted  
18 safeguards; and (4) file status reports regarding compliance will remedy the lack of meaningful  
19 access to TVPRA protections without enjoining or restraining any of the provisions in  
20 § 1252(f)(1).<sup>15</sup> See, e.g., Al Otro Lado, 138 F.4th at 1127 (9th Cir. 2025) (concluding that an  
21 injunction “requir[ing] the Government to identify possible P.I. class members and notify them  
22 about their class membership and the significance of the injunction” was “permissible under

---

24 <sup>14</sup> Similarly, an injunction that would prevent the government from enforcing unexecuted  
25 removal orders against MPP-unaccompanied children, (see Dkt. 309, Opp. at 2-3), is unnecessary  
26 because vacatur of the Policy prevents the government from subjecting MPP-unaccompanied  
children to their prior removal orders.

27 <sup>15</sup> The government cannot and does not argue that the notice and identification provisions of  
28 plaintiffs’ requested injunction are barred. (See, generally, Dkt. 309, Opp.); see, e.g., Al Otro  
Lado, 138 F.4th at 1127 (affirming notice and identification provisions of an injunction).

1 § 1252(f)(1)” because “[t]hose requirements do not enjoin or restrain the operation of any covered  
2 provision”) (internal quotation marks omitted).

3 In order to afford complete relief to plaintiffs, the injunction must provide safeguards and  
4 notice to all MPP-unaccompanied children. The government’s APA and due process violations  
5 deny plaintiffs access to prospective and current clients; these violations have seriously impaired  
6 plaintiffs’ provision of legal services by preventing plaintiffs from identifying and developing  
7 attorney-client relationships with MPP-unaccompanied children. Under the TVPRA, these children  
8 are entitled to counsel to the greatest extent practicable, 8 U.S.C. § 1232(a)(5)(D)(iii), (c)(5), but  
9 plaintiffs are often unable to adequately screen these children – let alone form an attorney-client  
10 relationship – when the government fails to identify their clients and seeks to immediately deport  
11 them. Because there is no functional way to separate out MPP-unaccompanied children who will  
12 necessarily become plaintiffs’ clients from those who will not, the injunction must apply to the  
13 government’s actions with respect to all MPP-unaccompanied children in order to afford plaintiffs  
14 the relief to which they are entitled. (See Dkt. 307, Plaintiff’s Post-Trial Remedies Brief at 11)  
15 (“Plaintiffs are not ‘geographically limited’ because their unaccompanied child client base is not  
16 geographically limited.”); see also CASA, 145 S.Ct. at 2557 (“[W]hile the court’s injunction might  
17 have the *practical effect* of benefitting nonparties, that benefit [is] merely incidental.”) (internal  
18 quotation marks omitted).

19 In sum, the court finds that the government’s existing practices are inadequate to ensure  
20 that the government provide MPP-unaccompanied children with meaningful access to their TVPRA  
21 rights, including being able to apply for affirmative asylum on an extended timeline, and to seek  
22 voluntary departure. (See Dkt. 304, Liability Order at 29-30); supra at § II.C.1. The court has also  
23 determined that the government’s practice of failing to notify MPP-unaccompanied children and  
24 seeking to deport them before they have an opportunity to rely on their TVPRA protections  
25 deprives them of their rights under the TVPRA and therefore, of due process. (See Dkt. 304,  
26 Liability Order at 29-30); supra at § II.C.1. In short, the court will enter a permanent injunction, as  
27 set forth below, requiring additional safeguards to ensure that MPP-unaccompanied children have  
28 a meaningful opportunity to access these protections.

**CONCLUSION**

Based on the foregoing, and for the reasons set forth in the Court's Liability Order (Dkt. 304), IT IS ORDERED THAT Judgment shall be entered as follows in favor of plaintiffs as to their claims under the APA and the Due Process Clause of the Fifth Amendment of the United States:

I. VACATUR.

The government's Policy, as described above and in the Court's Liability Order, is hereby vacated and set aside.

II. DECLARATORY RELIEF.

In accordance with the Declaratory Judgment Act, 28 U.S.C. § 2201(a), the court **finds and declares** as follows:

A. The government's Policy violates the APA and the Due Process Clause of the Fifth Amendment of the United States Constitution. (See Dkt. 304, Liability Order at 23-30).

B. The TVPRA entitles all unaccompanied children, including MPP-unaccompanied children, to:

1. access to counsel to the greatest extent practicable, see 8 U.S.C. § 1232(a)(5)(D)(iii), (c)(5);

2. exemption from the one-year deadline to apply for asylum and extended timelines to develop claims for immigration relief, see 8 U.S.C. § 1158(a)(2)(E);

3. the processing of asylum claims in the first instance through affirmative applications adjudicated by USCIS in a nonadversarial process, see 8 U.S.C. § 1158(b)(3)(C);

4. placement in § 240 proceedings if the government seeks to remove them, notwithstanding a prior pending proceeding or removal order in which they were not unaccompanied children, see 8 U.S.C. § 1232(a)(5)(D)(i); and

5. the opportunity to seek voluntary departure, see 8 U.S.C. § 1232(a)(5)(D)(ii).

C. The TVPRA provides unaccompanied children, among other things, access to counsel to the greatest extent practicable, exemption from the one-year deadline to seek asylum, a guarantee of initial adjudication of their asylum application by USCIS, and placement in § 240

proceedings if the government seeks to remove an unaccompanied child. See 8 U.S.C. § 1158(a)(2)(E), (b)(3)(C); 8 U.S.C. § 1232(a)(5)(D)(ii)-(iii). In order for the TVPRA's protections to remain viable and existent in practice, the government must provide MPP-unaccompanied children a meaningful opportunity to access these rights. Because the TVPRA provides that MPP-unaccompanied children will have more than a year to seek asylum, the government may not seek to remove MPP-unaccompanied children on a rapid timeline before they have a meaningful opportunity to access their rights under the TVPRA. See United States v. Melendez-Castro, 671 F.3d 950, 954 (9th Cir. 2012) (finding the right to receive information regarding voluntary departure to be a constitutionally protected interest and the deprivation of a genuine opportunity to apply to be due process violation).

D. Due process requires that unaccompanied children and their counsel receive reasonable notice of prior MPP ties in order to help facilitate the children's access to TVPRA protections. The government's failure to, among other things, provide notice to MPP-unaccompanied children of their status, and its practice of moving to quickly deport them, deprives MPP-unaccompanied children of a meaningful opportunity to access TVPRA protections, thereby violating the Due Process Clause.

E. The government may not attempt to or otherwise execute a prior removal order against an MPP-unaccompanied child, without first providing the child an opportunity to access the protections set forth above, including the right to apply for asylum as an unaccompanied minor. See Velasquez-Castillo v. Garland, 91 F.4th 358, 362 (5th Cir. 2024) ("Velasquez-Castillo met the requirements of the TVPRA when he filed his subsequent asylum claim, which is still pending. Application of the TVPRA to this case would invalidate the existing removal order and provide an alternative pathway for Velasquez-Castillo to pursue his asylum claim.").

### III. PERMANENT INJUNCTION.

Permanent injunctive relief, as set forth below, is intended to remedy plaintiffs' injuries and to prevent defendants' further violations of, and to help ensure their compliance with, the TVPRA

1 and the Due Process Clause in their encounters with MPP-unaccompanied children. Accordingly,  
2 the court hereby enters the following permanent injunction:<sup>16</sup>

3       A.     TVPRA Safeguards. The court expects that the government will take steps and  
4 make efforts to ensure that MPP-unaccompanied children, like all unaccompanied children, are  
5 afforded the greater protections provided by the TVPRA. See Flores v. Sessions, 862 F.3d 863,  
6 880 (9th Cir. 2017) (“The overarching purpose of the . . . TVPRA was quite clearly to give  
7 unaccompanied minors more protection, not less.”). At a minimum, the government shall adopt  
8 safeguards to ensure that MPP-unaccompanied children: (1) have access to counsel to the  
9 greatest extent practicable; (2) have a meaningful opportunity to apply for affirmative asylum with  
10 USCIS on an extended timeline, given their exemption from the one-year deadline; (3) have their  
11 asylum claims processed in the first instance by USCIS; and (4) can seek voluntary departure.  
12 See 8 U.S.C. § 1158(a)(2)(E), (b)(3)(C); 8 U.S.C. § 1232(a)(5)(D)(i)-(iii). The government shall  
13 take concrete measures and actions to ensure that MPP-unaccompanied children have a  
14 meaningful opportunity to access TVPRA protections before the government seeks to remove  
15 them. This could include, for example, not rushing to remove MPP-unaccompanied children, and  
16 communicating with their counsel to ensure that the children are given a meaningful opportunity  
17 to apply for affirmative asylum on an extended timeline.

18       To afford the government flexibility in implementing this injunction, the court will not define  
19 the exact contours of the additional safeguards. Nor will the court define precisely what  
20 constitutes a meaningful opportunity to access TVPRA protections; it suffices to say that  
21 MPP-unaccompanied children must be provided a meaningful opportunity to access these rights.  
22 For instance, the TVPRA envisions that children will have extended timelines to develop and  
23 present asylum claims – their exemption from the one-year deadline to apply for asylum means  
24 that the children should have extended timelines, i.e., at least more than a year to do so. Rushing  
25 to remove a child in a matter of days or weeks would not comply with the injunction. Any efforts  
26  
27

---

28       <sup>16</sup> Defendants’ request that the court stay any injunction for 60 days is denied.

1 to remove children must comply with the TVPRA and the procedural safeguards set forth in this  
2 Order.

3 B. Identification and Notice Safeguards. The government shall adopt safeguards and  
4 take steps to identify MPP-unaccompanied children encountered by defendants, and provide  
5 adequate and timely written notice of an unaccompanied child's MPP status to the child, the ORR  
6 shelters in which any such children are housed, and plaintiffs.<sup>17</sup>

7 C. Guidance on Procedures and Safeguards. The government shall publish guidance  
8 on the procedures applicable to MPP-unaccompanied children, including the practices and  
9 safeguards adopted pursuant to the Court's Judgment and Permanent Injunction to ensure that  
10 MPP-unaccompanied children have meaningful access to their rights under the TVPRA. No later  
11 than 30 days from the filing of the Judgment, the parties shall propose a timeline for the publication  
12 of such guidance.

13 D. Status Report. The government shall file a Status Report every six months regarding  
14 compliance with the court's Judgment. The Status Report shall, at a minimum, include information  
15 regarding: (1) the relevant safeguards in effect and defendants' compliance with those  
16 safeguards; (2) the number of MPP-unaccompanied children encountered; (3) whether notice was  
17 provided to such children, plaintiffs' counsel, and the ORR shelters; and (4) whether any such  
18 children have been removed without being afforded the safeguards described in this Order. The  
19 first Status Report shall be filed no later than six months from the filing date of the Court's  
20 Judgment.

21 E. Jurisdiction and Disputes Relating to Injunction. The court shall retain jurisdiction  
22 over this matter to enforce and resolve any disputes concerning the terms of, and defendants'  
23 compliance with, the Court's Judgment, and to hear any application by plaintiffs for attorney's fees  
24 and costs. In the event the parties have a dispute concerning the requirements of the Court's  
25 Judgment or the meaning of any terms therein, they shall promptly meet and confer in a good faith  
26  
27

---

28 <sup>17</sup> Plaintiffs may designate a representative or representatives to receive notice on their behalf.

1 attempt to resolve the dispute. If those efforts do not succeed, the parties shall promptly present  
2 the dispute to the court for resolution.

3 Dated this 29th day of September, 2025.

4 \_\_\_\_\_  
/s/  
Fernando M. Olguin  
5 United States District Judge  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28