ADAM GORDON
United States Attorney
KELLY A. REIS
Assistant U.S. Attorney
California Bar No. 334496
Office of the United States Attorney
880 Front Street, Room 6293
San Diego, CA 92101-8893
Telephone: (619) 546-8767
Email: kelly.reis@usdoj.gov

Attorneys for Defendants

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

AL OTRO LADO, Inc., *et al*., Plaintiffs, v. DONALD J. TRUMP, President of the United States, in his official capacity, *et al*., Defendants.	Case No. 3:25-cv-1501-RBM-BLM **DEFENDANTS' REPLY IN SUPPORT OF MOTION TO DISMISS PLAINTIFFS' COMPLAINT**

There is no merit to Plaintiffs' claims, and they are not justiciable. Plaintiffs seek to require the Department of Homeland Security (DHS) to allow aliens to cross the Southwest land border even when precluded by a Presidential Proclamation barring entry. Plaintiffs challenge Section 3 of Proclamation No. 10888, issued under the authority bestowed upon the President by Congress at 8 U.S.C. §§ 1182(f) and 1185(a). Section 3 suspends the entry of aliens who do not provide sufficient medical, criminal history, and background information. DHS implements Section 3 at land ports of entry, by preventing covered aliens from crossing the international boundary into the United States. The President has ample and appropriate authority to instruct DHS to prevent aliens who are outside the United States from crossing into United States territory.

Plaintiffs respond that the authority in § 1182(f) to "suspend entry" does not actually allow the President to suspend physical entry, and §§ 1182(f) and 1185(a) cannot override the asserted right of aliens located in Mexico to seek asylum. Plaintiffs' position is contrary to the text of the relevant statutory provisions and the Supreme Court's view of the President's § 1182(f) powers as expressed in *Sale v. Haitian Centers Council*, 509 U.S. 155 (1993). In any event, it remains the government's position that aliens located outside United States territory are not covered by the asylum statute, 8 U.S.C. § 1158(a), and the Supreme Court is currently considering that very issue. *See Noem v. Al Otro Lado*, No. 25-5, 2025 WL 3198572, at *1 (U.S. Nov. 17, 2025). Plaintiffs cannot claim that the Proclamation impermissibly blocks their access to an asylum process to which they are not entitled.

I. The Organizations lack standing and are not in the zone of interests.

Because the challenged actions—the Proclamation and the cancellation of CBP One appointments—do not directly regulate Al Otro Lado and Haitian Bridge Alliance (together, the Organizations), the Organizations have at most indirect, downstream injuries from the immigration enforcement actions, and therefore lack a judicially cognizable interest in this case. *See* Mot. at 7–8 (citing *United States v. Texas*, 599 U.S. 670 (2023)). Nor have the Organizations shown that the challenged

actions impair their pre-existing services as required to support a resource-impact claim under *FDA v. Alliance for Hippocratic Medicine*, 602 U.S. 367 (2024). Plaintiffs' reliance on *Havens Realty v. Coleman*, 455 U.S. 363 (1982), is misplaced. *See* Opp'n at 4–5. In *Havens Realty*, the plaintiff housing services organization alleged that misinformation provided by the defendant to the housing services organization about apartment availability directly frustrated the organization's ability to provide their existing counseling services. *See Hippocratic Medicine*, 602 U.S. at 395 (discussing *Havens Realty*). *Havens Realty* is "an unusual case, and [the Supreme] Court has been careful not to extend the *Havens* holding beyond its context." *Id.* at 396. And here, unlike in *Havens Realty*, neither Organization has asserted that the alleged "Asylum Shutdown Policy" directly impairs or interferes with their ability to perform their pre-existing services on either side of the border. Instead, they assert that the number of migrants in need of their assistance in seeking asylum at ports of entry or after entry has declined. Opp'n at 4. This boils down to a setback to the Organizations' mission, which is not judicially cognizable. *See Sierra Club v. Morton*, 405 U.S. 727, 739 (1972).

But even if the Organizations' resource-diversion claim of injury satisfied Article III's standing requirements, their claims would still fail because the effect on their own expenditures does not fall within the zone of interests of the asylum statute, 8 U.S.C. § 1158. Plaintiffs' reliance on the APA's presumption of reviewability of agency action, Opp'n at 6, is misplaced, because the Immigration and Nationality Act (INA) sets out a comprehensive judicial review scheme that contemplates only limited review, and only at the behest of *individual aliens* affected by immigration decisions. *See generally* 8 U.S.C. § 1252.

II. Plaintiffs' challenge to the Proclamation is not justiciable.

Plaintiffs do not meaningfully dispute that their First, Second, Third and Sixth Claims are challenges to the Proclamation. These claims, which are premised on the argument that the Proclamation (and thus, its implementation) violates the INA or

exceeds statutory authority, are not justiciable, whether they are asserted under the Administrative Procedure Act (APA) or under a "nonstatutory review" theory.

First, the Proclamation and its implementation are unreviewable because the Proclamation involves statutorily (and constitutionally) authorized decisions to deny entry to aliens who are not already present in the United States. Under separation-of-powers principles, the Court may not hear challenges to the President's authority under 8 U.S.C. § 1182(f) to deny entry to aliens located outside the United States, such as the Individual Plaintiffs (and the putative class they seek to represent). Mot. at 12–13. This principle applies not just to Congress's decisions, but extends also to the President's exercise of his statutory and constitutional authority to deny entry to aliens who have "no claim of right" to enter the United States. *See United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 542–43 (1950). That authority to exclude "stems not alone from legislative power but is inherent in the executive power to control the foreign affairs of the nation." *Id.* at 542. Contrary to Plaintiffs' assertions (at Opp'n at 14–15), this case falls within this non-reviewability doctrine because the effect of the Proclamation is to deny entry to aliens abroad—just like any other decision to exclude aliens. *See infra* at Section III.

As Congress has not affirmatively authorized judicial review of decisions to deny entry to aliens located outside the United States (under § 1182(f) or otherwise), and Plaintiffs do not claim that the denial of entry burdens the Constitutional rights of a U.S. citizen, there is no review of the Proclamation or its implementation. Mot. at 12–13. Nor is *Trump v. Hawaii* to the contrary. *See* Opp'n at 14. The Supreme Court in *Hawaii* did not decide the reviewability question; instead, it "assume[d] without deciding that plaintiffs' statutory claims [were] reviewable" and then went on to determine those claims lacked merit. *Trump v. Hawaii*, 585 U.S. 667, 683 (2018).

Second, Plaintiffs cannot bring an equitable cause of action to obtain relief from Presidential action. Plaintiffs do not dispute that injunctive relief against the President is unavailable. Mot. at 13. Separation-of-powers principles likewise counsel against

declaratory relief against the President. *See* Mot. at 13–14; *Newdow v. Roberts*, 603 F.3d 1002, 1012 (D.C. Cir. 2010) ("A court—whether via injunctive or declaratory relief—does not sit in judgment of a President's executive decisions.").[1]

Third, Plaintiffs cannot evade these limitations on review and relief by challenging the agency's implementation of the Proclamation under the APA. The longstanding limitation on review of Executive Branch decision to deny entry to aliens qualifies as a "limitation[s] on judicial review" that is preserved by the APA. *See* Mot. at 15 (quoting 5 U.S.C. § 702(1)). Further, the action with operative legal effect on Plaintiffs is the Proclamation, and Plaintiffs do not identify a final agency action distinct from that Proclamation. *See* Mot. at 14–15. Plaintiffs argue that the DHS written guidance implementing Section 3 of the Proclamation is final agency action. Opp'n at 17. But those procedures are merely "carrying out directives of the President," *see Tulare Cnty. v. Bush*, 185 F. Supp. 2d 18, 28–29 (D.D.C. 2001), and are not an independent agency action separable from the Proclamation's suspension and restriction on entry.

III. The Proclamation appropriately suspends physical entry and does not conflict with the asylum statute.

Even assuming Plaintiffs' claims challenging the Proclamation are justiciable, they cannot succeed as a matter of law because the Proclamation does not exceed the President's statutory authority. Plaintiffs argue that, despite § 1182(f)'s broad conferral of power on the President to suspend "entry," it does not permit the President to close United States land borders to certain classes of aliens. Essentially, Plaintiffs' arguments are: (i) "entry" as used in § 1182(f) does not mean "entry"; and (ii) denying physical entry to aliens who would like to seek asylum in the United States violates the asylum statute. Both premises are incorrect.

[1] That the President's actions "may be reviewed for constitutionality," *see Franklin v. Massachusetts*, 505 U.S. 788, 801 (1992) (Opp'n at 12), is beside the point, as there are no constitutional claims at issue.

First, Plaintiffs' argument that the President has no power to suspend the "entry" of aliens disregards the plain text of § 1182(f) and the Supreme Court's view of that statutory authority. In Plaintiffs' view, § 1182(f) *only* gives the President power to designate additional categories of "inadmissibility." Opp'n at 7, 8, 18–19. This view depends on their assertion that "entry" as used in § 1182(f) is a "term of art" that incorporates the longstanding "entry fiction" and thus means *only* a procedurally "lawful entry"—that is, an "admission." *See* Opp'n at 8–9.[2] But, as the Supreme Court recognized in *Sale*, the power to suspend entry in § 1182 is broader than the power to deny "admission." If it were otherwise, the President's power to temporarily suspend entry of aliens where such entry would be detrimental to the interests of the United States would be rendered largely meaningless.

At the time § 1182(f) was adopted, Congress specifically defined the term "entry" as "any coming of an alien into the United States, from a foreign port or place or from an outlying possession, whether voluntarily or otherwise." INA of 1952, Pub. L. No. 414, Ch. 477 Sec. 101(a)(13) (June 27, 1952) (codified at 8 U.S.C. § 1101(a)(13)); *see also id.* Sec. 212(e) (provision now codified at 8 U.S.C. § 1182(f)). Congress did not incorporate the concept of the "entry fiction" into this definition. Thus, under the plain language at the time of § 1182(f)'s adoption, to suspend an "entry" under this definition meant to suspend "any coming of any alien into the United States, from a foreign . . . place." Plaintiffs and Amicus completely ignore this historical statutory text, which indicates that "entry" in § 1182(f) meant physical entry: a coming into United States territory.

[2] Plaintiffs' arguments focus on the authority under § 1182(f). Section 1185(a)(1) equally supports Section 3's restriction on entry, because it allows the President to "prescribe" "limitations" on aliens' ability to "enter . . . the United States. 8 U.S.C. § 1185(a)(1). This provision indisputably does not relate to admission, *see* Amicus Br. at 6, and that it is about "travel control" supports its application to aliens seeking to cross the border into the United States.

Agency decisions from the Board of Immigration Appeals subsequently formulated a "more precise" definition of "entry" as used in the pre-1996 INA (at 8 U.S.C. § 1101(a)(13) (1952)). *See* Opp'n at 9; *Matter of Z-*, 20 I&N Dec. 707, 708 (BIA 1993). The Board's interpretation emphasized that entry required, in the first instance, "a crossing into the territorial limits of the United States, *i.e.*, physical presence." *E.g.*, *Matter of Z-*, 20 I&N Dec. at 708. However, to preserve the notion of the "entry fiction," the Board held that "entry" required, in addition to physical presence in the United States, *either* "(a) inspection and admission by an immigration officer, *or* (b) actual and intentional evasion of inspection at the nearest inspection point" and "freedom from official restraint." *Id.* But even the Board's gloss on "entry" undermines Plaintiffs' proposed construction of the term: first, the primary component of entry remains physical entry—that is, the "crossing into the territorial limits of the United States"—and second, the concept of "entry" was not confined to "lawful entry" (or "admission").

The INA was later amended in 1996 to eliminate the distinction between those who had "effected an 'entry'" by meeting all of the required elements (who were subject to deportation proceedings) and those who were physically present in the United States but had not yet been admitted by an immigration officer and did not evade inspection (who were subject to exclusion proceedings, with fewer procedural protections). *See Hing Sum v. Holder*, 602 F.3d 1092, 1099–1100 (9th Cir. 2010). Under the 1996 amendments, the crucial distinction became whether or not someone had been "admitted" to the United States, not whether they had "entered." *See id.*; Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208 Division C, Sec. 301, 110 Stat. 3009-575 (Sept. 30, 1996) (section titled "Treating Persons Present in the United States Without Authorization as Not Admitted," contained in Subtitle A, "Revision of Procedures for Removal of Aliens")). Congress thus removed the defined term "entry" and added the defined term "admission" and "admitted," which were defined as "the lawful entry of the alien into the United States

after inspection and authorization by an immigration officer." IIRIRA, Pub. L. No. 104-208 Division C, Sec. 301(a) (Sept. 30, 1996) (codified at 8 U.S.C. § 1101(a)(13)).

But these 1996 amendments to the INA did not change the language of § 1182(f), which continued to use the term "entry." *See* 8 U.S.C. § 1182(f); IIRIRA, Pub. L. No. 104-208 Division C. And the common understanding of "entry" into the United States involves the individual coming into U.S. territory from outside the United States. *See Tellez v. Lynch*, 839 F.3d 1175, 1177–78 (9th Cir. 2016) ("[C]ommon sense and a stack of dictionaries can tell us that the word enter means '[t]o come or go into.'" (quoting *The American Heritage Dictionary of the English Language* 436 (1976)); *United States ex rel. Claussen v. Day*, 279 U.S. 398, 401 ("The word 'entry' by its own force implies a coming from outside."); *Huisha-Huisha v. Mayorkas*, 27 F.4th 718, 727 (D.C. Cir. 2022) (discussing statute prohibiting "introduction of persons": "Congress might have been clearer if it has used a word like 'entry' rather than 'introduction' when referring to the Executive's power to prohibit individuals from coming here.")

Plaintiffs argue that the term "admission" is the relevant term for purposes of § 1182(f), notwithstanding the provision's continued use of the term "entry." Opp'n at 8. But even assuming Plaintiffs are correct (they are not), the 1997 amendments incorporated the prior definition of entry into the definition of admission, *Hing Sum*, 602 F.3d at 1100, and did not disturb the underlying understanding of "entry" as requiring, in the first instance, "a crossing into the territorial limits of the United States," *see Matter of Z-*, 20 I&N Dec. at 708. Thus, a physical crossing into U.S. territory remains the first element of a "lawful entry." Even assuming the power to suspend entry is limited to the power to suspend "lawful entry," there is no reason the suspension cannot be implemented at the first step to prevent aliens from crossing the border in the first place. Just as a § 1182(f) proclamation can be used to deny travel authorization (and thus entry) to aliens seeking visas from non-contiguous territories abroad, *see, e.g.*, *Hawaii*, 585 U.S. at 675, 680, so too can it be used to deny entry at

a land border to aliens who traveled to Mexico in order to cross into the United States without a visa. And just as in *Sale*, it does not matter whether the aliens seeking entry are inadmissible and intend to seek asylum rather than be admitted. Plaintiffs' only response is that this would conflict with the asylum statute—but the asylum statute does not confer any right to cross the border. *See infra*.[3] Accordingly, even under Plaintiffs' proposed construction of "entry," the Proclamation permissibly suspends and restricts physical entry of covered aliens at a land border.

Plaintiffs' contention that § 1182(f) does not permit the President to deny physical entry to designated aliens is at odds with the Supreme Court's view of the statutory authority. The Supreme Court in *Sale* deemed it non-controversial that § 1182(f) permits the President to prevent physical entry into U.S. territory: "It is perfectly clear that 8 U.S.C. § 1182(f) . . . grants the President ample power to establish a naval blockade that would simply deny illegal Haitian immigrants the ability to disembark on our shores." *Sale*, 509 U.S. at 187. It is immaterial that the precise action at issue in *Sale* was the government's interception of asylum-seeking Haitians in extraterritorial waters in order to return them to Haiti. *See* Opp'n at 22. The Supreme Court clearly understood § 1182(f) to permit the President to "prevent [designated aliens] from reaching our shores and invoking [humanitarian] protections." *Id.* at 160; *see also id.* at 187 (characterizing § 1182(f) as a tool to prevent "mass migration"). This case is no different, except it involves land borders.

It is likewise immaterial that the *Sale* Court was primarily addressing not the scope of § 1182(f), but the related question of whether the withholding-of-removal statute applied to aliens apprehended by the U.S. government in international waters.

---

[3] Amicus's attempt (Amicus Br. at 13) to infer limitations on the scope of § 1182(f) from past practice are unavailing, and would call into question the Proclamation at issue in *Sale*, which expressly suspended the physical entry of Haitians without any right to seek asylum. *See Sale*, 509 U.S. at 166 & n.13; *see also Hawaii*, 585 U.S. at 693 (hesitating "to confine [§ 1182(f)'s] expansive language in light of its past application").

See Opp'n at 22. The *Sale* majority clearly announced that § 1182(f) authorized the Executive Branch's actions. Even if this statement is dictum, courts "do not treat considered dicta from the Supreme Court lightly" but accord it "appropriate deference." *United States v. Augustine*, 712 F.3d 1290, 1295 (9th Cir. 2013).

Second, given § 1182(f)'s conferral of broad power to suspend entry of all categories of aliens (regardless of whether or not they intend to seek asylum), the Proclamation does not conflict with the asylum statute at 8 U.S.C. § 1158(a). *See* Mot. at 17–18. But even assuming, *arguendo*, that a § 1182(f) entry suspension does not override any existing right to apply for asylum created by the asylum statute, no such rights are at issue here. Plaintiffs argue the asylum statute somehow bestows a right of entry to the United States and compels the government to permit them to cross the border from Mexico. *See* Compl. ¶¶ 13, 170–71, 180–81, 209; Opp'n at 20. The government maintains that this premise is incorrect because the asylum statute does not apply to aliens who are outside the United States. Mot. at 16.[4] The Supreme Court is poised to consider this issue, having granted certiorari in a case presenting the question of "whether an alien who is stopped on the Mexican side of the U.S.–Mexico border 'arrives in the United States' within the meaning of" the asylum statute, § 1158(a)(1), and other provisions. *Noem v. Al Otro Lado*, No. 25-5, Petition for Writ of Certiorari at (I) (U.S. July 1, 2025); *see also id.*, 2025 WL 3198572, at *1 (U.S. Nov. 17, 2025) (granting certiorari). Plaintiffs' attempt to minimize the impact of this certiorari grant (*see* Opp'n at 21) is unavailing: if the Supreme Court decides that such an alien is not covered by § 1158(a)(1), Plaintiffs' claims that the Proclamation and its implementation are inconsistent with the asylum statute cannot possibly succeed.

IV. Plaintiffs fail to state viable claims for relief.

Plaintiffs cannot state viable claims for relief for the additional reasons set forth

[4] As the asylum statute's scope is self-limited to aliens who are within the United States (whether or not at a port of entry), there is no need for the statute to include a separate "entry bar" to eligibility. *See* Opp'n at 20.

in Defendants' Motion. *See* Mot. at 19–25. In particular, Plaintiffs' separate challenges to the cancellation of CBP One appointments cannot succeed as a matter of law. Because the CBP One mobile app and CBP One appointments were procedural mechanisms for managing the flow of aliens presenting at ports of entry and provide no substantive rights, notice-and-comment rulemaking was not required before cancelling any CBP One appointments. Similarly, the cancellation of a CBP One appointment is not a final agency action, because the appointment itself created no substantive rights to entry, inspection, processing, or any particular processing outcome (including parole).

In a footnote, Plaintiffs attempt to distinguish the cancellation of existing CBP One appointments from *James V. Hurson Assocs., Inc. v. Glickman*, 229 F.3d 277, 280 (D.C. Cir. 2000). Opp'n at 25 n.27. But the CBP One appointment system was a scheduling system for presenting oneself at a port of entry; it did not alter the substantive standards governing admission to the United States or any rights to seek asylum. Like the face-to-face review of labels by the USDA examined in *Hurson Assocs.*, the scheduling system "simply changed the procedures [CBP] would follow" to manage the presentation of inadmissible aliens at ports of entry. *See Hurson Assocs.*, 229 F.3d at 281. Plaintiffs' claimed reliance on an appointment as a means of entering the United States is not sufficient to transform a procedural decision into a substantive one. Further, as notice-and-comment procedures were not required to create the CBP One scheduling system, they are not required to undo it. *See Perez v. Mortg. Bankers Ass'n*, 575 U.S. 92, 101 (2015) ("Because an agency is not required to use notice-and-comment procedures to issue an initial interpretive rule, it is also not required to use those procedures when it amends or repeals that interpretive rule.").

V. Conclusion

For the foregoing reasons, the United States respectfully requests that the Court grant its motion to dismiss.

DATED: December 15, 2025

Respectfully submitted,

ADAM GORDON
United States Attorney

s/ Kelly A. Reis
KELLY A. REIS
Attorneys for Defendants
DONALD J. TRUMP, et al.