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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

KAJI DOUSA,

Plaintiff,

v.

U.S. DEPARTMENT OF HOMELAND
SECURITY (“DHS”);
U.S. IMMIGRATION AND
ENFORCEMENT (“ICE”);
U.S. CUSTOMS AND BORDER
PROTECTION (“CBP”); ALEJANDRO
MAYORKAS, Secretary of DHS;
TAE D. JOHNSON, Acting Director of
ICE; CHRIS MAGNUS, Commissioner of
CBP; and SIDNEY AKI, Director of Field
Operations for CBP, San Diego,¹

Defendants.

Case No.: 19-CV-1255 TWR (KSC))

**STATEMENT OF FINDINGS OF
FACTS AND CONCLUSIONS OF
LAW FOLLOWING BENCH TRIAL**

(ECF Nos. 137–39)

Plaintiff Pastor Kaji Dousa initiated this action by filing her operative Complaint for Declaratory and Injunctive Relief on July 8, 2019, alleging four causes of action for

¹ Pursuant to Federal Rule of Civil Procedure 25(d), Secretary of DHS Alejandro Mayorkas is automatically substituted for Kevin K. McAleenan, Acting Director of ICE Tae D. Johnson for Matthew T. Albence, Acting Commissioner of CBP Troy A. Miller for Mark A. Morgan, and Director of Field Operations for CBP, San Diego (“DFO”) Sidney Aki for Peter Flores.

1 (1) retaliation in violation of the First Amendment; (2) violation of the First Amendment’s
2 Free Exercise Clause; (3) hybrid First Amendment rights claim; and (4) violation of the
3 Religious Freedom Restoration Act (“RFRA”), 42 U.S.C. §§ 2000bb *et seq.*, against
4 Defendants U.S. Department of Homeland Security (“DHS”); U.S. Immigration and
5 Enforcement (“ICE”); U.S. Customs and Border Protection (“CBP”); Alejandro Mayorkas,
6 Secretary of DHS; Tae D. Johnson, Acting Director of ICE; Troy A. Miller, Acting
7 Commissioner of CBP; and Sidney Aki, Director of Field Operations for CBP, San Diego
8 (“DFO”). (*See generally* ECF No. 1 (“Compl.”).) After then-Chief Judge Larry Alan
9 Burns dismissed with prejudice Plaintiff’s third cause of action, (*see* ECF No. 61), the
10 undersigned presided over a three-day bench trial beginning August 29, 2022, (*see* ECF
11 Nos. 137–39), during which the Court heard testimony from Plaintiff, CBP Branch Chief
12 Saro Oliveri, CBP Intelligence Agent Nathaniel Trueblood, then-Assistant Chief Patrol
13 Agent Roberto Del Villar, then-CBP Acting Special Operations Supervisor Juan
14 Rodriguez, and Supervisory CBP Officer Miguel Haro. (*See* ECF No. 140.) The Parties
15 subsequently filed their closing briefs, (*see* ECF Nos. 145 (“Pl.’s Br.”), 147 (“Defs.’ Br.”));
16 deposition designations for “CBP Agent 1,” then-CBP Agent Jeremy Burnett, then-ICE
17 Chief Intelligence Officer Lea DiSenso, and then-ICE Deputy Field Office Director Scott
18 Mechkowski, (*see* ECF No. 146), and then-CBP Intelligence Operations Supervisor Haldo
19 Dominguez, (*see* ECF No. 148); and redacted trial exhibits. (*See* ECF Nos. 149–54.)
20 Having carefully considered the record, the Parties’ arguments, and the relevant law, the
21 Court issues the following findings of fact and conclusions of law pursuant to Federal Rule
22 of Civil Procedure 52(a)(1). *See* Fed. R. Civ. P. 52(a)(1) (“In an action tried on the facts
23 without a jury or with an advisory jury, the court must find the facts specially and state its
24 conclusions of law separately.”).

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FINDINGS OF FACT

I. Trusted Traveler Programs

A. Overview of Trusted Traveler Programs

1. “CBP Trusted Traveler programs (“TTPs”) allow travelers [to] cross U.S. international borders in an expedited fashion.” (ECF No. 135 (“Stip. Facts”) at 23 ¶ 1; *see also* ECF No. 143 (“Day 2 Tr.”) at 243:5–8, 249:11–15.) “TTPs are ‘risk-based programs to facilitate the entry of pre-approved travelers. All applicants are vetted to ensure that they meet the qualifications for the program to which they are applying.’” (Stip. Facts at 23 ¶ 2 (quoting <https://ttp.dhs.gov/>); *see also* Day 2 Tr. at 245:12–25, 337:19–25.) A TTP participant must remain low risk to continue to be a member of the program. (*See* Day 2 Tr. at 338:10–12.)

2. “One TTP is Secure Electronic Network for Travelers Rapid Inspection, or “SENTRI,” which provides expedited entry into the United States from Canada and Mexico by land.” (Stip. Facts at 23 ¶ 3; *see also* Day 2 Tr. at 249:19–21.) “Another TTP is Global Entry, which provides expedited entry into the United States from other countries by land or by air.” (Stip. Facts at 23 ¶ 4; *see also* Day 2 Tr. at 249:16–18.) “Membership in Global Entry includes all of the same expedited border-crossing privileges that come with membership in SENTRI, plus additional privileges as well.” (Stip. Facts at 23 ¶ 5; *see also* Day 2 Tr. at 249:22–250:2, 250:18–24.) Specifically, both programs allow “[e]xpedited travel through a dedicated commuter lane and travel through a special kiosk at . . . airports,” (*see* Day 2 Tr. at 336:6–10), although members of TTPs may still be sent to secondary screening while crossing the border. (*See id.* at 336:1–20.)

3. “For purposes of crossing the U.S./Mexico border on land, Global Entry and SENTRI are the same.” (*See id.* at 250:22–24.) Indeed, “[t]he CBP officials deposed in this case often use the terms ‘SENTRI’ and ‘Global Entry’ interchangeably.” (Stip. Facts at 23 ¶ 6; *see also* Day 2 Tr. at 250:25–251:22.)

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1 **B. Administration of the Trusted Traveler Programs**

2 4. The Global Enrollment System (“GES”) is the official record for all TTPs.
3 (See Day 2 Tr. at 330:2–5.) An entry in GES cannot subsequently be changed. (See *id.* at
4 330:6–8.) A revocation of TTP status in GES must be made manually by a supervisor with
5 annotations as to why he has taken that action. (See *id.* at 330:14–17.)

6 5. There are written guidelines (the “Trusted Traveler handbook”) that “set[]
7 forth the rules, policies, [and] procedures for applying, determining eligibility, revocation,
8 and the like.” (See *id.* at 246:4–11.) Although officers can recommend revocation of TTP
9 status, a supervisor’s concurrence is required. (See *id.* at 246:23–247:8.) “[R]evocation
10 decisions must be finalized in two days,” (see *id.* at 331:14–19), and a revoked member’s
11 TTP card must be shredded and GES must be updated to reflect the revocation and
12 destruction of the card. (See *id.* at 334:8–335:2.)

13 6. The enrollment center also must enter reasons for the revocation into GES “so
14 that a letter or notification can be generated by the system and sent to the member or posted
15 to his or her GOES account.” (See *id.* at 331:20–332:15; see also *id.* at 333:9–20.) If the
16 revocation is based on a decision that the person is no longer a low risk, the officer should
17 provide information as to why that conclusion was reached. (See *id.* at 335:20–25.)

18 7. Since December 2014, Saro Oliveri has been the Branch Chief for CBP
19 responsible for TTPs in San Diego. (See *id.* at 241:24–242:16, 242:24–243:4, 243:9–12.)
20 “[I]t is very rare that [he] get[s] personally involved in decision making about whether to
21 revoke a person’s Trusted Traveler status,” (see *id.* at 247:18–25), happening
22 approximately once per year. (See *id.* at 248:1–249:7.) Oliveri did, however, have
23 “personal involvement” in Dousa’s TTP status. (See *id.* at 257:17–258:4.)

24 8. “In [his] job overseeing the[TTPs], [Olivieri] do[es] not draw a distinction
25 between people having Global Entry or SENTRI.” (See *id.* at 251:4–7.) Although TTP
26 status can only be revoked, (see *id.* at 255:1–4), Oliveri also uses the terms “revocation”
27 and “suspension” interchangeably. (See *id.* at 254:22–25; see also *id.* at 255:5–7.)

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1 9. Between November 2018 and March 2019, Oliveri was on assignment from
2 the TTP office to a liaison unit. (*See id.* at 258:17–20.) One of the supervisors who
3 reported to Oliveri, Nicholas Gonzales, acted as Branch Chief of the TTP office during that
4 time. (*See id.* at 258:25–8.) Nonetheless, Oliveri continued to receive emails in a TTP
5 Branch Chief capacity during that time. (*See id.* at 259:9–14.)

6 **C. Dousa’s Participation in the Trusted Traveler Programs**

7 10. “Plaintiff applied for and received a membership in Global Entry in 2016.”
8 (Stip. Facts at 23 ¶ 7; *see also* ECF No. 142 (“Day 1 Tr.”) at 99:10–13; ECF No. 153-10
9 (“Ex. 340”).) Dousa believed Global Entry “would be useful to [her] in carrying out [her]
10 Christian ministry” because “it would allow [her] to expedite [her] border crossing so that
11 [she] could . . . [cross] more frequently, to offer [her] ministry in Mexico.” (*See* Day 1 Tr.
12 at 97:10–18.)

13 11. “On November 27 and again on November 28, 2018, Dousa crossed the border
14 into the United States from Mexico at the San Ysidro Port of Entry using her Global Entry
15 membership.” (Stip. Facts at 23 ¶ 12; *see also* Day 1 Tr. at 95:7–18.)

16 12. Dousa’s Global Entry card expired on August 22, 2022. (*See* Day 2 Tr. at
17 213:2–6, 227:20–23.) As of the date of her testimony, Dousa had applied for renewal. (*See*
18 *id.* at 227:24–25.) Because of a backlog in processing Global Entry renewals, her
19 expiration date was extended by a year. (*See id.* at 228:4–11.)

20 **II. Dousa and Her Ministry**

21 13. “Dousa is a U.S. Citizen and Senior Pastor at Park Avenue Christian Church
22 in New York City.” (Stip. Facts at 22 ¶ 1; *see also* Day 1 Tr. at 36:3–4, 37:13–23.) Dousa
23 was ordained by the United Church of Christ, a Protestant denomination, in 2002. (*See*
24 Day 1 Tr. at 34:20–23, 36:1–11.)

25 14. There are two sacraments that are recognized in the Protestant church:
26 (1) baptism, and (2) communion. (*See id.* at 76:5–6.) There are also several rituals and
27 ceremonies, including funerals, marriages, ordinations, etc. (*See id.* at 44:3–13.)

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1 15. Dousa officiates marriage ceremonies “[v]ery often,” (*see id.* at 45:6–7), and
2 “consider[s] performing marriages to be one of [her] most sacred pastoral duties.” (*See id.*
3 at 50:1–3.) Dousa is authorized to sign marriage licenses in New York, (*see id.* at
4 51:9–11), and takes that authorization “very seriously.” (*See id.* at 52:12–14.)

5 16. Dousa therefore has “very strict rules around how [she] will sign a wedding
6 license.” (*See id.* at 52:14–15.) While she does sign marriage licenses outside of New
7 York, (*see id.* at 52:25–2), she first “contact[s] the city or county clerk’s office just to make
8 sure that [she] understand[s] what the requirements are, and that [she is] indeed authorized
9 to do so.” (*See id.* at 52:2–6.)

10 17. Dousa also has rules for conducting wedding ceremonies: she has a “standard
11 process that [she] . . . do[es]n’t deviate from for any marriage that [she] officiate[s].” (*See*
12 *id.* at 46:3–8.) In the “discernment phase,” Dousa “tr[ies] to get to know a little bit about”
13 the couple and understand whether there is “consent between the couple,” whether “there
14 [is] any coercion,” and whether “this [is] a real relationship.” (*See id.* at 46:8–17.)

15 18. In “many, many cases,” Dousa will decline to marry couples following this
16 process. (*See id.* at 46:17–20.) Indeed, she has “turn[ed] away more couples than [she]
17 actually agree[s] to marry.” (*See id.* at 53:7–13.) If, however, the couple “do[es] make it
18 through that process, then the next several steps are to help them to understand both
19 theologically and ethically what it means to invite God into [their] relationship.” (*See id.*
20 at 46:21–24.)

21 19. The immigrant community became a focus of Dousa’s ministry beginning in
22 2009 when “God called [her] to it.” (*See id.* at 53:20–23.) While she was at The Table
23 Church in San Diego in approximately 2013, Dousa would “go to Mexico to minister to
24 people there.” (*See id.* at 55:3–18.)

25 20. Eventually, “Dousa [became] the co-chair of the New Sanctuary Coalition
26 (“New Sanctuary”), a faith-based network of congregations, organizations, and individuals
27 devoted to immigrant rights.” (Stip. Facts at 22 ¶ 2; *see also* Day 1 Tr. at 54:18–22,
28 61:7–10, 62:4–5.) As such, Dousa “advocate[s] for the rights and humane treatment of

1 immigrants,” (*see* Day 1 Tr. at 59:4–7), and has “been critical of any family separation
2 policy from the Trump administration and also from the Biden administration.” (*See* Day
3 2 Tr. at 175:5–176:7.) Consequently, “Dousa participates in and is involved in organizing
4 protests, rallies, and prayer vigils, including ones that advocate for immigrants’ rights.”
5 (Stip. Facts at 22 ¶ 3; *see also* Day 1 Tr. at 59:4–7; Day 2 Tr. at 151:2–152:10.)

6 21. Although she finds “it[] scary going on the news,” (*see* Day 2 Tr. at
7 214:13–17), “Dousa makes television and media appearances in which she discusses
8 immigration issues, and meets with local, state, and federal political representatives to
9 discuss public policy and legislative issues related to immigration.” (Stip. Facts at 22 ¶ 4;
10 *see also* Day 1 Tr. at 61:1–4; Day 2 Tr. at 171:15–172:12.)

11 **III. The Sanctuary Caravan**

12 22. In late 2018 and early 2019, a large migration of individuals, primarily from
13 Central America, arrived at the U.S.-Mexico border seeking entry into the United States
14 and/or asylum in the United States. (*See* Stip. Facts at 22 ¶¶ 5–6.)

15 23. “In late 2018, Pastor Dousa, through New Sanctuary, was involved in
16 organizing a ‘Sanctuary Caravan’ of faith leaders, congregants, and humanitarian workers
17 to Tijuana to provide pastoral services and support to migrants in the Migrant Caravan.”
18 (Stip. Facts at 23 2d ¶ 8; *see also* Day 1 Tr. at 64:2–65:10.) The Sanctuary Caravan was
19 planned to last forty days and forty nights. (*See* Day 1 Tr. at 65:13–18; Day 2 Tr. at
20 108:13–15.) Dousa “absolutely” “consider[ed her] work with The Sanctuary Caravan to
21 be part of [her] Christian ministry.” (*See* Day 1 Tr. at 66:11–14.)

22 24. “In addition to providing services, Sanctuary Caravan members coordinated
23 with legal organizations working with migrants applying for asylum.” (Stip. Facts at 23
24 ¶ 9; *see also* Day 2 Tr. at 179:8–14.)

25 25. “Before Pastor Dousa departed for Tijuana, Nicole Ramos—an attorney with
26 Al Otro Lado, an organization that provides support for migrants and asylum seekers—
27 asked Pastor Dousa if members of the Sanctuary Caravan could perform religious marriage
28 ceremonies for migrants in the caravan. Pastor Dousa agreed.” (Stip. Facts at 23 ¶ 10; *see*

1 *also* Day 1 Tr. at 68:5–69:10.) Specifically, Ramos asked Dousa to perform “religious
2 ceremonies only” for couples who were already common-law married but were unable to
3 prove the “fact of their marriage” because “common-law married couples with children are
4 more likely to be separated in family detention.” (*See* Day 1 Tr. at 68:22–70:15; *see also*
5 ECF No. 153-12 (“Ex. 346”).) In other words, Dousa and her cohorts “would not be
6 seeking any state licensure or authorization” for the marriages. (*See* Day 1 Tr. at
7 69:25–70:4.) Dousa did not believe that the marriages she was asked to perform in Tijuana
8 “would or could be used to help the migrants obtain asylum or any other legal status in the
9 United States.” (*See id.* at 70:25–71:4.)

10 26. As part of the Sanctuary Caravan, Dousa and seven other clergy traveled to
11 Tijuana on November 27 and 28, 2018. (*See id.* at 66:15–67:19.) They were not
12 accompanied by a notary public. (*See id.* at 146:15–20.)

13 27. When Dousa and the other clergy crossed the border, “crowds of people would
14 come to seek to have prayer, laying [on] of hands, . . . hear[ing of] their confession[s], . . .
15 bless[ing of] their babies.” (*See id.* at 74:3–15.) Dousa and other clergy also anointed the
16 sick, (*see id.* at 77:23–25); consoled mourners, (*see id.* at 79:20–22); and comforted the
17 distressed. (*See id.* at 80:8–10). Finally, “[o]n November 27 and 28, 2018, Pastor Dousa,
18 along with other clergy, performed approximately 17 religious marriage ceremonies for
19 migrants in Tijuana.” (Stip. Facts at 23 ¶ 11; *see also* Day 1 Tr. at 81:9–14.)

20 28. Although Dousa is not familiar with the requirements for common law
21 marriage in any Central American country, (*see* Day 2 Tr. at 186:17–187:10), it was
22 Dousa’s understanding that the couples whom she and other members of the Sanctuary
23 Caravan married on November 27 and 28, 2018, were couples “who were common-law
24 married back home,” (*see* Day 1 Tr. at 81:24–82:3), and “who had not been able to have a
25 church-blessed wedding” previously. (*See id.* at 82:4–8.) All but one of the couples either
26 had children or had a child on the way. (*See id.* at 83:3–6.)

27 29. Prior to officiating any marriages, Dousa followed the same process she
28 always does, “just in a very condensed form.” (*See id.* at 83:18–84:1.) “Based on those

1 conversations, . . . [Dousa] believe[d] that each of the couples met [her] criteria for agreeing
2 to officiate their Christian marriage.” (*See id.* at 84:9–13.) “To the best of [her]
3 knowledge,” she did not “perform any marriages in Tijuana for any couples who were not
4 sincerely, genuinely a family, but were getting married solely for U.S. immigration
5 purposes.” (*See id.* at 92:10–15.)

6 30. Dousa was not “asked to provide any kind of state authorization or recognition
7 for the marriages [she] officiated in Tijuana in November of 2018.” (*See id.* at 83:10–14.)
8 Although she does not know what members of Al Otro Lado or other clergy may have said
9 about the marriage certificates, (*see* Day 2 Tr. 199:5–15), she personally “was very clear
10 [with the couples] that there would be no state authorization or recognition for these
11 marriages.” (*See* Day 1 Tr. at 84:18–22.)

12 31. Dousa did, however, “provide a certificate of marriage to each of the 17
13 couples whose Christian marriage rituals [she] officiated in Tijuana in November of 2018.”
14 (*See id.* at 87:8–12.) The certificates did not “have any seal or any other marking of any
15 government entity,” (*see id.* at 88:6–9), and were not “notarized by a notary public.” (*See*
16 *id.* at 88:10–13; *see also id.* at 145:24–5; Day 2 Tr. at 196:13–19; ECF No. 153-2 (“Ex.
17 327”).) She did not provide any “sort of legal document” to accompany the marriage
18 certificates. (*See* Day 2 Tr. at 196:5–12.) Dousa also provided the couples with a copy of
19 her business card. (*See* Day 1 Tr. at 92:24–93:1; Day 2 Tr. at 193:22–194:7.)

20 32. Dousa thought that the marriage certificates she provided “might offer the
21 chance for families to stay together once they were taken into immigration and detention.”
22 (*See* Day 1 Tr. at 91:10–18; *see also id.* at 92:4–9; Day 2 Tr. at 199:17–200:3.) She did
23 not believe that they would “be used to try to help [the couples] obtain asylum or any other
24 legal status in the United States.” (*See* Day 1 Tr. at 92:16–22.)

25 33. After returning to the United States, Dousa helped to create a document to
26 help other clergy who were considering pastoral work in Tijuana. (*See id.* at 93:11–24; *see*
27 *also* ECF No. 154-1 (“Ex. 347”); Day 2 Tr. at 197:2–7.) That document emphasized that
28 the clergy would not be providing state recognition of the marriages, (*see* Day 1 Tr. at

1 94:23–95:6; *see also* Ex. 347), although it also recommended bringing a notary. (*See* Day
2 2 Tr. at 197:17–199:4; *see also* Ex. 347.)

3 34. Dousa returned to Tijuana as part of the Sanctuary Caravan on January 2,
4 2019. (*See* Day 2 Tr. at 108:23–109:4.) Although she had intended to stay for “several
5 days,” (*see id.* at 109:11–13), she returned to the United States that same evening through
6 the San Ysidro Port of Entry’s pedestrian SENTI walkway. (*See id.* at 110:9–18.)

7 **IV. Operation Secure Line**

8 35. Around the time that Dousa was involved in organizing the Sanctuary
9 Caravan, “[CBP] began gathering information on individuals associated with the migrant
10 caravan.” (Stip. Facts at 22 ¶ 7.) The migrant caravan consisted of thousands of migrants,
11 primarily from Central America, amassing at the Southern border and seeking to enter the
12 United States. (*See* ECF No. 144 (“Day 3 Tr.”) at 368:12–368:16; *see also id.* at
13 407:12–15, 431:13–20.)

14 36. Around Thanksgiving 2018, there was an attempted mass border crossing in
15 Tijuana. (*See id.* at 408:12–14.) There was another such mass border crossing attempted
16 around the New Year in 2019. (*See id.* at 409:14–17.)

17 37. “In response to the Migrant Caravan, CBP implemented an operational plan
18 known as ‘Operation Secure Line.’” (Stip. Facts at 23 1st ¶ 8.) Operation Secure Line
19 resulted in a reallocation of additional resources to secure the southern border. (*See, e.g.,*
20 ECF No. 146-2 (“Burnett Depo.”) at 34:20–25:14; ECF No. 148-1 (“Dominguez Depo.”)
21 at 41:17–42:22.)

22 **A. Investigations Concerning Dousa**

23 38. As an intelligence agent for CBP’s Sector Intelligence Unit, Nathaniel
24 Trueblood was tasked with gathering information related to immigration-related crimes
25 and creating reports for field agents and other law enforcement officers. (*See* Day 3 Tr. at
26 367:9–368:2, 368:17–23.) Some of the persons of interest were caravan organizers,
27 including some who were providing humanitarian assistance to migrants. (*See id.* at
28 369:15–20.)

1 39. One of Trueblood’s responsibilities was preparing daily reports of interviews
2 that other agents had conducted of migrants who had crossed the border into the United
3 States. (*See id.* at 368:24–369:6.) One type of report is a “report of investigation” (“ROI”),
4 which is entered into a system known as IRS.² (*See id.* at 368:3–7.) IRS is “a database
5 that contains information gathered by border patrol and is accessible to all intelligence
6 agents in border patrol and Customs and Border Protection.” (*See id.* at 391:25–392:4; *see*
7 *also id.* at 434:2–4.)

8 1. *November 30, 2018 Interview of Migrant 1*

9 40. On November 30, 2018, two border patrol agents in Imperial Beach,
10 California—Joshua Morales and Fabian Lopez—conducted an interview of a Honduran
11 national identified in the record as “Migrant 1.” (*See* ECF No. 149-6 (“Ex. 30”); *see also*
12 *Day 3 Tr.* at 373:8:16.) The resultant report was “published” on December 3, 2018. (*See*
13 *Ex. 30* at 1.)

14 41. In relevant part, the report provides:

15 On November 30, 2018[,] Imperial Beath Patrol Station Strike Team Agents
16 Interviewed Honduran national [Migrant 1] [Migrant 1] admitted to
17 being a part of the Migrant Caravan that arrived in Mexico from Central
18 America. . . . [Migrant 1] later admitted to being a volunteer worker for the
19 Park Avenue Christian Church.

19 [Migrant 1] stated that while in Tijuana, she was sitting with other members
20 of the caravan at their camp site when an organizer began addressing the
21 crowd. [Migrant 1] states that the person is a Reverend by the name Kaji S.
22 Dousa. [Migrant 1] stated that Kaji S. Dousa told her and others that were
23 present at the camp site that they should all get married to each other.
24 According to [Migrant 1] Dousa told everyone that if they get married, they
25 w[ould] get papers to live in the United States. [Migrant 1] stated that she is
26 currently married to a man in Honduras and . . . that despite being married in
27 Honduras, they forced her to get married. [Migrant 1] stated . . . that marriage
28 certificates are being provided to facilitate their political asylum claim once
 in the United States.

² IRS appears to stand for “Intelligence Records System.”

1 [Migrant 1] stated that an organizer from Park Avenue Christian Church
2 provided her with a phone since [Migrant 1] volunteered to help the group. . . .

3 A photo of Rev. Kaji S. Dousa was taken from the internet and shown to
4 [Migrant 1] who was unable to identify Rev. Kaji S. Dousa. [Migrant 1] stated
5 that a woman fitting the description of Rev. Kaji S. Dousa provided her with
6 a red business card, with Dousa's name on it above the title "Senior Minister,
Park Avenue Christian Church". . . .

7 [Migrant 1] gave verbal and written consent for Agents to search her cell
8 phone. [Migrant 1] stated the app [redacted] was loaded on the phone when
9 she received it, and there were multiple group chats already created as
well. . . .

10 One of the messages in the "[redacted]" conversation . . . stated that a group
11 named [redacted] is organizing a protest at the San Ysidro Port of Entry to be
12 held on Saturday[,] December 1, 2018. The message states that the intent of
13 the protest is to shut down the San Ysidro Port of Entry. . . . The group chat
14 also contains a recorded voice message that states that [redacted] intends to
15 initiate a violent confrontation with caravan members in order to gather media
attention on the date of the protest.

16 (Ex. 30 at 3–4.) The report included an image of Dousa's business card. (*See* Ex. 30 at 5.)

17 42. On November 30, 2018, an email was circulated under the subject "Caravan
18 INTEL from ASID."³ (*See* ECF No. 152-4 ("Ex. 305").) The email noted "IMB ASID is
19 developing some INTEL to include a possible NY nexus and a church/religious group that
20 is assisting in coordinating at least some of the movement from the caravan." (*See id.*)

21 43. A draft of the report was circulated on December 2, 2018, to a group of
22 recipients including Supervisory CBP Officer Miguel Haro.⁴ (*See* ECF No. 154-2 ("Ex.
23 348").) Miguel Haro responded, copying Morales and Lopez, "I may have found Kaji
24 Dousa and I was wondering if you still had the image you showed to [Migrant 1]
25

26
27 ³ ASID appears to refer to the Alien Smuggler Identification and Deterrence unit.

28 ⁴ Because Miguel Haro's brother, Jose Haro, was also employed by CBP during the relevant period, (*see*
Day 3 Tr. at 446:12–16), the Court will distinguish between them by also using their first names.

1 [redacted]? I would also like to confirm that [Migrant 1] positively identified her in the
2 photograph you showed.”⁵ (*See id.*; *see also* Day 3 Tr. at 495:5–13.)

3 44. Morales responded, “[Migrant 1] was NOT able to identify Dousa, but she did
4 describe a woman fitting the description of Dousa. We showed various pictures of Kaji S.
5 Dousa from the internet, as well as the website of the Park Avenue Christian Church.” (*See*
6 Ex. 348.)

7 45. After it was published on December 3, 2018, a copy of the report was
8 circulated via the November 30, 2018 email chain. (*See* Ex. 305.) The email indicated that
9 “IMB ASID is looking into a church/religious group from NY called Park Avenue
10 Christian Church that may have assisted in coordinating movement of [the] caravan group.
11 Possible association to [redacted]. Rev. Kaji S. Dousa was pushing for subjects at the camp
12 site to marry each o[ther] to facilitate their political asylum case once in the U.S. Subject
13 [Migrant 1,] mentioned below, is currently married to a man in Honduras but stated they
14 forced her to get married at the camp.” (*See id.*)

15 46. The email was forwarded up the chain of command. (*See id.*) Then-CBP
16 Division Chief Patrol Agent for Law Enforcement Operations Kathleen Scudder, (*see* Day
17 3 Tr. at 404:17–20), who reported to then-CBP Chief Patrol Agent for the San Diego Sector
18 Rodney Scott, (*see id.* at 404:21–23), forwarded the email to then-CBP Assistant Chief
19 Patrol Agent overseeing the Foreign Operations Branch in the San Diego Sector of the U.S.
20 Border Patrol, Roberto Del Villar, (*see id.* at 403:5–10), asking, “What the?” (*See* Ex.
21 305.)

22 47. Del Villar then forwarded the email to Juan Rodriguez, then-CBP Acting
23 Special Operations Supervisor, (*see* Day 3 Tr. at 404:10–16, 429:24–430:2), writing “We
24 need to start with some serious targeting efforts. Canceling visas, SENTRIs, Psy[cological]
25 Op[eration]s, etc.” (*See* Ex. 305; *see also* Day 3 Tr. at 418:3–8, 419:15–17.)
26

27
28 ⁵ When Miguel Haro said that he had “found” Dousa, he meant that he had searched for her name in an
internal CBP databased and had found a record for her. (*See* Day 3 Tr. at 495:13–19.)

1 48. Trueblood was “concern[ed]” about Dousa’s purported claim that those who
2 got married would get papers to live in the United States because single adults had “more
3 of a chance of being detained,” whereas those who were married or had children had a
4 greater chance of being released together. (*See* Day 3 Tr. at 396:24–397:14.) Trueblood
5 was also “concern[ed]” by the information on Migrant 1’s phone regarding a possible
6 confrontation at the border “[b]ecause previously there was a physical, violent
7 confrontation with several hundred migrants that had actually closed down the San Ysidro
8 Port of Entry for . . . a period of like 10, 12 hours.” (*See id.* at 397:16–24.) Although
9 Trueblood believed that the report merited follow up, it was not his job to do so. (*See id.*
10 at 398:15–22.)

11 49. On December 3, 2018, Trueblood emailed a “Migrant Interview Analysis” of
12 the November 30, 2018 interview of Migrant 1. (*See* ECF No. 153-1 (“Ex. 325”); *see also*
13 Day 3 Tr. at 369:23–370:17.) Trueblood wrote:

14 On November 30, 2018, Imperial Beach Border Patrol Station Strike Team
15 Agents interviewed Honduran national [Migrant 1] who was part of the
16 Migrant Caravan. [Migrant 1] identified several individuals who are
17 organizing the caravan and attempting to defraud the U.S. government.
18 [Migrant 1] stated that Reverend named Kaji S. DOUSA from the Park
19 Avenue Christian Church told members of the caravan [they] should get
20 married to each other. [Migrant 1] stated . . . that marriage certificates are
21 being provided to facilitate their political asylum claim once in the United
22 States. An organizer from the Park Avenue Christian Church provided her
23 with a phone, which had social media application called [redacted] used by
24 organizers and advisors to the caravan to communicate to each other. The
25 following subjects are the ones designated as Group Chap administrators on
26 the [redacted]. Several of these numbers are linked to individuals already
27 identified by the Department of Homeland Security (DHS) as organizers.

28 . . .

 According to [Migrant 1], DOUSA told members of the caravan that if they
get married, they will get papers to live in the United States. [Migrant 1]
stated that an organizer from the Park Avenue Christian Church provided her
with a phone since [Migrant 1] volunteered to help the group.

1 (Ex. 325 at 2–4; *see also* Day 3 Tr. at 371:19–373:6.)

2 50. Trueblood was not present for the interview and never spoke with Migrant 1.
3 (*See* Day 3 Tr. at 370:19–371:3.) In preparing his email, Trueblood relied on and
4 summarized the interview report prepared by the interviewing border patrol agents. (*See*
5 *id.* at 371:10–18.)

6 51. Dousa credibly testified at trial that she had never “address[ed] a crowd of
7 migrants in Tijuana and t[old] them that if they got married, they would get papers to live
8 in the United States.” (*See* Day 2 Tr. at 139:4–9.) She also denied that she “ever t[old]
9 anyone in Tijuana in any setting that if they got married, they would get papers to live in
10 the United States,” (*see id.* at 139:17–22); they “would get marriage certificates to facilitate
11 their political asylum claims,” (*see id.* at 142:6–15); or she ever “forced anyone to get
12 married.” (*See id.* at 140:14–141:16.) Dousa also denied “giv[ing] anyone in Tijuana any
13 cell phone.” (*See id.* at 145:2–4.)

14 2. *December 17, 2018 Recovery of a Marriage Certificate*

15 52. On December 20, 2018, Trueblood prepared a ROI entitled “Possible
16 Marriage Fraud Migrant Caravan ROI,” (*see* ECF No. 153-5 (“Ex. 330”); *see also* Day 3
17 Tr. at 380:1–4), which provides, in relevant part:

18 **Executive Summary:**

19 Imperial Beach Border Patrol Intelligence Group (IBM Intel Group) was able
20 to identify several subjects involved in performing marriages in Tijuana, MX
21 as a tactic to assist members of the migrant caravan with their asylum claims.
22 On December 17, 2018, IMB Strike Team discovered a marriage certificate
23 linking a Virginia notary and reverend with performing a marriage for two
24 Guatemalan Nationals. Further analysis linked the reverend to another open
25 border activist/attorney named Nicole Ramos who works with the migrant
26 caravan, and initiates active protests at the Otay Mesa Port of Entry (OTM
27 POE). RAMOS is linked to another pastor involved in marrying migrant
28 caravan members that was previously identified by the IMB Intelligence
Group.

Narrative:

On December 17, 2018, IMB Border Patrol Agents apprehended a Guatemala
National family . . . for illegally entering the United States (U.S.). . . .

1 During the search of their personal belong[ing]s by IMB Strike Team, a
2 marriage certificate was found showing [redacted] were recently married on
3 December 03, 2018[,] in Tijuana, MX. The certificate had a simple generic
4 overlay with no distinct markings other than an official notary stamp from the
5 Commonwealth of Virginia. The registered notary public is a subject named
6 Alicia Rose HORST The reverend who performed the ceremony is a
7 subject named Brittany CAINE-Conley from the United Church of Christ
8 located in Charlottesville, VA.

7 (Ex. 330 at 1 (emphasis in original).)

8 53. The ROI continues with “a more extensive analysis on the subjects connected
9 to the marriage certificate.” (*See id.*) Several pages later, in a discussion of Ramos, the
10 report notes that, “[o]n November 27, 2018, RAMOS posted about how Al Otro Lado was
11 partnering with New Sanctuary Coalition. She linked Kaji DOUSA and DOUSA was in
12 the photograph. DOUSA was previously identified by IMB Strike Team as another pastor
13 performing marriage ceremonies in Tijuana, MX” (*See id.* at 7.)

14 54. There is then a separate entry for Dousa, identifying her “Association” as
15 “Pastor for Park Avenue Christian Church/Coordinator for the Migrant Caravan.” (*See id.*)
16 The ROI notes:

17 On November 30, 2018, an illegal alien named [Migrant 1] was interviewed
18 regarding her role in the migrant caravan. [Migrant 1] stated that while in
19 Tijuana, she was sitting with other members of the caravan at their campsite
20 when an organizer began addressing the crowd. [Migrant 1] states [it] was
21 Reverend Kaji S. DOUSA. [Migrant 1] stated that DOUSA told her and
22 others that were present at the migrant campsite that they should all get
23 married to each other. According to [Migrant 1] DOUSA told everyone that
24 if they got married, they would get papers to live in the United States.

23 (*See id.* at 8.)

24 55. The ROI concludes:

25 The Migrant Caravan is a common cause for numerous open border,
26 humanitarian, and other groups with the goal to challenge U.S. Immigration
27 laws. RAMOS works for one of these groups named Al Otro Lado.
28 According to their website, this organization assists deportees, migrants, and
refugees in Tijuana, MX. They attempt to use mechanisms such as the U Visa,

1 the Credible Fear screening process for refugees, and Humanitarian Parole to
2 allow aliens to gain legal status in the U.S. RAMOS has documented travel
3 to Guatemala and the southern Mexico Border in order to assist migrants with
4 their goal of entering the U.S. RAMOS is a common connection between
5 both DOUSA and CAINE who have married an unknown number of migrants
6 with a promise it will help their asylum claims.

7 Further investigation into the regulations pertaining to the violations of notary
8 law of the Commonwealth of Virginia shows possible violations and/or
9 criminal activity. HORST possibly violated the prohibition of a notary public
10 to offer legal advice on immigration or other legal matters, unless she is
11 authorized or licensed to practice law within the Commonwealth or accredited
12 pursuant to 8 C.F.R. 292.2 to practice immigration law

13 (*Id.*)

14 56. As of December 20, 2018, Trueblood had no information that Caine-Conley
15 had told migrants that getting married would help with their asylum claims, (*see* Day 3 Tr.
16 at 386:5–8), and no evidence aside from Migrant 1’s statement that Dousa was performing
17 marriages to help with asylum claims. (*See id.* at 386:19–23.)

18 57. On December 20, 2018, Ricardo Gilbert, a special agent assigned to the HIS
19 Document and Benefit Fraud Task Force,⁶ reached out to Trueblood and another agent
20 regarding “the recent reporting regarding Hondurans being found with Marriage
21 Certificates and/or with VA Notarized documents.” (*See* ECF No. 153-3 (“Ex. 328”); *see*
22 *also* Day 3 Tr. at 387:1–10.) He also requested clarification as to several questions. (*See*
23 Ex. 328.)

24 58. Trueblood responded the following day, attaching the ROI and a copy of the
25 marriage certificate. (*See* Ex. 328; *see also* Day 3 Tr. at 387:21–23.) In response to
26 Gilbert’s questions, Trueblood noted that the marriage certificate recovered on
27 December 17, 2018, was a “generic[,] illegitimate marriage certificate.” (*See* Ex. 328; *see*
28 *also* Day 3 Tr. at 387:24–388:1.) At his deposition, Trueblood testified that he believed
the marriage certificate looked illegitimate because the notary and officiant were from

⁶ HIS appears to refer to ICE’s Homeland Security Investigations Service.

1 Virginia, while the marriage happened in Tijuana. (*See* Day 3 Tr. at 389:8–25.) Trueblood
 2 also noted that “[i]t appears a Reverend named Kaji Rosa DOUSA is telling the migrants
 3 if they get married, they w[ill] get papers to live in the United States.” (*See* Ex. 328; *see*
 4 *also* Day 3 Tr. at 391:5–9.)

5 59. On December 28, 2018, Miguel Haro received an email with the subject line
 6 “SM/OS and financials on fraud marriage certificate group.”⁷ (*See* ECF No. 151-1 (“Ex.
 7 79); *see also* Day 3 Tr. at 535:1–15.) The email contains bullet points related to the
 8 Facebook and LinkedIn profiles and certain financial information for four “targets”: Alicia
 9 Rose Horst, Brittany Caine-Conley, Nicole Elizabeth Ramos, and Kaji Rosa Dousa
 10 Spellman. (*See* Ex. 79; *see also* Day 3 Tr. at 535:16–539:15.)

11 60. The email indicates that Dousa’s “Facebook is blank and private” and that a
 12 report from a financial tracking service used by the United States government in 2012
 13 turned up a \$12,876 withdrawal from a PNC bank in Pittsburgh. (*See* Ex. 79; *see also* Day
 14 3 Tr. at 542:14–19.) An additional search in another financial tracking service yielded no
 15 results. (*See* Day 3 Tr. at 542:20–543:1.)

16 61. On January 14, 2019, Trueblood published a Field Information Report entitled
 17 “Migrant Caravan—Possible Marriage Fraud,” (*see* ECF No. 150-4 (“Ex. 73”); *see also*
 18 Day 3 Tr. at 391:18–21), which contains “basically the same . . . information [as] in the
 19 marriage fraud report of information.” (*See* Day 3 Tr. at 392:5–15.)

20 ***B. Actions Regarding Dousa’s TTP Status***

21 62. On December 2, 2018, Miguel Haro emailed Gonzales, cc’ing Oliveri,
 22 identifying Dousa as a SENTRI holder who was possibly a caravan organizer. (*See* ECF
 23 No. 149-5 (“Ex. 29”); *see also* Day 2 Tr. at 259:18–260:23, 261:5–10.) Miguel Haro noted
 24 that he had “placed a lookout on the subject,” (*see* Ex. 29; *see also* Day 2 Tr. at
 25 261:12–18; Day 3 Tr. at 497:8–14, 499:7–10, 574:25–575:2), meaning she could be
 26 referred to secondary screening or tracked when she crossed the border. (*See* Day 2 Tr. at
 27

28 ⁷ Based on the content of the email, SM/OS appears to stand for “Social Media/Online Selectors.”

1 262:17–22; *see also* Day 3 Tr. at 497:15–19.) A lookout is placed in the Treasury
2 Enforcement Communications System (“TECS”), (*see id.* at 269:18–19, 280:8–9; *see also*
3 *id.* at 317:25–318:3), and can affect the subject’s TTP status. (*See id.* at 262:23–263:1,
4 269:10–270:1.)

5 63. Miguel Haro added that he “would like to have her interviewed to see if she
6 is helping coordinate the caravan in Tijuana,” (*see Ex. 29; see also* Day 2 Tr. at 263:2–9),
7 but that “her continued enrollment [in Global Entry] I’ll leave up to your discretion.” (*See*
8 *Ex. 29; see also* Day 2 Tr. at 263:4–264:7; Day 3 Tr. at 498:20–499:6.) The email also
9 transmitted the Field Information Report (“FIR”) discussing Morales and Lopez’s
10 interview of Migrant 1. (*See Ex. 29; see also* Day 2 Tr. at 260:24–261:1.)

11 64. On December 3, 2018, at 7:03 a.m., Gonzales responded, asking Miguel Haro
12 to “[p]lease, let us know once you confirm this information.” (*See Ex. 29; see also* Day 2
13 Tr. at 264:13–19; Day 3 Tr. at 500:9–13.)

14 65. Miguel Haro responded that evening at 8:19 p.m. that “Border Patrol showed
15 various pictures of Kaji S. Dousa from the internet, as well as the website of the Park
16 Avenue Christian Church[. Migrant 1] was not able to identify Dousa, but she did describe
17 a woman fitting the description of Dousa. Attached is a picture of the business card
18 [Migrant 1] was provided with and had in her possession.” (*See Ex. 29; see also* Day 2 Tr.
19 at 264:20–265:7; Day 3 Tr. at 500:22–501:2.)

20 66. On December 3, 2018, Miguel Haro also disseminated an “organizers line up”
21 containing photographs and names of purported “instigators.” (*See* ECF Nos. 149-9 (“Ex.
22 39”), 150-3 (“Ex. 64”); *see also* Day 2 Tr. at 286:6–287:20; Day 3 Tr. at 503:15–508:3;
23 ECF No. 149-3 (“Ex. 14”).) Beginning on December 5, 2018, and various dates thereafter,
24 Miguel Haro disseminated “target profiles” for twenty-four “caravan organizers/
25 instigators” to a wide variety of individuals within CBP. (*See* ECF Nos. 149-10 (“Ex. 40”),
26 151-3 (“Ex. 109”), 151-4 (“Ex. 110”), 151-5 (“Ex. 111”), 152-2 (“Ex. 302”); *see also* Day
27 2 Tr. at 287:21–288:24, 289:16–290:1; Day 3 Tr. at 508:17–518:9, 531:1–534:4; ECF No.
28 152-1 (“Ex. 301”).) One of the attached profiles was for Dousa and included her name,

1 photograph, and other identifying information. (*See* Exs. 40, 109, 301, 302; *see also* Day
2 2 Tr. at 289:3–9, Day 3 Tr. at 508:17–509:18.) In the process of updating the target
3 profiles, Miguel Haro emailed Gonzales on December 5, 2018, to ask whether “any
4 decision [had] been made about her membership in the TTP” or whether they were “in a
5 holding pattern until she is interviewed by TTRT.” (*See* ECF No. 152-5 (“Ex. 309”); *see*
6 *also* Day 3 Tr. at 525:11–19.)

7 67. On December 5, 2018, Gonzales placed an “interdiction” on Dousa in GES.
8 (*See* ECF No. 150-2 (“Ex. 51-2”) at 48–49; ECF No. 154-7 (“Ex 580”); *see also* Day 2 Tr.
9 at 268:6–10, 348:13–349:5.) An interdiction is distinct from a lookout and triggers an alert
10 when the subject tries to go through a TTP lane at the border, (*see* Day 2 Tr. at
11 268:11–269:9; *see also* Day 3 Tr. at 526:18–527:3), and, as with a lookout, can affect the
12 subject’s continued eligibility for TTPs. (*See* Day 2 Tr. at 269:10–270:1.)

13 68. On December 6, 2018, Gonzales emailed Miguel Haro, cc’ing others, “Today
14 I suspended [Dousa’s] Global access as well,” (*see* Ex. 309; *see also* Day 2 Tr. at
15 270:2–6; Day 3 Tr. at 526:11–13), meaning Dousa’s Global Entry had been revoked. (*See*
16 Day 2 Tr. at 270:7–272:2, 274:23–275:4.) He added, “I am going to wait until you guys
17 interview her so I can add more information in her account.” (*See* Ex. 309; *see also* Day 3
18 Tr. at 526:13–15.) Miguel Haro responded, confirming receipt. (*See* Ex. 309; *see also* Day
19 3 Tr. at 527:4–13.)

20 69. On December 13, 2018, at 10:15 p.m., Miguel Haro forwarded to Oliveri an
21 email with the subject line “DOUSA KANJI [I]INFO/MARRIAGE FRAUD
22 CERTIFICATE,” in which he asked Oliveri to forward the email to Gonzales to “see what
23 you and him think of this for this TTP participant.” (*See* ECF No. 149-14 (“Ex. 44”); Day
24 2 Tr. at 304:25–305:25; Day 3 Tr. at 529:3–7.) Oliveri understood this to mean that Miguel
25 Haro wanted his and Gonzales’s thoughts about possibly revoking Dousa’s TTP privileges.
26 (*See* Day 2 Tr. at 306:1–5, 306:12–19.)

27 ///

28 ///

1 70. Oliveri responded the following day, December 14, 2018, “We revoked her.”
2 (See ECF Nos. 149-8 (“Ex. 33”), 152-7 (“Ex. 314”); *see also* Day 2 Tr. at 306:20–307:1;
3 Day 3 Tr. at 529:8–16.)

4 71. Ultimately, despite these email communications, Dousa’s GES contains “no
5 indication of revocation.” (See Day 2 Tr. at 333:21–334:4.)

6 ***C. December 10, 2018 Email to the Mexican Government***

7 72. On December 10, 2018, Oliveri emailed an official with the Mexican
8 immigration authorities, requesting in Spanish that the Mexican government detain and
9 return to the United States a list of twenty-four people corresponding to the twenty-four
10 “caravan organizers/instigators” for whom target profiles had been prepared on December
11 5, 2018. (See ECF Nos. 149-11 (“Ex. 41”); *see also* Day 2 Tr. at 290:1–293:13.)
12 Translated into English, the email reads:

13 Greetings [redacted],

14 CBP has identified the following individuals as part of the
15 organizers/instigators of the migrant caravan that is currently located in
16 Tijuana. The majority of these persons are United States citizens and there
17 exists a great possibility that they do not have adequate documentation to be
18 in Mexico. CBP wishes to interview them all and respectfully requests of the
19 INM that they deny their entry to Mexico. If they are found, please send them
back to the United States so that CBP may proceed with the interview. Your
attention and assistance is very appreciated.

20 (Ex. 41; *see also* Day 2 Tr. at 294:16–296:5, Day 3 Tr. at 519:10–520:14.)

21 73. On December 11, 2018, Oliveri forwarded the email to Miguel Haro, (*see* ECF
22 No. 149-12 (“Ex. 42”); *see also* Day 2 Tr. at 304:14–23, Day 3 Tr. at 518:17–20), who, in
23 turn, forwarded the “list” to the Director of Field Intelligence for the Office of Intel. (See
24 ECF No. 149-13 (“Ex. 43”); *see also* Day 3 Tr. at 522:20–523:8.)

25 74. The list in the email contained fourteen U.S. citizens, including Dousa. (See
26 Exs. 41, 42, 43; *see also* Day 2 Tr. at 290:12–291:2, 293:14–18, Day 3 Tr. at 521:5–11.)
27 Oliveri was not involved in creating the list of people the email contained. (See Day 2 Tr.
28 at 294:1–4, 301:21–302:9.)

1 75. This was the first and only time that Oliveri has ever sent such a
 2 communication, (*see id.* at 297:6–298:1, 298:25–299:12), and he is not aware of anyone
 3 else at CBP sending such a communication to a foreign government. (*See id.* at
 4 299:13–300:18; *see also id.* at 344:17–22.) Although he was involved in writing the email,
 5 (*see id.* at 293:19–25), Oliveri does not recall who asked him to send the email, (*see id.* at
 6 291:3–5, 302:10–14), or why he told the Mexican government that there was a large
 7 possibility that the people on that list did not have adequate documentation to be in Mexico.
 8 (*See id.* at 298:12–16.)

9 76. In fact, “[n]o one told [Oliveri]” that there was a great possibility that the
 10 people on the list did not have adequate documentation to be in Mexico. (*See id.* at
 11 302:14–18.) At trial, he characterized the addition of that statement as “[l]iterally, creative
 12 writing . . . [w]ithout any basis.” (*See id.* at 302:19–303:4.)

13 77. Oliveri never received a response to the December 10, 2018 email, (*see id.* at
 14 326:5–10), and is not aware of any action taken pursuant to it.⁸ (*See id.* at 326:11–13.)
 15 Although he testified that he did not “have any expectation . . . the recipients in Mexico
 16 would take the action [he had] requested,” (*see id.* at 327:10–13), no other explanation was
 17 offered for why he would have sent it. Oliveri has not followed up on, retracted, or
 18 corrected the email in any way and does not know whether anybody else has. (*See id.* at
 19 303:17–25, 304:6–12.)

20 ///

21
 22 ⁸ Although not introduced into the record—and therefore not considered as part of the instant Statement
 23 of Decision—the Court notes that the DHS Office of Inspector General (“OIG”) reported that,
 24 “[a]pproximately a month after [Oliveri]’s email, Mexico notified the FOB that it was denying entry to
 25 [an] American [listed in the email].” *See* OIG, DHS, *CBP Targeted Americans Associated with the*
 26 *2018–2019 Migrant Caravan* 19, OIG-21-62 (Sept. 20, 2021), *available at* <https://www.oig.dhs.gov/sites/default/files/assets/2021-09/OIG-21-62-Sep21.pdf> (the “DHS OIG Report”). Because the Court “may
 27 take judicial notice of the fact that such a report was published by the OIG, but not of the facts included
 28 within the report,” *see Dasenbrock v. Enenmoh*, No. 1:11-CV-01884-DADGSAPC, 2018 WL 10322174,
 at *2 (E.D. Cal. Jan. 8, 2018); *see also, e.g., Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 999 (9th
 Cir. 2018) (“[A] court cannot take judicial notice of disputed facts contained in such public records.”
 (citing *Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001))), the Court reiterates that it does not
 consider this fact as part of the record or its analysis.

1 **D. Dousa’s Detention and Interrogation**

2 78. “On January 2, 2019, after having returned to Tijuana, Pastor Dousa crossed
3 the border into the United States from Mexico at the San Ysidro Port of Entry, but was not
4 able to use her Global Entry membership to cross in an expedited fashion, and instead was
5 referred to secondary inspection.” (Stip. Facts at 23 ¶ 13; *see also* Day 2 Tr. at
6 110:19–111:12.) An email alert was sent to Miguel Haro pursuant to the TECS alert he
7 had placed on Dousa. (*See* ECF No. 154-3 (“Ex. 349”); *see also* Day 3 Tr. at 544:7–19.)

8 79. Dousa was not informed why she had been placed into secondary. (*See* Day
9 2 Tr. at 112:1–3; *see also id.* at 115:15–18.) After she was referred to secondary, the
10 Tactical Terrorism Response Team was contacted for an interview. (*See, e.g.*, Burnett
11 Depo. at 38:14–19.) Then-CBP Agent Jeremy Burnett and an officer identified in the
12 record as “CBP Agent 1” were selected to perform the interview. (*See id.* at 44:14–45:6;
13 *see also* CBP Agent 1 Depo. at 40:12–17.)

14 80. Burnett and CBP Agent 1 had approximately 30 to 40 minutes to prepare
15 before the interview. (*See* Burnett Depo. at 38:20–39:6.) During that time, they queried
16 databases to determine the subject’s crossing and interview history and called the
17 Emergency Operations Center (“EOC”) to determine whether there were any instructions
18 or questions to be asked. (*See id.* at 39:7–42:3; *see also id.* at 33:6–34:15; CBP Agent 1
19 Depo. at 26:17–27:5, 28:9–29:13.) Although Burnett could not recall whether he had
20 conferred with CBP Agent 1 prior to interviewing Dousa, it was generally their practice to
21 do so. (*See* Burnett Depo. at 46:17–22.)

22 81. CBP Agent 1 was “confident” that prior to the interview he knew that Dousa
23 “was . . . possibly involved in marriage fraud.” (*See* CBP Agent 1 Depo. at 43:24–44:20.)
24 He also believed that he may have called Miguel Haro after querying Dousa’s TECS record
25 and before the interview. (*See id.* at 49:12–50:5.) He was unsure whether he learned of
26 Dousa’s alleged involvement in marriage fraud from TECS or from Miguel Haro. (*See id.*
27 at 50:13–18.)

28 ///

1 82. Burnett, on the other hand, did not recall knowing in advance of the interview
2 that there was an allegation that Dousa was committing marriage fraud. (*See* Burnett Depo.
3 at 51:7–13.) He believes he may have seen “a chart of pictures of certain individuals . . .
4 they believed were involved in the caravan,” which was likely a targeting package, (*see id.*
5 at 58:22–59:4), and that Dousa’s picture was on it. (*See id.* at 51:1–6.)

6 83. Dousa was detained and interviewed by Burnett and CBP Agent 1 regarding
7 her ministry to members of the migrant caravan. (Stip. Facts at 23 ¶ 14; *see also* Day 2 Tr.
8 at 111:19–114:16.) Burnett asked questions, while CBP Agent 1 took notes. (*See* Burnett
9 Depo. at 47:25–48:7; CBP Agent 1 Depo. at 40:18–41:9, 43:8–11.) According to Burnett’s
10 recollection, the TTRT agents were generally instructed to ask questions regarding why the
11 subject was in Mexico, their involvement in the caravan, and whether they were aiding
12 with illegal crossings, (*see* Burnett Depo. at 62:20–63:12; *see also* CBP Agent 1 Depo. at
13 30:6–20), and Dousa was asked these questions. (*See* Burnett Depo. at 63:13–15; *see also*
14 *id.* at 74:7–75:2; CBP Agent 1 Depo. at 45:3–9.)

15 84. Burnett testified at his deposition that the interview was “a usual interview.”
16 (*See* Burnett Depo. at 35:23–36:17.) CBP Agent 1 believed that Dousa was being “open”
17 with them. (*See* CBP Agent 1 Depo. at 44:21–45:2.)

18 85. In what Miguel Haro later characterized as a possible “lack of
19 communication,” (*see* Day 3 Tr. at 577:11–25), “[t]he CBP agents who interviewed Pastor
20 Dousa in secondary inspection did not ask any questions about any marriage ceremonies
21 Pastor Dousa performed” in Tijuana in November 2018, (*see* Stip. Facts at 23 ¶ 15; *see*
22 *also* Day 2 Tr. at 113:12–21, 138:4–6; Day 3 Tr. at 548:24–549:12), and—
23 understandably—she did not volunteer any such information. (*See* Day 2 Tr. at 114:6–14,
24 210:24–211:13.) According to CBP Agent 1, “[i]t didn’t seem necessary” to ask Dousa
25 about marriage fraud. (*See* CBP Agent 1 Depo. at 45:10–15.)

26 86. The interviewing agents also did not ask Dousa any questions regarding the
27 Virginia notary, (*see id.* at 147:10–24), or the report based on Migrant 1’s interview that
28 Dousa had addressed a crowd in Tijuana and told them that if they got married, they would

1 get papers to live in the United States, (*see id.* at 140:4–10); forced people to get married,
2 (*see id.* at 141:17–21); and had provided anybody with a cell phone. (*See id.* at 145:5–9.)

3 87. After forty-three minutes, the agents told Dousa she was free to go. (*See id.*
4 at 114:15–21; *see also id.* at 209:7–14.) They gave her back her Global Entry card. (*See*
5 *id.* at 212:3–5.) A subsequent query of a CBP database reported that Dousa had
6 “PRESENTED HER VALID GLOBAL ENTRY CARD . . . FOR ENTRY INTO THE
7 UNITED STATES.” (*See* ECF No. 154-12 (“Ex. 586”) (emphasis in original); *see also*
8 Day 2 Tr. at 327:21–328:16.)

9 88. Although Dousa had intended to, she did not return to Tijuana the following
10 day or for the rest of the week because she “was afraid” and “wasn’t sure what was
11 happening.” (*See id.* at 115:1–14; *see also id.* at 134:3–8.)

12 89. On January 3, 2019, Miguel Haro received an email notification reporting
13 “NEGATIVE INSPECTION RESULTS,” (*see* ECF No. 154-4 (“Ex. 350”) (emphasis in
14 original); *see also* Day 3 Tr. at 544:22–545:15), meaning “nothing was seized from Pastor
15 Dousa and no derogatory information was found” during her interview with the TTRT the
16 previous day. (*See* Day 3 Tr. at 545:16–19.)

17 90. On January 4, 2019, a “Field Encounter” was published entitled “MIGRANT
18 CARAVAN 2019/KAJI DOUSA.” (*See* ECF No. 151-9 (“Ex. 125”); *see also* Day 3 Tr.
19 at 546:19–21.) In relevant part, the Field Encounter provided:

20 **EXECUTIVE SUMMARY**

21 On January 2, 2019[,], at approximately 1847 hours, Kaji DOUSA (DOB:
22 [redacted]) applied for entry into the US from Mexico via the San Ysidro Port
23 of Entry Pedestrian West area. DOUSA presented her valid Global Entry card
24 bearing #[redacted], her name, and picture for entry into the United States.
25 Primary Customs and Border Protection Officer Salazar received two negative
26 customs declarations from DOUSA and she stated she was going to San
27 Diego. Primary CBPO [redacted] Queried DOUSA’S name in CBP systems
28 and received a computer generated alert. DOUSA was referred and escorted
to the Pedestrian West secondary area for further inspection. CBPO
[redacted] and CBPO Burnett were notified of the alert and responded.

28 ///

1 An interview of DOUSA was conducted by CBPO Burnett and CBPO
2 [redacted]. DOUSA made the following statements:

3 **NARRATIVE**

4 DOUSA arrived in San Diego on Sunday[,] December 30, 2018[,] and spent
5 New Year's in Los Angeles. She traveled to Tijuana on this date, January 2,
6 2019[,] and spent the day with immigrants as part of her "Aid Organization."
7 She is a Pastor for Park Avenue Christian Church She is now going to
8 San Diego and tomorrow, Thursday, January 3, 2019[,] she will return to
Tijuana. She will be returning to New York on Saturday, January 5, 2019.

9 DOUSA stated she speaks to migrants who want to cross over to the US "the
10 right way" by "preparing them" to share their credible fear story truthfully.
11 She has been helping the migrants who[se] numbers are coming up at the
12 shelters in Tijuana, Mexico. When she talks to people at the shelter, she sees
13 them frustrated and "at a breaking point." Some of them want to cross through
the desert. DOUSA does not encourage them to go through the desert because
it is dangerous.

14 DOUSA has been a pastor since 2006 and has been working on this project
15 since 2009, when she was with "New Sanctuary" in New York. . . . In the
16 past, she has worked with Immigration and Customs Enforcement in New
17 York as well as CBP New York but was not too clear as to what her dealings
were/are with them.

18 . . . No derogatory information was found during interview[.]

19 DOUSA was released at approximately 1930 hours.

20
21 (Ex. 125 at 4; *see also* Day 3 Tr. at 546:24–548:22.)

22 91. By writing "[n]o derogatory information was found," CBP Agent 1 meant
23 "[n]o information that was gathered . . . sa[id] that she was involved in . . . marriage fraud
24 or anything that had to do with the caravan." (*See* CBP Agent 1 Depo. at 58:21–59:7.) In
25 CBP Agent 1's opinion, none of the information in the Field Encounter "support[ed] taking
26 any adverse action against Pastor Dousa." (*See id.* at 76:7–11.)

27 92. Although he considered the information in the Field Report to be "potentially
28 relevant to Pastor Dousa's continued enrollment in CBP's Trusted Traveler program," (*see*

1 Day 3 Tr. at 549:22–25), Miguel Haro did not send it to Oliveri or Gonzales, (*see id.* at
2 550:1–3), with whom he had previously corresponded regarding Dousa’s continued TTP
3 enrollment. (*See id.* at 549:13–21.)

4 93. That same day, Miguel Haro emailed the TTRT: “If Kaji Dousa crosses again
5 please see attached ROI and image. She may be part of furthering fraudulent marriage
6 certificates with a valid VA notary stamp. If encountered[,] direct questions to association
7 to women from ROI and how she’s assisting with marriage certificates.” (*See* ECF Nos.
8 150-5 (“Ex. 78”), 154-8 (“Ex. 582”); *see also* Day 3 Tr. at 552:6–10, 578:1–579:10;
9 Burnett Depo. at 80:1–19.)

10 94. On January 7, 2019, the Emergency Operations Center provided a briefing.
11 (*See* ECF No. 154-5 (“Ex. 351”); *see also* Day 3 Tr. at 556:25–557:4.) Among other things,
12 the briefing included slides concerning “CBP Encounter[s]/Interview[s]” with “Caravan
13 Coordinator[s],” including Dousa. (*See* Ex. 351 at 22–23.) The slide contained bullet
14 points from the Field Encounter from her TTRT interview, (*see id.* at 23; *see also* Day 3
15 Tr. at 557:9–22), but nothing about marriage ceremonies in Tijuana. (*See* Ex. 351 at 23;
16 *see also* Day 3 Tr. at 557:23–558:3.)

17 ***E. The Migrant Caravan PowerPoint***

18 95. In the beginning of 2019, following a mass attempt by migrants to cross the
19 Southern border into the United States, then-CBP Chief Patrol Agent for the San Diego
20 Sector Scott asked for a briefing on efforts being taken regarding the migrant caravan. (*See*
21 Day 3 Tr. at 409:18–410:3.) In response, Del Villar assigned Rodriguez to create a
22 document to brief Scott about individuals associated with the caravan. (*See id.* at
23 410:12–411:1, 431:21–432:3.)

24 96. Rodriguez “directly obtained” “all of the information contained within the
25 PowerPoint.” (*See id.* at 433:12–15.) Rodriguez first performed keyword searches for
26 terms such as “caravan,” “migrant caravan,” “caravan 2019,” and “migrant caravan 2019”
27 in the IRS database. (*See id.* at 433:21–434:12.)

28 ///

1 97. Rodriguez then skimmed the search results and relevant reports. (*See id.* at
2 434:13–14, 435:17–24.) Individuals who were identified in the reports were added to the
3 PowerPoint. (*See id.* at 436:5–437:12.) Rodriguez included uniform information for each
4 individual, including their photograph, name, date of birth, county of citizenship, role,
5 whether a TECS alert had been placed, and a “disposition.” (*See id.* at 437:13–439:8.)
6 Rodriguez completed these steps in approximately four to five hours on January 7, 2019.
7 (*See id.* at 443:20–444:5.)

8 98. Ninety-nine percent of the information included in the PowerPoint came from
9 the IRS keyword search results, (*see id.* at 439:9–13), with the rest coming from other CBP
10 databases. (*See id.* at 439:14–440:6.) Aside from role and disposition, Rodriguez
11 considered the information to be accurate. (*See id.* at 442:17–443:2.) Verifying the
12 information, however, was beyond the scope of the task he had been assigned. (*See id.* at
13 440:18–441:12.)

14 99. After compiling this information, Rodriguez sent it two other supervisors
15 whose role was limited to the aesthetic presentation of that material in PowerPoint format.
16 (*See id.* at 433:2–8, 433:16–20, 444:2–9.) One of those supervisors sent the completed
17 PowerPoint to Rodriguez the following morning at 7:26 a.m. (*See* ECF No. 152-10 (“Ex.
18 317”); *see also* Day 3 Tr. at 444:14–445:10.)

19 100. At 7:39 a.m. on January 8, 2019, Rodriguez circulated the PowerPoint
20 presentation, entitled “SDC-FOB: Migrant Caravan FY-2019: Suspected Organizers,
21 Coordinators, Instigators, and Media” (the “Migrant Caravan PowerPoint”),⁹ to Jose and
22 Miguel Haro, among others. (*See* ECF Nos. 149-15 (“Ex. 48”), 152-8 (“Ex. 315”); *see*
23 *also* Day 2 Tr. at 307:15–308:1, 308:14–22; Day 3 Tr. at 446:4–11, 559:1–12.) The cover
24 email said, “this is what we have so far, see attached.” (*See* Exs. 48, 315.) It added, “I
25 know Saro [Oliveri] mentioned . . . a few SENTRIs that were pulled, do you know which
26 ///

27 _____
28 ⁹ SDC-FOB stands for “San Diego Sector Foreign Operations Branch.”

1 ones? Are the subjects on here?” ((*See* Ex. 315; *see also* Day 2 Tr. at 308:2–13, Day 3 Tr.
2 at 450:16–24.)

3 101. The Migrant Caravan PowerPoint included a photograph of Dousa *without* an
4 “X” over her face, indicating her “Role” and “Disposition” as “N/A” and that there had
5 been “No” “Alert Placed.” (*See* Ex. 315; *see also* Day 2 Tr. at 308:25–309:13; Day 3 Tr.
6 at 448:16–449:14, 559:16–560:3; Stip. Facts at 23 ¶ 17.)

7 102. Later that morning, Miguel Haro responded to Rodriguez, copying Dousa’s
8 photograph and information from the Migrant Caravan PowerPoint into the email. (*See*
9 ECF Nos. 149-15 (“Ex. 48”), 152-9 (“Ex. 316”); *see also* Day 2 Tr. at 309:20–25, Day 3
10 Tr. 452:17–24, 560:9–12.) He noted:

11 She has Global Entry[.]

12 It was put on hold pending interview.

13
14 She was interviewed by TTRT and she has a [TECS hit]. She was marrying
15 the migrants and she is associated [with] possible marriage fraud with a VA
16 notary that is down in Mex too. I believe Agent Trueblood did an FE on the
marriage fraud. I’ll look for it and forward.

17 (*See* Exs. 48, 316; *see also* Day 2 Tr. at 310:17–311:9, Day 3 Tr. at 452:5–453:6,
18 560:13–561:16.)

19 103. After further email exchanges, Rodriguez asked, “So she still has her Global
20 Card?” (*See* ECF No. 152-6 (“Ex. 311”).) At 11:11 a.m. on January 8, 2019, Miguel Haro
21 responded, “Yeah, the enrollment center wasn’t 100% convinced. So they were waiting
22 on the interview. I’ll check GES (Global Enrollment System) and see what they did with
23 her. I’ll let you know.” (*See id.*)

24 104. Despite receiving this information and understanding that Dousa still had her
25 Global Entry card, Rodriguez “made a mistake and . . . never went back and adjusted or
26 adjudicated that information on the PowerPoint.” (*See* Day 3 Tr. at 477:3–478:6.) He
27 presented the Migrant Caravan PowerPoint to Scott on the morning of January 9, 2019.

28 ///

1 (*See id.* at 455:25–456:7.) The briefing lasted approximately 90 seconds. (*See id.* at
2 475:17–21.)

3 105. On January 9, 2019, and again on January 10, 2019, Rodriguez circulated a
4 revised version of the Migrant Caravan PowerPoint “containing 67 identified Caravan
5 Organizers.” (*See* ECF Nos. 149-1 (“Ex. 5”), 151-6 (“Ex. 119”), 152-3 (“Ex. 303”); *see*
6 *also* Day 2 Tr. at 311:11–312:5, Day 3 Tr. at 456:8–457:10, 563:11–24; Stip. Facts at 23
7 ¶ 16.) Rodriguez invited the recipients to “[f]eel free to send out to whomever you like.”
8 (*See* Exs. 5, 119, 303; *see also* Day 2 Tr. at 312:6–8, Day 3 Tr. at 457:2–10, 474:13–19.)
9 Miguel Haro forwarded the email containing the revised Migrant Caravan PowerPoint to a
10 number of recipients without comment. (*See* Ex. 119; *see also* Day 3 Tr. at 564:3–20.)

11 106. The revised Migrant Caravan PowerPoint added a yellow “X” over Dousa’s
12 photo indicating revocation of her TTP status, changed her “Role” to “Associate,”
13 indicated that an “Alert” had been “Placed,” and changed “Disposition” to “SENTRI
14 Revoked.” (*See* ECF Nos. 149-4 (“Ex. 27”), 151-10 (“Ex. 126”); *see also* Day 2 Tr. at
15 312:20–315:19, Day 3 Tr. at 459:15–460:22, 562:17–563:3; Stip. Facts at 23 ¶ 18.) Oliveri
16 cannot explain why these changes were made after the TTRT found no derogatory
17 information about Dousa after interviewing her on January 2, 2019. (*See* Day 2 Tr. at
18 317:8–15.)

19 107. On February 27, 2019, NBC sent several agencies a “request for comment”
20 on the Migrant Caravan PowerPoint, (*see* ECF No. 149-2 (“Ex. 9”)), which had been
21 leaked. (*See* Stip. Facts at 23 ¶ 19; *see also* Day 3 Tr. at 413:6–7.) The email was circulated
22 within CBP, (*see* Ex. 9), with Del Villar eventually writing that “Chief [Scott] is asking
23 [the Sector Intelligence Unit] and [Foreign Operations Branch] to help him articulate why
24 we are targeting these individuals.” (*See id.*; *see also* Day 3 Tr. at 414:6–19.)

25 108. On March 8, 2019, an entry was added to Dousa’s TECS record: “Migrant
26 caravan FY 2019. Information Only [¶] TTRT exam. Do not revoke SENTRI based on
27 this lookout.” (*See* ECF Nos. 150-1 (“Ex 51”) at 3, 151-8 (“Ex. 122”); *see also* Day 2 Tr.
28 ///

1 at 318:14–319:3, 345:10–15.) Oliveri had no explanation for the entry other than the leak
2 of the Migrant Caravan PowerPoint two days earlier. (*See* Day 2 Tr. at 320:9–16.)

3 109. On July 25, 2019—the same day that Dousa moved for a preliminary
4 injunction in this case, (*see generally* ECF No. 25; *see also* Day 2 Tr. at 324:3–13)—Oliveri
5 entered a notation in Dousa’s GES record: “Interdiction cancelled. TECS record was a
6 one-day lookout based on limited information received. No other derogatory information
7 found. Oliveri.” (*See* Ex. 51-2 at 48; Ex 580; *see also* Day 2 Tr. at 322:24–323:13,
8 345:16–22.) Other than Dousa moving for a preliminary injunction that day, Oliveri could
9 recall no other reason for cancelling the interdiction on that day. (*See* Day 2 Tr. at
10 325:14–325:18.)

11 **V. Dousa’s Discovery of the Investigation and Its Impact on Her**

12 110. “On March 6, 2019, NBC 7 in San Diego published an article [containing] a
13 copy of the PowerPoint presentation that had been leaked by a whistleblower.” (Stip. Facts
14 at 23 ¶ 19; *see also* ECF No. 153-11 (“Ex. 343”); Day 3 Tr. at 413:6–7.) When Dousa saw
15 the article, she understood why she had been pulled into secondary screening in January of
16 that year. (*See* Day 2 Tr. at 115:19–117:5.)

17 111. Because Dousa suspected that one of the blurred-out photos appearing in the
18 article might be hers, she contacted Tom Jones, the reporter who broke the story, who
19 emailed her a copy of the unredacted, unblurred photo of Dousa with a yellow “X” across
20 her face. (*See id.* at 117:6–25; *see also* ECF No. 151-10 (“Ex. 126”).) When she saw it,
21 Dousa “collapsed to the floor and just hid under [her] table and cried.” (*See* Day 2 Tr. at
22 122:13–15.)

23 112. The combination of the yellow “X” and text led Dousa to believe that her
24 Global Entry had been “canceled,” (*see* Day 2 Tr. at 127:10–19), or “revoked,” (*see id.* at
25 128:20–129:8), and she has been unsure of her Trusted Traveler program status ever since.
26 (*See id.* at 130:4–11.)

27 113. Dousa has travelled to Mexico five times and internationally two times since
28 March 2019. (*See* ECF No. 154-9 (“Ex. 583”); *see also* Day 2 Tr. at 339:9–25.) Although

1 Dousa was “unable to use [her] Global Entry card at the kiosk” and “had to go back into
2 the general passport lane” when she returned from a ministry trip to Ethiopia in
3 approximately 2021, (*see id.* at 130:12–24; *see also id.* at 229:15–230:5), she was not
4 pulled into secondary inspection or otherwise questioned during that or any subsequent
5 reentry into the United States. (*See id.* at 131:3–6 (Ethiopia), 229:7–12 (Bahamas),
6 230:10–17 (Mexico); *see also* Ex. 583.)

7 114. When Dousa returned to Mexico as part of her ministry after March 2019, she
8 only felt comfortable doing so accompanied by counsel. (*See* Day 2 Tr. at 128:21–129:16;
9 *see also id.* at 134:9–12, 228:21–3.) Dousa also has been “careful to carry a letter from
10 [her] lawyer explaining that [she is], indeed, a U.S. citizen” when travelling internationally.
11 (*See id.* at 129:17–130:3.)

12 115. In September 2021, Dousa learned of the email that Oliveri had sent to the
13 Mexican government when she read the DHS OIG Report. (*See id.* at 131:21–132:6.) To
14 Dousa, “this was worse” than the leak of the PowerPoint “because it’s just so much more
15 physically dangerous” and she “was, again, terrified.” (*See id.* at 132:12–20.) Because she
16 does not feel safe doing so, she has not returned to Mexico since that time. (*See id.* at
17 132:21–133:4, 134:13–16, 155:3–6.)

18 116. According to Dousa, these events have “changed [her] life” and “the way that
19 [she] do[es her] ministry.” (*See id.* at 133:12–15.) She no longer travels to Mexico,
20 meaning she can no longer offer a “ministry of presence.” (*See id.* at 134:17–135:1; *see*
21 *also id.* at 226:23–227:19.) As for her ministry in the United States, Dousa no longer feels
22 comfortable officiating marriages for non-U.S. citizens. (*See id.* at 135:2–17.) Finally,
23 regarding her ministry to U.S. citizens, after these events took place, Dousa’s congregants
24 worried that they might become “targets of the U.S. government.” (*See id.* at 136:3–15.)

25 117. Dousa continues to “speak publicly about immigration issues and [her]
26 criticisms of them,” (*see id.* at 215:5–7), although she has “plenty of fear of retaliation from
27 CBP.” (*See id.* at 215:22–25.) “It’s a calculation [she] always ha[s] to make.” (*See id.* at
28 216:1–3.)

CONCLUSIONS OF LAW

I. Article III Standing

1. “To establish Article III standing, a plaintiff must demonstrate that: (1) she suffered an ‘actual or imminent’ injury as a result of the alleged illegal conduct; (2) there is a ‘causal connection between the injury and the conduct complained of’; and (3) the injury will ‘likely’ be ‘redressed by a favorable decision’ of the court.” *Wright v. Serv. Emps. Int’l Union Loc. 503*, 48 F.4th 1112, 1118 (9th Cir. 2022) (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992)), *cert. denied sub nom. Wright v. SEIU Loc. 503*, No. 22-577, 2023 WL 350030 (U.S. Jan. 23, 2023).

2. “Because [Dousa]’s First Amendment claim for declaratory and injunctive relief [i]s based on the threat of future injury, she has standing to sue only if the threatened injury is certainly impending, or there is a substantial risk that the harm will occur.” *See id.* (internal quotation marks omitted) (quoting *In re Zappos.com, Inc.*, 888 F.3d 1020, 1024 (9th Cir. 2018) (quoting *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014))). “[Dousa] cannot rely ‘on mere conjecture’ about Defendants’ possible actions; she must present ‘concrete evidence to substantiate [her] fears.’” *See id.* (quoting *Index Newspapers LLC v. U.S. Marshals Serv.*, 977 F.3d 817, 825 (9th Cir. 2020) (quoting *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 420 (2013))). “Past wrongs are ‘insufficient by themselves to grant standing,’ but are ‘evidence bearing on whether there is a real and immediate threat of repeated injury.’” *Id.* at 1118–19 (quoting *Davidson v. Kimberly-Clark Corp.*, 889 F.3d 956, 967 (9th Cir. 2018) (citing *City of Los Angeles v. Lyons*, 461 U.S. 95, 102 (1983))). “When a plaintiff’s standing is grounded entirely on the threat of repeated injury, a plaintiff must show ‘a sufficient likelihood that [s]he will again be wronged in a similar way.’” *Id.* at 1119 (alteration in original) (quoting *Davidson*, 889 F.3d at 967 (quoting *Lyons*, 461 U.S. at 111))).

3. “First Amendment challenges ‘present unique standing considerations’ because of the ‘chilling effect of sweeping restrictions’ on speech.” *Italian Colors Rest. v. Becerra*, 878 F.3d 1165, 1171 (9th Cir. 2018) (quoting *Ariz. Right to Life Political Action*

1 *Comm. v. Bayless*, 320 F.3d 1002, 1006 (9th Cir. 2003)). “A chilling of First Amendment
 2 rights can constitute a cognizable injury, so long as the chilling effect is not ‘based on a
 3 fear of future injury that itself [is] too speculative to confer standing.’” *Index Newspapers*,
 4 977 F.3d at 826 (alteration in original) (quoting *Munns v. Kerry*, 782 F.3d 402, 410 (9th
 5 Cir. 2015) (citing *Clapper*, 568 U.S. at 417–18); *Libertarian Party of L.A. Cnty. v. Bowen*,
 6 709 F.3d 867, 870 (9th Cir. 2013) (“[A]s the Supreme Court has recognized, a chilling of
 7 the exercise of First Amendment rights is, itself, a constitutionally sufficient injury.”).

8 4. “The existence of standing turns on the facts as they existed at the time the
 9 plaintiff filed the complaint.” *Skaff v. Meridien N. Am. Beverly Hills, LLC*, 506 F.3d 832,
 10 838 (9th Cir. 2007) (citing *Lujan*, 504 U.S. at 569 n.4). Judge Burns previously concluded
 11 that “Dousa has demonstrated that she has standing to pursue her claims against the
 12 Government based on its pattern of surveillance and the chilling effect this surveillance has
 13 had on her exercise of protected activity,” *see Dousa v. DHS*, No. 19CV1255-LAB (KSC),
 14 2020 WL 434314, at *6 (S.D. Cal. Jan. 28, 2020), and, in the absence of any challenge
 15 from Defendants, (*see generally* Defs.’ Br.), the Court is disinclined to reevaluate Dousa’s
 16 standing at this time.

17 **II. First Cause of Action: Retaliation in Violation of the First Amendment**

18 5. The Parties agree that, to establish a *prima facie* case for retaliation, Dousa
 19 must establish that (1) she engaged in a constitutionally protected activity, (2) Defendants’
 20 actions would chill a person of ordinary firmness from continuing to engage in that
 21 protected activity, and (3) the protected activity was a substantial or motivating factor in
 22 Defendants’ conduct. (*Compare* Pl.’s Br. at 39–40 (quoting *Sampson v. County of Los*
 23 *Angeles*, 974 F.3d 1012, 1019 (9th Cir. 2020)), *with* Defs.’ Br. at 17 (citing *Blair v. Bethel*
 24 *Sch. Dist.*, 608 F.3d 540, 543 (9th Cir. 2010)). “To ultimately prevail on such a claim, a
 25 plaintiff must establish a causal connection between the government defendant’s retaliatory
 26 animus and the plaintiff’s subsequent injury.” *Capp v. County of San Diego*, 940 F.3d
 27 1046, 1053 (9th Cir. 2019) (internal quotation marks omitted) (quoting *Nieves v. Bartlett*,
 28 587 U.S. ___, 139 S. Ct. 1715, 1722 (2019)). “Specifically, a plaintiff must show that the

1 defendant’s retaliatory animus was a but-for cause, meaning that the adverse action against
2 the plaintiff would not have been taken absent the retaliatory motive.” *Id.* (quoting *Nieves*,
3 139 S. Ct. at 1722).

4 6. “Once a plaintiff has made such a showing, the burden shifts to the
5 government to show that it ‘would have taken the same action even in the absence of the
6 protected conduct.’” (Pl.’s Br. at 40 (quoting *O’Brien v. Welty*, 818 F.3d 920, 932 (9th Cir.
7 2016)).) “The Government must show more than that they *could* have punished the
8 plaintiffs[] in the absence of the protected speech; instead, the burden is on the defendants
9 to show through evidence that they *would* have punished the plaintiff[] under those
10 circumstances.” *Bello-Reyes v. Gaynor*, 985 F.3d 696, 702 (9th Cir. 2021) (emphasis in
11 original) (quoting *Pinard v. Clatskanie Sch. Dist. 6J*, 467 F.3d 755, 770 (9th Cir. 2006)).

12 7. The Court finds that Dousa has established a *prima facie* case for First
13 Amendment Retaliation. First, the law is clear, and Defendants do not dispute, (*see* Defs.’
14 Br. at 17–18), that both Dousa’s ministry to migrants and speech concerning U.S.
15 immigration law and policy constitute “constitutionally protected activity.” *See, e.g.*,
16 *Murdock v. Commonwealth of Pennsylvania*, 319 U.S. 105, 109 (1943) (noting that
17 distribution of religious pamphlets, like “worship in the churches and preaching from the
18 pulpits,” “occupies . . . high estate under the First Amendment”); *Capp*, 940 F.3d at 1054
19 (“[V]oicing criticism of [a government a]gency’s conduct[]is constitutionally protected.”
20 (citing *Hartman v. Moore*, 547 U.S. 250, 256 (2006); *Ford v. City of Yakima*, 706 F.3d
21 1188, 1192–93 (9th Cir. 2013) (per curiam), *abrogated on other grounds by Nieves*, 139 S.
22 Ct. 1715)); *see also Adlerstein v. U.S. Customs & Border Prot.*, No. CIV 19-500-TUC-
23 CKJ, 2020 WL 5846600, at *12 (D. Ariz. Oct. 1, 2020) (concluding that “associating with
24 migrants and advocates and . . . engaging in political speech” were protected activity (first
25 citing *Roberts v. U.S. Jaycees*, 468 U.S. 609, 622 (1984); then citing *Buckley v. Am. Const.*
26 *Law Found., Inc.*, 525 U.S. 182, 186–87 (1999))).

27 8. Second, Oliveri’s email to the Mexican government would chill a person of
28 ordinary firmness from continuing to engage in Dousa’s protected activities. In that email,

1 Oliveri, on behalf of CBP, requested that Dousa be “den[ie]d entry to Mexico” and “sen[t]
2 . . . back to the United States.” As Dousa testified at trial:

3 It would be reckless, even, to go to a country that my country has asked to
4 apprehend, arrest me and place me in custody until I’m returned to the custody
5 of the United States. . . . You don’t go to a country where you know that you
6 might be arrested for just walking there and offering ministry. It doesn’t make
7 sense.

7 (See Day 2 Tr. at 227:13–19.) There is no evidence that Defendants have corrected or
8 retracted this request and, although Dousa traveled to Mexico five times following her
9 detention on January 2, 2019, she has not returned to Mexico since she learned of the email
10 in September 2021.

11 9. Finally, the Court concludes that Dousa’s constitutionally protected activity
12 was a substantial or motivating factor in—at the very least—Defendants’ decision to email
13 the Mexican authorities.

14 10. With the benefit of hindsight, there are numerous ways in which Defendants’
15 investigation of Dousa could have been improved. Based on Migrant 1’s statements on
16 November 30, 2018, the Court finds that Defendants had a legitimate interest in searching
17 for information concerning Dousa in government databases and/or placing a TECS
18 “lookout” on Dousa to conduct an interview of her regarding the information provided by
19 Migrant 1. The legitimacy of the Defendants’ investigative efforts, however, particularly
20 the detention and interview of Dousa on January 2, 2019, is undermined by the fact that
21 during the January 2, 2019 interview Dousa was never questioned about Migrant 1’s
22 information or her activities related to officiating marriage ceremonies in Mexico. Further,
23 although several CBP employees sought to revoke Dousa’s Global Entry, the record makes
24 clear that no CBP employee ever took the steps necessary to do so. Indeed, had the Migrant
25 Caravan PowerPoint never been leaked to the press, Dousa would have been none-the-
26 wiser as to any of Defendants’ investigative actions, including the “targeting” work
27 product, with the notable exception of Dousa’s January 2, 2019 detention and interview.

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1 11. In contrast to the Court’s determination that Defendants had a legitimate
2 interest in conducting a follow-up investigation regarding Migrant 1’s statements, the
3 Court concludes that no credible claim of legitimacy can be made for Oliveri’s
4 December 10, 2018 email to the Mexican government. Not only does it appear that the
5 decision to send such an email was unprecedented, but even Oliveri acknowledged that the
6 email was “[l]iterally, creative writing . . . [w]ithout any basis.” Despite Oliveri’s
7 testimony that he never “inten[ded] to punish or retaliate against Pastor Dousa because of
8 her religious beliefs,” (*see* Day 2. Tr. at 340:20–23), the absence of any proper basis for
9 writing and sending the email is incontrovertible evidence of Oliveri’s retaliatory motive.
10 *See, e.g., White*, 227 F.3d at 1237–38 (affirming grant of summary adjudication in favor of
11 plaintiffs’ on the First Amendment retaliation claim where “the investigation far exceeded
12 what was reasonable for the purpose of ascertaining the plaintiffs’ motives for filing the
13 state-court suit and thus intruded unnecessarily on their First Amendment rights”).

14 12. Because Dousa has established a *prima facie* case for retaliation stemming
15 from the email to the Mexican government, the burden shifts to the government to show
16 that it would have taken the same action even in the absence of Dousa’s protected conduct.
17 Defendants have failed to do so. (*See generally* Defs.’ Br. at 17–18.)

18 13. The Court therefore concludes that Dousa has established that the CBP
19 retaliated against her in violation of her First Amendment rights.

20 **III. Second Cause of Action: Violation of the First Amendment’s Free Exercise** 21 **Clause**

22 14. The Parties agree that, to prevail on her Free Exercise claim, Dousa must
23 establish that Defendants’ actions impaired the free exercise of her genuinely held religious
24 beliefs. (*Compare* Pl.’s Br. at 38 (citing *Jones v. Slade*, 23 F.4th 1124, 1144 (9th Cir.
25 2022)), *with* Defs.’ Br. at 18 (citing *United States v. Lee*, 455 U.S. 252, 256–57 (1982)).)
26 As Judge Burns previously recognized, when—as here—“the challenged government
27 action is neither regulatory, proscriptive or compulsory,” the question is not necessarily
28 whether the Government action is neutral and generally applicable, but rather ‘whether it

1 substantially burdens a religious practice and either is not justified by a substantial state
2 interest or is not narrowly tailored to achieve that interest.” *Dousa*, 2020 WL 434314, at
3 *7 (quoting *Am. Fam. Ass’n, Inc. v. City & County of San Francisco*, 277 F.3d 1114,
4 1123–24 (9th Cir. 2002)).

5 15. “[A] substantial burden ‘must place more than inconvenience on religious
6 exercise.’” *Int’l Church of Foursquare Gospel v. City of San Leandro*, 673 F.3d 1059,
7 1067 (9th Cir. 2011) (quoting *Guru Nanak Sikh Soc’y of Yuba City v. County of Sutter*, 456
8 F.3d 978, 988 (9th Cir. 2006)). Instead, “a ‘substantial burden’ is imposed only when
9 individuals are forced to choose between following the tenets of their religion and receiving
10 a governmental benefit (*Sherbert[v. Verner*, 374 U.S. 398 (1963)]) or coerced to act
11 contrary to their religious beliefs by the threat of civil or criminal sanctions (*[Wisconsin*
12 *v.] Yoder[*, 406 U.S. 205 (1972)]).” *Navajo Nation v. U.S. Forest Serv.*, 535 F.3d 1058,
13 1069–70 (9th Cir. 2008). “Any burden imposed on the exercise of religion short of that
14 described by *Sherbert* and *Yoder* is not a ‘substantial burden.’” *Id.* at 1070. Consequently,
15 “a subjective chilling effect on free exercise rights is not sufficient to constitute a
16 substantial burden.” *Dousa*, 2020 WL 434314, at *7 (quoting *Am. Family Ass’n*, 277 F.3d
17 at 1124) (citing *Vernon v. City of Los Angeles*, 27 F.3d 1385, 1394 (9th Cir. 1994)).

18 16. Dousa contends that Defendants have substantially burdened her religious
19 practice by (1) “coercively prevent[ing] her from traveling to Mexico to carry out her
20 ministry of presence there[,]” (2) “coercively prevent[ing] her from officiating Christian
21 marriage ceremonies for non-U.S. citizens in the United States[,]” and (3) “imped[ing]
22 [her] ability to provide essential pastoral care to her congregants with the necessary
23 guarantees of secrecy and confidentiality.” (See Pl.’s Br. at 37 (citing *Mockaitis v.*
24 *Harclerod*, 104 F.3d 1522, 1533 (9th Cir. 1997), *overruled on other grounds by City of*
25 *Boerne v. Flores*, 521 U.S. 507 (1997)).) Although Defendants concede that Dousa’s
26 ministry in Mexico, officiating Christian marriage ceremonies, and provision of pastoral
27 care are religious practices, they argue that the harms Dousa identifies remain “subjective
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1 and constitute, at best, only an incidental burden on her religious practice.” (See Defs.’ Br.
2 at 19.)

3 17. To the extent Dousa contends that Defendants have violated her Free Exercise
4 rights because she has declined to “officiate marriages for non-U.S. citizens, because [she]
5 worr[ies] about what that might do to their immigration status for having been associated
6 with [her] in some way,” (see Day 2 Tr. at 135:2–17), Dousa has not established more than
7 a subjective chilling effect. Although Dousa’s reluctance to officiate marriages for non-
8 U.S. citizens is understandable, the record establishes that Defendants’ investigation was
9 limited to whether Dousa was committing marriage fraud to facilitate asylum claims for
10 members of the 2018 to 2019 migrant caravan. There is no evidence in the record that
11 (1) the investigation ever focused on marriages Dousa officiated anywhere other than
12 Tijuana; (2) any further investigative measures were taken against Dousa after July 25,
13 2019, when Oliveri cancelled the interdiction on her in the TECS database; or (3) any
14 adverse immigration-related action has ever been taken against any non-U.S. citizen Dousa
15 has married, including those she married in Tijuana on November 27 and 28, 2018.
16 Ultimately, there is an insufficient nexus between the activity from which Dousa is
17 refraining and the government’s investigative actions. The Court is therefore unable to
18 conclude that Defendants’ investigation coercively has prevented Dousa from officiating
19 marriages for non-U.S. citizens in the United States.

20 18. The same is true of Dousa’s claim that Defendants’ investigation has impeded
21 her from providing essential pastoral care to her congregants. Dousa testified that learning
22 of the investigation against her has made “things so much harder for [her congregants]”
23 because “they worried that [the United States’ investigation] could also make them targets
24 of the U.S. government.” (See Day 2 Tr. at 136:3–15.) Dousa, however, stops short of
25 offering evidence that “members have withdrawn from active participation” or
26 “congregants have become reluctant to seek pastoral counseling and are less open in
27 prayers and confessions.” Cf. *Presbyterian Church (U.S.A.) v. United States*, 870 F.2d
28 518, 522 (9th Cir. 1989) (concluding that church had standing on First Amendment claim

1 where U.S. Immigration and Naturalization Service agents surreptitiously recorded church
2 services because “when congregants are chilled from participating in worship activities,
3 when they refuse to attend church services because they fear the government is spying on
4 them and taping their every utterance, all as alleged in the complaint, . . . a church suffers
5 organizational injury because its ability to carry out its ministries has been impaired”); *cf.*
6 *also Mockaitis*, 104 F.3d at 1530 (concluding that audiotaping of Catholic sacrament of
7 confession between prisoner and Catholic priest for purposes of murder investigation
8 “invade[d prisoners’] free exercise of religion and . . . ma[de] it impossible for [the priest]
9 to minister the sacrament to those who seek it in jail”). There also is no evidence, as there
10 was in *Presbyterian Church* or *Mockaitis*, that Dousa’s interactions with her congregants
11 were ever recorded, much less monitored, as part of the government’s investigation into
12 marriage fraud allegedly occurring in Mexico. Although Dousa’s claimed harms are
13 important, the current record fails to establish that Defendants’ investigation into Dousa’s
14 alleged participation in marriage fraud has prevented Dousa from providing essential
15 pastoral care to her congregants in the United States.

16 19. Further, the United States has a compelling interest in protecting the border,
17 *see Presbyterian Church (U.S.A.) v. United States*, 752 F. Supp. 1505, 1513 (D. Ariz. 1990)
18 (“[T]he government’s interest in controlling immigration outweighs appellants’ purported
19 religious interest.” (quoting *United States v. Aguilar*, 883 F.2d 662, 696 (9th Cir.1989),
20 *superseded by statute on other grounds as recognized in United States v. Gonzalez-Torres*,
21 309 F.3d 594 (9th Cir. 2002))); (*see also* Defs.’ Br. at 22–26), and the investigation was
22 narrowly tailored to achieve that result. The record reveals that the investigation—
23 although at times misguided and unprofessional—was limited to Defendants pulling
24 information about Dousa from the internet and government-accessible databases and
25 interviewing her at secondary inspection. The Court therefore concludes that Dousa has
26 failed to establish that Defendants violated her Free Exercise rights by investigating
27 Migrant 1’s report that Dousa may have been involved in marriage fraud.

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1 20. The Court reaches a different conclusion as to Dousa’s Free Exercise claim to
2 the extent she contends that Oliveri’s December 10, 2018 email to the Mexican government
3 has substantially burdened her ministry in Mexico. At the preliminary injunction stage,
4 Judge Burns concluded that Dousa had failed to demonstrate a likelihood of success on the
5 merits because “[s]he remains free to travel to Mexico, to minister there, and to return to
6 the United States with ease.” *See Dousa*, 2020 WL 434314, at *8. Judge Burns noted,
7 however, that, “if the Government had revoked Dousa’s SENTRI card (and Dousa could
8 show that the revocation was the result of her engaging in protected activity), the Court
9 would have no problem finding a substantial burden” because “[t]hat action would
10 effectively amount to a government sanction, and it would undoubtedly make it more
11 difficult for her to travel and to practice her sincerely held beliefs.” *See id.*

12 21. Although the Court has concluded that the government did not revoke Dousa’s
13 Global Entry privileges, the December 10, 2018 email has accomplished the same end
14 result: Defendants contend that “Plaintiff has traveled to Mexico on multiple occasions
15 since the time she was sent to secondary,” (*see* Defs.’ Br. at 19), but the record conclusively
16 establishes that Dousa has not travelled to Mexico since learning of the December 10, 2018
17 email in September 2021. For the reasons discussed above, *see supra* Section II, the email
18 “threatens to ‘coerce’ [Dousa], via [potential forced repatriation,] into abandoning conduct
19 that is an exercise of religion.” *See United States v. Hoffman*, 436 F. Supp. 3d 1272, 1285
20 (D. Ariz. 2020) (concluding that volunteers from a faith-based, humanitarian aid
21 organization demonstrated that enforcement of permit requirement for entering wildlife
22 refuge substantially burdened their exercise of their religious beliefs); *see also, e.g., Dousa*,
23 2020 WL 434314, at *8 (noting that revocation of Dousa’s TTP status “would effectively
24 amount to a government sanction, and it would undoubtedly make it more difficult for her
25 to travel and to practice her sincerely held beliefs”).

26 22. Further, this burden is not justified by a substantial state interest or narrowly
27 tailored to achieve that interest. While the United States undoubtedly has a compelling
28 state interest in protecting the border, Oliveri’s admission that the email was “[I]terally,

1 creative writing . . . [w]ithout any basis” indicates that there exists no substantial state
 2 interest in requesting that Mexican authorities deny entry to Dousa. And, as evidenced by
 3 the United States’ other investigative efforts, there exist more “narrowly tailored”
 4 approaches to achieve border security. Dousa therefore has established that the CBP
 5 violated her Free Exercise rights by restricting her ability to minister to migrants in Mexico.

6 **IV. Third Cause of Action: Violation of the Religious Freedom Restoration Act**

7 23. Finally, the Parties agree that, to succeed on her RFRA claim, Dousa must
 8 prove (1) the activities she claims are burdened by Defendants’ action are an exercise of
 9 religion, and (2) Defendants’ action substantially burdened her exercise of religion.
 10 (*Compare* Pl.’s Br. at 36 (quoting *Oklevueha Native Am. Church of Haw., Inc. v. Lynch*,
 11 828 F.2d 1012, 1014 (9th Cir. 2016)), *with* Defs.’ Br. at 20 (quoting *Navajo Nation*, 535
 12 F.3d at 1068).) Once Dousa has met her burden, Defendants must prove that the challenged
 13 government action furthers a compelling governmental interest and is implemented by the
 14 least restrictive means. (*Compare* Pl.’s Br. at 36 (quoting *Navajo Nation*, 535 F.3d at
 15 1068), *with* Defs.’ Br. at 20 (citing *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 705
 16 (2014)).)

17 24. As Judge Burns noted, *see Dousa*, 2020 WL 434314, at *8–9, and the Parties
 18 acknowledge, (*see* Pl.’s Br. at 38–39), this analysis is similar to that of Plaintiff’s Free
 19 Exercise claim, with the exception that the government interest must be “compelling”
 20 instead of “substantial” and “implemented by the least restrictive means” rather than
 21 “narrowly tailored.” For the same reasons as discussed above, *see supra* Section III, the
 22 Court concludes that Plaintiff has established that the CBP violated the RFRA when Oliveri
 23 emailed the Mexican government on December 10, 2018, but not by conducting its
 24 investigation into her alleged marriage fraud.

25 **V. Prevailing Party**

26 25. Dousa requests that she be awarded her reasonable costs and attorneys’ fees
 27 as the prevailing party pursuant to the Equal Access to Justice Act (“EAJA”), 28 U.S.C.
 28 § 2412. “The EAJA provides for the award of attorney’s fees to a party that prevails against

1 the United States in a proceeding for review of an agency action, unless the court finds
 2 ‘that the position of the United States was substantially justified or that special
 3 circumstances make an award unjust.’” *Costa v. Comm’r of Soc. Sec. Admin.*, 690 F.3d
 4 1132, 1135 (9th Cir. 2012) (quoting 28 U.S.C. § 2412(d)(1)(A)).

5 26. Here, the Court finds that the CBP violated Dousa’s First Amendment rights
 6 when Oliveri emailed the Mexican government on December 10, 2018. *See supra* Sections
 7 II–IV. Dousa is therefore entitled to at least some of her reasonable costs and attorneys’
 8 fees. What proportion of her costs and attorneys’ fees Dousa is entitled to recover depends
 9 on the resolution of two questions: “First, did the plaintiff fail to prevail on claims that
 10 were unrelated to the claims on which he succeeded? Second, did the plaintiff achieve a
 11 level of success that makes the hours reasonably expended a satisfactory basis for making
 12 a fee award?” *See Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983). The Court therefore
 13 defers ruling on the amount of Dousa’s award of reasonable costs and attorneys’ fees
 14 pending the receipt of additional briefing from the Parties, as discussed below.

15 CONCLUSION AND RULING

16 27. Ultimately, the Court concludes that Dousa has established that the CBP
 17 unlawfully retaliated against her for her protected First Amendment activity, violated her
 18 Free Exercise right to minister to migrants in Mexico, and violated the RFRA when Oliveri
 19 emailed Mexican authorities on December 10, 2018, that “there exist[ed] a great possibility
 20 that [she] d[id] not have adequate documentation to be in Mexico” and that she should be
 21 “den[ied] . . . entry to Mexico” and “sen[t] . . . back to the United States.”

22 28. Accordingly, within fourteen (14) days of the date on which this Order is
 23 electronically docketed, Defendants **SHALL COMMUNICATE** in writing to appropriate
 24 Mexican immigration authorities that their request in Oliveri’s December 10, 2018 email
 25 is fully and immediately rescinded and revoked as to Dousa. Defendants **SHALL**
 26 **SUBMIT** a copy of such communication to the Court.

27 29. Pursuant to the EAJA, the Court **AWARDS** Dousa her reasonable costs and
 28 attorneys’ fees as the prevailing party in this case. Dousa **MAY FILE** a properly supported

1 motion regarding her reasonable costs and attorneys' fees, including whether the fee award
2 should be reduced given Dousa's partial success, on or before April 24, 2023. Should
3 Dousa file a motion under the EAJA, Defendants **SHALL FILE** their opposition on or
4 before May 15, 2023, and Dousa **MAY FILE** an optional reply, if any, on or before
5 May 29, 2023. Upon completion of the briefing, the Court will take the matter under
6 submission without oral argument pursuant to Civil Local Rule 7.1(d)(1). If the Court later
7 determines that oral argument is necessary, it will set a hearing date.

8 **IT IS SO ORDERED.**

9 Dated: March 21, 2023

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11 Honorable Todd W. Robinson
12 United States District Judge
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