

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

Service Employees International Union,
et al.,

Plaintiffs,

V.

Rodney S. Scott, Commissioner of U.S.
Customs and Border Protection, *et al.*,

Defendants.

No. 1:26-cv-11251-PBS

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY
JUDGMENT**

TABLE OF CONTENTS

INTRODUCTION	1
BACKGROUND	3
I. Development of the Pre-2025 Customs Seal Regime	3
II. The Trump Administration’s Issuance of a New Policy in 2025.....	6
III. Impact of the New Policy on Plaintiffs.....	8
IV. Procedural History.....	11
STANDARD OF REVIEW	11
ARGUMENT	11
I. Defendants’ new interpretation of “authorized residency” is arbitrary and capricious.	11
A. Defendants failed to examine the relevant data.	13
B. Defendants did not provide an adequate explanation for how they selected this definition of “authorized residency” over reasonable alternatives.	14
C. Defendants did not consider substantial reliance interests.	16
II. Defendants’ interpretation of “violation of a U.S. immigration law” to include civil violations is unlawful.....	18
A. Defendants’ interpretation of the “violation of a U.S. immigration law” provision is inconsistent with the text, purpose, and structure of the regulation.....	19
B. Defendants’ interpretation of the “violation of a U.S. immigration law” provision is arbitrary and capricious.....	21
C. The inclusion of the “violation of a U.S. immigration law” provision in the regulations is arbitrary and capricious.....	22
III. CBP’s Refusal to Finalize the 2002 IFR Violates the APA.....	24
IV. Defendants’ revocations of Plaintiffs’ Customs seals suffered from fatal procedural deficiencies.	28
A. CBP’s revocations violated the agency’s own regulations.....	29
B. CBP violated Plaintiffs’ rights to due process under the Fifth Amendment.....	32
V. This Court should grant Plaintiffs’ requested relief.....	36
CONCLUSION.....	37

TABLE OF AUTHORITIES

Cases	Page(s)
<i>AFGE v. U.S. Fed. Lab. Rels. Auth.</i> , No. 26-CV-11747, 2026 WL 1870987 (D. Mass. June 29, 2026).....	15
<i>Am. Fed. of Gov't Empls., AFL-CIO v. Block</i> , 655 F.2d 1153 (D.C. Cir. 1981).....	26
<i>Am. Pub. Health Ass'n v. Nat'l Institutes of Health</i> , 145 F.4th 39 (1st Cir. 2025).....	22
<i>Amsden v. Moran</i> , 904 F.2d 748 (1st Cir. 1990).....	34
<i>Anchustegui v. Dep't of Agric.</i> , 257 F.3d 1124 (9th Cir. 2001)	33
<i>Ass'n of Am. Univs. v. Dep't of Def.</i> , 806 F. Supp. 3d 79 (D. Mass. 2025).....	17, 28
<i>Ass'n of Am. Univs. v. Dep't of Energy</i> , 789 F. Supp. 3d 118 (D. Mass. 2025).....	16
<i>Ass'n of Am. Univs. v. Nat'l Sci. Found.</i> , 788 F. Supp. 3d 106 (D. Mass. 2025).....	17
<i>Atieh v. Riordan</i> , 727 F.3d 73 (1st Cir. 2013).....	12
<i>Atl. Richfield Co. v. United States</i> , 774 F.2d 1193 (D.C. Cir. 1985).....	33
<i>Barrows v. Becerra</i> , 24 F.4th 116 (2d Cir. 2022)	37
<i>Bd. of Regents of State Colleges v. Roth</i> , 408 U.S. 564 (1972).....	33, 34
<i>Bos. Redevelopment Auth. v. Nat'l Park Serv.</i> , 838 F.3d 42 (1st Cir. 2016).....	11
<i>Burlington Truck Lines, Inc. v. United States</i> , 371 U.S. 156 (1962).....	14

<i>California v. Azar</i> , 911 F.3d 558 (9th Cir. 2016)	25
<i>California v. Mullin</i> , 833 F. Supp. 3d 50 (D. Mass. 2026)	25
<i>Camp v. Pitts</i> , 411 U.S. 138 (1973)	12
<i>City of Providence v. Barr</i> , 954 F.3d 23 (1st Cir. 2020)	21
<i>Clarke v. Commodity Futures Trading Comm’n</i> , 74 F.4th 627 (5th Cir. 2023)	33
<i>Cleveland Bd. of Educ. v. Loudermill</i> , 470 U.S. 532 (1985)	33, 35
<i>Conservation L. Found., Inc. v. EPA</i> , 223 F. Supp. 3d 124 (D. Mass. 2017)	20
<i>Corner Post, Inc. v. Bd. of Governors of Fed. Res. Sys.</i> , 603 U.S. 799 (2024)	36
<i>Davis v. Coakley</i> , 802 F.3d 128 (1st Cir. 2015)	34
<i>Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.</i> , 591 U.S. 1 (2020)	12, 14, 16, 22
<i>Encino Motorcars, LLC v. Navarro</i> , 579 U.S. 211 (2016)	16, 17
<i>FCC v. Fox Television Stations, Inc.</i> , 556 U.S. 502 (2009)	18
<i>FCC v. Prometheus Radio Project</i> , 592 U.S. 414 (2021)	12
<i>Fed. Land Bank of Springfield v. Farm Credit Admin.</i> , 676 F. Supp. 1239 (D. Mass. 1987)	25, 26
<i>Fischer v. United States</i> , 603 U.S. 480 (2024)	21
<i>González-Fuentes v. Molina</i> , 607 F.3d 864 (1st Cir. 2010)	32

<i>Greene v. McElroy</i> , 360 U.S. 474 (1959).....	34
<i>Gulluni v. Levy</i> , 85 F.4th 76 (1st Cir. 2023).....	21
<i>Harrington v. Chao</i> , 280 F.3d 50 (1st Cir. 2002).....	36
<i>Haoud v. Ashcroft</i> , 350 F.3d 201 (1st Cir. 2003).....	28
<i>Hells Canyon Pres. Council v. Richmond</i> , 841 F. Supp. 1039 (D. Or. 1993)	26
<i>Hickey-McAllister v. Brit. Airways</i> , 978 F. Supp. 133 (E.D.N.Y. 1997)	32
<i>Kollett v. Harris</i> , 619 F.2d 134 (1st Cir. 1980).....	27
<i>Levasque v. Block</i> , 723 F.2d 175 (1st Cir. 1983).....	27
<i>Mack Trucks, Inc. v. E.P.A.</i> , 682 F.3d 87 (D.C. Cir. 2012).....	27
<i>Massachusetts v. Nat’l Insts. of Health</i> , 770 F. Supp. 3d 277 (D. Mass. 2025).....	14, 16, 17
<i>Massachusetts v. U.S. Dep’t of Health & Hum. Servs.</i> , 513 F. Supp. 3d 215 (D. Mass. 2021)	14
<i>Mathews v. Eldridge</i> , 424 U.S. 319 (1976).....	34
<i>Mid-Tex Elec. Co-op., Inc. v. F.E.R.C.</i> , 822 F.2d 1123 (D.C. Cir. 1987).....	27
<i>Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.</i> , 463 U.S. 29 (1983).....	12, 13, 14
<i>N.H. Hosp. Ass’n v. Azar</i> , 887 F.3d 62 (1st Cir. 2018).....	28
<i>N.Y. Pathological & X-Ray Labs., Inc. v. INS</i> , 523 F.2d 79 (2d Cir. 1975)	33

<i>Nat'l Fed. of Fed. Emp. v. Devine</i> , 671 F.2d 607 (D.C. Cir. 1982).....	27
<i>Nat. Res. Def. Council, Inc. v. EPA</i> , 824 F.2d 1258 (1st Cir. 1987).....	24
<i>New York v. Trump</i> , 171 F.4th 1 (1st Cir. 2026).....	16
<i>New York v. Trump</i> , 811 F. Supp. 3d 215 (D. Mass. 2025).....	32
<i>Ohio v. EPA</i> , 603 U.S. 279 (2024).....	12
<i>Perez-Escobar v. Moniz</i> , 792 F. Supp. 3d 224 (D. Mass. 2025).....	30, 31
<i>Raso v. Lago</i> , 135 F.3d 11 (1st Cir. 1998).....	36
<i>Rodriguez v. United States</i> , 336 F. Supp. 3d 1051 (D. Ariz. 2018)	31
<i>Rombot v. Souza</i> , 296 F. Supp. 3d 383 (D. Mass. 2017).....	28
<i>Rotinsulu v. Mukasey</i> , 515 F.3d 68 (1st Cir. 2008).....	28
<i>S.D. Warren Co. v. Me. Bd. of Envtl. Prot.</i> , 547 U.S. 370 (2006).....	21
<i>Salman v. Perry</i> , No. 2:23-CV-11588, 2025 WL 1679512 (E.D. Mich. June 13, 2025)	31
<i>Scottsdale Ins. Co. v. United Rentals (N. Am.), Inc.</i> , 977 F.3d 69 (1st Cir. 2020).....	11
<i>Stauffer v. Internal Revenue Serv.</i> , 285 F. Supp. 3d 474 (D. Mass. 2017).....	15
<i>United States ex rel. Accardi v. Shaughnessy</i> , 347 U.S. 260 (1954).....	28
<i>United States v. Coal. for Buzzards Bay</i> , 644 F.3d 26 (1st Cir. 2011).....	19, 20

<i>United States v. Williams</i> , 553 U.S. 285 (2008).....	21
<i>Valiant Steel & Equip., Inc. v. Goldschmidt</i> , 499 F. Supp. 410 (D.D.C. 1980).....	26
<i>Viscito v. Nat’l Plan. Corp.</i> , 34 F.4th 78 (1st Cir. 2022).....	11
<i>We Who Care, Inc. v. Sullivan</i> , 756 F. Supp. 42 (D. Me. 1991).....	13
<i>Wolff v. McDonnell</i> , 418 U.S. 539 (1974).....	34
<i>Yakima Valley Cablevision, Inc. v. F.C.C.</i> , 794 F.2d 737 (D.C. Cir. 1986).....	16
<i>Zinerman v. Burch</i> , 494 U.S. 113 (1990).....	34

Statutes

5 U.S.C. § 551(8)	30, 33
5 U.S.C. § 553(b)(B).....	24, 25
5 U.S.C. § 558(c)(1)-(2).....	30, 35
8 U.S.C. § 1182(a)(6)(A)(i)	18
8 U.S.C. §§ 1324, 1324a(f), 1325, 1326	21

Regulatory Materials

Access to Customs Security Areas at Airports, 67 Fed. Reg. 48,977 (July 29, 2002).....	4, 5, 19, 23, 24, 25, 28
Criminal History Records Checks, 66 Fed. Reg. 63,474 (Dec. 6, 2001).....	4, 23
Customs Regulations Amendment Concerning Access To Customs Security Areas at Airports, 51 Fed. Reg. 32,448 (Sept. 12, 1986)	3
8 C.F.R. § 274a.12	8, 15
19 C.F.R. § 122.182	5, 6, 29, 32, 34

19 C.F.R. § 122.183 *passim*

19 C.F.R. § 122.187 *passim*

49 C.F.R. § 1542.209 6, 23

Other Authorities

Teresa Murray & Lillian Tracy, U.S. PIRG Education Fund, The Plane Truth
2026 (May 2026) 17

U.S. Dep’t of Transp., Bureau of Transp. Stats., Transportation Statistics Annual
Report 2020 (2020) 13

INTRODUCTION

Raquel Molina cleaned airplane cabins at Logan Airport for twenty-seven years, through the aftermath of the terrorist attacks of September 11, 2001 and a global pandemic, all while raising her daughter and five grandchildren. She was—and still is—legally authorized to work in the United States. After conducting a rigorous background check and biometric collections, Defendant U.S. Customs and Border Protection (“CBP”) granted her what is known as a “Customs seal,” which allowed her to work in international areas of the airport, and it renewed that seal, repeatedly, for nearly three decades. In spring 2025, however, CBP abandoned its longstanding interpretation of who may obtain a Customs seal and—notwithstanding that her immigration status and work authorization had not changed—revoked Ms. Molina’s seal, declaring that the 65-year-old grandmother “poses an unacceptable risk to public health, interest or safety, national security, aviation safety, the revenue, or the security of the area.” Statement of Undisputed Material Facts (“SUMF”) ¶¶ 32-41.

For more than two decades, Defendants provided Customs seals to workers under a statutory and regulatory scheme that allowed for their issuance to persons with “authorized residency” and who were not otherwise disqualified due to criminal “violation[s] of a U.S. immigration law.” SUMF ¶¶ 1, 3-4. Employers, airport authorities, and workers built their operations and careers on this settled interpretation. In 2025, CBP abruptly shifted its approach and declared that a federal work permit “does not confer authorized residency,” excluding those, like Plaintiffs, with Temporary Protected Status or pending asylum or adjustment of status applications from obtaining or keeping Customs seals. *Id.* ¶¶ 15-16. Simultaneously, CBP began disqualifying workers from keeping their seals based on a new interpretation of the phrase “violation of a U.S. immigration law”—a phrase drafted to refer to immigration *crimes*—to encompass civil immigration violations. *Id.* ¶ 28.

The consequences of CBP’s new interpretation have been dramatic. Since February 2025, CBP has revoked or refused to renew the Customs seals of lawful, work-authorized immigrant airport workers in airports around the country. Plaintiffs Raquel Molina, Ana Lemus, Saint Paul Paul, and Daysi Rocha Cruz (“Individual Plaintiffs”) and many other lawful immigrant airport workers who are members of Plaintiff Service Employees International Union (“SEIU”) have lost their jobs as a result. *Id.* ¶¶ 29, 30, 38, 47, 55, 59. These are the workers who keep airports running: they clean airplane cabins, attend to luggage, and assist wheelchair users and unaccompanied minors. *Id.* ¶ 22.

CBP’s revocation of Plaintiffs’ Customs seals is unlawful. First, CBP’s change in position violates the Administrative Procedure Act (“APA”), which requires that when an agency changes policies, it must acknowledge the change, consider reliance interests it has engendered, and give good reasons for its change. Second, CBP’s interpretation of “violation of a U.S. immigration law” to include civil immigration violations is contrary to the text and structure of CBP’s regulations and an arbitrary interpretation of them. Likewise, the inclusion of the “violation of a U.S. immigration law” provision in CBP’s regulations is arbitrary and capricious and has been since its inception. Third, CBP failed to finalize a 2002 “interim” rule (“IFR”) which enacted the revocation and “violation of a U.S. immigration law” provisions on which the agency now relies, in contravention of the APA’s procedural requirements. Fourth and finally, in revoking Individual Plaintiffs’ Customs seals, Defendants violated their own procedures and the Due Process Clause of the Fifth Amendment.

Plaintiffs request that the Court grant summary judgment to declare CBP’s new interpretations of “authorized residency” and “violation of a U.S. immigration law” unlawful and vacate them along with the “violation of a U.S. immigration law” provision; vacate and remand

the 2002 IFR; set aside the revocations and constructive denials of the seals of Individual Plaintiffs and Plaintiff SEIU's members; and enjoin the government from revoking any SEIU member's Customs seal without a pre-deprivation hearing to protect Plaintiffs' due process rights.

BACKGROUND

I. Development of the Pre-2025 Customs Seal Regime

In the mid-1980s, the U.S. Customs Service (a pre-cursor to CBP), following a period of notice and comment, issued a final rule to control access to areas of airports with incoming foreign aircraft, primarily by requiring workers with access to airport areas that receive international travel to display a form of Customs-approved identification called a "seal." Customs Regulations Amendment Concerning Access To Customs Security Areas at Airports, 51 Fed. Reg. 32448, 32449 (Sept. 12, 1986); SUMF ¶ 1. The regulations recognized that the Federal Aviation Administration ("FAA") had "general responsibility for security at airports" but determined Customs needed additional procedures to improve security at international airport areas under Customs jurisdiction. 51 Fed. Reg. at 32449. The final rule established the identification system for all employees whose duties require access to areas of airports handling international air commerce—the inception of what Plaintiffs refer to as a Customs seal. *Id.* The rule required that, to obtain a Customs seal, an employee provide "proof of citizenship or authorized residency." *Id.* at 32450.

The final rule permitted Customs to deny or revoke a seal but provided the employee notice and the opportunity to request a hearing (at which the employee could be represented by counsel and present evidence and testimony of witnesses, and at which both parties had a right to cross-examination) before the denial or revocation of the seal became final. *Id.* at 32451-52. Accordingly,

between 1986 and 2002, a Customs district director could not revoke a seal until the affected employee had an opportunity to be heard and the administrative process concluded.

After the September 11, 2001 attacks, the federal government took numerous actions designed to improve airport security. In December 2001, the FAA issued a direct final rule along with a request for comments to require criminal background checks for individuals with access to secure areas of airports. Criminal History Records Checks, 66 Fed. Reg. 63474 (Dec. 6, 2001); SUMF ¶ 2. The direct final rule added a requirement that the airport operator must immediately suspend an individual's security access if he or she was found to have committed a "disqualifying criminal offense" and enumerated disqualifying criminal offenses. *Id.* at 63481-82.

Customs similarly initiated a review of the security standards and procedures at airports and, nearly eight months later, in July 2002, issued an interim rule ("IFR"), effective immediately, and a "solicitation of comments." Access to Customs Security Areas at Airports, 67 Fed. Reg. 48977 (July 29, 2002); SUMF ¶ 3. Similar to the approach taken by the FAA in its December 2001 final rule, Customs determined that "the immediate and ongoing significance of these security considerations requires that the regulatory amendments take effect on the date of publication in the Federal Register even though the document affords the public an opportunity to comment on the regulatory changes prior to publication of a final rule." *Id.* at 48979. Thus, the IFR contemplated that, following a period of notice and comment, the agency would issue a final rule accounting for and responding to comments it received.

The IFR imposed additional, stricter requirements for issuance of Customs seals and, for the first time, "the inclusion of separate procedures for immediate revocation or suspension of access." *Id.* at 48977. The IFR made three crucial changes to the Customs seal denial and revocation process. First, the 2002 IFR provided a new process for immediate revocation of seals

in emergency situations (“emergency revocation”). Employees would no longer be guaranteed an opportunity to contest the agency’s action prior to losing physical access to their workplace. *See* 19 C.F.R. § 122.187(b)(1) (authorizing immediate action “whenever in the judgment of the port director . . . an emergency situation involving public health, safety, or security is involved,” with “final notice . . . issued to the affected employee within 10 calendar days”).

Second, the 2002 IFR narrowed employees’ opportunity to submit evidence and cross-examine witnesses to contest the revocation of their seals. According to the new emergency revocation procedures, a hearing is only provided at the appeal stage, after a seal has been revoked, and only if the employee demonstrates a “genuine issue of fact that is material to the revocation or suspension action.” *Id.* § 122.187(b)(1)(ii). The IFR also increased the discretion of Customs port directors to determine who poses an “unacceptable risk to public health, interest or safety, national security, or aviation safety” and thus who may lose their seal. *See id.* §§ 122.183(a), 122.187(a)(2)(iv). The rule maintained the requirement that applicants for a Customs seal supply proof of citizenship or authorized residency. *Id.* § 122.182(c)(1)(ii).

Third, and finally, as relevant here, the IFR established additional grounds for revocation of seals. The regulation explained that it added a new paragraph, (a)(4), “because Customs believes that the issue of established criminal conduct is appropriate for detailed treatment in an application context.” 67 Fed. Reg. at 48980. Throughout the IFR, Customs evinced an intention to align its procedures with the procedures announced by the FAA in December 2001. In furtherance of that goal, Customs added a new paragraph listing as grounds for denial or revocation of a Customs seal specific “disqualifying offenses for which an applicant has been convicted of, or found not guilty of by reason of insanity.” *Id.* at 48980. The IFR explained that Customs tried, whenever practicable, to use similar standards to those of the FAA since the same people will be given access to airports

under either FAA or Customs authority. However, the IFR included in the list of disqualifying offenses “[a]ny violation of a U.S. immigration law”—an offense not listed in the FAA regulation. 19 C.F.R. § 122.183(a)(4)(xxxiv); 49 C.F.R. § 1542.209(d).

II. The Trump Administration’s Issuance of a New Policy in 2025.

CBP has issued two guidance documents implementing the 2002 IFR. The first, issued in 2012, CBP Directive No. 1440-011B, “Airport Security Program,” addresses airport security topics, including the issuance and revocation of Customs seals. SUMF ¶ 5. Broadly speaking, the directive gives significant authority and discretion to the relevant port director to “establish guidelines for developing and maintaining security” consistent with the directive. SUMF ¶¶ 5-6.

The directive provides guidance regarding the Director’s exercise of that discretion and further implements the requirements in 19 C.F.R. § 122; SUMF ¶ 6. It stipulates that: (a) an individual’s employer is responsible for submitting a security application based on need, (seal application); (b) the employer must provide proof of the employee’s “valid and proper U.S. immigration status”; (c) “[a]ccess to the Customs security area will not be granted . . . to any person whose access to the Customs security area will, in the judgment of the port director, endanger the revenue or the security of the area or pose an unacceptable risk to public health, interest or safety, national security, or aviation safety” as set forth in 19 C.F.R. § 122.183(a); (d) one of those grounds for denial of access includes “conduct which relates to, or which could lead to a conviction for, a disqualifying offense” as delineated in 19 C.F.R. § 122.183(a)(4), *id.* § 122.183(a)(2); and (e) in the case of a denial the port director will give written notification to that applicant who is denied access, “fully stating the reasons for denial and setting forth specific appeal procedures,” *id.* § 122.183(b). SUMF ¶ 6. It also sets out procedures for appeal of a revocation or denial. *Id.* The

guidance document, however, does not define the term “authorized residency” as used in 19 C.F.R. § 122.182(c)(ii); SUMF ¶ 6.

Between issuance of the first and second guidance documents, and in light of apparent divergent interpretations of the 2012 guidance document across airports, in May 2024 CBP circulated a survey to port directors to help the agency “produce a clear definition of ‘authorized residency’ for purposes of granting access to secure areas at airports.” SUMF ¶ 7. The agency explained the survey would “allow us to ascertain what is considered ‘authorized residency’ for current and future” seal holders. *Id.* ¶ 8. The agency received responses from 20 airports, but not some of the largest airports in the country, including Logan International Airport in Boston (“Logan Airport”), San Francisco International Airport (“SFO”), or George H.W. Bush Intercontinental Airport in Houston, among others. *Id.* ¶ 9. Among the excluded airports were at least some that allowed individuals with employment authorization to obtain Customs seals, *id.* ¶ 9, 21, suggesting that the survey’s sample may not have been representative of airports around the country. The results of the survey, *id.* ¶¶ 10-12, indicated that the majority of responding airports included lawful permanent residents within the class of those deemed to have authorized residency, while some airports (such as John F. Kennedy International Airport and Austin-Bergstrom International Airport) used more expansive definitions, including those with an Employment Authorization Document (“EAD”), applicants for adjustment of status, TPS recipients, and asylum seekers. *Id.* ¶ 10. At least nine of the 20 surveyed airports allowed those with an EAD to obtain a seal. *Id.* ¶ 11. The type of documentation each airport deemed sufficient was similarly varied, though again, at least nine airports deemed an EAD sufficient. *Id.* ¶ 12.

The CBP Office of Field Operations summarized the results of the survey in a July 11, 2024 memorandum. *Id.* ¶ 13. The memo explained that the lack of a uniform definition of the term

“authorized residency” caused the “incongruous application of policy.” *Id.* Defendants deemed the memo’s ultimate recommendation as deliberative, however, and redacted it. Although not discussed in the agency’s memorandum, the record does contain an email from the Director of the CBP Traveler Entry Programs Division supplying a potential definition of “authorized residency” from “an immigration perspective.” SUMF ¶ 14. That email (the sole discussion of a potential alternative definition of “authorized residency” in the entire record) referenced 8 C.F.R. § 274a.12, which defines the noncitizens who are authorized to accept employment in the United States. SUMF ¶ 14. That regulation includes 20 separate sub-categories of individuals who may legally accept employment, including applicants for adjustment of status, TPS holders, and asylum seekers.

The second guidance document, issued on May 12, 2025, memorialized CBP’s new interpretation of “authorized residency.” *Id.* ¶ 15. CBP explained that, among other things, “though a valid [EAD] grants permission to work in the United States, it does not confer authorized residency status if it is not accompanied by supporting documents.” *Id.* CBP then announced a definition of authorized residency that is narrower than CBP’s own suggested definition of those authorized to accept employment in 8 C.F.R. § 274a.12; for example, the new CBP definition excludes applicants for adjustment of status, TPS holders, and asylum seekers. SUMF ¶ 16.

III. Impact of the New Policy on Plaintiffs.

CBP’s policy change had the effect of stripping airport workers of their jobs and livelihoods, imperiling their health and welfare and that of their families. *Id.* ¶¶ 22, 29-30. Plaintiff Saint Paul Paul was a cabin cleaner at Logan Airport. *Id.* ¶ 50. One day in 2025, he arrived at work as usual only to discover that he could no longer access the terminal where he worked. *Id.* ¶¶ 51-52. Although his immigration status remained the same throughout his three years of employment at the airport, Mr. Paul received a letter from CBP stating that his Customs seal was revoked for

lack of “authorized residency.” *Id.* ¶ 54. CBP offered no explanation of what that requirement entailed or how he failed to meet it. *Id.* As a result, Mr. Paul can no longer work as a cabin cleaner and has struggled to find other employment, securing only temporary, non-union restaurant work, most recently at Chipotle. *Id.* ¶¶ 56-57. His new jobs are more physically demanding, pay less, and fail to cover the expenses of his family household, which includes his wife and two children. *Id.* ¶ 57.

Meanwhile, Plaintiff Ana Lemus timely applied to renew her seal when it expired in early 2025. *Id.* ¶ 43. Defendants appear to have ignored her renewal application, failing to adjudicate it before her previous seal expired, and effectively forcing her out of the cabin cleaning job she had held for six years. Without a decision on her renewal application, Ms. Lemus was deprived of any opportunity to be heard on appeal. *Id.* ¶¶ 45-47. Ms. Lemus has struggled to find work comparable to her cabin cleaning role. *Id.* ¶ 48. She now commutes three hours by bus from her Massachusetts home to work at a New Hampshire hotel. *Id.*

Plaintiff Raquel Molina worked at Logan Airport for 27 years as a cabin cleaner and maintained work authorization through her TPS. *Id.* ¶¶ 31-32. On June 30, 2025, CBP revoked Ms. Molina’s seal without reason, declaring that the 65-year-old grandmother “poses an unacceptable risk to public health, interest or safety, national security, aviation safety, the revenue, or the security of the area.” *Id.* ¶ 35. The revocation of Ms. Molina’s seal did not follow any change to her immigration status or work authorization. *Id.* ¶ 37. Since losing her Customs seal, Ms. Molina has not been able to find alternative work that accommodates her arthritis, as her work as a cabin cleaner did, which has made it difficult for her to afford rent and food for her family. *Id.* ¶ 39.

Plaintiff Daysi Rocha Cruz received a CBP letter that accused her of having committed a “violation of a U.S. immigration law” by violating the Immigration and Nationality Act and

incorrectly described her immigration status—alleging that she lacked lawful status to remain in the U.S.—and cited this information as the basis for revoking her seal. *Id.* ¶ 61. As an additional basis, the letter stated that the Port Director had determined, without further elaboration, that she posed “an unacceptable risk to public health, interest or safety, national security, aviation safety, the revenue, or the security of the area.” *Id.* ¶ 63. The letter further explained that she could either submit a new Customs seal application or file a written administrative appeal of the revocation within thirty days. *Id.* On May 7, 2025, Ms. Rocha Cruz filed a new application for a Customs seal via Swissport. To date, she has received no notice from CBP regarding the status of that application. *Id.* ¶ 66. Ms. Rocha Cruz spent three months unemployed as she and her immigration attorney attempted to address the wrongful revocation, before finally finding lower-paying work at an airport cafeteria. *Id.* ¶ 60.

Defendants have similarly revoked the Customs seals of other SEIU members based on the agency’s new interpretations of “authorized residency” and “violation of a U.S. immigration law.” *Id.* ¶ 28. CBP’s policy change has also caused the termination of many other employment-authorized immigrant airport workers who are SEIU members, undermining workers’ financial security and ability to maintain stable union jobs. *Id.* ¶ 29. Plaintiff SEIU represents 40,000 airport workers across the country and supports those who have experienced the effects of CBP’s policy change. *Id.* ¶ 24. Immigrant workers are approximately twenty-five percent of SEIU’s membership. *Id.* ¶ 26. Many of SEIU’s dues-paying members, including Plaintiffs Ms. Lemus, Ms. Rocha Cruz, Mr. Paul, and Ms. Molina, have lost their jobs. Further, SEIU advances its mission of promoting worker rights by forging a diverse labor movement that empowers both immigrant and non-immigrant workers. *Id.* ¶ 25. CBP’s dramatic policy change impedes SEIU’s mission by creating new barriers to promoting its membership’s labor and employment rights.

IV. Procedural History.

Plaintiffs filed this lawsuit on March 13, 2026, on behalf of four Individual Plaintiffs and SEIU. Dkt. No. 1. Five days later, they moved to expedite production of the Administrative Record, Dkt. No. 4, which this Court granted, Dkt. No. 22, ordering Defendants to produce all records concerning “‘authorized residency’ and ‘violation of a U.S. immigration law’ by April 24, 2026 and all records relating to the Individual Plaintiffs by May 4, 2026.” *Id.* Defendants answered the Complaint on June 12, 2026, Dkt. No. 44, and Plaintiffs filed an Amended Complaint as of right on July 6, 2026, Dkt. No. 48, which Defendants answered on August 20, 2026, Dkt. No. 58. Following completion of the production of the Administrative Record, the parties agreed to proceed to summary judgment briefing. *See* Dkt. No. 56 (adopting parties’ Joint Statement).

STANDARD OF REVIEW

Summary judgment “is appropriate when there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” *Viscito v. Nat’l Plan. Corp.*, 34 F.4th 78, 83 (1st Cir. 2022) (quotations omitted). “On cross-motions for summary judgment, each motion is reviewed separately, drawing facts and inferences in favor of the non-moving party.” *Scottsdale Ins. Co. v. United Rentals (N. Am.), Inc.*, 977 F.3d 69, 72 (1st Cir. 2020). For APA claims, “a motion for summary judgment is simply a vehicle to tee up a case for judicial review and, thus, an inquiring court must review an agency action not to determine whether a dispute of fact remains but, rather, to determine whether the agency action” violates the APA. *Bos. Redevelopment Auth. v. Nat’l Park Serv.*, 838 F.3d 42, 47 (1st Cir. 2016).

ARGUMENT

I. Defendants’ new interpretation of “authorized residency” is arbitrary and capricious.

In 2025, Defendants abandoned more than two decades of agency practice and adopted a new, narrow definition of “authorized residency” for purposes of determining which individuals

are entitled to obtain Customs seals, in the process excluding workers with employment authorization based on certain disfavored immigration statuses. SUMF ¶¶ 15-16. This change in position violates the APA, because it was undertaken without adequate explanation, without consideration of reliance interests, without analysis of reasonable alternatives, and without adequate data. Each is reason enough to find an APA violation; together, CBP's errors amount to a patently arbitrary policy swing.

Agency decisions must be "reasonable and reasonably explained"; otherwise, they are arbitrary and capricious. *Ohio v. EPA*, 603 U.S. 279, 292 (2024) (quoting *FCC v. Prometheus Radio Project*, 592 U.S. 414, 423 (2021)). In providing a reasonable explanation for its decision, an agency must articulate a connection between the facts found and the choice made, and it must consider reliance interests, as well as obvious alternatives. *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983); see *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 30 (2020) (requiring that agencies consider alternatives "within the ambit of the existing policy").

An agency is limited to the administrative record it certifies, no matter how threadbare. The "focal point" for arbitrary and capricious review is "the administrative record already in existence, not some new record made initially in the reviewing court." *Camp v. Pitts*, 411 U.S. 138, 142 (1973); *Atieh v. Riordan*, 727 F.3d 73, 76 (1st Cir. 2013) ("The focal point of APA review is the existing administrative record."). If the certified record cannot sustain the action, the agency's decision must be vacated. *Pitts*, 411 U.S. at 143.

Here, the administrative record cannot support Defendants' new policy, which is arbitrary and capricious several times over. Not only does the administrative record omit any explanation of why Defendants chose this definition of "authorized residency," it also fails to explain the

connection, if any, between Defendants’ sparse data collection and the policy they chose, indicate whether Defendants considered any reasonable alternatives, or even mention the reliance interests of workers and airports. As a result, Defendants’ new definition of “authorized residency” is arbitrary and capricious.

A. Defendants failed to examine the relevant data.

Defendants have an obligation to examine the “relevant data” before deciding on a course of action. *State Farm*, 463 U.S. at 30. Because they did not do so here, their action was arbitrary and capricious.

As their “data,” Defendants provided survey results from fewer than 20 of the approximately 200 airports in the United States that receive international flights.¹ SUMF ¶ 9. The administrative record does not explain whether Defendants distributed their survey to all airports hosting international flights, or only to some; if only to some, which ones and why; what response rate the survey yielded; and whether the 20 respondents are representative of practices at the airports not surveyed or which did not respond—including Logan Airport, where Individual Plaintiffs were employed. Notably, at least some of the omitted airports (Logan, SFO, Houston, and Orlando) allowed TPS holders, asylum seekers, and adjustment applicants with valid work authorization to qualify for “authorized residency” and receive Customs seals. SUMF ¶¶ 9, 10, 26.

Without a more thorough explanation of how CBP designed and carried out the survey, and whether the 20 responses are sufficiently representative to support such a drastic change in policy, Defendants cannot rely on the survey alone to justify its change of policy as “reasonable” or “reasonably explained.” *See We Who Care, Inc. v. Sullivan*, 756 F. Supp. 42, 46 (D. Me. 1991)

¹ U.S. Dep’t of Transp., Bureau of Transp. Stats., *Transportation Statistics Annual Report 2020* at 1-11 (2020), <https://perma.cc/W9UE-QMGV> (stating that “[t]he number of U.S. airports with nonstop international service” was 192 in 2019). It appears the Department of Transportation no longer includes this statistic in more recent annual reports.

(rejecting agency reliance on survey where administrative record lacked “even the most basic information concerning the . . . survey, e.g., who conducted the survey, how many households were interviewed, or the methodology used in conducting the survey”).

B. Defendants did not provide an adequate explanation for how they selected this definition of “authorized residency” over reasonable alternatives.

Defendants also failed to explain any connection between their survey results and the definition of “authorized residency” they selected, and as such the definition must be set aside as arbitrary and capricious. An agency must articulate “a rational connection between the facts found and the choice made.” *State Farm*, 463 U.S. at 43 (quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)); *see also Massachusetts v. Nat’l Insts. of Health*, 770 F. Supp. 3d 277, 306-07 (D. Mass. 2025). While Defendants presented some facts about differing airport definitions of authorized residency, the record certified by the agency provides no *analysis* of those facts or any link between the survey results and the particular definition of authorized residency that led to the revocation of the hundreds of airport workers’ Customs seals—including those of Plaintiffs and other SEIU members. SUMF ¶¶ 7-13. It is not enough for Defendants to have surveyed a handful of airports (or to have surveyed many airports but received only a handful of responses), identified various definitions of “authorized residency,” and then chosen one. SUMF ¶¶ 9-12, 15. Instead, Defendants must explain *why* they did so.

Further, in explaining the connection between the facts found and the choice made, the agency must “give a reasoned explanation for its rejection of [reasonable] alternatives.” *Massachusetts v. U.S. Dep’t of Health & Hum. Servs.*, 513 F. Supp. 3d 215, 225 (D. Mass. 2021); *see also State Farm*, 463 U.S. at 51 (defendants’ failure to consider “technological alternative[s] within the ambit of the existing standard,” such as airbags rather than passive restraints, was arbitrary and capricious); *Regents*, 591 U.S. at 30 (noting that “when an agency rescinds a prior

policy its reasoned analysis must consider the ‘alternative[s]’ that are ‘within the ambit of the existing policy’); *Stauffer v. Internal Revenue Serv.*, 285 F. Supp. 3d 474, 484 (D. Mass. 2017) (same); *AFGE v. U.S. Fed. Lab. Rels. Auth.*, --- F.Supp.3d ---, No. 26-CV-11747, 2026 WL 1870987, at *7 (D. Mass. June 29, 2026) (holding that a new policy was arbitrary and capricious because “nowhere in the administrative record does the [agency] consider, much less ‘cast doubt’ on, its previous rationale”).

Defendants failed to consider even reasonable alternatives that *their own survey* identified—let alone explain why they rejected them. The survey revealed that approximately half of the airports that responded accepted EADs as sufficient for “authorized residency.” SUMF ¶ 12. Defendants failed to explain why letting airports use different definitions, as they had for decades, or adopting a more expansive uniform policy of accepting EADs as sufficient would have been worse than the option they chose. Given the survey responses, Defendants can hardly say they were unaware of these alternatives to their chosen narrow definition of “authorized residency.”

Defendants also seemingly did not consider defining “authorized residency” based on 8 C.F.R. § 274a.12, even though a senior CBP official expressly proposed it. SUMF ¶ 14. That regulation defines the classes of aliens authorized to accept employment, including noncitizens “granted Temporary Protected Status,” 8 C.F.R. § 274a.12(a)(12), who “ha[ve] filed a complete application for asylum . . . whose application . . . [h]as not been decided,” *id.* § 274a.12(c)(8)(i), and who “ha[ve] filed an application for adjustment of status,” *id.* § 274a.12(c)(9), among others. In a July 2024 email, the Director of the Traveler Entry Programs (“TEP”) Division raised the possibility of using that regulation as a starting point for defining “authorized residency.” SUMF ¶ 14. The TEP Director wrote that the idea had come from a CBP Program Manager. *Id.* Defendants failed to explain whether they considered this suggestion, and if they did, why they rejected it.

Ultimately, Defendants failed to explain why they chose a narrow definition of “authorized residency” that excludes workers with certain immigration statuses, especially in the face of alternatives identified by their survey and the email from the TEP Director. “The failure of an agency to consider obvious alternatives has led uniformly to reversal.” *Yakima Valley Cablevision, Inc. v. F.C.C.*, 794 F.2d 737, 746 n.36 (D.C. Cir. 1986).

C. Defendants did not consider substantial reliance interests.

The new definition of “authorized residency” is arbitrary and capricious for the additional reason that Defendants failed to consider reliance interests. “When an agency changes course . . . it must be cognizant that longstanding policies may have engendered serious reliance interests that must be taken into account” *Regents*, 591 U.S. at 30. Indeed, where there have been “decades of industry reliance on the Department’s prior policy,” as is the case here, an explanation that may justify a new policy may still “[fall] short of the agency’s duty to explain why it deemed it necessary to overrule its previous position.” *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 222 (2016).

Agencies act arbitrarily when they make policy changes without considering reliance interests. *Regents*, 591 U.S. at 30; *Encino*, 579 U.S. at 222. This principle is well understood by courts within the First Circuit. *See New York v. Trump*, 171 F.4th 1, 24 (1st Cir. 2026) (noting that plaintiffs were likely to succeed “in showing that [the Office of Management and Budget] acted arbitrarily and capriciously” because it directed agencies to “freeze . . . funds without considering . . . the reliance interests of the recipients of the obligated federal funds that were to be frozen”); *Nat’l Insts. of Health*, 770 F. Supp. 3d at 310 (holding that the agency’s “conclusory” consideration of reliance interests in changing grant reimbursement rate was arbitrary and capricious); *Ass’n of Am. Univs. v. Dep’t of Energy*, 789 F. Supp. 3d 118, 143 (D. Mass. 2025) (holding that an agency must consider reliance interests and “acknowledge[] . . . the potential

consequences of the policy change”); *Ass’n of Am. Univs. v. Nat’l Sci. Found.*, 788 F. Supp. 3d 106, 138 (D. Mass. 2025) (stating that where parties accrued “decades” of reliance interests, an agency’s “summary treatment of that reliance interest falls short of the agency’s duty to explain why it deemed it necessary to overrule its previous position”); *Ass’n of Am. Univs. v. Dep’t of Def.*, 806 F. Supp. 3d 79, 119-20 (D. Mass. 2025) (holding that agency failure to account for reliance interests before capping grant reimbursement rate was arbitrary and capricious).

Here, nothing in the administrative record evidences that Defendants considered the interests of the thousands of workers who need Customs seals for their jobs and thus their livelihoods, nor the impact that the loss of these workers would have on airports and employers around the country—especially at a time when many airports were already struggling with delays.² Employment and compensation constitute substantial reliance interests, both for affected individuals and the entire industry. *Encino*, 579 U.S. at 212 (noting that the “industry had relied since 1978 on the Department’s position that service advisors are exempt from the FLSA’s overtime pay requirements, and had negotiated and structured compensation plans against this background understanding,” which constituted “significant reliance interests,” requiring the agency to provide “a more reasoned explanation for its decision to depart from its existing enforcement policy”); *see also Nat’l Insts. of Health*, 770 F. Supp. 3d at 309 (including lost careers, and the impact of those lost careers on public health research, among the reliance interests that agency failed to consider). The experiences of the Individual Plaintiffs, SUMF ¶¶ 31-66, demonstrate precisely why courts insist that an agency departure from longstanding policy upon which others have relied requires “a more reasoned explanation.” *Encino*, 579 U.S. at 212; *see*

² See Teresa Murray & Lillian Tracy, U.S. PIRG Education Fund, *The Plane Truth 2026* at 1 (May 2026), <https://perma.cc/SMN3-EQXU> (finding that in 2025, on-time arrivals hit their lowest level since 2014).

also *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009). And many members of plaintiff SEIU are similarly situated. SUMF ¶¶ 27-30.

In sum, because Defendants failed to examine relevant data or explain their reasoning, did not consider reasonable alternatives that their own survey identified, and ignored substantial reliance interests, their decision to adopt a new definition of “authorized residency” was arbitrary and capricious.

II. Defendants’ interpretation of “violation of a U.S. immigration law” to include civil violations is unlawful.

Defendants’ policy interpreting 19 C.F.R. § 122.183(a)(4)(xxxiv) to include civil immigration violations is contrary to law, incompatible with the text of the regulation itself, and arbitrary and capricious. Defendants cited 19 C.F.R. § 122.183(a)(4)(xxxiv)—which lists a “violation of a U.S. immigration law” among the list of “disqualifying offense[s]”—in its letter revoking Plaintiff Rocha Cruz’s Customs seal. Defendants do not contend that Ms. Rocha Cruz has committed any criminal violation of U.S. immigration laws, because she has not. Rather, their revocation letter pointed to her having committed the supposed *civil* immigration violation of being a noncitizen present in the United States without being admitted or paroled pursuant to 8 U.S.C. § 1182(a)(6)(A)(i).³

³ It is unclear when Defendants adopted the policy of including civil immigration violations within the scope of § 122.183(a)(4)(xxxiv)—presumably sometime after Ms. Rocha Cruz’s Customs seal was initially approved in 2024 but before it was revoked in 2025. Defendants have produced no documents in the administrative record relating to this policy despite Plaintiffs’ inquiries as to the absence of any supporting documentation.

A. Defendants’ interpretation of the “violation of a U.S. immigration law” provision is inconsistent with the text, purpose, and structure of the regulation.

First, Defendants’ interpretation of what constitutes a violation of U.S. immigration law is contrary to law. The “violation of a U.S. immigration law” provision was added in the 2002 IFR to specifically address “criminal” conduct. The preamble to the IFR anchors the entire subsection’s scope to purely criminal conduct by explaining that “[§ 122.183(a)(4)] was added to § 122.183 because Customs believes that the issue of established *criminal* conduct is appropriate for detailed treatment[.]” 67 Fed. Reg. at 48980 (emphasis added). CBP’s recent gloss interpreting the regulation to include civil immigration violations thus contradicts the agency’s intent at the time the provision was added. And it flies in the face of the First Circuit’s principle that an agency’s interpretation cannot contradict the plain text of a regulation. *See United States v. Coal. for Buzzards Bay*, 644 F.3d 26, 33 (1st Cir. 2011).

The relevant regulations provide specific grounds for denial or revocation of a Customs access seal. *See* 19 C.F.R. §§ 122.183 (denial), 122.187 (revocation). Those grounds include “[a] disqualifying offense committed by the applicant” which the regulation explains includes an offense “the applicant has been convicted of, or found not guilty of by reason of insanity, or has committed any act or omission involving.” *Id.* § 122.183(a), (a)(4). Additionally, “[e]vidence of a pending or past investigation establishing probable cause to believe that the applicant has engaged in any conduct which relates to, or which could lead to a conviction for, a disqualifying offense” is grounds for denial of a customs seal. *Id.* § 122.183(a)(2). The regulation lists twelve specific criminal statutes and several crimes, including “murder,” “assault with intent to murder,” “kidnapping,” “sedition,” “treason,” “robbery,” and other “felon[ies].” *See id.* § 122.183(a)(4)(i-xxxiii), (xxxv-xxxvii). Buried near the end of the list is “any violation of a U.S. immigration law.” *Id.* § 122.183(a)(4)(xxxiv).

Defendants’ interpretation of “violation of a U.S. immigration law” to include civil immigration violations is therefore inconsistent with the plain text of the regulation, which otherwise refers only to criminal violations as disqualifying offenses and repeatedly uses criminal law terminology. For example, a person can only be “convicted” of, “found not guilty of by reason of insanity” of, “arrested for,” or “charged with” a crime—not a civil offense. *See generally id.* §§ 122.183; 122.187. An agency may not “read a provision in a manner that is utterly contrary to its plain language.” *Buzzards Bay*, 644 F.3d at 33; *see also Conservation L. Found., Inc. v. EPA*, 223 F. Supp. 3d 124, 129 (D. Mass. 2017) (holding that “an agency cannot take a position which contradicts the plain text of a regulation”).

Although the specific list of disqualifying offenses appears in the provision pertaining to denial of a Customs seal, the list is cross-referenced in the provisions describing the grounds for revocation of an existing seal. *Id.* § 122.187(a). A Customs seal may be revoked if “[t]he employee is or has been convicted of, or found not guilty of by reason of insanity, or there is probable cause to believe that the employee has committed any act or omission involving, an offense listed in § 122.183(a)(4)” or if “[t]he employee has been arrested for, or charged with, an offense listed in § 122.183(a)(4) and prosecution or other disposition of the arrest or charge is pending.” *Id.* § 122.187(a)(2)(ii)-(iii). The revocation grounds in § 122.187 likewise hinge on criminal procedural predicates—“convicted,” “found not guilty of by reason of insanity,” “arrested,” “charged”—which are inapposite to purely civil immigration violations. The agency’s reading of the regulation to include civil immigration violations is thus doubly incompatible with the text of the revocation-specific regulation. *Id.*

If the plain text were not obvious enough, familiar tools of statutory construction undermine Defendants’ interpretation of that provision to include civil immigration offenses.

“[T]he canon of *noscitur a sociis* teaches that a word is ‘given more precise content by the neighboring words with which it is associated.’” *Fischer v. United States*, 603 U.S. 480, 487 (2024) (quoting *United States v. Williams*, 553 U.S. 285, 294 (2008)); see also *City of Providence v. Barr*, 954 F.3d 23, 34 (1st Cir. 2020). Under this canon, “a string of statutory terms raises the implication that the ‘words grouped in a list should be given related meaning.’” *Id.* (quoting *S.D. Warren Co. v. Me. Bd. of Env’tl. Prot.*, 547 U.S. 370, 378 (2006)). Every other specific ground listed in subsection (a)(4) is a criminal offense—either a named criminal statute or a paradigmatic crime like “murder,” “kidnapping,” “treason,” or “felonies.” Placing a violation of a U.S. immigration law amongst criminal offenses makes it clear that the regulation did not contemplate a civil infraction.⁴

Defendants’ interpretation of the regulation is likewise not entitled to deference, because deference is warranted only when a regulation’s text is genuinely ambiguous and the agency’s interpretation is reasonable, authoritative, expertise-grounded, and reflective of fair and considered judgment. See *Gemini Fishing Inc. v. U.S. Dep’t of Homeland Sec.*, 783 F. Supp. 3d 465, 480 (D. Mass. 2025). Defendants’ interpretation meets none of those criteria. The text of the regulation unambiguously refers to criminal conduct exclusively, and Defendants produced no administrative record to support the argument that this new *circa* 2025 interpretation is expertise-grounded or reflective of fair and considered judgment, or indeed any judgment at all.

B. Defendants’ interpretation of the “violation of a U.S. immigration law” provision is arbitrary and capricious.

Defendants’ interpretation of the “violation of a U.S. immigration law” provision to include civil immigration violations is also arbitrary and capricious. As explained, “[a]n agency’s decision

⁴ Construing this provision to apply only to immigration crimes would not render it superfluous, as there are immigration crimes not covered by the other provisions in the regulation. See, e.g., 8 U.S.C. §§ 1324, 1324a(f), 1325, 1326.

is arbitrary and capricious if the agency relied on improper factors, disregarded ‘an important aspect of the problem, offered an explanation that runs counter to the evidence,’ or when a reasonable explanation for the agency’s decision cannot be discerned.” *Gulluni v. Levy*, 85 F.4th 76, 82 (1st Cir. 2023) (quoting *State Farm* 463 U.S. at 43). CBP’s 2024 survey did not ask airports how they interpreted this regulatory term, and Defendants produced *nothing* in the administrative record supporting their new policy. Defendants have therefore provided no explanation for the interpretation of the “violation of a U.S. immigration law” provision to include civil immigration violations and have failed to meet their burden that an agency’s explanation be reasonable and reasonably explained.

There is also “no indication in the record that anyone . . . performed any analysis to support the conclusion” that the regulation’s “violation of a U.S. immigration law” provision encompasses civil immigration violations. *Am. Pub. Health Ass’n v. Nat’l Institutes of Health*, 145 F.4th 39, 54 (1st Cir. 2025) (holding agency action bore “all the hallmarks of arbitrary and capricious decision-making” “after reviewing the ‘sparse’ administrative record”). The record is devoid of any indication of what, if anything, Defendants considered in interpreting the regulation to include civil immigration violations. There is thus no record support for any assertion that Defendants considered the reliance interests of people like Ms. Rocha Cruz, who have built careers and livelihoods around their airport jobs, *see Regents*, 591 U.S. at 30-31 (agency must consider reliance interests), or reasonable alternatives, or the consequences of excluding qualified personnel from essential airport jobs.

C. The inclusion of the “violation of a U.S. immigration law” provision in the regulations is arbitrary and capricious.

Though the provision listing a “violation of a U.S. immigration law” as grounds for denial or revocation of a Customs seal has been part of the regulation since 2002, the inclusion of that

provision is arbitrary and capricious, has been since its inception, and was unlawful at the time it was applied to Plaintiff Rocha Cruz in 2025. The 2002 IFR explained CBP’s intent “whenever practicable, to use similar standards as those of the FAA” to address security concerns. This makes sense—people with airport security access provided by the FAA have access to many of the same areas as people with airport security access provided by CBP; both agencies authorize “access to areas at airports that are concentric or overlapping.” 67 Fed. Reg. at 48981. In other words, somebody who poses a risk to airport security poses that risk regardless of whether they are seeking access pursuant to CBP or FAA policies. *See id.* (noting that “the basic security concerns reflected in the FAA action would also apply in a Customs security area context”).

The 2002 IFR copied many of the grounds for Customs seal denial and revocation from a 2001 Final Rule promulgated by the FAA. *See* 67 Fed. Reg. at 48980 (stating that CBP regulation “parallels the FAA approach”); *see also* 66 Fed. Reg. at 63474 (codified at 49 C.F.R. § 1542.209)). The FAA Final Rule provided that an airport worker’s access to the Security Identification Display Area (the “SIDA” in FAA terminology)—where unescorted workers must display identification issued by an airport or aircraft operator—must be suspended if they are found to have been convicted of a “disqualifying criminal offense.” 49 C.F.R. § 1542.209(b). The FAA’s list of disqualifying criminal offenses mirrors many of the offenses listed in the CBP regulation but does not reference a violation of a U.S. immigration law. *Id.* § 1542.209(d).⁵

⁵ The IFR explained that the new paragraph (a)(4) text also lists some additional offenses not included in the FAA regulations, including offenses that relate directly to a Customs statutory enforcement mandate, as encompassed in subsection (xxxv): “Any violation of a Customs law or any other law administered or enforced by Customs involving narcotics or controlled substances, commercial fraud, currency or financial transactions, smuggling, failure to report, or failure to declare.” 19 C.F.R. § 122.183(a)(4)(xxxv); *see also* Access to Customs Security Areas at Airports, 67 Fed. Reg. 48981. At any rate, even when Customs deviated from the FAA’s list of disqualifying offenses to capture offenses that relate to Customs’ statutory mandate, it added criminal offenses, not civil ones.

Given that individuals who have committed a violation of U.S. immigration law—civil or criminal—are not prohibited from gaining access to FAA security areas under FAA regulations, it is arbitrary and capricious to prohibit those same people from holding a Customs seal. If the goal of controlling which workers have access to secure airport areas is to promote airport security as a whole, then it makes no logical sense to consider somebody a security risk for CBP but not FAA purposes. The First Circuit has held that it is irrational for an agency to ignore inconsistencies between regulations where one regulation permits the very conduct that another regulation seeks to prohibit or restrict, especially when the agency “does so entirely without explanation.” *Nat. Res. Def. Council, Inc. v. EPA*, 824 F.2d 1258, 1280 (1st Cir. 1987) (holding that “the EPA was irrational to establish, without a word of explanation, different and more relaxed criteria than the EPA’s co-existing [Safe Drinking Water Act] standard”). The CBP Customs seal regulation similarly bars something that is permitted by the FAA airport access regulation—yet CBP never explained the regulatory conflict, why persons who violated a U.S. immigration law posed a security threat when their airport access is authorized by CBP but not when authorized by FAA, or why the CBP restriction on persons who violated a U.S. immigration law serves any meaningful purpose when those same persons are not prohibited from accessing concentric or overlapping areas of the airport under FAA authorization.

III. CBP’s Refusal to Finalize the 2002 IFR Violates the APA.

CBP’s reliance on provisions added via the 2002 IFR is also unlawful. When Customs issued the IFR in 2002, it characterized the rule as an “interim regulation” and announced the commencement of a 60-day period for public comment “prior to the publication of a final rule.” 67 Fed. Reg. at 48977, 48978. But CBP has never finalized the IFR in the over 24 years since its promulgation, and any exception to the APA’s requirement that the agency conduct notice-and-

comment rulemaking in the first instance has long since gone stale. The Court should thus find that the agency's recent actions to apply an unlawfully promulgated regulation are themselves unlawful.

In 5 U.S.C. § 553, the APA provides narrow exceptions to the traditional requirement that an agency promulgate final regulations only after having first engaged in notice-and-comment rulemaking. Among other reasons, an agency may do away with that process when it “for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.” 5 U.S.C. § 553(b)(B).

“[T]he good-cause exception to the APA’s procedural requirements is ‘narrowly construed and only reluctantly countenanced,’ usually in ‘emergencies’ where ‘delay would do real harm to life, property, or public safety.’” *California v. Mullin*, 833 F. Supp. 3d 50, 78 (D. Mass. 2026) (citing *California v. Azar*, 911 F.3d 558, 575-76 (9th Cir. 2016)); *see also Fed. Land Bank of Springfield v. Farm Credit Admin.*, 676 F. Supp. 1239, 1248 (D. Mass. 1987) (noting “[c]ourts have found good cause for waiver of notice and comment” where agencies were “confronted with emergencies to which *immediate* response was necessary” and promulgated “*interim* or temporary rules”) (emphasis in original).

In 2002, CBP explained that the IFR would take effect immediately because it had “determined that prior public notice and comment procedures on these regulations are unnecessary and contrary to the public interest,” given that the IFR’s changes were “primarily intended to enhance the security environment at airports in those areas designated as Customs security areas.” 67 Fed. Reg. 48983. The agency also determined good cause did not support a delayed effective date. *Id.*

Regardless of whether that rationale was sufficient in 2002, any exigency constituting good cause has long since lapsed, and the agency's failure to consider comments and issue a final rule in the intervening two-decade-long period violates the APA. As the D.C. Circuit explained, "[c]ommon sense suggests that any administrative action taken in a rare 'emergency' situation such as the one at hand, while perhaps necessarily 'immediately effective,' need only be temporary, pending public notice-and-comment procedures." *Am. Fed. of Gov't Empls., AFL-CIO v. Block*, 655 F.2d 1153, 1157 (D.C. Cir. 1981) (citation omitted). Thus, "once an emergency situation has been eased by the promulgation of interim rules, it is crucial that the comprehensive permanent regulations which follow emerge as a result of the congressionally-mandated policy of affording public participation that is embodied in section 553." *Id.* at 1158; *see also Fed. Land Bank of Springfield*, 676 F. Supp. at 1248 (citing *AFGE* for the proposition that "although there was good cause for waiver of notice and comment in promulgating the agency's temporary regulations, the same was not true for the agency's *permanent* regulations") (emphasis in original). The emergency that justified the interim rule is, by definition, addressed (at least temporarily) by that rule; the agency then has no excuse to bypass proper rulemaking before "chisel[ing]" the regulations "into bureaucratic stone." *Id.* (quoting *AFGE v. Block*, 655 F.2d at 1157-58). CBP has utterly failed to heed that instruction.

At least one court has found an IFR invalid where the agency did not move to finalize within two years of promulgation of the interim rule. *See Valiant Steel and Equip., Inc. v. Goldschmidt*, 499 F. Supp. 410, 413 (D.D.C. 1980) ("If meaning is to be given to the procedural requirements for rule-making, defendants cannot be allowed to continue to rely indefinitely on an emergency which at this date is almost two years old."). If a delay of that length is unlawful, one that exceeds two decades is certainly unlawful. *See Hells Canyon Pres. Council v. Richmond*, 841

F. Supp. 1039, 1047 n.8 (D. Or. 1993) (“Allowing [the agency] to avoid an APA timeliness challenge by simply promulgating an ‘interim rule’ would effectively eviscerate the intent” of the APA). “Nor does the fact that the regulations were only interim ones and that interested persons were given an opportunity to comment following their promulgation excuse the [agency’s] departure from section 553 procedures, for the purpose of prior notice and comment is to afford persons an opportunity to influence agency action in the formulative stage, before implementation, when the agency is more likely to be receptive to argument.” *Kollett v. Harris*, 619 F.2d 134, 145 (1st Cir. 1980).

Then-Judge Ginsburg warned of the dangers of permitting agencies to circumvent normal procedures indefinitely. Recognizing that “tolerance of ‘temporary’ measures installed without a public airing may give [an] agency an apparent incentive to proceed with its permanent rulemaking at a leisurely pace,” she “emphasize[d] . . . that the agency must convince [the court] . . . that it is not engaging in dilatory tactics during the interim period.” *Mid-Tex Elec. Co-op., Inc. v. F.E.R.C.*, 822 F.2d 1123, 1132 (D.C. Cir. 1987); *see also See Nat’l Fed. of Fed. Emp. v. Devine*, 671 F.2d 607, 612 (D.C. Cir. 1982). Here, CBP took that “tolerance” to the extreme and has simply never finalized the IFR through consideration of public comment. This Court should not countenance such flagrant disregard for the letter and spirit of the APA.

Moreover, CBP’s failure to consider public comments in a properly promulgated final rule undercuts Congress’s intention that exceptions to traditional rulemaking be rare. “Congress’s view seems to have been that any time one can expect real interest from the public in the content of the proposed regulation, notice-and-comment rulemaking will not be contrary to the public interest.” *Levasque v. Block*, 723 F.2d 175, 185 (1st Cir. 1983). Thus, “[t]he question is not whether *dispensing* with notice and comment would be contrary to the public interest, but whether

providing notice and comment would be contrary to the public interest.” *Mack Trucks, Inc. v. E.P.A.*, 682 F.3d 87, 95 (D.C. Cir. 2012) (emphasis in original). “The public interest prong of the good cause exception is met only in the rare circumstance when ordinary procedures—generally presumed to serve the public interest—would in fact harm that interest.” *Id.*

Contrary to those principles, CBP has allowed a 2002 IFR to sit on the books for decades, without issuing a final rule that responded to public comments and explained the rationale for the agency’s final position. Accordingly, it is procedurally invalid and cannot support CBP’s actions at issue in this case. *See N.H. Hosp. Ass’n v. Azar*, 887 F.3d 62, 70 (1st Cir. 2018) (“Failure to abide by [the APA’s] requirements renders a rule procedurally invalid.”).

The unlawfully-promulgated 2002 IFR increased the potential grounds for denial and revocation of Customs seals by adding that any person who “has been arrested for, or charged with” “[a]ny violation of a U.S. immigration law” would lose their seal. 67 Fed. Reg. 48,978, 48,986. Because that provision was issued using an invalid procedure, the Court should vacate it, and find that the agency’s application of it now violates the APA. *See Assoc. of Am. Univ. v. Dep’t of Defense*, 806 F. Supp. 3d 79, 121 (D. Mass. 2025).

IV. Defendants’ revocations of Plaintiffs’ Customs seals suffered from fatal procedural deficiencies.

CBP also did not follow its own procedures and did not afford workers the due process the Fifth Amendment guarantees. CBP revoked the seals of Mr. Paul and Ms. Molina without stating specific grounds, excluded workers from their workplaces before issuing notice and without the emergency finding the agency’s own rules require, and never acted on the renewal applications of Ms. Lemus and Ms. Rocha Cruz. SUMF ¶¶ 41, 45, 55-59, 62-63, 65-66. CBP also deprived Plaintiffs of their property interests in their Customs seals without a pre-deprivation hearing in violation of the Due Process Clause of the Fifth Amendment.

A. CBP’s revocations violated the agency’s own regulations.

“An agency has an obligation to abide by its own regulations.” *Rotinsulu v. Mukasey*, 515 F.3d 68, 72 (1st Cir. 2008); *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 265-67 (1954). When an agency does not, courts may reverse the resulting action. *Haoud v. Ashcroft*, 350 F.3d 201, 205 (1st Cir. 2003). Courts have enforced this duty, invalidating agency action where an agency disregarded its procedures. *See, e.g., Rombot v. Souza*, 296 F. Supp. 3d 383, 388 (D. Mass. 2017) (holding that ICE unlawfully re-detained a noncitizen without following its own regulations and thus ordering his release).

CBP’s regulations establish clear procedures that the agency must follow when it seeks to revoke a Customs seal. As discussed above, there are two processes for revocation under 19 C.F.R. § 122.187. The first, “[p]roposed revocation or suspension,” requires a port director to provide a notice of proposed revocation to the Customs seal holder. Upon receiving notice, the seal holder has an opportunity to respond and contest the action before a decision is made. *Id.* § 122.187(b)(2). The second, “[i]mmediate revocation or suspension,” provides that a port director issues a final notice and a worker’s seal is surrendered at once, with no pre-deprivation notice or hearing. *Id.* § 122.187(b)(1). The port director may immediately deny a worker physical access to her workplace before issuing a final notice only when the director determines that “an emergency situation involving public health, safety, or security” is present. *Id.*

Even when the government denies access on an emergency basis prior to issuing a final notice—as it did here, despite the absence of any apparent “emergency situation involving public health, safety, or security”—the regulations impose obligations on CBP. The port director must issue final written notice within ten calendar days of the emergency action, “state the *specific* grounds for the immediate revocation,” and inform the employee of the right to appeal. *Id.* (emphasis added).

The consequences of revocation are severe and lasting. Third-party contractors, such as those that employed Individual Plaintiffs, will immediately terminate employees without a seal, as they can no longer perform their job duties. 19 C.F.R. § 122.182(a). A terminated employee who has lost their seal may either wait 180 days and apply for a new seal or file an administrative appeal, which permits a hearing only if the port director determines that the employee demonstrated “a genuine issue of fact that is material to the revocation or suspension action.” *Id.* § 122.187(b)(1); *id.* § 122.187(c).

In revoking or constructively denying the Customs seals of the Individual Plaintiffs, CBP flouted its rules in three ways. First, Defendants’ notices to Plaintiffs Molina and Paul failed to state the “specific grounds” for revocation required by CBP’s regulations. *Id.* § 122.187(b)(1); SUMF ¶¶ 36, 54.⁶ The letters recite in boilerplate terms that the recipient lacks “authorized residency,” without explaining CBP’s interpretation of that term or why the recipient falls outside of it. SUMF ¶¶ 36, 54. The failure to include “specific grounds” violates CBP’s regulations.⁷

The letter to Plaintiff Rocha Cruz fares no better. The letter states that the Port Director determined that she posed “an unacceptable risk to public health, interest or safety, national security, aviation safety, the revenue, or the security of the area” without explaining why he believed she posed those risks. SUMF ¶ 63.

⁶ It also violated the APA, which requires agencies to provide a licensee with notice “in writing of the facts or conduct which may warrant the action” and “opportunity to demonstrate or achieve compliance with all lawful requirements.” 5 U.S.C. § 558(c)(1)-(2). As discussed *infra*, Plaintiffs’ seals were “licenses” as that term is defined in the APA, *see id.* § 551(8), and CBP’s conduct thus violated its statutory obligations as well. Section 558 permits agencies to forego these requirements when public health or safety is threatened. *Id.* § 558(c). But there is no evidence anywhere in the administrative record or otherwise that any such threat existed here.

This matters because CBP’s letters impermissibly leave workers with nothing to answer on appeal. *See Perez-Escobar v. Moniz*, 792 F. Supp. 3d 224, 226 (D. Mass. 2025) (agency’s “conclusory explanation” for adverse action “did not offer . . . adequate notice of the basis for the . . . decision such that [Petitioner] could meaningfully respond”). Under CBP’s regulations, a worker “must demonstrate that there is a genuine issue of fact that is material to the revocation.” 19 C.F.R. § 122.187(b)(1)(ii). But a worker reading these letters has no way of knowing any issue of fact relevant to the revocation. CBP’s failure to provide Plaintiffs with a “meaningful notice of the basis,” *Perez-Escobar*, 792 F. Supp. 3d at 226, for revoking their Customs seals violates the agency’s own regulation.

To that end, courts have held that CBP violates its own rules when it relies on unsubstantiated and vague reasoning to deny a Customs seal application. *See, e.g., Rodriguez v. United States*, 336 F. Supp. 3d 1051, 1060 (D. Ariz. 2018) (holding that where CBP offered only “conclusory,” “unsupported,” and “non-specific” reasons for denying plaintiff’s application for a Customs seal, the agency violated its own regulations). More recently, a court determined that where CBP merely recited the language of the regulation, the agency failed to abide by its regulation requiring that it “fully stat[e]” the reasons for denying the plaintiff’s seal application. *Salman v. Perry*, No. 2:23-CV-11588, 2025 WL 1679512, at *3 (E.D. Mich. June 13, 2025) (holding that CBP violated §122.183(b) but granting summary judgment to defendants on other grounds). Here, CBP employed similarly insufficient tactics in revoking Plaintiff’s seals, regurgitating the language of §122.187 and offering little more than conclusory allegations about Plaintiffs and their immigration statuses.

Second, CBP denied several Plaintiffs access to their workplaces before issuing a final notice of revocation without the emergency finding that permits such action. Plaintiffs Molina,

Rocha Cruz, and Paul each lost access to the Customs security area before receiving notice from CBP. SUMF ¶¶ 40, 51, 64. But CBP regulations allow such an action only “on an emergency basis” when the port director determines there is an “emergency situation” involving health, safety, or security. 19 C.F.R. § 122.187(b). Defendants identified no such emergency, nor does the administrative record reveal one. Plaintiffs had passed their background checks and worked at Logan Airport for years with no issues. SUMF ¶¶ 31, 41, 50, 58, 65. The only change here was CBP’s reading of a phrase in its own regulations—a far cry from a public safety emergency. *See Hickey-McAllister v. Brit. Airways*, 978 F. Supp. 133, 141 (E.D.N.Y. 1997) (in case arising under pre-2002 version of Customs seal regulations, rejecting argument that the government’s authority to demand immediate surrender of a seal in some circumstances allowed it to ignore regulatory requirements of notice in writing, appeal, and hearing).

Third, CBP never acted on the renewal applications of Ms. Lemus or Ms. Rocha Cruz at all. SUMF ¶¶ 44, 66. CBP regulations state that renewal applications “*will* be subject to review.” 19 C.F.R. § 122.182(c)(2) (emphasis added). Had CBP denied their applications outright, the agency would have been required to furnish “detailed reasons for the denial” and explain available appeal procedures. *Id.* § 122.183(b)-(c). But CBP instead ignored their applications, effectively denying seals to Ms. Lemus and Ms. Rocha Cruz while at the same time withholding the procedural protections that CBP regulations provide to rejected applicants.

Each of these procedural violations would independently invalidate CBP’s actions. At each step of revocation, CBP ignored its rules, denying Plaintiffs an opportunity to respond or contest their revocations.

B. CBP violated Plaintiffs’ rights to due process under the Fifth Amendment.

In addition to violating CBP’s own regulations, CBP’s flawed process violated Plaintiffs’ constitutionally protected due process rights. To succeed on a procedural due process claim, a

plaintiff must show that the government interfered with a protected liberty or property interest, and that the procedures that accompanied that deprivation were constitutionally insufficient.

González-Fuentes v. Molina, 607 F.3d 864, 886 (1st Cir. 2010). Plaintiffs’ challenge to 19 C.F.R. § 122.187(b)(1) as applied to themselves satisfies both requirements.

This Court should hold that Customs seals constitute federal licenses. “The term ‘license’ is defined broadly by the APA to include any ‘permit, certificate, approval, registration, charter, membership, statutory exemption or other form of permission.’” *New York v. Trump*, 811 F. Supp. 3d 215, 242 (D. Mass. 2025), *appeal dismissed*, No. 26-1174 (1st Cir. June 15, 2026) (quoting 5 U.S.C. § 551(8)). Customs seals, which provide approval and permission for airport workers to access certain parts of an airport, meet the APA’s broad definition. *See, e.g., Clarke v. Commodity Futures Trading Comm’n*, 74 F.4th 627, 637 (5th Cir. 2023) (holding that even an informal CFTC no-action letter, in which the federal agency stated that it will not recommend enforcement action against a proposed activity, met the APA’s definition of “license”); *Anchustegui v. Dep’t of Agric.*, 257 F.3d 1124, 1129 (9th Cir. 2001) (permit to graze on national forest land is “license” within meaning of 5 U.S.C. 551(8)); *N.Y. Pathological & X-Ray Labs., Inc. v. INS*, 523 F.2d 79, 82 (2d Cir. 1975) (holding that approval to conduct medical examinations for immigrants seeking permanent resident status was a “license” under the APA). A license may become a protected property interest once it is granted by the government even when the government’s approval was “highly discretionary.” *Atl. Richfield Co. v. United States*, 774 F.2d 1193, 1202-03 n.39 (D.C. Cir. 1985).

Alternatively, even if this Court does not hold that the Customs seal is a government license, Plaintiffs still possess a property interest in their Customs seals. A person has a property interest in a government benefit when she has a “legitimate claim of entitlement to it.” *Bd. of Regents of*

State Colleges v. Roth, 408 U.S. 564, 577 (1972); *Davis v. Coakley*, 802 F.3d 128, 134 (1st Cir. 2015). The Supreme Court has long held that a person can have a property right in continued employment. *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 538 (1985). “[T]he right to hold specific private employment and to follow a chosen profession free from unreasonable governmental interference comes within the ‘liberty’ and ‘property’ concepts of the Fifth Amendment.” *Greene v. McElroy*, 360 U.S. 474, 492 (1959).

CBP’s regulations bolster the conclusion that Plaintiffs’ Custom seals constitute a property interest. Once a worker receives a seal, it remains valid for two years. 19 C.F.R. § 122.182(a). The government may revoke that seal only on the grounds set forth in § 122.187 and must provide clear notice and appeal rights. Plaintiffs’ seals were also essential to their livelihoods; CBP’s seal revocations directly resulted in Plaintiffs losing their jobs. SUMF ¶¶ 38, 47, 55, 59.

Whether the Customs seal is a statutory license or a constitutionally protected property interest, its revocation “constitute[s] deprivation of a property interest sufficient to animate due process protections,” *Amsden v. Moran*, 904 F.2d 748, 752 (1st Cir. 1990).

But CBP revoked Plaintiffs’ property right without any advance notice or opportunity for a pre-deprivation hearing and in the absence of any emergency justifying immediate termination. Mr. Paul learned that his seal had been revoked when he and his coworkers were abruptly blocked by security from entering their place of work. SUMF ¶ 52. CBP’s letter did not arrive until two days later. *Id.* ¶ 53. Ms. Molina and Ms. Rocha Cruz were told by their employers that their seals were revoked before receiving letters from CBP. *Id.* ¶¶ 40, 64. Ms. Lemus heard nothing at all from CBP. *Id.* ¶ 44-45. And the consequences for the Plaintiffs and their families have been substantial.

The familiar three-factor test of *Mathews v. Eldridge* supplies the standard to assess the constitutional adequacy of CBP's process: the private interest affected by the government action; the risk of erroneous deprivation and the probable value of additional safeguards; and the government's interest. 424 U.S. 319, 335 (1976). "Applying this test, the Court usually has held that the Constitution requires some kind of a hearing *before* the State deprives a person of liberty or property." *Zinerman v. Burch*, 494 U.S. 113, 127 (1990); *see also Wolff v. McDonnell*, 418 U.S. 539, 557-58 (1974). Here, each of the *Mathews* factors favors Plaintiffs.

First, Plaintiffs' private interest is weighty. Their Customs seals were the foundation of their financial security. Losing them meant immediately losing their jobs. SUMF ¶¶ 38, 47, 55, 59. The Supreme Court has long "recognized the severity of depriving a person of the means of livelihood." *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. at 543. That deprivation is all the more serious when, as here, individuals face continued hardship after losing their job. *Id.* Plaintiffs' revocations barred reapplication for 180 days and leave a permanent mark on future applications for Customs seals. 19 C.F.R. § 122.187(b)(1)(i); *id.* § 122.183(a)(1).

Second, the risk of error under § 122.187 as applied here is substantial, and the record shows it. CBP erroneously stripped at least one SEIU member of their Customs seal based on incorrect information. SUMF ¶ 30. CBP's revocation letter was riddled with factual errors, but it still cost that member their job. *Id.* CBP admitted the mistake only after the firing. *Id.* A pre-deprivation hearing would have allowed this worker, and others who may have lost their seals erroneously, to correct CBP's factual errors before losing their seals—and thus their jobs.

Third, the government's interest in immediately revoking Plaintiffs' seals in the absence of any evidence of an emergency or change in the circumstances of any Plaintiff is minimal. So too is the burden of additional safeguards, such as notice and a pre-deprivation hearing, as already

called for in agency regulations and the APA. 5 U.S.C. § 558(c)(1)-(2). Providing Plaintiffs with notice would have cost the government nothing. CBP ultimately sent out letters to workers. SUMF ¶¶ 36, 53, 61, 63. It could have sent such letters *before* stripping them of their livelihoods.

Because Plaintiffs held a protected property interest in their Customs seals, and because CBP seized that interest without notice or a pre-deprivation hearing, the revocations violated the Fifth Amendment.

V. This Court should grant Plaintiffs’ requested relief.

Plaintiffs have demonstrated that the new definition of “authorized residency,” the new interpretation of a “violation of a U.S. immigration law” to include civil immigration violations, and the provision of the 2002 IFR currently codified at 19 C.F.R. § 122.183(a)(4)(xxxiv), are all unlawful under the APA and should therefore be vacated and set aside. Vacatur is the proper remedy when a court determines that an agency rule violates the APA. *See, e.g., Harrington v. Chao*, 280 F.3d 50, 60 (1st Cir. 2002); *see also Corner Post, Inc. v. Bd. of Governors of Fed. Res. Sys.*, 603 U.S. 799, 826-27 (2024) (Kavanaugh, J., concurring). This principle extends to the entirety of the 2002 IFR, which was promulgated in violation of the APA’s notice-and-comment requirements. The Court should also find that the revocations of the Customs seals belonging to Plaintiffs Rocha Cruz, Molina, and Paul and the constructive denials of the renewal applications of Plaintiffs Rocha Cruz and Lemus were unlawful and it should vacate and set aside those agency actions.

Finally, the Court should enjoin Defendants from revoking any Customs seal belonging to an SEIU member without first providing those members a pre-deprivation hearing. *See Raso v. Lago*, 135 F.3d 11, 15 n.4 (1st Cir. 1998) (holding that the federal Department of Housing and Urban Development is “[t]he subject to suit for injunctive relief for violations of the Constitution”

under the Fifth Amendment); *Barrows v. Becerra*, 24 F.4th 116, 112 (2d Cir. 2022) (affirming the district court's judgment that the Department of Health and Human Services violated class members' Fifth Amendment due process rights and its injunction ordering the agency to create a new process).

CONCLUSION

For the foregoing reasons, the Court should grant summary judgment to Plaintiffs.

Dated: September 17, 2026,

Respectfully submitted,

/s/ Anna L. Deffebach

Anna L. Deffebach, *pro hac vice*

Gregory M. Cumming, *pro hac vice*

Jennifer Fountain Connolly (DC Bar No. 1019148)^

DEMOCRACY FORWARD
FOUNDATION

P.O. Box 34553

Washington, DC 20043

P: (202) 448-9090

adeffebach@democracyforward.org

gcumming@democracyforward.org

jconnolly@democracyforward.org

^ *Pro Hac Vice* forthcoming

Spencer Goldberg, Law Student Intern*

Marisa Houlahan, Law Student Intern

Amala Karri, Law Student Intern

Sam Maldonado, Law Student Intern*

Elias Mastakouris, Law Student Intern

Michael J. Wishnie (BBO #568654)

JEROME N. FRANK LEGAL SVCS. ORG.

P.O. Box 209090

New Haven, CT 06520

Phone: (203) 432-4800

michael.wishnie@ylsclinics.org

*Motion for law student appearance
forthcoming

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I, Anna L. Deffebach, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as nonregistered participants.

Date: September 17, 2026

Respectfully submitted,
/s/ Anna L. Deffebach
Anna L. Deffebach