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17
18 **UNITED STATES DISTRICT COURT**
19 **CENTRAL DISTRICT OF CALIFORNIA**

20 IMMIGRANT DEFENDERS LAW
CENTER, a California corporation; JEWISH
21 FAMILY SERVICE OF SAN DIEGO, a
California corporation; DANIEL DOE,
22 HANNAH DOE, BENJAMIN DOE,
JESSICA DOE, ANTHONY DOE,
23 NICHOLAS DOE, FELIZA DOE, and
JAQUELINE DOE, individually and on
24 behalf of all others similarly situated,

25 Plaintiffs,

26 v.

27 CHAD WOLF, Acting Secretary, Department
of Homeland Security, in his official
28 capacity; U.S. DEPARTMENT OF

Case No. 2:20-cv-9893

**COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF**

CLASS ACTION

1 HOMELAND SECURITY; MARK A.
2 MORGAN, Acting Commissioner, U.S.
3 Customs and Border Protection, in his
4 official capacity; WILLIAM A. FERRARA,
5 Executive Assistant Commissioner, Office of
6 Field Operations, U.S. Customs and Border
7 Protection, in his official capacity; RODNEY
8 S. SCOTT, Chief of U.S. Border Patrol, U.S.
9 Customs and Border Protection, in his
10 official capacity; U.S. CUSTOMS AND
11 BORDER PROTECTION; TONY H.
12 PHAM, Acting Director, U.S. Immigration
13 and Customs Enforcement, in his official
14 capacity; U.S. IMMIGRATION AND
15 CUSTOMS ENFORCEMENT,

16 Defendants.

17 [Caption Page Continued - Additional Attorneys for Plaintiffs]

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pending

INTRODUCTION

1
2 1. Since January 2019, the government has trapped over 60,000 individuals
3 seeking asylum, including the Individual Plaintiffs in this case, in life-threatening
4 conditions in Mexico under the Migrant Protection Protocols (“MPP” or “Protocols”).
5 These individuals suffered harm in their home countries, survived harrowing journeys,
6 and sought protection in the United States, only to be sent back to dangerous Mexican
7 border towns to await immigration court hearings that may never happen.

8 2. When former Secretary of the Department of Homeland Security (DHS)
9 Kirstjen Nielsen announced the Protocols in December 2018, she stated that they would
10 expedite the adjudication of meritorious asylum claims. In reality, the Protocols have
11 functioned to deport nearly every individual subjected to them. Their ruthless
12 effectiveness in this regard—as evidenced by the 98 percent deportation rate for
13 affected individuals over twenty months—is consistent with their Orwellian name.

14 3. To achieve their everyone-is-deported objective, Defendants have adopted
15 a multi-pronged approach. First, through MPP’s “Return Policy,” which forces asylum
16 seekers to live indefinitely under perilous conditions in Mexico, Defendants jeopardize
17 Individual Plaintiffs’ personal safety and prevent them from being able to fulfill basic
18 human needs. The Return Policy also thereby deprives asylum seekers of access to the
19 information and tools necessary to defend against refoulement and to meaningfully
20 present their asylum claims.

21 4. Second, the Protocols’ “Deprivation of Counsel” Policy has obstructed
22 legal representation for nearly 93 percent of impacted individuals. Under that policy,
23 Defendants limit attorney-client consultations occurring in the United States for the
24 relatively few individuals subject to the Protocols who have legal representation to an
25 illusory one-hour window before a scheduled hearing, without any assurance of or
26 mechanism for confidentiality. In practice, legal representatives rarely, if ever, have
27 even a full hour to meet with their clients. Individuals without representation, including
28 Plaintiffs Anthony Doe, Hannah Doe, and Jaqueline Doe, are left to navigate the

1 complexities of U.S. asylum law, including the ever-changing, logistically
2 complicated Protocols, on their own.

3 5. Even though Defendants are required to provide asylum seekers in MPP
4 with a list of free or low-cost legal service providers, the list that the government
5 provides consists primarily of organizations that do not provide representation to
6 asylum seekers trapped in Mexico. And Defendants continually have thwarted the
7 efforts of the few legal service providers whose mission includes representing
8 individuals subject to the Protocols—including Plaintiffs Immigrant Defenders Law
9 Center and Jewish Family Service of San Diego—to screen, advise, represent, or
10 otherwise assist individuals subject to the Protocols.

11 6. Defendants have acknowledged the importance of legal representation for
12 individuals subject to the Protocols but have refused to facilitate access to such
13 representation. For example, a February 2019 memorandum from U.S. Immigration
14 and Customs Enforcement (“ICE”) states that asylum seekers subject to the Protocols
15 must be allowed enough time before an immigration hearing to permit an in-person
16 meeting with their legal representatives. On January 14, 2020, DHS component
17 agencies recommended that individuals in MPP have access to counsel but failed to
18 identify any concrete steps. And on March 23, 2020, Defendants issued a joint
19 statement reaffirming that they are “deeply committed to ensuring that individuals
20 ‘have their day in court.’” To date, however, that commitment has been honored only
21 in its breach.

22 7. Third, the Protocols’ “Presentation Requirement,” ordering individuals
23 subjected to MPP to present at a port of entry as the only means to access the U.S.
24 asylum system, effectively confines Individual Plaintiffs to extreme danger zones,
25 where they are vulnerable to assault, robbery, rape, kidnapping, and other harm at the
26 hands of cartels, gang members, and Mexican officials, and deprives them of access
27 to their basic needs.

28

1 Convention Against Torture (“CAT”), which was ratified through the Foreign Affairs
2 Reform and Restructuring Act of 1998 (“FARRA”), Pub. L. No. 105-277, div. G,
3 Title XXII, § 2242, 112 Stat. 2681-822 (1998) (codified as Note to 8 U.S.C. § 1231).

4 12. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal
5 question), and § 1346 (United States as defendant). Defendants have waived
6 sovereign immunity with respect to the claims alleged in this case. 5 U.S.C. § 702.
7 This Court has jurisdiction to enter declaratory and injunctive relief under 28 U.S.C.
8 §§ 2201 and 2202.

9 13. Venue is proper under 28 U.S.C. § 1391(e)(1) because Defendants are
10 agencies or officers of the United States acting in their official capacity, and one of
11 the Plaintiff organizations has its principal residence in this district.

12 PARTIES

13 **A. Plaintiffs**

14 14. **Plaintiff Daniel Doe**, a citizen of Guatemala, suffered harm and fled to
15 the United States to seek asylum. Daniel crossed the U.S.–Mexico border with his
16 daughter on June 12, 2019, was apprehended shortly thereafter, and was returned to
17 Mexico under the Protocols. Daniel is currently trapped by DHS in Tijuana, Mexico.
18 If returned to the United States, Daniel would reside in Los Angeles, California with
19 his cousin.

20 15. **Plaintiff Hannah Doe**, a citizen of Venezuela, suffered harm and fled to
21 the United States to seek asylum. She presented at the San Ysidro port of entry on
22 October 26, 2019 and was returned to Mexico on October 31, 2019. Hannah is
23 currently trapped by DHS in Tijuana, Mexico. If returned to the United States,
24 Hannah would reside in Florida with her husband.

25 16. **Plaintiffs Jessica Doe and Benjamin Doe**, citizens of Honduras,
26 suffered harm and fled to the United States to seek asylum. Jessica and her husband
27 Benjamin crossed the U.S.–Mexico border on October 7, 2019, were apprehended
28 shortly thereafter, and were returned to Mexico under the Protocols around October

1 9, 2019. Jessica and Benjamin are currently trapped by DHS in Tijuana, Mexico with
2 their three minor children. If returned to the United States, Jessica, Benjamin, and
3 their children would reside in Georgia with Benjamin’s aunt.

4 17. **Plaintiff Anthony Doe**, a citizen of Cuba, suffered harm and fled to the
5 United States to seek asylum. He crossed the U.S.-Mexico border on September 19,
6 2019, was apprehended, and was returned to Mexico under the Protocols two or three
7 days later. Anthony is currently trapped by DHS in Tijuana, Mexico. If returned to
8 the United States, Anthony would reside in Florida with a friend.

9 18. **Plaintiff Nicholas Doe**, a citizen of Nicaragua, suffered harm and fled to
10 the United States to seek asylum. He crossed the U.S.–Mexico border on March 6,
11 2020, was apprehended, and was returned to Mexico under the Protocols. Nicholas
12 is currently trapped by DHS in Rosarito, Mexico. If returned to the United States,
13 Nicholas would reside in California with his aunt.

14 19. **Plaintiff Feliza Doe**, a citizen of Guatemala, suffered harm and fled to
15 the United States with her three children to seek asylum. She crossed the U.S.–
16 Mexico border on November 23, 2019, was apprehended, and was returned to Mexico
17 under the Protocols. Feliza is currently trapped by DHS in Mexicali, Mexico. If
18 returned to the United States, Feliza and her children would reside in Florida with her
19 cousin.

20 20. **Plaintiff Jaqueline Doe**, a citizen of Honduras, suffered harm and fled to
21 the United States to seek asylum. She crossed the U.S.–Mexico border on July 4,
22 2019, was apprehended, and was returned to Mexico under the Protocols three days
23 later. Jaqueline is currently trapped by DHS in Tijuana, Mexico. If returned to the
24 United States, Jaqueline would reside in New Jersey with her mother.

25 21. **Plaintiff Immigrant Defenders Law Center (“ImmDef”)** is a nonprofit
26 organization incorporated in California and based in Los Angeles, with additional
27 offices in Riverside, San Diego, and Santa Ana, California, that serves immigrants
28 and refugees throughout Southern California. ImmDef’s mission is to provide

1 universal representation so that no immigrant is forced to face removal proceedings
2 without an attorney or accredited representative. To achieve its mission, ImmDef
3 manages several programs, including the Children’s Representation Program; the
4 National Qualified Representative Program; the Family Unity Project; Local Funding
5 Initiatives to provide removal defense in Los Angeles, Santa Ana, Long Beach, and
6 the Inland Empire; and the Cross-Border Initiative. The Cross-Border Initiative,
7 which was established in response to MPP, provides direct representation, pro se
8 assistance, Know Your Rights presentations, and other support to individuals subject
9 to MPP whose cases are pending before the San Diego immigration court.

10 22. **Plaintiff Jewish Family Service of San Diego** (“Jewish Family
11 Service”) is a nonprofit organization incorporated in California and based in San
12 Diego. The mission of Jewish Family Service’s Immigration Services Department is
13 to provide holistic, culturally competent, trauma-informed, quality legal and other
14 supportive services to the immigrant community in San Diego and Imperial Counties.
15 Since early 2019, Jewish Family Service has provided legal and other services to
16 individuals subject to MPP. To achieve its mission, Jewish Family Service manages
17 several programs, including a Removal Defense Program, an Affirmative Services
18 Program, and a Higher Education and Legal Services Program. Jewish Family
19 Service also participates in and manages the San Diego Rapid Response Network
20 (“Rapid Response Network”), which was formed in December 2017 to ensure that all
21 detained noncitizens within San Diego County have access to legal consultations.
22 Through the Rapid Response Network, Jewish Family Service operates the Migrant
23 Family Shelter, which provides critical humanitarian assistance to asylum-seeking
24 individuals and families released from detention.

1 **B. Defendants**

2 23. Defendant Chad Wolf is the person performing the duties of Acting
3 Secretary of Homeland Security.¹ He directs each of the components within DHS,
4 including those responsible for enforcing U.S. immigration laws, and bears ultimate
5 responsibility for administering the immigration laws pursuant to 8 U.S.C. § 1103.
6 Acting Secretary Wolf oversees MPP. He is sued in his official capacity.

7 24. Defendant DHS is a cabinet-level department of the U.S. government. Its
8 components include U.S. Citizenship and Immigration Services (“USCIS”), U.S.
9 Customs and Border Protection (“CBP”), and ICE.

10 25. Defendant Mark A. Morgan is the Acting Commissioner of CBP. CBP is
11 responsible for the apprehension, detention, and processing of individuals seeking
12 asylum at or near the border, including individuals subject to MPP. He is sued in his
13 official capacity.

14 26. Defendant William A. Ferrara is the Executive Assistant Commissioner
15 of CBP’s Office of Field Operations (“OFO”). OFO is the largest component of CBP
16 and is responsible for border security, including immigration and travel through U.S.
17 ports of entry. Since August 30, 2020, Defendant Ferrara has had responsibility for
18 implementing MPP. He is sued in his official capacity.

19 27. Defendant Rodney S. Scott is the Chief of U.S. Border Patrol. Border
20 Patrol is responsible for enforcing immigration laws between ports of entry. Since
21 February 2, 2020, Defendant Scott has had responsibility for detecting, interdicting,
22 and apprehending individuals who attempt to enter the United States between ports
23 of entry, including those who are ultimately subject to the Protocols.

24
25 _____
26 ¹ In August 2020, the U.S. Government Accountability Office issued a decision
27 holding unlawful the appointments of Chad Wolf to the position of Acting Secretary
28 of Homeland Security and Ken Cuccinelli to the position of Deputy Director of U.S.
Citizenship and Immigration Services. *See* U.S. Government Accountability Office
Decision on the Legality of Service of Acting Secretary of Homeland Security and
Service of Senior Official Performing the Duties of Deputy Secretary of Homeland
Security (Aug. 14, 2020), *available at* <https://bit.ly/31GcJi0>.

1 “refugee.” Under that definition, individuals generally are eligible for asylum if they
2 have experienced past persecution or have a well-founded fear of future persecution
3 on account of race, religion, nationality, membership in a particular social group, or
4 political opinion and if they are unable or unwilling to return to and avail themselves
5 of the protection of their country of origin because of that persecution or fear. 8
6 U.S.C. § 1101(a)(42)(A).

7 35. Although a grant of asylum may be discretionary, the right to apply for
8 asylum is not. The Refugee Act broadly affords a right to apply for asylum to any
9 noncitizen “who is physically present in the United States or who arrives in the United
10 States,” “whether or not at a designated port of arrival. . . .” 8 U.S.C. § 1158(a)(1).

11 36. The Refugee Act’s right to apply for asylum is limited by only three
12 statutory provisions. First, the U.S. government may under certain circumstances
13 require noncitizens to pass a threshold screening interview, known as a credible fear
14 interview, before they can apply for asylum and other forms of relief. 8 U.S.C. §
15 1225(b). Second, a noncitizen’s right to apply for asylum can be lost over time,
16 because of passage through a designated safe third country, or because the right has
17 already been exercised. 8 U.S.C. § 1158(a)(2). Third, the right may not apply to
18 those who return to the United States after they previously have been ordered
19 removed. 8 U.S.C. § 1231(a)(5).

20 37. Because of the life-or-death stakes, the statutory right to apply for asylum
21 is robust. The right necessarily includes the right to counsel, at no expense to the
22 government, *see* 8 U.S.C. § 1229a(b)(4)(A), § 1362, the right to notice of the right to
23 counsel, *see* 8 U.S.C. § 1158(d)(4), and the right to access information in support of
24 an application, *see* § 1158(b)(1)(B) (placing the burden on the applicant to present
25 evidence to establish eligibility).

26 38. The right to apply for asylum also includes the right to uniform treatment
27 by the U.S. government. Through the Refugee Act, the U.S. Government must
28 “establish a uniform procedure for passing upon an asylum application.” S. Rep. No.

1 256, 96th Cong., 2d Sess. (1980), *reprinted in* 1980 U.S.C.C.A.N. 141, 149; *see also*
2 *Orantes-Hernandez v. Smith*, 541 F. Supp. 351, 375 (C.D. Cal. 1982) (acknowledging
3 the emphasis that Congress placed on the uniform, nondiscriminatory treatment of
4 refugees).

5 39. Consistent with the Refugee Protocol, the INA further provides that
6 noncitizens who are not eligible for asylum are also protected from return to a country
7 where it is more likely than not that their “life or freedom would be threatened . . .
8 because of [their] race, religion, nationality, membership in a particular social group,
9 or political opinion.” 8 U.S.C. § 1231(b)(3)(A).

10 40. Noncitizens also may not be returned to a country where they are more
11 likely than not to be tortured. 8 C.F.R. §§ 1208.16-1208.19.

12 **B. The Right to Access Counsel for the Purpose of Applying for Asylum**

13 41. Both the INA and the Fifth Amendment guarantee noncitizens seeking
14 asylum the right to meaningfully access counsel at no expense to the government.
15 *See, e.g., Biwot v. Gonzales*, 403 F.3d 1094, 1098 (9th Cir. 2005) (“The right to
16 counsel in immigration proceedings is rooted in the Due Process Clause and codified
17 [in the INA.]”); 8 U.S.C. § 1362 (providing right to counsel in removal proceedings);
18 8 U.S.C. § 1229a(b)(4)(A) (same); 8 U.S.C. § 1158(d)(4) (referring to right to counsel
19 for applying for asylum); *see also Torres v. U.S. Dep’t of Homeland Sec.*, 411 F.
20 Supp. 3d 1036, 1061 (C.D. Cal. 2019) (“[T]he right to counsel codified in the INA
21 extends beyond the removal proceeding itself.”).

22 42. Because asylum law is complex and the stakes involve life or death, legal
23 services organizations, including Organizational Plaintiffs, play a particularly
24 important role in assisting persons fleeing persecution who are seeking asylum. The
25 burden of proof on applicants is high in asylum proceedings, where the central focus
26 is whether the applicant has demonstrated that she fits the definition of a “refugee”
27 and is otherwise eligible for asylum.

28

1 43. Asylum applications require detailed, fact-specific submissions
2 containing evidence related to a noncitizen’s fear of persecution and evidence
3 showing the noncitizen’s fear is objectively reasonable. Legal service providers,
4 including Organizational Plaintiffs, must allow time for relationship-building so that
5 their clients trust them enough to share sensitive past experiences. For clients
6 suffering the effects of severe trauma, Organizational Plaintiffs must provide
7 additional time and resources to build these relationships. To obtain necessary
8 evidence, Organizational Plaintiffs often must engage experts from the United States
9 or abroad to review the facts of an applicant’s case and provide expert testimony
10 regarding country conditions. Organizational Plaintiffs may need to seek testimony
11 from expert medical or mental health professionals to corroborate the injuries of a
12 client who has survived past persecution. In each case, Organizational Plaintiffs must
13 coordinate all these pieces while also ensuring that they are zealously representing
14 their clients by developing rigorous legal arguments, submitting legal briefs, and
15 complying with complex procedures.

16 44. Access to legal representation in the asylum process is particularly critical
17 in light of the complicated factual and legal questions that individuals who have
18 experienced persecution or trauma must recount and address. And for persons in
19 government custody, the government must affirmatively put in place policies and
20 procedures that secure meaningful access to counsel. *Arroyo v. U.S. Dep’t of*
21 *Homeland Sec.*, No. SACV-19-815 JGB (SHKx), 2019 WL 2912848, at *17 (C.D.
22 Cal. June 20, 2019) (finding telephonic access to attorneys insufficient as “a healthy
23 counsel relationship in the immigration context requires confidential in-person
24 visitation, especially where an immigrant must be forthcoming about sensitive matters
25 such as past trauma, mental health issues, and criminal history”).

26 45. Legal representation in immigration proceedings has a strong
27 determinative effect on noncitizens’ ability to obtain relief and remain in the United
28 States. Represented noncitizens detained in the United States are over ten times more

1 likely to succeed in their immigration cases than those who appear pro se. Non-
2 detained noncitizens who are represented by counsel are over five times more likely
3 to succeed in their cases than those who appear pro se.² Before Defendants
4 implemented the Protocols, the statutory and constitutional rights to apply for asylum,
5 which necessarily include the right to access counsel for this purpose, were
6 effectuated by providing affected noncitizens with certain other rights or access to
7 certain benefits. Those other statutory and regulatory rights and benefits included:

8 (a) Access to law libraries, legal materials, and legal reference
9 materials on a reliable and consistent basis. Even for individuals in ICE
10 detention, applicable standards were intended to afford such access, although
11 they are not always honored. *See* Performance-Based National Detention
12 Standards (PBNDS) (rev. 2016), at 6.3, *available at* <https://bit.ly/2HBW2gG>,
13 (providing regular access for noncitizens in detention to law libraries and legal
14 materials).

15 (b) Access to legal presentations and individual counseling about their
16 cases. For example, Los Angeles County's Office of Immigrant Affairs
17 provides resources on immigrant rights, legal self-help, and workshops for
18 individual counseling, as do other Los Angeles-based publicly funded entities.
19 Even for individuals in ICE detention, applicable standards describe the same.
20 *See* PBNDS, at 6.4 (providing noncitizens in detention with access to
21 presentations on U.S. immigration law and procedures as well as individual
22 counseling after a group presentation to discuss cases).

23 (c) Access to immigration attorneys, accredited representatives, and
24 nongovernmental organizations (NGOs) registered to provide asylum support in
25 the United States. There are more than 60 different organizations in Los
26 Angeles and San Diego Counties, all of which are recognized under 8 C.F.R.

27 ² Ingrid V. Eagly & Steven Shafer, *A National Study of Access to Counsel in*
28 *Immigration Court*, 164 U. Penn. L. Rev. 1, 9, 49 (2015), *available at*
<https://bit.ly/3osTJgL>.

1 § 1292.11 as immigrant legal service organizations. Currently, there are more
2 than 1400 immigration attorneys and more than 100 accredited representatives
3 who can appear on behalf of noncitizens in immigration court in these
4 jurisdictions.

5 (d) Access to a List of Pro Bono Legal Service Providers, maintained
6 by the Executive Office for Immigration Review (EOIR), which must “be
7 provided to individuals in removal and other proceedings before an immigration
8 court.” 8 U.S.C. § 1158(d)(4)(B); 8 C.F.R. § 1003.61(b); *see also* 8 C.F.R.
9 § 1240.10(a)(2) (noting obligation of immigration judges to advise individuals
10 of availability of pro bono legal service providers). The list includes contact
11 information for six organizations that represent individuals in the San Diego
12 Immigration Court and nine organizations that represent individuals in the Los
13 Angeles Immigration Court. Individuals seeking asylum who are not detained
14 may make local calls to legal service providers on EOIR’s list. In the detained
15 setting, individuals generally can reach those on the EOIR list by making a free
16 call. *See* PBNDS, at 5.6(II)(7), (V)(E) (referring to detainees’ right to make
17 unlimited free calls to pro bono legal service providers on EOIR list).

18 (e) Access to local state-funded nonprofits and community-based
19 organizations in California that offer services—including for food, housing, and
20 medical care—to individuals seeking asylum in the San Diego and Los Angeles
21 immigration courts.

22 46. With access to the above-described statutory and regulatory rights and
23 benefits, which are intended to protect and effectuate the right to apply for asylum in
24 the United States, EOIR records reflect that over 70 percent of non-MPP individuals
25 appearing in the San Diego Immigration Court for asylum proceedings are
26
27
28

1 represented.³ In the Los Angeles Immigration Court, EOIR records place this number
2 at nearly 80 percent.⁴

3 47. Regardless of where individuals exercise their right to apply for asylum,
4 their access to this system is intended to be uniform.

5 **II. CONDITIONS IN MEXICO BEFORE IMPLEMENTATION OF THE**
6 **PROTOCOLS**

7 48. When Defendants implemented the Protocols in January 2019, they were
8 aware of the harms that asylum seekers subjected to the Protocols would face.
9 According to the U.S. Department of State Country Reports on Human Rights
10 Practices, “violence against migrants by government officers and organized criminal
11 groups” was one of “[t]he most significant human rights issues” in Mexico.⁵ The
12 State Department likewise has reported for three consecutive years that the dangers
13 that forced many Central American migrants to flee their homes were also present in
14 Mexico, as the presence of Central American gangs has “spread farther into the
15 country and threatened migrants who had fled the same gangs in their home
16 countries.”⁶

17
18
19
20 ³ TRAC, *Asylum Decisions by Custody, Representation, Nationality, Location, Month*
21 *and Year, Outcome and more* (Sept. 2020), available at <https://bit.ly/2G4neEk> (filters
set to “Immigration Court,” and “Represented”).

22 ⁴ *Id.*

23 ⁵ U.S. Dep’t of State, *2017 Country Reports on Human Rights Practices: Mexico* at 1
24 (Apr. 20, 2018) (hereafter “2017 State Dep’t Mexico Human Rights Report”),
25 available at <https://bit.ly/31HD27G>; see also U.S. Dep’t of State, *2019 Country*
26 *Reports on Human Rights Practices: Mexico* at 18 (Mar. 11, 2020) (hereafter “2019
27 State Dep’t Mexico Human Rights Report”), available at <https://bit.ly/35FfmSB> and
U.S. Dep’t of State, *2018 Country Reports on Human Rights Practices: Mexico* at 19-
20 (Mar. 13, 2019) (hereafter “2018 State Dep’t Mexico Human Rights Report”),
available at <https://bit.ly/3jwz9Z5> (both reports noting “victimization of migrants by
criminal groups and in some cases by police, immigration officers, and customs
officials” and reported kidnappings and extortion of migrants).

28 ⁶ See 2019 State Dep’t Mexico Human Rights Report at 18; 2018 State Dep’t Mexico
Human Rights Report at 19; 2017 State Dep’t Human Rights Report, at 21.

1 49. Before the Protocols, reports by human rights groups warned that “the
2 dangers facing refugees and migrants in Mexico ha[d] escalated” since 2017.⁷ In
3 addition to threats from gangs and other criminal organizations, the Mexican police
4 and armed forces were often implicated in crimes against migrants and operated with
5 impunity. Indeed, “[i]n some regions of Mexico the state ha[d] become so closely
6 identified with criminal gangs and drug cartels that these criminal organizations d[id]
7 not need to corrupt the state—they essentially ‘[we]re’ part of the state.”⁸

8 50. Since at least 2017, migrants in Mexico’s northern border states have been
9 subject to disappearances, kidnappings, rape, trafficking, extortion, execution, and
10 sexual and labor exploitation by state and non-state actors. Migrants in the immediate
11 vicinity of a port of entry were—and still are—at particular risk of violence and
12 exploitation. Those who seek refuge in shelters may be in particular danger. Some
13 shelters are infiltrated by organized crime; others are sites of vandalism, burglary,
14 threats, and kidnapping.

15 51. Tijuana, where Individual Plaintiffs were returned after being placed in
16 MPP, is among the deadliest cities in the world.⁹ In 2018, Tijuana had its highest
17 number of reported murders, and Baja California, the Mexican state where Tijuana is
18 located, also had the highest number of reported murders.¹⁰ Asylum seekers in
19 Tijuana are often direct targets of violence.

20
21
22 ⁷ Human Rights First, *Mexico: Still Not Safe for Refugees & Migrants* (Mar. 23,
23 2018), available at <https://bit.ly/3jwxMtw>.

24 ⁸ Alberto Díaz-Cayeros, Beatriz Magatoni, and Vidal Romero, *Caught in the*
25 *Crossfire: The Geography of Extortion and Police Corruption in Mexico*, Stanford
Center for International Development, at 3-4 (February 2015), available at
<https://stanford.io/3mo863X>.

26 ⁹ Overseas Security Advisory Council, *Mexico 2020 Crime & Safety Report: Tijuana*
27 (July 29, 2020), available at <https://bit.ly/31LWIXP>.

28 ¹⁰ Wendy Fry, *Drug violence continues to grip Tijuana, with most homicides of any*
city in Mexico, *The San Diego Union-Tribune* (Jan. 6, 2020), available at
<https://bit.ly/3owrG03>.

1 52. At the time the Protocols were implemented, President Trump himself
2 acknowledged that Mexico was not a safe place, tweeting on January 31, 2019: “Very
3 sadly, Murder cases in Mexico in 2018 rose 33% from 2017, to 33,341.” He stated
4 further that the situation in Mexico is “[w]orse even than Afghanistan.”¹¹

5 53. Had Defendants considered these conditions, of which they were well
6 aware, before enacting the Protocols, they would have necessarily concluded that the
7 Return Policy, the Deprivation of Counsel Policy, and the Presentation Requirement
8 would jeopardize Individual Plaintiffs’ safety and security, obstruct their access to
9 legal representation, interfere with their ability to gather and present evidence, and
10 thereby prevent asylum seekers from meaningfully exercising their right to apply for
11 asylum.

12 **III. IMPLEMENTATION OF THE PROTOCOLS**

13 54. On December 20, 2018, former DHS Secretary Kirstjen Nielsen
14 announced the Protocols, characterizing them as an “unprecedented” change to DHS
15 policy. In January 2019, Defendants began implementing the Protocols at the San
16 Ysidro Port of Entry between San Diego, California, and Tijuana, Mexico.¹²

17 55. The purpose of the Protocols was to serve the Administration’s broader,
18 publicly proclaimed goal of deterring individuals from seeking access to the U.S.
19 asylum process.

20 56. Several independent but related policies, memoranda, statements of
21 guiding principles, and other announcements comprise the Migrant Protection
22 Protocols, including the Return Policy, the Deprivation of Counsel Policy, and the
23 Presentation Requirement.

26 ¹¹ Donald Trump (@realDonaldTrump), Twitter (Jan. 31, 2019, 12:43 PM), *available*
27 *at* <https://bit.ly/2IYyJOz>.

28 ¹² Dep’t of Homeland Security, ICE Policy Guidance for Implementation of the
Migrant Protection Protocols (Feb. 12, 2019) (“ICE Policy Memorandum”), *available*
at <https://bit.ly/3e1uM76>.

1 **A. The Return Policy**

2 57. Under the Return Policy, DHS forces certain asylum-seeking individuals
3 and families from non-contiguous countries who present themselves at or near the
4 southern U.S. border to return to Mexico for the duration of their immigration
5 proceedings.¹³ The Return Policy provides that individuals subject to the Protocols
6 “receive a specific immigration court hearing date and time” and must wait in Mexico
7 until then.¹⁴ On each of their scheduled immigration court hearing dates, individuals
8 must present themselves at a designated port of entry as early as 3 a.m. so that they
9 may be transported to the immigration court for their hearings.

10 58. In early February 2019, ICE issued a policy memorandum (“the ICE
11 Policy Memorandum”) providing “operational guidance” on how the Return Policy
12 would be implemented. The ICE Policy Memorandum generally explains the manner
13 in which decisions to subject individuals to the Protocols would be made. The
14 memorandum provides, specifically, that “[p]rocessing determinations, including

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16 ¹³ Dep’t of Homeland Security, Policy Guidance for Implementation of the Migrant
17 Protection Protocols (Jan. 25, 2019), *available at* <https://bit.ly/3kyjny7>; *see also*
18 Memorandum from Kevin K. McAleenan, Commissioner of U.S. Customs and
19 Border Protection, Implementation of the Migrant Protection Protocols (Jan. 28,
20 2019), *available at* <https://bit.ly/3e10Nws> (“Section 235(b)(2)(C) of the INA
21 provides that the Secretary of Homeland Security may return certain applicants for
22 admission to the contiguous country from which they are arriving on land (whether
23 or not at a designated port of entry) pending removal proceedings under Section 240
24 of the INA.”); Memorandum from Todd A. Hoffman, Executive Director of the
25 Admissibility and Passenger Programs of the Office of Field Operations of U.S.
26 Customs and Border Protection, Guidance on Migrant Protection Protocols (Jan. 28,
27 2019), *available at* <https://bit.ly/3mpLOPv> (“Under this implementation of section
235(b)(2)(C), referenced as the Migrant Protection Protocols (MPP), DHS is
authorized to return certain applicants for admission who arrive via land at the San
Ysidro Port of Entry, and who are subject to removal proceedings under Section 240
of the INA, to Mexico pending removal proceedings.”); Enforcement Programs
Division, Guiding Principles for Migrant Protection Protocols (Jan. 28, 2019),
available at <https://bit.ly/3jyIYHb> (“To implement the MPP, aliens arriving from
Mexico who are amenable to the process (see below), and who in an exercise of
discretion the officer determines should be subject to the MPP process, will be issued
an Notice to Appear (NTA) and placed into Section 240 removal proceedings. They
will then be transferred to await proceedings in Mexico.”).

28 ¹⁴ *See* Enforcement Programs Division, Guiding Principles for Migrant Protection
Protocols (Jan. 28, 2019), *available at* <https://bit.ly/3mkkB0o>.

1 whether to place an alien into [expedited removal] or INA section 240 proceedings
2 (and, as applicable, to return an alien placed into INA section 240 proceedings to
3 Mexico under INA section 235(b)(2)(C) as part of MPP), or to apply another
4 processing disposition, will be made by [CBP], in CBP’s enforcement discretion.”
5 The memorandum further provides that individuals subjected to the Protocols will be
6 transported by ICE Enforcement and Removal Operations (ERO) “from the
7 designated port of entry to the court facility for the scheduled removal hearings before
8 an immigration judge and back to the port of entry for return to Mexico by CBP after
9 such hearings.”

10 59. Whether individuals subject to the Protocols present themselves at a port
11 of entry or are apprehended by CBP after entering the United States, they are in DHS’s
12 actual, physical custody from the time they are initially processed until they are
13 returned to Mexico.¹⁵ Each time individuals present themselves at a port of entry,
14 they are again placed in the actual, physical custody of DHS. After their hearings in
15 immigration court—except in cases where there is a decision on the merits or the case
16 is terminated—ICE transports them back to the port of entry, where CBP resumes
17 custody and returns them to Mexico. Throughout this time, they remain in DHS’s
18 physical custody and control.

19 60. The government considers individuals subject to MPP to be in custody
20 for the duration of their placement in Mexico. DHS regulations provide that
21 individuals subject to MPP “shall be considered detained for a proceeding within the
22 meaning of section 235(b) of the [Immigration and Nationality] Act and may be
23 ordered removed in absentia by an immigration judge if the alien fails to appear for
24 the hearing.” 8 C.F.R. § 235.3(d). In at least one case, DHS expressly conceded that
25 the MPP respondent was in the constructive custody of DHS for the purposes of a
26 bond request. Moreover, Senior Official Performing the Duties of the Deputy

27 ¹⁵ DHS Mem. for Field Office Directors, Enforcement & Removal Op., *Migrant*
28 *Protection Protocols Guidance* at 2-3 (Feb. 12, 2019) (“Field Office Memo”),
available at <https://bit.ly/3kxXZc>.

1 Secretary of Homeland Security Ken Cuccinelli has stated that individuals in MPP
2 “are essentially on what we call a ‘detained docket’—it means they are not going to
3 be released until their case is heard. And so they’re waiting in Mexico”¹⁶

4 61. In many respects, individuals trapped in Mexico under MPP are treated
5 like those detained inside the United States. DHS officers accompany all individuals
6 who are detained inside the United States and those subject to MPP, but never non-
7 detained individuals, during their immigration proceedings. DHS controls where
8 these individuals sit, to whom they may speak, and when they may sit, stand, or use
9 the restroom. DHS additionally restricts the items that individuals detained in the
10 United States and those in MPP proceedings may bring with them to court.

11 62. Individuals who are subject to MPP also face similar barriers to detained
12 individuals when communicating with attorneys. Detained individuals and those
13 subject to MPP are unable to travel outside of their area of confinement in order to
14 meet with their attorneys; they lack access to confidential spaces; they have limited
15 means of communicating with their attorneys outside of face-to-face meetings; and
16 they have limited ability to gather and share evidence with their attorneys.

17 63. The Protocols cause asylum-seekers to be trapped in life-threatening
18 conditions in Mexico. Although the Protocols purport to protect against refoulement,
19 both the applicable process and standard are inadequate to achieve this goal.

20 64. If an individual affirmatively expresses a fear of return to Mexico, the
21 individual receives a nonrefoulement interview, often telephonically, with a USCIS
22 asylum officer. In the interview, the individual must prove—without any ability to
23 present evidence or witness testimony—that it is more likely than not she will be
24 persecuted or tortured if returned to Mexico.

25 65. The asylum officer’s determination is reviewed only by a supervisor; no
26 other review is available. Asylum officers have reported that positive determinations

27 ¹⁶ Interview with Acting Deputy Secretary of Homeland Security Ken Cuccinelli,
28 “Securing the Southern Border,” *FOX News* at 3:00–3:30 (Nov. 24, 2019), available
at <https://bit.ly/2TF3fPT>.

1 in these screenings “are often reviewed—and blocked or overturned—by asylum
2 headquarters. Decisions to send the asylum seeker back to Mexico, on the other hand,
3 don’t appear to get reviewed at all.”¹⁷

4 66. The nonrefoulement interview process does not adequately safeguard
5 individuals against harm in Mexico because it does not require Defendants to
6 affirmatively inquire whether an individual would face harm, danger, persecution, or
7 torture if returned to Mexico. Defendants inquire about the risk of return to Mexico
8 only if the asylum seeker, without any understanding of the process or notice of
9 applicable standards or requirements, affirmatively expresses a risk of persecution or
10 torture in Mexico. *See* USCIS Policy Guidance, PM-602-0169, Guidance for
11 Implementing Section 235(b)(2)(C) of the Immigration and Nationality Act and the
12 Migrant Protection Protocols, dated Jan. 28, 2019 (“USCIS Guidance”),
13 <https://bit.ly/3e4crX2>.

14 67. The nonrefoulement interview standard does not adequately safeguard
15 individuals against harm in Mexico because it does not account for the majority of
16 life-threatening and dangerous conditions in Mexico for asylum-seekers.

17 68. The Ninth Circuit has found the nonrefoulement interview process under
18 MPP to be legally deficient because it is inconsistent with the United States’ treaty-
19 based obligations codified under 8 U.S.C. § 1231(b)(3)(A).¹⁸

20 69. The inadequate process and standard result in the return of asylum-
21 seekers, including each of the Individual Plaintiffs, to danger. According to DHS, as
22 of October 15, 2019, only 13 percent of individuals subject to the Protocols had
23 received nonrefoulement interviews with asylum officers, and only 13 percent of
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26 ¹⁷ Dara Lind, *Exclusive: Civil servants say they’re being used as pawns in a*
27 *dangerous asylum program*, Vox (May 2, 2019), available at <https://bit.ly/2HxgxJ>.

28 ¹⁸ *See Innovation Law Lab v. Wolf*, 951 F.3d 1073, 1088 (9th Cir. 2020). *Details on*
MPP (Remain in Mexico) Deportation Proceedings (through Aug. 2020), available
at <https://bit.ly/2G1R24v> (filters set to “Hearing Location” and “Outcome”).

1 those individuals had received positive determinations.¹⁹ In other words, despite the
2 dangers in Mexico, only 1.7 percent of individuals subject to the Protocols were
3 provided the relief they requested.

4 70. In March 2019, then-Secretary Nielsen expanded the Protocols to
5 Calexico, California, across the border from Mexicali, Mexico; and El Paso, Texas,
6 across the border from Ciudad Juárez, Mexico. In July 2019, then-Acting Secretary
7 Kevin McAleenan expanded the Protocols to Laredo, Texas, across the border from
8 Nuevo Laredo, Mexico; and Brownsville, Texas, across the border from Matamoros,
9 Mexico. In October 2019, McAleenan, performing the duties of Acting Secretary of
10 DHS, announced that the Protocols would be expanded to Eagle Pass, Texas, across
11 the border from Piedras Negras, Mexico. Most recently, in November 2019 and
12 January 2020, McAleenan (in November) and Chad Wolf (in January), performing
13 the duties of Acting Secretary of DHS, announced that the Protocols had been
14 expanded to the Tucson and Nogales ports of entry in Arizona. The Protocols
15 currently are being implemented at all ports of entry along the United States–Mexico
16 border.

17 **B. The Deprivation of Counsel Policy**

18 71. A memorandum issued by ERO (“the ERO Memorandum”) on February
19 12, 2019 (*available at* <https://bit.ly/3ms8Vc5>), describes the Protocols’ mechanism
20 for providing individuals with access to counsel. The ERO Memorandum provides
21 that to “facilitate” access to legal representation for individuals subjected to the
22 Protocols, “ERO will depart from the [port of entry] with the alien at a time sufficient
23 to ensure arrival at the immigration court not later than one hour before his or her
24 scheduled hearing time in order to afford the alien the opportunity to meet in-person
25 with his or her legal representative.” In other words, under the ERO Memorandum,
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28 ¹⁹ Dep’t of Homeland Security, Assessment of the Migrant Protection Protocols (Oct. 28, 2019), *available at* <https://bit.ly/31KkNy6>.

1 individuals subjected to the Protocols are supposed to be provided a minimum of one
2 hour to consult with legal representatives before they must appear in immigration
3 court.

4 72. The ERO Memorandum also sets forth the procedures for notifying
5 individuals subjected to the Protocols of their next hearing and the manner in which
6 they will be transported to and from that hearing. The ERO Memorandum provides:
7 “Before returning an alien to Mexico under the MPP to await his or her removal
8 proceedings, CBP will provide the alien instructions explaining when and to which
9 [port of entry] to report to attend his or her hearing.” The ERO Memorandum further
10 explains that, “[o]n the day of [their] hearing, an [individual subjected to the
11 Protocols] will arrive at the [port of entry] at the time designated—generally, a time
12 sufficient to allow for CBP processing, prehearing consultation with counsel (if
13 applicable), and timely appearance at hearings.” Individuals subject to the Protocols
14 are not provided with any means to, options for, or information about how to travel
15 to the port of entry at which they are required to appear.

16 73. The Deprivation of Counsel Policy is intended to deny access to counsel,
17 and it successfully does so. Ninety-three percent of individuals subjected to the
18 Protocols are unrepresented. In other words, Defendants have achieved a 7 percent
19 representation rate for individuals who have been subjected to the Protocols.

20 74. The Deprivation of Counsel Policy achieves that result by narrowing
21 access to an illusory one-hour period of time before a scheduled hearing for already-
22 represented individuals with no assurance of or mechanism for confidentiality. That
23 one-hour period of time, even if it were afforded, fails to provide any meaningful
24 opportunity to access counsel. Individuals and their legal representatives are forced
25 to meet in a public setting, where they cannot speak confidentially, no childcare is
26 available, and legal representatives cannot access other tools necessary to provide
27 meaningful legal services. Moreover, legal representatives rarely, if ever, have more
28

1 than a few minutes to meet with their clients due to, among other things, late arrivals
2 of buses from Mexico and restrictions on entering the courtroom.

3 75. For individuals who do not have legal representation, the Protocols do not
4 provide even an illusory one-hour period to locate counsel. They provide merely a
5 tear sheet containing information about the process and a list of free or low-cost legal
6 service providers, most of whom do not offer legal services to persons in MPP. The
7 tear sheets are available only in English and Spanish.

8 76. Defendants' Deprivation of Counsel Policy blocks unrepresented asylum
9 seekers from accessing information about their legal rights while they are in the
10 United States. The Protocols do not guarantee any opportunity to contact or otherwise
11 seek out counsel. During the hour preceding immigration court hearings,
12 unrepresented individuals are not permitted to interact with legal representatives.
13 Legal representatives must present signed notices of representation before speaking
14 with individuals awaiting their hearings.

15 77. Beyond the one-hour consultation period, which is wholly inadequate to
16 provide comprehensive legal advice to asylum seekers, the Protocols do not provide
17 any other mechanism for in-person access to counsel. In fact, the Protocols aim to
18 keep individuals as far away from legal representation as possible. For nearly
19 everyone subject to the Protocols, access to in-person legal representation in Mexico
20 is functionally impossible because the law and logistics of representing a homeless or
21 refugee-sheltered individual in Mexico are, in most cases, too complex for a nonprofit
22 organization to resolve. By forcing individuals into a different country—a country
23 that is not their own and in which they live in precarious situations and are frequently
24 deprived of access to their most basic needs—the Protocols functionally operate to
25 deny access to counsel for individuals that are subject to them. By forcing individuals
26 into a different country—where their safety is in jeopardy and their most basic needs
27 often go unmet—the Protocols functionally operate to deny access to counsel for
28 individuals that are subject to them.

1 78. In implementing and expanding the Protocols, Defendants failed to
2 consider, examine, analyze, or address how they would impact the right of individuals
3 to access counsel for purposes of representation during immigration proceedings and
4 related matters.

5 79. The Administrative Record—produced by Defendants in other litigation
6 challenging the Protocols (“*Law Lab v. Wolf* Administrative Record”)—does not
7 include or refer to any studies, reports, interviews, or other communications
8 evidencing that Defendants considered in implementing the Protocols the obstacles
9 that individuals subjected to the Protocols would face in locating, communicating
10 with, retaining, or consulting with legal representatives. On information and belief, in
11 adopting the additional final agency actions that are the subject of this suit,
12 Defendants have not considered the obstacles that individuals subjected to the
13 Protocols would face in locating, communications with, retaining, or consulting with
14 legal representatives.

15 80. The *Law Lab v. Wolf* Administrative Record does not reflect any
16 consideration of the fact that many legal service providers are unable to represent
17 individuals who have been forced to remain in Mexico for the duration of their
18 proceedings. On information and belief, in adopting the additional final agency
19 actions that are the subject of this suit, Defendants have not considered the fact that
20 many legal service providers are unable to represent individuals who have been forced
21 to remain in Mexico for the duration of their proceedings.

22 81. The *Law Lab v. Wolf* Administrative Record also does not reflect any
23 consideration as to how individuals subject to the Protocols would retain counsel
24 before their scheduled hearings and potential obstacles they would face in identifying,
25 retaining, or meaningfully accessing counsel, particularly for in-person consultations.
26 On information and belief, in adopting the additional final agency actions that are the
27 subject of this suit, Defendants have not considered the obstacles faced by individuals
28 subject to the Protocols in identifying, retaining, or meaningfully accessing counsel.

1 82. There is nothing in the *Law Lab v. Wolf* Administrative Record that
2 reflects any consideration by Defendants regarding how much time immigration
3 attorneys actually need to spend with their clients to prepare for an immigration
4 hearing, or how providing only one hour before a scheduled hearing would ensure
5 that individuals seeking asylum are afforded meaningful “access to counsel” as
6 required by federal law. Defendants also failed to consider in implementing the
7 Protocols whether the courts have available space to allow for confidential
8 conversations between client and counsel, or how much space or how many rooms
9 would be needed per hearing. On information and belief, in adopting the additional
10 final agency actions that are the subject of this suit, Defendants have not considered
11 how much time immigration attorneys actually need to spend with their clients before
12 an immigration hearing, if providing only one hour is sufficient to ensure meaningful
13 “access to counsel,” or whether courts have available space to allow for confidential
14 conversations between client and counsel prior to the client’s immigration hearing.

15 83. The *Law Lab v. Wolf* Administrative Record does not include any
16 reference to studies, reports, or benchmarking supporting Defendants’ determination
17 that one hour of consultation with an attorney immediately before a hearing is
18 sufficient to ensure that the individual is provided meaningful access to counsel. On
19 Plaintiffs’ information and belief, in adopting the additional final agency actions that
20 are the subject of this suit, Defendants have not conducted nor referenced any studies,
21 reports, or benchmarking supporting Defendant’s determination that one hour of
22 consultation with an attorney immediately before a hearing is sufficient to ensure that
23 the individual is provided meaningful access to counsel.

24 **C. The Presentation Requirement**

25 84. The Protocols, through the Presentation Requirement, require individuals
26 to present themselves at a designated port of entry to gain access to the U.S. asylum
27 system, to attend their asylum hearings, and to maintain their tenuous status in
28 Mexico.

1 85. For individuals who violate or fail to adhere to the Presentation
2 Requirement, Defendants impose significant penalties: Defendants deny access to the
3 asylum system; deny access to counsel to the few who have counsel; and endanger
4 asylum seekers' fragile status under Mexican law.

5 86. The Presentation Requirement makes proximity to a port of entry crucial
6 for individuals subjected to the Protocols. It traps Plaintiffs and others similarly
7 situated in the dangerous zones and transit corridors around the port of entry because
8 they do not have resources to move outside those dangerous zones and still comply
9 with the Requirement. Regardless of where they may be located, Plaintiffs and others
10 similarly situated must repeatedly transit to the port of entry through these dangerous
11 zones as a requirement to access the asylum system, their asylum hearings, and their
12 counsel (for those few who have counsel).

13 87. Plaintiffs and others similarly situated are trapped in the dangerous zones
14 and transit corridors around the port of entry because their precarious migration status
15 in Mexico in practice requires it. The temporary permit that asylum seekers are
16 provided upon their forced return to Mexico is generally confiscated by Mexican
17 migration authorities when the asylum seeker leaves Mexico. There is no guarantee
18 that individuals would be provided another permit if they were to leave Mexico and
19 return in time for their immigration hearings.

20 **IV. THE HEARING SUSPENSION DIRECTIVE**

21 88. Since late March 2020, MPP hearings have been postponed six times—
22 ostensibly due to COVID-19²⁰—leaving Plaintiffs and thousands of others waiting,
23 potentially indefinitely, for their day in court.

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27 ²⁰ *Accord* Michelle Hackman, Andrew Restuccia and Stephanie Armour, *CDC*
28 *Officials Objected to Order Turning Away Migrants at Border*, Wall Street J. (Oct. 3,
2020), available at <https://on.wsj.com/2HAc0be>.

1 89. The first five times MPP hearings were postponed, the suspension
2 announcement provided a specific date for the resumption of hearings.²¹ The March
3 announcement also declared that “[n]either the MPP program nor any hearings will
4 be canceled.”

5 90. But on July 17, 2020, the sixth time that DHS and DOJ postponed MPP
6 hearings, they provided no date for the resumption of hearings (“Hearing Suspension
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10 ²¹ See Joint DHS/EOIR Statement on MPP Rescheduling, Mar. 23, 2020, *available at*
11 <https://bit.ly/2HCTILV> (“Due to circumstances resulting from COVID-19, all
12 Migrant Protection Protocol (MPP) master calendar and merit hearings presently
13 scheduled through April 22 will be rescheduled. Neither the MPP program nor any
14 hearings will be cancelled.”); Joint DHS/EOIR Statement on MPP Rescheduling, Apr.
15 1, 2020, *available at* <https://bit.ly/3mkHdy2> (“Due to continued circumstances related
16 to COVID-19 and newly-issued guidance from the Centers for Disease Control and
17 Prevention, the Departments of Justice and Homeland Security have determined to
18 extend the temporary postponement of Migrant Protection Protocols (MPP) hearings
19 scheduled through Friday, May 1, 2020. All presently scheduled hearings will be
20 rescheduled. The Departments will continually review conditions related to COVID-
21 19 and will make further determinations as necessary in order to ensure that all MPP
22 hearings can proceed as expeditiously as possible when appropriate.”); Joint
23 DHS/EOIR Statement on MPP Rescheduling, Apr. 30, 2020, *available at*
24 <https://bit.ly/37NAVDc> (“The Departments of Justice and Homeland Security have
25 extended the temporary postponement of Migrant Protection Protocols (MPP)
26 Hearings scheduled through, and including, June 1, 2020, will be rescheduled. As the
27 Departments continue to review conditions related to COVID-19, they will make
28 further determinations as necessary in order to ensure that all MPP hearings can
proceed as expeditiously as possible.”); DHS, Weekly Update: DHS Response to
COVID-19, May 4, 2020, *available at* <https://bit.ly/31P5V1I> (“On April 30th, the
Departments of Justice and Homeland Security extended the temporary postponement
of Migrant Protection Protocols (MPP) due to circumstances stemming from COVID-
19. Hearings scheduled through and including June 1, 2020 will be rescheduled for a
later date. This extension will ensure that individuals ‘have their day in court’ while
also protecting the health and safety of aliens, law enforcement, immigration court
professionals, and U.S. citizens”); Joint DHS/EOIR Statement on MPP Rescheduling,
May 10, 2020, *available at* <https://bit.ly/2HC0BYm> (“All MPP hearings will
remain postponed through, and including, June 19th. Individuals with a hearing
date prior to June 22nd should present themselves at the port of entry identified on
their tear sheet one month later than the date indicated on their most recently noticed
date. For example, if the hearing date is May 10th, individuals should present
themselves on June 10th”). Joint DHS/EOIR Statement on MPP Rescheduling, June
16, 2020, *available at* <https://bit.ly/2Tu2o4b> (“We anticipate the resumption of
hearings on July 20, 2020, so long as public health and safety indicators support
hearing reinstatement at that time.”).

1 Directive”).²² Instead they announced that MPP hearings would resume only after
2 certain “threshold criteria” have been met. These criteria include:

3 91. “When California, Arizona, and Texas progress to Stage 3 of their
4 reopening plans.”

5 92. “When [the Department of State] and [Centers for Disease Control] lower
6 their global health advisories to Level 2 and/or a comparable change in health
7 advisories, regarding Mexico in particular.”

8 93. “When [the Government of Mexico’s] ‘stoplight’ system categorizes all
9 Mexican border states (i.e. Tamaulipas, Nuevo Leon, Coahuila, Chihuahua, Sonora,
10 and Baja California) as ‘yellow.’”

11 94. DHS and DOJ have not stated whether additional requirements, beyond
12 these criteria, would or could be imposed before hearings resume.

13 95. Given the current conditions and trends in each of these locations,
14 Defendants’ “threshold criteria” named in the July 17, 2020 Hearing Suspension
15 Directive will not be met in the foreseeable future.

16 96. Defendants’ announcement contains a list of “safeguards” for DHS
17 employees and noncitizens that will apply when hearings resume. These safeguards
18 include further postponing and rescheduling hearings of individual noncitizens if “a
19 [DHS] facility’s capacity is reached.”

20 97. Through the Hearing Suspension Directive, DHS and DOJ have
21 effectively suspended the Protocols, postponing MPP hearings indefinitely and
22 leaving individuals subject to the Protocols, including Individual Plaintiffs, stranded
23 in Mexico with no end in sight. Defendants have thereby deprived Individual
24 Plaintiffs of meaningful access to the U.S. asylum system.

25
26 _____
27 ²² DHS/DOJ Announcement Plan to Restart MPP Hearings, July 17, 2020, *available*
28 *at* <https://bit.ly/35wiQGQ> (“The U.S. Department of Homeland Security (DHS) and
the U.S. Department of Justice (DOJ) remain committed to resuming removal
hearings for aliens subject to the Migrant Protection Protocols (MPP) as expeditiously
as possible.”).

1 **V. THE PROTOCOLS HAVE HARMED THE INDIVIDUAL PLAINTIFFS**

2 **A. Obstructions of Safety, Survival, and Legal Assistance**

3 98. The Protocols have harmed or created grave risks for Individual Plaintiffs
4 and others similarly situated by trapping them in dangerous zones and transit corridors
5 in Mexico, denying them their basic human needs, and depriving them of access to
6 legal assistance.

7 **1. The Danger Zones and Transit Corridors in Mexico**

8 99. To access their asylum hearings—the only systematic way out of the
9 Protocols, individuals must move from a precarious place of shelter, through zones
10 controlled by violent forces, to present themselves at designated ports of entry in the
11 middle of the night before their hearing dates. They are then taken into DHS custody
12 and transported to immigration court, only to be returned to the danger zone to start
13 the process again, in what becomes a repeated, dangerous cycle imposed by
14 Defendants on asylum seekers for the duration of their immigration proceedings.

15 100. Cartels and transnational criminal organizations target asylum-seekers in
16 the danger zones near ports of entry.²³ The transit corridors leading to the ports of

17 ²³ The dangers to asylum seekers living in Mexican border cities have been widely
18 reported. *See, e.g.* J.D. Long-García, *Trump's 'Remain in Mexico' policy has*
19 *thousands of asylum seekers still stuck at the border*, America Mag. (Sept. 27, 2020),
20 *available at* <https://bit.ly/3oxCtac> (reporting extortion of asylum seekers by criminal
21 organizations, and threats of kidnapping, torture, and sexual assault while forced to
22 wait in Mexican border towns); Human Rights First, *Report on Publicly Reported*
23 *MPP Attacks* (May 13, 2020), *available at* <https://bit.ly/3jCFu5k>; Michael Garcia
24 Bochenek, *US: 'Remain in Mexico' Program Harming Children*, Human Rights
25 Watch (Feb. 12, 2020), *available at* <https://bit.ly/3e5bJcq>; Daniella Silva, *One year*
26 *into 'Remain in Mexico' policy, migrants confront danger and instability*, NBC News
27 (Jan. 29, 2020) (reporting that some migrants rarely leave shelters due to safety
28 concerns), *available at* <https://nbcnews.to/37SPuVI>; Wendy Fry, *Central American*
migrant who sought U.S. asylum slain in Tijuana, L.A. Times (Dec. 12, 2019),
available at <https://lat.ms/37LicIf> (reporting on a Salvadoran asylee tortured and
murdered in Tijuana after being sent back to Mexico, and that “[o]fficials with the
Baja California prosecutors’ office said that during the process of repeatedly
presenting themselves at the border, U.S. asylum seekers can easily be spotted and
targeted by criminal groups as potential victims.”); Silvia Foster-Frau, *Kidnapped and*
attacked in Mexico, migrants are giving up their asylum claims, San Antonio Express-
News (Sept. 29, 2019), *available at* <https://bit.ly/3owLMqV>; John Burnett, *Criminals*
Target Migrants in Mexico Seeking U.S. Asylum, NPR (Aug. 27, 2019), *available at*
Footnote continued to next page.

1 entry are fraught with similar risks for individuals who must travel significant
 2 distances over land—such as those staying in Mexicali who have been directed to
 3 appear at the San Ysidro port of entry to access the asylum system, including their
 4 counsel, if any.²⁴

5 101. Mexican law enforcement officers not only fail to provide protection from
 6 these organizations, but also regularly engage in discrimination and violence against
 7 migrants themselves.²⁵ The State Department’s 2019 Country Reports on Human
 8 Rights Practices in Mexico, issued in March 2020, noted multiple “credible reports”
 9 of police involvement in kidnappings, and the involvement of federal, state and
 10 municipal police in nearly 900 crimes against migrants, including extortion, injuries,
 11 and illegal detention.²⁶

12 <https://n.pr/34A6RsG> (describing targeting of migrants by gangs sent to Nuevo
 13 Laredo under the Return Policy); Gustavo Solis, *Remain in Mexico: Tijuana rent*
 14 *scams target asylum seekers*, San Diego Union-Tribune, (Aug. 26, 2019), available
 15 at <https://bit.ly/35GkAgG>; Gusatvo Solis, *Asylum seekers report theft, exploitation in*
 16 *Mexicali’s migrant shelters*, L.A. Times (Aug. 7, 2019), available at
 17 <https://lat.ms/2J1n1Tl> (noting rampant exploitation of migrants staying at Mexicali
 18 migrant shelters); Joel Rose and Laura Smitherman, *Fear, Confusion and Separation*
 19 *as Trump Administration Sends Migrants Back to Mexico*, NPR (July 1, 2019),
 20 available at <https://n.pr/3jxJ7te>; Danielle Silva, *Asylum-seekers forced to wait in*
 21 *Tijuana fear for their lives*, NBC News (Mar. 27, 2019), available at
 22 <https://nbcnews.to/3kFc5Ji> (reporting frequent violence against migrants in Tijuana);
 23 Julia Gavarrete and Heather Gies, *Honduran Teen Fled Gangs at Home Only to be*
 24 *Murdered While Stranded at the U.S.-Mexico Border*, The Intercept (Feb. 23, 2019),
 25 <https://bit.ly/2HEloe6>.

26 ²⁴ Notably, the roads between Mexicali and Tijuana are so hazardous that U.S.
 27 government employees working in Mexico are directed that they may only travel
 28 during “daylight hours.” See State Dep’t Travel Advisory (Sept. 8, 2020), available
 at <https://bit.ly/3jz0JF1>.

²⁵ See, e.g., Human Rights First, Report on Publicly Reported MPP Attacks (May 13,
 2020) (noting the involvement of Mexican local and federal police in many of the
 violent crimes reported by asylum seekers), available at <https://bit.ly/3jCFu5k>; see
 also Alexandra Villarreal, *Rapes, murders...and coronavirus: the dangers US asylum*
 seekers in Mexico must face, The Guardian (Mar. 23, 2020), available at
<https://bit.ly/37L5qt7>; Jonathan Blitzer, *How the U.S. Asylum System is Keeping*
 Migrants at Risk in Mexico, The New Yorker (Oct. 1, 2019), available at
<https://bit.ly/34CGJ0l>; Rebekah F. Ward, *Mexican Federal Police accused of*
 harassment at migrant shelter, latest in a series, Reuters (July 22, 2019), available at
<https://bit.ly/3msBKVX>.

²⁶ State Dep’t, 2019 Country Reports on Human Rights Practices: Mexico at 3-4.

1 102. On August 6, 2020, the State Department issued a Level 4: Do Not Travel
2 advisory for Mexico, due to COVID-19, crime, and kidnapping.²⁷ The advisory noted
3 that travelers to Baja California, which includes Tijuana and Mexicali, should
4 exercise “increased caution” due to criminal activity and violence, with “particularly
5 notable” levels of homicide in Tijuana. On September 8, 2020, the State Department
6 updated the advisory to a Level 3: Reconsider Travel, noting continued risk of crime
7 and kidnapping, and again advising travelers to exercise increased caution in Baja
8 California, particularly Tijuana, due to continued violent crime.²⁸

9 103. Defendants are aware of the continued serious risk of physical harm to
10 those subject to the Protocols. In July 2020, the State Department’s Overseas Security
11 Advisory Council (OSAC) reported that “the five Baja California municipalities—
12 Tijuana, Mexicali, Ensenada, Rosarito, and Tecate—all had a record number of
13 homicides in 2018”; increases in reported rape; and targeted killings, kidnappings,
14 narco-trafficking, and human smuggling by transnational criminal organizations in
15 these areas.²⁹ OSAC stated further that Tijuana had the “highest per capita murder
16 rate in the world” and the highest rate of femicide in Mexico.³⁰

17 104. Both the 2019 and 2020 editions of the State Department’s Trafficking in
18 Persons Report warn that migrants in Mexico are vulnerable to human rights abuses
19 and human trafficking, and that migrants from Central and South America are
20 particularly vulnerable to forced labor and sex trafficking.³¹ And, as noted above, the
21 2017, 2018, and 2019 editions of the State Department’s Country Reports on Human
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23 _____
24 ²⁷ State Dep’t Travel Advisory (Aug. 6, 2020), *available at* <https://bit.ly/3ovAZ0b>.

25 ²⁸ State Dep’t Travel Advisory (Sept. 8, 2020), *available at* <https://bit.ly/35CNv5j>.

26 ²⁹ Overseas Security Advisory Council, Mexico 2020 Crime & Safety Report: Tijuana, *available at* <https://bit.ly/37MEVUs>.

27 ³⁰ *Id.*

28 ³¹ State Dep’t, *2020 Trafficking in Persons Report: Mexico* (June 2020), *available at* <https://bit.ly/2Ts5EwT>; State Dep’t, *2019 Trafficking in Persons Report: Mexico* (June 1, 2019), *available at* <https://bit.ly/31KAiXa>.

1 Rights Practices all noted that migrants living in Mexico were subjected to violence
2 by both government officers and organized criminal groups.³²

3 105. Documentation by nongovernmental organizations and the media
4 confirms the dangers faced by asylum seekers subject to the Protocols. In May 2020,
5 for example, Human Rights First identified 1,114 public reports of murder, rape,
6 torture, kidnapping, and other violent assaults against asylum seekers subject to the
7 Protocols.³³ A number of these attacks were reportedly committed by, or with the
8 acquiescence of, Mexican local and federal police.

9 106. Similarly, in September 2019 the U.S. Immigration Policy Center
10 (USIPC), a research organization based at the University of California-San Diego,
11 published the results of a survey of more than 600 asylum seekers subject to the
12 Protocols and living in migrant shelters in Tijuana and Mexicali. USIPC reported that
13 approximately one in four of these individuals had been threatened with physical
14 violence in Mexico, and that the threats led to actual violence in over half those
15 cases.³⁴ The researchers found that the longer an individual was forced to wait in
16 Mexico, the more likely they were to be the victim of violence, and projected that
17 “[f]or those who have to wait 6 months before their immigration court dates, over half
18 (51.3%) will likely be threatened with physical violence.”³⁵

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23 ³² 2019 State Dep’t Mexico Human Rights Report at 18; 2018 State Dep’t Mexico
24 Human Rights Report at 19-20; 2017 State Dep’t Mexico Human Rights Report at 1,
21-22.

25 ³³ Human Rights First, Report on Publicly Reported MPP Attacks (May 13, 2020),
26 available at <https://bit.ly/35D6VHk>. See also Elliot Spagat, *Migrants live in fear at Mexico-US border as violence flares*, Associated Press (Nov. 6, 2019), available at
<https://bit.ly/3e2fjDX>

27 ³⁴ U.S. Immigration Policy Center, *Seeking Asylum: Part 2* (Oct. 29, 2019) at 4-5,
28 available at <https://bit.ly/31NbfCu>.

³⁵ *Id.* at 9.

1 107. Other organizations, including Freedom House, Amnesty International,
2 and Human Rights Watch, have also reported that asylum seekers subject to the
3 Protocols are at risk of assault, kidnapping, and extortion.³⁶

4 **2. Deprivation of Access to Basic Needs**

5 108. In addition to jeopardizing asylum seekers' physical safety, the Protocols
6 deprive them of access to basic needs, including housing, food, clean water, and
7 medical care.³⁷ It is very difficult for individuals subject to the Protocols to find work
8 in Mexico, in large part due to discrimination and a presumption that they are not
9 eligible to work. Those who are lucky enough to find work are relegated to the
10 lowest-paying jobs in the informal economy.

11 109. Many asylum seekers experience homelessness while awaiting their
12 immigration court hearings. Others live in shelters, shared spaces, or makeshift
13 arrangements on the streets of Mexico's northern border cities and struggle to support
14 themselves and their children.³⁸ The crowded and unsanitary conditions in Mexican
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19 ³⁶ Michael Garcia Bochenek, *US: 'Remain in Mexico' Program Harming Children*,
20 Human Rights Watch (Feb. 12, 2020), available at <https://bit.ly/2J8m0ZL>; Freedom
21 House, *Freedom in the World 2020: Mexico* (March 4, 2020), available at
<https://bit.ly/2HDWeME>; Amnesty International, *Country Reports: Mexico 2019*,
available at <https://bit.ly/3e1xA4a>.

22 ³⁷ U.S. Immigration Policy Center, *Seeking Asylum: Part 2* (Oct. 29, 2019), at 4,
23 available at <https://bit.ly/31NbfCu>; see also Sumiko Keil, *Migrant shelter in Mexicali*
24 *desperate for help amid the pandemic*, KYMA (Aug. 6, 2020), available at
<https://bit.ly/3mtKMC1>; John Holman, *Mexico fails to provide promised jobs to*
25 *migrants*, Al Jazeera (Aug. 28, 2019), available at <https://bit.ly/2HEovlQ>; Julia
26 Ainsley, *As COVID-19 looms, conditions for migrants stalled at U.S. border are a*
27 *'disaster in the making'*, NBC News (May 12, 2020), available at
<https://nbcnews.to/34ylKvy> (reporting that although Mexican law purports to
28 guarantee access to health care, many low-income people are turned away from
hospitals and public health workers were blocked from visiting migrant shelters under
COVID-19 stay-at-home orders).

³⁸ *Id.*

1 migrant shelters have been well-documented,³⁹ and the COVID-19 pandemic has only
2 exacerbated the health risks to those living there.⁴⁰

3 110. The shelters in Mexico are generally not safe. Transnational criminal
4 organizations in Mexican border cities target local shelters to kidnap, extort, or traffic
5 individuals subjected to the Protocols. Asylum seekers are frequently targeted at or
6 immediately outside of migrant shelters.⁴¹

7 3. Denial of Access to Legal Assistance

8 111. By forcing Individual Plaintiffs to live under the dangerous and often life-
9 threatening conditions described above, the Return Policy obstructs their ability to
10 identify, retain, and consult with legal representatives. Because they must focus on
11 keeping themselves and their families alive, they often lack the time, information and
12 resources necessary to contact or communicate with legal service providers.

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14 ³⁹ Jayson Barniske, *Central American Refugees and Their Problems Compound at the*
15 *Border*, Holtsville Tribune (July 9, 2020), available at <https://bit.ly/3mqj1KD>
16 (reporting overcrowded shelters and refugees living “on the street” in Mexicali amid
17 the pandemic); Rafael Carranza, *Near World’s Largest Border Crossing, Tijuana*
18 *Shelters Eye the New Coronavirus with Worry*, Ariz. Repub. (Mar. 14, 2020)
19 available at <https://bit.ly/34AepM1> (reporting how the overcrowded shelters in
20 Tijuana are at particular risk for disease to spread); Wendy Fry, *Rain Brings Flooding*
21 *and Foul Sewage Backup to Migrant Shelter Near Border in Tijuana*, L.A. Times
22 (Dec. 24, 2019), available at <https://lat.ms/2Trl8Bo>; Nicole Narea, *The Abandoned*
23 *Asylum Seekers on the US-Mexico Border*, Vox (Dec. 20, 2019), available at
24 <https://bit.ly/35DSnHp>.

25 ⁴⁰ Sumiko Keil, *Shelters in Mexicali struggle to keep migrants safe during pandemic*,
26 KYMA (June 2, 2020), available at <https://bit.ly/3jwPcWT> (reporting that multiple
27 migrant shelters in Mexicali had cases of COVID-19 but had not received any
28 assistance from the Mexican government); Jennifer Kastner, *Glimpse at life inside*
Tijuana migrant shelter during the pandemic, ABC 10 San Diego (Apr. 14, 2020),
available at <https://bit.ly/31PA80F>; Adolfo Flores, *Immigrants Waiting at the*
Mexican Border Are At High Risk Of Contracting The Coronavirus, Experts Warn,
Buzzfeed News (Mar. 17, 2020), available at <https://bit.ly/2G4mXBl> (reporting that
“up to 3,000 immigrants living in the border city’s 30 official shelters” but that many
“immigrants [are] living in unofficial shelters not registered with the government or
sharing densely packed apartments”).

⁴¹ See, e.g., Human Rights First, *A Sordid Scheme*, (Feb. 13, 2019) at 4-5 available
at <https://bit.ly/35HremK>; Human Rights First, *Human Rights Fiasco*, (Dec. 5, 2019)
at 7-9, available at <https://bit.ly/31NC61m>; Human Rights First, *Orders from Above*,
(Oct. 1, 2019) at 6, 10, available at <https://bit.ly/34AdqeO>; Human Rights First,
Pandemic as Pretext, (May 13, 2020) at 9, available at <https://bit.ly/3mytnbz>.

1 112. The list of low-cost legal service providers that DHS provides to asylum
2 seekers subject to the Protocols consists entirely of legal service providers in the
3 United States, almost none of whom can or will provide legal services to individuals
4 in Mexico.⁴² Indeed, the majority of the organizations on the list of pro bono legal
5 service providers in the San Diego Immigration Court do not represent individuals
6 subject to the Protocols. As a result, individual asylum seekers spend their limited
7 resources contacting providers who cannot assist them.

8 113. For individuals subject to the Protocols, communications with legal
9 service providers in the United States are extremely challenging. Many individuals
10 subject to the Protocols do not have consistent access to phone or internet
11 communication, and international mail service between the United States and Mexico
12 is unreliable at best. Lack of access to technology also prevents individuals in MPP
13 from gathering required documentation and other evidence to support their cases.

14 114. Given the critical nature of in-person meetings when representing asylum
15 seekers, many qualified legal service providers have been reluctant to accept MPP
16 cases due to the risks of traveling to dangerous border towns and the time and expense
17 involved.

18 115. Not surprisingly, rates of legal representation of asylum seekers are
19 substantially higher for detained and non-detained individuals inside the United States
20 than those subject to MPP. According to EOIR records, over 80 percent of individuals
21 seeking asylum but not subject to MPP are represented in their immigration
22 proceedings (50 percent of detained asylum seekers, 86 percent of asylum seekers
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26 ⁴² Michael Garcia Bochenek, *US: 'Remain in Mexico' Program Harming Children*,
27 Human Rights Watch (Feb. 12, 2020) available at <https://bit.ly/3kCbisg>
28 (“Immigration officials provided a woman who attended a hearing in Laredo a list of
legal service providers – showing lawyers in Dallas, 700 kilometers (430 miles)
away.”).

1 who have never been detained, and 88 percent of asylum seekers who have been
2 released from detention).⁴³

3 116. Even asylum seekers like Individual Plaintiffs Nicholas Doe, Benjamin
4 and Jessica Doe, Feliza Doe, and Daniel Doe, who have been able to secure legal
5 representation, lack access to private spaces where they can have confidential
6 conversations with attorneys or accredited representatives, either in person or by
7 phone. The absence of private spaces leads individuals to withhold information that
8 they are afraid to share within earshot of others and impedes trust-building between
9 legal representatives and clients. Such trust-building is particularly critical where
10 attorneys are developing asylum cases, seeking nonrefoulement interviews,
11 evaluating eligibility for parole or other relief, and addressing essential needs such as
12 medical vulnerabilities.

13 117. Defendants' continued implementation of the Protocols, including the
14 Return Policy, the Deprivation of Counsel Policy, and the Presentation Requirement,
15 despite their implementation of the Hearing Suspension Directive, has only
16 compounded existing harms for Individual Plaintiffs, who must remain in Mexico
17 indefinitely—despite the risk of violence, homelessness, and a deadly pandemic—if
18 they have any hope of pursuing their asylum claims.

19 **B. Individual Plaintiffs' Experiences in Mexico**

20 *i) Plaintiff Daniel Doe*

21 118. The Protocols have trapped Plaintiff Daniel Doe in the danger zone
22 around the San Ysidro port of entry. On June 12, 2019, after expressing a fear of
23 persecution or a desire to seek asylum in the United States, Defendants subjected
24 Daniel to the Protocols and returned him to Mexico pursuant to the Return Policy.
25 Defendants ordered Daniel to reappear at the port of entry on October 29, 2019 or
26 face the consequence of being ordered deported in his absence and forfeiting certain

27 ⁴³ TRAC, *Asylum Decisions by Custody, Representation, Nationality, Location,*
28 *Month and Year, Outcome and more* (Sept. 2020), available at
<https://bit.ly/2HElAtQ>.

1 rights under the U.S. asylum system. Defendants provided him no resources or
2 support for survival, safety, and general well-being.

3 119. As an asylum-seeking migrant in Mexico, Daniel is required to maintain
4 a limited-term humanitarian visa, which requires him to reappear at the port of entry
5 for renewal of that document.

6 120. Because Defendants used the Protocols to trap Daniel in the danger zone
7 around the San Ysidro port of entry, he and his daughter have been subjected to
8 violence and imminent threats of violence. Earlier this year, Daniel was stopped and
9 extorted by the Mexican police. More recently, he was the victim of an attempted
10 robbery by men who had targeted him because he is not from Mexico. He and his
11 daughter hear gunshots close to their home, and two people recently were murdered
12 nearby. Daniel does not allow his daughter to leave the home, for fear that she will
13 be shot, kidnapped, or otherwise harmed.

14 121. In March 2020, Plaintiff Daniel Doe and his daughter requested a
15 nonrefoulement interview, and they informed U.S. immigration officials about the
16 incidents and threats of violence that they have faced. Defendants returned them to
17 Mexico.

18 122. As a result of being trapped in a dangerous border zone, Daniel lives in
19 constant fear of being subjected to violence and faces a substantial and imminent risk
20 of serious harm.

21 123. On October 29, 2019, Daniel and his daughter made the dangerous
22 journey to the port of entry. They appeared in immigration court without
23 representation, but Daniel told the judge he wanted to find an attorney because he
24 understood that the asylum process in the United States is very complicated. At his
25 hearing, Daniel received a new hearing date of December 12, 2019 and a list of free
26 legal service providers. Defendants then returned Daniel and his daughter to Mexico
27 under the Protocol's Return Policy.

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1 124. Following his return to Mexico, Daniel immediately started calling the
2 attorneys on the free legal service provider list. Only one attorney answered, but then
3 would not return Daniel’s calls.

4 125. On December 12, 2019, Daniel and his daughter again made the
5 dangerous journey to the port of entry. At their hearing, the immigration judge gave
6 Daniel an asylum application in English, a language that he does not understand, and
7 directed him to complete it. After the hearing, Defendants again returned Daniel and
8 his daughter to Mexico under the Protocols’ Return Policy, with instructions to appear
9 on January 24, 2020.

10 126. In December and January 2019, Daniel Doe continued to call the
11 attorneys on the list, but his calls went unanswered. He eventually heard about a free
12 legal clinic through which he finally found an attorney willing to take his case.

13 127. On January 24, 2020, Daniel Doe and his daughter again made the
14 dangerous journey to the port of entry. This time, his attorney met them at the
15 immigration court, where U.S. immigration officers gave them no more than ten
16 minutes to meet before their hearing. At the hearing, Daniel received a new hearing
17 date of February 14, 2020, and Defendants returned him and his daughter to Mexico
18 under the Protocols’ Return Policy.

19 128. On February 14, 2020, Daniel and his daughter again made the dangerous
20 journey to the point of entry. At this hearing, where U.S. immigration officers again
21 gave them no more than ten minutes to meet with their attorney before their hearing,
22 the immigration judge scheduled a merits hearing for April 24, 2020. Defendants
23 then returned Daniel and his daughter to Mexico under the Protocols’ Return Policy.

24 129. Defendants have postponed, Daniel’s merits hearing several times since
25 April 24, 2020; his attorney advises him of the new dates. Although Daniel’s hearing
26 is currently scheduled for December 10, 2020, Defendants’ Hearing Suspension
27 Directive makes clear that Defendants will not conduct his hearing in the foreseeable
28 future.

1 130. Because the journey to the port of entry is dangerous, Daniel and his
2 daughter have not returned to renew their visas to stay in Mexico.

3 131. By trapping Daniel in Mexico, Defendants have deprived him of access
4 to the resources necessary to meet his and his daughter's basic human needs. They
5 currently live in a shared apartment without heat, where they fear exposure to
6 COVID-19. Although Daniel managed to find work, he cannot afford to send his
7 daughter to school. He also cannot afford medical care for his daughter who suffers
8 from chronic, severe stomachaches and pain in her arms and legs.

9 132. By trapping Daniel in Mexico, Defendants have obstructed his right to
10 access legal representation. Despite diligent efforts for eight months, he was unable
11 to reach any attorney who could assist with his case. Although he now has an
12 attorney, he has difficulty communicating by phone because the connection is poor
13 and international calls are expensive. Moreover, because he lacks any confidential
14 space in Mexico, he cannot readily share important details about his asylum case with
15 his attorney. Daniel's daughter is almost always by his side, and fears that sharing
16 information in her presence will retraumatize her. He has also been unable to gather
17 evidence needed to support his case. As a result, Daniel fears that his attorney will
18 not be able to fully prepare him and his daughter for their merits hearing, if it ever
19 takes place.

20 **ii) Plaintiff Hannah Doe**

21 133. The Protocols have trapped Plaintiff Hannah Doe in the danger zone
22 around the San Ysidro port of entry. On October 31, 2019, after expressing a fear of
23 persecution or a desire to seek asylum in the United States, Defendants subjected
24 Hannah to the Protocols and, after a nonrefoulement interview, returned her to
25 Mexico pursuant to the Return Policy. Defendants provided Hannah with a list of pro
26 bono legal services providers and ordered her to present herself at the San Ysidro port
27 of entry on or around November 13, 2019 or face the consequence of being ordered
28

1 deported and forfeiting certain rights under the U.S. asylum system. Defendants
2 provided her with no resources or support for survival, safety, and general well-being.

3 134. As an asylum-seeking migrant in Mexico, Hannah is required to maintain
4 a limited-term humanitarian visa, which requires her to reappear at the port of entry
5 for renewal of that document.

6 135. Because Defendants used the Protocols to trap Hannah in the danger zone
7 around the San Ysidro port of entry, she has faced violence or imminent threats of
8 violence. One night on her way home from work, a man tried to grab her in the street.
9 Several nights later, a man broke into her apartment and attempted to rape her. She
10 filed a report with the police, who took no action. She moved closer to the port of
11 entry to avoid the expense and risks of travel on days when she must appear in
12 immigration court.

13 136. As a result of being trapped in a dangerous border zone, Hannah lives in
14 constant fear of being subjected to violence and faces a substantial and imminent risk
15 of serious harm.

16 137. Before her first hearing in immigration court, Hannah called every phone
17 number on the list of free legal service providers that Defendants had given her. Many
18 did not answer, and those who did told her that they could not represent her because
19 she was not in the United States.

20 138. On or around November 13, 2019, Hannah made the dangerous journey
21 to the port of entry. When she appeared in immigration court, she told the
22 immigration judge that she was afraid to be in Mexico, and had in fact been assaulted
23 in her apartment. The immigration judge gave her additional time to look for an
24 attorney. Defendants then gave her a second nonrefoulement interview, found that
25 she did not have the requisite fear, and returned her to Mexico under the Protocol's
26 Return Policy with instructions to reappear on December 11, 2019.

27 139. On December 11, 2019, Hannah again made the dangerous journey to the
28 port of entry. At her hearing, the immigration judge gave her additional time to

1 complete her asylum application, a form in English that she did not understand.
2 Defendants then returned Hannah again to Mexico under the Protocol's Return Policy
3 with instructions to reappear on January 12, 2020.

4 140. After her hearing, Hannah discovered the organization Al Otro Lado,
5 which assists asylum seekers subject to MPP. They invited her to participate in their
6 next asylum application workshop, which was not until after her January 12 hearing.
7 Al Otro Lado gave her a letter to hand to the judge explaining that they would assist
8 her in completing her asylum application, but not until after her hearing.

9 141. On January 12, 2020, Hannah again made the dangerous journey to the
10 port of entry. The immigration judge gave Hannah more time to file her asylum
11 application so that she could get assistance from Al Otro Lado. Defendants then
12 returned Hannah again to Mexico under the Protocol's Return Policy with instructions
13 to reappear in February 2020.

14 142. Although Al Otro Lado was able to assist Hannah in completing her
15 asylum application, they were not able to represent her in her removal proceedings
16 due to the vast numbers of migrants in MPP who need assistance.

17 143. In February 2020, Hannah again made the dangerous journey to the port
18 of entry. At her hearing, she filed her asylum application with the immigration judge.
19 Defendants then returned Hannah again to Mexico under the Protocol's Return Policy
20 with instructions to reappear on March 24, 2020.

21 144. Defendants have rescheduled Hannah's hearing multiple times since
22 March 2020—to April 14, 2020 and May 11, 2020, among other dates. Although
23 Hannah's hearing is currently scheduled for November 20, 2020, Defendants'
24 Hearing Suspension Directive makes clear that Defendants will not conduct her
25 hearing in the foreseeable future.

26 145. By trapping Hannah in Mexico, Defendants have deprived her of access
27 to the resources necessary to meet her basic human needs. She has not been able to
28 find consistent work, and therefore cannot afford to rent an apartment. She currently

1 lives in a room adjacent to a hair salon in exchange for cleaning and assistance with
2 other tasks. Hannah suffers constant pain from a back injury, which has been
3 exacerbated by the physical nature of the work available to her. She has limited access
4 to medical care to treat her chronic pain.

5 146. By trapping Hannah in Mexico, Defendants have obstructed her right to
6 access legal representation. Despite diligent efforts, she has not been able to find an
7 attorney to represent her. She did not have any opportunity to communicate with any
8 attorneys at the San Diego immigration court when she was there for hearings. Even
9 if she had an attorney, she knows it would be difficult to communicate with them—
10 she does not have access to a confidential space in which to speak with them and thus
11 cannot speak freely about the basis for her fear of persecution.

12 147. Without legal assistance, Hannah has faced significant challenges in
13 navigating the U.S. asylum system. As a result, Hannah fears that she will not be able
14 to fully prepare for her asylum hearing, if it ever takes place.

15 ***iii) Plaintiffs Benjamin and Jessica Doe***

16 148. The Protocols have trapped Plaintiffs Benjamin and Jessica Doe in the
17 danger zone around the San Ysidro port of entry. On October 7, 2019, after both
18 Benjamin and Jessica expressed a fear of persecution or a desire to seek asylum in the
19 United States, Defendants subjected them, along with their three children, to the
20 Protocols and returned all of them to Mexico pursuant to the Return Policy.
21 Defendants ordered Benjamin and Jessica to present themselves at the San Ysidro
22 port of entry on February 28, 2020 or face the consequence of being ordered deported
23 in their absence and forfeiting certain rights under the U.S. asylum system.
24 Defendants provided them with no resources or support for survival, safety, or general
25 well-being.

26 149. As asylum-seeking migrants in Mexico, Benjamin and Jessica are
27 required to maintain limited-term humanitarian visas, which require them to reappear
28 at the port of entry for renewal of those documents.

1 150. Because Defendants used the Protocols to trap Benjamin and Jessica in
2 the danger zone around the San Ysidro port of entry, they and their children have been
3 subjected to violence or imminent threats of violence. In July 2020, for instance, a
4 Mexican cartel tried to kidnap their seventeen-year-old son. Since then, Jessica and
5 the children rarely leave the house. Because of the danger they faced, a
6 nongovernmental organization eventually moved their family to different housing,
7 where they continued to stay inside most of the time for safety reasons. That housing
8 was temporary, and the family relocated to other temporary housing.

9 151. As a result of being trapped in a dangerous border zone, Benjamin and
10 Jessica live in constant fear of being subjected to violence and face substantial and
11 imminent risk of serious harm.

12 152. In August 2020, Benjamin and Jessica requested parole into the United
13 States because of the threats they faced from the cartel and their fears of harm. U.S.
14 immigration officers refused to interview them.

15 153. On February 28, 2020, Benjamin and Jessica made the dangerous journey
16 to the port of entry. They appeared in immigration court without representation but
17 told the judge they wanted to find an attorney because they understood that the asylum
18 process in the United States was very complicated. They received a new hearing date
19 of March 31, 2020, and Defendants returned them to Mexico.

20 154. Benjamin and Jessica tried calling all the organizations on a list of free
21 legal service providers that DHS had provided them but received no response. They
22 were eventually able to find an immigration attorney through a friend in the United
23 States.

24 155. Defendants have postponed Benjamin and Jessica's hearing several times
25 since March 2020—to August 17, 2020 and October 15, 2020, among other dates.
26 Although Benjamin and Jessica's hearing is currently scheduled for December 10,
27 2020, Defendants' Hearing Suspension Directive makes clear that Defendants will
28 not conduct their hearing in the foreseeable future.

1 156. By trapping Benjamin and Jessica in Mexico, Defendants have deprived
2 them of access to the resources necessary to meet their basic human needs. When
3 they first arrived in Tijuana, the weather was very cold, and they lived in a shelter
4 with no heat. They lacked access to reliable running water for about two months.
5 They have had difficulty finding work and, since their son was targeted by the cartel,
6 Jessica does not leave the house. As a result, they do not make enough money to
7 support their family.

8 157. By trapping Benjamin and Jessica in Mexico, Defendants have
9 obstructed their right to access their attorney, whom they have never been able to
10 meet in person. They communicate only by phone. They do not have access to a
11 confidential space in which to speak with their and thus cannot readily the basis for
12 their fear of persecution. Because they do not have access to technology that permits
13 transmission of documents, they are having difficulty gathering the evidence they
14 need to support their asylum case, causing them grave concern that their attorney will
15 not be fully prepared to represent them.

16 ***iv) Plaintiff Anthony Doe***

17 158. The Protocols have trapped Plaintiff Anthony Doe in the danger zone
18 around the San Ysidro port of entry. On September 19, 2019, after expressing a fear
19 of persecution or a desire to seek asylum in the United States, Defendants subjected
20 Anthony to the Protocols and returned him to Mexico pursuant to the Return Policy.
21 Defendants provided Anthony with a list of pro bono legal service providers, ordered
22 Anthony to present himself at the port of entry on October 8, 2019 or face the
23 consequence of being ordered deported and forfeiting certain rights under the U.S.
24 asylum system. Defendants provided him no resources or support for survival, safety,
25 or general well-being.

26 159. As an asylum-seeking migrant in Mexico, Anthony is required to
27 maintain a limited-term humanitarian visa, which requires him to reappear at the port
28 of entry for renewal of that document.

1 160. Because Defendants used the Protocols to trap Anthony in the danger
2 zone around the San Ysidro port of entry, he has faced violence or imminent threats
3 of violence. He has been assaulted and robbed at least three times, and there are
4 frequent shootings near the church where he lives. Every time he leaves the church,
5 Anthony fears for his safety.

6 161. As a result of being trapped in a dangerous border zone, Anthony lives in
7 constant fear of being subjected to violence and faces a substantial and imminent risk
8 of serious harm.

9 162. Each time Anthony is required to present himself at the San Ysidro port
10 of entry, he must leave the church, at times in the dark, early morning hours, and
11 transit through the danger zone, which is controlled by violent cartels.

12 163. On October 8, 2019, Anthony made the dangerous journey to the port of
13 entry at 4:30 a.m. At his hearing, an immigration judge gave him some papers,
14 including an asylum application form, that he could not read or understand, and the
15 same list of free legal service providers that Anthony was previously provided by
16 DHS. Defendants then returned Anthony to Mexico under the Protocol's Return
17 Policy with instructions to reappear on October 29, 2019.

18 164. Following the hearing, Anthony tried to call the attorneys on the list he
19 had received. None of them answered his calls.

20 165. On October 29, 2019, Anthony again made the dangerous journey to the
21 port of entry. At his hearing, he submitted his asylum application, which an English-
22 speaking friend had helped him to complete. The immigration judge accepted the
23 application and then instructed Anthony to find an attorney to assist him. Defendants
24 then returned Anthony to Mexico under the Protocol's Return Policy with instructions
25 to reappear on February 3, 2020.

26 166. On February 3, 2020, Anthony again made the dangerous journey to the
27 port of entry. At his hearing, the immigration judge gave him more time to find an
28

1 attorney. Defendants then returned Anthony to Mexico under the Protocol's Return
2 Policy with instructions to reappear on June 1, 2020.

3 167. At one of his hearings, Anthony told the immigration judge that he was
4 afraid to return to Mexico. After Defendants detained him for a few days, an asylum
5 officer conducted a telephonic nonrefoulement interview, during which he was
6 permitted only to respond to the questions asked. He was subsequently returned to
7 Mexico under the Return Policy.

8 168. Defendants have postponed Anthony's hearing several times since June
9 1, 2020, when he again made the dangerous journey to the port of entry but was not
10 permitted to cross. When he returned the next day, Mexican immigration officials
11 told him to present himself on the first day of every month. Although Anthony's
12 hearing is currently scheduled for January 5, 2021, Defendants' Hearing Suspension
13 Directive makes clear that Defendants will not conduct his hearing in the foreseeable
14 future.

15 169. By trapping Anthony in Mexico, Defendants have deprived him of access
16 to the resources necessary to meet his basic human needs. He has not been able to
17 find consistent work, and therefore does not have enough money to rent an apartment.
18 He receives some food at the church where he lives, but not enough to survive. He
19 fears for his safety outside the church but cannot leave Tijuana because he would be
20 unable to return if his immigration court hearing goes forward.

21 170. By trapping Anthony in Mexico, Defendants have obstructed his right to
22 access legal representation. Despite diligent efforts, he has not been able to find an
23 attorney to assist him with his asylum case while he is in Mexico. He did not see or
24 have any opportunity to communicate with any attorneys at the San Diego
25 immigration court when he was there for his hearings. Even if he had an attorney, he
26 knows it would be difficult to communicate with them—when he speaks with people
27 in the United States over the phone, it is sometimes almost impossible to understand
28 them because the connection is so poor.

1 171. Without legal assistance, Anthony has faced significant challenges in
2 navigating the U.S. asylum system. After he filed his asylum application, the
3 government attorney in his immigration case told him it would need to be corrected.
4 He does not know why or what parts of it are incorrect. As a result, Anthony fears
5 that he will not be able to fully prepare for his asylum hearing, if it ever takes place.

6 **v) Plaintiff Nicholas Doe**

7 172. The Protocols have trapped Plaintiff Nicholas Doe in the danger zone
8 around the San Ysidro port of entry. On March 6, 2020, after Nicholas expressed a
9 fear of persecution or a desire to seek asylum in the United States, Defendants
10 subjected him to the Protocols and returned him to Mexico pursuant to the Return
11 Policy. Defendants ordered Nicholas to present himself at the San Ysidro port of entry
12 on March 23, 2020 or face the consequences of being ordered deported in his absence
13 and forfeiting certain rights under the U.S. asylum system. Defendants provided him
14 no resources or support for survival, safety, or general well-being.

15 173. As an asylum-seeking migrant in Mexico, Nicholas is required to
16 maintain a limited-term humanitarian visa, which requires him to reappear at the port
17 of entry for renewal of that document.

18 174. Because Defendants used the Protocols to trap Nicholas in the danger
19 zone around the San Ysidro port of entry, he faced violence or imminent threats of
20 violence. While he was living in Tijuana, shootings occurred all around the shelter
21 where he stayed, and bullets often came through the wall. Nicholas has since moved
22 to Rosarito, which is about forty minutes from Tijuana. There, he has been robbed,
23 and the police often stop him, extort him, and threaten to deport him from Mexico.

24 175. As a result of being trapped in a dangerous border zone, Nicholas lives in
25 constant fear of being subjected to violence and faces a substantial and imminent risk
26 of serious harm.

27 176. Because he is afraid to make the dangerous journey to the port of entry
28 during the dark, early morning hours, Nicholas has departed the day before each

1 scheduled hearing and spent the night on the street outside the port of entry to comply
2 with Defendants' order to appear by 4 am. These journeys to the port of entry require
3 Nicholas to transit through terrain controlled by violent cartels.

4 177. Defendants have postponed Nicholas's hearing five times since March
5 2020— to April 2020, May 2020, June 2020, November 2020, and later February
6 2021. On four occasions, Nicholas made the dangerous journey to the port of entry,
7 only to be returned to Mexico under the Protocol's Return Policy with instructions to
8 appear on a future date. Although Nicholas's hearing is currently scheduled for
9 February 18, 2021, Defendants' Hearing Suspension Directive makes clear that
10 Defendants will not conduct his hearing in the foreseeable future.

11 178. As a result of being trapped in a dangerous border zone, Nicholas lives in
12 constant fear of being subjected to violence and faces a substantial and imminent risk
13 of serious harm.

14 179. By trapping Nicholas in Mexico, Defendants have deprived him of access
15 to the resources necessary to meet his basic human needs. When he lived at the shelter
16 in Tijuana, he often lacked even running water. Nicholas has had difficulty finding
17 work and consequently has no steady source of income. He has chronic respiratory
18 issues and is concerned for his health and safety in Mexico.

19 180. By trapping Nicholas in Mexico, Defendants have obstructed his right
20 to access legal representation. Because the telephone connection from Mexico is
21 often intermittent or unreliable, Nicholas has difficulty contacting and
22 communicating with his attorney, whom he has never been able to meet in person. In
23 addition to the connection issues and difficulty understanding his attorney and being
24 understood over the phone, Nicholas does not feel comfortable discussing his
25 traumatic experiences in Nicaragua over the phone. Because Nicholas has no access
26 to technology that permits the transmission of documents, he cannot provide his
27 attorney with documents that are relevant and important to his case. As a result,
28

1 Nicholas fears that his attorney will not be able to meet important deadlines in his
2 case or fully prepare to represent him in immigration court.

3 **vi) Plaintiff Feliza Doe**

4 181. The Protocols have trapped Plaintiff Feliza Doe in the danger zone in
5 Mexicali, Baja California, Mexico, forcing her to use the dangerous transit corridor
6 between Mexicali and Tijuana. On November 23, 2019, after Feliza expressed a fear
7 of persecution or a desire to seek asylum in the United States, Defendants subjected
8 her and her children to the Protocols and returned them to Mexico pursuant to the
9 Return Policy. Defendants coerced Feliza into signing papers that she could not read
10 or understand and gave her instructions to reappear in a language she does not speak.
11 Defendants provided her with no resources or support for survival, safety, or general
12 well-being. When Feliza asked U.S. immigration officers to help her find a safe place
13 for her children, they declined.

14 182. As an asylum-seeking migrant in Mexico, Feliza is required to maintain
15 a limited-term humanitarian visa, which requires her to reappear at the port of entry
16 for renewal of that document.

17 183. Because Defendants used the Protocols to trap Feliza in the danger zone
18 in Mexicali, she and her children have faced violence or imminent threats of violence.
19 Feliza fears that her daughters will be raped or kidnapped because other children in
20 the shelter where they live have had this experience. Feliza and her daughters rarely
21 go outside for fear of being killed, kidnapped, or extorted. One day, while Feliza was
22 walking back to the shelter from her children's school, a taxi driver ordered her to get
23 into his car, threatened her, and chased her. Feliza no longer takes her children to
24 school unless someone can accompany them on their walk. Although Feliza does not
25 feel safe living so close to the border, she cannot move further away and still present
26 herself at the San Ysidro port of entry if and when Defendants order her to do so.

1 184. As a result of being trapped in a dangerous border zone, Feliza lives in
2 constant fear of being subjected to violence and faces a substantial and imminent risk
3 of serious harm.

4 185. Defendants ordered Feliza to present herself at the San Ysidro port of
5 entry in Tijuana on January 31, 2020 or face the consequence of being ordered
6 deported in her absence and forfeiting certain rights under the U.S. asylum system.

7 186. On January 30, 2020, the day before she was required to appear, Feliza
8 and her daughters made the dangerous journey from Mexicali to Tijuana with a group
9 of other migrants. During her hearing, Feliza, whose principal language is Mam,
10 could not understand the judge or any of the papers that the judge gave her. She
11 wanted to tell the judge about her fear of returning to Mexico, but could not do so
12 because there was no Mam interpreter.

13 187. After the hearing, Defendants returned Feliza and her daughters to
14 Mexico under the Protocols' Return Policy, with instructions to appear at the San
15 Ysidro port of entry on March 4, 2020.

16 188. After Feliza returned to Mexicali, another migrant helped her read the
17 papers the judge had given her and explained that they included a list of free legal
18 service providers. She started calling the organizations on the list, but many did not
19 answer her calls, and others told her they could not help. None could speak to her in
20 Mam.

21 189. On March 3, 2020, Feliza and her daughters again made the dangerous
22 journey to Tijuana to present themselves at the San Ysidro port of entry the next day
23 at 4 a.m. With the help of a telephonic Mam interpreter, Feliza was able to tell the
24 judge that she had tried to call many attorneys but could not find one who was willing
25 to take her case. She also told the judge that she was afraid to return to Mexico. The
26 judge instructed her to tell an immigration officer that she was afraid of returning to
27 Mexico.

28

1 190. After Defendants detained Feliza and her daughters for two days, an
2 asylum officer conducted a telephonic nonrefoulement interview. The officer spoke
3 to her in Spanish and did not provide a Mam interpreter. Feliza could not understand
4 everything he said. After the interview, Defendants returned Feliza and her daughters
5 to Mexico, gave her papers in English that she could not read, and ordered her to
6 present herself at the San Ysidro port of entry on April 6, 2020.

7 191. Feliza continued to call the organizations on the list she had been given,
8 trying to find an attorney. Finally, Plaintiff Jewish Family Service agreed to take her
9 case.

10 192. Defendants have postponed Feliza's hearing several times since April.
11 Although Feliza's hearing is currently scheduled for November 10, 2020, Defendants'
12 Hearing Suspension Directive makes clear that Defendants will not conduct her
13 hearing in the foreseeable future.

14 193. By trapping Feliza in Mexico, Defendants have deprived her and her
15 daughters of access to the resources necessary to meet their basic human needs. Feliza
16 does not earn enough money to cover their expenses at the migrant shelter or buy
17 food, medicine, or clothing. Because of COVID-19, they are not allowed to leave the
18 shelter at all.

19 194. By trapping Feliza in Mexico, Defendants have obstructed her right to
20 access legal representation. For the first four months that she was in Mexico, Feliza
21 was unable to reach anyone who could help her with her case. Feliza has never met
22 her legal representative in person and must now communicate only by phone, but the
23 connection is often poor or unreliable. In addition, Feliza lacks a safe and confidential
24 space to speak with her legal representative about the traumatic details of what
25 happened to her in Guatemala. She has had difficulty sending her legal representative
26 many documents relevant to her case, and gathering additional evidence from
27 Guatemala has been virtually impossible. As a result, Feliza fears that her attorney
28 will not be able to fully prepare her for her merits hearing, if it ever takes place.

1 **vii) Plaintiff Jaqueline Doe**

2 195. The Protocols have trapped Plaintiff Jaqueline Doe in the danger zone
3 around the San Ysidro port of entry. Around July 7, 2019, after Jaqueline expressed
4 a fear of persecution or a desire to seek asylum in the United States, Defendants
5 subjected her to the Protocols and returned her to Mexico pursuant to the Return
6 Policy. Defendants ordered Jaqueline to present herself at the San Ysidro port of
7 entry on October 24, 2019 or face the consequences of being ordered deported in her
8 absence and forfeiting certain rights under the U.S. asylum system. Defendants
9 provided her no resources or support for survival, safety, or general well-being.

10 196. As an asylum-seeking migrant in Mexico, Jaqueline is required to
11 maintain a limited-term humanitarian visa, which requires her to reappear at the port
12 of entry for renewal of that document.

13 197. Because Defendants used the Protocols to trap Jaqueline in the danger
14 zone around the San Ysidro port of entry, she has faced violence or imminent threats
15 of violence. As a transgender woman living in Tijuana, she has been threatened,
16 verbally abused, and physically assaulted on account of her gender identity. Jaqueline
17 has also received threats to her life through text and audio messages from people she
18 believes to be associated with cartels. On the two occasions when she was robbed,
19 she reported the incidents to the police, who made a report but took no action.

20 198. As a result of being trapped in a dangerous border zone, Jaqueline lives
21 in constant fear of being subjected to violence and faces a substantial and imminent
22 risk of serious harm.

23 199. On October 25, 2019, Jaqueline made the dangerous journey to the San
24 Ysidro port of entry. She appeared in immigration court without representation. The
25 immigration judge gave her a list of free legal service organizations and told her to
26 find an attorney to take her case. After her hearing, Defendants returned Jaqueline to
27 Mexico with instructions to appear for her next hearing on December 11, 2019.

28

1 200. Despite diligent efforts, including the purchase of a cell phone plan,
2 Jaqueline was unable to find legal representation.

3 201. On December 11, 2019, Jaqueline again made the dangerous journey to
4 the San Ysidro port of entry. When she explained at her hearing that she had been
5 unable to find representation, the immigration judge gave her another copy of the
6 same list of free legal service providers. Jaqueline told both the immigration judge
7 and U.S. immigration officers that she was afraid to return to Mexico because she had
8 been assaulted in Tijuana, but she did not receive a nonrefoulement interview. After
9 the hearing, Defendants again returned Jaqueline to Mexico under the Protocols'
10 Return Policy, with instructions to appear on February 6, 2020.

11 202. On February 6, 2020, Jaqueline again made the dangerous journey to the
12 San Ysidro port of entry. However, U.S. immigration officers would not allow her
13 into the port of entry, telling her that her case was "closed."

14 203. When Jaqueline returned home, she again attempted to contact attorneys
15 on the list she had received to seek assistance with her case.

16 204. By trapping Jaqueline in Mexico, Defendants have deprived her of access
17 to the resources necessary to meet her basic human needs. Jaqueline has spent
18 multiple nights on the street in Tijuana because she has had nowhere to live. The
19 primary work she has been able to find has been dangerous sex work at a bar. Due to
20 the pandemic, the restaurant where she was working closed for four months, and she
21 was forced to go without food until she found a temporary job doing manual labor.
22 She is sometimes unable to afford the medications necessary for her transition.

23 205. By trapping Jaqueline in Mexico, Defendants have obstructed her right to
24 access legal representation. Despite diligent efforts, she has not been able to find an
25 attorney to assist her with her asylum case. Even if she had an attorney, she knows it
26 would be difficult to communicate with them because she cannot always afford
27 internet or a cell phone plan.

28

1 206. Without legal assistance, Jaqueline has faced significant challenges in
2 navigating the U.S. asylum system. As a result, Jaqueline fears that she will not be
3 able to reopen her case.

4 **C. The Protocols Harm Organizational Plaintiffs**

5 207. Plaintiffs ImmDef and Jewish Family Service are nonprofit legal services
6 organizations that were established to provide legal and other services to detained and
7 non-detained immigrants in California. Before the Protocols were implemented,
8 Organizational Plaintiffs focused on representing and advising detained individuals
9 in custody proceedings; representing, advising and otherwise supporting detained and
10 non-detained individuals seeking asylum and other relief; explaining the legal process
11 to individuals in removal proceedings; conducting factual investigations; researching
12 and articulating potential forms of relief; preparing clients and witnesses to testify;
13 and filling out English-language court forms for non-English speaking clients in a
14 clear and legible manner.

15 208. As discussed more fully below, the manner in which Defendants have
16 implemented the Protocols frustrates both Organizational Plaintiffs' missions and
17 requires them to expend resources they otherwise would spend on other programs.

18 **1. ImmDef**

19 209. Plaintiff ImmDef is a nonprofit organization committed to creating a
20 public defender system for immigrants facing deportation.

21 210. Prior to the start of MPP, ImmDef provided limited or full-scope
22 representation in immigration court proceedings and other services to unaccompanied
23 minor children, indigent detained adults, individuals deemed mentally incompetent to
24 represent themselves, and families separated at the border. ImmDef's primary focus
25 was on detained and non-detained individuals in immigration court proceedings in the
26 Greater Los Angeles and Orange County areas (including the Inland Empire), but not
27 generally focused on the San Diego border area.

28

1 211. In response to Defendants’ implementation of the Protocols in January
2 2019, ImmDef established its Cross Border Initiative (“CBI”), which focuses on
3 providing direct representation, pro se assistance, and advocacy to individuals subject
4 to MPP. Specifically, ImmDef represents individuals and families subject to MPP in
5 applications for immigration relief and bond requests before the San Diego
6 immigration court, appeals to the Board of Immigration Appeals, nonrefoulement
7 interviews, and parole requests. ImmDef also provides Know Your Rights
8 presentations, conducts asylum clinics, and undertakes advocacy to assist MPP clients
9 whom they do not have capacity to represent. As of October 26, 2020, ImmDef had
10 represented approximately 86 individuals in MPP.

11 212. To represent individuals subject to the Protocols, ImmDef was required
12 to undertake two new ventures: first, to begin representing individuals in the San
13 Diego immigration court and second, to engage in cross-border travel and
14 communication. Both required new infrastructure, staff, materials, and funding.

15 213. Before MPP, ImmDef attorneys rarely needed to travel to Mexico to meet
16 with clients. ImmDef also did not represent clients before the San Diego immigration
17 courts because any case pending in San Diego could be easily transferred to the
18 immigration courts in Los Angeles, where ImmDef is based. However, the San Diego
19 immigration courts routinely deny motions for change of venue in MPP cases.

20 214. From January 2019 until April 2019, ImmDef’s Executive Director and
21 several staff frequently traveled back and forth from Los Angeles to Tijuana and
22 Mexicali to consult with individuals subject to the Protocols, to escort them to the San
23 Ysidro port of entry on days they had hearings, and to represent them before the San
24 Diego immigration courts.

25 215. ImmDef diverted substantial resources from planned projects in Los
26 Angeles, including its Family Unity Project, to support the expansion of MPP-related
27 work. This decision was driven by the urgent needs of MPP families and the relative
28 lack of resources from partner organizations to assist them. As a result, since MPP

1 started, ImmDef has taken on far fewer cases of families at risk of separation in the
2 Los Angeles area, despite the continued need.

3 216. When it became clear that ImmDef staff based in Los Angeles could not
4 travel regularly between Los Angeles and Tijuana, ImmDef diverted funding and
5 fundraising resources to establish an office and the necessary infrastructural support
6 in San Diego.

7 217. By September 2019, ImmDef's Legal Services Director had shifted her
8 focus from adult detained representation in the Greater Los Angeles Area to
9 overseeing the San Diego office, and ImmDef had hired a Managing Attorney, a
10 Supervising Attorney, and a paralegal. By May 2020, ImmDef had hired two staff
11 attorneys and an administrative staff member. Since January 2019, ImmDef has spent
12 approximately \$400,000 on costs associated with representation of MPP clients.

13 218. The added challenges of representing individuals trapped in Mexico,
14 including the time and expense involved in cross-border travel, safety risks,
15 communication barriers, and the far-reaching needs of most MPP clients, increases
16 the amount of staff time required for each case and decreases the total number of cases
17 each ImmDef attorney representing clients trapped in Mexico can effectively handle.

18 219. Given the precarious circumstances under which most individuals subject
19 to MPP live, ImmDef works to help them address both their legal and non-legal needs,
20 including housing, food, medical care, and safety. These efforts are essential because
21 MPP respondents cannot otherwise fully engage in discussions about their cases. In
22 this way, representing MPP respondents is different and much more time and
23 resource-intensive than providing representation in removal proceedings to detained
24 and non-detained individuals inside the United States, where their lives are not
25 constantly at risk. With MPP hearings indefinitely suspended, ImmDef attorneys
26 must continue to work with their clients in Mexico to prepare their asylum cases and
27 carefully monitor their well-being.

28

1 220. Before the COVID-19 pandemic, ImmDef staff traveled regularly to
2 Tijuana and Mexicali to meet with clients despite the time and expense involved.
3 ImmDef staff tried to meet at least three times with clients in Tijuana and at least
4 twice with clients in Mexicali. Each meeting lasted at least a few hours. In some
5 cases, ImmDef staff visiting clients in Mexicali had to stay overnight in Calexico for
6 safety reasons, which further increased the cost of the trip.

7 221. Despite Defendants' stated policy that individuals in MPP should have an
8 hour to speak to their attorneys before a hearing in immigration court, ImmDef staff
9 are often not allowed to enter the courtroom until a few minutes before the start of
10 court hearings. This makes it extremely difficult and sometimes impossible to review
11 sensitive documents, obtain client signatures, or answer last-minute questions in a
12 way that protects attorney-client confidentiality. ImmDef attorneys are similarly
13 unable to consult privately with clients after their hearings. And when ImmDef
14 lawyers have multiple clients scheduled for hearings on the same day, it is impossible
15 to consult with all of them even if the full hour is available.

16 222. Even if ImmDef attorneys had sufficient time to communicate with their
17 clients, no confidential space is available. DHS officers often stand nearby, refusing
18 to move out of hearing distance and preventing confidential communications.
19 Sometimes, ICE officers end attorney-client conversations prematurely, interject
20 during those conversations, or prevent lawyers from giving legal documents to their
21 clients. These practices impede communication, limit what lawyers and clients can
22 and will say to each other, and obstruct ImmDef's representation efforts.

23 223. Defendants have also thwarted ImmDef's efforts to provide legal
24 information to unrepresented individuals in MPP. Although unrepresented
25 individuals sometimes approach ImmDef attorneys in court to seek legal advice or
26 representation, immigration officers prohibit communications with those individuals.
27 This prohibition impedes ImmDef's ability not only to fulfill its mission, but also to
28 identify prospective clients.

1 224. Due to pandemic-related travel restrictions, in-person meetings and Know
2 Your Rights presentations for MPP clients are now impossible. By contrast with
3 cases of detained and non-detained clients in the United States, ImmDef staff cannot
4 even set up confidential phone appointments with MPP clients but must instead rely
5 on international phone calls or WhatsApp to communicate. Even if MPP clients can
6 afford cell phone service or internet access, they may not have access to a confidential
7 space in Mexico for sensitive communications. Moreover, connections are often
8 weak or unreliable, and phone communication is generally less effective than in-
9 person communication for purposes of building trust with clients.

10 **2. Jewish Family Service**

11 225. Plaintiff Jewish Family Service is a nonprofit organization dedicated to
12 providing holistic, culturally competent, trauma-informed, quality legal and other
13 supportive services to immigrants in San Diego and Imperial Counties.

14 226. Before the implementation of the Protocols, Jewish Family Service
15 provided consultations, limited-scope and full-scope legal representation for both
16 detained and non-detained individuals in immigration court proceedings in the Otay
17 Mesa and San Diego immigration courts, and limited-scope and full-scope legal
18 representation before the Board of Immigration Appeals and the Ninth Circuit Court
19 of Appeals. From January 2018 until MPP started, Jewish Family Service sent a staff
20 member to the Otay Mesa Detention Center for two full days per week to provide free
21 legal consultations, screen potential clients, and meet with existing clients. Jewish
22 Family Service also represented and otherwise assisted non-detained immigrants
23 located in San Diego County and seeking affirmative immigration benefits from
24 USCIS.

25 227. In response to Defendants' implementation of the Protocols in January
26 2019, Jewish Family Service shifted its focus to respond to the needs of individuals
27 subject to MPP who had few other legal representation options available. Before this
28 time, Jewish Family Service had rarely engaged in cross-border legal work.

1 228. Currently, Jewish Family Service is the only organization on the EOIR
2 free legal services provider list in the San Diego area that consistently provides legal
3 representation to individuals subject to the Protocols and one of only a few
4 organizations in San Diego that serve people subject to MPP.⁴⁴

5 229. Since January 2019, Jewish Family Service has repurposed significant
6 portions of six staff members' time and hired three new full-time employees to
7 provide legal services to individuals subjected to the Protocols and returned to Mexico
8 under the Return Policy.

9 230. Given the logistical, technical, and legal complexity of MPP cases, Jewish
10 Family Service cannot recruit, train, and mentor volunteer attorneys to assist with
11 these cases as they had previously done for non-MPP cases. Although Jewish Family
12 Service had made a concerted effort to expand its volunteer attorney program since
13 2017, they had to suspend this program due to their lack of capacity to supervise and
14 oversee it following the implementation of MPP.

15 231. In order to assist individuals subject to MPP, Jewish Family Service has
16 been forced to divert resources away from providing representation and other services
17 to noncitizens in the United States, including individuals detained at the Otay Mesa
18 Detention Center and non-detained individuals in the San Diego area. From
19 November 1, 2017 to January 31, 2019, before the implementation of MPP, Jewish
20 Family Service provided or commenced representation under their then-existing
21 funding to about 15 detained individuals and about 46 non-detained individuals. From
22 February 1, 2019 to October 20, 2020, after the implementation of MPP, Jewish
23 Family Service was only able to provide representation under their then-existing
24 funding to 11 detained individuals and 12 non-detained individuals. This reflects
25 about a 74% reduction in non-detained cases and about a 27% reduction in detained
26 cases.

27 _____
28 ⁴⁴ Plaintiff ImmDef also consistently provides legal representation to individuals
subject to the Protocols but is not on the list.

1 232. As of October 20, 2020, Jewish Family Service had provided either full
2 or limited-scope representation to approximately 96 individuals subject to MPP and
3 over 500 legal consultations. In MPP cases where Jewish Family Service was unable
4 to provide full-scope legal representation, they often represented individuals in parole
5 requests, nonrefoulement interviews, affirmative relief, or advocacy with DHS.

6 233. Recognizing that many people subject to the Protocols did not have the
7 ability to contact any of the organizations on EOIR’s free legal service provider list,
8 Jewish Family Service expended significant resources to establish cross-border
9 infrastructure to receive calls from individuals subject to MPP. This infrastructure
10 includes a hotline accessible via cell phone and WhatsApp for individuals waiting in
11 Tijuana and Mexicali. Jewish Family Service also rearranged its staffing to field calls
12 received through its MPP hotline from Monday through Friday during regular
13 business hours. Before MPP, the staff resources invested in running the MPP hotline
14 would have been dedicated to providing legal services to detained and non-detained
15 individuals in the San Diego area.

16 234. All individuals that dial Jewish Family Service’s MPP hotline receive free
17 legal consultations via internet or phone, “Know Your Rights” information, and
18 information on what to expect in the MPP process. The individuals are also
19 considered for full-scope or limited-scope legal representation.

20 235. Jewish Family Service has invested at least seventy hours of staff time in
21 producing English and Spanish “Know Your Rights” videos about MPP. These
22 videos provide basic information about the MPP process and the rights of affected
23 individuals. The videos are publicly available on the internet and are shared with each
24 hotline caller before their legal consultation with Jewish Family Service.

25 236. Communication with individuals in Mexico via internet and cell phone is
26 often difficult due to bad connections, callers’ limited minutes, lack of access to
27 private spaces where individuals can speak freely, and security concerns. Limitations
28 on internet and mobile access in Mexico also complicate the sharing of documents,

1 compromise the quality of documents transmitted, and raise concerns about
2 confidentiality. To facilitate document sharing and minimize the risk of
3 confidentiality breaches, Jewish Family Service has invested additional resources in
4 technology.

5 237. In September 2019, Jewish Family Service began an ad hoc program at
6 the San Diego immigration court to provide KYR presentations and rapid intake
7 screenings for unrepresented individuals on the MPP docket. Until MPP hearings
8 were suspended in March 2020, Jewish Family Service made a concerted effort to
9 conduct these activities inside the courtrooms while MPP-affected individuals and
10 families waited for their hearings to start. These presentations were independent of
11 the legal communication permitted under the Deprivation of Counsel policy, were not
12 authorized by Defendants, and were not confidential. ICE officers, who provide
13 security at the San Diego immigration court, repeatedly interfered with confidential
14 communication in court.

15 238. In an effort to address these problems, Jewish Family Service tried
16 repeatedly to formalize the KYR program and arrange a confidential space in the
17 immigration court building to meet with individuals in need of immediate legal
18 assistance. Both EOIR and ICE have denied these requests, severely impeding Jewish
19 Family Service's ability to identify and advise potential MPP clients.

20 239. Before March 16, 2020, Jewish Family Service expended significant
21 resources for its staff to travel to Tijuana to meet with clients subject to the Protocols.
22 For each MPP case, Jewish Family Service staff members usually made three to five
23 trips to Mexico for legal visits. Staff members sometimes also traveled to Tijuana to
24 accompany their clients to the San Ysidro port of entry on their hearing dates,
25 sometimes as early as 3 a.m., which increased the length of the workday for staff.

26 240. The circumstances of Jewish Family Service's meetings with clients
27 subject to MPP were far from ideal. Jewish Family Service's staff members did not
28 have consistent access to space in Tijuana where they could meet confidentially with

1 clients. In cases where Jewish Family Service conducted meetings in clients' living
2 spaces, some clients expressed fear that they would be targeted by organized crime if
3 people from the United States were seen entering or leaving. These circumstances
4 hindered Jewish Family Service's ability to provide meaningful legal representation.

5 241. The staff time and additional expenditures required for legal visits with
6 clients subject to MPP, which generally take a full day, have diverted substantial
7 resources from Jewish Family Service's prior work on behalf of clients in the United
8 States. In addition, due to safety concerns in Mexico, Jewish Family Service
9 purchased additional insurance and adopted the practice of assigning two caseworkers
10 to each case. This practice has significantly decreased the total number of clients that
11 Jewish Family Service can represent.

12 242. Jewish Family Service has rarely had the opportunity to meet with its
13 clients for a full hour before their immigration court hearings due to a variety of
14 factors, including CBP's slow processing at the port of entry, ICE's failure to
15 transport individuals to the immigration court sufficiently in advance of their
16 hearings, and ICE's insistence on escorting individuals who need to use the restroom
17 before allowing legal representatives to enter the courtroom. Moreover, ICE officials
18 previously delayed the entry of Jewish Family Service lawyers into the courtroom by
19 requiring that they show signed notices of representation for the clients with whom
20 they planned to meet. Where ICE did permit pre-hearing consultations, they occurred
21 in a crowded, open courtroom with no assurances of confidentiality. Jewish Family
22 Service has similarly been prevented from consulting confidentially with MPP clients
23 following their hearings.

24 **CLASS ACTION ALLEGATIONS**

25 243. Individual Plaintiffs bring this action pursuant to Federal Rules of Civil
26 Procedure 23(a) and 23(b)(2) on behalf of themselves and all other persons similarly
27 situated. The proposed class is defined as all noncitizens who: (1) expressed or will
28 express a fear of persecution in their home countries or a desire to seek asylum; (2)

1 were or will be subjected to the Migrant Protection Protocols; and (3) presented, will
2 present, or have been directed to present themselves at the San Ysidro or Calexico
3 ports of entry.

4 244. The class is so numerous that joinder of all members is impracticable. As
5 of September 2020, over 4300 asylum seekers were awaiting their immigration court
6 hearings in Mexico pursuant to MPP after expressing a fear of persecution in their
7 home countries or a desire to seek asylum in the United States, and after presenting
8 or having been directed to present at the San Ysidro or Calexico port of entry.⁴⁵ Such
9 individuals generally do not have stable living situations in Mexico, also making
10 joinder impracticable.

11 245. There are questions of law and fact that are common to the class. The
12 class members allege common harms: violation of the right to apply for asylum by
13 virtue of being trapped in Mexico under dangerous conditions in a manner that
14 obstructs access to all the components of the U.S. asylum system; unlawful
15 application of 8 U.S.C. § 1225(b)(2)(C) after the indefinite suspension of MPP
16 hearings pursuant to the Hearing Suspension Directive; obstruction of their access to
17 legal representatives; denial of reasonable safety and basic human needs; and
18 obstruction of their right to hire and consult an attorney and petition the courts. The
19 class members' entitlement to these rights is based on a common core of facts. All
20 proposed class members have expressed or will express a fear of persecution in their
21 home countries or a desire to seek asylum, were or will be subjected to the Migrant
22 Protection Protocols, and have presented, will present, or have been directed to
23 present themselves at the San Ysidro or Calexico ports of entry. All class members
24 raise the same legal claims under the INA, 8 U.S.C. §§ 1158(a)(1), 1158(d)(4),
25 1225(b)(2)(C), 1229a(b)(4), 1362, the APA, 5 U.S.C. § 706(2)(a), the Fifth

26 _____
27 ⁴⁵ TRAC, *Details on MPP (Remain in Mexico) Deportation Proceedings by Hearing*
28 *Location and Attendance, Representation, Nationality, Month and Year of NTA,*
Outcome, and Current Status (Sept. 2020), available at <https://bit.ly/31JJXgz> (filter
set to "Hearing Location" and "Outcome").

1 Amendment Due Process Clause, and the First Amendment. Their shared common
2 facts will ensure that judicial findings regarding the legality of the challenged
3 practices will be the same for all class members. Should Plaintiffs prevail, all class
4 members will benefit; each of them will be entitled to return to the United States, with
5 appropriate precautionary public health measures, and to pursue their asylum claim
6 from inside the country.

7 246. Individual Plaintiffs' claims are typical of the claims of the class.
8 Individual Plaintiffs and class members raise common legal claims and are united in
9 their interest and injury. All Individual Plaintiffs, like class members, are asylum
10 seekers whom Defendants unlawfully deprived of the right to apply for asylum by
11 trapping them in Mexico under dangerous conditions in a manner that obstructs their
12 access to legal representatives or legal assistance, reasonable safety, and basic human
13 needs; their ability to gather and present evidence; and their right to consult an
14 attorney and petition the courts. Individual Plaintiffs and class members are thus
15 victims of the same, unlawful course of conduct.

16 247. Individual Plaintiffs are adequate class representatives. Individual
17 Plaintiffs seek relief on behalf of the class as a whole and have no interest antagonistic
18 to other members of the class. Individual Plaintiffs' mutual goal is to declare
19 Defendants' challenged policies unlawful and to obtain declaratory and injunctive
20 relief that would cure this illegality. Individual Plaintiffs seek a remedy for the same
21 injuries as the class members, and all share an interest in having a meaningful right
22 to apply for asylum. Thus, the interests of the Individual Plaintiffs and of the class
23 members are aligned.

24 248. Plaintiffs are represented by attorneys from the Southern Poverty Law
25 Center, the National Immigration Project of the National Lawyers Guild, Innovation
26 Law Lab, and Arnold & Porter Kaye Scholer LLP. Counsel have a demonstrated
27 commitment to protecting the rights and interests of noncitizens and, together, have
28 considerable experience in handling complex and class action litigation in the

1 immigration field. Counsel have represented numerous classes of immigrants and
2 other victims of systematic government misconduct in actions in which they
3 successfully obtained class relief.

4 249. Defendants have acted or refused to act on grounds that are generally
5 applicable to Individual Plaintiffs and the class. Through their Return Policy,
6 Deprivation of Counsel Policy, and Presentation Requirement, Defendants have
7 denied Individual Plaintiffs and class members a meaningful right to apply for
8 asylum. Defendants' actions violate Individual Plaintiffs' and class members'
9 statutory and constitutional rights. Declaratory and injunctive relief are appropriate
10 remedies. In the absence of a class action, there is substantial risk that individual
11 actions would be brought in different venues, creating a risk of inconsistent
12 injunctions to address Defendants' common conduct.

13 **FIRST CLAIM FOR RELIEF**

14 **ADMINISTRATIVE PROCEDURE ACT, 5 U.S.C. § 706(2)(A)**

15 **VIOLATION OF THE RIGHT TO APPLY FOR**

16 **ASYLUM, 8 U.S.C. § 1158(a)(1)**

17 **(All Plaintiffs Against All Defendants)**

18 250. Plaintiffs reallege and incorporate by reference each and every allegation
19 contained in the preceding paragraphs as if set forth fully herein.

20 251. The APA provides that courts "shall ... hold unlawful and set aside
21 agency action" that is "arbitrary, capricious, an abuse of discretion, . . . otherwise not
22 in accordance with law: . . . [or] in excess of statutory jurisdiction, authority, or
23 limitations, or short of statutory right." 5 U.S.C. § 706(2)(A)-(C).

24 252. The Refugee Act as codified in the INA provides that the U.S.
25 government must provide a uniform method by which an individual can meaningfully
26 apply for asylum under 8 U.S.C. § 1158(a)(1) ("Any alien who is physically present
27 in the United States or who arrives in the United States . . . irrespective of such alien's
28 status, may apply for asylum . . .").

1 253. The Migrant Protection Protocols subvert and violate the right to apply
2 for asylum by trapping applicants in a foreign country under dangerous conditions in
3 a manner that obstructs access to all of the components of the U.S. asylum system.

4 254. The Protocols subvert and violate the right to apply for asylum by
5 irrationally treating asylum seekers at the southern border, including at the San Ysidro
6 port of entry, in a discriminatory and non-uniform way.

7 255. The Protocols thereby violate the Individual Plaintiffs' right to apply for
8 asylum under the INA and are not in accordance with law or in excess of statutory
9 authority under 5 U.S.C. § 706(2)(A).

10 256. By trapping their clients and potential clients in a foreign country, in
11 dangerous conditions and in a manner that obstructs access to all the components of
12 the U.S. asylum system, the Protocols further interfere with the Organizational
13 Plaintiffs' ability to deliver meaningful legal assistance to individuals seeking to
14 apply for asylum, as is required under the INA. Defendants failed to adequately
15 consider that fact when they implemented the Protocols.

16 257. By implementing the Protocols, Defendants have acted in a manner that
17 is arbitrary and capricious, not in accordance with law, and in excess of their
18 statutorily prescribed authority in violation of § 706(2) of the APA. And by
19 implementing the Protocols, Defendants have frustrated the Organizational Plaintiffs'
20 core missions, impaired their efforts, and forced them to divert substantial resources
21 away from existing programs.

22 258. The Protocols are final agency actions that are reviewable under 5 U.S.C.
23 §§ 702 and 706.

24 259. Defendants' violation of the APA causes ongoing harm to the Individual
25 Plaintiffs and the Organizational Plaintiffs.

26 260. Plaintiffs do not have an adequate alternative remedy at law and therefore
27 seek immediate review under the APA and injunctive relief.
28

SECOND CLAIM FOR RELIEF

ADMINISTRATIVE PROCEDURE ACT, 5 U.S.C. § 706(2)(A)

VIOLATION OF 8 U.S.C. § 1225(b)(2)(C)

(Individual Plaintiffs Against All Defendants)

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5 261. Plaintiffs reallege and incorporate by reference each and every allegation
6 contained in the preceding paragraphs as if set forth fully herein.

7 262. The APA provides that courts “shall . . . hold unlawful and set aside
8 agency action” that is “arbitrary, capricious, an abuse of discretion, or otherwise not
9 in accordance with law; . . . [or] in excess of statutory jurisdiction, authority, or
10 limitations, or short of statutory right.” 5 U.S.C. § 706(2)(A)-(C).

11 263. An agency action is arbitrary and capricious where the agency “relied on
12 factors which Congress has not intended it to consider” or “entirely failed to consider
13 an important aspect of the problem.” *Motor Vehicle Mfrs. Ass’n v. State Farm Mut.*
14 *Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). Defendants’ decision to continue
15 implementing the Return Policy in the wake of the Hearing Suspension Directive
16 constitutes a final agency action that is reviewable under 5 U.S.C. §§ 702 and 706.

17 264. The INA permits the return to a “foreign territory contiguous to the United
18 States” of certain noncitizens who are “arriving on land” from that territory, but only
19 “pending a proceeding under [8 U.S.C. § 1229a].” 8 U.S.C. § 1225(b)(2)(C). A
20 person subject to § 1225(b)(2)(C) may be kept in a contiguous country only “while
21 awaiting a removal hearing.” 8 C.F.R. § 235.3(d).

22 265. Since March 23, 2020, Defendants have repeatedly postponed Individual
23 Plaintiffs’ removal proceedings, ostensibly due to COVID-19. Rather than suspend
24 the Return Policy, Defendants have forced Individual Plaintiffs to remain in Mexico.

25 266. By implementing the Hearing Suspension Directive on July 17, 2020,
26 Defendants canceled Individual Plaintiffs’ hearings. The Hearing Suspension
27 Directive states that Individual Plaintiffs’ hearings will resume only after certain
28

1 “threshold criteria” have been met. Defendants’ “threshold criteria” are unattainable
2 within the foreseeable future.

3 267. Defendants’ Hearing Suspension Directive effectively suspends
4 indefinitely Individual Plaintiffs’ removal proceedings.

5 268. Defendants’ decision to implement the Return Policy following their
6 adoption of the Hearing Suspension Directive is not in accordance with law or is in
7 excess of Defendants’ statutory authority because Individual Plaintiffs’ proceedings
8 are no longer “pending” but instead are indefinitely suspended. Individual Plaintiffs
9 are no longer “awaiting” their removal hearings.

10 269. Defendants’ decision to implement the Return Policy following their
11 adoption of the Hearing Suspension Directive is also arbitrary and capricious because
12 Defendants failed to consider important aspects of the problem. In particular,
13 Defendants have failed to consider Individual Plaintiffs’ inability to meaningfully
14 access legal representatives for the purpose of applying for asylum, as well as the
15 consequences of requiring asylum seekers to languish indefinitely in life-threatening
16 conditions in Mexico.

17 270. Defendants’ decision to implement the Return Policy following their
18 adoption of the Hearing Suspension Directive on July 17, 2020, is a final agency
19 action that is reviewable under 5 U.S.C. §§ 702 and 706.

20 271. Defendants’ violation of the APA causes ongoing harm to the Individual
21 Plaintiffs.

22 272. Plaintiffs, who have no adequate alternative remedy at law, seek
23 immediate review under the APA and injunctive relief.

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THIRD CLAIM FOR RELIEF

**ADMINISTRATIVE PROCEDURE ACT, § 706(2)(A)
ACCESS TO COUNSEL FOR INDIVIDUAL PLAINTIFFS
(Individual Plaintiffs Against All Defendants)**

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5 273. Plaintiffs reallege and incorporate by reference each and every allegation
6 contained in the preceding paragraphs as if set forth fully herein.

7 274. The APA provides that courts “shall . . . hold unlawful and set aside
8 agency action that is “arbitrary and capricious, an abuse of discretion, or otherwise
9 not in accordance with law.” 5 U.S.C. § 706(2)(A).”

10 275. An agency action is arbitrary and capricious where the agency “entirely
11 failed to consider an important aspect of the problem.” *Motor Vehicle Mfrs. Ass’n*,
12 463 U.S. at 43.

13 276. Defendants’ Return Policy and Deprivation of Counsel Policy are
14 arbitrary and capricious or an abuse of discretion because, in adopting the policies,
15 Defendants failed to consider the obstacles that individuals placed into MPP would
16 face in communicating with and meaningfully accessing legal representatives in the
17 United States; the obstacles that individuals placed into MPP would face in accessing
18 food, shelter, health care, and other basic needs; and the effect those obstacles would
19 have in exacerbating such individuals’ inability to meaningfully access legal
20 representatives.

21 277. Defendants’ Return Policy and Deprivation of Counsel Policy are not in
22 accordance with law because the INA provides noncitizens who are seeking asylum
23 with a right to counsel. *See* 8 U.S.C. §§ 1158(d)(4), 1229a(b)(4)(A), 1362.

24 278. Defendants’ Return Policy and Deprivation of Counsel Policy impose
25 systemic obstacles to Individual Plaintiffs’ ability to access legal representatives, the
26 cumulative effect of which is tantamount to a denial of counsel. *See* 8 U.S.C. §§
27 1158, 1229a(b)(4)(A), 1362.
28

1 279. Defendants’ Return Policy and Deprivation of Counsel Policy are thus
2 not in accordance with law or are arbitrary and capricious.

3 280. Defendants’ Return Policy and Deprivation of Counsel Policy constitute
4 final agency actions that are reviewable under 5 U.S.C. §§ 702 and 706. Defendants’
5 violation of the APA causes ongoing and imminent harm to the Individual Plaintiffs.

6 281. Individual Plaintiffs have no adequate alternative remedy at law and
7 therefore seek immediate review under the APA and injunctive relief.

8 **FOURTH CLAIM FOR RELIEF**

9 **ADMINISTRATIVE PROCEDURE ACT § 706(2)(A)**

10 **VIOLATION OF 8 U.S.C. §§ 1158, 1229a(b)(4), 1362**

11 **(Organizational Plaintiffs Against All Defendants)**

12 282. Plaintiffs reallege and incorporate by reference each and every allegation
13 contained in the preceding paragraphs as if set forth fully herein.

14 283. The APA provides that courts “shall . . . hold unlawful and set aside
15 agency action” that is “arbitrary and capricious, an abuse of discretion, . . . otherwise
16 not in accordance with law . . . [or] in excess of statutory jurisdiction, authority, or
17 limitations, or short of statutory right.” 5 U.S.C. § 706(2)(A)-(C).

18 284. Defendants’ Return Policy and Deprivation of Counsel Policy are
19 arbitrary and capricious because, in adopting these policies, Defendants failed to
20 consider the obstacles that Organizational Plaintiffs would face in safely meeting and
21 meaningfully communicating with clients and potential clients who are placed into
22 MPP. Defendants’ Return Policy and Deprivation of Counsel Policy are not in
23 accordance with law or are in excess of Defendants’ statutory authority because they
24 interfere with the Organizational Plaintiffs’ ability to deliver meaningful pro bono
25 legal assistance, as is required under the INA, to individual clients and potential
26 clients who are placed into MPP.

27 285. By implementing the Return Policy and the Deprivation of Counsel
28 Policy, Defendants have acted in a manner that is not in accordance with law and is

1 in excess of their statutorily prescribed authority in violation of § 706(2) of the APA.
2 And by implementing the Return Policy and the Deprivation of Counsel Policy,
3 Defendants have frustrated the Organizational Plaintiffs’ core missions, impaired
4 their efforts, and forced them to divert substantial resources away from existing
5 programs.

6 286. Defendants’ Return Policy and Deprivation of Counsel Policy constitute
7 final agency actions that are reviewable under 5 U.S.C. §§ 702 and 706. Defendants’
8 violation of the APA causes ongoing and imminent harm to the Organizational
9 Plaintiffs.

10 287. Organizational Plaintiffs have no adequate alternative remedy at law and
11 therefore seek immediate review under the APA and injunctive relief.

12 **FIFTH CLAIM FOR RELIEF**

13 **VIOLATION OF FIFTH AMENDMENT DUE PROCESS CLAUSE**

14 **RIGHT TO FULL AND FAIR HEARING**

15 **(Individual Plaintiffs Against All Defendants)**

16 288. Plaintiffs reallege and incorporate by reference each and every allegation
17 contained in the preceding paragraphs as if set forth fully herein.

18 289. The Due Process Clause of the Fifth Amendment guarantees noncitizens
19 the right to a full and fair hearing in their removal cases. *See, e.g., Colmenar v. INS*,
20 210 F.3d 967, 971 (9th Cir. 2000).

21 290. The Due Process Clause also guarantees noncitizens the right to effective
22 assistance of counsel in their removal proceedings at no cost to the Government. *Ray*
23 *v. Gonzales*, 439 F.3d 582, 587 (9th Cir. 2006) (stating that “this Circuit has long
24 recognized that an alien’s due process right to obtain counsel in immigration matters
25 also includes a right to *competent representation* . . . due process requires more than
26 the formal *availability* of counsel”) (emphasis in original); *Biwot v. Gonzales*, 403
27 F.3d 1094, 1098 (9th Cir. 2005) (“The right to counsel in immigration proceedings is
28 rooted in the Due Process Clause . . .”); *Orantes-Hernandez v. Thornburgh*, 919 F.2d

1 549, 554 (9th Cir. 1990) (stating that noncitizens’ “fundamental” right to counsel
2 “must be respected in substance as well as in name”).

3 291. Defendants’ Return Policy and Deprivation of Counsel Policy impose
4 systemic obstacles to Individual Plaintiffs’ Fifth Amendment rights by obstructing
5 their meaningful access to legal representatives.

6 292. Defendants’ Return Policy and Deprivation of Counsel Policy also
7 impose systemic obstacles to Individual Plaintiffs’ Fifth Amendment rights by
8 obstructing their ability to collect evidence and communicate with potential witnesses
9 and experts, as necessary to meaningfully prepare and present their claims for relief.

10 293. Defendants’ violation of the Due Process Clause causes ongoing and
11 imminent harm to the Individual Plaintiffs.

12 **SIXTH CLAIM FOR RELIEF**

13 **VIOLATION OF THE FIRST AMENDMENT**

14 **(Individual Plaintiffs Against All Defendants)**

15 294. Plaintiffs reallege and incorporate by reference each and every allegation
16 contained in the preceding paragraphs as if set forth fully herein.

17 295. Defendants’ Return Policy and Deprivation of Counsel Policy and their
18 implementation interfere with and obstruct Individual Plaintiffs’ First Amendment
19 rights to hire and consult an attorney and petition the courts. “[T]he ‘right to hire and
20 consult an attorney is protected by the First Amendment’s guarantee of freedom of
21 speech, association and petition.’” *Mothershed v. Justices of the Supreme Court*, 410
22 F.3d 602, 611 (9th Cir. 2005), *as amended on denial of reh’g* (9th Cir. July 21, 2005)
23 (quoting *Denius v. Dunlap*, 209 F.3d 944, 953 (7th Cir. 2000)). The First Amendment
24 protects the efforts of individuals to seek the assistance of attorneys and petition the
25 courts, including with respect to immigration proceedings.

26 296. Defendants’ Return Policy and Deprivation of Counsel Policy and their
27 implementation restrict the time, place, and manner in which the Individual Plaintiffs
28 may exercise their First Amendment rights to hire and consult an attorney and petition

1 the courts. The Return Policy and its implementation force individuals subject to it,
2 including Individual Plaintiffs, to return to Mexico and prevents them from entering
3 the United States except under limited circumstances. The Deprivation of Counsel
4 Policy and its implementation restrict communication with legal service providers
5 while Individual Plaintiffs are in the United States, with the result that nearly all
6 meaningful legal communication must occur while they are in Mexico.

7 297. Forced to return to Mexico, Individual Plaintiffs cannot communicate
8 effectively with attorneys in the United States. Due to health, safety, and resource
9 constraints, Individual Plaintiffs cannot meet in person with U.S.-based attorneys.
10 Communication by telephone or internet requires substantial time and funds and is
11 unreliable at best.

12 298. Defendants' Deprivation of Counsel Policy and Return Policy and their
13 implementation necessitate that nearly all legal communication occur while
14 Individual Plaintiffs are in Mexico, where meaningful legal communication is
15 functionally impossible or possible only at great expense and/or substantial risk.
16 Represented Individual Plaintiffs are left with, at most, a single hour before court
17 appearances, which often is not available in practice and, in any case, is insufficient
18 to obtain comprehensive advice regarding the legal issues surrounding their asylum
19 claims. Pro se Individual Plaintiffs are denied even that single hour to seek the advice
20 of counsel. Individual Plaintiffs lack viable meaningful alternative channels, let alone
21 ample alternative channels, for seeking the assistance of counsel and petitioning the
22 courts.

23 299. Defendants' policies therefore constitute unreasonable restrictions on the
24 Individual Plaintiffs' constitutionally protected right to seek the assistance of
25 attorneys and petition the courts and are unconstitutional.

26 300. Individual Plaintiffs have suffered and will imminently suffer irreparable
27 injury as a result of Defendants' violation of their constitutional right to hire and
28

1 consult an attorney and petition the courts and are entitled to declaratory and
2 injunctive relief to avoid any further injury.

3 **SEVENTH CLAIM FOR RELIEF**

4 **VIOLATION OF FIRST AMENDMENT RIGHTS**
5 **TO ADVISE POTENTIAL AND EXISTING CLIENTS**
6 **(Organizational Plaintiffs Against All Defendants)**

7 301. Plaintiffs reallege and incorporate by reference each and every allegation
8 contained in the preceding paragraphs as if set forth fully herein.

9 302. Defendants' Return Policy and Deprivation of Counsel Policy and their
10 implementation interfere with and obstruct Organizational Plaintiffs' First
11 Amendment rights to advise potential and existing clients.

12 303. The First Amendment protects legal services providers from government
13 interference when they are "advocating lawful means of vindicating legal rights."
14 *NAACP v. Button*, 371 U.S. 415, 437 (1963). Pro bono legal assistance to immigrants
15 in removal proceedings falls within this zone of protection. *Nw. Immigrant Rights*
16 *Project v. Sessions*, No. C17-716, 2017 WL 3189032 (W.D. Wash. July 27, 2017).

17 304. The protection afforded by the First Amendment extends to advising
18 potential clients of their rights. *See, e.g., In re Primus*, 436 U.S. 412, 431-32. (1978);
19 *Nw. Immigrant Rights Project*, 2017 WL 3189032, at *2-3.

20 305. The protection afforded by the First Amendment also includes providing
21 legal assistance to existing clients. *See, e.g., Legal Services Corp. v. Velazquez*, 531
22 U.S. 533 (2001); *In re Primus*, 436 U.S. 412; *NAACP v. Button*, 371 U.S. 415; *Torres*
23 *v. DHS*, 411 F. Supp. 3d 1036 (C.D. Cal. 2019).

24 306. By advising, assisting, and consulting with potential and existing clients,
25 attorneys disseminate important legal information, and the "creation and
26 dissemination of information are speech within the meaning of the First Amendment."
27 *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 570 (2011).

28

1 307. Defendants’ Return Policy and Deprivation of Counsel Policy and their
2 implementation restrict the viewpoints that Organizational Plaintiffs may express
3 and/or unreasonably restrict the time, place, and manner in which Organizational
4 Plaintiffs may exercise their First Amendment rights to advise potential and existing
5 clients. The Return Policy forces all potential and existing clients into Mexico and
6 prevents them from entering the United States except under limited circumstances.
7 The Deprivation of Counsel policy and its implementation restrict and regulate the
8 viewpoints and/or content of legal communication between Organizational Plaintiffs
9 and all potential or existing clients while they are allowed in the United States.

10 308. Organizational Plaintiffs cannot meaningfully communicate with
11 potential and existing clients while those clients are in Mexico. Forced to return to
12 Mexico, Organizational Plaintiffs’ potential and existing clients lack the resources
13 and conditions necessary for face-to-face meetings and communication through other
14 less effective channels. Due to health, safety and resource concerns, Organizational
15 Plaintiffs are unable to undertake the international travel that would be required for
16 in-person meetings. Communication by telephone or other means with potential or
17 existing clients in Mexico requires substantial time and funds and is unreliable at best.
18 Moreover, Organizational Plaintiffs’ attorneys—who are licensed to practice law in
19 the United States—must abide by the geographic restrictions of their bar licenses.

20 309. Defendants’ Deprivation of Counsel Policy and Return Policy and their
21 implementation force nearly all legal communication to occur while the
22 Organizational Plaintiffs’ potential and existing clients are in Mexico, where
23 Organizational Plaintiffs are unable to meaningfully communicate with them or are
24 able to do so only at great expense or at substantial risk.

25 310. For their existing clients, Organizational Plaintiffs are left, at most, with
26 a single hour before court appearances, which often is not available in practice and,
27 in any case, is insufficient to provide comprehensive advice regarding the legal issues
28

1 surrounding their asylum claims. At the very least, Organizational Plaintiffs lack
2 viable alternative channels to advise their existing clients.

3 311. Defendants' policies and their implementation therefore constitute
4 unreasonable restrictions on the Organizational Plaintiffs' constitutionally protected
5 rights to advise their existing clients and are unconstitutional.

6 312. Defendants' policies and their implementation limit the time available for
7 legal communication in the United States to communication with already represented
8 individuals; Defendants' policies forbid legal communication with unrepresented
9 potential clients.

10 313. Defendants' policies and their implementation thus prevent
11 Organizational Plaintiffs from exercising their First Amendment rights to
12 communicate with potential clients and advise them of their rights.

13 314. Defendants' policies and their implementation also prevent
14 Organizational Plaintiffs from advising potential clients regarding Organizational
15 Plaintiffs' viewpoints regarding the rights of individuals subject to MPP.

16 315. Therefore, Defendants' policies and their implementation constitute
17 impermissible content-based and/or viewpoint-based restrictions on Organizational
18 Plaintiffs' First Amendment rights.

19 316. In the alternative, Defendants' policies and their implementation
20 constitute unreasonable restrictions on the Organizational Plaintiffs' constitutionally
21 protected right to solicit and advise potential clients. At the very least, Organizational
22 Plaintiffs lack viable alternative channels to exercise their First Amendment rights to
23 solicit and advise potential clients.

24 317. Under either theory, Defendants' policies and their implementation
25 violate Organizational Plaintiffs' First Amendment rights to solicit and advise
26 potential clients and are unconstitutional.

27 318. Organizational Plaintiffs have suffered and will imminently suffer
28 irreparable injury as a result of Defendants' violation of Organizational Plaintiffs'

1 constitutional rights to advise potential and existing clients and are entitled to
2 declaratory and injunctive relief to avoid any further injury.

3 **EIGHTH CLAIM FOR RELIEF**

4 **VIOLATION OF FIFTH AMENDMENT DUE PROCESS CLAUSE**

5 *State-Created Danger*

6 **(Individual Plaintiffs Against All Defendants)**

7 319. Plaintiffs reallege and incorporate by reference each and every allegation
8 contained in the preceding paragraphs as if set forth fully herein.

9 320. The Fifth Amendment to the U.S. Constitution protects an individual's
10 liberty interest in bodily security. The federal government violates this substantive
11 due process right when it affirmatively places an individual in a position of danger,
12 creating or increasing the potential for harm. *Kennedy v. City of Ridgefield*, 439 F.3d
13 1055, 1061 (9th Cir. 2006).

14 321. The right to reasonable safety under the Due Process Clause applies to
15 noncitizens. *See Wang v. Reno*, 81 F.3d 808, 817-18 (9th Cir. 1996).

16 322. Defendants have engaged in affirmative conduct that they knew or should
17 have known places Individual Plaintiffs in danger that they otherwise would not have
18 faced. Defendants knew or should have known that the Return Policy and
19 Presentation Requirement exposes asylum seekers to obvious and substantial risks of
20 harm through extortion, assault, kidnapping, sexual violence, and other crimes as they
21 are forced to wait in or transit through Tijuana and Mexicali. Defendants knew or
22 should have known that the Return Policy and Presentation Requirement leaves
23 asylum seekers unable to meet their basic human needs, including adequate housing,
24 food, clean water, and medical care, while in Mexico.

25 323. Under the Return Policy and Presentation Requirement, Defendants have
26 forced each of the Individual Plaintiffs to remain in, and/or repeatedly transit through,
27 Tijuana and/or Mexicali despite Defendants' knowledge of the dangers that
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1 Individual Plaintiffs have faced and the continuing serious and obvious risk of
2 extortion, assault, kidnapping, sexual violence and other crimes.

3 324. Despite these known or obvious dangers, Defendants have continued to
4 act with deliberate indifference toward Plaintiffs' bodily security.

5 325. For these reasons, Defendants have violated Individual Plaintiffs' due
6 process rights both by implementing the Return Policy and Presentation Requirement,
7 by subjecting and continuing to subject Individual Plaintiffs to the Return Policy and
8 Presentation Requirement, and additionally by failing to provide for their reasonable
9 safety and basic human needs while in Mexico.

10 **NINTH CLAIM FOR RELIEF**

11 **VIOLATION OF FIFTH AMENDMENT DUE PROCESS CLAUSE**

12 *Special Relationship*

13 **(Individual Plaintiffs Against All Defendants)**

14 326. Plaintiffs reallege and incorporate by reference each and every allegation
15 contained in the preceding paragraphs as if set forth fully herein.

16 327. Under the Fifth Amendment to the U.S. Constitution, Defendants have an
17 obligation to provide for the reasonable safety and basic human needs of those with
18 whom it has created a "special relationship." *DeShaney v. Winnebago Cnty. Dep't of*
19 *Soc. Servs.*, 489 U.S. 189, 199-200 (1989). When the government "so restrains an
20 individual's liberty that it renders him unable to care for himself," it assumes
21 responsibility for their safety and well-being. *Id.*

22 328. Defendants have created a "special relationship" with Individual
23 Plaintiffs by discretionarily subjecting them to the Protocols.

24 329. While inside the United States, Individual Plaintiffs were in Defendants'
25 actual physical custody before being returned to Mexico pursuant to Defendants'
26 Return Policy. Individual Plaintiffs will again be placed in Defendants' actual
27 physical custody upon arrival at a Port of Entry, under the Presentation Requirement,
28 if and when their immigration hearings are rescheduled.

1 Protection Protocols; and presented, will present, or have been directed to present at
2 the San Ysidro or Calexico port of entry.

3 b) Name Nicholas Doe, Jessica Doe, Benjamin Doe, Daniel Doe, Feliza
4 Doe, Anthony Doe, Hannah Doe, and Jaqueline Doe as representatives of the class,
5 and appoint Plaintiffs' counsel as class counsel;

6 c) Declare that the Protocols as a whole, the Return Policy and the
7 Deprivation of Counsel Policy, individually and collectively, violate federal statutes
8 and the U.S. Constitution;

9 d) Enjoin Defendants, their subordinates, agents, employees, and all others
10 acting in concert with them from subjecting Plaintiffs and class members to the Return
11 Policy and the Deprivation of Counsel Policy, and issue an injunction sufficient to
12 remedy the violations of the rights of both the Individual and Organizational Plaintiffs
13 and class members, including ordering Defendants to set aside the Return Policy;

14 e) Allow each of the Individual Plaintiffs and class members to return to the
15 United States, with appropriate precautionary public health measures, and to pursue
16 their asylum claims from inside the country;

17 f) Pending the release of individuals into the United States, order
18 Defendants to provide an adequate facility in the United States for legal visitation
19 with no less than 20 confidential meeting spaces (adequate under all appropriate
20 precautionary public health measures), accessible by legal representatives,
21 interpreters and individuals subjected to MPP for no less than seven days a week,
22 including holidays, for no less than eight hours a day per day on regular business days
23 and a minimum of four hours per day on weekends and holidays. Such meeting spaces
24 shall provide access to an international telephone line, third-party interpretation, and
25 videoconferencing;

26 g) Order Defendants to permit Organizational Plaintiffs and others similarly
27 situated to provide legal services presentations to groups of individuals subjected to
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1 the Protocols, including members of the class, for the purpose of informing them of
2 U.S. immigration law and procedures;

3 h) Order Defendants to provide food, shelter, medical care, and other
4 appropriate relief to Individual Plaintiffs and members of the class in order to address
5 their basic human needs while in Mexico;

6 i) Award Plaintiffs all costs incurred in maintaining this action, including
7 reasonable attorneys' fees under the Equal Access to Justice Act, as amended, 5
8 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified by law; and

9 j) Grant such further relief as this Court deems just and proper.

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Dated: October 28, 2020

ARNOLD & PORTER KAYE SCHOLER LLP

By: /s/ Angel Tang Nakamura
ANGEL TANG NAKAMURA
HANNAH R. COLEMAN

Attorneys for Plaintiffs