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12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**

14 Innovation Law Lab; Central American Resource Center
of Northern California; Centro Legal de la Raza;
15 Immigration and Deportation Defense Clinic at the
University of San Francisco School of Law; Al Otro
16 Lado; Tahirih Justice Center; John Doe; Gregory Doe;
Bianca Doe; Dennis Doe; Alex Doe; Christopher Doe;
17 Evan Doe; Frank Doe; Kevin Doe; Howard Doe; Ian
Doe,

18 *Plaintiffs,*

19 v.

20 Kirstjen Nielsen, Secretary of Homeland Security, in
21 her official capacity; U.S. Department of Homeland
Security; Lee Francis Cissna, Director, U.S. Citizenship
22 and Immigration Services, in his official capacity; John
L. Lafferty, Chief of Asylum Division, U.S. Citizenship
23 and Immigration Services, in his official capacity; U.S.
Citizenship and Immigration Services; Kevin K.
24 McAleenan, Commissioner, U.S. Customs and Border
Protection, in his official capacity; Todd C. Owen,
25 Executive Assistant Commissioner, Office of Field
Operations, U.S. Customs and Border Protection, in his
26 official capacity; U.S. Customs and Border Protection;
Ronald D. Vitiello, Acting Director, U.S. Immigration
27 and Customs Enforcement, in his official capacity; U.S.
Immigration and Customs Enforcement,

28 *Defendants.*

Case No.:

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

IMMIGRATION ACTION

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25 **Pro hac vice application forthcoming*
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INTRODUCTION

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2 1. This case challenges the federal government’s new policy of forcing asylum seekers to
3 return to danger in Mexico while they await their removal proceedings, in violation of the
4 humanitarian protections to which they are entitled under United States and international law.

5
6 2. Plaintiffs are individual asylum seekers from Central America who are now living in fear in
7 Mexico because they were returned there under the new policy, as well as legal organizations
8 whose missions to provide representation to such asylum seekers are being thwarted by the physical
9 removal of those asylum seekers from the United States.

10 3. Since the enactment of the 1980 Refugee Act nearly forty years ago, U.S. law has prohibited
11 the return of individuals to countries where they are likely to face persecution, while providing an
12 asylum procedure by which individuals fleeing persecution can seek and obtain permanent safety.
13 But at the end of January, the government began to implement a new policy that eviscerates both of
14 these fundamental protections.
15

16 4. Under the new policy, immigration authorities are forcing asylum seekers at the southern
17 border of the United States to return to Mexico—to regions experiencing record levels of
18 violence—where they must remain for the duration of their asylum proceedings. By placing them in
19 such danger, and under conditions that make it difficult if not impossible for them to prepare their
20 cases, Defendants are depriving them of a meaningful opportunity to seek asylum.
21

22 5. Moreover, the procedure Defendants have implemented for determining who can be
23 returned under the policy is wholly inadequate for ensuring that those who face persecution, torture,
24 or death in Mexico will not be erroneously returned. Indeed, the procedure is unlike any that
25 Defendants have previously used to adjudicate such claims for protection. Yet Defendants’ policy
26 memoranda contain no explanation for such a departure.
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1 6. Defendants call their new forced return policy the “Migrant Protection Protocols” (“MPP”).
2 It was first announced by Secretary of Homeland Security Kirstjen M. Nielsen on December 20,
3 2018, and implemented at the San Ysidro Port of Entry in California on January 28, 2019.
4 Defendants recently announced imminent expansion of the policy to the Eagle Pass Port of Entry,
5 with other Texas locations soon to follow.

6
7 7. The new policy violates the Immigration and Nationality Act (“INA”) and the
8 Administrative Procedure Act (“APA”). It violates the INA because the authority Defendants cite
9 for the policy, INA § 235(b)(2)(C), 8 U.S.C. § 1225(b)(2)(C)—a provision that allows the return
10 pending removal proceedings of certain noncitizens who arrive by land from a contiguous foreign
11 territory—cannot be used against the asylum seekers to whom Defendants are applying it. It also
12 violates INA § 208, 8 U.S.C. § 1158 (establishing a right to apply for asylum), and INA § 241(b)(3),
13 8 U.S.C. § 1231(b)(3) (prohibiting removal to a country where one would face persecution). The
14 policy violates the APA, because Defendants failed to comply with the APA’s notice and comment
15 requirements and because the policy is arbitrary, capricious, and contrary to law.

16
17 8. Plaintiffs seek a declaration that the policy is illegal and an injunction enjoining its
18 operation.

19
20 **JURISDICTION & VENUE**

21 9. This case arises under the United States Constitution; the Administrative Procedure Act
22 (“APA”), 5 U.S.C. § 701 *et seq.*; the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101 *et*
23 *seq.* and its implementing regulations; and the Convention Against Torture (“CAT”), *see* Foreign
24 Affairs Reform and Restructuring Act of 1998 (“FARRA”), Pub. L. No. 105-277, div. G, Title
25 XXII, § 2242, 112 Stat. 2681, 2681-822 (1998) (codified as Note to 8 U.S.C. § 1231).

26 10. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 (federal question), the Declaratory
27 Judgment Act, 28 U.S.C. §§ 2201-2202, and the Alien Tort Statute, 28 U.S.C. § 1350.
28

1 11. Venue is proper under 28 U.S.C. § 1391(e)(1) because Defendants are agencies of the
2 United States and officers of the United States acting in their official capacity; three of the Plaintiff
3 organizations have their principal residence in this District; and another two Plaintiff organizations
4 have offices in this District.

5 **PARTIES**

6
7 12. Plaintiff John Doe fled Guatemala to seek asylum in the United States. On January 30, 2019,
8 he was returned to Mexico pursuant to Defendants' new forced return policy. He is currently in
9 Tijuana, where he fears for his life.

10 13. Plaintiff Gregory Doe fled Honduras to seek asylum in the United States. On January 30,
11 2019, he was returned to Mexico pursuant to Defendants' new forced return policy. He is currently
12 in Tijuana where he fears for his life.

13
14 14. Plaintiff Bianca Doe fled Honduras to seek asylum in the United States. On January 30,
15 2019, she was returned to Mexico pursuant to Defendants' new forced return policy. She is
16 currently in Tijuana where she fears for her life.

17 15. Plaintiff Dennis Doe fled Honduras to seek asylum in the United States. On January 30,
18 2019, he was returned to Mexico pursuant to Defendants' new forced return policy. He is currently
19 in Tijuana where he fears for his life.

20
21 16. Plaintiff Alex Doe fled Honduras to seek asylum in the United States. On January 30, 2019,
22 he was returned to Mexico pursuant to Defendants' new forced return policy. He is currently in
23 Tijuana where he fears for his life.

24 17. Plaintiff Christopher Doe fled Honduras to seek asylum in the United States. On January 30,
25 2019, he was returned to Mexico pursuant to Defendants' new forced return policy. He is currently
26 in Tijuana where he fears for his life.

1 18. Plaintiff Evan Doe fled El Salvador to seek asylum in the United States. On January 30,
2 2019, he was returned to Mexico pursuant to Defendants’ new forced return policy. He is currently
3 in Tijuana where he fears for his life.

4 19. Plaintiff Frank Doe fled Honduras to seek asylum in the United States. On February 4, 2019,
5 he was returned to Mexico pursuant to Defendants’ new forced return policy. He is currently in
6 Tijuana where he fears for his life.

7 20. Plaintiff Kevin Doe fled Honduras to seek asylum in the United States. On January 30,
8 2019, he was returned to Mexico pursuant to Defendants’ new forced return policy. He is currently
9 in Tijuana where he fears for his life.

10 21. Plaintiff Howard Doe fled Honduras to seek asylum in the United States. On February 5,
11 2019, he was returned to Mexico pursuant to Defendants’ new forced return policy. He is currently
12 in Tijuana where he fears for his life.

13 22. Plaintiff Ian Doe fled Honduras to seek asylum in the United States. On February 5, 2019,
14 he was returned to Mexico pursuant to Defendants’ new forced return policy. He is currently in
15 Tijuana where he fears for his life.

16 23. Plaintiff Innovation Law Lab (the “Law Lab”) is a nonprofit organization that has projects
17 in multiple states throughout the country, including California, New Mexico, Texas, Oregon, and
18 North Carolina. The Law Lab seeks to advance the legal rights of immigrants and refugees in the
19 United States, with a focus on providing and facilitating representation to asylum seekers through
20 innovative, technology-driven models. The Law Lab has an office in Oakland, California.

21 24. Plaintiff Central American Resource Center of Northern California (“CARECEN”) is a
22 nonprofit organization founded in 1986 by Central American refugees, which provides pro bono
23 and low cost immigration services to primarily low-income, immigrant, Latino, and monolingual
24 Spanish speakers. A central part of CARECEN’s mission is to provide legal counseling and
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1 representation to asylum seekers, the vast majority of whom enter the United States through the
2 southern border. The organization is incorporated in California and headquartered in San Francisco,
3 California.

4 25. Plaintiff Centro Legal de la Raza (“Centro Legal”) is nonprofit organization incorporated in
5 California. Centro Legal is a comprehensive immigration services agency focused on protecting
6 and expanding the rights of low-income people, particularly Latino immigrants and asylum
7 seekers. Centro Legal’s comprehensive immigration practice specializes in providing removal
8 defense for asylum seekers and others throughout California, including asylum seekers arriving
9 through the U.S.-Mexico border. Centro Legal is the largest provider of removal defense services
10 in California, and has offices in Oakland, Hayward, and San Francisco, California.

11 26. Plaintiff Immigration and Deportation Defense Clinic at the University of San Francisco
12 School of Law (the “USF Clinic”) is a nonprofit organization that provides removal defense and
13 engages in advocacy in California. The USF Clinic’s twofold mission is to provide free legal
14 services to noncitizens in removal proceedings, with an emphasis on asylum, and to train law
15 students to be effective and ethical immigration lawyers in the area of defensive asylum cases. The
16 USF Clinic is headquartered in San Francisco, California.

17 27. Plaintiff Al Otro Lado (“AOL”) is a nonprofit legal services organization based in Los
18 Angeles, California that serves indigent deportees, migrants, refugees, and their families in
19 Southern California and Tijuana, Mexico. Al Otro Lado’s mission is to provide screening,
20 advocacy, and legal representation for individuals in asylum and other immigration proceedings; to
21 seek redress for civil rights violations; and to provide assistance with other legal and social service
22 needs.

23 28. Plaintiff Tahirih Justice Center (“Tahirih”) is a nonprofit and non-partisan organization
24 providing free legal immigration services to survivors of gender-based violence. Tahirih’s mission
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1 is to provide free holistic services to immigrant women and girls fleeing violence such as rape,
2 domestic violence, female genital mutilation/cutting, forced marriage, and human trafficking, and
3 who seek legal immigration status under U.S. law. Tahirih offers legal representation and social
4 services for individuals who seek protection, including asylum, in their immigration proceedings.

5 Tahirih operates from five offices across the country and has an office in San Francisco, California.

6
7 29. Defendant Kirstjen M. Nielsen is the Secretary of Homeland Security. She is sued in her
8 official capacity. In that capacity, she issued the Migrant Protection Protocols (“MPP”) and related
9 policy guidance. She directs each of the component agencies within the Department of Homeland
10 Security. In her official capacity, Defendant Nielsen is responsible for the administration of the
11 immigration laws pursuant to 8 U.S.C. § 1103, and is empowered to grant asylum or other relief.

12
13 30. Defendant U.S. Department of Homeland Security (“DHS”) is a cabinet-level department of
14 the U.S. government. Its components include U.S. Citizenship and Immigration Services
15 (“USCIS”), U.S. Customs and Border Protection (“CBP”), and U.S. Immigration and Customs
16 Enforcement (“ICE”).

17 31. Defendant Lee Francis Cissna is the Director of USCIS. He is sued in his official capacity.

18 32. Defendant John L. Lafferty is the Chief of the Asylum Division of USCIS. He is sued in his
19 official capacity.

20
21 33. Defendant USCIS is the sub-agency of DHS that, through its asylum officers, conducts
22 interviews of individuals who apply for asylum and other forms of protection. Under Defendants’
23 new policy and their implementing guidance, USCIS asylum officers are directed to interview
24 noncitizens who are potentially subject to return to Mexico, and who affirmatively express a fear of
25 such return, in order to determine whether it is more likely than not that they would be persecuted
26 or tortured in Mexico.

1 34. Defendant Kevin K. McAleenan is the Commissioner of CBP. He is sued in his official
2 capacity.

3 35. Defendant Todd C. Owen is the Executive Assistant Commissioner of CBP's Office of Field
4 Operations ("OFO"). OFO is the largest component of CBP and is responsible for border security,
5 including immigration and travel through U.S. ports of entry.

6 36. Defendant CBP is the sub-agency of DHS that is responsible for the initial processing and
7 detention of noncitizens who are apprehended at or between U.S. ports of entry.

8 37. Defendant Ronald D. Vitiello is the Acting Director of ICE. He is sued in his official
9 capacity.

10 38. Defendant ICE is the sub-agency of DHS that is responsible for carrying out removal orders
11 and overseeing immigration detention.
12

13 **BACKGROUND**

14 **A. Asylum Seekers at the U.S.-Mexico Border, Including the Named Plaintiffs, Are** 15 **Fleeing Horrendous Violence** 16

17 39. Asylum seekers who arrive at the southern border seeking protection in the United States
18 are fleeing some of the most dangerous countries in the world.

19 40. Although these asylum seekers come from all over the world, most come from El Salvador,
20 Guatemala, and Honduras. According to the United Nations High Commissioner for Refugees
21 ("UNHCR"), these countries are experiencing epidemic levels of violence. Human rights groups
22 have compared the levels of violence in this region to those typically seen in war zones.

23 41. Those who flee are often escaping life-threatening situations. In particular, violence by
24 criminal armed groups has escalated dramatically in Central America, and those governments have
25 been unable or unwilling to provide effective protection.
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1 42. The vast majority of the migrants coming to the southern border have legitimate claims to
2 asylum.

3 43. Between fiscal years 2014 and 2016, 12,350 people from El Salvador, Guatemala, and
4 Honduras were granted asylum. Between fiscal years 2010 and 2016, the percentage of asylum
5 seekers from these countries granted protection increased by 96 percent.

6 44. The Individual Plaintiffs sought asylum in the United States because they have experienced
7 persecution—including brutal beatings, death threats, and rape—in their countries of origin.

8 45. For example, Plaintiff Bianca Doe, a lesbian woman from Honduras, fears returning to her
9 home country where LGBTQ individuals like her face discrimination, violence, and death, and
10 receive no protection from the authorities. In Honduras, Bianca became pregnant by a man who
11 raped her because of her sexual orientation, and who was then granted custody of their son by a
12 Honduran judge who cited the fact Bianca was a lesbian as evidence of her unfitness as a parent.
13 Bianca was forced to flee Honduras after her partner's abusive father discovered their relationship,
14 and threatened to kill them both if Bianca did not leave the country immediately.
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17 46. Plaintiff John Doe is an indigenous man from Guatemala who suffered brutal beatings and
18 death threats at the hands of a "death squad" that controls his town. The death squad targeted him
19 for his indigenous identity, frequently taunting him with indigenous slurs when they attacked him.
20 Some of the attacks left him bloodied and unconscious. John reported the first beating to the police,
21 but they did nothing to protect him.
22

23 47. Plaintiff Ian Doe is a former police officer from Honduras who worked undercover to
24 interdict drug trafficking activity. He fled the country to seek asylum in the U.S. after his identity
25 was revealed to the drug traffickers and they came after him. Ian narrowly escaped with his life.
26 After he left the country, the drug traffickers killed his brother, believing that he was Ian.
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1 48. Plaintiff Alex Doe is a youth pastor and organizer from Honduras who works with young
2 people who are former or current gang members, or at risk of being forcibly recruited by gangs,
3 After he helped organize a strike to protest the killing of a young member of his church by a
4 powerful gang, he was featured on the national news denouncing the gang and demanding the
5 Honduran government provide more security. He was forced to flee after the gang threatened his
6 life.
7

8 **B. Asylum Seekers, Including the Named Plaintiffs, Face Extreme Danger in Mexico**

9 49. Like the Individual Plaintiffs, many asylum seekers from Central American have no choice
10 but to travel by land to the United States due to documentation requirements that would be
11 necessary to board a plane, as well as financial constraints. Although this means they must cross
12 through Mexico before reaching the United States, for most, remaining in Mexico is not an option.
13

14 50. According to the U.S. Department of State, “violence against migrants by government
15 officers and organized criminal groups” is one of “[t]he most significant human rights issues” in
16 the Mexico. The State Department also reports that the dangers that forced many Central American
17 migrants to flee their homes are likewise present in Mexico, as the presence of Central American
18 gangs has “spread farther into the country and threatened migrants who had fled the same gangs in
19 their home countries.”
20

21 51. Asylum seekers in Mexico face a heightened risk of kidnapping, disappearance, trafficking,
22 sexual assault, and murder, among other harms. Lesbian, gay, bisexual, and transgender persons,
23 as well as people of indigenous heritage, are particularly at risk.

24 52. Even before they were subjected to Defendants new forced return policy, many of the
25 Individual Plaintiffs had already been the victims of discrimination, robbery, extortion, kidnapping,
26 and assault in Mexico.
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1 53. For example, Mexican police detained Plaintiff Ian Doe several times and demanded his
2 immigration documents. About a month ago, officers required him to pay a bribe of 1,500 pesos to
3 avoid being arrested and taken to jail.

4 54. Similarly, Plaintiff Christopher Doe was stopped by the Mexican police who threatened that
5 they would take him to jail if they saw him on the street again.

6 55. Plaintiff Howard Doe was robbed at gunpoint by two Mexican men in Tijuana just days
7 before he presented himself at the port of entry. The robbers said they knew that he was Honduran,
8 and that if they saw him again, they would kill him.

9 56. Plaintiff Gregory Doe was staying at a shelter in Tijuana when a mob of young men
10 wielding sticks surrounded the shelter and threatened the residents.

11 57. Plaintiff Alex Doe was staying in the Playas neighborhood of Tijuana when he and other
12 asylum seekers were forced to flee in the middle of the night after a group of Mexicans threw stones
13 at them and additional attackers began to gather with sticks and other weapons.

14 58. While traveling through Mexico on his way to the U.S.-Mexico border, Plaintiff Howard
15 Doe was kidnapped and held for more than two weeks by members of a Mexican drug cartel until
16 he and several others were able to escape. He fears that the well-connected cartel will find him in
17 the border region and torture and murder him for escaping.

18 59. President Trump has himself acknowledged that Mexico is not a safe place for migrants,
19 tweeting on January 31, 2019: “Very sadly, Murder cases in Mexico in 2018 rose 33% from 2017,
20 to 33,341.” He further stated that the situation in Mexico is “[w]orse even than Afghanistan.”

21 60. Moreover, the border regions where asylum seekers subjected to Defendants’ new policy
22 will be returned are especially dangerous. Tijuana, the city where Individual Plaintiffs and other
23 migrants returned from the San Ysidro port of entry are being dumped, is one of the deadliest cities
24 in the world. Tijuana had its highest number of reported murders ever last year, and Baja
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1 California, the state in which Tijuana is located, was the state in Mexico with the highest number
2 of reported murders last year. Asylum seekers in Tijuana have been the direct targets of violence.
3 Among the incidents of violence documented by human rights groups in recent months, two
4 teenagers from Honduras were kidnapped and murdered in Tijuana last December.

5
6 61. Similar dangers face asylum seekers who will soon be forced to return from the Eagle Pass
7 Port of Entry and will be dumped in Coahuila state. The U.S. Department of State advises that
8 Americans reconsider travel to Coahuila because violent crime and gang activity are common, and
9 U.S. employees traveling in Piedras Negras, the town across from Eagle Pass, must observe a
10 nighttime curfew.

11
12 62. In addition to fearing discrimination and violence in Mexico, several of the Individual
13 Plaintiffs fear that Mexico will unlawfully deport them to their home countries where they face
14 persecution.

15
16 63. There is no functioning asylum system in Mexico, and Central American asylum seekers
17 face a substantial risk of being involuntarily repatriated to the countries they have fled.
18 Intergovernmental and human rights organizations have documented widespread instances of
19 Mexican officials returning Central American migrants to their home countries despite their fears
20 of persecution or torture, without any meaningful process.

21
22 64. The U.S. Department of State's 2017 Human Rights Report on Mexico notes "incidents in
23 which immigration agents had been known to threaten and abuse migrants to force them to accept
24 voluntary deportation and discourage them from seeking asylum."

25
26 65. For example, when Plaintiff Dennis Doe first entered Mexico en route to the United States,
27 he was apprehended by Mexican officials who deported him without asking him if he wished to
28 apply for asylum or if he feared returning to his home country.

1 66. Similarly, Plaintiff Alex Doe witnessed Mexican authorities deport several immigrants
2 simply for being in an area where someone had started a fight.

3 67. Plaintiff Kevin Doe and his wife were arrested by Mexican immigration authorities after
4 they entered the country. The authorities separated Kevin from wife and deported her to Honduras,
5 even though she told them that she was pregnant and scared to return to Honduras
6

7 68. President Trump recently advocated for Mexico to deport individuals who arrived on
8 “caravans,” regardless of their claims for asylum and other protection: “Mexico should move the
9 flag waving Migrants, many of whom are stone cold criminals, back to their countries. Do it by
10 plane, do it by bus, do it anyway (sic) you want, but they are NOT coming into the U.S.A. We will
11 close the Border permanently if need be.”

12 69. The conditions in Mexico will make it difficult if not impossible for asylum seekers to
13 meaningfully exercise their right to apply for asylum. Asylum seekers who are attacked,
14 kidnapped, or killed in Mexico will be wholly unable to pursue their asylum applications.
15

16 70. For those who escape violence but nonetheless live in fear of harm, the psychological
17 strains of navigating danger, necessary limitations on their movement to avoid violence, lack of a
18 secure place to live, and other challenges will prevent them from being able to devote the time
19 needed to meaningfully prepare for their asylum proceedings—a process that, under normal
20 conditions, can require hundreds of hours.

21 71. Instead of being able to focus on preparing their cases, asylum seekers forced to return to
22 Mexico will have to focus on trying to survive. These pressures may deter even those with the
23 strongest asylum claims to give up, rather than endure the wait under such conditions.
24

25 **C. Asylum Procedures at the U.S.-Mexico Border**

26 72. Until recently, individuals applying for asylum at the southern border were either placed in
27 expedited removal proceedings under INA § 235(b)(1), 8 U.S.C. § 1225(b)(1) or placed in full
28

1 removal proceedings under INA § 240, 8 U.S.C. § 1229a. Expedited removal allows for the
2 immediate removal of noncitizens who lack valid entry documents or attempt to enter the U.S.
3 through fraud—unless they express a fear removal. *See* 8 U.S.C. § 1225(b)(1)(A)(i).

4 73. Although most asylum seekers at the southern border lack valid entry documents and are
5 therefore eligible to be placed in expedited removal, it is well established that the government has
6 discretion to decline to initiate removal proceedings against any individual; to determine which
7 charges to bring in removal proceedings; and to place individuals amenable to expedited removal
8 in full removal proceedings instead.

9 74. Regardless of whether they were placed in expedited removal or regular removal
10 proceedings, prior to Defendants’ new policy asylum seekers went through these removal
11 proceedings *inside* the United States. Those who were placed in expedited removal needed to pass
12 a credible fear interview with an asylum officer first. But once they passed this interview—by
13 showing a “significant possibility” that they could establish eligibility for asylum, 8 U.S.C. §
14 1225(b)(1)(B)(v), a low threshold—they were placed in regular removal proceedings.

15 75. Those who were not placed in expedited removal were simply placed in regular removal
16 proceedings without going through the credible fear process.

17 76. Both categories of asylum seekers—those who were placed in regular removal proceedings
18 after first passing a credible fear interview, and those who were placed in removal proceedings
19 without such an interview—could either be held in detention or released pursuant to parole or bond
20 pending completion of their asylum proceedings.

21 77. Whether detained or released, however, no asylum seeker could be physically removed
22 from the United States without an order of removal duly issued by either an immigration judge in
23 full removal proceedings or, for those asylum seekers who failed to pass a credible fear screening,
24 by an immigration adjudicator in expedited removal proceedings.

1
2 **D. Defendants' New Forced Return Policy**

3 78. On December 20, 2018, DHS Secretary Nielsen announced an “unprecedented” change to
4 the existing policy. In what DHS described as an “historic action to confront illegal immigration,”
5 Defendant Nielsen announced a new policy, dubbed the “Migrant Protection Protocols” (“MPP”),
6 under which DHS would begin requiring noncitizens who seek admission from Mexico “illegally
7 or without proper documentation” to be “returned to Mexico for the duration of their immigration
8 proceedings.”

9
10 79. According to DHS, the new policy would address the problem of noncitizens who allegedly
11 “game the system” and “disappear into the United States,” and deter migrants from making “false”
12 asylum claims at the border, “while ensuring that vulnerable populations receive the protections
13 they need.”

14
15 80. Subsequently, in a press release justifying the new policy, DHS cited “[m]isguided court
16 decisions and outdated laws [that] have made it easier for illegal aliens to enter and remain in the
17 U.S.,” especially “adults who arrive with children, unaccompanied alien children, or individuals
18 who fraudulently claim asylum.” DHS stated that the new policy “will discourage individuals from
19 attempting illegal entry and making false claims to stay in the U.S. and allow more resources to be
20 dedicated to individuals who legitimately qualify for asylum.”

21
22 81. More than a month later, in late January 2019, DHS issued a handful of memoranda and
23 guidance documents implementing its new forced return policy.

24 82. On January 25, 2019, a memo issued by Defendant Nielsen stated that implementation of
25 the forced return policy would be “on a large scale basis.”
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1 83. A few days later, a memorandum issued by CBP Commissioner McAleenan announced
2 that Defendants would begin implementing the new policy at the San Ysidro Port of Entry on
3 January 28, 2019, and that expansion was anticipated “in the near future.”

4 84. During the first two weeks the policy was in place at San Ysidro, the asylum seekers forced
5 to return to Mexico were all single adults. On February 13, 2019, several asylum-seeking families
6 were returned to Mexico, one of which included a one-year old child.

7 85. On February 11, 2019, a DHS official informed the media that the forced return policy
8 would imminently be expanded to the Eagle Pass Port of Entry in Texas, and thereafter throughout
9 Texas.
10

11 **E. Purported Legal Authority for Defendants’ Forced Return Policy**

12 86. Defendants claim that authority for their new forced return policy comes from INA §
13 235(b)(2)(C), 8 U.S.C. § 1225(b)(2)(C).
14

15 87. Section 1225(b)(2)(C) authorizes DHS to “return” certain individuals who are “arriving on
16 land (whether or not at a designated port of arrival) from a foreign territory contiguous to the
17 United States” to that contiguous territory during the pendency of their removal proceedings.

18 88. The provision was enacted in 1996 at the same time Congress enacted expedited removal.
19 It specifically exempts from its coverage those individuals to whom the expedited removal statute
20 “applies.” 8 U.S.C. § 1225(b)(2)(B)(ii).
21

22 89. Defendants state that their forced return policy does not apply to anyone who was
23 “processed for expedited removal.” CBP, MPP Guiding Principles, at *1 (dated Jan. 28, 2019).
24 However, the population that is expressly targeted by the policy—asylum seekers who cross the
25 border illegally or who present themselves for admission at a port of entry without proper
26 documents—is precisely the population to whom the expedited removal statute applies.
27
28

1 90. Defendants’ broad application of Section 1225(b)(2)(C) to this population constitutes a
2 major departure from the agency’s prior practice.

3 91. Between 1997 and 2005, the Immigration and Naturalization Service (“INS”), the precursor
4 agency to DHS, issued a number of memoranda purporting to authorize the use of Section
5 1225(b)(2)(C) in expedited removal proceedings. However, this authority appears never to have
6 been exercised, at least not on the “large scale” that is currently anticipated for the forced return
7 policy.
8

9 92. The INS memoranda specify the limited circumstances in which Section 1225(b)(2)(C) was
10 to be used: only in the event of “insufficient detention space” and “as a last resort,” 2001.03, INS
11 Insp. Field Manual 17.15, and only for individuals who did not “express[] a fear of persecution
12 related to Canada or Mexico.” Memorandum for Regional Directors from Michael A. Pearson, INS
13 Executive Associate Commissioner of Field Operations on Detention Guidelines (“Pearson
14 Memo”) at *3 (Oct. 7, 1998) (“If an alien expresses a fear of persecution related to Canada or
15 Mexico, the alien . . . may not be required to wait in that country for a determination of the
16 claim.”).
17

18 93. Other guidance issued in 2005 to authorize use of the return authority against certain
19 Cubans specifies that it was limited to 1) individuals who had permission to legally reside in the
20 contiguous territory to which they were being returned, and 2) who were ineligible for release from
21 detention on discretionary parole. 2006.03.27, ICE Detention & Deportation Officers’ Field
22 Manual, Appx. 16-6.
23

24 94. The “MPP Guiding Principles” for Defendants’ forced return policy do not include such
25 constraints. CBP officers have discretion whether to subject migrants to forced return under the
26 policy, or instead to process them under regular removal proceedings or expedited removal
27 proceedings. In making this decision, however, officers are not required to consider the availability
28

1 of detention space or whether the individual could be released on parole in lieu of being returned to
2 Mexico.

3 95. Nor are officers required to consider whether the individual has a legal status in Mexico for
4 the duration of removal proceedings or has a place to reside, nor whether the individual could be
5 gravely harmed in ways that may not amount to persecution or torture.
6

7
8 **F. Plaintiffs Have Been Harmed by Defendants’ Inadequate Procedures for Determining**
9 **Whether They Will Face Persecution or Torture in Mexico.**

10 96. The Guiding Principles do require that Defendants consider whether an individual is “more
11 likely than not” to face persecution or torture if returned to Mexico—the standard required to
12 obtain “withholding of removal” and one of the few exceptions to the forced return policy.
13

14 97. On January 28, 2019, USCIS issued guidance setting forth the procedure for making this
15 determination. *See* USCIS Policy Guidance, PM-602-0169, Guidance for Implementing Section
16 235(b)(2)(C) of the Immigration and Nationality Act and the Migrant Protection Protocols, dated
17 Jan. 28, 2019 (“USCIS Guidance”). The procedure established for making this determination is
18 extremely truncated and lacking in basic safeguards.

19 98. First, to receive a determination under the procedure, an asylum seeker must, without notice,
20 affirmatively state a fear of persecution. Then the individual must establish before an asylum officer
21 that they are entitled to withholding or CAT protection on the merits—i.e., that it is more likely
22 than not they will be persecuted or tortured.
23

24 99. The asylum seeker is not permitted to consult with counsel either before or after the
25 interview. In addition, there is no guarantee of an interpreter to assist at the interview.

26 100. The asylum officer’s determination is reviewed by a supervisory asylum officer. No other
27 appeal or review is available. Moreover, if while in Mexico the individual suffers actual persecution
28

1 or torture, or other changed circumstances arise that might affect the determination, there is no
2 opportunity to revisit a negative determination, until the individual returns to the port of entry for
3 their scheduled removal hearing

4 101. These procedures are a stark departure from procedures the Executive Branch has adopted to
5 implement its duty of *nonrefoulement*. In regular removal proceedings, for example, the decision
6 whether an individual faces persecution or torture is made in a hearing before an immigration judge,
7 with a right to counsel, present evidence, and cross-examine witnesses, and then with a right to seek
8 administrative and judicial review.

9 102. Although this new procedure effects a sea change in the treatment of asylum seekers,
10 Defendants adopted it without undertaking notice-and-comment rulemaking. A proposed
11 regulation, “Return to Territory,” appeared on a list of anticipated rulemaking in the fall of 2017,
12 spring of 2017, and fall of 2018, but was withdrawn on December 21, 2018.

13 103. Moreover, the Individual Plaintiffs’ experiences demonstrate that asylum seekers are not
14 even being referred to asylum officers despite their real fears of return to Mexico. Instead,
15 Defendants are simply processing asylum seekers for forced return.

16 104. Prior to their interviews, the Individual Plaintiffs were kept overnight in a “hielera” or “ice
17 box,” a small locked holding cell packed with dozens of other migrants. The Individual Plaintiffs
18 and other migrants were given only a thin mat to sleep on and an aluminum emergency blanket. But
19 they got little to no rest before their interviews. The overly crowded cells were freezing, the bright
20 lights were never turned out, and there was constant activity. Many of the Plaintiffs were not given
21 sufficient food.

22 105. In contrast to other screenings conducted by Defendants, Individual Plaintiffs received no
23 “rest period” to ensure they were prepared to testify to their fear of persecution. Indeed, several of
24 the Individual Plaintiffs were even called out and interviewed in the middle of the night.

1 106. Moreover, the Individual Plaintiffs’ interviews were cursory. For example, Kevin Doe’s
2 interview with CBP lasted all of five minutes, and he was never asked about his fear of being
3 returned to Mexico.

4 107. Christopher Doe—who has a first-grade education and childhood head injury that impairs
5 his learning and memory—tried to explain that he had been attacked while in Mexico at his
6 interview, but was abruptly cut off by the CBP officer and never referred to an asylum officer.
7 Christopher’s interview lasted all of 10 to 15 minutes. The officer was impatient and angry, and
8 frequently interrupted him, repeatedly saying “No!” in response to his answers. At the conclusion of
9 the interview, the officer instructed Christopher to sign forms he did not understand, including
10 forms that were only provided to him in English.
11

12 108. Similarly, Ian Doe was never asked about fear of return to Mexico, and the CBP officer
13 frequently cut him off and did not allow him to fully answer his questions. When Ian explained he
14 did not feel safe in Mexico, the officer replied “that it was too bad. He said that [] Honduras wasn’t
15 safe, Mexico wasn’t safe, and the U.S. isn’t safe either . . . He told me I’d have to figure out how to
16 survive in Tijuana.” Ian was also directed to sign documents that were written in English, and he
17 was not offered any interpretation before signing. He later found out the officer had written that Ian
18 had stated that “Mexico” had offered him asylum, even though he never said that. Despite
19 expressing a fear of return, Ian was never referred to an asylum officer.
20

21 109. Indeed, almost none of the Individual Plaintiffs were asked by CBP about their fears of
22 being returned to Mexico.
23

24 110. Although two Plaintiffs, Howard Doe and Frank Doe, were referred to an asylum officer
25 after expressing their fear of return, they were summarily returned to Mexico with no explanation.
26
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1 111. The CBP officers did not explain the purpose of the interview to the Individual Plaintiffs.
2 Several Plaintiffs only realized they were being returned to Mexico at the conclusion of their
3 interviews.

4 112. In several cases, as with Christopher Doe and Ian Doe, CBP officers frequently interrupted
5 Plaintiffs and did not permit them to fully answer questions or provide additional information.

6 113. Several CBP officers spoke only limited Spanish and could not communicate effectively
7 with Plaintiffs during their interviews. Nor did those officers provide Plaintiffs with an interpreter.
8 For example, Bianca Doe was interviewed by an agent who struggled to speak Spanish.
9

10 114. In several cases, as with Christopher Doe and Ian Doe, Plaintiffs were directed to sign forms
11 in English that they did not understand and that were not explained to them.

12 **G. Plaintiffs Are Unable to Meaningfully Access the Asylum Process From Mexico**

13 115. Many of the Individual Plaintiffs fear they will be unable to properly prepare their cases
14 from Mexico, access or meaningfully communicate with attorneys, and access expert or other
15 professional services necessary to make out their asylum claims. The grave danger and insecurity
16 the Individual Plaintiffs face in Mexico will further undermine their ability to prepare for their cases
17 and meaningfully access the asylum system.
18

19 116. The Individual Plaintiffs were not provided enough information about how to attend their
20 immigration court hearings in the United States when they were forced to return to Mexico.
21

22 117. Several Individual Plaintiffs have friends or family members in the United States who had
23 offered to help support them and find them an attorney. In Mexico, however, the Individual
24 Plaintiffs do not have any family to help them through the legal process and they lack the financial
25 resources to support themselves in Mexico for months or years.

26 118. For example, Plaintiff Gregory Doe has a sister in the United States who had offered to help
27 support him and obtain the resources he would need to apply for asylum. Gregory worries that,
28

1 without assistance, he will not be able to gather the evidence necessary to prove his case, such as
2 statements from those who witnessed his persecution. Plaintiff Evan Doe similarly lacks support in
3 Mexico to help him prepare his case.

4 119. Plaintiff Frank Doe does not know where he will stay while he prepares his asylum claim.
5 After being forced to return to Mexico, he attempted to return to the shelter where he resided
6 previously, but officials turned him away because it was full. He was able to find a different shelter
7 to stay for a couple of nights, but he does not have a more permanent residence. Plaintiff Ian Doe
8 was also unable to return to the shelter where he stayed previously.
9

10 **H. The Organizational Plaintiffs Are Injured by Defendants' Forced Return Policy**

11 120. The Organizational Plaintiffs are nonprofit organizations that provide legal assistance to
12 asylum seekers from Central America and other parts of the world, the majority of whom arrive
13 through the southern border. Defendants' policy of returning asylum seekers to Mexico frustrates
14 each Organizational Plaintiff's goals and requires them to expend resources they otherwise would
15 spend in other ways.
16

17 121. Plaintiff Innovation Law Lab is a nonprofit organization dedicated to advancing the legal
18 rights of immigrants and refugees in the United States, with a focus on providing legal
19 representation to asylum seekers. Among other programs and services, the Law Lab has established
20 various "Centers of Excellence" around the country, which provide support to asylum seekers and
21 their pro bono attorneys, including legal, technical, and strategic assistance in preparing and
22 presenting asylum claims in removal proceedings. These projects are established in Georgia,
23 Kansas, Missouri, North Carolina, and Oregon, and the Law Lab is in the process of expanding to
24 sites in Texas, New Mexico, and California. An important component of the Law Lab's mission is
25 the investment in technology resources to support its work. The Law Lab employs software
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1 engineers to maintain its technology and create software deployments that support its representation
2 models across the United States.

3 122. Defendants' new forced return policy frustrates Law Lab's efforts to obtain asylum and
4 other relief for asylum seekers, and has required and will continue to require the Law Lab to divert
5 significantly its limited resources to counteract this frustration. For example, because the policy
6 makes it more difficult for asylum seekers to obtain legal representation and to successfully pursue
7 their claims, it threatens to hinder Law Lab's ability to provide its core services. The attorneys and
8 staff who manage those projects, have had to shift their organizational focus, time, resources to
9 Mexico and away, from critical, ongoing matters and clients served by their existing projects. This
10 significant diversion of the Law Lab's resources, which has been necessary to counter the
11 frustration of their mission and meet the needs of individuals returned to Mexico, vastly diminishes
12 the organization's operational capacity. Moreover, the process of deploying the Law Lab's
13 immigration case technology in a new, remote location has been particularly complicated and will
14 require additional investment of resources.
15

16
17 123. The new policy has also required Law Lab to rework the orientation, training, and
18 resources that it provides to asylum-seeking clients to address the needs of individuals returned to
19 Mexico. Overhauling these materials is especially challenging in light of the unprecedented
20 circumstances surrounding the new policy. For example, it is unclear how individuals who have
21 been returned to Mexico will present their cases and at what time; how they will attend their court
22 hearings; or how, if they are able to obtain counsel, they will exchange documents or information
23 with their attorneys in the United States. This uncertainty also significantly undermines the
24 effectiveness of the Law Lab's goal to provide effective representation and help asylum seekers
25 successfully pursue relief.
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1 124. The new policy also frustrates the Law Lab’s mission and organizational model because, by
2 returning asylum-seekers to Mexico, fewer pro bono attorneys will be able to provide
3 representation. Most of the pro bono attorneys within the Law Lab’s existing network do not have
4 the time, skill, or capacity to engage in representation for individuals stranded in Mexico,
5 particularly because the organization’s model requires that attorneys provide a substantial portion of
6 representation through in-person, face-to-face interactions. In this way, the policy undermines the
7 Law Lab’s ability to provide a core service: engaging and supporting pro bono attorneys to provide
8 direct representation to asylum seekers.
9

10 125. Plaintiff CARECEN of Northern California provides immigration legal and social services
11 to clients throughout the San Francisco Bay Area and elsewhere in California. A central part of the
12 organization’s mission is to provide high-quality legal counseling, representation, and wrap-around
13 social services, such as case management, mental health therapy, and peer education, to asylum
14 seekers.
15

16 126. CARECEN appears on the list of legal services providers that the federal government has
17 distributed to migrants returned to Mexico. The organization has been retained to represent an
18 asylum seeker returned to Mexico under the policy. Because CARECEN provides a consultation to
19 every person who seeks its assistance, it anticipates serving additional returned individuals in the
20 future.
21

22 127. Due to the numerous significant obstacles to providing high-quality legal and social
23 services to asylum seekers returned to Mexico, the new policy frustrates CARECEN’s mission of
24 providing such services and accordingly requires the organization to divert significant
25 organizational resources in response, as CARECEN’s legal program is neither structured nor
26 envisioned to represent asylum clients residing in Mexico. The policy also makes it more difficult
27 for CARECEN’s potential clients, who will be stuck in Mexico pursuant to the policy, to gain
28

1 access to and participate in the organization's core services, thereby impairing CARECEN's ability
2 to function.

3 128. For example, CARECEN will not be able to effectively present the claims for protection of
4 returned asylum seekers because the organization will be unable to provide to clients in Mexico the
5 same critical legal and social service support needed to assist survivors of trauma that it provides
6 to clients in the United States. Because serving individuals in Mexico will be much more resource
7 intensive, CARECEN will be forced to divert significant resources away from its core services for
8 asylum seekers in the United States to attempt to serve clients while they are in Mexico, or
9 substantially cut or curtail its current asylum practice, which undermines its organizational goals.

10
11 129. CARECEN also will be forced to expend significant resources to change its intake,
12 consultation, and representation model, all of which are currently predicated on in-person services,
13 and bear the significant costs of frequent travel to Mexico and San Diego. Representing asylum
14 seekers returned to Mexico will require CARECEN to restructure attorney caseloads and
15 responsibilities, and divert staff time and other resources from other cases. If the policy remains in
16 effect, CARECEN will be able to handle far fewer cases every year, and its ability to provide
17 mental health and other supportive services will be severely compromised. In addition,
18 CARECEN's asylum representation program is funded by grants from the State of California and
19 various local governments that require the clients served to live or have previously resided in the
20 jurisdiction. Accordingly, taking on asylum cases under the policy will require the organization to
21 divert funding from its general operating budget and so will undermine its ability to maintain its
22 various legal and social service programs. Also, because of the policy, the number of potential
23 clients who can satisfy the residency requirements of CARECEN's funders will decline, thus
24 jeopardizing CARECEN's ability to secure these grants moving forward.
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1 130. Plaintiff Centro Legal de la Raza (“Centro Legal”) is a comprehensive immigration legal
2 services agency that provides legal consultations, limited-scope services, full representation, and
3 legal referrals to over 10,000 clients annually. As part of its services, Centro Legal provides direct
4 legal representation to asylum seekers throughout California, including those in removal
5 proceedings.

6
7 131. Centro Legal is included on the list of free legal services providers provided by the U.S.
8 government to asylum seekers who are returned to Mexico. It is in the process of being retained by
9 three individuals who were forced to return to Mexico.

10 132. Defendants’ policy will frustrate Centro Legal’s core mission of providing comprehensive
11 and effective legal representation to asylum seekers. For example, the resource-intensive nature of
12 assisting asylum seekers located in Mexico will cause Centro Legal to have fewer resources
13 available to continue its existing program and case work. The new policy will also frustrate Centro
14 Legal’s mission of providing a high volume of comprehensive removal defense services to asylum
15 seekers because it will be nearly impossible for the organization to provide comprehensive services
16 to individuals in Mexico. Centro Legal’s ability to provide effective representation to asylum
17 seekers subjected to the forced return policy will also be hampered due to the numerous obstacles to
18 counsel access and case preparation in Mexico. The effective and ethical representation of clients in
19 Mexico will require Centro Legal to either hire substantial additional staff or significantly lower the
20 number of cases of asylum seekers in the United States that it accepts. Moreover, Centro Legal will
21 have to use significant resources to research or hire counsel to advise on the requirements under
22 both U.S. and Mexican law for its attorneys to practice in Mexico.

23
24
25 133. Further, the policy makes it more difficult for Centro Legal’s potential clients, who will be
26 stuck in Mexico pursuant to the policy, to gain access to and participate in the organization’s core
27 services, thereby impairing Centro Legal’s ability to function.

1 134. Plaintiff the Immigration and Deportation Defense Clinic of the University of San Francisco
2 School of Law (“USF Clinic”) provides removal defense and engages in advocacy on behalf of
3 asylum seekers in California. The USF Clinic was established in 2015 in direct response to the
4 increase in individuals fleeing violence in Central America and Mexico and seeking asylum and
5 other relief in the United States. Since that time, 87% of the USF Clinic’s clients have come from
6 the Northern Triangle countries and entered the United States through the southern border. A
7 central aim of the USF Clinic is to train USF law students to be effective and ethical immigration
8 practitioners in the area of asylum law, and specifically in removal defense.
9

10 135. Defendants’ policy of returning certain asylum seekers to Mexico threatens and frustrates
11 the USF Clinic’s mission and will require it to divert resources away from its core services. For
12 example, as greater numbers of asylum seekers are forced to return to Mexico, the policy will make
13 it more difficult for the USF Clinic to connect with potential clients, who are typically referred to
14 the clinic through other legal service organizations in Northern California. Indeed, in response to
15 the new policy, the USF Clinic has already had to make arrangements to send a team of eleven
16 students and supervisors to the southern border to assist individuals subject to Defendants’ policy.
17 As the forced return policy is expanded, in order to serve sufficient clients to train its students, the
18 USF Clinic will have to shift its model to focus on representing asylum seekers who are stranded in
19 Mexico, forcing it to seek out new sources of funding, rearrange the way that it provides legal
20 services, and divert significant funds to travel and communications costs.
21

22
23 136. The USF Clinic’s asylum representation work is currently entirely funded by grants from
24 the State of California and local governments that require the clients to be physically present in
25 California. As Defendants’ policy expands, the Clinic thus risks losing its existing funding, which
26 could lead to a reduction or termination of their program. Representing asylum seekers in Mexico
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1 would also pose significant obstacles and be more resource intensive, requiring extensive travel and
2 other changes to current practice to provide adequate representation.

3 137. Defendants' policy will also significantly harm the USF Clinic's core mission of training
4 law students to be effective advocates. The USF Clinic requires in-person access to its clients in
5 order to effectively train law students consistent with its mission. However, law students lack the
6 necessary flexibility in their schedules to travel repeatedly to San Diego for court hearings and
7 Mexico for the multiple, lengthy client meetings typically required to prepare for an asylum
8 hearing. Shifting the organization's representation model to provide services to clients at a distance
9 would be extremely difficult and compromise the Clinic's ability to effectively represent clients and
10 train law students.
11

12 138. Plaintiff Al Otro Lado is a nonprofit organization based in Los Angeles that provides legal
13 representation or other assistance to individuals in asylum and other immigration proceedings in
14 Southern California. The organization also provides know-your-rights workshops and other services
15 to asylum seekers in Tijuana, Mexico.
16

17 139. With its policy of returning asylum seekers, Defendants have frustrated Al Otro Lado's
18 mission and have forced the organization to divert significant resources away from its other
19 programs. For example, the organization's small staff has had to pull its attention from integral
20 projects to identify and respond to the urgent needs of asylum seekers stranded in Mexico. Since
21 Defendants' implementation of the new policy, Al Otro Lado has experienced a significant increase
22 in requests for assistance from individuals who have been returned to Mexico, many of whom do
23 not understand what has happened to them or why they have been returned. Staff or volunteers must
24 take time away from other critical tasks to review individuals' documents, answer questions, and
25 attempt to place them with pro bono attorneys. The new policy has also required Al Otro Lado to
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1 re-work its volunteer training and know-your-rights presentations and overhaul its training
2 materials to incorporate new and critical information.

3 140. Al Otro Lado has also been forced to divert significant staff resources to help returned
4 migrants find safe housing in Mexico and provide emotional support. Because many returned
5 asylum seekers will be unable to retain legal counsel from Mexico, Al Otro Lado has had to begin
6 developing workshops to provide pro se support to those who need assistance completing the
7 English-only asylum application form, which will require significant staff efforts. Providing pro se
8 trainings will also pull volunteer resources away from outreach efforts and general know-your-
9 rights workshops.
10

11 141. Plaintiff the Tahirih Justice Center (“Tahirih”) is a nonprofit and non-partisan organization
12 providing free legal immigration services to survivors of gender-based violence such as domestic
13 abuse, sexual violence, and human trafficking. Tahirih’s mission is to provide free holistic services
14 to immigrant women and girls fleeing violence such as rape, domestic violence, female genital
15 mutilation/cutting, forced marriage, and human trafficking, and who seek legal immigration status
16 under U.S. law. Tahirih offers legal representation and social services for individuals who seek
17 protection, including asylum, in their immigration proceedings. An average of 78% of Tahirih
18 clients in the past few years were Latin American survivors of violence, virtually all of whom
19 would have crossed at Tijuana or other ports of entry along the southern border.
20

21 142. Defendants’ policy will frustrate Tahirih’s mission and require it to divert significant
22 organizational resources to address the consequences of the policy. Tahirih will not be able to
23 effectively provide holistic legal services to the asylum seekers fleeing gender-based violence who
24 are returned to Mexico and will be forced to divert significant resources from its existing services to
25 attempt to serve those clients. Asylum seekers returned to Mexico will have little to no practical
26 way to learn that Tahirih exists or that it offers holistic assistance. Tahirih will have to send staff to
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1 Mexico to conduct intakes and to effectively represent to these asylum seekers. This will
2 significantly increase the time and cost Tahirih spends to develop cases, as working with survivors
3 of gender-based violence, who are typically traumatized, requires repeated face-to-face meetings
4 and consultations. Furthermore, Tahirih will be required to spend additional time and money to
5 represent individuals returned to Mexico whose cases have been assigned to the San Diego
6 Immigration Court.
7

8 143. Tahirih will have to divert substantial resources to researching and understanding Mexican
9 law regarding the practice of law by foreign lawyers, including complicated questions of licensing,
10 reciprocity, the effect of NAFTA, any criminal penalties and visa requirements, and how all of
11 those issues interact with lawyers' professional obligations in each state in which a Tahirih attorney
12 or one of its hundreds of pro bono attorneys is barred. The risk of potential legal sanctions may
13 deter attorneys from taking on asylum seekers returned to Mexico, thereby frustrating Tahirih's
14 mission.
15

16 144. Tahirih will also be unable to obtain the expert services, including psychological
17 evaluations, that are necessary to represent many survivors of gender-based violence. Tahirih
18 anticipates needing to transport experts to Mexico for psychological evaluations, again requiring a
19 substantial diversion of time and funds for that travel. In addition, Tahirih will be required to divert
20 resources to understanding Mexican laws relating to licensing and the practice of psychology by a
21 foreigner in Mexico.
22

23 145. Finally, Defendants' new policy will jeopardize Tahirih's funding streams. Tahirih's San
24 Francisco office receives grant funding from Santa Clara County, California to provide
25 immigration-related legal services to vulnerable individuals who reside in or are employed in Santa
26 Clara County. Under Defendants' policy, fewer individuals will be permitted to enter the United
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1 States pending their removal proceedings, meaning there will be fewer potential clients for Tahirih
2 to serve in Santa Clara County.

3 146. The Organizational Plaintiffs have also been harmed because they were denied the
4 opportunity to comment on Defendants' policy through a notice-and-comment rulemaking. If
5 Defendants had provided an opportunity for notice and comment before Defendant began
6 implementing the policy, Plaintiffs could have informed Defendants of their serious objections to
7 the policy, and they may have convinced Defendants to adopt a different approach.
8

9
10 **CAUSES OF ACTION**

11 **FIRST CLAIM FOR RELIEF**

12 **(VIOLATION OF INA § 235(b)(2)(C), 8 U.S.C. § 1225(b)(2)(C),**
13 **TREATMENT OF ALIENS ARRIVING FROM FOREIGN CONTIGUOUS TERRITORY,**
14 **AND ADMINISTRATIVE PROCEDURE ACT, 5 U.S.C. § 706(2)(A))**

15 147. The foregoing allegations are repeated and realleged as if fully set forth herein.

16 148. INA § 235(b)(2)(C), 8 U.S.C. § 1225(b)(2)(C) permits the return to a contiguous territory
17 only of an "alien described in subparagraph (A) who is arriving on land (whether or not at a
18 designated port of arrival) from a foreign territory contiguous to the United States." *Id.* Section
19 1225(b)(2)(B) further provides that the return authorized in Section 1225(b)(2)(C) shall not be
20 applied to any noncitizen "to whom paragraph (1) [Section 1225(b)(1) expedited removal] applies."
21 8 U.S.C. § 1225(b)(2)(B)(ii).
22

23 149. In addition, Section 1225(b)(2)(C) authorizes return only of those individuals who are
24 "from" the foreign contiguous territory, and only where return would not violate the United
25 States' protection obligations under domestic and international law, including the prohibition on
26 returning individuals to face persecution, torture, or cruel, inhumane, and degrading treatment;
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1 the right to a meaningful opportunity to apply for asylum; and other restrictions on countries to
2 which a noncitizen may be removed or returned.

3 150. Defendants are applying their policy of returning asylum seekers to Mexico (the “forced
4 return policy”) to individuals, including the individual Plaintiffs, who cannot lawfully be
5 returned under Section 1225(b)(2)(C).
6

7 151. As a result, the forced return policy is contrary to law. *See* 5 U.S.C. § 706(2)(A).
8

9 **SECOND CLAIM FOR RELIEF**

10 **(VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT,
11 5 U.S.C. § 553(b), (c), (d))**

12 152. The Administrative Procedure Act (“APA”) requires notice and opportunity for comment
13 prior to the promulgation of a rule. 5 U.S.C. § 553(b), (c).

14 153. Defendants’ nondiscretionary procedure for determining whether an individual who is more
15 likely than not to face persecution or torture in Mexico, and thus precluded from being returned
16 to Mexico during the pendency of removal proceedings, constitutes a legislative rule that
17 requires notice-and-comment rulemaking.

18 154. Defendants did not promulgate a rule or engage in notice-and-comment rulemaking before
19 implementing their procedure for making fear determinations as part of the forced return policy.

20 155. The APA requires that a substantive rule be published “no less than 30 days before its
21 effective date.” 5 U.S.C. § 553(d).

22 156. Defendants failed to appropriately publish the forced return policy, its screening procedures,
23 and related guidance 30 days before its effective date.
24

25 **THIRD CLAIM FOR RELIEF**

26 **(VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT,
27 5 U.S.C. § 706(2)(A))**

28 157. The foregoing allegations are repeated and realleged as though fully set forth herein.

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

4 159. Defendants’ forced return policy is arbitrary, capricious, and contrary to law. Defendants
5 have not articulated a reasoned explanation for their decision to adopt this policy; failed to
6 consider relevant factors; relied on factors Congress did not intend to be considered; and offered
7 explanations for their decision that are counter to the evidence before the agency.
8

9 160. The policy deprives asylum seekers of a meaningful right to apply for asylum.

10 161. The policy also permits an individual’s forced return to Mexico unless the individual
11 affirmatively states a fear of return and establishes before an asylum officer that it is more likely
12 than not that he or she will face persecution or torture there, without providing basic procedural
13 protections, including: any notice that he or she must affirmatively express such a fear; any
14 opportunity to consult with counsel either prior to or during the fear interview; the guarantee of
15 an interpreter; a written summary of the interview and written explanation of the determination;
16 or immigration judge review.
17

18 162. The policy is arbitrary, capricious, and contrary to law because it departs from the agency’s
19 existing policies for determining whether individuals face a likelihood of persecution or torture,
20 as well as prior policies prohibiting the return of individuals to contiguous territories pending
21 their removal proceedings based on a fear of persecution or torture, without providing a
22 reasoned explanation for departing from these policies.
23

24 **FOURTH CLAIM FOR RELIEF**

25 **(VIOLATION OF INA § 241(b)(3), 8 U.S.C. § 1231(b)(3)**
26 **WITHHOLDING OF REMOVAL, AND ADMINISTRATIVE PROCEDURE ACT,**
27 **5 U.S.C. § 706(2)(A))**

28 163. The foregoing allegations are repeated and realleged as though fully set forth herein.

1 164. The 1951 Refugee Convention and the 1967 Protocol relating to the Status of Refugees, to
2 which the United States is party, requires that the United States not “expel or return (‘refouler’) a
3 refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be
4 threatened on account of his race, religion, nationality, membership of a particular social group or
5 political opinion.” United Nations Convention Relating to the Status of Refugees, art. 33, July 28,
6 1951, 189 U.N.T.S. 150; *see also* Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19
7 U.S.T. 6223, 606 U.N.T.S. 267.

9 165. The Refugee Convention prohibits the return of individuals to countries where they would
10 directly face persecution on a protected ground as well as to countries that would deport them to
11 conditions of persecution.

12 166. Congress has codified these prohibitions in the “withholding of removal” provision at INA §
13 241(b)(3), 8 U.S.C. § 1231(b)(3), which bars the removal of an individual to a country where it is
14 more likely than not that he or she would face persecution.
15

16 167. Pursuant to regulation, only an immigration judge can determine whether an individual
17 faces such a risk of persecution and is entitled to withholding of removal after full removal
18 proceedings in immigration court. 8 C.F.R. § 1208.16(a).

19 168. The forced return policy provides none of these safeguards to ensure the critical protection
20 against *nonrefoulement* and therefore violates Section 1231(b)(3). It permits an asylum officer to
21 determine whether it is more likely than not that an individual faces persecution in Mexico through
22 a truncated procedure, without any right to review or a hearing before an immigration judge.
23 Moreover, the procedure does not assess whether an individual is at risk of *refoulement* to his or her
24 country of origin by Mexico, and does not account for whether an individual will be able to exercise
25 his or her right to apply for asylum from Mexico.
26

27 169. This procedure violates Section 1231(b)(3) and its implementing regulations.
28

1 170. As a result, the forced return policy is contrary to law. *See* 5 U.S.C. § 706(2)(A).

2 **FIFTH CLAIM FOR RELIEF**

3 **(VIOLATION OF CUSTOMARY INTERNATIONAL LAW:**
4 **PROHIBITION ON *REFOULEMENT*)**

5 171. All of the foregoing allegations are repeated and realleged as if fully set forth herein.

6 172. The prohibition on *refoulement* is a specific, universal, and obligatory norm of customary
7 international law. That norm prohibits returning an individual to a country where there exists a
8 threat of subsequent forcible return to a country where the individual would be subject to torture or
9 where the individual's life or freedom would be threatened on account of their race, religion,
10 nationality, membership of a particular social group, or political opinion.

11 173. Defendants have not undertaken a proper evaluation of the risk of *refoulement* by Mexico.
12 The procedures for carrying out the forced return policy are inadequate to guard against such
13 indirect *refoulement* in violation of the law of nations.

14 174. Defendants were aware or reasonably should have known that indirect *refoulement* by
15 Mexico was a foreseeable consequence of its forced return policy.

16 175. Defendants knowingly and purposefully designed and, directly or through their agents,
17 applied their forced return policy to the individual Plaintiffs.

18 176. Defendants' actions have placed the individual Plaintiffs at risk of return to their countries
19 of origin, where their lives or freedom would be threatened on account of their race, religion,
20 nationality, membership in a particular social group, or political opinion, or where they face a
21 substantial risk of torture or other cruel, inhumane, and degrading treatment.

22 177. Defendants' actions have caused and will continue to cause a grave and foreseeable injury to
23 Plaintiffs, including a continued risk of *refoulement* in violation of the protections afforded to them
24 under international law.
25
26
27
28

1 178. Plaintiffs do not have an adequate damages remedy at law to address the violations alleged
2 herein.

3 **SIXTH CLAIM FOR RELIEF**

4 **(VIOLATION OF INA § 208(a), 8 U.S.C. § 1108(a), ASYLUM, AND ADMINISTRATIVE**
5 **PROCEDURE ACT, 5 U.S.C. § 706(2)(A))**

6 179. The foregoing allegations are repeated and realleged as though fully set forth herein.

7 180. The INA provides, with certain exceptions, that “[a]ny alien who is physically present in the
8 United States or who arrives in the United States (whether or not at a designated port of arrival and
9 including an alien who is brought to the United States after having been interdicted in international
10 or United States waters), irrespective of such alien’s status, may apply for asylum in accordance
11 with this section or, where applicable, section 1225(b) of this title.” 8 U.S.C. § 1158(a)(1).
12

13 181. The forced return policy is contrary to law, *see* 5 U.S.C. § 706(2)(A), under 8 U.S.C.
14 § 1158(a)(1), because individuals are returned to conditions that meaningfully deprive them of their
15 right to apply for asylum.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiffs respectfully pray this Court to:
18

- 19 a. Declare unlawful the new forced return policy (or “Migrant Protection Protocols”),
20 including the Secretary’s January 25, 2019 Memorandum, the USCIS Policy Guidance, and the
21 CBP MPP Guiding Principles, Commissioner’s Memorandum Implementing the MPP, and Field
22 Operations Memorandum Implementing the MPP;
23
24 b. Enter an order vacating the forced return policy;
25
26 c. Enter an order enjoining Defendants from continuing to apply the forced return policy to
27 third-party nationals seeking humanitarian protection at a port of entry or between ports of entry;
28

- 1 d. Enter an order providing relief for the Individual Plaintiffs by ordering that Defendants
2 return them to the San Ysidro Port of Entry for reprocessing of their applications for admission
3 without subjecting them to the unlawful forced return policy;
4
5 e. Award Plaintiffs' counsel reasonable attorneys' fees under the Equal Access to Justice Act,
6 and any other applicable statute or regulation; and,
7
8 f. Grant such further relief as the Court deems just, equitable, and appropriate.

8 Dated: February 14, 2019

Respectfully submitted,

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CERTIFICATION OF INTERESTED ENTITIES OR PARTIES

Under Civil Local Rule 3-15, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.

Dated: February 14, 2019

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