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17 **UNITED STATES DISTRICT COURT**
18 **CENTRAL DISTRICT OF CALIFORNIA - EASTERN DIVISION**

19 IMMIGRANT DEFENDERS LAW
20 CENTER, a California corporation; JEWISH
21 FAMILY SERVICE OF SAN DIEGO, a
22 California corporation; LIDIA DOE,
23 ANTONELLA DOE, RODRIGO DOE,
24 CHEPO DOE, YESENIA DOE, SOFIA
25 DOE, GABRIELA DOE, ARIANA DOE,
26 FRANCISCO DOE, REINA DOE, CARLOS
27 DOE, and DANIA DOE, individually and on
28 behalf of all others similarly situated,

Plaintiffs,

v.

ALEJANDRO MAYORKAS, Secretary,
Department of Homeland Security, in his
official capacity; U.S. DEPARTMENT OF
HOMELAND SECURITY; CHRIS
MAGNUS, Commissioner, U.S. Customs and

Case No. 2:20-cv-09893-JGB-SHK

**SECOND AMENDED
COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF**

CLASS ACTION

1 Border Protection, in his official capacity;
WILLIAM A. FERRARA, Executive
2 Assistant Commissioner, Office of Field
Operations, U.S. Customs and Border
3 Protection, in his official capacity; RAUL
ORTIZ, Chief of U.S. Border Patrol, U.S.
4 Customs and Border Protection, in his
official capacity; U.S. CUSTOMS AND
5 BORDER PROTECTION; TAE D.
JOHNSON, Acting Director, U.S.
6 Immigration and Customs Enforcement, in
his official capacity; U.S. IMMIGRATION
7 AND CUSTOMS ENFORCEMENT,

8 Defendants.

9
10 *[Caption Page Continued - Additional Attorneys for Plaintiffs]*

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25 * *admitted Pro Hac Vice*

26 ** *Pro Hac Vice application pending*

27 † *not admitted in DC; working remotely from and admitted in Louisiana only*

28 ‡ *admitted in Maryland; DC bar admission pending*

↓ *admitted in New Jersey; GA bar admission forthcoming*

1 **INTRODUCTION**

2 1. Between January 2019 and February 2021, the U.S. government trapped
3 nearly 70,000 individuals seeking protection, including Individual Plaintiffs, in life-
4 threatening conditions in Mexico under the Migrant Protection Protocols (“MPP” or
5 “Protocols”). The Protocols functioned to deny protection to nearly every individual
6 subjected to them. Their ruthless effectiveness in this regard—as evidenced by the 98
7 percent deportation rate for affected individuals with final immigration-court decisions
8 over fourteen months¹—is consistent with their Orwellian name.

9 2. By forcing Individual Plaintiffs and similarly situated individuals to return
10 to Mexico to await their immigration proceedings in dangerous Mexican border towns,
11 the Protocols functionally denied them access to the U.S. asylum system and left them
12 to contend with assault, robbery, rape, kidnapping, and other harm at the hands of
13 cartels, gang members, and Mexican officials. The Protocols, as implemented,
14 simultaneously deprived these individuals of access to their basic needs and obstructed
15 their efforts to seek legal representation. Moreover, Defendants continually thwarted
16 the efforts of the few legal service providers who represent individuals subjected to the
17 Protocols—including Organizational Plaintiffs Immigrant Defenders Law Center and
18 Jewish Family Service of San Diego—to screen, advise, represent, or otherwise assist
19 such individuals.

20 3. At the outset of his administration, President Biden promised that the
21 United States would “restore and strengthen our own asylum system, which has been
22 badly damaged by policies enacted over the last 4 years that contravened our values and
23 caused needless human suffering.”² To this end, Defendants suspended new enrollments
24 into MPP in February 2021 and began “winding down” MPP. Department of Homeland
25

26 ¹ See TRAC Immigration, *Details on MPP (Remain in Mexico) Deportation*
27 *Proceedings*, <https://bit.ly/3yzwW8x> (filter set to “Setting: Outcome”). From February
28 2019 to March 2020, 32,234 removal orders were issued in MPP cases as compared to
740 grants of relief.

² Exec. Order No. 14010, 86 Fed. Reg. 8,267 (Feb. 2, 2021), <https://bit.ly/31Tc9AZ>.

1 Security (“DHS”) initially began processing individuals in Mexico with “active” MPP
2 cases for return to the United States, and later expanded the wind-down to include
3 individuals outside the United States whose cases had been terminated by
4 immigration judges³ and individuals who had received *in absentia* removal orders.
5 DHS’s attempted wind-down failed to rectify much of the harm caused by the
6 Protocols.

7 4. In June 2021, DHS attempted to terminate the Protocols. Citing official
8 data, DHS Secretary Alejandro Mayorkas conceded that the high percentage of
9 completed MPP cases resulting in *in absentia* removal orders raised serious concerns
10 about the program’s implementation, including whether individuals subjected to MPP
11 had an adequate opportunity to seek relief and whether conditions in Mexico led
12 individuals to abandon meritorious claims for protection.⁴ In DHS’s own words, MPP
13 “impos[ed] substantial and unjustifiable human costs on migrants who were exposed
14 to harm while waiting in Mexico. . . . Significant evidence indicates that individuals
15 were subject to extreme violence and insecurity at the hands of transnational criminal
16 organizations that profited from putting migrants in harm’s way while awaiting their
17 court hearings in Mexico.”⁵ In a filing in this case, the government even acknowledges
18 that “[a]s a matter of policy, Defendants do not defend MPP or its prior
19 implementation.” ECF No. 163 (Defs.’ Opp. to TRO) at 1 n.1.⁶

20 _____
21 ³ Immigration judges terminated MPP proceedings based on improvidently issued
22 Notices to Appear and, in some instances, when individuals did not appear for their
23 hearings.

24 ⁴ DHS, Memorandum from Secretary Alejandro N. Mayorkas to Acting Heads of
25 CBP, ICE, and USCIS, Termination of the Migrant Protection Protocols Program, at
26 7 (June 1, 2021), <https://bit.ly/3IQsua5>.

27 ⁵ DHS, Explanation of the Decision to Terminate the Migrant Protection Protocols
28 (“Second Termination Memo”), at 2 (Oct. 29, 2021), <https://bit.ly/30ydfkW>.

⁶ In February 2020, the U.S. Court of Appeals for the Ninth Circuit affirmed a
preliminary injunction setting aside the Protocols because they are statutorily
unauthorized. *Innovation Law Lab v. Wolf*, 951 F.3d 1073, 1084 (9th Cir. 2020). The
U.S. Supreme Court initially stayed the injunction pending the disposition of a
petition for a writ of certiorari, 140 S. Ct. 1564 (2020), which was later granted, – S.
Ct. – (Oct. 19, 2020). On February 3, 2021, the Court granted the government’s

Footnote continued to next page.

1 5. In August 2021, the U.S. District Court for the Northern District of Texas
2 permanently enjoined the June 2021 directive terminating MPP and ordered the
3 federal government to reinstate MPP until it is lawfully rescinded and until the federal
4 government obtains sufficient detention capacity to hold noncitizens subject to
5 mandatory detention.⁷

6 6. DHS’s wind-down of MPP was abruptly halted in August 2021, following
7 the injunction against the June 2021 termination memo, even though the termination
8 of MPP had no impact on the status of individuals who had been subjected to MPP in
9 the past and had obtained final removal orders or had their cases terminated.

10 7. In late October 2021, DHS re-terminated MPP with a lengthy explanatory
11 memo, including the proviso that “[t]he termination of MPP will not take effect until
12 the current injunction is lifted.”⁸ DHS subsequently restarted MPP by issuing
13 guidance on “Court-Ordered Reimplementation of MPP.”⁹ On December 8, 2021, the
14 first individuals were returned to Mexico under DHS’s new version of MPP (“MPP
15 2.0”).

16 8. Meanwhile, thousands of individuals subjected to MPP who have final
17 orders of removal or terminated cases, including Individual Plaintiffs, remain
18 stranded outside the United States and continue to be deprived of security, stability,
19

20 motion to hold further briefing in abeyance and remove the case from the February
21 2021 argument calendar. On June 21, 2021, the Court granted the government’s
22 motion to vacate the judgment. The case was remanded to the Ninth Circuit with
23 instructions to direct the district court to vacate as moot its prior order granting a
preliminary injunction. The district court vacated the preliminary injunction on
August 6, 2021. *Innovation Law Lab v. Mayorkas*, No. 3:19-cv-00807-RS (N.D. Cal.
Aug. 6, 2021), ECF No. 131.

24 ⁷ The U.S. Court of Appeals for the Fifth Circuit and the Supreme Court subsequently
25 denied the government’s application for a stay of the district court’s order. *Texas v.*
26 *Biden*, 10 F.4th 538, 560–61 (5th Cir. 2021) (per curiam); *Biden v. Texas*, – S. Ct. –,
No. 21A21, 2021 WL 3732667 (Aug. 24, 2021) (mem.).

27 ⁸ Press Release, DHS, DHS Issues A New Memo to Terminate MPP (Oct. 29, 2021),
<https://bit.ly/3GOloRw>.

28 ⁹ DHS, Court-Ordered Reimplementation of MPP Policy Guidance
 (“Reimplementation Guidance”) (Dec. 2, 2021), <https://bit.ly/3GHnpyW>.

1 and meaningful access to legal representation, making it virtually impossible for them
2 to pursue their claims for protection. These individuals are not included in MPP 2.0
3 but have been unlawfully deprived of meaningful access to the U.S. asylum process.
4 Despite diligent efforts, Organizational Plaintiffs remain unable to meaningfully
5 assist such individuals.

6 9. Through this lawsuit, Plaintiffs seek to facilitate the return of Individual
7 Plaintiffs to the United States, with appropriate precautionary public health measures,
8 to pursue their asylum claims from inside the country; to certify a class of similarly
9 situated individuals; to allow Organizational Plaintiffs to effectively fulfill their
10 missions of providing legal assistance to asylum seekers; and to ensure that members
11 of the proposed class receive meaningful access to the U.S. asylum process.¹⁰

12 **JURISDICTION AND VENUE**

13 10. This case arises under the First and Fifth Amendments to the U.S.
14 Constitution; the Immigration and Nationality Act of 1952 (“INA”), 8 U.S.C. § 1101
15 *et seq.*; and the Administrative Procedure Act (“APA”), 5 U.S.C. § 701 *et seq.*

16 11. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal
17 question) and § 1346 (United States as defendant). Defendants have waived sovereign
18 immunity with respect to the claims alleged in this case. 5 U.S.C. § 702. This Court
19 has jurisdiction to enter declaratory and injunctive relief under 28 U.S.C. §§ 2201 and
20 2202.

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

24
25
26 ¹⁰ For purposes of this Complaint, references to “asylum” or the “U.S. asylum
27 process” encompass the statutory and regulatory processes by which any noncitizen
28 may seek all relevant forms of non-refoulement relief available under U.S.
immigration laws, including asylum, withholding of removal, and relief under the
Convention Against Torture. *See* 8 U.S.C. §§ 1158, 1231(b)(3); 8 C.F.R.
§ 1208.17(a).

PARTIES

A. Plaintiffs

13. **Plaintiff Lidia Doe**, a citizen of Honduras, suffered harm and fled to the United States to seek asylum. She and her granddaughter crossed the U.S.-Mexico border on or around May 15, 2019, were apprehended and then detained for approximately three days before Defendants returned them to Mexico under the Protocols. Lidia did not have legal representation in her removal proceedings and has faced significant obstacles to finding counsel. Lidia’s removal proceedings were terminated on March 9, 2020, after she was unable to attend a scheduled hearing due to a hypertensive crisis for which she had been hospitalized two days before. Lidia is currently stranded, has experienced harm, and is living in fear in Mexico. If returned to the United States, Lidia and her granddaughter would reside in Iowa with her son-in-law.

14. **Plaintiff Antonella Doe**, a citizen of Honduras, suffered harm and fled to the United States to seek asylum. She, her husband, and their two young daughters presented themselves at the U.S.-Mexico border in November 2018. They were forced to wait and ultimately processed into the United States in February 2019. Antonella and her family were detained and returned to Mexico under the Protocols approximately five days later. Antonella did not have legal representation in her removal proceedings and has faced significant obstacles to finding counsel. She missed her first and only immigration court hearing after she was told by the owner of the shelter where they were residing that she would not be allowed to enter the United States for her immigration court hearing because she lacked lawful status. At the hearing, the immigration judge terminated Antonella’s case. Antonella did not receive a decision or any notices from the court regarding the status of her case and, until recently, believed her case was still pending. In Mexico, a woman coerced Antonella and her family into working without pay in her home and threatened to report them to the Mexican police if they disobeyed her or tried to leave. This woman

1 also verbally and physically abused Antonella and her daughters. Antonella is
2 currently stranded, has experienced harm, and is living in fear in Mexico. She was
3 eligible for expanded MPP processing and registered, but she was not processed for
4 return to the United States before DHS halted the MPP wind-down. If returned to the
5 United States, Antonella and her family would reside in North Carolina with a family
6 friend.

7 15. **Plaintiff Rodrigo Doe**, a citizen of Honduras, suffered harm and fled to
8 the United States to seek asylum. He crossed the U.S.-Mexico border on or around
9 May 5, 2019, was apprehended and then detained for approximately two days before
10 Defendants returned him to Mexico under the Protocols. Rodrigo did not have legal
11 representation in his removal proceedings and has faced significant obstacles to
12 finding counsel. Rodrigo's case was terminated after he missed his final immigration
13 court hearing due to a lack of transportation to the San Ysidro port of entry.
14 Approximately six months ago, Rodrigo was violently assaulted by four men who
15 stole his phone and wallet. Since his assault, Rodrigo has left the shelter where he
16 lives only to go to work. Rodrigo is currently stranded, has experienced harm, and is
17 living in fear in Mexico. He was eligible for expanded MPP processing and registered,
18 but he was not processed for return to the United States before DHS halted the MPP
19 wind-down. If returned to the United States, Rodrigo would reside in California with
20 his sister-in-law.

21 16. **Plaintiff Chepo Doe**, a citizen of El Salvador, suffered harm and fled to
22 the United States to seek asylum. He and his teenage daughter presented themselves
23 at the U.S.-Mexico border on February 26, 2019 and were detained for approximately
24 two days before Defendants returned them to Mexico under the Protocols. Chepo
25 managed to secure legal representation for his removal proceedings but has faced
26 significant obstacles to finding and confidentially communicating with counsel.
27 While in Mexico, Chepo's daughter became gravely ill. After a local hospital refused
28 treatment due to their migrant status, Chepo felt compelled to return to El Salvador

1 with his daughter to get her medical care. Doctors in El Salvador performed
2 emergency surgery and told Chepo that his daughter had nearly died from necrotizing
3 pancreatitis. As a result, they missed their fourth immigration hearing on February
4 25, 2020, and Chepo received an *in absentia* removal order. His case has not been
5 reopened, and no appeal is pending. Chepo is currently stranded, has experienced
6 harm, and is living in fear in El Salvador.¹¹ He was eligible and registered to apply to
7 reopen his case under expanded MPP processing but was not processed for return to
8 the United States before DHS halted the MPP wind-down. If returned to the United
9 States, Chepo and his daughter would reside in Alabama with his brother.

10 17. **Plaintiff Yesenia Doe**, a citizen of Honduras, suffered harm and fled to
11 the United States to seek asylum. She and her son crossed the U.S.-Mexico border on
12 or around July 24, 2019, were apprehended and then detained for approximately three
13 days before Defendants returned them to Mexico under the Protocols. Yesenia did not
14 have legal representation in her removal proceedings and has faced significant
15 obstacles to finding and confidentially communicating with counsel. The day after
16 she was returned to Mexico under the Protocols, Yesenia and her son were kidnapped
17 by cartel members and held for approximately four weeks. After Mexican police
18 rescued them, Yesenia and her son slept on the street for several nights. Out of
19 desperation, Yesenia made the difficult decision to return to her mother's home in
20 Honduras. However, after receiving renewed death threats just a few weeks after they
21 arrived, Yesenia and her son again fled to Mexico. Yesenia missed her first and only
22 immigration court hearing and received an *in absentia* removal order. Her case has
23 not been reopened, and no appeal is pending. Yesenia is currently stranded, has
24

25 ¹¹ Plaintiffs have filed a motion for an emergency order allowing Individual Plaintiffs
26 Chepo Doe, Ariana Doe, and Francisco Doe to return to the United States with their
27 immediate family members, under appropriate precautionary public health measures,
28 in order to seek reopening of their cases and, if successful, pursue their claims for
asylum and related relief. *See* ECF No. 157. As of the date of this filing, that motion
remains pending, and the underlying claims on which it is based have been
incorporated into the Second Amended Complaint.

1 experienced harm, and is living in fear in Mexico. She was eligible for expanded MPP
2 processing and registered, but she was not processed for return to the United States
3 before DHS halted the MPP wind-down. If returned to the United States, Yesenia and
4 her son would reside in Texas with her friend.

5 18. **Plaintiff Sofia Doe**, a citizen of Honduras, suffered harm and fled to the
6 United States to seek asylum. She, her husband, and their young son crossed the U.S.-
7 Mexico border on or around May 15, 2019, were apprehended and then detained for
8 approximately eight days before Defendants returned them to Mexico under the
9 Protocols. Sofia did not have legal representation in her removal proceedings and has
10 faced significant obstacles to finding counsel. She missed her third immigration
11 hearing due to complications with a high-risk pregnancy for which she had recently
12 been hospitalized. As a result, Sofia received an *in absentia* removal order. Sofia's
13 case has not been reopened, and no appeal is pending. Her husband was assaulted
14 while he was working in Mexico and has now been missing for over three weeks,
15 leaving Sofia and their four-year-old son, who has respiratory problems, alone in
16 Tijuana. Sofia is currently stranded, has experienced harm, and is living in fear in
17 Mexico. She was eligible for expanded MPP processing and registered, but she was
18 not processed for return to the United States before DHS halted the MPP wind-down.
19 If returned to the United States, Sofia and her family would reside in California with
20 her sister-in-law.

21 19. **Plaintiff Gabriela Doe**, a citizen of Honduras, suffered harm and fled to
22 the United States to seek asylum. She and her daughter crossed the U.S.-Mexico
23 border on or around July 12, 2019, were apprehended and then detained for
24 approximately two days before Defendants returned them to Mexico under the
25 Protocols. Gabriela did not have legal representation in her removal proceedings and
26 has faced significant obstacles to finding counsel. The immigration judge denied her
27 claim for asylum. Gabriela was subsequently returned to Mexico and immediately
28 kidnapped and assaulted, and she went into hiding as soon as she escaped. As a result,

1 she was unable to file an appeal or seek legal representation to assist her with this
2 process. Gabriela received a final order of removal as a result.¹² Her case has not been
3 reopened and no appeal is pending. Gabriela is currently stranded, has experienced
4 harm, and is living in fear in Mexico. If returned to the United States, Gabriela and
5 her daughter would reside in Texas with her friend.

6 20. **Plaintiff Ariana Doe**, a citizen of Guatemala, suffered harm and fled to
7 the United States to seek asylum. She and her young daughter crossed the U.S.-
8 Mexico border on September 2, 2019, were apprehended and then detained for
9 approximately one week before Defendants returned them to Mexico under the
10 Protocols. Ariana did not have legal representation in her removal proceedings and
11 has faced significant obstacles to finding counsel. The immigration judge denied her
12 asylum application, and she was unable to find an attorney to assist with an appeal.
13 She received a final order of removal as a result. Her case has not been reopened, and
14 no appeal is pending. Ariana and her daughter have had to go into hiding to escape a
15 powerful cartel member. Ariana is currently stranded, has experienced harm, and is
16 living in fear in Mexico. If returned to the United States, Ariana and her daughter
17 would reside in Massachusetts with her family.

18 21. **Plaintiff Francisco Doe**, a citizen of El Salvador, suffered harm and fled
19 to the United States to seek asylum. He crossed the U.S.-Mexico border on July 25,
20 2019, was apprehended and then detained for approximately one week before
21 Defendants returned him to Mexico under the Protocols. Francisco has faced
22 significant obstacles to finding counsel. He hired an individual in Mexico to assist
23 him with his asylum application, but he does not know whether the individual was a
24

25 ¹² An order of removal is considered “final” after an individual has either (1) failed to
26 attend their hearing (an “*in absentia*” removal order); (2) waived appeal; (3) reserved
27 but failed to file an appeal within 30 days of the removal order; (4) appealed the
28 removal order but subsequently withdrawn their appeal; or (5) had their appeal denied
by the Board of Immigration Appeals (“BIA”) or Attorney General. 8 C.F.R.
§ 1241.1. While an individual whose appeal is denied by the BIA may file a petition
for review in the relevant federal circuit court of appeals, that individual is considered
to have a final order of removal unless and until such order is vacated by the federal
circuit.

1 qualified attorney or legal representative. The immigration judge denied Francisco’s
2 asylum claim, and the Mexican individual who had previously assisted Francisco
3 misfiled the documents required for his appeal. Francisco received a final order of
4 removal as a result. Francisco has been robbed at gunpoint by armed men and is afraid
5 to go outside because of all the shootings in the area where he lives. His case has not
6 been reopened, and no appeal is pending. Francisco is currently stranded, has
7 experienced harm, and is living in fear in Mexico. If returned to the United States,
8 Francisco would reside in Florida with his mother.

9 22. **Plaintiffs Reina and Carlos Doe**, citizens of Honduras, suffered harm
10 and fled to the United States to seek asylum. Reina and Carlos, their two children,
11 and Carlos’s son crossed the U.S.-Mexico border in or around the beginning of
12 October 2019, were apprehended and then detained for approximately four days
13 before Defendants returned them to Mexico under the Protocols. Reina and Carlos
14 did not have legal representation in their removal proceedings and have faced
15 significant obstacles to finding and confidentially communicating with counsel. The
16 immigration judge denied Reina and Carlos’s asylum claims, and they were unable to
17 find an attorney to assist them in appealing to the BIA. They received final removal
18 orders as a result. Reina and Carlos’s case has not been reopened, and no appeal is
19 pending. While they were in Mexico awaiting their immigration hearings, Reina,
20 Carlos, and their family were attacked and threatened by municipal police. Reina and
21 Carlos are currently stranded, have experienced harm, and are living in fear in
22 Mexico. If returned to the United States, Reina, Carlos, and their family would reside
23 in Alabama with a friend.

24 23. **Plaintiff Dania Doe**, a citizen of El Salvador, suffered harm and fled to
25 the United States to seek asylum. She and her daughter crossed the U.S.-Mexico
26 border on or around September 10, 2019, were apprehended and then detained for
27 approximately three days before Defendants returned them to Mexico under the
28 Protocols. Dania did not have legal representation in her removal proceedings and has

1 faced significant obstacles to finding counsel. The immigration judge denied her
2 asylum application, and she was unable to find an attorney to assist with her appeal.
3 Dania received a final order of removal as a result. Dania and her daughter lived in
4 dangerous conditions in the migrant camp in Matamoros, and Dania has been
5 kidnapped and brutally raped. Dania is currently stranded, has experienced harm, and
6 is living in fear in Mexico. If returned to the United States, Dania and her daughter
7 would reside in Texas with her family.

8 24. **Plaintiff Immigrant Defenders Law Center** (“ImmDef”) is a nonprofit
9 organization incorporated in California and based in Los Angeles, with additional
10 offices in Riverside, San Diego, and Santa Ana, California, that serves immigrants
11 and refugees throughout Southern California. ImmDef’s mission is to provide
12 universal representation so that no immigrant is forced to face removal proceedings
13 without an attorney or accredited representative. To achieve its mission, ImmDef
14 manages several programs, including the Children’s Representation Program; the
15 National Qualified Representative Program; the Family Unity Project; Local Funding
16 Initiatives to provide removal defense in Los Angeles, Santa Ana, Long Beach, and
17 the Inland Empire; and the Cross-Border Initiative. The Cross-Border Initiative,
18 which was established in response to MPP, provides direct representation, *pro se*
19 assistance, Know Your Rights presentations, and other support to individuals
20 subjected to MPP whose cases are pending before the San Diego immigration court
21 or who have received removal orders or had their cases terminated in MPP
22 proceedings. ImmDef also plays a core role in the California Welcoming Task Force
23 (“CAWTF”), a coalition of organizations that provide legal services, humanitarian
24 and health services, advocacy, and communications assistance to individuals seeking
25 asylum in the United States.

26 25. **Plaintiff Jewish Family Service of San Diego** (“Jewish Family
27 Service”) is a nonprofit organization incorporated in California and based in San
28 Diego. The mission of Jewish Family Service’s Immigration Services Department is

1 to provide holistic, culturally competent, trauma-informed, quality legal and other
2 supportive services to the immigrant community in San Diego and Imperial Counties.
3 Since early 2019, Jewish Family Service has provided legal and other services to
4 individuals subjected to MPP, including assisting individuals with terminated cases
5 and with motions to reopen. To achieve its mission, Jewish Family Service manages
6 several programs, including an Immigrant Legal Rights Program (“ILRP”), an
7 Affirmative Services Program, and a Higher Education and Legal Services Program.
8 Jewish Family Service also participates in and manages the San Diego Rapid
9 Response Network (“Rapid Response Network”), which was formed in December
10 2017 to ensure that all detained noncitizens within San Diego County have access to
11 legal consultations. Jewish Family Service operates the Rapid Response Network
12 Migrant Shelter, which provides critical humanitarian assistance to asylum-seeking
13 individuals and families released from detention, including those processed into the
14 United States after being subjected to MPP. The Jewish Family Service ILRP team
15 provides legal support for individuals coming through the Rapid Response Network
16 Migrant Shelter, including support of individuals formerly subjected to MPP. From
17 February 19, 2021, through August 24, 2021, members of Jewish Family Service’s
18 ILRP traveled regularly to the San Ysidro port of entry to assist in welcoming and
19 processing individuals and families subjected to the Protocols who were permitted to
20 return to the United States to pursue their immigration cases. Jewish Family Service
21 has also provided legal advice and counseling to hundreds of individuals subjected to
22 MPP. Jewish Family Service co-leads the CAWTF and leads the humanitarian work
23 group of the CAWTF.

24 **B. Defendants**

25 26. Defendant Alejandro Mayorkas is the Secretary of Homeland Security.
26 He directs each of the components within DHS, including those responsible for
27 enforcing U.S. immigration laws, and bears ultimate responsibility for administering
28 the immigration laws pursuant to 8 U.S.C. § 1103. Secretary Mayorkas oversees MPP,

1 directed its termination on June 1, 2021, and is ultimately responsible for the decision
2 to process into the United States individuals returned to Mexico under MPP. He is
3 sued in his official capacity.

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

8 28. Defendant Chris Magnus is the Commissioner of CBP. CBP is
9 responsible for the apprehension, detention, and processing of individuals seeking
10 asylum at or near the border, including individuals subject to MPP. He is integrally
11 involved in overseeing the processing of eligible individuals subjected to MPP for
12 return to the United States. He is sued in his official capacity.

13 29. Defendant William A. Ferrara is the Executive Assistant Commissioner
14 of CBP’s Office of Field Operations (“OFO”). OFO is the largest component of CBP
15 and is responsible for border security, including immigration and travel through U.S.
16 ports of entry. Defendant Ferrara had responsibility for implementing the original
17 version of MPP from August 30, 2020 through June 1, 2021, and is integrally involved
18 in overseeing the processing of eligible individuals subjected to MPP for return to the
19 United States. He is sued in his official capacity.

20 30. Defendant Raul Ortiz is the Chief of U.S. Border Patrol. He is responsible
21 for enforcing immigration laws between ports of entry, including by detecting,
22 interdicting, and apprehending individuals who attempted to enter the United States
23 between ports of entry and were subsequently subjected to the Protocols. Defendant
24 Ortiz is sued in his official capacity.

25 31. Defendant CBP is the component of DHS that is responsible for the initial
26 processing and detention of noncitizens who are apprehended at or, in the border
27 region, between U.S. land ports of entry.

28

1 37. Because of the life-or-death stakes, the statutory right to apply for asylum
2 is robust. It includes the right to legal representation,¹³ at no expense to the
3 government, *see* 8 U.S.C. §§ 1229a(b)(4)(A), 1362; the right to notice of the right to
4 legal representation, *see* 8 U.S.C. § 1158(d)(4); the right to access information in
5 support of an application, *see* 8 U.S.C. § 1158(b)(1)(B) (placing the burden on the
6 applicant to present evidence to establish eligibility); the right to appeal a
7 determination by an immigration judge, *see* 8 U.S.C. § 1229a(c)(5) (referencing the
8 right to appeal); the right to petition federal circuit courts for judicial review of a final
9 order of removal, *see* 8 U.S.C. § 1252(b); and the right to move to reopen proceedings
10 or reconsider a decision regarding removability, *see* 8 U.S.C. § 1229a(c)(6)-(7).

11 38. The right to seek asylum also includes the right to uniform treatment by
12 the U.S. government. Through the Refugee Act, the U.S. government must “establish
13 a uniform procedure for passing upon an asylum application.” S. Rep. No. 256, 96th
14 Cong., 2d Sess. (1980), *reprinted in* 1980 U.S.C.C.A.N. 141, 149; *see also Orantes-*
15 *Hernandez v. Smith*, 541 F. Supp. 351, 375 (C.D. Cal. 1982) (acknowledging the
16 emphasis that Congress placed on the uniform, nondiscriminatory treatment of
17 refugees).

18 39. Consistent with the principle of non-refoulement at the heart of the
19 Refugee Act, the INA further provides that noncitizens who are not eligible for
20 asylum are nonetheless protected from return to a country where it is more likely than
21 not that their “life or freedom would be threatened . . . because of [their] race, religion,
22 nationality, membership in a particular social group, or political opinion.” 8 U.S.C.
23 § 1231(b)(3)(A). Noncitizens also may not be returned to a country where they are
24 more likely than not to be tortured. 8 C.F.R. §§ 1208.16–1208.19.

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26
27 ¹³ Plaintiffs use “legal representation” interchangeably with “counsel” given that the
28 regulations promulgated by the Department of Justice allow for representation by
non-attorney accredited representatives, law students, and other reputable individuals.
8 C.F.R. § 1292.1(a).

1 **B. The Right to Access Legal Representation for the Purpose of**
2 **Applying for Asylum**

3 40. Both the INA and the Fifth Amendment guarantee noncitizens seeking
4 asylum the right to meaningfully access legal representation at no expense to the
5 government. *See supra* ¶ 37; *Biwot v. Gonzales*, 403 F.3d 1094, 1098 (9th Cir. 2005).

6 41. Asylum law is complex, and the stakes involve life and death. Legal
7 services organizations, including Organizational Plaintiffs, therefore play a
8 particularly important role in assisting persons fleeing persecution who are seeking
9 asylum.

10 42. The burden of proof on applicants is high in asylum proceedings. Asylum
11 applications require detailed, fact-specific submissions containing evidence related to
12 a noncitizen’s fear of persecution on account of a protected ground, and evidence
13 showing that fear is objectively reasonable. Legal service providers, including
14 Organizational Plaintiffs, must allow time for relationship-building so that their
15 clients trust them enough to share sensitive, frequently traumatic, past experiences.
16 For clients suffering the effects of severe trauma, Organizational Plaintiffs must
17 invest additional time and resources to build these relationships. Organizational
18 Plaintiffs often must engage experts to provide testimony on country conditions or to
19 corroborate the injuries of clients who have survived past persecution. In each case,
20 Organizational Plaintiffs must coordinate all these pieces while also ensuring that they
21 are zealously representing their clients by developing rigorous legal arguments,
22 submitting legal briefs, and complying with complex procedures.

23 43. Legal representation strongly affects the outcome of asylum applications.
24 Represented noncitizens detained in the United States are over ten times more likely
25 to succeed in their immigration cases than those who appear *pro se*.¹⁴ Non-detained
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27
28 ¹⁴ Ingrid V. Eagly & Steven Shafer, *A National Study of Access to Counsel in Immigration Court*, 164 U. Penn. L. Rev. 1, 9 (Dec. 2015), <https://bit.ly/3osTJgL>.

1 noncitizens in the United States who have legal representation are over five times
2 more likely to succeed in their cases than those who appear *pro se*.¹⁵

3 44. Before the Protocols, the right to apply for asylum, which necessarily
4 includes the right to access legal representation for this purpose, was effectuated by
5 providing affected noncitizens with certain other rights and access to certain benefits.

6 Those rights and benefits included:

7 (a) Access to immigration attorneys, accredited representatives, and
8 nongovernmental organizations (“NGOs”) registered to provide asylum
9 support in the United States. *See* 8 C.F.R. § 1292.11 (recognizing over
10 750 NGOs providing asylum support in the United States).

11 (b) Access to a list of pro bono legal service providers maintained by the
12 Executive Office for Immigration Review (“EOIR”). *See* 8 U.S.C.
13 § 1158(d)(4)(B); 8 C.F.R. § 1003.61(b); *see also* 8 C.F.R.
14 § 1240.10(a)(2) (noting obligation of immigration judges to advise
15 individuals of availability of pro bono legal service providers).

16 (c) Access to law libraries, legal materials, and legal reference materials.
17 *See, e.g.*, ICE, Performance-Based National Detention Standards
18 (“PBNDS”) (rev. 2016), at 6.3, <https://bit.ly/2HBW2gG> (providing
19 regular access for noncitizens in detention to law libraries and legal
20 materials).

21 (d) Access to legal presentations and individual counseling about their
22 cases. *See, e.g., id.* at 6.4 (providing noncitizens in detention with
23 access to presentations on U.S. immigration law and procedures as well
24 as individual counseling after a group presentation to discuss cases).

25 (e) The right to make free local calls to pro bono legal service providers on
26 EOIR’s list. *See, e.g., id.* at 5.6(II)(7), (V)(E) (referring to detained
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¹⁵ *Id.* at 49.

1 individuals' right to make unlimited free calls to pro bono legal service
2 providers on EOIR list).

3 45. With access to the above-described statutory and regulatory rights and
4 benefits, nearly 80 percent of all asylum seekers appearing in immigration court are
5 represented at their merits hearings, according to EOIR records.¹⁶

6 **C. The Right to File a Motion to Reopen Immigration Proceedings**

7 46. "The motion to reopen is an important safeguard intended to ensure a
8 proper and lawful disposition of immigration proceedings." *Kucana v. Holder*, 558
9 U.S. 233, 242 (2010) (internal quotations omitted); *see also Dada v. Mukasey*, 554
10 U.S. 1, 14 (2008) (describing the motion to reopen as "a statutory form of relief
11 available" to noncitizens). In adjudicating motions to reopen, immigration judges
12 must consider whether the parties were provided "a fair opportunity" to present their
13 case. *See INS v. Abudu*, 485 U.S. 94, 107 (1988). An immigration court cannot deny
14 a meritorious statutory motion to reopen that is based on errors affecting the
15 lawfulness and propriety of a removal decision, where the immigration relief sought
16 is nondiscretionary.¹⁷

17 47. Individuals with final orders of removal have the right to file a motion to
18 reopen their immigration proceedings in order to present new evidence. 8 U.S.C.
19 § 1229a(c)(7).¹⁸

20 48. Individuals with *in absentia* removal orders may file a motion to reopen
21 if they can prove deficiencies with notice, exceptional circumstances, and/or that they
22 were in custody and the failure to appear was through no fault of their own. *See*
23 8 U.S.C. § 1229a(b)(5)(C). Under this statutory provision, an individual's removal is

24 _____
25 ¹⁶ TRAC Immigration, *Asylum Decisions by Custody, Representation, Nationality,*
26 *Location, Month and Year, Outcome and more* (Nov. 2021), <https://bit.ly/2G4neEk>
(filters set to "Immigration Court: All" and "Represented").

27 ¹⁷ American Immigration Council, *The Basics of Motions to Reopen EOIR-Issued*
Removal Orders, at 6–7 (Feb. 7, 2018), <https://bit.ly/30N7wYC>.

28 ¹⁸ Individuals with final orders of removal also have the right to file a motion to
reconsider a removal decision based on errors of fact or law. 8 U.S.C. § 1229a(c)(6).

1 automatically stayed pending the disposition of a motion to reopen by an immigration
2 judge. *Id.*

3 49. Motions to reopen *in absentia* removal orders based on lack of notice or
4 custody status may be filed at any time, 8 U.S.C. § 1229a(b)(5)(C)(ii), as may asylum-
5 based motions to reopen involving changed country conditions, § 1229a(c)(7)(C)(ii).
6 All other motions to reopen are generally subject to both time and numerical
7 limitations, unless they are filed jointly with DHS. *See* 8 U.S.C. §§ 1229a(b)(5),
8 (c)(6), (c)(7); 8 C.F.R. §§ 1003.23(b)(4)(iv), 1003.2(c)(3)(iii).

9 50. Preparing a motion to reopen is generally a difficult and time-consuming
10 task. All motions to reopen must “state the new facts that will be proven at a hearing
11 to be held if the motion is granted, and shall be supported by affidavits or other
12 evidentiary material.” *See* 8 U.S.C. § 1229a(c)(7)(B). Regulations require that a
13 motion to reopen “for the purpose of submitting an application for relief must be
14 accompanied by the appropriate application for relief and all supporting
15 documentation.” 8 C.F.R. § 1003.2(c)(1).

16 51. Thorough preparation is particularly crucial because individuals are
17 typically limited to a single motion to reopen. *See* 8 U.S.C. § 1229a(c)(7)(A). An
18 individual or their attorney usually must obtain the underlying A-file, the DHS file
19 documenting the noncitizen’s immigration history; the Record of Proceedings, a court
20 file that contains hearing recordings and all documents filed with the immigration
21 court; and new and previously unavailable evidence supporting the facts on which the
22 motion is based. *See Chhoeun v. Marin*, 306 F. Supp. 3d 1147, 1156 (C.D. Cal. 2018)
23 (“Filing a motion to reopen is a complicated and often prolonged process.”).

24 52. Throughout this process, attorneys must meet repeatedly with their clients
25 to build trust and to gather the necessary facts.

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1 **II. CONDITIONS IN MEXICO BEFORE IMPLEMENTATION OF THE**
2 **PROTOCOLS**

3 53. When Defendants implemented the Protocols in January 2019, they were
4 aware of the harms that asylum seekers subjected to the Protocols would face.
5 According to the latest then-available U.S. Department of State Country Report on
6 Human Rights Practices, “violence against migrants by government officers and
7 organized criminal groups” was one of “[t]he most significant human rights issues”
8 in Mexico.¹⁹ The State Department likewise has repeatedly reported that the dangers
9 that forced many Central American migrants to flee their homes were also present in
10 Mexico, as the presence of Central American gangs has “spread farther into the
11 country and threatened migrants who had fled the same gangs in their home
12 countries.”²⁰ Human rights groups have similarly reported the escalation of these
13 dangers since 2017, noting that Mexican police and armed forces were often complicit
14 in crimes against migrants.²¹

15 54. Since at least 2017, migrants in Mexico’s northern border states have also
16 been subject to disappearances, kidnappings, rape, trafficking, extortion, execution,
17 and sexual and labor exploitation by non-state actors. Migrants in the immediate
18

19 ¹⁹ U.S. Dep’t of State, *2017 Country Reports on Human Rights Practices for 2018: Mexico*, at 1 (Apr. 20, 2018) (hereafter “2017 State Dep’t Mexico Human Rights Report”), <https://bit.ly/3H6yNou>; *see also* 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”), <https://bit.ly/3qbgxTU> (both 2017 and 2018 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); U.S. Dep’t of State, *2019 Country Reports on Human Rights Practices: Mexico*, at 18 (Mar. 11, 2020) (hereafter “2019 State Dep’t Mexico Human Rights Report”), <https://bit.ly/32sKXZq>.

20 ²⁰ *See* 2019 State Dep’t Mexico Human Rights Report, *supra* n.19, at 18; 2018 State Dep’t Mexico Human Rights Report, *supra* n.19, at 19; 2017 State Dep’t Human Rights Report, *supra* n.19, at 21.

21 ²¹ Human Rights First, *Mexico: Still Not Safe for Refugees & Migrants* (Mar. 23, 2018), <https://bit.ly/3jwxMtw>; Alberto Díaz-Cayeros, Beatriz Magatoni, and Vidal Romero, *Caught in the Crossfire: The Geography of Extortion and Police Corruption in Mexico*, Stanford Center for International Development, at 3–4 (Feb. 2015), <https://stanford.io/3egRhpY>.

1 vicinity of a port of entry were—and still are—at particular risk of violence and
2 exploitation. Those who seek refuge in shelters may be in particular danger. Some
3 shelters are infiltrated by organized crime; others are sites of vandalism, burglary,
4 threats, and kidnapping.

5 55. The Mexican border cities where Individual Plaintiffs were returned after
6 being subjected to MPP, including Tijuana, Mexicali, Nuevo Laredo, and Matamoros,
7 are among the most violent in Mexico.²²

8 56. Had Defendants properly considered these conditions, of which they were
9 well aware, before implementing the Protocols, they would necessarily have
10 concluded that the Protocols would jeopardize Individual Plaintiffs’ safety and
11 security, obstruct their access to legal representation, and interfere with their ability
12 to gather and present evidence, thereby preventing these individuals from
13 meaningfully exercising their right to apply for asylum.

14 **III. THE IMMEDIATE AND SEVERE REPERCUSSIONS OF THE**
15 **PROTOCOLS**

16 57. The Protocols trap individuals in Mexico under conditions so perilous that
17 they replicate many of the dangers that prompted these individuals to flee their home
18 countries. These conditions obstruct their ability to obtain legal representation and
19 deny them access to the U.S. asylum system.

21 ²² See e.g., U.S. Dep’t of State, Overseas Security Advisory Council (“OSAC”),
22 *Mexico Country Security Report* (Aug. 6, 2021), <https://bit.ly/3E0sUXV> (assessing
23 Tijuana, Nuevo Laredo, and Matamoros as being “CRITICAL-threat locations”); U.S.
24 Dep’t of State, OSAC, *Mexico 2020 Crime & Safety Report: Tijuana* (July 29, 2020),
25 <https://bit.ly/31LWIXP>; U.S. Dep’t of State, OSAC, *Mexico 2020 Crime & Safety*
26 *Report: Matamoros* (June 24, 2020), <https://bit.ly/3oWnlFB>; U.S. Dep’t of State,
27 OSAC, *Mexico 2020 Crime & Safety Report: Nuevo Laredo* (June 24, 2020),
28 <https://bit.ly/3GKYsCP>; see also Human Rights First, *Human Rights Travesty: Biden*
Administration Embrace of Trump Asylum Expulsion Policy Endangers Lives,
Wreaks Havoc (“Human Rights Travesty”), at 8 (Aug. 2021), <https://bit.ly/3dXkLsH>
 (“Nearly 83 percent of all asylum seekers stranded in the Mexican states bordering
the United States reported that they had been the victim of an attack, attempted attack,
or threats in the past month”); Wendy Fry, *Drug violence continues to grip Tijuana,*
with most homicides of any city in Mexico, *The San Diego Union-Tribune* (Jan. 6,
2020), <https://bit.ly/3owrG03>.

1 58. Under the Protocols, Defendants forcibly returned asylum seekers to
2 border zones in Mexico for the duration of their immigration court proceedings.²³

3 59. Starting in January 2019, Defendants rapidly rolled out the Protocols’
4 new asylum regime at ports of entry across the U.S.-Mexico border, with full
5 knowledge of the devastating effects they would have on the lives of Individual
6 Plaintiffs.²⁴ The repercussions of the Protocols on Individual Plaintiffs were
7 immediate and have been long-lasting.

8 60. Individuals subjected to MPP were in the custody of DHS for the duration
9 of their removal proceedings.²⁵ By trapping individuals under dangerous conditions
10 in Mexico, the Protocols jeopardized Individual Plaintiffs’ personal safety, prevented
11 them from being able to fulfill basic human needs, and deprived them of the
12 information and tools necessary to present their asylum claims. Because individuals
13 subjected to the Protocols were required to present at a port of entry on each of their
14 scheduled immigration court hearing dates, most were effectively confined to the

16 ²³ See DHS, Memorandum from Kirstjen M. Nielsen, Secretary of Homeland
17 Security, Policy Guidance for Implementation of the Migrant Protection Protocols
18 (Jan. 25, 2019), <https://bit.ly/3kyjny7>; see also CBP, Memorandum from Kevin K.
19 McAleenan, Commissioner, Implementation of the Migrant Protection Protocols
20 (Jan. 28, 2019), <https://bit.ly/3e10Nws> (“Section 235(b)(2)(C) of the INA provides
21 that the Secretary of Homeland Security may return certain applicants for admission
22 to the contiguous country from which they are arriving on land (whether or not at a
23 designated port of entry) pending removal proceedings under Section 240 of the
24 INA.”).

25 ²⁴ See ICE, Memorandum from Ronald D. Vitiello, Deputy Director and Senior
26 Official Performing the Duties of the Director, Implementation of the Migrant
27 Protection Protocols (Feb. 12, 2019), <https://bit.ly/3e1uM76> (implementing at San
28 Ysidro, California). By January 2, 2020, DHS had implemented the Protocols at all
ports of entry along the United States–Mexico border, including for persons
apprehended between those ports. See Press Release, DHS, DHS Begins MPP Returns
at Nogales Port of Entry in Arizona (Jan. 2, 2020), <https://bit.ly/32kMxwp>.

²⁵ DHS regulations provide that individuals returned to Mexico under INA
§ 235(b)(2)(C) “shall be considered detained for a proceeding within the meaning of
section 235(b) of the [Immigration and Nationality] Act and may be ordered removed
in absentia by an immigration judge if the alien fails to appear for the hearing.”
8 C.F.R. § 235.3(d). See also Order Denying Emergency Motions and Stay, ECF No.
135 at 10 (describing individuals subjected to MPP as “legally in the custody of the
U.S. while in Mexico”).

1 extreme danger zones near the border. The majority lived in crowded shelters, tent
2 encampments, or other makeshift arrangements.

3 61. The Protocols also obstructed legal representation for all individuals
4 subjected to them, blocking it entirely for over 90 percent of impacted individuals.²⁶
5 Defendant Mayorkas has acknowledged that in the implementation of MPP,
6 “[i]nadequate access to counsel casts doubt on the reliability of removal
7 proceeding[s].”²⁷

8 62. Initially, Defendants provided individuals in MPP proceedings with a list
9 of free or low-cost legal service providers in the United States, but most of those
10 providers did not offer legal services to people trapped in Mexico. Thus, most
11 individuals were left to navigate the complexities of U.S. asylum law on their own.
12 Ill-equipped to do so, particularly without reliable communication mechanisms,²⁸
13 only 740 individuals in MPP out of 71,071 cases, or 1 percent, were granted relief
14 from removal.²⁹ Prior to MPP, the general “relief granted rate” for Northern Triangle
15 (Guatemala, Honduras, and El Salvador) asylum-related claims originating in border
16 encounters was more than 26 times greater.³⁰ DHS has conceded that MPP “did not
17

18 ²⁶ As of October 2021, only 6,504 of the 71,071 individuals subjected to MPP had
19 legal representation. See TRAC Immigration, *Details on MPP*, *supra* n.1 (filters set
to “Hearing Location: All” and “Represented: Represented”).

20 ²⁷ DHS, Second Termination Memo, *supra* n.5, at 17; see also *id.* at 3 (recognizing
21 “difficulties in accessing counsel” as among the “significant issues with MPP”).

22 ²⁸ While far from adequate, MPP 2.0’s additional access to counsel provisions
23 demonstrate that even elementary facilitation of this right was absent in the original
24 version of MPP. For example, now “CBP will provide MPP enrollees information
... about where they can locate places in Mexico to engage in telephonic or video
communications with counsel.” See DHS, Reimplementation Guidance, *supra* n.9,
at 6.

25 ²⁹ See TRAC Immigration, *Details on MPP*, *supra* n.1 (filters set to “Hearing
Location: All” and “Outcome: Removal Order”).

26 ³⁰ DHS, Second Termination Memo, *supra* n.5, at 20–21. DHS concluded that
27 “[t]hese discrepancies strongly suggest that at least some MPP enrollees with
28 meritorious claims either abandoned or were unable to adequately present their claims
given the conditions faced by migrants in Mexico and barriers to legal access.”
Id. at 21.

1 succeed in a sufficient number of cases at achieving the timely and reliable
2 adjudication of migrants’ removal proceedings.”³¹

3 63. Defendants also thwarted the efforts of the few legal service providers
4 who did represent individuals subjected to the Protocols—including Organizational
5 Plaintiffs ImmDef and Jewish Family Service—to screen, advise, represent, or
6 otherwise assist individuals subjected to the Protocols. In-person attorney-client
7 consultations were limited to an illusory one-hour window before a scheduled
8 hearing—an access-to-counsel flaw that DHS’s second termination memo describes
9 as “exceedingly challenging to fix.”³² Even when these meetings could take place,
10 legal representatives were forced to meet with their clients in a public setting, where
11 they could not speak confidentially, no childcare was available, and tools necessary
12 to provide meaningful legal services were unavailable. Unrepresented individuals
13 were prohibited even from approaching legal representatives present in the
14 immigration court to discuss possible representation.

15 64. In implementing the Protocols, Defendants failed to consider, examine,
16 analyze, or address how the Protocols would impact the right of individuals to access
17 counsel for purposes of representation during immigration proceedings and in related
18 matters such as humanitarian parole applications, habeas petitions, and non-
19 refoulement interviews.

20 65. The Administrative Record for the Protocols’ implementation—produced
21 by Defendants in other litigation (“*Law Lab v. Wolf* Administrative Record”)—does
22 not include or refer to any studies, reports, interviews, or other communications
23 evidencing that, in implementing the Protocols, Defendants considered the obstacles
24 that individuals subjected to the Protocols would face in locating, communicating
25 with, retaining, or consulting with legal representatives.

26
27 ³¹ *Id.* at 21.

28 ³² *See* ICE, Implementation of the Migrant Protection Protocols, *supra* n.23; DHS, Second Termination Memo, *supra* n.5, at 17.

1 66. The *Law Lab v. Wolf* Administrative Record does not reflect any
2 consideration of the fact that many legal service providers were (and remain) unable
3 to represent individuals who have been forced to remain in Mexico for the duration
4 of their immigration proceedings.

5 67. The *Law Lab v. Wolf* Administrative Record also does not reflect any
6 consideration of how individuals subjected to the Protocols would retain counsel
7 before their scheduled hearings or potential obstacles they would face in identifying,
8 retaining, and meaningfully accessing counsel, particularly for in-person
9 consultations.

10 68. The *Law Lab v. Wolf* Administrative Record does not reflect any
11 consideration by Defendants regarding how much time immigration attorneys would
12 need to spend with their clients to prepare for an immigration hearing, or how
13 providing only one hour before a scheduled hearing would ensure that individuals
14 seeking asylum are afforded meaningful access to counsel. In implementing the
15 Protocols, Defendants also failed to consider whether the courts had available space
16 to allow for confidential conversations between client and counsel during this one-
17 hour consultation period, a feature added to MPP 2.0 but conspicuously absent before.

18 69. The *Law Lab v. Wolf* Administrative Record does not include any
19 reference to studies, reports, or benchmarking supporting Defendants' determination
20 that one hour of consultation with an attorney immediately before a hearing was
21 sufficient to ensure that individuals were provided meaningful access to counsel.

22 **IV. THE ATTEMPTED TERMINATION OF MPP**

23 70. On January 20, 2021, DHS announced the suspension of new enrollments
24 into MPP.³³ On February 2, 2021, President Joseph R. Biden, Jr. issued an executive
25 order directing the Secretary of Homeland Security to “promptly review and
26

27 _____
28 ³³ Press Release, DHS, DHS Statement on the Suspension of New Enrollments in the
Migrant Protection Protocols Program (Jan. 20, 2021), <https://bit.ly/33ycbyC>.

1 determine whether to terminate or modify” MPP.³⁴ The executive order directed that
2 “the Secretary of Homeland Security shall promptly consider a phased strategy for
3 the safe and orderly entry into the United States, consistent with public health and
4 safety and capacity constraints, of those individuals who have been subjected to MPP
5 for further processing of their asylum claims.”³⁵

6 **A. The First Termination Memo**

7 71. On June 1, 2021, Defendant Mayorkas announced the termination of
8 MPP. His memorandum directed DHS personnel to immediately “take all appropriate
9 actions to terminate MPP, including taking all steps necessary to rescind
10 implementing guidance and other directives issued to carry out MPP” and to
11 “continue to participate in the ongoing phased strategy for the safe and orderly entry
12 into the United States of individuals enrolled in MPP.”³⁶

13 72. The first termination memo acknowledged that “the high percentage of
14 cases completed through the entry of *in absentia* removal orders (approximately 44
15 percent, based on DHS data) raises questions . . . about the design and operation of
16 the program, whether the process provided enrollees an adequate opportunity to
17 appear for proceedings to present their claims for relief,” and whether “conditions
18 faced by some MPP enrollees in Mexico, including the lack of stable access to
19 housing, income, and safety, resulted in the abandonment of potentially meritorious
20 protection claims.”³⁷

21 73. The first termination memo clarified that “[t]he termination of MPP does
22 not impact the status of individuals who were enrolled in MPP at any stage of their
23 proceedings before EOIR or the phased entry process.”³⁸

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³⁴ Exec. Order No. 14010, 86 Fed. Reg. 8,267 (Feb. 2, 2021), <https://bit.ly/31Tc9AZ>.

26 ³⁵ *Id.*

27 ³⁶ DHS, Termination of the Migrant Protection Protocols Program, *supra* n.4, at 7.

28 ³⁷ *Id.* at 4.

³⁸ *Id.* at 7.

1 **B. Texas v. Biden Injunction**

2 74. On August 13, 2021, the U.S. District Court for the Northern District of
3 Texas permanently enjoined the June 1 termination memo and ordered the
4 government:

5 to enforce and implement MPP *in good faith* until such a time as it has been
6 lawfully rescinded in compliance with the APA **and** until such a time as the
7 federal government has sufficient detention capacity to detain all aliens subject
8 to mandatory detention under [INA] Section 1255 [*sic*] without releasing any
aliens *because of* a lack of detention resources.³⁹

9 75. The decision to terminate MPP and the Northern District of Texas’s
10 injunction only impact *future* placements into MPP 2.0. They do not impact
11 individuals, like Individual Plaintiffs, who were *already* subjected to the prior
12 iteration of MPP and received removal orders or had their cases terminated. The
13 decision to terminate MPP and the Northern District of Texas’s injunction do not
14 impact the federal government’s authority to parole individuals into the United States
15 under 8 U.S.C. § 1182(d)(5).⁴⁰

16 **C. The Second Termination Memo**

17 76. On October 29, 2021, Defendant Mayorkas issued a second termination
18 memo, accompanied by a 39-page explanation, which concluded that “there are
19 inherent problems with the program that no amount of resources can sufficiently
20 fix.”⁴¹ Ultimately, “[t]he integrity of the nation’s immigration system should be
21

22 ³⁹ *Texas v. Biden*, No. 2:21-CV-067-Z, 2021 WL 3603341, at *27 (N.D. Tex. Aug.
23 13, 2021) (emphases in original). On August 19, 2021, the U.S. Court of Appeals for
24 the Fifth Circuit denied the government’s application to stay the district court’s order.
25 *Texas v. Biden*, 10 F.4th 538 (5th Cir. 2021). On August 24, 2021, the Supreme Court
26 denied the government’s application to stay the district court’s order. *Biden v. Texas*,
No. 21A21, 2021 WL 3732667 (U.S. Aug. 24, 2021). On December 13, 2021, the
Fifth Circuit affirmed the district court’s judgment and denied the Government’s
motion to vacate and remand for further proceedings.

27 ⁴⁰ *See Texas v. Biden*, 10 F.4th at 558 (stating that the district court’s injunction does
not restrict DHS’s parole discretion but forbids “simply releas[ing] every alien
28 described in [8 U.S.C.] § 1225 *en masse* into the United States”).

⁴¹ DHS, Second Termination Memo, *supra* n.5, at 38.

1 assessed by whether immigration proceedings achieve fair and just outcomes, both
2 for individuals who merit relief and those who do not. In the Secretary’s judgment,
3 the data show that MPP generally failed to meet that bar.”⁴²

4 77. The memo underscored that “[t]he difficulties that MPP enrollees faced
5 in Mexico, including the threat of violence and kidnapping, coupled with inadequate
6 and unreliable access to food and shelter, likely contributed to people placed in MPP
7 choosing to forego further immigration court proceedings regardless of whether their
8 cases had merit.”⁴³ Nevertheless, citing compulsion from the district court injunction
9 in *Texas v. Biden*, Defendants restarted a new, expanded version of MPP on December
10 8, 2021.⁴⁴

11 **V. THE SUSPENDED MPP WIND-DOWN**

12 78. Following President Biden’s February 2021 directive to reconsider MPP
13 and before the first termination memo, DHS began implementing a process “meant to
14 provide an opportunity to individuals who were returned to Mexico under MPP to
15 proceed with their immigration proceedings from within the United States.”⁴⁵ On
16 February 11, 2021, DHS announced that it would implement a process for individuals
17 returned to Mexico under MPP whose cases were “pending” before EOIR, explaining
18 that the process would exempt those “who do not have active immigration court
19

21 ⁴² *Id.* at 18.

22 ⁴³ *Id.* at 20.

23 ⁴⁴ On the same day DHS issued the Second Termination Memo, the Department of
24 Justice filed a “Suggestion of Mootness and Opposed Motion to Vacate the Judgment
25 Below and Remand for Further Proceedings” with the Fifth Circuit in *Texas v. Biden*,
26 requesting a remand to the district court in order to vacate its injunction. No. 21-10806
(5th Cir. Oct. 29, 2021). On December 13, 2021, the Fifth Circuit denied the
27 Government’s motion to vacate the judgment and affirmed the district court’s August
28 13, 2021 judgment granting a permanent injunction against the termination of MPP.
Texas v. Biden, No. 21-10806, 2021 WL 5882670 (5th Cir. Dec. 13, 2021).

⁴⁵ DHS, Migrant Protection Protocols (Biden Administration Archive),
<https://bit.ly/3snf7IS> (accessed Dec. 20, 2021) (in “What happens when my
immigration case is completed?” drop-down text).

1 cases.”⁴⁶ Defendant Mayorkas later reiterated the importance of the wind-down
2 because those with active MPP cases would otherwise be “denied a chance to seek
3 protection.”⁴⁷

4 79. On February 26, 2021, Defendants began formally winding down MPP.
5 In order to return to the United States, DHS required individuals who qualified to
6 register with the United Nations High Commissioner for Refugees (“UNHCR”).
7 UNHCR would then contact those individuals, process their cases, direct eligible
8 individuals to report to a specified location for COVID-19 testing, and transport them
9 to the port of entry for processing into the United States.

10 80. The roll-out of the MPP wind-down was poorly communicated and
11 implemented, resulting in widespread confusion, pervasive misinformation, and
12 frequent missteps that further endangered the safety of tens of thousands of affected
13 asylum seekers.

14 81. On June 23, 2021, DHS announced that it was expanding processing of
15 individuals subjected to MPP into the United States to include terminated cases and
16 establishing a streamlined process for individuals with *in absentia* orders to seek
17 reopening of their cases by submitting joint motions to reopen.

18 **A. Core Components of the MPP Wind-Down**

19 82. Two core components of Defendants’ MPP wind-down were the
20 Reopened Case Policy and the Terminated Case Policy.

21 83. Pursuant to the Reopened Case Policy, individuals subjected to MPP who
22 had received final orders of removal, including *in absentia* final removal orders, were
23 eligible to be processed into the United States only if their cases had been reopened
24

25 ⁴⁶ Press Release, DHS, DHS Announces Process to Address Individuals in Mexico
26 with Active MPP Cases (Feb. 11, 2021), <https://bit.ly/3pZwBrV>; DHS, Press Release,
27 DHS Statement on First Step in Process to Address Individuals in Mexico with Active
28 MPP Cases (Feb. 19, 2021), <https://bit.ly/3oV0ytM>.

⁴⁷ Press Release, DHS, Statement by Homeland Security Secretary Alejandro N.
Mayorkas Regarding the Situation at the Southwest Border (Mar. 16, 2021),
<https://bit.ly/3s9Bi4V>.

1 and were thus “pending” or “active.” Upon information and belief, Defendants
2 defined “pending” or “active” cases as cases that were open and pending adjudication
3 by an immigration court or the BIA. Although Defendants’ announcement of
4 expanded processing established a streamlined route for individuals with *in absentia*
5 removal orders to seek reopening of their cases, these individuals had no guarantee
6 that DHS would join their motions to reopen or that reopening would be granted,
7 which was a prerequisite for processing in to the United States.

8 84. Under the Terminated Case Policy, individuals whose cases had been
9 terminated while in MPP proceedings would be automatically eligible for processing
10 into the United States. As individuals with terminated cases are not eligible to seek
11 reopening of their cases, the Terminated Case Policy did not require these individuals
12 to have reopened their cases prior to processing.

13 85. As of August 25, 2021, CBP had processed about half the individuals
14 subjected to MPP who were eligible based on their “pending” immigration
15 proceedings.⁴⁸

16 **B. Defendants’ Sudden Suspension of the Wind-Down**

17 86. In late August 2021, Defendants abruptly halted the wind-down.
18 Consequently, no individuals who were subjected to MPP are currently eligible for
19 processing into the United States on that basis.

20 87. Since the suspension of the wind-down, individuals subjected to MPP
21 with *in absentia* removal orders have no access to the streamlined joint motion to
22 reopen process established by Defendants’ expanded wind-down. Individuals with
23 final removal orders, whether issued *in absentia* or otherwise, now must file a motion
24

25
26 ⁴⁸ See DHS, Second Termination Memo, *supra* n.5, at 10 (identifying “about 13,000
27 individuals [who] were processed into the United States to participate in Section 240
28 removal proceedings as a result of this process”); TRAC Immigration, *Details on MPP*, *supra* n.1 (filters set to “Hearing Location: All” and “Outcome: Pending”) (noting 25,684 individuals subjected to MPP with “pending” immigration proceedings).

1 to reopen through the typical statutory process in order to restart their immigration
2 proceedings.

3 88. As discussed *supra* in Section I.C, filing a motion to reopen is a complex
4 process that is nearly impossible to navigate from outside the United States without
5 adequate access to legal representation. Individuals are required to include with their
6 motion to reopen an application for the relief they seek—a nearly insurmountable
7 requirement for individuals subjected to MPP and still outside the United States, who
8 typically lack the resources and expertise to accurately fill out an English-only asylum
9 application.⁴⁹ In the unlikely event that an individual stranded in Mexico is able to
10 find counsel, their legal representative will face serious obstacles to obtaining the
11 necessary signatures to review their client’s A-file and record of proceedings and to
12 meeting confidentially with their client to review these documents and discuss the
13 facts and circumstances that will inform the motion. For individuals subjected to MPP
14 and still stranded outside the United States, each of the typical steps to filing a motion
15 to reopen is thus fraught with barriers.

16 89. Like individuals with final orders of removal, individuals with terminated
17 MPP cases must seek to reactivate their cases from outside the United States. Yet the
18 latter group has no clear process to get their cases back on the docket. Following the
19 suspension of the wind-down, these individuals have three options: attempt to start a
20 new case by presenting themselves at a port of entry and expressing a desire to seek
21 asylum, appeal the termination decision to the BIA, or request that DHS reissue their
22 Notice to Appear.

23 90. Currently, DHS officials generally treat individuals who present at a port
24 of entry and express a desire to seek asylum in one of several ways: expulsion
25
26
27

28 ⁴⁹ See *Niz-Chavez v. Garland*, 141 S. Ct. 1474, 1485 (2021) (“Asylum applicants must use a 12-page form and comply with 14 single-spaced pages of instructions.”).

1 pursuant to Title 42 (unless they meet one of the enumerated Title 42 exemptions);⁵⁰
2 placement in expedited removal proceedings, in which case they can seek asylum
3 only after passing a credible fear interview; placement directly in removal
4 proceedings under INA § 240; or, as of December 8, 2021, placement into MPP 2.0
5 for individuals from Western hemisphere countries.

6 91. Legal representation is critical for BIA appeals of decisions to terminate
7 proceedings. Indeed, the BIA Practice Manual states that “[d]ue to the complexity of
8 the immigration and nationality laws, the Board recommends that those who can
9 obtain professional representation do so.”⁵¹ In fiscal year 2021, individuals were
10 represented in 80 percent of completed appeals and 90 percent of appeals that
11 remained pending,⁵² demonstrating the infrequency of *pro se* BIA appeals. The need
12 for representation is particularly acute in cases where individuals have missed the
13 deadlines to file a notice of appeal or a supporting legal brief and must establish
14 equitable tolling for the appeal to be accepted. Upon information and belief, this
15 predicament is common for individuals with terminated MPP cases, who are often
16 unaware of the relevant deadlines and the requirements for appeal to the BIA.

17 92. Upon information and belief, DHS is not responding to requests by
18 individuals with terminated cases for reissuance of a Notice to Appear.

19 93. In addition to these routes, individuals with terminated cases or final
20 orders of removal, including *in absentia* orders, may seek entry into the United States
21 by applying for humanitarian parole under 8 U.S.C. § 1182(d)(5). However, upon
22 information and belief, DHS is exercising its humanitarian parole discretion
23 exceptionally narrowly.

24
25 ⁵⁰ The Centers for Disease Control and Prevention Title 42 travel restrictions prevent
26 certain individuals in Mexico, including asylum seekers, from entering the United
27 States. *See* 85 Fed. Reg. 17,060, 17,061 (Mar. 26, 2020).

28 ⁵¹ Board of Immigration Appeals Practice Manual § 2.2(a) (Oct. 5, 2020).

⁵² EOIR Adjudication Statistics, Current Representation Rates (Oct. 19, 2021),
<https://bit.ly/3edUPZI>.

1 **VI. DEFENDANTS’ POLICIES HAVE HARMED INDIVIDUAL AND**
2 **ORGANIZATIONAL PLAINTIFFS**

3 94. The Protocols trapped Individual Plaintiffs and others similarly situated
4 in dangerous zones and transit corridors in Mexico, jeopardizing their safety, denying
5 them basic human needs, and preventing them from accessing legal assistance. These
6 conditions deprived individuals subjected to MPP of a meaningful opportunity to
7 present their claims for asylum and other relief.

8 95. Individual Plaintiffs and similarly situated individuals remain stranded
9 outside the United States with minimal access to legal representation. Individuals with
10 final removal orders can pursue their claims only if they succeed in reopening their
11 cases through the complex process described in Section I.C, *supra*. And, following
12 DHS’s suspension of the wind-down, individuals with terminated MPP cases can
13 pursue their asylum claims only by presenting themselves at a port of entry and
14 attempting to restart the process, appealing to the BIA, or convincing DHS to reissue
15 their Notice to Appear.

16 96. Complicating the situation further, Defendants’ implementation of MPP
17 has thwarted the efforts of legal service providers, including Organizational Plaintiffs
18 ImmDef and Jewish Family Service, to provide legal representation and other
19 assistance to individuals subjected to MPP.

20 **A. Through the Protocols, Defendants Have Threatened Individuals’**
21 **Safety and Survival**

22 97. In order to access their immigration court hearings, individuals subjected
23 to MPP regularly had to move through zones controlled by violent criminal
24 organizations in order to present themselves at designated ports of entry in the middle
25 of the night. After their hearings, they were generally returned to these dangerous
26 areas to start the process again, in a repetitive cycle that Defendants imposed on
27 asylum seekers for the duration of their MPP proceedings. Forced to focus on daily
28 survival in an environment of uncertainty and fear, these individuals were unable to

1 contact legal representatives, obtain evidence, contact witnesses, or take other steps
2 necessary to effectively present their cases.

3 98. Defendants were aware that these dangerous conditions persisted
4 throughout the time the Protocols were in effect and continue to date.⁵³ The 2019,
5 2020, and 2021 editions of the State Department’s Trafficking in Persons Report warn
6 that migrants in Mexico are vulnerable to human rights abuses and human trafficking,
7 and that migrants from Central and South America are particularly vulnerable to
8 forced labor and sex trafficking.⁵⁴ Since January 2021, the State Department has
9 issued eight separate security alerts for Mexican border states warning of ongoing and
10 increasing violence.⁵⁵ The State Department has reported continued victimization of
11 migrants by criminal groups, police, immigration officers, and customs officials.⁵⁶
12 The Overseas Security Advisory Council (OSAC) of the U.S. Department of State’s
13 Bureau of Diplomatic Security has classified multiple border cities (including
14 Tijuana, Nogales, Ciudad Juarez, Nuevo Laredo, and Matamoros) as “CRITICAL-
15 threat locations.”⁵⁷ Further, the Administrative Record provided by Defendants in

16 ⁵³ See *supra* Section II ; see also U.S. Dep’t of State, *2020 Country Reports on Human*
17 *Rights Practices: Mexico* at 21 (Mar. 30, 2021) (hereafter “2020 State Dep’t Mexico
18 Human Rights Report”), <https://bit.ly/33yauRM> (reporting “numerous instances of
19 armed groups limiting the movements of asylum seekers and other migrants,
20 including by threats and acts of kidnapping, extortion, and homicide,” often with the
21 complicity of local government or police); Human Rights First, *Human Rights*
22 *Travesty*, *supra* n.22, at 4–5, 15–16; Human Rights Watch, *US: Investigate ‘Remain*
23 *in Mexico’ Program* (June 2, 2020), <https://bit.ly/322dp4L>.

24 ⁵⁴ U.S. Dep’t of State, *2021 Trafficking in Persons Report* (June 2021) at 391,
25 <https://bit.ly/30GgQNK>; U.S. Dep’t of State, *2020 Trafficking in Persons Report*
26 (June 2020) at 349, <https://bit.ly/3qctIEc>; U.S. Dep’t of State, *2019 Trafficking in*
27 *Persons Report* (June 2019) at 327, <https://bit.ly/3FeGjNt>.

28 ⁵⁵ U.S. Dept. of State, OSAC, Resources (filter set to “Mexico,” then filter to “Travel
Advisories and Alerts”), <https://bit.ly/3ILM6vY>.

⁵⁶ U.S. Dep’t of State, *2020 Country Reports on Human Rights Practices: Mexico*,
supra n.53, at 20.

⁵⁷ U.S. Dep’t of State, OSAC, *Mexico 2020 Crime & Safety Report: Tijuana* (July 29,
2020), <https://bit.ly/31LWIXP>; OSAC, *Mexico 2020 Crime & Safety Report:*
27 *Matamoros* (June 24, 2020), <https://bit.ly/3oWnlFB>; OSAC, *Mexico 2020 Crime &*
28 *Safety Report: Nuevo Laredo* (June 24, 2020), <https://bit.ly/3GKYsCP>; OSAC,
Mexico 2020 Crime & Safety Report: Nogales (June 24, 2020), <https://bit.ly/3muh6r5>;
Footnote continued to next page.

1 *Texas v. Biden* includes numerous materials evidencing the immense danger faced by
2 asylum seekers subjected to MPP.⁵⁸

3 99. Documentation by the United States government, NGOs, and the media
4 confirms the continued dangers faced by asylum seekers.⁵⁹ In August 2021, for
5 example, Human Rights First identified 6,356 reports of attacks, including
6 kidnappings, rape, human trafficking, and other violent assaults against asylum
7 seekers and migrants stranded in Mexico since President Biden took office.⁶⁰ A
8 number of these attacks were reportedly committed by, or with the acquiescence of,
9 Mexican local and federal police.⁶¹ As has been reported, “[a]reas in the north of
10 [Mexico] have transformed into hunting grounds for criminal groups and security
11 elements that prey on recent deportees and migrants.”⁶²

12
13
14 OSAC, *Mexico 2020 Crime & Safety Report: Ciudad Juarez* (June 24, 2020),
<https://bit.ly/3oX9fUi>.

15 ⁵⁸ See Administrative Record at 374–425; 456–58; 468–87; 590–613, *Texas v. Biden*,
2:21-cv-0067-2 (N.D. Tex. June 22, 2021), ECF No. 61.

16 ⁵⁹ See e.g., U.S. Dep’t of State, *2021 Trafficking in Persons Report: Mexico* (July
17 2021), <https://bit.ly/3q3Ds3x>; Human Rights First, *Failure to Protect: Biden*
18 *Administration Continues Illegal Trump Policy to Block and Expel Asylum Seekers to*
19 *Danger* (“Failure to Protect”) (Apr. 2021), <https://bit.ly/3yuFgq0>; Human Rights
20 Watch, *Mexico: Events of 2020* (2021), <https://bit.ly/3sczgrv> (“Criminal cartels,
21 common criminals, and sometimes police and migration officials regularly target
22 people migrating through Mexico to rob, kidnap, extort, rape, or kill them”);
23 Stephanie Leutert, *Migrant Kidnapping in Nuevo Laredo During MPP and Title 42*,
24 The University of Texas at Austin Strauss Center for International Security and Law
(Dec. 2021), <https://bit.ly/3p7UpL2> (analyzing kidnappings of 352 migrants in Nuevo
Laredo between 2018 and 2021); David Agren, *Remain in Mexico: Migrants Face*
Deadly Peril as Biden Restores Trump Policy, The Guardian (Dec. 3, 2021),
<https://bit.ly/3E4QkeP> (“Under [MPP], first implemented by Trump, asylum seekers
were left stranded in violent Mexican border cities where they were routinely targeted
by organized crime groups for rape, robbery, extortion and abduction.”).

25 ⁶⁰ Human Rights First, *Human Rights Travesty*, *supra* n.22, at 8.

26 ⁶¹ Human Rights First, *Tracker of Reported Attacks During the Biden Administration*
27 *Against Asylum Seekers and Migrants Who Are Stranded in and/or Expelled to*
Mexico (Oct. 21, 2021), <https://bit.ly/3q6MNaE>; see also Human Rights First, *Human*
Rights Travesty, *supra* n.22.

28 ⁶² Ryan Devereaux, *Biden’s Border Agenda Collides With the Realities Of Mexico’s*
Violence, The Intercept (June 7, 2021), <https://bit.ly/3yuTZRH>.

1 100. People who are still stranded in Mexico are often deprived of access to
2 basic needs, including housing, food, clean water, and medical care.⁶³ As the
3 Women’s Refugee Commission recently reported from Tijuana, “[t]he lack of
4 permanent legal status in Mexico . . . has prohibited many individuals from getting a
5 job, securing stable housing, or accessing medical care.”⁶⁴ Finding work is difficult,
6 in large part due to discrimination. Individuals who are lucky enough to find work are
7 frequently relegated to low-paying jobs in the informal economy.

8 101. Asylum-seeking individuals who remain in Mexico must maintain a
9 temporary legal status to avoid detention or deportation by Mexican authorities. If an
10 individual leaves Mexico, Mexican authorities confiscate the document conferring
11 that status at the time of their departure. Should such an individual need to reenter
12 Mexico to access a port of entry, there is no guarantee that the Mexican government
13 would grant them temporary legal status, without which the individual would risk
14 detention or deportation while transiting through Mexico. Consequently, many
15 individuals subjected to MPP feel compelled to stay in Mexico to preserve their
16 chance of returning to the United States to pursue their asylum claims.

17 102. Dangerous and unstable conditions persist for many individuals subjected
18 to the Protocols who remain stranded outside the United States, including Individual
19 Plaintiffs and similarly situated individuals. Many of these individuals are still in
20 Mexico. Some have sought safety in third countries, while others have been forced to

21
22 ⁶³ See, e.g., Human Rights First, *Failure to Protect, supra* n.59, at 28–31; Global
23 Response Management, *Migration in 2021: Has Anything Really Changed?* (June
24 2021), <https://bit.ly/321yPif>; Tom K. Wong, *Seeking Asylum: Part 2*, at 4, U.S.
25 Immigration Policy Center (Oct. 29, 2019), <https://bit.ly/31NbfCu>; see also Sumiko
26 Keil, *Migrant Shelter in Mexicali Desperate for Help Amid the Pandemic*, KYMA &
27 KEYC (Aug. 6, 2020), <https://bit.ly/3mtKMC1>; Julia Ainsley, *As COVID-19 Looms,*
28 *Conditions for Migrants Stalled at U.S. Border Are a ‘Disaster in the Making’*, NBC
News (May 12, 2020), <https://nbcnews.to/3231PZd> (reporting that although Mexican
law purports to 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).

⁶⁴ Women’s Refugee Commission, *Asylum Denied: Remain in Mexico 2.0* (Dec.
2021), at 4, <https://bit.ly/3E69VuY>.

1 return to their home countries, where they risk the very persecution that caused them
2 to flee in the first place.

3 **B. Through the Protocols, Defendants Have Obstructed Individuals’**
4 **Access to the U.S. Asylum System**

5 103. Individuals subjected to the Protocols who remain stranded outside the
6 United States continue to face daunting barriers to vindicating their statutory and
7 constitutional rights, including obstacles to accessing legal representation in pursuing
8 their claims for asylum. *See supra* at Section III.

9 104. Being stranded outside the United States obstructs Individual Plaintiffs’
10 ability to identify, retain, and consult with legal representatives familiar with U.S.
11 immigration law. Many individuals lack consistent access to phone or internet service,
12 making communication with legal service providers in the United States extremely
13 challenging. Lack of access to technology has also prevented individuals in MPP from
14 gathering required documentation and other evidence to support their asylum claims.

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

19 106. Rates of legal representation of asylum seekers reflect the challenges
20 imposed by MPP. According to EOIR records, from fiscal year 2001 through
21 November 2021, over 80 percent of individuals who received decisions in their
22 asylum cases had representation in their immigration proceedings.⁶⁵ By contrast, 90
23 percent of individuals subjected to the Protocols were unrepresented in their
24 proceedings.⁶⁶

25 _____
26 ⁶⁵ As of November 2021, only 122,950 individuals (around 20 percent) who received
27 decisions in their asylum cases were unrepresented. TRAC Immigration, *Asylum*
Decisions, supra n.16 (filters set to “Immigration Court” and “Represented”).

28 ⁶⁶ As of October 2021, only 7,273 (10 percent) of the 71,071 individuals subjected to
MPP had legal representation. *See* TRAC Immigration, *Details on MPP, supra* n.1
(filters set to “Hearing Location: All” and “Represented: Represented”).

1 107. Even asylum seekers who have been able to secure some form of legal
2 representation, like Individual Plaintiffs Chepo Doe, Reina Doe, and Carlos Doe, face
3 serious barriers to communication with their representatives. Individuals often lack
4 access to private spaces where they can have confidential conversations with
5 attorneys or accredited representatives, either in person or by phone. This lack of
6 confidentiality can lead individuals to withhold information that they are afraid to
7 share within earshot of others and impedes trust-building between legal
8 representatives and clients.

9 108. Given the high stakes in asylum cases, legal representation is critical to
10 ensure that motions to reopen and BIA appeals comply with applicable requirements
11 and that applicable claims are presented as completely as possible. Legal assistance
12 is also essential to navigate the complicated process of restarting terminated cases
13 through administrative avenues. However, by forcing Individual Plaintiffs and other
14 similarly situated individuals to remain stranded in precarious circumstances outside
15 the United States, Defendants have effectively deprived them of access to legal
16 representation throughout their removal proceedings and thereby prevented them
17 from pursuing their asylum claims.

18 109. According to one report analyzing government data after the MPP wind-
19 down began, “the likelihood of asylum seekers [subjected to MPP] being represented
20 by an attorney increases after the person is paroled into the United States and increases
21 the longer the person is in the United States.”⁶⁷ Forty-four percent of the nearly 3,000
22 individuals subjected to MPP who were returned to the United States on or before
23 January 31, 2021, were able to secure legal representation by April 2021, compared
24 to just nine percent of individuals who remained stranded in Mexico.⁶⁸

25
26
27 ⁶⁷ TRAC Immigration, *Now Over 8,000 MPP Cases Transferred Into United States*
28 *Under Biden* (May 11, 2021), <https://bit.ly/3q1Y6B6>.

⁶⁸ *Id.*

1 **C. Defendants’ Policies Harm Individual Plaintiffs**

2 **1. Plaintiff Lidia Doe**

3 110. On or around May 15, 2019, Plaintiff Lidia Doe and her granddaughter
4 crossed the U.S.-Mexico border to seek asylum.

5 111. Defendants apprehended and detained Lidia and her granddaughter for
6 approximately three days. An officer served Lidia with a Notice to Appear and
7 instructed her to present herself at the San Ysidro port of entry on July 23, 2019, for
8 her first immigration hearing. Immigration officers provided Lidia with a list of pro
9 bono attorneys before her release. Defendants then returned her and her
10 granddaughter to Mexico pursuant to the Protocols. Defendants did not provide Lidia
11 and her granddaughter with any resources or support for survival, safety, or general
12 well-being.

13 112. Following their return to Mexico, Lidia and her granddaughter spent two
14 weeks at a crowded migrant shelter in Mexicali. The shelter was filthy and reeked of
15 marijuana. They often went hungry because Lidia initially had no income and they
16 could not afford to buy food. Although Lidia eventually found work cleaning houses,
17 she has not been able to work for the last month and a half due to severe pain resulting
18 from chronic high blood pressure. Her lack of employment authorization has made it
19 extremely difficult for her to find work that is less physically challenging than
20 cleaning houses, and it was only until recently that she was able to secure a part-time
21 job preparing food at a taco stand.

22 113. On July 23, 2019, Lidia and her granddaughter made the dangerous
23 journey by bus to the San Ysidro port of entry for her first immigration hearing. She
24 appeared in immigration court without representation. The immigration judge gave
25 Lidia a list of free legal service organizations and advised her to find an attorney to
26 represent her. After the hearing, Defendants returned Lidia and her granddaughter to
27 Mexico with instructions to return to the San Ysidro port of entry on the day of her
28 next hearing.

1 114. Lidia's attempts to contact the legal service providers on the list were
2 unavailing. She was unable to reach any of them despite multiple attempts prior to
3 each scheduled hearing.

4 115. Lidia and her granddaughter returned to the San Ysidro port of entry for
5 subsequent hearings on August 28, 2019 and September 9, 2019. At each of these
6 hearings, the immigration judge advised Lidia of her right to seek and retain counsel.
7 After each hearing, Defendants again returned Lidia and her granddaughter to
8 Mexico.

9 116. Lidia's next immigration court hearing was scheduled for March 9, 2020,
10 but she was too sick to go. Lidia, who suffers from chronic high blood pressure, had
11 been hospitalized two nights before her hearing due to a hypertensive crisis and was
12 released from the hospital the day before her hearing. When Lidia failed to appear for
13 her hearing, the immigration judge terminated her proceedings. Lidia does not know
14 how to get her case back on the active docket.

15 117. Lidia and her granddaughter have been living in Mexicali since her
16 asylum proceedings were terminated. As foreigners without legal status in Mexico,
17 they are extremely vulnerable to abuse. On one occasion, Lidia received a call from
18 a man who identified himself as a lawyer and asked for her by name. The man
19 informed Lidia that her request to enter the United States had been approved and
20 requested contact information for her sponsor in the United States. After Lidia
21 provided her son-in-law's contact information, the man convinced her son-in-law to
22 send him \$2,000, ostensibly to finalize Lidia's travel to the United States. The man
23 subsequently demanded that Lidia's son-in-law send more money and threatened to
24 harm Lidia and her granddaughter if he failed to do so. He also called Lidia directly
25 to demand funds, threatening her that she would pay the consequences if she did not
26 comply.

27 118. Lidia and her granddaughter both suffer from potentially life-threatening
28 medical conditions. Lidia has chronic high blood pressure, which requires medication,

1 and her granddaughter has a heart condition known as tachycardia. Their inconsistent
2 access to prescribed medication and reliable medical care in Mexico put them at even
3 greater risk. Nonetheless, Lidia has stayed in Mexico to ensure that she does not lose
4 the chance to seek protection in the United States.

5 119. Without legal assistance, Lidia has faced significant challenges in
6 navigating the U.S. asylum system. As a result, she fears that she will not be able to
7 reopen her case on her own.

8 120. If permitted to return to the United States, Lidia would live with her son-
9 in-law in Iowa.

10 **2. Plaintiff Antonella Doe**

11 121. In November 2018, Plaintiff Antonella Doe, her husband, and their two
12 young daughters presented themselves at the San Ysidro port of entry to seek asylum.
13 They were directed to join a waiting list and, for the next few months, spent hours
14 every morning at the port of entry waiting for their number to be called.⁶⁹

15 122. In February 2019, Antonella and her family were finally processed for
16 entry into the United States.

17 123. Defendants detained Antonella and her family for approximately five
18 days. Defendants did not ask them if they were seeking asylum or whether they were
19 afraid to return to Mexico. Defendants then separated Antonella and her daughters
20 from her husband.

21 124. While separated from her husband, Antonella was interviewed briefly by
22 an immigration officer. She told the officer that she and her family were seeking
23 asylum from Honduras and that they were afraid to return to Mexico. The officer
24 laughed and began speaking to other immigration officers in English, a language that
25 Antonella does not understand. The officer then presented Antonella with paperwork

26 _____
27 ⁶⁹ CBP used a “metering” system to turn back asylum seekers at the border in an
28 attempt to limit the number of individuals who were permitted to access asylum at
ports of entry each day. This policy has since been declared unlawful. *See Al Otro
Lado, Inc. v. Wolf*, No. 3:17-cv-02336-BAS-KSC (S.D. Cal.).

1 in English. Antonella felt compelled to sign the paperwork despite not understanding
2 what it said. Defendants did not explain to Antonella that she and her family would
3 be returned to Mexico.

4 125. Antonella and her daughters were reunited with her husband as they were
5 boarding the van that would return them to Mexico. An immigration officer told
6 everyone boarding the van that they had to attend a hearing on March 27, 2019. The
7 officer then gave Antonella and her family a list of free legal service providers and
8 advised them to call the attorneys on the list. Antonella and her family never received
9 any instructions about how to appear for their hearing.

10 126. Defendants then returned Antonella and her family to Mexico pursuant to
11 the Protocols. Defendants did not provide them with any resources or support for
12 survival, safety, or general well-being.

13 127. A volunteer group assisted Antonella and her family in finding temporary
14 accommodations in Mexico. However, Antonella's husband was sent to a men's
15 shelter while she and her daughters were sent to a different shelter for women and
16 children. Antonella and her family later found a more permanent shelter where they
17 could stay together, but the conditions were so poor that they had to find another place
18 to live.

19 128. Antonella made numerous calls to all the attorneys on the list she had
20 received. Only a few answered. Most told Antonella they could not take her case
21 because she and her family were in Mexico. One person spoke to her only in English,
22 which Antonella did not understand, and then hung up.

23 129. Antonella and her family missed their March 27 hearing after the owner
24 of the shelter they were staying in told them that they would not be allowed to enter
25 the United States for her hearing because they lacked lawful status. On May 7, 2019,
26 the immigration judge terminated Antonella's case. Antonella did not receive a
27 decision or any notices from the court regarding the status of her case and until
28 recently, believed her case was still pending.

1 130. Antonella has continued to search for an attorney to assist with her case.
2 Even if they had an attorney, Antonella knows that communication would be difficult
3 because she and her family cannot always afford access to internet, which they need
4 to make calls and to send documents.

5 131. Antonella and her family have suffered violence and threats of violence
6 throughout their time in Mexico. In approximately June or July 2020, Antonella and
7 her family began living with a woman in Tijuana. The woman forced Antonella and
8 her family, including Antonella's young daughters, to work for her without pay in
9 exchange for housing. The woman verbally and physically abused Antonella and her
10 daughters, and repeatedly threatened to report the family to the Mexican police if they
11 disobeyed her or tried to leave the house. Antonella and her family were held against
12 their will and forced to work for approximately a year and a half before they were
13 able to escape. They currently live in fear that the woman or the Mexican police will
14 find them and harm them.

15 132. Even though Antonella and her family are at risk of serious harm or death
16 in Mexico, they have stayed there to ensure that they do not lose the chance to pursue
17 their asylum case.

18 133. Antonella registered for expanded MPP processing with UNHCR in or
19 around June or July 2021. On July 27, 2021, she received an email from UNHCR
20 confirming her registration, but she received no further information.

21 134. Without legal assistance, Antonella has faced significant challenges in
22 navigating the U.S. asylum system. As a result, she fears that she and her family will
23 not be able to pursue their case on their own.

24 135. If permitted to return to the United States, Antonella and her family would
25 live with her mother's friend in North Carolina.

26 **3. Plaintiff Rodrigo Doe**

27 136. On or around May 5, 2019, Plaintiff Rodrigo Doe crossed the U.S.-
28 Mexico border to seek asylum.

1 137. Defendants apprehended and detained Rodrigo for approximately two
2 days. Before returning him to Mexico, Defendants served Rodrigo with a Notice to
3 Appear and instructed him to present himself at the San Ysidro port of entry on July
4 18, 2019 for his first immigration hearing. Defendants told Rodrigo that he had to
5 wait in Mexico until his next hearing. Defendants did not provide him with any
6 resources or support for survival, safety, or general well-being.

7 138. Following his return to Mexico, Rodrigo found a shelter in Tijuana where
8 he could stay for 400 pesos (approximately \$19) per week. He eventually found a job,
9 where he must work double shifts six days a week to be able to pay his rent. He
10 sometimes goes hungry because he does not have enough money to buy food.

11 139. On July 18, 2019, Rodrigo made the dangerous journey to the San Ysidro
12 port of entry at 9:00 a.m. for his first immigration court hearing. He had to travel on
13 foot because he could not afford other transportation. Rodrigo appeared in
14 immigration court without representation. The immigration judge gave him a list of
15 free legal service providers and advised him to find an attorney to take his case.
16 Rodrigo also received several other documents, which he could not understand
17 because he cannot read in either English or Spanish. After the hearing, Defendants
18 returned Rodrigo to Mexico.

19 140. Rodrigo called the attorneys on the list multiple times. When he called,
20 either no one answered the phone, or he was told that they did not have capacity to
21 take his case.

22 141. Rodrigo again made the dangerous journey to the San Ysidro port of entry
23 for his second immigration court hearing on August 13, 2019. He still did not have
24 representation. At the hearing, the immigration judge gave him the asylum application
25 form and instructed him to fill it out before his next hearing.

26 142. Rodrigo sought assistance from Al Otro Lado, a legal service provider in
27 Tijuana, which helped him complete his asylum application in English. However,
28 they were unable to represent him in his immigration proceedings.

1 143. Rodrigo once again made the dangerous journey to the San Ysidro port
2 of entry on September 10, 2019, for his third immigration court hearing. Rodrigo
3 submitted his asylum application at this hearing.

4 144. Rodrigo's fourth hearing was scheduled for October 31, 2019. Unlike the
5 prior three hearings, the notice Rodrigo had received at his prior hearing indicated
6 that he had to be at the San Ysidro port of entry at 4:00 a.m. Aware that the road to
7 the port of entry was too dangerous to walk in the dark, Rodrigo, with the assistance
8 of a friend, booked a taxi the night before his hearing. However, the taxi never arrived,
9 and Rodrigo, who is illiterate, was unable to call for another ride. Desperate to reach
10 the port of entry, he began walking in the dark but quickly recognized the risks of
11 walking through such a high-crime area and ran back to the shelter. When Rodrigo
12 failed to appear for his hearing, the immigration judge terminated his case.

13 145. Rodrigo never received an update from the immigration court on the
14 status of his case and did not realize that it had been terminated until earlier this year.

15 146. Rodrigo has continued to seek legal assistance in his case, to no avail.
16 Because he cannot read, he relies primarily on recommendations from others. All the
17 attorneys he has called have been unable take his case.

18 147. Rodrigo has suffered violence during his time in Mexico. In or around
19 June 2021, he was assaulted while walking back to the shelter after work. Four men,
20 one of whom had a gun, approached him. After one man hit Rodrigo in the face with
21 a skateboard, the others directed him to lie face down on the ground and then stole
22 his phone and wallet.

23 148. Since Rodrigo was robbed, he has been afraid to go outside. He does not
24 leave the shelter except to go to work. In or around the middle of December 2021,
25 Rodrigo was on his way home from work when his phone was stolen. He is terrified
26 that he will be robbed or assaulted again because he lives in a dangerous area, where
27 shootings and kidnappings are common.

28

1 149. Despite the risk of harm or death Rodrigo faces in Mexico, he has stayed
2 there to ensure that he does not lose the chance to pursue his asylum case.

3 150. Rodrigo registered for expanded MPP processing with UNHCR at the
4 beginning of 2021. It was only through the process of registering with UNHCR that
5 Rodrigo discovered that his case had been terminated. Rodrigo received an email from
6 UNHCR confirming that he was registered but never received any further
7 information.

8 151. If permitted to return to the United States, Rodrigo would live with his
9 mother-in-law in California.

10 **4. Plaintiff Chepo Doe**

11 152. On February 26, 2019, Plaintiff Chepo Doe and his daughter presented
12 themselves at the San Ysidro port of entry to seek asylum.

13 153. Defendants detained Chepo and his daughter for two days. During that
14 time, an officer interviewed Chepo about his fear of returning to El Salvador. The
15 officer told Chepo that because the laws had changed under President Trump, he
16 would have to defend his case from Mexico. Defendants served Chepo with a Notice
17 to Appear and other paperwork in English but provided him with no instructions on
18 how to appear for his first hearing. Chepo learned that he would have to present at the
19 San Ysidro port of entry on April 4, 2019 only after his brother explained the
20 documents to him. On February 28, 2019, Defendants returned Chepo and his
21 daughter to Mexico pursuant to the Protocols. Defendants did not provide them with
22 any resources or support for survival, safety, or general well-being.

23 154. Following their return to Mexico, Chepo called all the attorneys on the
24 list of free legal service providers he had received, as well as attorneys he found
25 online. The few who picked up told him either that they did not travel to Mexico or
26 that Chepo would be responsible for covering the cost of their airline tickets, an
27 expense he could not afford. As a result, Chepo was unable to find representation
28 before his first immigration hearing.

1 155. On April 4, 2019, Chepo and his daughter made the dangerous journey to
2 the San Ysidro port of entry. At the hearing, Chepo requested additional time to
3 prepare his immigration case. The immigration judge scheduled his next hearing for
4 May 13, 2019.

5 156. On May 13, 2019, Chepo and his daughter again made the dangerous
6 journey to the San Ysidro port of entry. The ICE officers who transported Chepo and
7 his daughter to the immigration court told them not to speak to any attorneys in the
8 courtroom. At the hearing, the immigration judge gave Chepo an asylum application
9 and instructed him to complete it before his next hearing on or around July 25, 2019.

10 157. On or around July 25, 2019, Chepo and his daughter again made the
11 dangerous journey to the San Ysidro port of entry for their next hearing. The ICE
12 officer who transported Chepo and his daughter to the immigration court again
13 instructed him not to speak to any attorneys in the courtroom. However, when the
14 officer briefly left the courtroom, Chepo approached an attorney from Organizational
15 Plaintiff ImmDef to ask for her help. Chepo spoke to the attorney for only a few
16 minutes but gave her his contact information.

17 158. At the hearing, Chepo submitted his asylum application. Although Chepo
18 informed the immigration judge and an immigration officer that he and his daughter
19 did not feel safe in Mexico, they were returned anyway.

20 159. Following their return to Mexico, the ImmDef attorney called Chepo to
21 inform him that she could represent him. Around the same time, Chepo's daughter
22 started experiencing stomach pain and fevers. They sought medical care from a doctor
23 at a local pharmacy, who advised that Chepo's daughter needed a CT scan or an
24 ultrasound, which were only available at the local hospital. They went to the hospital
25 but were refused services because they were not Mexican citizens or residents.

26 160. During the last week of November 2019, Chepo's daughter's condition
27 worsened. Her stomach pain was so severe that she cried for two or three days straight
28

1 and began vomiting. Chepo and his daughter returned to the hospital but were again
2 refused services.

3 161. On December 3, 2019, Chepo and his daughter once again made the
4 dangerous journey to the port of entry and presented themselves for their third
5 immigration hearing. They were represented by the attorney from Plaintiff ImmDef.
6 At the hearing, Chepo answered questions about his identity, country of origin, and
7 reasons for seeking asylum. He also presented evidence in support of his asylum
8 claim. The immigration judge scheduled another hearing for February 25, 2020.

9 162. Following their return to Mexico that evening, Chepo's daughter began
10 experiencing severe pain. Fearing that his daughter might die if she did not get
11 medical care, Chepo made a desperate decision to take her back to El Salvador for
12 treatment.

13 163. When they arrived in El Salvador, Chepo immediately sought medical
14 care for his daughter. The doctors diagnosed her with necrotizing pancreatitis, a life-
15 threatening condition that is incredibly rare in young people. Following emergency
16 surgery, which lasted several hours, the doctor told Chepo that it was a miracle that
17 his daughter had survived.

18 164. Chepo and his daughter could not return to Mexico to attend their
19 February 25, 2020 hearing because of his daughter's ongoing need for medical care.
20 Their attorney attended the hearing on their behalf, explained the circumstances, and
21 asked the immigration judge to allow them to withdraw their asylum application.
22 Instead, the immigration judge ordered Chepo and his daughter removed *in absentia*.

23 165. Since returning to El Salvador, Chepo has received death threats from the
24 Barrio 18 gang. He and his daughter are currently living in a church out of concern
25 for their safety. Chepo's daughter's health remains fragile, and Chepo must constantly
26 monitor her symptoms.

27 166. If permitted to return to the United States, Chepo and his daughter would
28 live with Chepo's brother in Alabama.

1 **5. Plaintiff Yesenia Doe**

2 167. On or around July 24, 2019, Plaintiff Yesenia Doe and her son crossed
3 the U.S.-Mexico border to seek asylum.

4 168. Defendants detained Yesenia and her son for approximately three days.
5 An immigration officer interviewed Yesenia about her fear of returning to Honduras
6 but did not ask her any questions regarding her fear of return to Mexico. When
7 Yesenia expressed fear of returning to Mexico, the immigration officer told her that
8 it was “Donald Trump’s law,” and that he could not help her. Defendants gave
9 Yesenia several documents, which she did not understand because she does not speak
10 English and has limited literacy. Defendants told Yesenia that she was being returned
11 to Mexico but did not explain that she was being placed into the Migrant Protection
12 Protocols or advise her to find a lawyer. Yesenia did not know if she was being
13 deported to Mexico or could still seek asylum in the United States. Defendants then
14 returned Yesenia and her son to Mexico pursuant to the Protocols. Defendants did not
15 provide them with any resources or support for survival, safety, or general well-being.

16 169. When they arrived in Matamoros, Mexican authorities put Yesenia and
17 her son on a bus to Monterrey. When the bus arrived at the Monterrey bus station at
18 1:30 a.m., there was no one to assist Yesenia and her son, who had none of their
19 personal belongings because they had been confiscated by Defendants. They slept on
20 the street that night.

21 170. The next night, a woman approached Yesenia and offered to take them
22 somewhere safe. A car subsequently picked up Yesenia and her son, but Yesenia soon
23 realized that they had been kidnapped. Yesenia and her son were taken to a house in
24 Reynosa, where they were held with other migrants and surrounded by armed men.
25 The men asked Yesenia for the phone numbers of her family in United States, but
26 Yesenia responded that she had no family there and had lost her phone. The men
27 threatened to force her son to work for them to pay for their ransom. Approximately
28 four weeks later, Mexican police came to the house and freed Yesenia, her son, and

1 the other migrants who had been held captive. Following their release, Yesenia and
2 her son slept on the street for several nights because they had no money and no phone.

3 171. When Yesenia was finally able to look at the papers she had been given
4 by Defendants, she did not understand most of what they said because she does not
5 speak English and has limited literacy.

6 172. Although she knew that she was supposed to present herself at the
7 Brownsville port of entry on September 26, 2019, she was terrified that she and her
8 son would be kidnapped again. Out of desperation, Yesenia decided to return to
9 Honduras in late August 2019, and missed her September 26, 2019 court hearing.
10 When she failed to appear, the immigration judge ordered her removed *in absentia*.

11 173. In or around late September 2019, Yesenia and her son again fled
12 Honduras after receiving death threats from the same gang that had originally forced
13 them to flee. After traveling for about three months, during which they had to stop
14 frequently to work or beg for money to cover their expenses, they finally arrived in
15 Monterrey.

16 174. During their journey back to Mexico, Yesenia showed her court papers to
17 a fellow traveler who explained that the appointment on September 26 had been for a
18 hearing in immigration court. This was the first time that Yesenia understood that she
19 had missed a court hearing, but she did not know how that would affect her case. She
20 had no idea that she had been ordered removed or that she needed to find legal
21 representation.

22 175. After arriving in Monterrey, Yesenia and her son found accommodations
23 in a church where they remained for approximately a year. They were unable to go
24 directly to the border due to limited funds. While they were saving money to resume
25 their travel, Yesenia fell ill, likely with COVID-19, for an extended period.

26 176. In early January 2021, Yesenia and her son departed Monterrey for the
27 border, but were kidnapped en route. The kidnapers, whom Yesenia believes to be
28 affiliated with the Cartel del Golfo, locked them in a house for approximately three

1 months. Yesenia and her son were forced to sleep on the floor, deprived of food,
2 beaten, forced to make and distribute food, and punished for praying. During this
3 time, Yesenia began having severe nerve pain on the left side of her body, and the left
4 side of her face became paralyzed.

5 177. Yesenia and her son were eventually freed after her family collected
6 enough money to pay their ransom. The kidnappers took them to the bus station in
7 Reynosa. Before leaving, the kidnappers took their photos and ordered Yesenia not
8 to return to that area. The kidnappers informed Yesenia that they would circulate her
9 photo widely so that everyone would know who she was and would be on the lookout
10 for her.

11 178. Yesenia and her son then made their way back to Monterrey, where they
12 remained in hiding for several months in the same church where they had previously
13 lived. During that period, another individual staying at the church gave Yesenia the
14 phone number of an attorney who assisted her in filing a request for a humanitarian
15 exemption to Title 42. Yesenia encountered significant difficulties in communicating
16 with the attorney due to poor cell service in Mexico, lack of funds to pay for phone
17 minutes, and her inability to find quiet, confidential spaces where she could speak
18 freely. Although her humanitarian exemption request was approved, immigration
19 officers at the Eagle Pass port of entry ultimately refused to process Yesenia and her
20 son into the United States because of their prior placement in MPP.

21 179. Shortly thereafter, Yesenia and her son moved to a house in Monterrey,
22 where a woman offered to give them a room if Yesenia worked as her housekeeper.
23 But in late November 2021, Yesenia and her son were forcibly evicted without their
24 belongings. They slept on the street for several days before a group of nuns in
25 Monterrey took them in.

26 180. Yesenia continues to experience severe pain in the left side of her body,
27 and the left side of her face remains paralyzed.

28

1 181. Even though Yesenia and her son are at risk of serious harm or death in
2 Mexico, they have stayed there so that they can attempt to pursue their asylum case.

3 182. With the assistance of the same attorney who had filed her humanitarian
4 exemption request, Yesenia registered for expanded MPP processing in or around
5 August 2021. She received an email from UNHCR confirming her registration but
6 later learned that the wind-down process had been halted.

7 183. Yesenia has been unable to find counsel who can represent her in her
8 removal proceedings and fears that she will be unable to reopen her case on her own.

9 184. If permitted to return to the United States, Yesenia would live with a
10 friend in Texas.

11 **6. Plaintiff Sofia Doe**

12 185. On or around May 15, 2019, Plaintiff Sofia Doe, her husband, and their
13 son crossed the U.S.-Mexico border to seek asylum.

14 186. Defendants detained Sofia and her family for eight days. After separating
15 Sofia and her child from her husband, an immigration officer interviewed her about
16 her fear of returning to Honduras. The officer informed her that the United States was
17 not for people like her and that only important people are granted asylum. The officer
18 did not ask Sofia about her fear of return to Mexico and insisted that she sign a
19 document in English. When Sofia refused to sign the document because she did not
20 understand it, the officer told her that she would be sent to Mexico anyway and not
21 permitted to enter the United States.

22 187. Defendants served Sofia with a Notice to Appear and instructed her to
23 present herself at the San Ysidro port of entry on August 12, 2021 for her first
24 immigration hearing. Defendants then returned Sofia and her family to Mexico
25 pursuant to the Protocols. Defendants did not provide Sofia with any resources or
26 support for survival, safety, or general well-being.

27 188. Sofia and her family stayed temporarily with a family they had met on
28 their way to the border. After a few months, Sofia's husband found a job that enabled

1 them to rent a room. However, after Sofia’s husband lost his job, they could no longer
2 afford to pay rent and went to live in a shelter. They were able to rent another room
3 beginning on or around June 2020, when Sofia’s husband was able to find another
4 job.

5 189. Since then, Sofia’s husband has had a difficult time finding stable work
6 due to pervasive animosity towards migrants in Mexico. Sofia cannot work because
7 she must stay with her child, who has respiratory issues that require constant care and
8 monitoring to make sure he can breathe.

9 190. On August 12, 2019, Sofia and her family made the dangerous journey to
10 the San Ysidro port of entry. They appeared in immigration court without legal
11 representation. The immigration judge gave them a list of free legal service providers
12 and advised them to bring their lawyer to their next hearing. They also received an
13 asylum application form, which they were instructed to complete in English. After
14 their hearing, Defendants returned Sofia and her family to Mexico with instructions
15 to appear for their next hearing on September 11, 2019.

16 191. Sofia and her husband tried calling the numbers on the list many times,
17 but no one answered. They also sought help from Al Otro Lado, which provided some
18 assistance with their asylum application.

19 192. On September 11, 2019, Sofia and her family again made the dangerous
20 journey to the San Ysidro port of entry for their second hearing. They again appeared
21 without legal representation. When the immigration judge asked Sofia and her
22 husband why they did not have a lawyer, they explained that they had not been able
23 to reach anyone on the list of free legal service providers and could not afford to pay
24 for a lawyer. The immigration judge told them that they had to find a lawyer in order
25 for him to hear their case. Sofia and her husband attempted to file their asylum
26 application, but the judge rejected their filing because it was incomplete. After the
27 hearing, Defendants returned Sofia and her family to Mexico with instructions to
28 appear for their next hearing on October 23, 2019.

1 193. Sofia and her family were unable to attend their third hearing on October
2 23, 2019 for medical reasons. Sofia was approximately three months into a high-risk
3 pregnancy, and she started bleeding the night before the hearing. Sofia had just been
4 released from the hospital with instructions to go on bed rest and return for a doctor's
5 appointment in the morning. Having previously suffered a miscarriage, Sofia was
6 terrified of losing her baby and followed the doctor's instructions. When Sofia failed
7 to appear for her hearing, the immigration judge issued an *in absentia* removal order.

8 194. Sofia does not know how to seek reopening of her case or what evidence
9 she would need to do so. She and her husband tried calling the numbers on the free
10 legal service provider list again but have been unable to find legal representation.
11 Even if they had counsel, Sofia knows that communication would be difficult because
12 she cannot afford continuous access to the internet and the electricity in the area where
13 she lives frequently goes out.

14 195. Sofia's family has faced violence or threats of imminent violence
15 throughout their time in Mexico. In February 2021, Sofia's husband was assaulted at
16 his workplace. He and Sofia tried to report the assault to the Mexican police, but the
17 police never followed up with them.

18 196. On or around December 5, 2021, Sofia's husband disappeared. Neither
19 she nor any of their family in Honduras or acquaintances in Mexico have heard from
20 him since he left to look for work. A few days after he disappeared, Sofia tried to
21 report him to the Mexican police as a missing person, but they told her to wait and
22 see if he returned. Sofia fears that he has been deported, kidnapped, or worse. She is
23 terrified for her husband and does not know how she will support herself and her
24 child, whose condition has continued to deteriorate. Sofia rarely leaves the house
25 where she and her husband rent a room because they live in a dangerous area. Several
26 weeks ago, a couple was killed a block away from where Sofia lives.

27 197. Even though Sofia is at risk of serious harm or death in Mexico, she has
28 stayed there to ensure that she does not lose the chance to pursue her asylum case.

1 208. Sofia’s husband registered the family for expanded MPP processing with
2 UNHCR in or around June 2021, but, to Sofia’s knowledge, they have received no
3 further information.

4 209. If permitted to return to the United States, Sofia and her family would live
5 with her sister-in-law in California.

6 **7. Plaintiff Gabriela Doe**

7 200. On or around July 12, 2019, Plaintiff Gabriela Doe and her daughter
8 crossed the U.S.-Mexico border to seek asylum.

9 201. Defendants detained Gabriela and her daughter for approximately two
10 days. During that time, an immigration officer asked Gabriela about her fear of
11 returning to Honduras. Defendants served Gabriela with a Notice to Appear and
12 instructed her to present herself at the Laredo port of entry on September 16, 2019,
13 for her first immigration hearing.

14 202. Gabriela told the immigration officers that she feared returning to Mexico
15 because she had been kidnapped and threatened by what she believes to be the Cartel
16 del Golfo on her way to the border. The officers responded by telling her she had to
17 return to Mexico to wait for her immigration hearing and instructing her to present
18 herself at the Laredo port of entry on September 16, 2019. Defendants then returned
19 Gabriela and her daughter to Mexico pursuant to the Protocols. Defendants did not
20 provide her with any resources or support for survival, safety, or general well-being.

21 203. Following their return to Nuevo Laredo, Gabriela and her daughter had
22 nowhere to go. Mexican immigration officials put them on a bus to Monterrey. When
23 they arrived late at night, Gabriela had to beg on the street to find shelter for the night.
24 A man let Gabriela and her daughter stay on the floor of his house, but Gabriela felt
25 so unsafe that she and her daughter left after only a few days. Fortunately, they later
26 found a room to rent.

27 204. On September 16, 2019, Gabriela made the dangerous journey from
28 Monterrey to Nuevo Laredo. To arrive at 4:30 a.m. at the Laredo port of entry,

1 Gabriela and her daughter had to leave Monterrey at around midnight. Gabriela
2 appeared in immigration court without legal representation. The immigration judge
3 gave her a list of legal service providers and advised her to find an attorney to take
4 her case. The immigration judge also provided Gabriela with an asylum application
5 and instructed her to complete and submit it in English at her next hearing. After her
6 hearing, Defendants returned Gabriela and her daughter to Mexico with instructions
7 to appear for her next hearing on October 16, 2019.

8 205. Gabriela called every attorney on the list multiple times, but no one
9 answered her calls. She also called what she believed to be a U.S. immigration hotline
10 number to request additional phone numbers of free legal service providers, but she
11 never reached anyone. Because she was unable to obtain legal assistance, Gabriela
12 attempted to fill out her asylum application by herself, painstakingly translating the
13 items on the English-language form on her phone.

14 206. Gabriela attended her second immigration court hearing on October 16,
15 2019. As before, she and her daughter left Monterrey around midnight in order to
16 arrive at the Laredo port of entry by 4:30 a.m. At her second hearing, Gabriela
17 attempted to submit her asylum application, but the immigration judge rejected it as
18 incomplete and instructed Gabriela to return to court in November with a completed
19 application.

20 207. After her second hearing, Gabriela attempted to further complete her
21 asylum application by herself, using her phone to translate her answers. Gabriela
22 submitted her asylum application at her third immigration court hearing on November
23 6, 2019. Once again, she and her daughter had to leave Monterrey at around midnight
24 in order to arrive at the Laredo port of entry by 4:30 a.m. After her third hearing,
25 Defendants returned Gabriela and her daughter to Mexico with instructions to appear
26 for another hearing on December 12, 2019.

27 208. On December 12, 2019, Gabriela and her daughter once again made the
28 dangerous journey to the Laredo port of entry for her fourth hearing, again leaving

1 around midnight from Monterrey to arrive at the port of entry by 4:30 a.m. Gabriela
2 remembers feeling very confused at her fourth hearing. The immigration judge told
3 her that she did not have enough evidence and denied her asylum claim. She recalls
4 the immigration judge asking her if she wanted to appeal and responding yes. After
5 the hearing, Defendants returned Gabriela and her daughter to Mexico under the
6 Protocols, with instructions to appear at the Laredo port of entry on January 27, 2020,
7 at 4:30 a.m.

8 209. Almost immediately following their return to Mexico, Gabriela and her
9 daughter were seized by what she believes to be members of the Noroeste Cartel and
10 forced into a car. These men drove Gabriela and her daughter around for several
11 hours, asking Gabriela for phone numbers of individuals from whom they could
12 demand a ransom. They hit her face so hard that her lip split and they pulled her
13 repeatedly by her hair. The cartel members eventually released Gabriela and her
14 daughter, threatening to kill Gabriela if they ever saw her in Nuevo Laredo again.

15 210. After being released, Gabriela sought help from Mexican immigration
16 officials, who directed her to a local pastor. Fearing for their safety, Gabriela and her
17 daughter remained in hiding in the pastor's shelter for almost a year. Because she was
18 unable to file a timely notice of appeal to the BIA, Gabriela's order of removal became
19 final.

20 211. In March 2021, Gabriela returned to the Laredo port of entry and
21 explained to U.S. immigration officers that she had been kidnapped and forced into
22 hiding on the day she was supposed to present at the Laredo port of entry. The officers
23 told her that she could not enter the United States because the immigration judge had
24 already denied her case.

25 212. Gabriela has faced violence and threats of imminent violence throughout
26 her time in Mexico. She currently lives in the same shelter in Nuevo Laredo that she
27 helps to run. However, she has recently come under threat because of her work for
28 the shelter. In approximately early December 2021, a man threatened Gabriela and a

1 co-worker in the shelter, telling them that he worked with the Noroeste Cartel and
2 that they would pay for their work with the shelter. Since then, cartel members in
3 Nuevo Laredo have followed Gabriela, fired gunshots at and around the shelter where
4 she lives, and monitored the entrance to the shelter. Gabriela does not leave the shelter
5 out of fear for her safety.

6 213. The pastor who runs the shelter and an attorney who occasionally visits
7 the shelter have explained to Gabriela that she would have to reopen her case in order
8 to pursue her asylum claim. However, she does not know how to initiate that process
9 or what evidence she would need to do so. Gabriela has continued to search for an
10 attorney to assist with her case, but to no avail.

11 214. Even though Gabriela is at risk of serious harm or death in Mexico, she
12 has stayed there to ensure that she does not lose the chance to pursue her asylum case.

13 215. If permitted to return to the United States, Gabriela would live with a
14 friend in Texas.

15 **8. Plaintiff Ariana Doe**

16 216. Plaintiff Ariana Doe and her daughter presented themselves at the
17 Brownsville port of entry in September 2019 to seek asylum.

18 217. Defendants detained Ariana and her daughter for approximately one
19 week. Defendants then served Ariana with a Notice to Appear and instructed her to
20 return to the port of entry for her first immigration hearing on December 3, 2019.
21 While she was detained, Ariana developed a serious stomach infection for which she
22 had to be hospitalized. Although Ariana told immigration officers that she feared
23 returning to Mexico, Defendants still sent her and her daughter back under the
24 Protocols. Defendants recommended that Ariana find legal representation but did not
25 tell her how to do so. They also did not provide Ariana and her daughter with any
26 resources or support for survival, safety, or general well-being.

27 218. Ariana felt “abandoned like a dog” on the Mexican side of the border. She
28 and her daughter were forced to sleep on the ground by the river for approximately a

1 week until a humanitarian aid group gave them a tent. Eventually, Ariana found work
2 in a beauty salon that enabled her to rent a small apartment, where she and her
3 daughter slept on the floor because they could not afford furniture.

4 219. In December 2019, Ariana and her daughter made the dangerous journey
5 to the Brownsville port of entry for her first immigration hearing. She appeared in
6 immigration court without legal representation. At the hearing, the immigration judge
7 spoke by webcam to approximately fifteen asylum seekers in the same room. Ariana
8 received an asylum application, which she was instructed to complete in English and
9 submit at her next hearing, along with any relevant evidence in support of her asylum
10 claim. Ariana was also given a list of legal service providers to call for possible
11 representation and informed that her next hearing would be on January 2, 2020.
12 Defendants then returned Ariana and her daughter to Mexico under the Protocols.

13 220. Ariana called every attorney on the list multiple times but was not able to
14 reach any of them. Unable to find a lawyer to represent her, Ariana prepared her
15 asylum application herself. After completing the application in Spanish and attaching
16 the evidence she was able to gather, she paid to have these documents translated into
17 English, a language that she does not speak or understand. She thus had no way of
18 knowing whether the translation was accurate.

19 221. In January 2020, Ariana and her daughter again made the dangerous
20 journey to the Brownsville port of entry for her next immigration hearing. Ariana did
21 not understand that this hearing would address the merits of her asylum application.
22 Ariana represented herself at the hearing. At the end of the hearing, the immigration
23 judge denied her asylum claim. Defendants again returned Ariana and her daughter
24 to Mexico under the Protocols.

25 222. Ariana submitted a timely notice of appeal to the BIA but was unable to
26 submit a supporting brief because she did not know how to do so and, despite diligent
27 efforts, was still unable to find legal representation. As a result, her appeal was
28 dismissed, and her order of removal became final.

1 223. Ariana does not know how to seek reopening of her case or what evidence
2 she would need to do so.

3 224. Since their asylum claim was denied, Ariana and her daughter have been
4 living in Matamoros, where crime rates are high, gang violence is prevalent, and dead
5 bodies are routinely found within walking distance of their apartment. A powerful
6 cartel member in Matamoros has repeatedly sexually propositioned Ariana, forcing
7 her to hide to avoid contact with him. Ariana and her daughter feel so unsafe that they
8 leave their apartment only to go to Ariana's workplace and to buy food. Even though
9 Ariana and her daughter face a risk of serious harm in Mexico, they have stayed there
10 to ensure that they do not lose a chance to pursue their asylum case.

11 225. If permitted to return to the United States, they would live with family in
12 Massachusetts.

13 **9. Plaintiff Francisco Doe**

14 226. In late July 2019, Plaintiff Francisco Doe crossed the U.S.-Mexico border
15 to seek asylum.

16 227. Defendants detained Francisco for approximately seven days.
17 Defendants then served Francisco with a Notice to Appear and instructed him to
18 return to the Brownsville port of entry in October 2019 for his first immigration
19 hearing. Defendants told Francisco that he had to wait in Mexico, but did not explain
20 how to appear for his hearing. Although Francisco expressed a fear of returning to
21 Mexico, Defendants still sent him back pursuant to the Protocols. Defendants did not
22 provide him with any resources or support for survival, safety, or general well-being.

23 228. During his first three months in Matamoros, Francisco was homeless and
24 unemployed. Fortunately, he met people who were able to understand the documents
25 Defendants had given him and explained when and where he had to go for his
26 immigration hearing.

27 229. In October 2019, Francisco made the dangerous journey to the
28 Brownsville port of entry on the date of his hearing. He left his home before 3 a.m.

1 so he could arrive at the port of entry four hours before his hearing, as required. The
2 immigration judge gave Francisco an asylum application in English, which he was
3 instructed to complete in English and submit at his next hearing on November 7, 2019.
4 The immigration judge also gave Francisco a list of legal service providers to contact
5 regarding possible representation. Although Francisco told the immigration judge that
6 he feared returning to Mexico, Defendants sent him back with instructions to appear
7 for his next hearing.

8 230. Upon returning to Mexico, Francisco called the attorneys on the list, but
9 most did not answer or return his calls. The few who responded said they did not
10 assist individuals outside the United States.

11 231. After being homeless for three months, Francisco eventually found work
12 in Matamoros and rented a room with some coworkers.

13 232. In November 2019, Francisco again made the dangerous journey to the
14 Brownsville port of entry for his next hearing. He left his home before 3 a.m. so he
15 could arrive at the port of entry on time. At the hearing, Francisco was unable to
16 submit a completed asylum application because he had been unable to find anyone in
17 Matamoros who could translate the application into Spanish or help him fill it out in
18 English. The immigration judge instructed him to bring the completed application to
19 his next hearing in February 2020. Defendants again returned Francisco to Mexico
20 with instructions to appear for his next hearing.

21 233. Francisco eventually found someone in Matamoros who agreed to help
22 him with his asylum application in exchange for payment. Although Francisco did
23 not know if the individual was qualified to provide legal assistance, he felt that he had
24 no other option.

25 234. Francisco had difficulty communicating with the individual about his
26 case. He also noticed that the Spanish translations of his application sometimes
27 omitted required information or included irrelevant information. Francisco is not sure
28 if the individual submitted any supporting evidence with his asylum application.

1 235. Francisco once again made the journey to the Brownsville port of entry
2 for his final hearing in July 2020. He again left his home before 3 a.m. so he could
3 arrive at the port of entry four hours before his hearing. Francisco could not afford to
4 pay the individual who had prepared his asylum application to represent him at his
5 hearing, so he had to represent himself.

6 236. After Francisco testified about his experiences in El Salvador and
7 Mexico, the immigration judge denied his asylum application. She ordered his return
8 to Matamoros and told him he could appeal the decision.

9 237. Following his return to Matamoros, Francisco asked the same individual
10 who had assisted with his asylum application to file an appeal. Although the
11 individual claimed to have submitted the necessary documents, Francisco later
12 learned that his appeal had been rejected because there was no proof of service on the
13 government. Francisco has had no further contact with the individual, who never told
14 him that his appeal had been rejected and did not file a corrected appeal. The
15 individual stopped returning Francisco's calls.

16 238. Francisco has continued to search for an attorney to assist with his case.
17 He does not know how to seek reopening of his case or what evidence he would need
18 to do so.

19 239. If allowed to return to the United States, Francisco would live with his
20 mother in Florida.

21 **10. Plaintiffs Reina Doe and Carlos Doe**

22 240. On or around October 8, 2019, Plaintiff Reina Doe and her husband,
23 Plaintiff Carlos Doe, their two children, and Carlos's son crossed the U.S.-Mexico
24 border to seek asylum.

25 241. Defendants detained Reina, Carlos, and their family for approximately
26 four days. Defendants separated Reina and her daughters from Carlos and his son.
27 Defendants served Reina with a Notice to Appear and told her that she would be
28 returned to Mexico to await her hearing. They also gave Reina other paperwork in

1 English, a language she does not understand. When Reina indicated that she had
2 suffered harm in Mexico, the officer responded that he was sending her and her family
3 back to Mexico because it was the “Trump era.” Defendants similarly served Carlos
4 with a Notice to Appear and told him he would be returned to Mexico. Defendants
5 then returned Reina, Carlos, and their family to Mexico without any resources or
6 support for survival, safety, or general well-being.

7 242. Defendants left Reina, Carlos, and their family in Nuevo Laredo, Mexico.
8 When Reina and Carlos asked Mexican immigration officials for help, the officials
9 initially told them to go back to their country. The officials then pointed to trucks
10 parked by the building, which they said belonged to a cartel waiting to take them
11 away. With help from a local pastor, Reina, Carlos, and their family made it safely to
12 a shelter.

13 243. Carlos has struggled to find work in Mexico, due in large part to
14 discrimination against migrants. He has been unable to find stable work, and instead
15 has had to work odd- and part-time jobs to support his family.

16 244. On November 14, 2019, Reina, Carlos, and their family made the
17 dangerous journey to the Laredo port of entry. They appeared in immigration court
18 without legal representation. The immigration judge gave Reina and Carlos a list of
19 legal service providers and advised them to find an attorney to represent them. Reina
20 and Carlos informed the immigration judge that they had completed their asylum
21 applications in Spanish, but the immigration judge told them it had to be in English.
22 At the hearing, Reina and Carlos expressed fear of being returned to Mexico. After
23 conducting a non-refoulement interview, Defendants returned Reina, Carlos, and their
24 family to Mexico.

25 245. Upon their return, Reina, Carlos, and their family were caught in a gun
26 fight between two cartels in Nuevo Laredo. Carlos’s son was so traumatized by the
27 violence he had witnessed that he ran away and entered the United States without his
28

1 family. For several weeks, Reina and Carlos did not know where he was and feared
2 that he had been kidnapped.

3 246. Reina diligently attempted to find an attorney to represent her, Carlos, and
4 their family in their removal proceedings. She made numerous attempts to call each
5 of the attorneys on the list she was given, but no one answered her calls. She then
6 tried to look online for attorneys, but without success.

7 247. In or around December 2019, Reina, Carlos, and their family survived an
8 attempted kidnapping by individuals who they believe to be cartel members. After the
9 cartel members assaulted Carlos, Reina, and their daughter, Reina screamed for help,
10 and Mexican municipal police officers arrived and promised to take Reina, Carlos,
11 and their family to a “safe place.” Instead, the police put them in the back of a van,
12 transported them to the U.S.-Mexico border, and warned them to keep silent about
13 the incident before abandoning them.

14 248. On January 16, 2020, Reina, Carlos, and their family made the dangerous
15 journey to the Laredo port of entry for their second hearing. At the hearing, Reina and
16 Carlos submitted their asylum applications, along with supporting evidence, which
17 they had translated into English using Reina’s phone. Reina and Carlos again
18 expressed fear of returning to Mexico and were given a second non-refoulement
19 interview. However, Defendants again returned Reina, Carlos, and their family to
20 Mexico.

21 249. On March 17, 2020, Reina, Carlos, and their family made the dangerous
22 journey to the Laredo port of entry for their third hearing. Once again, Reina and
23 Carlos did not have legal representation. The immigration judge denied their cases
24 and gave them paperwork in English that they did not understand. Defendants then
25 gave Reina and Carlos hearing notices for May 2020 and returned them to Mexico.

26 250. Reina and Carlos did not submit notices of appeal to the BIA because they
27 did not know how to do so. As a result, their removal orders became final. Reina and
28 Carlos attempted to present themselves at the Laredo port of entry in May 2020, but

1 were prohibited from entering due to the COVID-19 pandemic, and given another
2 appointment for June 2020. When they went to the Laredo port of entry in June 2020,
3 they were again told they could not enter due to the COVID-19 pandemic.

4 251. In early 2021, Reina made contact with attorneys at a legal services
5 organization who agreed to review Carlos and her cases and explained that they would
6 have to seek reopening in order to pursue their asylum claims. Communication with
7 the attorneys has been challenging because Reina does not always have access to a
8 working phone or stable internet. Due to their limited resources, the family shares one
9 phone, and Reina sometimes must wait days to be able to afford more minutes.

10 252. Reina and her family have faced violence or threats of imminent violence
11 throughout their time in Mexico. In addition to surviving an attempted kidnapping by
12 cartel members, they have been threatened and extorted by people claiming to be able
13 to help them obtain Mexican residence permits. On another occasion, Reina, Carlos,
14 and their children were on the way to a grocery store when they were stopped by
15 Mexican municipal police. Upon learning that Reina, Carlos, and their children were
16 migrants, the police robbed them, leaving Reina and Carlos with no money to feed
17 their family that week.

18 253. Even though Reina, Carlos, and their family are at risk of serious harm or
19 death in Mexico, they have stayed there to ensure that they do not lose the chance to
20 pursue their asylum cases.

21 254. If permitted to return to the United States, Reina, Carlos, and their family
22 would live with a friend in Alabama.

23 **11. Plaintiff Dania Doe**

24 255. On or around September 10, 2019, Plaintiff Dania Doe and her daughter
25 crossed the U.S.-Mexico border to seek asylum.

26 256. Defendants detained Dania and her daughter for approximately four days.
27 Before returning them to Mexico pursuant to the Protocols, Defendants served Dania
28 with a Notice to Appear and instructed her to return to the Brownsville port of entry

1 for her first immigration hearing on October 23, 2019. Defendants did not provide
2 them with any resources or support for survival, safety, or general well-being.

3 257. Following their return to Mexico, Dania and her daughter were homeless
4 for over a year. For the first several nights, they slept on the street without any
5 blankets, food, water, money, and no extra clothing.

6 258. After an aid organization gave them a tent, Dania and her daughter began
7 living at the migrant camp in Matamoros, where they remained until around
8 December 2020. At the camp, Dania and her daughter had no access to running water
9 or electricity, no reliable place to bathe or use the restroom, and no security. Dania
10 lived in fear that anyone could enter their tent at any time. She earned some money
11 by selling food in the camp.

12 259. On October 23, 2019, Dania and her daughter presented themselves at the
13 Brownsville port of entry. They appeared in immigration court without legal
14 representation and received a list of legal service providers. When an official
15 informed Dania that her hearing would be postponed, she begged not to return to
16 Mexico. Dania was then given a non-refoulement interview, where she explained that
17 several days before the hearing, she and several other women in the migrant camp
18 had been approached by a man covered in blood, and they feared retribution from the
19 cartels for being witnesses. Nonetheless, Defendants returned Dania and her daughter
20 to Mexico with instructions to appear for her rescheduled hearing on January 8, 2020.

21 260. Dania made many calls to the attorneys on the list. The few who
22 responded told her that they did not serve clients in Matamoros. Dania ultimately
23 received assistance in filling out her asylum application from a *pro se* legal clinic.
24 Although Dania attempted to obtain documents from El Salvador, the process was
25 very slow and expensive.

26 261. Shortly after her first court appearance, in late October 2019, Dania and
27 her daughter were walking with another woman and her child when two men
28 kidnapped them and took them to a house. After separating Dania and her friend from

1 their children, the men asked the women what they knew about the bloody man they
2 had seen several days earlier. The men beat Dania and threatened to kill her daughter
3 if she did not tell the truth. They were held for approximately fifteen days, during
4 which Dania was brutally raped every single night. Dania, her daughter, and the other
5 woman and child eventually managed to escape with the assistance of another woman
6 in the house.

7 262. On January 8, 2020, Dania and her daughter presented themselves at the
8 Brownsville port of entry for their rescheduled first hearing. When they arrived at the
9 court, she submitted her completed asylum application. Prior to the hearing, Dania
10 asked if a doctor could examine her three-year-old daughter, who was very sick at the
11 time. After the doctor realized that the child had an extremely high fever, Dania and
12 her daughter were transported by ambulance to a nearby hospital. Dania's daughter
13 was diagnosed with the flu and treated for several hours before being discharged at
14 approximately 11:00 p.m. that night. Officials transported Dania and her daughter
15 back to the court, where they informed her that her hearing had been rescheduled, but
16 that they would have to spend the night there. They were taken to a cold room with
17 no beds or blankets.

18 263. The next day, Dania again expressed her fear of returning to Mexico. She
19 was given another non-refoulement interview, where she related the details of her
20 kidnapping. However, Defendants again returned Dania and her daughter to Mexico,
21 with instructions to appear on March 6, 2020.

22 264. Dania and her daughter presented themselves at the Brownsville port of
23 entry on March 6, 2020, for their rescheduled hearing. After denying Dania's
24 application, the immigration judge asked if she wanted to appeal, and she said yes.
25 Dania was then informed that she would be returned to Mexico again and given a new
26 hearing date of April 6, 2020, which was her deadline to appeal. Following a third
27 non-refoulement interview, Dania and her daughter were returned to Mexico.
28

1 265. Dania has continued to search for an attorney to assist with her case but
2 has been unable to find one. She did not file a timely notice of appeal to the BIA
3 because she did not know how to do so. As a result, her removal order became final.
4 Dania does not know how to seek reopening of her case or what evidence she would
5 need to do so.

6 266. On or around December 2020, Dania’s daughter became sick again. To
7 avoid the freezing cold conditions in the migrant camp, Dania began renting a small
8 room in Matamoros with another mother and child. She is currently working as a
9 housekeeper. Due to the dangerous conditions in Matamoros, Dania leaves her room
10 only to go to work and to buy food.

11 267. Even though Dania is at risk of serious harm or death in Mexico, she and
12 her daughter have stayed there to ensure that they do not lose the chance to pursue
13 their asylum case.

14 268. If permitted to return to the United States, Dania would live with her
15 family in Texas.

16 **D. Defendants’ Policies Harm Organizational Plaintiffs**

17 269. Plaintiffs ImmDef and Jewish Family Service are nonprofit organizations
18 that were established to provide legal and other services to detained and non-detained
19 immigrants in California. Before the Protocols were implemented, Organizational
20 Plaintiffs focused on representing and advising detained individuals in custody
21 proceedings; representing, advising and otherwise supporting detained and non-
22 detained individuals seeking asylum and other relief; explaining the legal process to
23 individuals in removal proceedings; conducting factual investigations; researching
24 and articulating potential forms of relief; preparing clients and witnesses to testify;
25 and filling out English-language court forms for non-English-speaking clients in a
26 clear and legible manner.

27 270. As discussed more fully below, the manner in which Defendants
28 implemented the Protocols and their continuing deprivation of legal representation to

1 individuals subjected to MPP who remain outside the United States frustrate both
2 Organizational Plaintiffs’ missions and require them to expend resources they
3 otherwise would invest in other programs.

4 **1. ImmDef**

5 271. Plaintiff ImmDef is a nonprofit organization committed to creating a
6 public defender system for immigrants facing deportation.

7 272. Prior to the start of MPP, ImmDef provided limited or full-scope
8 representation in immigration court proceedings and other services to unaccompanied
9 minor children, indigent detained adults, individuals deemed mentally incompetent to
10 represent themselves, and families separated at the border. ImmDef’s primary focus
11 was on detained and non-detained individuals in immigration court proceedings in the
12 Greater Los Angeles and Orange County areas (including the Inland Empire), but not
13 generally focused on the San Diego border area.

14 273. In response to Defendants’ implementation of the Protocols in January
15 2019, ImmDef established its Cross Border Initiative (“CBI”), which focuses on
16 providing direct representation, *pro se* assistance, and advocacy to individuals
17 subjected to MPP. ImmDef has represented individuals and families subjected to MPP
18 in applications for immigration relief and bond requests before the San Diego
19 immigration court, as well as BIA appeals, non-refoulement interviews, parole
20 requests, and motions to reopen before the immigration court. ImmDef also has
21 provided Know Your Rights presentations, conducted asylum clinics, and undertaken
22 advocacy to assist MPP clients whom they do not have capacity to represent. As of
23 December 2021, ImmDef had provided legal assistance to 98 individuals in MPP.

24 274. To represent individuals subjected to the Protocols, ImmDef was required
25 to undertake two new ventures: first, to begin representing individuals in the San
26 Diego immigration court and, second, to engage in cross-border travel and
27 communication. Both required new infrastructure, staff, materials, and funding.

28

1 275. ImmDef diverted substantial resources from planned projects in Los
2 Angeles, including its Family Unity Project, to support the expansion of MPP-related
3 work. This decision was driven by the urgent needs of MPP families and the relative
4 lack of resources from partner organizations to assist them. As a result, since MPP
5 started, ImmDef has taken on far fewer cases of families at risk of separation in the
6 Los Angeles area, despite the continued need.

7 276. When it became clear that ImmDef staff based in Los Angeles could not
8 travel regularly between Los Angeles and Tijuana, ImmDef diverted funding and
9 fundraising resources to establish an office and the necessary infrastructural support
10 in San Diego.

11 277. By September 2019, ImmDef’s Legal Services Director had shifted her
12 focus from representing detained adults in the Greater Los Angeles Area to
13 overseeing the new San Diego office, and ImmDef had dedicated resources to hiring
14 new staff for that office to assist people subjected to the Protocols. Since January
15 2019, ImmDef has spent at least \$400,000 on costs associated with representation of
16 MPP clients.

17 278. The added challenges of representing individuals stranded in Mexico,
18 including the time and expense involved in cross-border travel, safety risks,
19 communication barriers, and the far-reaching needs of most MPP clients, has
20 increased the amount of staff time required for each case and decreased the total
21 number of cases each ImmDef attorney representing clients in Mexico can effectively
22 handle. Given the precarious circumstances under which most individuals subjected
23 to MPP live, ImmDef has worked to help them address both their legal and non-legal
24 needs, including housing, food, medical care, and safety. These efforts are essential
25 because individuals subjected to MPP could not otherwise fully engage in discussions
26 about their cases. In this way, representing individuals subjected to MPP is different
27 and much more time- and resource-intensive than providing representation in removal
28

1 proceedings to detained and non-detained individuals inside the United States, where
2 their lives are not constantly at risk.

3 279. Despite Defendants' stated policy that individuals in MPP should have
4 had an hour to speak to their attorneys before a hearing in immigration court, ImmDef
5 staff were often not allowed to enter the courtroom until a few minutes before the start
6 of court hearings. This lack of access made it extremely difficult and sometimes
7 impossible to review sensitive documents, obtain client signatures, or answer last-
8 minute questions in a way that protected attorney-client confidentiality. ImmDef
9 attorneys were similarly unable to consult privately in court with clients after their
10 MPP hearings.

11 280. No confidential space was available for client consultation prior to
12 hearings. DHS officers often stood nearby, refusing to move out of hearing distance
13 and preventing confidential communications. Sometimes, DHS officers or agents
14 ended attorney-client conversations prematurely, interfered with those conversations,
15 or prevented lawyers from giving legal documents to their clients. These practices
16 impeded communication, limited what lawyers and clients could and would say to
17 each other, and obstructed ImmDef's representation efforts.

18 281. Defendants also actively impeded ImmDef's efforts to provide legal
19 information to unrepresented individuals subjected to MPP. Although unrepresented
20 individuals sometimes approached ImmDef attorneys in court to seek legal advice or
21 representation, DHS officers prohibited communications with those individuals. This
22 impeded ImmDef's ability not only to fulfill its mission, but also to identify
23 prospective clients.

24 282. Once the COVID-19 pandemic began, in-person meetings and Know
25 Your Rights presentations for MPP clients became difficult due to travel restrictions.
26 Unlike cases of detained and non-detained clients in the United States, ImmDef staff
27 have struggled to set up confidential phone appointments with MPP clients. Even if
28 MPP clients outside the United States can afford cell phone service or internet access,

1 they often lack access to a confidential space for sensitive communications.
2 Moreover, connections are often weak or unreliable, and phone communication is
3 generally less effective than in-person communication for purposes of building trust
4 with clients. ImmDef continues to conduct virtual Know Your Rights presentations
5 for persons in the Tijuana border region, including those subjected to MPP; and as of
6 September 28, 2021, ImmDef resumed in-person presentations.

7 283. Despite the temporary termination of MPP and in light of its
8 reinstatement, ImmDef continues to divert organizational and staff resources to
9 support individuals outside the United States who were or will be subjected to the
10 Protocols.

11 284. ImmDef's ability to provide representation and other support services to
12 individuals stranded outside the United States remains constrained by security and
13 health concerns that restrict staff members' ability to travel to Mexicali,
14 communication barriers, and precarious living situations of those stranded outside the
15 United States.

16 285. During the MPP wind-down, ImmDef staff spent countless hours
17 responding to thousands of telephonic inquiries from individuals denied processing
18 at U.S. ports of entry, including some persons subjected to MPP who had questions
19 about their eligibility for processing. Responding to these calls diverted ImmDef's
20 resources away from its mission of providing universal representation, as staff had to
21 spend a significant part of their workday answering calls rather than providing the
22 direct representation the organization is funded to do.

23 286. In recent months, ImmDef has periodically received inquiries from
24 people who had relocated away from dangerous border towns after having their MPP
25 cases terminated or receiving *in absentia* orders of removal. ImmDef does not have
26 the financial or staff resources to reach the significant number of people in this
27 situation.

28

1 287. Since January 2021, ImmDef’s role in the California Welcoming Task
2 Force also continues to divert organizational resources. ImmDef staff attend bi-
3 weekly and monthly CAWTF meetings. ImmDef staff also co-facilitate the CAWTF’s
4 Legal Subgroup. As part of the Legal Subgroup, ImmDef staff spend several hours
5 per week engaging on issues pertaining to MPP, including responding to inquiries
6 from attorneys and organizers regarding various border-related issues and fielding
7 inquiries from asylum seekers subjected to MPP, which would otherwise have been
8 dedicated to other work.

9 **2. Jewish Family Service**

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

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

23 290. In response to Defendants’ implementation of the Protocols in January
24 2019, Jewish Family Service shifted its focus to respond to the needs of individuals
25 subjected to MPP who had few other legal representation options available. Before
26 this time, Jewish Family Service had rarely engaged in cross-border legal work.

27 291. Between January 2019 and August 2021, Jewish Family Service
28 repurposed significant portions of six staff members’ time and hired three new full-

1 time employees to provide legal services to individuals subjected to the Protocols. As
2 of December 2021, Jewish Family Service has four staff members whose full-time
3 focus is on cross-border work, including dealing with the repercussions of
4 Defendants' initial implementation of MPP, as well as three members of the Jewish
5 Family Service immigration services senior leadership team who spend substantial
6 amounts of time on cross-border cases and issues.

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

13 293. In order to assist individuals subjected to MPP, Jewish Family Service
14 was forced to divert resources away from providing representation and other services
15 to noncitizens in the United States, including individuals detained at the Otay Mesa
16 Detention Center and non-detained individuals in the San Diego area. As a result,
17 from February 1, 2019 to October 20, 2020, Jewish Family Service reduced its
18 representation of non-detained immigrants in the United States by approximately 74
19 percent and representation of detained immigrants by approximately 27 percent.

20 294. As of December 2021, Jewish Family Service had provided either
21 limited- or full-scope representation to approximately 130 individuals subjected to
22 MPP and over 600 legal consultations to individuals subjected to MPP. In MPP cases
23 where Jewish Family Service was unable to provide full-scope legal representation,
24 they often represented individuals in parole requests, non-refoulement interviews,
25 applications for affirmative relief, assistance with motions to reopen, or advocacy
26 with DHS.

27 295. Because many people subjected to the Protocols do not have the ability to
28 contact any of the organizations on EOIR's free legal service provider list, Jewish

1 Family Service expended significant resources to establish cross-border infrastructure
2 to receive calls from individuals subjected to MPP. This infrastructure included a
3 hotline accessible via cell phone and WhatsApp that began operating in February
4 2019. Before MPP, the staff resources invested in running the MPP hotline would
5 have been dedicated to providing legal services to detained and non-detained
6 individuals in the San Diego area.

7 296. Jewish Family Service has invested at least 75 hours of staff time in
8 producing English and Spanish “Know Your Rights” videos and other materials about
9 MPP. These materials are publicly available on the internet and provide basic
10 information about the MPP process and the rights of affected individuals. In response
11 to ongoing changes in the MPP process, Jewish Family Service is in the process of
12 updating its online materials and creating additional videos to ensure that individuals
13 subjected to MPP are aware of their rights.

14 297. In September 2019, Jewish Family Service began an ad hoc program at
15 the San Diego immigration court to provide Know Your Rights presentations and
16 rapid intake screenings for unrepresented individuals on the MPP docket. Until MPP
17 hearings were suspended in March 2020, Jewish Family Service made a concerted
18 effort to conduct these activities inside the courtrooms while MPP-affected
19 individuals and families waited for their hearings to start. These presentations were
20 independent of the attorney-client communications ostensibly permitted during the
21 hour before hearings, were not authorized by Defendants, and were not confidential.

22 298. In an effort to address these problems, Jewish Family Service tried
23 repeatedly to formalize the Know Your Rights program and arrange a confidential
24 space in the immigration court building to meet with individuals in need of immediate
25 legal assistance. Both EOIR and ICE denied these requests, severely impeding Jewish
26 Family Service’s ability to identify and advise potential MPP clients.

27 299. Jewish Family Service rarely had the opportunity to meet with its clients
28 for a full hour before their immigration court hearings due to a variety of factors,

1 including CBP's slow processing at the port of entry and ICE's failure to transport
2 individuals to the immigration court sufficiently in advance of their hearings. When
3 ICE did permit pre-hearing consultations, they occurred in a crowded, open
4 courtroom with no assurances of confidentiality. Jewish Family Service was similarly
5 prevented from consulting confidentially with MPP clients following their hearings.

6 300. Jewish Family Service has faced significant challenges in communicating
7 with individuals outside the United States, including bad internet or cell phone
8 connections, callers' limited minutes, lack of access to private spaces where
9 individuals can speak freely, and security concerns. Limitations on internet and cell
10 phone access also complicate the sharing of documents, compromise the quality of
11 documents transmitted, and raise concerns about confidentiality. To facilitate
12 document sharing and minimize the risk of confidentiality breaches, Jewish Family
13 Service has invested significant resources in technology over the course of MPP's
14 implementation, including by providing cell phones to all staff members assisting
15 with cross-border work and purchasing additional software licenses.

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

23 302. Jewish Family Service's staff members did not have consistent access to
24 space in Tijuana where they could meet confidentially with clients. In cases where
25 Jewish Family Service conducted meetings in clients' living spaces, some clients
26 expressed fear that they would be targeted by organized crime if people from the
27 United States were seen entering or leaving. These circumstances hindered Jewish
28 Family Service's ability to provide meaningful legal representation.

1 303. Jewish Family Service co-leads the California Welcoming Task Force,
2 which was established in January 2021 to assist people eligible for the MPP wind-
3 down, with the goal of welcoming new arrivals in a dignified and humane way.
4 Specifically, Jewish Family Service leads the humanitarian work group of the
5 CAWTF, which convenes a binational group of humanitarian service providers to
6 share information, best practices, trends, and ensure that the new arrivals have shelter,
7 food, health care, and can be placed in a safe location while their cases are being
8 processed. They participate in weekly meetings with the legal services, advocacy,
9 communications, and facilitators work groups. As a leader in the CAWTF, Jewish
10 Family Service also attends weekly meetings with welcoming task forces in other
11 border regions as well as joint meetings with DHS and the Department of Justice.

12 304. From February 19, 2021, when the MPP wind-down started, through
13 August 24, 2021, Jewish Family Service staff regularly traveled to the San Ysidro
14 port of entry to provide legal and humanitarian support to individuals permitted to
15 enter the United States.

16 305. Since the government halted the wind-down, Jewish Family Service has
17 continued to represent and advise individuals subjected to MPP. They have fielded
18 dozens of MPP-related inquiries, including from individuals who received final orders
19 of removal or had their cases terminated.

20 306. As one of the few California-based organizations that provides
21 representation and other assistance to individuals subjected to MPP, Jewish Family
22 Service regularly receives case referrals from international organizations such as the
23 UNHCR, the International Organization for Migration, and UNICEF, as well as many
24 shelters in and around Tijuana. Given the increasing number of local referrals from
25 these sources, Jewish Family Service decided in December 2021 to shut down its
26 MPP hotline, which had begun drawing a significant number of calls from individuals
27 outside Jewish Family Service's service area.

28

1 307. In June 2021, Jewish Family Service staff resumed travel to Tijuana to
2 assist individuals subjected to MPP. During these trips, Jewish Family Service
3 assisted individuals with *in absentia* orders who filed joint motions to reopen and
4 were unaware of the steps they needed to take to be processed into the United States
5 during expanded MPP processing. Jewish Family Service staff continues to struggle
6 to find confidential spaces in which to meet with clients subjected to MPP.

7 308. Jewish Family Service has encountered numerous challenges when
8 assisting individuals with motions to reopen. For example, individuals are required to
9 gather and submit evidence in support of their motion to reopen, which is often
10 difficult for those stranded outside of the United States. In cases where DHS refuses
11 to join a motion to reopen, individuals who have received *in absentia* orders in MPP
12 proceedings and missed the deadline to file a motion to reopen must make complex
13 tolling arguments to have any chance of having their cases reopened. Jewish Family
14 Service staff members must invest additional time and resources when assisting with
15 complex motions to reopen.

16 309. Jewish Family Service’s ongoing work on behalf of individuals subjected
17 to MPP has diverted substantial resources from their prior work on behalf of clients
18 in the United States. In addition, due to safety concerns in Mexico, Jewish Family
19 Service purchased additional insurance and adopted the practice of assigning two
20 caseworkers to each case. This practice significantly decreased the total number of
21 clients that Jewish Family Service could represent.

22 310. As a result of Jewish Family Service’s diversion of resources to assist
23 individuals subjected to MPP, the organization is behind on its deliverables for grants
24 they have received for removal defense and immigration detention cases in the United
25 States.

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28

CLASS ACTION ALLEGATIONS

1
2 311. Individual Plaintiffs bring this action pursuant to Federal Rules of Civil
3 Procedure 23(a) and 23(b)(2) on behalf of themselves and all other persons similarly
4 situated.

5 312. Individual Plaintiffs seek to represent a class of individuals who were
6 subjected to MPP prior to June 1, 2021, remain outside the United States, and whose
7 cases are not currently active due to termination or a final removal order in MPP
8 proceedings. Plaintiffs also seek certification of three subclasses of individuals whose
9 cases were terminated, who received *in absentia* removal orders, and who received
10 final removal orders for reasons other than failure to appear.

11 313. All Individual Plaintiffs seek to represent the proposed “Inactive MPP
12 Class,” defined as:

13 All individuals subjected to MPP prior to June 1, 2021, who remain
14 outside the United States and whose cases are not currently active due to
15 termination of proceedings or a final removal order.

16 314. Individual Plaintiffs Lidia Doe, Antonella Doe, and Rodrigo Doe seek to
17 represent the proposed “Terminated Case Subclass,” defined as:

18 All individuals subjected to MPP prior to June 1, 2021, who remain
19 outside the United States and whose MPP proceedings were terminated
20 and remain inactive.

21 315. Individual Plaintiffs Chepo Doe, Yesenia Doe, and Sofia Doe seek to
22 represent the proposed “*In Absentia* Subclass,” defined as:

23 All individuals subjected to MPP prior to June 1, 2021, who remain
24 outside the United States, received an *in absentia* order of removal in
25 MPP proceedings, and whose cases have not been reopened and are not
26 currently pending review before a federal circuit court of appeals.

27 316. Individual Plaintiffs Gabriela Doe, Ariana Doe, Francisco Doe, Reina
28 Doe, Carlos Doe, and Dania Doe seek to represent the proposed “Final Order
Subclass,” defined as:

All individuals subjected to MPP prior to June 1, 2021, who remain
outside the United States, received a final order of removal for reasons
other than failure to appear for an immigration court hearing, and whose

1 cases have not been reopened and are not currently pending review before
2 a federal circuit court of appeals.

3 317. The Inactive MPP Class, Terminated Case Subclass, *In Absentia*
4 Subclass, and Final Order Subclass are each so numerous that joinder of all members
5 is impracticable. Through October 2021, at least 27,653 individuals subjected to MPP
6 had received *in absentia* removal orders,⁷⁰ and at least an additional 4,581 individuals
7 subjected to MPP had received removal orders for reasons other than failure to
8 appear.⁷¹ In addition, the cases of at least 10,510 individuals subjected to MPP had
9 been terminated.⁷² Upon information and belief, the vast majority of these individuals
10 are unable to pursue their claims for relief because their cases have not been reopened
11 or restarted. Additionally, upon information and belief, very few such individuals
12 have been able to pursue reopening of their immigration proceedings, appeal to the
13 BIA, or seek judicial review before a federal circuit court of appeals. Individual
14 Plaintiffs’ precarious living conditions, geographical dispersion, and lack of access to
15 legal representation or resources make joinder impracticable.

16 318. There are questions of law and fact that are common to all members of
17 the Inactive MPP Class, including the Terminated Case Subclass, the *In Absentia*
18 Subclass, and the Final Order Subclass, and that predominate over any question
19 affecting only Individual Plaintiffs. Class members allege common harms: violation
20 of the right to apply for asylum by virtue of being stranded outside the United States;
21 obstruction of their access to legal representation; violation of their right to a full and
22 fair hearing; and obstruction of their right to hire and consult an attorney and petition
23 the courts.

24
25 ⁷⁰ TRAC Immigration, *Details on MPP*, *supra* n.1 (filters set to “Hearing Location:
26 All,” “Hearing Attendance: Not Present at Last Hearing (Absentia Decision)” and
“Outcome: Removal Order”).

27 ⁷¹ *Id.* (filters set to “Hearing Location: All,” “Hearing Attendance: Always Present at
28 Hearings” and “Outcome: Removal Order”).

⁷² *Id.* (filters set to “Hearing Location: All,” “Outcome: Terminate Proceedings”).

1 319. Class members’ claims are based on a common core of facts. All proposed
2 class members were subjected to MPP before June 1, 2021; have cases that are not
3 currently active due to termination or a final removal order in MPP proceedings and
4 that have not been restarted or reopened; and remain outside the United States. All
5 proposed class members’ ability to present their claims for relief and access legal
6 representation have been impeded by the harms they have been forced to endure
7 because of MPP.

8 320. All proposed Inactive MPP Class and Final Order Subclass members raise
9 the same legal claims under the INA, 8 U.S.C. §§ 1158(a)(1), 1158(d)(4),
10 1229a(b)(4), 1362; the APA, 5 U.S.C. § 706(2); the Fifth Amendment Due Process
11 Clause; and the First Amendment. All proposed Terminated Case Subclass and *In*
12 *Absentia* Subclass members raise these same legal claims, as well as additional shared
13 legal claims under the APA, 5 U.S.C. § 706(2)(A), for Defendants’ unlawful cessation
14 of the wind-down. Class members’ shared common facts will ensure that judicial
15 findings regarding the legality of the challenged practices will be the same for all class
16 members.

17 321. Should Plaintiffs prevail, all class members will benefit: each of them will
18 be entitled to return to the United States, with appropriate precautionary public health
19 measures, in order to pursue their asylum proceedings from inside the country.

20 322. Individual Plaintiffs’ claims are typical of the claims of the Inactive MPP
21 Class, including the Terminated Case Subclass, *In Absentia* Subclass, and the Final
22 Order Subclass. Individual Plaintiffs and class members raise common legal claims
23 and are united in their interest and injury. All Individual Plaintiffs, like all class
24 members, are asylum seekers whom Defendants unlawfully deprived of the right to
25 apply for asylum by trapping them in Mexico under dangerous conditions in a manner
26 that obstructed their access to legal assistance, reasonable safety, and basic human
27 needs; their right to access legal representation; their right to a full and fair asylum
28 hearing; and their right to hire and consult an attorney and petition the courts.

1 Individual Plaintiffs and class members are thus victims of the same unlawful course
2 of conduct.

3 323. Individual Plaintiffs will fairly and adequately protect the interests of the
4 Inactive MPP Class. Individual Plaintiffs Lidia Doe, Antonella Doe, and Rodrigo Doe
5 will fairly and adequately represent the interests of the Terminated Case Subclass;
6 Individual Plaintiffs Chepo Doe, Yesenia Doe, and Sofia Doe will fairly and
7 adequately represent the interests of the *In Absentia* Subclass; and Individual
8 Plaintiffs Gabriela Doe, Ariana Doe, Francisco Doe, Reina Doe, Carlos Doe, and
9 Dania Doe will fairly and adequately represent the interests of the Final Order
10 Subclass. Individual Plaintiffs seek relief on behalf of the class as a whole and have
11 no interest antagonistic to other members of the class. Individual Plaintiffs' mutual
12 goal is to declare Defendants' challenged policies unlawful and to obtain declaratory
13 and injunctive relief that would cure this illegality. Individual Plaintiffs seek a remedy
14 for the same injuries as class members, and all share an interest in having a meaningful
15 right to apply for asylum, to access legal representation, to have a full and fair asylum
16 hearing, and to hire and consult an attorney and petition the courts. Thus, the interests
17 of Individual Plaintiffs and class members are aligned.

18 324. Plaintiffs are represented by attorneys from the Southern Poverty Law
19 Center, the National Immigration Project of the National Lawyers Guild, Innovation
20 Law Lab, and Arnold & Porter Kaye Scholer LLP. Counsel have demonstrated a
21 commitment to protecting the rights and interests of noncitizens and, together, have
22 considerable experience in handling complex and class action litigation in the
23 immigration field. Counsel have represented numerous classes of noncitizens and
24 other victims of systemic government misconduct in actions in which they
25 successfully obtained class relief.

26 325. The members of the proposed class and each proposed subclass are
27 readily ascertainable through Defendants' records.

28

1 326. Defendants have acted, have threatened to act, and will act on grounds
2 generally applicable to the Inactive MPP Class and each Subclass, thereby making
3 final injunctive and declaratory relief appropriate to the Inactive MPP Class,
4 including the Terminated Subclass, the *In Absentia* Subclass, and the Final Order
5 Subclass, as a whole.

6 327. Through the Protocols, Defendants have denied Individual Plaintiffs and
7 class members a meaningful right to apply for asylum, the right to access legal
8 representation, and the right to hire and consult an attorney and petition the courts.
9 Defendants’ actions violate Individual Plaintiffs’ and class members’ statutory and
10 constitutional rights.

11 328. Declaratory and injunctive relief are appropriate remedies. In the absence
12 of a class action, there is substantial risk that individual actions would be brought in
13 different venues, creating a risk of inconsistent adjudications to address Defendants’
14 common conduct.

15
16 **FIRST CLAIM FOR RELIEF**
17 **ADMINISTRATIVE PROCEDURE ACT, 5 U.S.C. § 706(2)**
18 **VIOLATION OF THE RIGHT TO APPLY FOR**
19 **ASYLUM, 8 U.S.C. § 1158(a)(1)**
20 **(ALL PLAINTIFFS AGAINST ALL DEFENDANTS)**

21 329. Plaintiffs reallege and incorporate by reference each and every allegation
22 contained in the preceding paragraphs as if set forth fully herein.

23 330. The APA provides that courts “shall . . . hold unlawful and set aside
24 agency action” that is “arbitrary, capricious, an abuse of discretion, . . . otherwise not
25 in accordance with law: . . . [or] in excess of statutory jurisdiction, authority, or
26 limitations, or short of statutory right.” 5 U.S.C. §§ 706(2)(A) & (C).

27 331. An agency action is arbitrary and capricious where the agency “relied on
28 factors which Congress has not intended it to consider” or “entirely failed to consider

1 an important aspect of the problem.” *Motor Vehicle Mfrs. Ass’n v. State Farm Mut.*
2 *Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

3 332. The Refugee Act as codified in the INA provides that the United States
4 government must provide a uniform method by which an individual can meaningfully
5 apply for asylum under 8 U.S.C. § 1158(a)(1). This uniform method includes the right
6 to seek reopening of asylum proceedings, 8 U.S.C. §§ 1229a(c)(7), (b)(5)(C), and the
7 right to appeal an unfavorable decision, 8 U.S.C. § 1229a(c)(5).

8 333. Defendants’ Migrant Protection Protocols and their implementation
9 subverted and violated the right to apply for asylum by trapping Individual Plaintiffs
10 and similarly situated individuals in a foreign country under dangerous conditions in
11 a manner that obstructed access to all components of the U.S. asylum system. The
12 ongoing effects of the Protocols’ implementation continue to violate this right,
13 including by impeding individuals’ ability to restart or reopen their immigration cases
14 or appeal an unfavorable decision.

15 334. The Protocols and their implementation have also subverted and violated
16 the right to apply for asylum by irrationally treating asylum seekers at the southern
17 border in a discriminatory and non-uniform way.

18 335. The Protocols were arbitrary and capricious or an abuse of discretion
19 because, in adopting the Protocols in January 2019, Defendants failed to consider how
20 leaving individuals stranded outside the United States in life-threatening conditions
21 and without access to legal representation would obstruct these individuals’ access to
22 the U.S. asylum system, including, where relevant, by impeding their ability to restart
23 or reopen their asylum proceedings or appeal an unfavorable decision. Defendants
24 also failed to consider the obstacles that Organizational Plaintiffs would face in safely
25 meeting and effectively communicating with clients and potential clients who were
26 subjected to MPP, including individuals who were seeking to restart or reopen
27 proceedings from outside the United States.

1 336. The Protocols and their implementation have kept Individual Plaintiffs
2 and similarly situated individuals stranded outside the United States and continue to
3 obstruct their access to the U.S. asylum system, including their right to appeal or seek
4 reopening of their asylum proceedings.

5 337. By stranding Organizational Plaintiffs' clients and potential clients
6 outside the United States in a manner that obstructs access to all components of the
7 U.S. asylum system, the Protocols also interfere with Organizational Plaintiffs' ability
8 to deliver meaningful legal assistance to individuals seeking to apply for asylum,
9 including, where relevant, individuals seeking to restart or reopen their asylum
10 proceedings. The impact of Defendants' implementation of the Protocols continues
11 to frustrate Organizational Plaintiffs' core missions, impair their efforts, and force
12 them to divert resources away from existing programs.

13 338. The Protocols and their implementation have thereby violated the right to
14 seek asylum under the INA and are arbitrary and capricious, an abuse of discretion,
15 not in accordance with law, or in excess of statutory authority under 5 U.S.C.
16 § 706(2)(A).

17 339. The Protocols are a final agency action that is reviewable under 5 U.S.C.
18 §§ 702 and 706.

19 340. Defendants' violation of the APA causes ongoing harm to Individual
20 Plaintiffs, similarly situated individuals, and Organizational Plaintiffs.

21 341. Plaintiffs do not have an adequate alternative remedy at law and therefore
22 seek immediate review under the APA and injunctive relief.

23 **SECOND CLAIM FOR RELIEF**

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

25 **VIOLATION OF THE RIGHT TO ACCESS TO COUNSEL**

26 **(ALL PLAINTIFFS AGAINST ALL DEFENDANTS)**

27 342. Plaintiffs reallege and incorporate by reference each and every allegation
28 contained in the preceding paragraphs as if set forth fully herein.

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

5 344. An agency action is arbitrary and capricious where the agency “relied on
6 factors which Congress has not intended it to consider” or “entirely failed to consider
7 an important aspect of the problem.” *Motor Vehicle Mfrs. Ass’n*, 463 U.S. at 43.

8 345. The INA provides noncitizens who are seeking asylum with a right to
9 access to counsel. *See* 8 U.S.C. §§ 1158(d)(4), 1229a(b)(4)(A), 1362.

10 346. Defendants’ Migrant Protection Protocols and their implementation have
11 subverted and violated the right to access to counsel by trapping individuals in
12 conditions that obstruct their access to legal representation and impose systemic
13 obstacles to the ability of Individual Plaintiffs and similarly situated individuals to
14 access legal representation, the cumulative effect of which is tantamount to a denial
15 of counsel. The ongoing effects of the Protocols’ implementation continue to violate
16 this right, including by impeding individuals’ ability to access counsel when seeking
17 to restart or reopen their immigration cases or appeal an unfavorable decision.

18 347. The Protocols were also arbitrary and capricious or an abuse of discretion
19 because, in adopting the Protocols, Defendants failed to consider the obstacles that
20 individuals subjected to MPP would face in accessing and communicating with legal
21 representatives in the United States and in accessing food, shelter, health care, and
22 other basic needs, as well as the effect those obstacles would have in exacerbating
23 such individuals’ inability to meaningfully access legal representation. Defendants
24 also failed to consider the obstacles that Organizational Plaintiffs would face in safely
25 meeting and effectively communicating with clients and potential clients who were
26 subjected to MPP, including individuals who were seeking to restart or reopen their
27 proceedings from outside the United States.

28

1 348. The Protocols and their implementation have kept Individual Plaintiffs
2 and similarly situated individuals stranded outside the United States and continue to
3 obstruct their access to legal representation, including their right to appeal or seek
4 reopening of their asylum proceedings.

5 349. By stranding Organizational Plaintiffs’ clients and potential clients
6 outside the United States in a manner that obstructs their access to counsel, the
7 Protocols have also interfered with Organizational Plaintiffs’ ability to deliver
8 meaningful legal assistance to individuals seeking to apply for asylum, including,
9 where relevant, individuals seeking to restart or reopen their asylum proceedings. The
10 impact of Defendants’ implementation of the Protocols continues to frustrate
11 Organizational Plaintiffs’ core missions, impair their efforts, and force them to divert
12 resources away from existing programs.

13 350. The Protocols and their implementation have thereby violated the right to
14 access to counsel under the INA and are arbitrary and capricious, an abuse of
15 discretion, not in accordance with law, or in excess of statutory authority under
16 5 U.S.C. § 706(2)(A).

17 351. The Protocols are a final agency action that is reviewable under 5 U.S.C.
18 §§ 702 and 706.

19 352. Defendants’ violation of the APA causes ongoing harm to Individual
20 Plaintiffs, similarly situated individuals, and Organizational Plaintiffs.

21 353. Plaintiffs do not have an adequate alternative remedy at law and therefore
22 seek immediate review under the APA and injunctive relief.

23 **THIRD CLAIM FOR RELIEF**

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

25 **RIGHT TO FULL AND FAIR HEARING**

26 **(ALL INDIVIDUAL PLAINTIFFS AGAINST ALL DEFENDANTS)**

27 354. Plaintiffs reallege and incorporate by reference each and every allegation
28 contained in the preceding paragraphs as if set forth fully herein.

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

4 356. The Due Process Clause also guarantees noncitizens the right to effective
5 assistance of counsel in their removal proceedings at no cost to the government. *Ray*
6 *v. Gonzales*, 439 F.3d 582, 587 (9th Cir. 2006) (stating that “this Circuit has long
7 recognized that a [noncitizen’s] due process right to obtain counsel in immigration
8 matters also includes a right to *competent representation* . . . due process requires
9 more than the formal *availability* of counsel”) (emphasis in original); *Biwot*, 403 F.3d
10 at 1098 (“The right to counsel in immigration proceedings is rooted in the Due Process
11 Clause”); *Orantes-Hernandez v. Thornburgh*, 919 F.2d 549, 554 (9th Cir. 1990)
12 (stating that noncitizens’ “fundamental” right to counsel “must be respected in
13 substance as well as in name”) (citation and quotation marks omitted).

14 357. Defendants’ Migrant Protection Protocols and their implementation have
15 imposed systemic obstacles to the Fifth Amendment rights of Individual Plaintiffs
16 and similarly situated individuals by obstructing their meaningful access to legal
17 representation.

18 358. The Protocols and their implementation have also imposed systemic
19 obstacles to the Fifth Amendment rights of Individual Plaintiffs and similarly situated
20 individuals by obstructing their ability to collect evidence and to communicate with
21 potential witnesses and experts, as necessary to meaningfully prepare and present
22 their claims for relief.

23 359. The Protocols and their implementation have left Individual Plaintiffs and
24 similarly situated individuals stranded under untenable conditions outside the United
25 States, in circumstances that undermine their ability to restart or reopen their cases in
26 order to pursue their claims for relief. The implementation of the Protocols thus
27 continues to undermine these individuals’ Fifth Amendment rights to counsel and to
28

1 present the evidence necessary to restart or reopen their immigration proceedings and
2 thereby access the U.S. asylum system.

3 360. Defendants’ violations of the Due Process Clause cause ongoing harm to
4 Individual Plaintiffs and similarly situated individuals.

5 **FOURTH CLAIM FOR RELIEF**

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

7 **UNLAWFUL CESSATION OF THE MPP WIND-DOWN**

8 **(INDIVIDUAL PLAINTIFFS LIDIA DOE, ANTONELLA DOE, RODRIGO**

9 **DOE, CHEPO DOE, YESENIA DOE, SOFIA DOE, AND**

10 **ORGANIZATIONAL PLAINTIFFS AGAINST ALL DEFENDANTS)**

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

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

17 363. An agency action is arbitrary and capricious where the agency “relied on
18 factors which Congress has not intended it to consider” or “entirely failed to consider
19 an important aspect of the problem.” *Motor Vehicle Mfrs. Ass’n*, 463 U.S. at 43.

20 364. By halting the MPP wind-down, Defendants stopped processing
21 Individual Plaintiffs and similarly situated individuals without adequate explanation.
22 Upon information and belief, Defendants did so in a mistaken belief that the *Texas v.*
23 *Biden* injunction required cessation of processing of these individuals. In making that
24 sudden decision, Defendants unlawfully failed to take into account the reliance
25 interests of persons with terminated cases and *in absentia* removal orders. *See DHS*
26 *v. Regents of the Univ. of Cal.*, 591 U.S. ___, 140 S. Ct. 1891, 1913–14 (2020).
27 Defendants also failed to adequately account for the reliance interests of
28

1 Organizational Plaintiffs, who had diverted substantial resources and specifically
2 restructured their programming in reliance on the wind-down process.

3 365. Defendants' decision to halt the MPP wind-down is not in accordance
4 with law or is in excess of statutory authority because it undermines the right of
5 Individual Plaintiffs and similarly situated individuals to seek asylum and to access
6 counsel. 5 U.S.C. § 706(2)(A); *see E. Bay Sanctuary Covenant v. Trump*, 950 F.3d
7 1242, 1271 (9th Cir. 2020), *amended by* 993 F.3d 640 (9th Cir. 2021).

8 366. Defendants' decision to halt the MPP wind-down was also arbitrary and
9 capricious. Had DHS processed the cases of Individual Plaintiffs with terminated
10 cases and facilitated joint motions to reopen of Individual Plaintiffs and similarly
11 situated individuals with *in absentia* removal orders before halting the MPP wind-
12 down in August 2021, these Individual Plaintiffs and similarly situated individuals
13 would have been eligible to return to the United States to pursue their claims for relief.
14 Instead, by ending the wind-down, DHS has left them stranded outside the country,
15 where they live in untenable conditions while their cases remain in limbo.

16 367. Defendants' decision to halt the MPP wind-down causes ongoing harm to
17 Individual Plaintiffs and similarly situated individuals with terminated cases and *in*
18 *absentia* removal orders. In making that sudden decision, Defendants unlawfully
19 failed to take into account the reliance interests of such individuals.

20 368. Defendants' decision to halt the MPP wind-down also causes ongoing
21 harm to Organizational Plaintiffs by interfering with their ability to deliver
22 meaningful legal assistance to individuals seeking to apply for asylum, including
23 individuals seeking to restart or reopen their cases, as provided by the INA. The
24 impact of Defendants' cessation of the wind-down continues to frustrate
25 Organizational Plaintiffs' core missions and force them to divert resources away from
26 existing programs.

27 369. Defendants' decision to halt the MPP wind-down has thereby violated the
28 right to seek asylum and the right to access counsel under the INA and is arbitrary

1 and capricious, not in accordance with law, or in excess of statutory authority under
2 5 U.S.C. § 706(2)(A).

3 370. Defendants’ decision to halt the MPP wind-down is a final agency action
4 that is reviewable under 5 U.S.C. §§ 702 and 706.

5 371. Defendants’ violation of the APA causes ongoing harm to Individual
6 Plaintiffs, similarly situated individuals, and Organizational Plaintiffs.

7 372. Plaintiffs do not have an adequate alternative remedy at law and therefore
8 seek immediate review under the APA and injunctive relief.

9 **FIFTH CLAIM FOR RELIEF**

10 **VIOLATION OF THE FIRST AMENDMENT**

11 **(ALL INDIVIDUAL PLAINTIFFS AGAINST ALL DEFENDANTS)**

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

14 374. Defendants’ Migrant Protection Protocols and their implementation have
15 interfered with and obstructed the First Amendment rights of Individual Plaintiffs and
16 similarly situated individuals to hire and consult an attorney and petition the courts.

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

24 376. The Protocols and their implementation have forced individuals subjected
25 to them, including Individual Plaintiffs and similarly situated individuals, to return to
26 Mexico, and prevented them from returning to the United States except under limited
27 circumstances. As implemented, the Protocols left Individual Plaintiffs and similarly
28 situated individuals with, at most, a single hour before court appearances, which often

1 was not available in practice and, in any case, was insufficient to obtain
2 comprehensive advice regarding the legal issues surrounding their asylum claims. *Pro*
3 *se* Individual Plaintiffs Lidia Doe, Antonella Doe, Rodrigo Doe, Yesenia Doe, Sofia
4 Doe, Gabriela Doe, Ariana Doe, Francisco Doe, Reina Doe and Carlos Doe,⁷³ and
5 Dania Doe were denied even that single hour to seek legal advice. The Protocols and
6 their implementation thus restricted communication with legal service providers
7 while Individual Plaintiffs and similarly situated individuals were in the United
8 States, with the result that nearly all meaningful legal communication had to occur
9 while they were in Mexico.

10 377. The Protocols and their implementation continue to cause harm to
11 Individual Plaintiffs and similarly situated individuals by obstructing their rights to
12 hire and consult with an attorney. Forced to pursue their cases from outside the United
13 States, Individual Plaintiffs and similarly situated individuals have been and continue
14 to be unable to communicate effectively with attorneys in the United States. Due to
15 health, safety, and resource constraints, U.S.-based attorneys cannot meet in person
16 with Individual Plaintiffs and similarly situated individuals on a regular basis.
17 Communication by telephone or internet requires substantial time and funds and is
18 unreliable at best.

19 378. The Protocols and their implementation have required nearly all legal
20 communication to occur while Individual Plaintiffs and similarly situated individuals
21 are outside the United States, where meaningful legal communication is functionally
22 impossible or possible only at great expense or substantial risk. Individual Plaintiffs
23 and similarly situated individuals lack viable meaningful alternative channels, let
24 alone ample alternative channels, for seeking the assistance of counsel and petitioning
25 the courts.

26
27
28 ⁷³ Although Reina and Carlos Doe ultimately made contact with a legal services
organization, *see supra* ¶ 251, they were unrepresented throughout their immigration
court proceedings.

1 379. Accordingly, the Protocols and their implementation unreasonably
2 restrict the time, place, and manner in which Individual Plaintiffs and similarly
3 situated individuals may exercise their First Amendment rights to hire and consult an
4 attorney and petition the courts. Defendants’ policy therefore places unreasonable
5 restrictions on Individual Plaintiffs and similarly situated individuals’ constitutionally
6 protected right to seek the assistance of attorneys and petition the courts and is
7 unconstitutional.

8 380. Individual Plaintiffs and similarly situated individuals have suffered and
9 continue to suffer ongoing injury as a result of Defendants’ violation of their
10 constitutional right to hire and consult an attorney and petition the courts and are thus
11 entitled to declaratory and injunctive relief.

12 **SIXTH CLAIM FOR RELIEF**
13 **VIOLATION OF FIRST AMENDMENT RIGHTS**
14 **TO ADVISE POTENTIAL AND EXISTING CLIENTS**
15 **(ORGANIZATIONAL PLAINTIFFS AGAINST ALL DEFENDANTS)**

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

18 382. Defendants’ Migrant Protection Protocols and their implementation
19 interfere with and obstruct Organizational Plaintiffs’ First Amendment rights to
20 advise potential and existing clients.

21 383. The First Amendment protects legal service providers from government
22 interference when they are “advocating lawful means of vindicating legal rights.”
23 *NAACP v. Button*, 371 U.S. 415, 437 (1963). Pro bono legal assistance to immigrants
24 in removal proceedings falls within this zone of protection. *Nw. Immigrant Rights*
25 *Project v. Sessions*, No. C17-716 RAJ, 2017 WL 3189032 at *3 (W.D. Wash. July
26 27, 2017).

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

4 385. The protection afforded by the First Amendment also includes providing
5 legal assistance to existing clients. *See, e.g., Legal Servs. Corp. v. Velazquez*, 531 U.S.
6 533 (2001); *In re Primus*, 436 U.S. 412; *Button*, 371 U.S. 415; *Torres v. DHS*, 411 F.
7 Supp. 3d 1036 (C.D. Cal. 2019).

8 386. By advising, assisting, and consulting with potential and existing clients,
9 attorneys disseminate important legal information, and the “creation and
10 dissemination of information are speech within the meaning of the First Amendment.”
11 *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 570 (2011).

12 387. The Migrant Protection Protocols trapped all potential and existing clients
13 in Mexico and prevented them from returning to the United States except under
14 limited circumstances. The Protocols and their implementation limited the time
15 available for legal communication in the United States to communication with
16 already-represented individuals; the Protocols and their implementation prohibited
17 legal communication with unrepresented potential clients. For their existing clients,
18 Organizational Plaintiffs were left, at most, with a single hour before court
19 appearances, which often was not available in practice and, in any case, was
20 insufficient to provide comprehensive advice regarding the legal issues surrounding
21 their clients’ asylum claims. At the very least, Organizational Plaintiffs lacked viable
22 alternative channels to advise their existing clients. As a result of these restrictions,
23 nearly all meaningful legal communication between Organizational Plaintiffs and
24 their clients had to occur while the clients were in Mexico.

25 388. The Protocols and their implementation also prevented Organizational
26 Plaintiffs from advising potential clients regarding Organizational Plaintiffs’
27 viewpoints regarding the rights of individuals subjected to MPP.

28

1 389. The Protocols and their implementation have continued to restrict
2 Organizational Plaintiffs' ability to meaningfully communicate with potential and
3 existing clients while those clients are seeking to pursue their cases from outside the
4 United States. Organizational Plaintiffs remain unable to meaningfully communicate
5 with these individuals or are able to do so only at great expense or substantial risk.

6 390. The Protocols and their implementation therefore constitute unreasonable
7 restrictions on Organizational Plaintiffs' constitutionally protected rights to solicit
8 and advise potential clients and to provide legal advice to existing clients.
9 Organizational Plaintiffs lack viable alternative channels to exercise their First
10 Amendment rights to solicit and advise potential clients and to provide legal advice
11 to existing clients. Accordingly, Defendants' policies and their implementation
12 violate Organizational Plaintiffs' First Amendment rights to solicit and advise
13 potential clients and to provide legal advice to existing clients and are
14 unconstitutional.

15 391. Organizational Plaintiffs have suffered and continue to suffer ongoing
16 injury as a result of Defendants' violation of Organizational Plaintiffs' constitutional
17 rights to advise potential and existing clients and are entitled to declaratory and
18 injunctive relief to avoid any further injury.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiffs request that this Court:

21 a) Certify the following classes of noncitizens who were subjected to
22 MPP and remain outside the United States:

- 23 1. Inactive MPP Class: All individuals subjected to MPP prior to June 1,
24 2021, who remain outside the United States and whose cases are not
25 currently active due to termination of proceedings or a final removal
26 order.

27
28

- 1 2. Terminated Case Subclass: All individuals subjected to MPP prior to
2 June 1, 2021, who remain outside the United States and whose MPP
3 proceedings were terminated and remain inactive.
- 4 3. *In Absentia* Subclass: All individuals subjected to MPP prior to June
5 1, 2021, who remain outside the United States, received an *in absentia*
6 order of removal in MPP proceedings, and whose cases have not been
7 reopened and are not currently pending review before a federal circuit
8 court of appeals.
- 9 4. Final Order Subclass: All individuals subjected to MPP prior to June
10 1, 2021, who remain outside the United States, received a final order
11 of removal for reasons other than failure to appear for an immigration
12 court hearing, and whose cases have not been reopened and are not
13 currently pending review before a federal circuit court of appeals.

14 b) Name all Individual Plaintiffs as representatives of the Inactive MPP
15 Class; Lidia Doe, Antonella Doe, and Rodrigo Doe as representatives of the
16 Terminated Case Subclass; Chepo Doe, Yesenia Doe, and Sofia Doe as
17 representatives of the *In Absentia* Subclass; and Gabriela Doe, Ariana Doe, Francisco
18 Doe, Reina Doe, Carlos Doe, and Dania Doe as representatives of the Final Order
19 Subclass; and appoint Plaintiffs' counsel as class counsel;

20 c) Declare that MPP as implemented violates federal statutes and the United
21 States Constitution;

22 d) Order Defendants, their subordinates, agents, employees, and all others
23 acting in concert with them to issue an injunction sufficient to remedy the violations
24 of the rights of both the Individual and Organizational Plaintiffs and class members;

25 e) Allow each of the Individual Plaintiffs and class members to return to the
26 United States, with appropriate precautionary public health measures, for a period
27 sufficient to enable them to seek legal representation, and pursue their asylum
28 proceedings from inside the United States;

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

10 g) Award Plaintiffs all costs incurred in maintaining this action, including
11 reasonable attorneys’ fees under the Equal Access to Justice Act, as amended,
12 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified by law; and

13 h) Grant such further relief as this Court deems just and proper.

14
15 Dated: December 22, 2021 ARNOLD & PORTER KAYE SCHOLER LLP

16
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Dated: December 22, 2021

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