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26 **UNITED STATES DISTRICT COURT**  
27 **CENTRAL DISTRICT OF CALIFORNIA – EASTERN DIVISION**

28 IMMIGRANT DEFENDERS LAW  
CENTER, *et al.*,

Plaintiffs,

v.

ALEJANDRO MAYORKAS, *et al.*,

Defendants.

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

**PLAINTIFFS’ MEMORANDUM  
OF POINTS AND AUTHORITIES  
IN SUPPORT OF EX PARTE  
APPLICATION FOR  
TEMPORARY RESTRAINING  
ORDER**

Judge: Honorable Jesus G. Bernal  
Crtrm: 1

Action Filed: October 28, 2020

1 [Caption Page Continued - Additional Attorneys for Plaintiffs and putative class  
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1 Plaintiffs respectfully move this Court for an emergency order allowing  
2 Individual Plaintiffs Jaqueline Doe, Victoria Doe, Chepo Doe, Fredy Doe, Ariana Doe,  
3 and Francisco Doe to return to the United States with their immediate family members,  
4 under appropriate precautionary public health measures, in order to seek reopening of  
5 their cases and, if successful, pursue their claims for asylum and related relief.

6 **I. INTRODUCTION**

7 Individual Plaintiffs Jaqueline Doe, Victoria Doe, Chepo Doe, Fredy Doe, Ariana  
8 Doe, and Francisco Doe are at imminent risk of grave harm because of the continuing  
9 effects of the Migrant Protection Protocols (“MPP” or “Protocols”). Each Individual  
10 Plaintiff arrived at the U.S.-Mexico border seeking asylum and, under the Protocols,  
11 was returned to Mexico. The Protocols have forced Individual Plaintiffs to live in  
12 life-threatening circumstances while attempting to prove their right to relief in  
13 immigration court. All Individual Plaintiffs received final orders of removal as a direct  
14 result of MPP, either because they were unable to attend their immigration hearings or  
15 because they were unable to fully and fairly present their asylum claims. These same  
16 Protocols have also prevented Individual Plaintiffs from meaningfully accessing  
17 counsel, appealing their removal orders, or seeking to reopen their immigration  
18 proceedings.

19 The Protocols violated Individual Plaintiffs’ rights to apply for asylum, to access  
20 legal counsel, and to receive a full and fair hearing. As a result, all Individual Plaintiffs  
21 remain stranded outside the United States in extremely dangerous conditions, in close  
22 proximity to violent cartels and gangs that routinely target migrants for kidnapping and  
23 extortion. Some Individual Plaintiffs have already survived extreme violence, including  
24 rape, kidnapping, physical assault, and death threats. Many cannot access necessary  
25 medical care for themselves or their family members, including emergency surgery and  
26 required medications. And some Individual Plaintiffs struggle to meet their basic needs,  
27 from obtaining adequate food to finding safe shelter. Each Individual Plaintiff is  
28 therefore at risk of imminent, irreparable harm absent relief from this Court.

1 Individual Plaintiffs seek an emergency order that the government admit them  
2 and their immediate family members to the United States to allow them an opportunity  
3 to move to reopen their removal proceedings and to vindicate their entitlement to pursue  
4 asylum with meaningful access to legal services. Admission to the United States will  
5 remove Individual Plaintiffs from the risk of imminent, irreparable harm. It will also  
6 allow them to meaningfully access the U.S. asylum system and to fully and fairly  
7 present their claims for protection.

## 8 **II. FACTUAL BACKGROUND**

### 9 **A. The Implementation of the Migrant Protection Protocols**

10 Starting in January 2019, Defendants rapidly rolled out MPP at ports of entry  
11 across the U.S.-Mexico border. Through MPP, the U.S. Government returned about  
12 68,000 asylum-seeking individuals, including Individual Plaintiffs, to border regions of  
13 Mexico to await their next hearing in U.S. immigration court.<sup>1</sup> Despite returning these  
14 asylum seekers to areas notorious for high rates of kidnappings, rapes, murders, and  
15 other violence against migrants, *see* FAC ¶¶ 44–48, the U.S. Government provided them  
16 with no resources to ensure their safety, meet their basic needs, or meaningfully  
17 participate in their immigration proceedings. In the Department of Homeland Security’s  
18 (“DHS”) own words, MPP:

19 impos[ed] substantial and unjustifiable human costs on migrants who  
20 were exposed to harm while waiting in Mexico. . . . Significant evidence  
21 indicates that individuals were subject to extreme violence and  
22 insecurity at the hands of transnational criminal organizations that  
23 profited from putting migrants in harm’s way while awaiting their court  
hearings in Mexico.<sup>2</sup>

24 <sup>1</sup> *See* Memorandum from Kirstjen M. Nielsen, Sec’y, U.S. Dep’t of Homeland Security, Policy  
25 Guidance for Implementation of the Migrant Protection Protocols (Jan. 25, 2019),  
26 [https://www.dhs.gov/sites/default/files/publications/19\\_0129\\_OPA\\_migrant-protection-protocols-  
policy-guidance.pdf](https://www.dhs.gov/sites/default/files/publications/19_0129_OPA_migrant-protection-protocols-policy-guidance.pdf); U.S. Customs and Border Protection, Migrant Protection Protocols Guiding  
27 Principles (Jan. 28, 2019), [https://www.cbp.gov/sites/default/files/assets/documents/2019-  
Jan/MPP%20Guiding%20Principles%201-28-19.pdf](https://www.cbp.gov/sites/default/files/assets/documents/2019-Jan/MPP%20Guiding%20Principles%201-28-19.pdf).

28 <sup>2</sup> DHS, Explanation of the Decision to Terminate the Migrant Protection Protocols, at 2 (Oct. 29,  
2021), [https://www.dhs.gov/sites/default/files/publications/21\\_1029\\_mpp-termination-justification-  
memo.pdf](https://www.dhs.gov/sites/default/files/publications/21_1029_mpp-termination-justification-memo.pdf).



1  
2 On the date of their scheduled immigration court hearings, individuals were  
3 required to present themselves at a designated port of entry hours before their hearing  
4 time—often at a dangerous, pre-dawn hour—so DHS could transport them to  
5 immigration court. *See* ECF No. 46, Declaration of Jaqueline Doe (“Jaqueline Doe  
6 Decl.”), ¶¶ 27, 35; Declaration of Victoria Doe (“Victoria Doe Decl.”), ¶ 18;  
7 Declaration of Chepo Doe (“Chepo Doe Decl.”), ¶ 25; Declaration of Fredy Doe  
8 (“Fredy Doe Decl.”), ¶ 7; Declaration of Ariana Doe (“Ariana Doe Decl.”), ¶ 10;  
9 Declaration of Francisco Doe (“Francisco Doe Decl.”), ¶ 12. Individuals subjected to  
10 the Protocols were not provided with means to travel to the port of entry at which they  
11 were required to appear, or even information about how to do so. *See* Victoria Doe Decl.  
12 ¶ 12 (stating that, when she was returned to Mexico, she did not understand how or  
13 when to return to court); Chepo Doe Decl. ¶ 13 (stating that he was not provided with  
14 any information about how to get to his first hearing).

15 The Protocols relied on the Immigration and Nationality Act’s (“INA”) detention  
16 scheme. Under the INA, individuals subjected to MPP were detained by the U.S.  
17 Government. From the time individuals were initially processed under the Protocols  
18 until they were returned to Mexico, they were detained by DHS and under DHS’s  
19 physical custody and control. *See* Jaqueline Doe Decl. ¶¶ 12–17; Victoria Doe Decl.  
20 ¶¶ 6–12; Chepo Doe Decl. ¶¶ 11–14; Fredy Doe Decl. ¶¶ 26–32; Ariana Doe Decl.  
21 ¶¶ 5–9; Francisco Doe Decl. ¶¶ 3–4.<sup>3</sup> When they were returned to Mexico, DHS kept  
22 them in statutory detention, retaining custody over them. *See* 8 U.S.C. § 1225(b)(2)(A),  
23 (C); 8 C.F.R. § 235.3(d) (“Such alien shall be considered detained for a proceeding  
24 within the meaning of section 235(b) of the Act . . . .”); *see also* ECF No. 79-2 (Brief  
25 of *Amici Curiae* Immigration Law Professors). By forcing Individual Plaintiffs to return  
26

27 <sup>3</sup> *See also Doe v. McAleenan*, 415 F. Supp. 3d 971, 976 (S.D. Cal. 2019) (people subjected to MPP  
28 and held in CBP custody “are subject to conditions that significantly confine and restrain their  
freedom” and are thus “in custody” for habeas purposes).

1 to Mexico to await their immigration proceedings, the Protocols rendered them  
2 vulnerable to violence at the hands of cartels, gangs, and Mexican officials, and  
3 deprived them of access to their basic needs in conditions DHS now admits are often  
4 “crowded, unsanitary, and beset by violence.”<sup>4</sup>

5 Although individuals subjected to MPP remain in DHS’s custody for the duration  
6 of their removal proceedings, they lack even the minimal access to legal assistance that  
7 would have been afforded them had they been detained within the United States.<sup>5</sup>  
8 Indeed, the Protocols blocked legal representation entirely for all but 10% of impacted  
9 individuals.<sup>6</sup> By contrast, Executive Office for Immigration Review (“EOIR”) records  
10 reflect that 80% of all asylum seekers appearing in immigration court are represented.<sup>7</sup>  
11 DHS itself describes “the difficulties in accessing counsel” as “endemic to the  
12 program’s design” and has thus concluded that “resources cannot sufficiently fix”  
13 MPP’s problems including “the challenges associated with accessing counsel.”<sup>8</sup>

14 For the few individuals lucky enough to find representation, in-person attorney-  
15 client consultations were limited to a one-hour window before a scheduled hearing.<sup>9</sup>  
16 But conditions at the hearing locations meant these meetings were of little use: it was  
17 difficult or impossible to speak confidentially, childcare was unavailable, and other  
18

19 \_\_\_\_\_  
20 <sup>4</sup> Explanation of the Decision to Terminate MPP, *supra* n. 2, at 7.

21 <sup>5</sup> See, e.g., Kyle Kim, *Immigrants held in remote ICE facilities struggle to find legal aid before they’re*  
22 *deported*. Los Angeles Times, Sept. 28, 2017.

23 <sup>6</sup> As of October 2021, only 6,837 (less than 10%) of the 71,039 individuals subjected to MPP had legal  
24 representation. See TRAC Immigration, *Details on MPP (Remain in Mexico) Deportation*  
25 *Proceedings by Hearing Location and Attendance, Representation, Nationality, Month and Year of*  
26 *NTA, Outcome, and Current Status* (Oct. 2021), <https://trac.syr.edu/phptools/immigration/mpp/> (filter  
27 set to “Hearing Location: All” and “Represented: Represented”).

28 <sup>7</sup> TRAC, *Asylum Decisions by Custody, Representation, Nationality, Location, Month and Year,*  
*Outcome and more* (Oct. 2021), <https://trac.syr.edu/phptools/immigration/asylum/> (filters set to  
“Immigration Court” and “Represented”).

<sup>8</sup> Explanation of the Decision to Terminate MPP, *supra* n. 2, at 3.

<sup>9</sup> See U.S. Immigration and Customs Enforcement Memorandum, “Migrant Protection Protocols  
Guidance,” (Feb. 12, 2019),

[https://www.ice.gov/sites/default/files/documents/Fact%20sheet/2019/ERO-MPP-Implementation-  
Memo.pdf](https://www.ice.gov/sites/default/files/documents/Fact%20sheet/2019/ERO-MPP-Implementation-Memo.pdf).

1 tools necessary to provide meaningful legal services were inaccessible. *See* Second  
2 Supplemental Declaration of Margaret Cargioli (“Cargioli 2d Suppl. Decl.”) ¶ 18.  
3 Unrepresented individuals were even directed not to approach legal representatives in  
4 the immigration court regarding possible representation. *See* Chepo Doe Decl. ¶¶ 29–  
5 30. DHS acknowledges that “[o]pportunities for attorneys to meet with their clients  
6 outside of those organized at the hearing locations were limited due to, among other  
7 constraints, complications associated with cross-border communication.”<sup>10</sup> Thus, most  
8 individuals subjected to MPP have been forced to navigate the complexities of U.S.  
9 immigration law on their own.

10 The outcomes of MPP hearings show that the Protocols effectively denied those  
11 subjected to them any meaningful opportunity to obtain asylum. Over a 14-month  
12 period, 98% of individuals subjected to MPP received removal orders,<sup>11</sup> including all  
13 six Individual Plaintiffs. DHS statistics show that only 732 individuals in MPP out of  
14 67,694 cases, or 1.1%, were granted relief from removal; in contrast, the general “relief-  
15 granted rate” is more than 26 times greater.<sup>12</sup>

16 **B. Defendants’ Attempted Wind-Down of the Protocols**

17 Defendants suspended new enrollments into MPP on January 20, 2021.<sup>13</sup> In late  
18 February 2021, DHS began processing individuals and certain family members in  
19 Mexico with “active” MPP cases for return to the United States. As of June 30, 2021,  
20  
21

22 <sup>10</sup> Explanation of the Decision to Terminate MPP, *supra* n. 2, at 17.

23 <sup>11</sup> An order of removal is considered “final” when an individual has either (1) failed to attend their  
24 hearing (“in absentia” removal order); (2) waived appeal; (3) reserved but failed to file an appeal  
25 within 30 days of the removal order; (4) appealed the removal order but later withdrew their appeal;  
26 or (5) had their appeal denied by the Board of Immigration Appeals (“BIA”) or Attorney General.  
8 C.F.R. § 1241.1. An individual whose appeal is denied by the BIA may file a petition for review in  
the relevant federal circuit court of appeals, but that individual is considered to have a final order of  
removal unless and until the order has been vacated by the federal circuit court. *See* 8 U.S.C. § 1252(b).

27 <sup>12</sup> Explanation of the Decision to Terminate MPP, *supra* n. 2, at 21.

28 <sup>13</sup> DHS Statement on the Suspension of New Enrollments in the Migrant Protection Protocols Program  
(Jan. 20, 2021), [https://www.dhs.gov/news/2021/01/20/dhs-statement-suspension-new-enrollments-  
migrant-protection-protocols-program](https://www.dhs.gov/news/2021/01/20/dhs-statement-suspension-new-enrollments-migrant-protection-protocols-program).

1 CBP had processed fewer than half of the individuals subjected to MPP who were  
2 eligible based on their “active” immigration proceedings.<sup>14</sup>

3 Defendants required individuals subjected to MPP who had received *in absentia*  
4 removal orders to first have their immigration cases reopened in order to be eligible for  
5 processing into the United States under the wind-down. Third Supplemental  
6 Declaration of Luis Gonzalez (“Gonzalez 3d Suppl. Decl.”) ¶ 17; Cargioli 2d Suppl.  
7 Decl. ¶¶ 7, 10, 25. DHS has complete discretion to determine whether to join a motion  
8 to reopen, making the likelihood of joinder uncertain. If, and only if, a motion to reopen  
9 were granted, would an individual with an *in absentia* order of removal be considered  
10 to again have an “active” case and thus be eligible for processing into the United States.  
11 See Gonzalez 3d Suppl. Decl. ¶ 18. Meanwhile, individuals with final removal orders  
12 for reasons other than failure to appear, who had no dedicated process for seeking  
13 reopening, remained in limbo outside the U.S. See, e.g., Fredy Doe Decl. ¶ 2; Ariana  
14 Doe Decl. ¶ 20.

15 **C. The Termination of the Protocols and *Texas v. Biden***

16 On June 1, 2021, Defendant Mayorkas announced the termination of MPP,  
17 directing DHS to rescind implementing guidance and other directives issued to carry  
18 out the policy (the “June 1 Termination Directive”). His memo acknowledged that “the  
19 high percentage of cases completed through the entry of *in absentia* removal orders . . .  
20 raises questions . . . about the design and operation of the program, whether the process  
21 provided enrollees an adequate opportunity to appear for proceedings to present their  
22 claims for relief,” and whether “conditions faced by some MPP enrollees in Mexico,  
23 including the lack of stable access to housing, income, and safety, resulted in the  
24

25  
26 <sup>14</sup> See Press Release, U.S. Customs and Border Protection, CBP Announces June 2021 Operational  
27 Update, (July 16, 2021), [https://www.cbp.gov/newsroom/national-media-release/cbp-announces-june-2021-operational-update?\\_ga=2.91485023.455329872.1635808166-1055311343.1635808166](https://www.cbp.gov/newsroom/national-media-release/cbp-announces-june-2021-operational-update?_ga=2.91485023.455329872.1635808166-1055311343.1635808166)  
28 (“more than 12,000 individuals who had been returned to Mexico under MPP” had been processed as of June 30, 2021).

1 abandonment of potentially meritorious protection claims.”<sup>15</sup> The June 1 Termination  
2 Directive clarified that “[t]he termination of MPP does not impact the status of  
3 individuals who were enrolled in MPP at any stage of their proceedings before EOIR  
4 or the phased entry process.”<sup>16</sup>

5 On August 13, 2021, the U.S. District Court for the Northern District of Texas  
6 permanently enjoined the June 1 Termination Directive and ordered the government:

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

11 *Texas v. Biden*, No. 2:21-CV-067-Z, 2021 WL 3603341, at \*27 (N.D. Tex. Aug. 13,  
12 2021) (emphases in original).

13 On August 19, 2021, the U.S. Court of Appeals for the Fifth Circuit denied the  
14 government’s application to stay the district court’s order. *Texas v. Biden*, 10 F.4th 538  
15 (5th Cir. 2021). The court’s opinion emphasizes that the injunction’s detention language  
16 does not restrict DHS’s parole discretion but forbids “simply releas[ing] every alien  
17 described in [INA] § 1225 *en masse* into the United States.” *Id.* at 558. On August 24,  
18 2021, the Supreme Court denied the government’s request to stay the district court’s  
19 injunction. *Biden v. Texas*, No. 21A21, 2021 WL 3732667 (U.S. Aug. 24, 2021).

20 On October 29, 2021, Defendant Mayorkas issued a second termination memo,<sup>17</sup>  
21 accompanied by a 39-page explanation that concluded “there are inherent problems  
22 with the program that no amount of resources can sufficiently fix.”<sup>18</sup> The same day, the

23 \_\_\_\_\_  
24 <sup>15</sup> Memorandum from Secretary Alejandro N. Mayorkas to Acting Heads of CBP, ICE, and USCIS,  
25 Termination of the Migrant Protection Protocols Program, at 4 (June 1, 2021),  
[https://www.dhs.gov/sites/default/files/publications/21\\_0601\\_termination\\_of\\_mpp\\_program.pdf](https://www.dhs.gov/sites/default/files/publications/21_0601_termination_of_mpp_program.pdf)  
26 (“June 1 Termination Directive”).

27 <sup>16</sup> *Id.* at 7.

28 <sup>17</sup> Memorandum from Secretary Alejandro N. Mayorkas, Termination of the Migrant Protection  
Protocols (Oct. 29, 2021), [https://www.dhs.gov/sites/default/files/publications/21\\_1029\\_mpp-  
termination-memo.pdf](https://www.dhs.gov/sites/default/files/publications/21_1029_mpp-termination-memo.pdf).

<sup>18</sup> Explanation of the Decision to Terminate MPP, *supra* n. 2, at 38.

1 Department of Justice filed a “Suggestion of Mootness and Opposed Motion to Vacate  
2 the Judgment Below and Remand for Further Proceedings” with the Fifth Circuit in  
3 *Texas v. Biden*, requesting a remand to the district court in order to vacate its injunction.  
4 No. 21-10806 (5th Cir. Oct. 29, 2021).

### 5 **III. PROCEDURAL BACKGROUND**

6 On October 28, 2020, while the Protocols were in effect, Plaintiffs filed their  
7 Complaint challenging the implementation of the Protocols on behalf of a class of  
8 individuals subjected to them. *See* Compl., ECF No. 1. On November 9, 2020, Plaintiffs  
9 filed Emergency Motions for Provisional Class Certification (ECF No. 35) and for a  
10 Preliminary Injunction (ECF No. 36). Plaintiffs sought to enjoin MPP until hearings  
11 could safely resume, enable the Individual Plaintiffs and putative class members to  
12 return to the United States to pursue their asylum claims, and require Defendants to  
13 provide class members with meaningful access to legal services. ECF No. 36 at 1. This  
14 Court held a telephonic hearing on both motions in December 2020.

15 On January 22, 2021, this Court ordered the parties to provide supplemental  
16 briefing on the suspension of new MPP enrollments. *See* ECF Nos. 109, 119, 121. On  
17 April 7, 2021, Defendants filed a Motion to Stay, which Plaintiffs opposed. *See* ECF  
18 Nos. 126, 129, 130. On June 2, 2021, the Court ultimately denied Plaintiffs’ pending  
19 Motions “[b]ecause of the passage of time and the transition of administrations,”  
20 particularly in light of “the substantial number of putative class members who have  
21 entered the United States.” Order, ECF No. 135 at 11. The Court recognized, however,  
22 that individuals who remained trapped outside the United States continued to face harms  
23 that may justify injunctive relief. *Id.* The Court also denied Defendants’ Motion to Stay,  
24 concluding that “granting a stay would likely cause Plaintiff Jaqueline Doe and others  
25 in her position hardship or inequity.” *Id.* at 8.

26 In light of this Court’s holding that individuals subjected to the Protocols who  
27 were admitted to the United States are differently situated than those who remain in  
28 Mexico, Plaintiffs amended their Complaint on August 13, 2021 to, *inter alia*, add five

1 Individual Plaintiffs, all of whom were subjected to MPP and are stranded outside the  
2 United States, and modify the putative class definition to include individuals subjected  
3 to MPP who received a final order of removal in MPP proceedings and remain outside  
4 the United States. *See* FAC, ECF No. 143. Hours after Plaintiffs filed their Amended  
5 Complaint, the U.S. District Court for the Northern District of Texas permanently  
6 enjoined the termination of enrollments into MPP. *See Texas v. Biden*, 2021 WL  
7 3603341, at \*27.

8 Because the compliance reports recently filed by the U.S. Government in *Texas*  
9 *v. Biden* make clear that the relief requested in this case does not interfere with the  
10 Northern District of Texas’s permanent injunction, *see infra* Sec. IV.D, and because of  
11 the serious risk of irreparable harm to Individual Plaintiffs, *see infra* Sec. IV.A,  
12 Individual Plaintiffs now request that this Court issue a temporary restraining order  
13 (“TRO”) allowing them to return to the United States with their immediate family  
14 members, under appropriate precautionary public health measures, to seek reopening of  
15 their cases and, if successful, to pursue their claims for asylum and related relief.

16 **IV. ARGUMENT**

17 Individual Plaintiffs seek a TRO to prevent further irreparable harm from  
18 Defendants’ unlawful implementation of the Protocols against them. “The standard for  
19 obtaining a temporary restraining order is identical to the standard for obtaining a  
20 preliminary injunction.” *Torres v. Dep’t of Homeland Sec.*, No. EDCV 18-2604, 2020  
21 WL 3124216, at \*5 (C.D. Cal. Apr. 11, 2020) (citation omitted). When moving for a  
22 preliminary injunction, a plaintiff “must establish that he is likely to succeed on the  
23 merits, that he is likely to suffer irreparable harm in the absence of preliminary relief,  
24 that the balance of equities tips in his favor, and that an injunction is in the public  
25 interest.” *Saravia ex rel. A.H. v. Sessions*, 905 F.3d 1137, 1142 (9th Cir. 2018) (quoting  
26 *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)). Under the Ninth Circuit’s  
27 “sliding scale” approach to preliminary injunctions, “the elements of the preliminary  
28 injunction test are balanced, so that a stronger showing of one element may offset a

1 weaker showing of another.” *Hernandez v. Lynch*, EDCV 16-00620, 2016 WL  
2 7116611, at \*20 (C.D. Cal. Nov. 10, 2016) (citation omitted). A preliminary injunction  
3 may issue where the plaintiff raises “serious questions going to the merits . . . and the  
4 balance of hardships tips sharply in . . . plaintiff’s favor.” *All. For the Wild Rockies v.*  
5 *Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011) (citation omitted). For the reasons  
6 discussed below, Individual Plaintiffs meet all of these requirements.

7 **A. INDIVIDUAL PLAINTIFFS ARE LIKELY TO SUFFER**  
8 **IRREPARABLE HARM IN THE ABSENCE OF IMMEDIATE**  
9 **RELIEF**

10 Due to Defendants’ unlawful implementation of MPP, Individual Plaintiffs have  
11 suffered and are at immediate risk of further irreparable harm. By returning Individual  
12 Plaintiffs Jaqueline Doe, Victoria Doe, Chepo Doe, Fredy Doe, Ariana Doe, and  
13 Francisco Doe to Mexico under MPP, Defendants jeopardized their lives by exposing  
14 them to violence, precluding them from meeting basic needs, including urgent medical  
15 care, and depriving them of meaningful access to the U.S. asylum process.

16 As a result of MPP, all Individual Plaintiffs remain stranded outside the United  
17 States in precarious conditions. After Defendants subjected Chepo Doe to the Protocols,  
18 he and his daughter faced such dire conditions in Mexico that they were forced to return  
19 to the country from which they had fled to access urgent medical care. Jaqueline Doe,  
20 Victoria Doe, Fredy Doe, Ariana Doe, and Francisco Doe remain stranded in Mexican  
21 border cities that the U.S. Department of State has classified as “CRITICAL-threat  
22 locations.”<sup>19</sup> As asylum-seeking individuals subjected to MPP, all five are at heightened  
23 risk of being targeted for violent crime in northern Mexico.<sup>20</sup>

24 <sup>19</sup> U.S. Dep’t of State, OSAC, Crime and Safety Report, Tijuana (July 29, 2020),  
25 <https://www.osac.gov/Content/Report/6da3d429-8e47-4cf5-b483-1949341e677f>; same, Nuevo  
26 Laredo (June 24, 2020), [https://www.osac.gov/Content/Report/7e7f075c-4642-42e7-b1ed-  
1902835361b9](https://www.osac.gov/Content/Report/7e7f075c-4642-42e7-b1ed-1902835361b9); same, Matamoros (June 24, 2020), [https://www.osac.gov/Content/Report/ee12ce10-  
1ee1-4fb5-a7b6-1902856858b5](https://www.osac.gov/Content/Report/ee12ce10-1ee1-4fb5-a7b6-1902856858b5).

27 <sup>20</sup> From January–June 2021, Human Rights First identified 3,250 public reports of murder, rape,  
28 torture, kidnapping, and other violent assaults against asylum seekers, often with the complicity or  
active participation of Mexican law enforcement. Human Rights First, Update: *Grave Dangers*



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All Individual Plaintiffs are in danger of immediate and irreparable harm:

- **Jaqueline Doe:** Since being placed in MPP, Jaqueline has been robbed, verbally abused, and physically assaulted because of her gender identity. Jaqueline Doe Decl. ¶¶ 49–54. She has also struggled to meet her basic needs, including being unable to consistently afford medicine, food, water, electricity, and housing. *Id.* ¶¶ 19, 20–22, 25, 26, 33, 46, 55, 57. Jaqueline currently lives in fear for her life in Tijuana. Second Supplemental Declaration of Jaqueline Doe (“Jaqueline Doe 2d Supp. Decl.”), ¶¶ 2, 7, 10. She was recently kidnapped and beaten by several armed men; since escaping, she has continued to live in hiding. *Id.* ¶¶ 4–7. Because she is HIV-positive, Jaqueline also faces imminent irreparable harm due to her inability to reliably obtain necessary medication. *Id.* ¶ 3. She currently has only enough HIV medication for the month of October; without access to additional medication, she is at risk of serious health effects, including organ damage. *Id.* Jaqueline is in immediate need of psychological support to overcome the trauma she has endured in Mexico. *Id.* ¶ 10.
- **Victoria Doe:** After returning to Nuevo Laredo from her last MPP court hearing, Victoria Doe was kidnapped and brutally raped while her partner and son were held at gunpoint. Victoria Doe Decl. ¶¶ 27–29. Her heightened anxiety following the assault has left Victoria afraid to go outside, and her son is so traumatized he will not speak. *Id.* ¶¶ 38, 41–42. Both Victoria and her son are in immediate need of medical and psychological care. *Id.* ¶¶ 4, 40–45. Her son suffers from an undiagnosed condition causing persistent vomiting and fever, and Victoria urgently requires reconstructive surgery to address the severe injuries caused by

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*Continue for Asylum Seekers Blocked In, Expelled to Mexico by Biden Administration* (June 22, 2021), <https://www.humanrightsfirst.org/resource/update-grave-dangers-continue-asylum-seekers-blocked-expelled-mexico-biden-administration>. See also Ryan Devereaux, *Biden’s Border Agenda Collides With the Realities Of Mexico’s Violence*, *The Intercept* (June 7, 2021), <https://theintercept.com/2021/06/07/biden-harris-mexico-border-violence/> (explaining that the Protocols have “transformed into hunting grounds for criminal groups and security elements that prey on recent deportees and migrants.”).

1 her rape. *Id.* ¶¶ 40–44. Victoria and her family were recently evicted and are  
2 living with another family in one small room, without access to a bathroom and  
3 with an unreliable water supply, because they are afraid to venture outside to look  
4 for new housing. *Id.* ¶¶ 35, 36. Victoria fears continued harm by the Mexican  
5 authorities, who have previously detained and threatened her family. *Id.* ¶ 33.

6 • **Fredy Doe:** Fredy Doe and his family are living in precarious circumstances in a  
7 hotel in Matamoros, where members of the Gulf cartel have recently been  
8 surveilling individuals. Fredy Doe Decl. ¶ 4. He and his family feel so unsafe that  
9 they rarely leave the room in which they live. *Id.* Fredy requires urgent medical  
10 care to treat serious head and spinal injuries, but doctors have been unwilling to  
11 treat him because he lacks immigration status in Mexico. *Id.* ¶ 5.

12 • **Ariana Doe:** Ariana Doe and her 12-year-old daughter are living in precarious  
13 circumstances in a shared apartment in Matamoros. Ariana Doe Decl. ¶ 22. There  
14 have been repeated shootings near Ariana’s home. In addition to placing her in  
15 physical danger, the frequent gunfire recalls the traumatic experiences that  
16 compelled her to flee her home country, causing her extreme stress. *Id.* ¶¶ 32–33.  
17 Ariana and her daughter feel so unsafe that they leave their apartment only to go  
18 to Ariana’s workplace (a hair salon) and to buy food. *Id.* ¶ 25. Cartel members  
19 have approached Ariana and pressured her to provide private haircuts to high-  
20 level members of their organizations. *Id.* ¶¶ 28–29. Ariana has rejected these  
21 requests, which angered the cartel members and made Ariana even more afraid  
22 for her and her daughter’s safety. *Id.* ¶ 29. In an effort to protect her daughter,  
23 Ariana is almost always with her. *Id.* ¶ 25. Ariana has been repeatedly sexually  
24 propositioned by a powerful cartel member in Matamoros, forcing her to hide to  
25 avoid contact with him. *Id.* ¶ 27.

26 • **Francisco Doe:** Francisco Doe is living in precarious circumstances in  
27 Matamoros, where he is constantly exposed to gang violence. Francisco Doe  
28 Decl. ¶ 23. Two weeks ago, there was an extended armed confrontation between

1 gangs and police in Matamoros, which led to numerous shootings. *Id.* ¶ 22.  
2 During this confrontation, there was a shootout between police and local gangs  
3 one block from Francisco’s apartment. *Id.* Francisco feared for his life, but still  
4 left his apartment to get to work immediately after the shooting stopped. *Id.*  
5 Because Francisco is not from Mexico, he has had difficulty finding employment.  
6 *Id.* ¶¶ 18, 21. He currently works at a tortilla factory, where his employer forces  
7 him to work a late shift that ends at 11:30 pm. *Id.* ¶ 18. Knowing that Matamoros  
8 is not safe after dark, he fears that he will be kidnapped or killed. *Id.* ¶ 23.

9 • **Chepo Doe:** During the ten months that Chepo Doe and his daughter spent in  
10 Mexico subject to MPP, Chepo’s daughter developed necrotizing pancreatitis, a  
11 condition that produces severe chronic abdominal pain. Chepo Doe Decl. ¶¶ 35–  
12 44. After trying for more than six months to access medical care in Mexico,  
13 Chepo felt that their only option was to return to El Salvador to seek treatment  
14 for her condition. *Id.* ¶¶ 37–38. After Chepo’s daughter narrowly survived  
15 emergency surgery, her doctors informed Chepo that she had been on the verge  
16 of death. *Id.* ¶¶ 39–40. Chepo and his daughter continue to live in fear of his  
17 persecutors in El Salvador, who have recently threatened to kill Chepo several  
18 times. *Id.* ¶¶ 4–10.

19 In addition to these threats to their physical safety, all six Individual Plaintiffs  
20 continue to be deprived of meaningful access to the U.S. asylum process, including their  
21 right to legal representation. *See infra* Sec. IV.B. As this Court has noted, Individual  
22 Plaintiff Jaqueline Doe and others in her position “are still injured and without relief”  
23 as long as they remain stranded outside the United States with no possibility of  
24 vindicating their rights to counsel or to apply for asylum. Order, ECF No. 135 at 8.

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1           **B. INDIVIDUAL PLAINTIFFS ARE LIKELY TO SUCCEED ON**  
2           **THE MERITS OF THEIR CLAIMS.**

3                   **1. Defendants’ implementation of MPP has violated Individual**  
4                   **Plaintiffs’ right to apply for asylum.**

5           “It is undisputed that all [noncitizens] possess [the right to apply for asylum]  
6 under the [INA].” *Orantes-Hernandez v. Thornburgh*, 919 F.2d 549, 553 (9th Cir. 1990)  
7 (citing 8 U.S.C. § 1158(a)). The right to apply for asylum includes the right to legal  
8 representation at no expense to the government, *see* 8 U.S.C. §§ 1229a(b)(4)(A), 1362;  
9 the right to notice of the right to legal representation, *see* 8 U.S.C. § 1158(d)(4); the  
10 right to access information to support an application, *see* 8 U.S.C. § 1158(b)(1)(B); the  
11 right to appeal a determination by an immigration judge, *see* 8 U.S.C. § 1229a(c)(5);  
12 the right to petition federal courts of appeals for judicial review of a final order of  
13 removal, *see* 8 U.S.C. § 1252(b); and the right to move to reopen proceedings or  
14 reconsider a decision regarding removability, *see* 8 U.S.C. § 1229a(c)(6)-(7).

15           The substantive right to apply for asylum also includes the right to uniform  
16 treatment by the government. Through the Refugee Act, the U.S. Government must  
17 “establish a uniform procedure for passing upon an asylum application.” S. Rep. No.  
18 96-256 (1980), *reprinted in* 1980 U.S.C.C.A.N. 141, 149; *see also Orantes-Hernandez*  
19 *v. Smith*, 541 F. Supp. 351, 375 (C.D. Cal. 1982) (acknowledging Congress’s focus on  
20 the “uniform, nondiscriminatory treatment of refugees” when it passed the Refugee  
21 Act); *see also* ECF No. 77-1 (Brief of *Amicus Curiae* Refugees International and Yael  
22 Schacher) at 7–12. Thus, the geographic location where an individual applies for asylum  
23 should have no bearing under federal law on the merits of their application.

24           Plaintiffs are likely to succeed on their claim that Defendants, by implementing  
25 the Protocols, have obstructed their substantive right to apply for asylum by effectively  
26 nullifying the protections of the INA and the Refugee Act.

27           **First**, because they were subjected to the Protocols, all Individual Plaintiffs have  
28 been unable to meaningfully pursue their asylum claims and have received removal

1 orders. Despite enduring dangerous conditions to attend their hearings, both Jaqueline  
2 Doe and Chepo Doe were ultimately issued *in absentia* removal orders. After attending  
3 her first two hearings, Jaqueline Doe was turned away by U.S. immigration officers  
4 when she presented for her third hearing. *See* ECF No. 46, Jaqueline Doe Decl. ¶¶ 27–  
5 42. The officers told her, without explanation, that her case was “closed.” *Id.* ¶ 40. After  
6 attending his first three hearings, Chepo Doe was compelled to return to El Salvador  
7 due to the lack of access to medical care for his daughter’s life-threatening illness, which  
8 she contracted while forced to stay in Mexico. Chepo Doe Decl. ¶¶ 35–44. Thus, for  
9 both Jaqueline and Chepo, the inability to attend their hearings was caused by  
10 conditions directly resulting from Defendants’ implementation of MPP.<sup>21</sup>

11 The implementation of the Protocols against Victoria, Fredy, Ariana, and  
12 Francisco also denied them access to the U.S. asylum system, resulting in removal  
13 orders that were issued following proceedings that they did not understand and for  
14 which they had been unable to adequately prepare due to conditions in Mexico. *See*  
15 Victoria Doe Decl. ¶¶ 25–26 (describing inability to understand the judge at hearing  
16 when he denied her case); Fredy Doe Decl. ¶¶ 8, 17 (describing inability to understand  
17 what was happening at immigration hearing); Ariana Doe Decl. ¶ 12 (stating she had to  
18 find someone to translate her asylum application but could not verify its accuracy);  
19 Francisco Doe Decl. ¶¶ 9, 11, 13 (describing inability to translate court documents and  
20 not understanding the basis of the denial of his claims). Despite their repeated efforts,  
21 none of them were able to retain counsel. *See* Victoria Doe Decl. ¶¶ 19–21, 24–25;  
22 Fredy Doe Decl. ¶¶ 6, 10, 22; Ariana Doe Decl. ¶¶ 11–12; Francisco Doe Decl. ¶¶ 4, 8,  
23 9, 10, 14 (stating he was able to hire only a Mexican representative to help fill out his  
24 asylum application but who did not appear at his removal hearings).

25 **Second**, the Protocols have obstructed Individual Plaintiffs’ ability to seek legal  
26 representation for purposes of reopening their cases or pursuing direct appeals of the  
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28 <sup>21</sup> *See supra*, n. 2.

1 denial of their asylum claims. *See, e.g.*, Ariana Doe Decl. ¶¶ 17–19 (describing that she  
2 could not find an attorney to appeal or reopen her case); Francisco Doe Decl. ¶ 16  
3 (describing difficulty finding attorney to reopen his case); Fredy Doe Decl. ¶¶ 18, 22  
4 (describing inability to find counsel to appeal or reopen his case). The complexity of  
5 the motion-to-reopen process—like the asylum process more generally—makes legal  
6 representation critical. This process is nearly impossible to navigate for Individual  
7 Plaintiffs outside the United States, who have no security, stability, or ability to  
8 communicate meaningfully with legal service providers in the United States. *See, e.g.*,  
9 Victoria Doe Decl. ¶ 39 (stating she cannot find an attorney to help her with the  
10 reopening process and does not know how to submit the motion to reopen); *see also*  
11 ECF No. 37, Cargioli Decl. ¶¶ 21–26; ECF No. 38, Gonzalez Decl. ¶¶ 20, 33–39.

12 Complicating matters further, motions to reopen are likely time-barred for at least  
13 some Individual Plaintiffs. For these individuals to obtain reopening, they must ensure  
14 that DHS joins their motions, make complex legal arguments for equitable tolling, or  
15 request that the immigration judge reopen their cases *sua sponte*. Gonzalez 3d Suppl.  
16 Decl. ¶¶ 17–18; *see* Cargioli 2d Suppl. Decl. ¶¶ 25–26. Moreover, individuals are  
17 required to include with their motion to reopen applications for any relief they seek,  
18 along with supporting documents and evidence to support equitable tolling and any  
19 other claims raised. *See* 8 U.S.C. § 1229a(c)(7)(B); 8 C.F.R. § 1003.2(c)(1).

20 These requirements are almost insurmountable for Individual Plaintiffs, who  
21 have been cut off from the U.S. asylum system and lack the resources and expertise to  
22 accurately fill out an asylum application in English without the assistance of counsel.<sup>22</sup>  
23 *See, e.g.*, Fredy Doe Decl. ¶ 18 (describing his inability to understand the forms  
24 necessary to file an appeal because they were in English); Ariana Doe Decl. ¶ 12  
25 (explaining that she filled out the application herself in Spanish but was unsure of how  
26 accurate the translation was). Even for Individual Plaintiffs with counsel, the process of  
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28 <sup>22</sup> *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 putting together a motion to reopen would be challenging given the lack of confidential  
2 meeting spaces in Mexico and the precariousness of their living situations. Gonzalez 3d  
3 Suppl. Decl. ¶¶ 15, 22; Cargioli 2d Suppl. Decl. ¶¶ 21–22, 25–26. In the unlikely event  
4 that the Individual Plaintiffs somehow managed to file and prevail on their motions to  
5 reopen, DHS would currently be unlikely to parole them into the United States to pursue  
6 their cases. Gonzalez 3d Suppl. Decl. ¶ 23; Cargioli 2d Suppl. Decl. ¶ 20. Such  
7 individuals have thus been “denied a chance to seek protection.”<sup>23</sup>

8 **Third**, MPP has obstructed Individual Plaintiffs’ access to other components of  
9 the asylum system. For instance, because they are stranded outside the United States,  
10 Individual Plaintiffs cannot access libraries, legal materials, or other reference materials  
11 to assist them in preparing and gathering evidence to support their motions to reopen or  
12 claims for relief. *See, e.g.*, Fredy Doe Decl. ¶ 16 (stating it was difficult and expensive  
13 to gather and submit evidence to support his application); Chepo Doe Decl. ¶ 28 (stating  
14 he was unable to submit supporting evidence with his asylum application because it was  
15 too difficult to gather documents on his own). Individual Plaintiffs therefore cannot  
16 fully understand or exercise their statutory right to access information to support their  
17 asylum applications. *See* 8 U.S.C. § 1158(b)(1)(B).

18 **Fourth**, the Protocols have violated the Refugee Act’s requirement of uniform  
19 treatment of asylum claims. *See Orantes-Hernandez*, 541 F. Supp. at 375. By design,  
20 MPP arbitrarily treats asylum applicants at the southern border differently from those  
21 who apply for asylum elsewhere. Had Jaqueline not been subject to the Protocols, she  
22 would have been free to attend her immigration hearing without seeking DHS’s  
23 permission to cross the border, which resulted in her *in absentia* removal order. *See*  
24 Jaqueline Doe Decl. ¶ 27. And had Victoria Doe not been subjected to the Protocols,  
25 she would not have missed the opportunity to appeal her removal order due to the  
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27 <sup>23</sup> DHS, Statement by Homeland Security Secretary Alejandro N. Mayorkas Regarding the Situation  
28 at the Southwest Border (Mar. 16, 2021), <https://www.dhs.gov/news/2021/03/16/statement-homeland-security-secretary-alejandro-n-mayorkas-regarding-situation>.

1 trauma of being kidnapped and raped in Mexico. *See* Victoria Doe Decl. ¶¶ 27–30. By  
2 implementing MPP, DHS has imposed arbitrary and systematic restrictions that apply  
3 only to asylum seekers at the U.S.-Mexican border. Indeed, the implementation of MPP  
4 appears to have been designed to coerce individuals to abandon their asylum claims  
5 altogether. *Cf. Orantes-Hernandez*, 919 F.2d at 557 (pattern of coercion and  
6 interference with right to apply for asylum violates the INA). DHS’s recent explanation  
7 for terminating MPP concludes that “[t]he difficulties that MPP enrollees faced in  
8 Mexico, including the threat of violence and kidnapping, coupled with inadequate and  
9 unreliable access to food and shelter, likely contributed to people placed in MPP  
10 choosing to forego further immigration court proceedings regardless of whether their  
11 cases had merit.”<sup>24</sup> The Protocols have thus effectively denied Individual Plaintiffs their  
12 right to apply for asylum in the United States.

13 **2. Defendants’ implementation of MPP has obstructed Individual**  
14 **Plaintiffs’ right to access counsel.**

15 Individual Plaintiffs are likely to succeed on the merits of their claim that  
16 Defendants’ implementation of the Protocols has violated their right to access counsel.  
17 By trapping asylum-seeking Individual Plaintiffs outside the United States—across an  
18 international border from immigration attorneys and other legal resources to which they  
19 would otherwise have access—Defendants’ implementation of the Protocols violated  
20 the INA’s clear mandate that individuals fleeing persecution have access to legal  
21 counsel. Indeed, DHS admits that, due to MPP’s failings, “[i]nadequate access to  
22 counsel casts doubt on the reliability of removal proceeding[s].”<sup>25</sup>

23 The INA codifies a right to counsel that is rooted in the Due Process Clause. *See*  
24 8 U.S.C. §§ 1158(d)(4), 1229a(b)(4)(A), 1362; *see also Biwot v. Gonzales*, 403 F.3d  
25 1094, 1098 (9th Cir. 2005). This statutory right mandates that asylum seekers have  
26 meaningful access to counsel, including the ability to seek legal representation at no

27 \_\_\_\_\_  
28 <sup>24</sup> Explanation of the Decision to Terminate MPP, *supra* n. 2, at 20.

<sup>25</sup> *Id.*, at 17.



1 cost to the government, to consult with legal service providers, and to safely and  
2 confidentially communicate with retained counsel. *See, e.g.*, FAC ¶¶ 32–37; *Torres v.*  
3 *Dep’t of Homeland Sec.*, 411 F. Supp. 3d 1036, 1063–65 (C.D. Cal. 2019); *see also*  
4 *Torres v. Dep’t of Homeland Sec.*, 2020 WL 3124216.

5 Because they were subjected to MPP, Individual Plaintiffs have been deprived of  
6 meaningful access to legal representation throughout the asylum process, including  
7 while completing applications for relief, preparing for hearings, appearing in removal  
8 proceedings, and directly appealing denials of relief. Victoria Doe, Fredy Doe, Ariana  
9 Doe, and Francisco Doe were unable to retain counsel at critical stages of their asylum  
10 proceedings. *See* Victoria Doe Decl. ¶ 19; Fredy Doe Decl. ¶¶ 6, 10; Ariana Doe Decl.  
11 ¶¶ 11, 18; Francisco Doe Decl. ¶ 8; *see also* Gonzalez 3d Suppl. Decl. ¶ 12 (stating that  
12 many legal service providers do not represent individuals in MPP living outside of the  
13 United States); Cargioli 2d Suppl. Decl. ¶¶ 18–19, 23 (describing how individuals in  
14 MPP were not allowed to speak to her in immigration court).

15 Although Jaqueline Doe and Chepo Doe were able to overcome overwhelming  
16 odds to secure legal representation for their relief applications,<sup>26</sup> MPP has nevertheless  
17 obstructed their ability to meaningfully access legal assistance by preventing them from  
18 safely meeting and confidentially communicating with those representatives, and by  
19 forcing them to prioritize survival over their asylum cases. *See, e.g.*, Jaqueline Doe 2d  
20 Suppl. Decl. ¶ 9 (stating that she does not always feel comfortable disclosing her story  
21 to her attorney over the phone); Chepo Doe Decl. ¶ 32 (explaining difficulty of  
22 discussing sensitive topics with his lawyer because they could only meet in public  
23 spaces); *see also* Gonzalez 3d Suppl. Decl. ¶¶ 13–15 (discussing obstacles to  
24 communication with MPP clients who generally do not have reliable cell phone  
25 connections or access to confidential spaces); Cargioli 2d Suppl. Decl. ¶¶ 21–22  
26 (explaining the difficulties in communication with individuals in MPP due to limited  
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28 <sup>26</sup> *See supra*, n.6.

1 access to cell phones, internet, and confidential meeting spaces); *see also supra* Sec.  
2 IV.A. (addressing Individual Plaintiffs’ inability to meet basic needs).

3 For the same reasons described above, Defendants’ implementation of MPP has  
4 also deprived Individual Plaintiffs of their right to meaningfully access legal  
5 representation in order to reopen their asylum proceedings or directly appeal their  
6 removal orders. Victoria Doe, Fredy Doe, Ariana Doe, and Francisco Doe do not have  
7 legal representation and are required to navigate the complex reopening process on their  
8 own. *See, e.g.*, Victoria Doe Decl. ¶ 39 (stating she cannot find an attorney to help her  
9 with the reopening process and does not know how to submit a motion to reopen); Fredy  
10 Doe Decl. ¶ 18 (explaining that he could not find anyone to help him submit an appeal);  
11 Ariana Doe Decl. ¶ 18 (stating that she was unable to find an attorney to represent her  
12 on appeal and still has not been able to find an attorney to help her file a motion to  
13 reopen); Francisco Doe ¶¶ 15–16 (stating that the lawyer he retained failed to file his  
14 appeal and that he has been unable to find an attorney to help him file a motion to  
15 reopen). Although Jaqueline Doe and Chepo Doe have managed to retain counsel for  
16 their motions to reopen, their attempts to communicate with their attorneys continue to  
17 be fraught with challenges. *See* Jaqueline Doe 2d Suppl. Decl. ¶ 9; Chepo Doe Decl.  
18 ¶¶ 32–33.

19 Individual Plaintiffs are therefore likely to succeed on their claims that  
20 Defendants’ implementation of MPP has deprived them of meaningful access to legal  
21 representation.

22 **3. Defendants’ implementation of MPP has violated Individual**  
23 **Plaintiffs’ due process right to a full and fair hearing.**

24 The Due Process Clause of the Fifth Amendment guarantees noncitizens the right  
25 to a full and fair hearing in their removal cases. *See, e.g., Colmenar v. INS*, 210 F.3d  
26 967, 971 (9th Cir. 2000). As part of this right, the Due Process Clause guarantees  
27 noncitizens the right to access counsel in their removal proceedings at no cost to the  
28 government. *Biwot v. Gonzales*, 403 F.3d at 1098 (“The right to counsel in immigration

1 proceedings is rooted in the Due Process Clause . . . .”); *Orantes-Hernandez*, 919 F.2d  
2 at 554 (stating that noncitizens’ “fundamental” right to counsel “must be respected in  
3 substance as well as in name”). Due process requires that noncitizens in removal  
4 proceedings are given “a reasonable opportunity to present evidence on [their] behalf.”  
5 *Colmenar*, 210 F.3d at 971; 8 U.S.C. § 1229(b)(4)(B); *see also Oshodi v. Holder*, 729  
6 F.3d 883, 889 (9th Cir. 2013) (“A vital hallmark of a full and fair hearing is the  
7 opportunity to present evidence and testimony on one’s behalf.”) (citation omitted). Due  
8 process also requires that noncitizens not be prevented from filing appeals from their  
9 removal proceedings. *See Dearinger ex rel. Volkova v. Reno*, 232 F.3d 1042, 1045 (9th  
10 Cir. 2000).

11 As explained above, Defendants’ implementation of the Protocols has denied  
12 Individual Plaintiffs a meaningful opportunity to access legal advice and representation.  
13 *See supra* Sec. IV.B.2. The implementation of MPP has also significantly obstructed  
14 Individual Plaintiffs’ ability to gather and present evidence and testimony in support of  
15 their asylum applications. *See, e.g.*, Jaqueline Doe Decl. ¶ 46 (stating she did not know  
16 what evidence was needed to support her application, and describing the costly and  
17 difficult process to print supporting documents); Chepo Doe Decl. ¶ 28 (stating he was  
18 unable to submit supporting evidence with his asylum application because it was too  
19 difficult to gather evidence); Fredy Doe Decl. ¶ 16 (stating it was difficult and expensive  
20 to gather and submit evidence to support his family’s application); Ariana Doe Decl.  
21 ¶ 12 (stating she had no way to know whether the translation of her evidence was  
22 accurate); Francisco Doe Decl. ¶ 10 (stating he was unsure if the person who helped  
23 him with his application submitted any supporting evidence). DHS has conceded that  
24 MPP “did not succeed in a sufficient number of cases at achieving the timely and  
25 reliable adjudication of migrants’ removal proceedings.”<sup>27</sup> Further, it has prevented  
26 Individual Plaintiffs from effectively appealing their final removal orders or moving to  
27

28 <sup>27</sup> Explanation of the Decision to Terminate MPP, *supra* n. 2, at 21.

1 reopen their cases. *See* Victoria Doe Decl. ¶ 39; Fredy Doe Decl. ¶ 18, 22; Ariana Doe  
2 Decl. ¶¶ 17–19; Francisco Doe ¶ 16; Jaqueline Doe 2d Suppl. Decl. ¶ 9.

3 For these reasons, Individual Plaintiffs are likely to establish that Defendants’  
4 implementation of MPP violated their due process right to a full and fair hearing.

5 **C. THE BALANCE OF HARDSHIPS AND PUBLIC INTEREST**  
6 **FACTORS TIP SHARPLY IN FAVOR OF PLAINTIFFS.**

7 The balance of equities tips sharply in Plaintiffs’ favor, and a TRO is in the public  
8 interest because of the grave harm Individual Plaintiffs will suffer if they continue to be  
9 exposed to dangerous conditions outside the United States, which also serve to deprive  
10 them of a meaningful opportunity to seek asylum. When the federal government is a  
11 party, the balance of the equities and public interest factors merge. *Drakes Bay Oyster*  
12 *Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014) (citing *Nken v. Holder*, 556 U.S.  
13 418, 435 (2009)).

14 Individual Plaintiffs’ hardships plainly outweigh any potential inconvenience to  
15 the government. Simply stated, Defendants have no legitimate or lawful reason to force  
16 Individual Plaintiffs to remain stranded outside the United States indefinitely and to  
17 continue to deprive them of access to the asylum system. *See Castillo v. Barr*, 449 F.  
18 Supp. 3d 915, 923 (C.D. Cal. 2020) (“[T]here is no harm to the Government when a  
19 court prevents the Government from engaging in unlawful practices”). The Ninth  
20 Circuit, for example, has repeatedly recognized that the risk of serious harm to  
21 immigrants’ health must weigh heavily in favor of a grant of injunctive relief—  
22 particularly where the government had a reasonable alternative to avoid this harm. *See,*  
23 *e.g., Roman v. Wolf*, 977 F.3d 935, 944 (9th Cir. 2020) (finding that the balance of  
24 equities tipped in favor of detained immigrants, in part because government could avoid  
25 exposure to COVID-19 by alternative means). Indeed, the Ninth Circuit has already  
26 recognized that individuals subjected to MPP face significant hardships. *Innovation*  
27 *Law Lab v. Wolf*, 951 F.3d 1073, 1093 (9th Cir. 2020) (recognizing that individuals who  
28 are forced to remain in Mexico “risk substantial harm, even death, while they await

1 adjudication of their applications for asylum”), *vacated as moot by Innovation Law Lab*  
2 *v. Mayorkas*, 5 F.4th 1099 (9th Cir. 2021).

3 Individual Plaintiffs have articulated facts demonstrating the severe and  
4 imminent risk of grave harm that they face on a daily basis, and their specific hardships  
5 weigh heavily in favor of issuing a TRO. Jaqueline Doe is HIV-positive, and MPP  
6 jeopardizes her access to the medication she needs to stay alive. *See* Jaqueline Doe 2d  
7 Supp. Decl. ¶ 3. Victoria Doe has already been kidnapped and raped, and she and her  
8 son are in desperate need of medical treatment. *See* Victoria Doe Decl. ¶¶ 40–45. Chepo  
9 Doe’s daughter developed a rare pancreatic disease and nearly died after a Mexican  
10 hospital refused to treat her. *See* Chepo Doe Decl. ¶¶ 35–44. Expulsion to Mexico has  
11 deprived Fredy Doe of necessary medical care for severe head and spinal injuries. Fredy  
12 Doe Decl. ¶ 5. And Ariana Doe and Francisco Doe are both in constant danger of being  
13 harmed by gang and cartel violence in Matamoros. *See* Ariana Doe Decl. ¶¶ 20, 23–29,  
14 31–32; Francisco Doe Decl. ¶¶ 18–19, 22–24.

15 A TRO is essential to avert these harms. Defendants admit that “the United States  
16 has limited ability to fix these issues, given that they relate to migrant living conditions  
17 and access to benefits in Mexico—an independent sovereign nation.”<sup>28</sup> Protecting  
18 Individual Plaintiffs’ fundamental rights and physical safety is unquestionably in the  
19 public interest. *See Anti Police-Terror Project v. City of Oakland*, 477 F. Supp. 3d 1066,  
20 1090 (N.D. Cal. 2020) (holding that protecting a party from threats to her bodily security  
21 is in the public interest); *see also Roman*, 977 F.3d at 944 (availability of reasonable,  
22 alternative means to a policy weighed against the government’s claim of hardship). And  
23 Defendants have no legitimate or lawful reason to violate the Constitution, *see United*  
24 *States v. U.S. Coin & Currency*, 401 U.S. 715, 726 (1971) (Brennan, J., concurring), or  
25 federal law, *see Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013).

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28 \_\_\_\_\_  
<sup>28</sup> *Id.* at 12.

1           **D. RELIEF FOR THE INDIVIDUAL PLAINTIFFS DOES NOT**  
2           **IMPLICATE THE *TEXAS V. BIDEN* INJUNCTION.**

3           The relief requested does not implicate the *Texas v. Biden* injunction because the  
4 injunction does not address the ongoing effects of Defendants’ past implementation of  
5 MPP. The *Texas v. Biden* injunction prohibits “implementing or enforcing the June 1  
6 Memorandum” which terminated *future* placements into MPP. *Texas v. Biden*, 2021  
7 WL 3603341, at \*27. Because the June 1 Termination Directive did not impact the  
8 status of individuals—like Individual Plaintiffs—who had *already* been subjected to  
9 MPP, its injunction likewise has no bearing on Individual Plaintiffs here. *See also* Defs.’  
10 Suppl. Brief, ECF No. 119 at 6 (characterizing “individuals who were placed in MPP,  
11 are currently outside the United States, and no longer have active immigration court  
12 cases” as “past MPP participants” who are “no longer in MPP”).<sup>29</sup>

13           For the same reason, Individual Plaintiffs’ request for emergency relief may  
14 proceed independently of Defendants’ evolving response to the *Texas v. Biden*  
15 injunction. On October 14, 2021, the U.S. Government informed the Northern District  
16 of Texas that it has “made substantial progress toward the re-implementation of MPP”  
17 and announced that “DHS is ready to begin re-implementing MPP in mid-November,  
18 assuming Mexico’s decision to accept returns under MPP at that time.” Defs.’ First  
19 Suppl. Notice of Compliance with Inj. at 2, 4, *Texas v. Biden*, No. 2:21-CV-067-Z (N.D.  
20 Tex. Oct. 14, 2021), ECF No. 111. Critically, both reimplementation and termination  
21 address present or future placements into MPP. *See id.*, at 2–4 (discussing plans for  
22 “re-implementation of MPP”). Nothing in the *Texas v. Biden* injunction or in the U.S.  
23 Government’s compliance notices discusses individuals, like Individual Plaintiffs, who  
24 were subjected to MPP in the past and continue to suffer harm as a result. Regardless  
25 of how the government proceeds, Individual Plaintiffs will continue to face ongoing

26  
27  
28 <sup>29</sup> Suspension of the MPP wind-down for persons with *in absentia* removal orders was not compelled by the injunction and is contrary to DHS’s own interpretation that the termination of MPP and the wind-down are distinct.

1 irreparable harm from Defendants’ past unlawful implementation of MPP and continue  
2 to be deprived of meaningful access to the U.S. asylum system.

3 Nor does the injunction preclude Defendants’ ability to comply with an order  
4 from this Court granting the relief requested by Individual Plaintiffs. The injunction  
5 emphasizes that “[n]othing in this injunction requires DHS to take any immigration or  
6 removal action nor withhold its statutory discretion towards any individual that it would  
7 not otherwise take.” *Texas v. Biden*, 2021 WL 3603341, at \*28. And the Fifth Circuit  
8 was clear that humanitarian parole, a status applicable to those processed into the United  
9 States who were in MPP, is permissible. *See Texas v. Biden*, 10 F.4th at 558. Thus,  
10 Defendants may permit Individual Plaintiffs to return to the United States.

11 **V. CONCLUSION**

12 For the foregoing reasons, Plaintiffs respectfully request that this Court issue a  
13 temporary restraining order allowing the Individual Plaintiffs and their immediate  
14 family members to return to the United States, under appropriate precautionary public  
15 health measures, in order to seek reopening of their cases and, if successful, pursue their  
16 claims for asylum and related relief.

17  
18 Dated: November 2, 2021

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