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 9 Association of Pro Bono Counsel

10 UNITED STATES DISTRICT COURT  
 11 CENTRAL DISTRICT OF CALIFORNIA  
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 14 IMMIGRANT DEFENDERS LAW  
 CENTER, *et al.*,

15 Plaintiffs,

16 v.

17 CHAD WOLF, Acting Secretary,  
 18 Department of Homeland Security, in  
 his official capacity, *et al.*,

19 Defendants.  
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CASE NO.: 2:20-cv-9893-JGB-SHK

UNOPPOSED MOTION BY  
 ASSOCIATION OF PRO BONO  
 COUNSEL FOR LEAVE TO FILE  
 AMICUS CURIAE BRIEF IN  
 SUPPORT OF PLAINTIFFS'  
 MOTION FOR PRELIMINARY  
 INJUNCTION

Hearing Date: Dec. 14, 2020  
 Hearing Time: 9:00 a.m.  
 Courtroom: 1  
 Judge: Hon. Jesus G.  
 Bernal

1 The Association for Pro Bono Counsel (“APBCo”) respectfully moves for  
2 leave to file an *amicus curiae* brief in the above-captioned matter. Plaintiffs and  
3 Defendant have been notified of APBCo’s request to file an *amicus curiae* brief, and  
4 all parties consent to APBCo’s request.

5 APBCo is a mission-driven membership organization of more than 260  
6 attorneys and practice group managers who manage and implement pro bono  
7 practices in over 130 of the world’s largest law firms. APBCo was founded in an  
8 effort to provide greater public access to justice through pro bono legal services.  
9 APBCo’s members manage pro bono practices that provide millions of hours to pro  
10 bono clients every year, collaborating with community-based legal aid agencies  
11 across the nation. APBCo’s mission includes (1) promoting and encouraging the  
12 development of full-time law firm pro bono counsel, (2) augmenting the professional  
13 development of pro bono counsel, and (3) representing the greater law firm pro bono  
14 community.

15 The Ninth Circuit and California District Courts have “broad discretion to  
16 appoint amici curiae.” *Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982)  
17 *abrogated on other grounds by Rainwater v. McGinness*, 559 F. App’x 635, 635 (9th  
18 Cir. 2014); *see also Duronslet v. Cty. of Los Angeles*, No. 2:16-cv-08933-  
19 ODW(PLAx), 2017 WL 5643144, \*1 (C.D. Cal. Jan. 23, 2017). Courts “frequently  
20 welcome amicus briefs from nonparties concerning legal issues that have potential  
21 ramifications beyond the parties directly involved or if the amicus has unique  
22 information or perspective that can help the court beyond the help that the lawyers  
23 for the parties are able to provide.” *Safari Club Int’l v. Harris*, No. 2:14-cv-01856-  
24 GEB-AC, 2015 WL 1255491, at \*1 (E.D. Cal. Jan. 14, 2015) (citation omitted).  
25 “Even when a party is very well represented, an amicus may provide important  
26 assistance to the court.” *Duronslet*, at \*1 (quoting *Neonatology Assocs., P.A. v.*  
27 *C.I.R.*, 293 F.3d 128, 132 (3d Cir. 2002)). “The touchstone is whether the amicus is  
28

1 ‘helpful,’ and there is no requirement ‘that amici must be totally disinterested.’”  
2 *Earth Island Inst. v. Nash.*, 2019 WL 6790682, at \*1 (E.D. Cal. Dec. 12, 2019); *see*  
3 *Funbus Sys., Inc. v. State of Cal. Pub. Utilities Comm’n*, 801 F.2d 1120, 1125 (9th  
4 Cir. 1986) (“[T]here is no rule that amici must be totally disinterested,” and it is “a  
5 perfectly permissible role for an amicus” to “take a legal position and present legal  
6 arguments in support of it.”).

7 Over the past several years, APBCo member firms have devoted substantial  
8 resources to developing, expanding and maintaining pro bono programs within their  
9 law firms to offer broad representation to vulnerable asylum seekers and their  
10 families. As *amicus curiae*, APBCo can provide this Court with important context  
11 directly relevant the Migrant Protection Protocols (“MPP” or “Protocols”) at issue in  
12 this case. APBCo has drawn on its expertise regarding pro bono efforts within the  
13 private bar to file amicus briefs in other cases, including most recently in the Ninth  
14 Circuit in *In re: Google LLC Street View Electronic Commun’s Litig.*, No. 20-15616  
15 (9th Cir. 2020), offering the Court a unique perspective that might otherwise be  
16 overlooked.

17 APBCo’s proposed *amicus* brief in this case provides an account of the  
18 deleterious effects of the Protocols on the private bar’s pro bono representation of  
19 asylum seekers. APBCo’s on-the-ground perspective is directly relevant to the  
20 Motion for Preliminary Injunction currently pending before the Court, therefore  
21 APBCo respectfully requests that the Court grant leave to file the accompanying  
22 *amicus curiae* brief in support of Plaintiffs’ Motion for Preliminary Injunction.

23 Dated: November 20, 2020

Respectfully submitted,

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By: /s/ Holly L. Henderson-Fisher  
Holly L. Henderson-Fisher  
Peter S. Julian  
Aaron Murphy  
  
Attorneys for Amicus Curiae  
Association of Pro Bono Counsel

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

IMMIGRANT DEFENDERS  
LAW CENTER, *et al.*,

Plaintiffs,

v.

CHAD WOLF, Acting Secretary,  
Department of Homeland  
Security, in his official capacity,  
*et al.*,

Defendants.

CASE NO.: 2:20-cv-9893-JGB-SHK

**[PROPOSED] ORDER GRANTING  
ASSOCIATION OF PRO BONO  
COUNSEL’S UNOPPOSED MOTION  
FOR LEAVE TO FILE *AMICUS  
CURIAE* BRIEF IN SUPPORT OF  
PLAINTIFFS’ MOTION FOR  
PRELIMINARY INJUNCTION**

Hearing Date: December 14, 2020  
Hearing Time: 9:00 a.m.  
Courtroom: 1  
Judge: Hon. Jesus G. Bernal

The Court, having considered Association of Pro Bono Counsel’s Unopposed Motion For Leave To File *Amicus Curiae* Brief In Support Of Plaintiffs’ Motion for Preliminary Injunction, and good cause appearing therefore, the Association of Pro Bono Counsel’s Motion is hereby **GRANTED**.

**IT IS SO ORDERED.**

DATED: \_\_\_\_\_

Honorable Jesus G. Bernal  
United States District Judge



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**CORPORATE DISCLOSURE STATEMENT**

The Association of Pro Bono Counsel has no parent corporations. It has no stock and hence no publicly held company owns 10% or more of its stock.

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**INTEREST OF AMICUS CURIAE**

The Association for Pro Bono Counsel (“APBCo”) is a mission-driven membership organization of more than 260 attorneys and practice group managers who manage and implement pro bono practices in over 130 of the world’s largest law firms. APBCo was founded in an effort to provide greater public access to justice through pro bono legal services. APBCo’s mission includes (1) promoting and encouraging the development of full-time law firm pro bono counsel, (2) augmenting the professional development of pro bono counsel, and (3) representing the greater law firm pro bono community. APBCo’s members manage pro bono practices that provide millions of hours to pro bono clients every year, collaborating with community-based legal aid agencies and private sector law firms across the nation. APBCo members help recruit volunteers within their firms for pro bono matters, including asylum cases, and often manage and mentor those pro bono cases, as well.

Because immigration representation, and asylum representation in particular, remain a central focus of the pro bono programs of most law firms whose pro bono counsel are APBCo members, APBCo offers this Court a unique perspective on the effects the Migrant Protection Protocols have on pro bono representation from the private sector.

**INTRODUCTION**

The Migrant Protection Protocols (“MPP” or “Protocols”) create a draconian immigration policy requiring certain asylum seekers to leave the United States and wait in Mexico while their immigration court proceedings are pending in the U.S. immigration courts. The Protocols are legally problematic on many fronts. APBCo submits this *amicus curiae* brief to highlight one particular harm: the Protocols impose insurmountable barriers to pro bono legal representation for those immigrants trapped within their ambit. The Protocols have serious, adverse and ongoing effects on the legal community’s ability to provide pro bono counsel to MPP-covered individuals

1 seeking asylum, withholding of removal or protection under the Convention Against  
2 Torture. While pro bono asylum representation is difficult under the best of  
3 circumstances, the Protocols make it all but impossible. APBCo urges this Court to  
4 enjoin Defendants from continuing to implement the Protocols.

5 **ARGUMENT**

6 **I. Pro Bono Counsel From the Private Sector Have Long Played a Pivotal**  
7 **Role in the Representation of Asylum Seekers.**

8 Pro bono private sector legal representation has long played a vital role in  
9 ensuring the effective representation of asylum seekers in the United States. Asylum  
10 seekers are entitled to counsel under the Immigration and Nationality Act.<sup>1</sup> However,  
11 since most asylum seekers cannot afford counsel and are not entitled to federally-  
12 funded legal aid, the only available representation is often through pro bono legal  
13 services.

14 In response to the growing crisis at the southern border, many of the country’s  
15 large law firms, including the majority of APBCo’s member law firms, have  
16 incorporated immigration work into their pro bono programs, representing thousands  
17 of asylum seekers in partnership with community-based legal services providers. For  
18 example, in 2017 Skadden Arps LLP launched an Immigration Impact Project  
19 involving hundreds of its attorneys and staff, providing (among other things) pro bono  
20 legal representation to asylum seekers on the U.S. side of the United States-Mexico  
21 border. Other firms have made remarkable inroads in representing detained asylum  
22 seekers at the border. Akin Gump LLP has participated in a program providing legal

23 <sup>1</sup> See 8 U.S.C. § 1362 (“In any removal proceedings before an immigration judge . . .  
24 the person concerned shall have the privilege of being represented (at no expense  
25 to the Government) by such counsel, authorized to practice in such proceedings, as  
26 he shall choose.”); 8 U.S.C. § 1229a(b)(4)(A) (in removal proceedings, the  
27 noncitizen “shall have the privilege of being represented, at no expense to the  
28 Government, by counsel of the [non-citizen’s] choosing who is authorized to  
practice in such proceedings”); 8 U.S.C. § 1158(d)(4) (requiring the Attorney  
General to provide noncitizens with notice of privilege of counsel as well as a list  
of attorneys who have indicated their availability to represent noncitizens).

(cont’d)

1 services to individuals in detention centers in Karnes County, Texas;<sup>2</sup> Jones Day has  
2 done extensive work at the border in Laredo, Texas;<sup>3</sup> and several large law firms and  
3 law schools have participated in the CARA Project at the Dilley Detention Center in  
4 Dilley, Texas.<sup>4</sup> Together, these firms have contributed thousands of hours of pro bono  
5 counsel to asylum seekers who otherwise would have no representation.

6 This work is vital. Legal representation in immigration proceedings strongly  
7 correlates with a noncitizen’s ability to obtain relief, and it likewise ensures the smooth  
8 functioning of the immigration system generally.<sup>5</sup> The Executive Office for  
9 Immigration Review (“EOIR”), the agency within the Department of Justice that  
10 operates the immigration court system, recognizes the value of pro bono counsel in  
11 this area. An EOIR operating memorandum reports:

12 Pro bono representation benefits both the respondent and the court,  
13 providing respondents with welcome legal assistance and the judge with  
14 efficiencies that can only be realized when the respondent is represented.  
15 A capable pro bono representative can help the respondent navigate court  
16 rules and immigration laws and thereby assist the court in understanding  
17 the respondent’s circumstances and interests in relief, if any is available.  
18 Pro bono representation in immigration court thus promotes the effective  
19 and efficient administration of justice.

20 See Exec. Off. of Immigr. Rev., U.S. Dep’t of Just., Memorandum: Operating Policies

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22 <sup>2</sup> See Wil S. Hylton, *The Shame of America’s Family Detention Camps*, N.Y. Times  
23 Mag. (Feb. 8, 2015), <https://www.nytimes.com/2015/02/08/magazine/the-shame-of-americas-family-detention-camps.html>.

24 <sup>3</sup> See *Pro Bono*, Jones Day, <https://www.jonesday.com/en/firm/pro-bono?tab=globalinitiatives> (last visited Nov. 19, 2020).

25 <sup>4</sup> See Nicole Narea, *In Remote Immigrant Detention Centers, It’s Pro Bono or Bust*,  
26 Law 360 (June 1, 2018), <https://www.law360.com/articles/1049270/in-remote-immigrant-detention-centers-it-s-pro-bono-or-bust>.

27 <sup>5</sup> See Ingrid V. Eagly & Steven Shafer, *A National Study of Access to Counsel in*  
28 *Immigration Court*, 164 U. Pa. L. Rev. 1, 35 (2015).

1 and Procedures Memorandum 08-01: Guidelines for Facilitating Pro Bono Legal  
2 Services (Mar. 10, 2008).

3 Thus, across the country, pro bono attorneys and the law firms for which they  
4 work are committed to shouldering the financial and professional burdens of  
5 representing asylum seekers and helping them to present complete, accurate and  
6 understandable asylum applications to immigration authorities and courts. Their  
7 efforts, lauded by the EOIR for promoting the effective and efficient administration  
8 of justice, should be encouraged and made easier by government policy. Sadly, the  
9 Protocols frustrate this goal by making access to pro bono representation nearly  
10 impossible for tens of thousands of asylum seekers, and ensuring that justice for  
11 these individuals will not be effectively or efficiently administered.

12 **II. Pro Bono Representation of Asylum Seekers Requires a Significant**  
13 **Investment of Time and Resources and Faces Significant Logistical**  
14 **Obstacles In the Best of Circumstances.**

15 APBCo members have dedicated significant time and resources developing,  
16 expanding and maintaining robust pro bono programs within their law firms to offer  
17 broad representation to vulnerable asylum seekers and their families. Even with these  
18 efforts, however, representation of asylum seekers is a labor-intensive process. In the  
19 best of circumstances—that is, where pro bono attorneys have direct and regular  
20 access to their client without external impediments—there are logistical obstacles to  
21 achieving robust and effective representation by pro bono lawyers who do not practice  
22 immigration law on a full-time basis.<sup>6</sup>

23 Primary among the challenges is the careful cultivation of an effective attorney-  
24 client relationship. Pro bono attorneys build that relationship over multiple, in-depth

25 <sup>6</sup> See C. Attanasio & E. Spagat, *Asylum-seekers waiting in Mexico rarely find*  
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28 [%20DIEGO%20\(AP\)%20%E2%80%94One,couldn't%20find%20an%20atto](https://apnews.com/article/0914755c23b0106388869835f7b3ce13#:~:text=SAN%20DIEGO%20(AP)%20%E2%80%94One,couldn't%20find%20an%20attorney)  
[rney \(quoting one immigration judge as stating, “Immigration law is considered](https://apnews.com/article/0914755c23b0106388869835f7b3ce13#:~:text=SAN%20DIEGO%20(AP)%20%E2%80%94One,couldn't%20find%20an%20attorney)  
[one of the most complicated areas of the law there is . . . Even lawyers struggle.”](https://apnews.com/article/0914755c23b0106388869835f7b3ce13#:~:text=SAN%20DIEGO%20(AP)%20%E2%80%94One,couldn't%20find%20an%20attorney)  
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1 interviews with the client—a process that can be challenging and time-consuming.  
2 Many, if not most, asylum seekers have been traumatized by persecution in the home  
3 countries from which they fled. As a result of that trauma, asylum seekers often do  
4 not present facts about their persecution in a linear, chronological fashion, particularly  
5 for a pro bono attorney whom they have never met before. Additionally, language  
6 barriers often inhibit the establishment of confidence and trust between an attorney  
7 and her client, requiring additional time and resources to secure interpretation and  
8 translation services for the pro bono attorney to gather and understand the relevant  
9 facts on which to base the client’s asylum application. Cultural barriers, too,  
10 frequently make it difficult for clients to discuss aspects of their persecution and for  
11 pro bono attorneys to elicit information essential to presenting the client’s case for  
12 asylum. In short, effective pro bono representation of asylum seekers takes time and  
13 patience as the attorney-client relationship is established and nurtured until  
14 traumatized clients feel sufficiently safe to reveal often horrific personal details of the  
15 persecution from which they have fled and on account of which they seek asylum in  
16 the United States.

17 While representation of asylum seekers will always present challenges, those  
18 challenges increase exponentially for pro bono attorneys representing *detained* asylum  
19 seekers. For example, many immigration detention centers are located in  
20 geographically remote areas, forcing pro bono attorneys to travel long distances to  
21 meet with their clients.<sup>7</sup> Pro bono attorneys, interpreters and medical experts may  
22 experience delays caused by lockdowns or bureaucracy even after making the long  
23 commute to a remote detention center. Even where geographic distance can be  
24 overcome, as has been demonstrated by the several successful pro bono projects  
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26 <sup>7</sup> See Eagly, *supra* n. 5 at 35; see also *Locked Up Far Away: The Transfer of*  
27 *Immigrants to Remote Detention Centers in the United States*, Hum. Rts. Watch  
28 (2009), <https://www.hrw.org/report/2009/12/02/locked-far-away/transfer-immigrants-remote-detention-centers-united-states#>.

1 undertaken by APBCo members at the United States-Mexico border, pro bono counsel  
2 nonetheless report a long series of hurdles that make it difficult to effectively represent  
3 their clients. These hurdles include extended waiting times to see clients, limited  
4 number or availability of rooms in which to meet with clients, inability to reach clients  
5 by telephone, and inability to bring basic equipment such as cell phones and laptops  
6 into detention centers, making representation of detained individuals particularly  
7 burdensome.<sup>8</sup>

8 While detention makes it difficult for attorneys to provide effective pro bono  
9 representation to immigrants, the current challenges now imposed by the Protocols  
10 have made a difficult situation demonstrably worse. Indeed, the MPP present  
11 APBCo's members with insurmountable impediments to pro bono representation.

12 **III. The Protocols Impose a Draconian Form of Detention That Exacerbates**  
13 **the Issues Facing Pro Bono Counsel and Asylum Seekers and Imposes**  
14 **Significant and Unprecedented Obstacles for Pro Bono Representation.**

15 By imposing the United States-Mexico international border between U.S.  
16 attorneys and potential pro bono clients, the Protocols have effectively eviscerated the  
17 statutory right to counsel for tens of thousands of asylum seekers. They have also  
18 undermined the private bar's efforts to offer effective and efficient representation on  
19 a pro bono basis. Under the Protocols, most asylum seekers arriving from Mexico are  
20 placed directly into removal proceedings. Those who fear persecution or torture if  
21 returned to their home country are instead removed to one of seven Mexican border

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23 <sup>8</sup> See generally *ACLU Settlement with ICE Will Allow Immigrants Held in Detention*  
24 *to Use Functional Telephones for Contacting Lawyers, Families, Government*  
25 *Agencies*, ACLU (June 14, 2016), [https://www.aclu.org/press-releases/aclu-](https://www.aclu.org/press-releases/aclu-settlement-ice-will-allow-immigrants-held-detention-use-functional-telephones)  
26 [settlement-ice-will-allow-immigrants-held-detention-use-functional-telephones](https://www.aclu.org/press-releases/aclu-settlement-ice-will-allow-immigrants-held-detention-use-functional-telephones)  
27 (summarizing a legal settlement requiring U.S. Immigration and Customs  
28 Enforcement to provide 4 additional telephone booths and provide detainees free  
attorney calls in four California detention facilities); see also Maria Benevento,  
*Legal representation for detained migrants hindered by access issues*, Nat'l Cath.  
Rep. (Dec. 21, 2018), [https://www.ncronline.org/news/justice/legal-](https://www.ncronline.org/news/justice/legal-representation-detained-migrants-hindered-access-issues)  
[representation-detained-migrants-hindered-access-issues](https://www.ncronline.org/news/justice/legal-representation-detained-migrants-hindered-access-issues).

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1 cities, where they must wait indefinitely for their asylum hearings.<sup>9</sup> The Protocols  
2 purport to “facilitate” the right to counsel by permitting asylum seekers who have been  
3 able to retain an attorney to meet with that attorney in the United States for one hour  
4 prior to their asylum hearing. But even that hour is not uniformly honored. And most  
5 asylum seekers subject to the Protocols are simply unable to retain counsel and must  
6 face their immigration proceedings unrepresented.<sup>10</sup>

7 The requirement that asylum seekers await their immigration hearings in  
8 Mexico creates severe safety and logistical hurdles for pro bono lawyers willing to  
9 represent affected asylum seekers. The Mexican border cities to which these asylum  
10 seekers are removed are dangerous, especially for MPP-covered migrants who are  
11 generally forced to remain indefinitely near designated ports of entry. As of May 13,  
12 2020, there were “at least 1,114 publicly reported cases of murder, rape, torture,  
13 kidnapping, and other violent assaults against asylum seekers and migrants forced to  
14 return to Mexico.”<sup>11</sup> There are frequent news reports of high levels of violence and  
15

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17 <sup>9</sup> See Kate Morrissey, ‘Remain in Mexico’ one year later: How a single policy  
18 transformed the U.S. asylum system, San Diego Union-Trib (Jan. 29, 2020),  
19 [https://www.sandiegouniontribune.com/news/immigration/story/2020-01-29/remain-in-mexico-one-year-later-how-a-single-policy-transformed-the-u-s-](https://www.sandiegouniontribune.com/news/immigration/story/2020-01-29/remain-in-mexico-one-year-later-how-a-single-policy-transformed-the-u-s-asylum-system)  
20 [asylum-system](https://www.sandiegouniontribune.com/news/immigration/story/2020-01-29/remain-in-mexico-one-year-later-how-a-single-policy-transformed-the-u-s-asylum-system) (“After one year of operation, MPP is now in effect in seven ports  
21 of entry along the border in California, Texas and Arizona . . .”). Notably, the  
state of legal limbo these individuals now inhabit has been further exacerbated by  
the global pandemic as well.

22 <sup>10</sup> See *Examining the Human Rights and Legal Implications of DHS’ “Remain in*  
23 *Mexico” Policy: Hearing Before the Subcomm. on Border Sec., Facilitation &*  
24 *Operations of the H. Comm. on Homeland Sec.*, 116th Cong. (2019) (statement of  
Laura Peña, Pro Bono Counsel, American Bar Association Commission on  
Immigration) (hereinafter “Peña Statement”).

25 <sup>11</sup> Human Rights First, a nonprofit advocacy organization, publishes a running  
26 database of publicly reported attacks on MPP-covered asylum seekers. See  
27 *Publicly Reported Cases of Violent Attacks on Individuals Returned to Mexico*,  
Hum. Rts. First,  
[https://www.humanrightsfirst.org/sites/default/files/PubliclyReportedMPPAttacks](https://www.humanrightsfirst.org/sites/default/files/PubliclyReportedMPPAttacks5.13.2020.pdf)  
28 [5.13.2020.pdf](https://www.humanrightsfirst.org/sites/default/files/PubliclyReportedMPPAttacks5.13.2020.pdf) (last visited Nov. 19, 2020).

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1 kidnapping in the Tijuana area, many affecting individuals trapped under the MPP.<sup>12</sup>  
2 Furthermore, the global COVID-19 pandemic has resulted in the closing of the U.S.-  
3 Mexico border to all but “essential travel.”<sup>13</sup> Given the inherent dangers, major U.S.  
4 law firms have declined to permit their attorneys to travel to Mexican border cities to  
5 represent asylum seekers subject to the Protocols.

6 Even those pro bono attorneys willing and able to brave the danger to meet with  
7 asylum seekers in Mexico face significant logistical hurdles. Remaining in Mexico  
8 for several days at a time increases the security risks posed to the attorney. Repeated  
9 daily travel to and from Mexico, however, is time-consuming, with lengthy  
10 unproductive time spent at border-crossing stations, and interferes with volunteer  
11 attorneys’ ability to balance their billable workload with their pro bono efforts.<sup>14</sup> Pro  
12 bono attorneys’ asylum-seeking clients often live in unstable, impermanent conditions,  
13 making them difficult to locate—let alone meet with, interview, and prepare for  
14 complex asylum proceedings. Those transient living conditions often do not provide

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16 <sup>12</sup> See Wendy Fry, *Central American in ‘migrant protection’ program slain in*  
17 *Tijuana*, San Diego Union Trib. (Dec. 12, 2019),  
18 [https://www.sandiegouniontribune.com/news/border-baja-california/story/2019-](https://www.sandiegouniontribune.com/news/border-baja-california/story/2019-12-12/attorney-central-american-in-mpp-program-murdered-in-tijuana)  
19 [12-12/attorney-central-american-in-mpp-program-murdered-in-tijuana](https://www.sandiegouniontribune.com/news/border-baja-california/story/2019-12-12/attorney-central-american-in-mpp-program-murdered-in-tijuana); see also  
20 Daniella Silva, *One Year Into ‘Remain in Mexico’ Policy, Migrants Confront*  
21 *Danger and Instability*, NBC News (Jan. 29, 2020),  
22 [https://www.nbcnews.com/news/us-news/one-year-remain-mexico-policy-](https://www.nbcnews.com/news/us-news/one-year-remain-mexico-policy-migrants-confront-danger-instability-n1124786)  
23 [migrants-confront-danger-instability-n1124786](https://www.nbcnews.com/news/us-news/one-year-remain-mexico-policy-migrants-confront-danger-instability-n1124786); see also Madeline Ross & Todd  
24 Schneberk, *A Deadly Prescription: the U.S. ‘Remain in Mexico’ Policy*, Physicians  
25 for Hum. Rts. (Jan. 7, 2020), [https://phr.org/our-work/resources/a-deadly-](https://phr.org/our-work/resources/a-deadly-prescription-the-u-s-remain-in-mexico-policy/)  
26 [prescription-the-u-s-remain-in-mexico-policy/](https://phr.org/our-work/resources/a-deadly-prescription-the-u-s-remain-in-mexico-policy/).

27 <sup>13</sup> See *Travel Restrictions – Fact Sheet*, U.S. Embassy & Consulates Mex.,  
28 <https://mx.usembassy.gov/travel-restrictions-fact-sheet/> (last visited Nov. 19,  
2020).

29 <sup>14</sup> See Monica Ortiz Uribe, *Trump Administration’s ‘Remain in Mexico’ Program*  
30 *Tangles Legal Process*, NPR (May 9, 2019),  
31 [https://www.npr.org/2019/05/09/721755716/trump-administrations-remain-in-](https://www.npr.org/2019/05/09/721755716/trump-administrations-remain-in-mexico-program-tangles-legal-process)  
32 [mexico-program-tangles-legal-process](https://www.npr.org/2019/05/09/721755716/trump-administrations-remain-in-mexico-program-tangles-legal-process) (“We’re literally having to go across the  
33 border to be able to provide intakes, consultations with people and see what we can  
34 do . . . . [It’s] something completely different, completely new. We never had to  
35 experience that before.” (second alteration in original)).

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1 an adequate place for private, confidential conversations about the personal details of  
2 a client’s past persecution and trauma. Frequently, asylum seekers forced to await  
3 their asylum hearings in Mexico lack meaningful access to phones, computers and e-  
4 mail, making regular communication between attorney and client a daunting task.  
5 Many speak no English, requiring translation and interpretation services for English-  
6 speaking pro bono attorneys.<sup>15</sup> These logistical hurdles dramatically increase the cost  
7 of pro bono asylum representation, forcing APBCo member firms to pull back from  
8 such representations.

9       Ultimately, by imposing the United States-Mexico border as a barrier between  
10 asylum seekers and U.S. pro bono attorneys, the Protocols either thwart pro bono  
11 representation outright or make it nearly impossible for pro bono attorneys and their  
12 asylum-seeking clients to develop the confidence and trust needed to establish an  
13 effective attorney-client relationship, without which robust representation cannot  
14 occur. Consequently, the Protocols are “proving disastrously difficult for many  
15 asylum seekers, who show up for critical court hearings . . . with no legal  
16 representation and little understanding of what is needed to successfully present a  
17 case.”<sup>16</sup> While some Mexican legal organizations provide pro se assistance to asylum  
18 seekers, “they can only help a small portion of the individuals who need assistance”  
19 and face “persistent logistical challenges when helping asylum seekers to fill out  
20 applications for relief and translate supporting evidence into English.”<sup>17</sup> The urgent

21 \_\_\_\_\_  
22 <sup>15</sup> See Laura Abel, *Language Access in Immigration Courts* 1 (2011),  
23 [https://www.brennancenter.org/sites/default/files/legacy/Justice/LangAccess/Lan](https://www.brennancenter.org/sites/default/files/legacy/Justice/LangAccess/Language_Access_in_Immigration_Courts.pdf)  
24 [guage\\_Access\\_in\\_Immigration\\_Courts.pdf](https://www.brennancenter.org/sites/default/files/legacy/Justice/LangAccess/Language_Access_in_Immigration_Courts.pdf) (“More than 85% of the people  
appearing before the nation’s Immigration Courts have limited proficiency in  
English.”).

25 <sup>16</sup> Miriam Jones, *In Court Without a Lawyer: The Consequences of Trump’s ‘Remain*  
26 *in Mexico’ Plan*, N.Y. Times (Aug. 3, 2019),  
<https://www.nytimes.com/2019/08/03/us/migrants-court-remain-in-mexico.html>.

27 <sup>17</sup> Peña Statement, *supra* n. 10.

1 need for pro bono representation from the private bar thus cannot be understated. Yet,  
2 rather than promoting the effective and efficient administration of justice, the  
3 Protocols are depriving tens of thousands of asylum seekers of access to counsel,  
4 putting “the mental and physical health of asylum seekers at great risk, [and] allowing  
5 harm to be inflicted upon a population that has already experienced severe levels of  
6 trauma.”<sup>18</sup>

7 **CONCLUSION**

8 For the foregoing reasons, APBCo respectfully requests that the Court grant  
9 Plaintiffs’ Motion for Preliminary Injunction.

10 Dated: November 20, 2020 Respectfully submitted,

11  
12 By: /s/ Holly L. Henderson-Fisher  
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14 Peter S. Julian  
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26 Attorneys for *Amicus Curiae*  
Association of Pro Bono Counsel

27 <sup>18</sup> *Examining the Human Rights and Legal Implications of DHS’ “Remain in Mexico”*  
28 *Policy: Hearing Before the H. Comm. on Homeland Sec., 116th Cong. (2019)*  
(statement of Todd Schneberk, Medical Expert, Physicians for Human Rights).