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12
13 **UNITED STATES DISTRICT COURT**
14 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
15

16
17 IMMIGRANT DEFENDERS LAW
CENTER, ET AL.,

18 Plaintiffs,

19 v.

20 CHAD WOLF, ACTING SECRETARY,
21 DEPARTMENT OF HOMELAND SE-
22 CURITY, ET AL.,

23 Defendants.

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

***EX PARTE* APPLICATION FOR
LEAVE TO FILE BRIEF OF
AMICUS CURIAE AMNESTY
INTERNATIONAL USA IN
SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY
INJUNCTION**

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1 Proposed amicus Amnesty International USA hereby requests leave to file the
2 attached Proposed Brief of Amicus Curiae in Support of Plaintiffs’ Motion for Pre-
3 liminary Injunction, Dkt. No. 36. A copy of the proposed brief is appended hereto
4 as Exhibit 1.

5 The Court “has broad discretion to appoint amici curiae,” *Hoptowit v. Ray*,
6 682 F.2d 1237, 1260 (9th Cir. 1982), *abrogated on other grounds by Sandin v. Con-*
7 *ner*, 515 U.S. 472 (1995). Amnesty International USA is a leading non-partisan,
8 non-profit human rights organization. It has substantial expertise in both the human
9 rights principles underpinning the international refugee protection framework and
10 the conditions faced by asylum-seekers in Mexico and the United States. Over the
11 course of several years, Amnesty International USA has documented the dangers
12 faced by migrants and asylum-seekers in Mexico and analyzed how U.S. and Mexi-
13 can policies and practices have failed to respect the right to seek asylum.

14 Proposed amicus participated as amicus curiae in *Innovation Law Lab v. Wolf*,
15 951 F.3d 1073 (9th Cir. 2020). As noted in the complaint in the instant case, the
16 Ninth Circuit “affirmed a preliminary injunction setting aside the Protocols because
17 they [were] statutorily unauthorized.” Dkt. No. 1 (Compl.) ¶ 9. In reaching this
18 decision, the court specifically called attention to Amnesty International USA’s ami-
19 cus brief, discussing it at length in its opinion. 951 F.3d at 1092–93.

20 Pursuant to Central District of California’s Local Civil Rules L.R. 7-19 and
21 7-19.1, counsel for amicus have contacted the parties in this matter. Plaintiffs have
22 consented to the filing of this amicus brief. Defendants do not object to the filing of
23 this brief.

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Respectfully submitted,

Dated: November 23, 2020

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**PROPOSED BRIEF OF AMICUS
CURIAE AMNESTY
INTERNATIONAL USA IN
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** Wilkinson Stekloff wishes to acknowledge and thank Michelle Li, law clerk, for her contributions to this brief.*

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TABLE OF AUTHORITIES

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Cases

1

2

3

4 *Bartolome v. Sessions,*

5 904 F.3d 803 (9th Cir. 2018) 6

6 *Bringas-Rodriguez v. Sessions,*

7 850 F.3d 1051 (9th Cir. 2017) 13

8 *E. Bay Sanctuary Covenant v. Trump,*

9 354 F. Supp. 3d 1094 (N.D. Cal. 2018)..... 8

10 *Henriquez-Rivas v. Holder,*

11 707 F.3d 1081 (9th Cir. 2013) 18

12 *Innovation Law Lab v. McAleenan,*

13 924 F.3d 503 (9th Cir. 2019) 3

14 *Innovation Law Lab v. Wolf,*

15 951 F.3d 1073 (9th Cir. 2020) 1, 4

16 *Pirir-Boc v. Holder,*

17 750 F.3d 1077 (9th Cir. 2014) 18

Statutes

18 8 U.S.C. § 1225(b)(1) 3

19 8 U.S.C. § 1231(b)(3) 7

20 142 Cong. Rec. H11054 (daily ed. Sept. 25, 1996)..... 3

Regulations

22 8 C.F.R. § 1208.16(c) 7

23 8 C.F.R. § 1208.30..... 4

24 8 C.F.R. § 1208.31..... 3, 4

25

26 *Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens;*

27 *Conduct of Removal Proceedings; Asylum Procedures,*

28 62 Fed. Reg. 10312 (Mar. 6, 1997) 6

Other Authorities

1
2 Amnesty International Court Observation, San Antonio, Texas (Sept. 2019)....6, 13
3
4 Amnesty International, *Asylum Seekers at Risk of Mass Detention*
5 (June 7, 2019) 16
6
7 Amnesty International, *No Safe Place* (Nov. 2017)..... 10
8
9 Amnesty International, *Overlooked, Under-Protected: Mexico’s*
10 *Deadly Refoulement of Central Americans Seeking Asylum* (2018)..... 15, 16, 18
11
12 Tatiana Arias, *Mexico Sends Nearly 15,000 Troops to the US Border,*
13 *CNN* (June 24, 2019)..... 17
14
15 Delivered to Danger (Nov. 18, 2020)..... 10
16
17 Steven Dudley, *Part III: The Gauntlet*, InSight Crime (Nov. 24, 2012) 9
18
19 Adolfo Flores, *Border Patrol Agents Are Writing “Facebook” as a Street*
20 *Address for Asylum-Seekers Forced to Wait in Mexico*, BuzzFeed News
21 (Sept. 27, 2019)..... 17
22
23 Adolfo Flores, *They Were Told 45 Days. Now Asylum-Seekers Are Being*
24 *Forced to Wait Up to a Year in Mexico*, BuzzFeed News (May 21, 2019) 8
25
26 Araine Francisco & Josefina Salomón, *Mexican Officials Extort Asylum*
27 *Seekers on Way to USA*, InSight Crime (Mar. 25, 2019) 12
28
29 Emily Green, *Exclusive: Mexican Officials Are Extorting Thousands of*
30 *Dollars from Migrants Applying for Asylum*, Vice News (Mar. 13, 2019) 12
31
32 Molly Hennessy-Fiske, *For Transgender Migrants Fleeing Death Threats,*
33 *Asylum in the U.S. Is a Crapshoot* (Oct. 29, 2019) 10
34
35 Molly Hennessy-Fiske, *Pregnant Women, Other Vulnerable Asylum Seekers*
36 *are Returned to Mexico to Await Hearings*, L.A. Times (May 19, 2019) 14
37
38 *Hirsi Jamaa and Others v. Italy*, ECtHR, Application No. 27765/09,
39 *Judgment* (Feb. 23, 2012) 3
40
41 Human Rights First, *Pandemic as Pretext: Trump Administration*
42 *Exploits COVID-19, Expels Asylum Seekers and Children to*
43 *Escalating Danger* (May 2020) 5, 9, 13, 16
44

1 Human Rights Watch, *“Every Day I Live in Fear”*: Violence and
 2 *Discrimination Against LGBT People in El Salvador, Guatemala, and*
 3 *Honduras, and Obstacles to Asylum in the United States* (Oct. 7, 2020) 10
 4 International Detention Coalition & W. Sydney Univ., *COVID-19 Impacts*
 5 *on Immigration Detention: Global Responses* (2020) 16
 6 International Rescue Comm., *Needs Assessment Report, Mexico:*
 7 *Northern Border* (Mar. 25, 2019)..... 14
 8 Interviews by Amnesty International with Forced Returnees (2019)5, 6, 12, 17
 9 Miriam Jordan, *‘I’m Kidnapped’*: *A Father’s Nightmare on the Border*,
 10 *N.Y. Times* (Dec. 21, 2019)..... 11
 11 *Lawyer Defending Trump Policy Makes Stunning Admission*,
 12 *CNN Politics* (Mar. 11, 2020) 6
 13 Dara Lind, *Exclusive: Civil Servants Say They’re Being Used as Pawns*
 14 *in a Dangerous Asylum Program*, *Vox* (May 2, 2019)4, 7
 15 Kate Linthicum, *Five of the Six Most Violent Cities in the World Are in*
 16 *Mexico*, *L.A. Times* (Mar. 14, 2019)..... 9
 17 Lyndon B. Johnson Sch. of Pub. Affairs et al., *The Implementation and*
 18 *Legacy of Mexico’s Southern Border Program* (June 2019) 12
 19 Médecins Sans Frontières, *Mexico: An Unsafe Country for Thousands*
 20 *of Refugees Fleeing Violence in Central America* (Jun. 20, 2018)..... 10
 21 Mexico Secretariat of the Interior, *Boletín Mensual de Estadísticas*
 22 *Migratorias 2019* (“*Monthly Bulletin of Migratory Statistics*”) (July 2020) 14
 23 Robert Moore, *‘I’m in Danger’*: *Migrant Parents Face Violence in Mexico*
 24 *Under New Trump Policy*, *Texas Monthly* (Apr. 25, 2019) 10
 25 Kate Morrissey, *San Diego Immigration Court ‘Overwhelmed’ by Remain*
 26 *in Mexico Cases*, *San Diego Union-Tribune* (June 3, 2019)..... 17
 27 Nicole Narea, *The US Has Abandoned Asylum Seekers in Mexico During*
 28 *the Pandemic*, *Vox* (May 13, 2020) 8
 Peter Orsi & Christopher Sherman, *Mexico-US Tariff Deal: Questions,*
Concerns for Migration, *PBS* (June 9, 2019)..... 14

1 Robert Strauss Center, *Migrant Kidnapping in Mexico:*
 2 *Regional Differences* (Nov. 1, 2018).....9

3 Robert Strauss Center, *Organized Crime and Central American*
 4 *Migration in Mexico Fall 2017–Spring 2018* (June 2018)9, 10, 11

5 *Secuestraron Federales a Migrante Hondureña [Federal Police Kidnapped*
 6 *Honduran Migrant]*, *El Diario de Chihuahua* (June 18, 2019)..... 12

7 Ximena Suárez et al., *Access to Justice for Migrants in Mexico: A Right That*
 8 *Exists Only on the Books* (July 2017)..... 11

9 Syracuse University TRAC Reports, *Details on MPP (Remain in Mexico)*
 10 *Deportation Proceedings* (Nov. 18, 2020)2, 14

11 The Office of U.S. Sen. Jeff Merkley, *Shattered Refuge: A U.S. Senate*
 12 *Investigation into the Trump Administration’s Gutting of Asylum*
 13 (Nov. 2019)..... 7

14 Duncan Tucker, *Mexico’s New National Guard is Breaking Its Vow to*
 15 *Respect Human Rights*, *Amnesty Int’l* (Nov. 8, 2020)..... 17

16 U.N. General Assembly, *Note on International Protection,*
 17 U.N. Doc. A/AC.96/951 (Sept. 13, 2001) 15

18 U.S. Dep’t of State, *U.S.-Mexico Joint Declaration* (June 7, 2019).....8

19 UNHCR, *Eligibility Guidelines for Assessing the International Protection*
 20 *Needs of Asylum-Seekers from El Salvador,*
 21 U.N. Doc. HCR/EG/SLV/16/01 (Mar. 15, 2016)..... 18

22 UNHCR, *Eligibility Guidelines for Assessing the International Protection*
 23 *Needs of Asylum-Seekers from Guatemala,*
 24 U.N. Doc. HCR/EG/GTM/18/01 (Jan. 2018)..... 18

25 UNHCR, *Eligibility Guidelines for Assessing the International Protection*
 26 *Needs of Asylum-Seekers from Honduras,*
 27 U.N. Doc. HCR/EG/HND/16/03 (July 27, 2016)..... 18

28 UNHCR, *General Comment No. 31: The Nature of the General Legal*
Obligation Imposed on State Parties to the Covenant (May 26, 2004) 2

UNHCR, *Note on the Principle of Non-Refoulement* (Nov. 1997).....2

1 UNHCR, *Women on the Run: First-Hand Accounts of Refugees Fleeing El*
2 *Salvador, Guatemala, Honduras, and Mexico* (Oct. 2015)..... 19

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5
6
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1 **STATEMENT OF INTEREST**

2 Amnesty International USA is a non-partisan, non-profit organization that,
3 together with more than seventy national and territorial counterparts, makes up
4 Amnesty International. Amnesty International is the world’s largest grassroots
5 human rights organization, comprising a global support base of more than seven
6 million individual members, supporters, and activists in more than 150 countries and
7 territories, including in Mexico and the United States. Amnesty International
8 engages in advocacy, litigation, and education to prevent and end human rights
9 violations and to demand justice for those whose rights have been violated.

10 Amnesty International’s interest in this case stems from a combination of its
11 expertise in the human rights principles underpinning the international refugee
12 protection framework and its expertise on conditions faced by asylum-seekers in
13 Mexico and the United States. For the past several years, Amnesty International has
14 documented the dangers faced by migrants and asylum-seekers in Mexico and
15 analyzed how U.S. and Mexican policies and practices have failed to respect the
16 right to seek asylum.

17 With regard specifically to the so-called Migrant Protection Protocols
18 (“MPP”), Amnesty International, along with the Institute for Women in Migration,
19 the Washington Office on Latin America, and the Latin America Working Group,
20 filed an amicus curiae brief before the Ninth Circuit in *Innovation Law Lab v. Wolf*,
21 951 F.3d 1073 (9th Cir. 2020). As noted in the complaint in the instant case, the
22 Ninth Circuit “affirmed a preliminary injunction setting aside the Protocols because
23 they [were] statutorily unauthorized.” Dkt. No. 1 (Compl.) ¶ 9. In reaching this
24 decision, the court specifically called attention to Amnesty International’s amicus
25 brief, discussing it at length in its opinion. *Id.* at 1092–93.

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1 **INTRODUCTION**

2 As of this writing, more than 67,000 people have been returned to Mexico
3 under MPP.¹ They are forced to await their U.S. immigration court hearings in
4 dangerous border towns in Mexico, often after escaping serious harm in their home
5 countries. Now, due to the COVID-19 pandemic, their wait is indefinite. Despite
6 an overwhelming amount of evidence that people waiting in Mexico face
7 kidnappings, extortion, torture, and even death, MPP remains in place to this day.
8 Not only does this policy place tens of thousands of people in real danger, it also
9 contravenes the United States’ legal obligations. International and domestic law
10 require the United States to comply with the principle of *non-refoulement*, which
11 prohibits sending individuals to a country or jurisdiction where they would face a
12 real risk of persecution or other serious human rights violations. *Non-refoulement*
13 encompasses several specific obligations, three of which are relevant here.

14 *First*, prior to any return or transfer, states must conduct individualized
15 screenings to prevent the erroneous transfer of a person to a place where he or she
16 would be at real risk of persecution or other serious human rights violations.²
17 *Second*, *non-refoulement* is violated whenever asylum-seekers are sent to any place
18 where they would face a real risk of such harm.³ *Third*, states may not engage in
19 “chain” *refoulement* by sending asylum-seekers to a territory or jurisdiction from
20 where they are again transferred to a place where they face persecution or harm.⁴ As

21 _____
22 ¹ Syracuse University TRAC Reports, *Details on MPP (Remain in Mexico)*
Deportation Proceedings, <https://perma.cc/P6TP-W5BX> (last visited Nov. 18,
2020) [*hereinafter* TRAC Reports].

23 ² UNHCR, *Note on the Principle of Non-Refoulement* (Nov. 1997),
24 <https://perma.cc/SXW6-6FN5> (“Procedures . . . for identifying refugees should
25 provide a guarantee against *refoulement*, by ensuring that persons who are entitled
to protection do in fact receive it.”).

26 ³ *Id.* (“[R]espect for the principle of *non-refoulement* requires that asylum
27 applicants be protected against return to a place where their life or freedom might
be threatened until it has been reliably ascertained that such threats would not
exist.”).

28 ⁴ UNHCR, *General Comment No. 31: The Nature of the General Legal Obligation*

1 discussed below, MPP transgresses all three of these obligations—and has done so
2 in ways that have resulted in tangible harm to asylum-seekers. Consequently, this
3 Court should grant Plaintiffs’ motion for a preliminary injunction.

4 **I. MPP FAILS TO SAFEGUARD ASYLUM-SEEKERS FROM RETURN**
5 **TO DANGER.**

6 Because MPP sends asylum-seekers back to Mexico without systematically
7 asking them whether they fear harm there, let alone conducting individualized
8 screenings, it dispenses with procedural safeguards critical to ensuring that the
9 United States comports with the obligation of *non-refoulement*.

10 For more than two decades prior to MPP, “immigration officers would
11 typically process asylum applicants who lack valid entry documentation” under a
12 procedure known as “expedited removal.” *Innovation Law Lab v. McAleenan*, 924
13 F.3d 503, 506 (9th Cir. 2019); *see* 8 U.S.C. § 1225(b)(1). Even though expedited
14 removal stripped individuals of many basic procedural protections, Congress
15 nonetheless recognized that an individualized screening mechanism prior to return
16 was essential for safeguarding *non-refoulement*. *See* 142 Cong. Rec. H11054,
17 H11066–67 (daily ed. Sept. 25, 1996) (“[I]t is . . . important . . . that the process be
18 fair . . . [and] not result in sending genuine refugees back to persecution.”).

19 All individuals in expedited removal who express a fear of return thus receive
20 an initial, non-adversarial screening: either a “credible fear” interview, 8 U.S.C.
21 § 1225(b)(1)(A)(ii), or a “reasonable fear” interview, for those in reinstatement
22 proceedings or administrative removal, 8 C.F.R. § 1208.31. During these

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Imposed on State Parties to the Covenant ¶ 12 (May 26, 2004),
25 <https://undocs.org/CCPR/C/21/Rev.1/Add.13> (referring to “an obligation not to
26 extradite, deport, expel or otherwise remove a person from their territory, where
27 there are substantial grounds for believing that there is a real risk of irreparable
28 harm . . . either in the country to which removal is to be effected or in any country
to which the person may subsequently be removed”); *accord Hirsi Jamaa and
Others v. Italy*, ECtHR, Application No. 27765/09, Judgment at ¶ 147 (Feb. 23,
2012) (“It is a matter for the State carrying out the return to ensure that the
intermediary country offers sufficient guarantees to prevent the person concerned
being removed to his country of origin without an assessment of the risks faced.”).

1 screenings, the asylum officer must read asylum-seekers a summary of their rights,
2 specifically inquire into their fear of return, allow for the presence and participation
3 of a legal representative if one is retained, and provide a written record of the
4 screening. 8 C.F.R. §§ 1208.30, 1208.31.

5 The screening process under MPP is woefully deficient by comparison: It
6 does not require officials to ask about an individual’s fear of return (and often
7 ignores those fears even when they are articulated), and it forces asylum-seekers to
8 meet a high evidentiary threshold unprecedented for an initial fear screening.

9 **A. Asylum-Seekers Must Volunteer Their Fear of Return to Have**
10 **Any Hope of Avoiding Return to Mexico.**

11 Individuals subject to MPP often arrive at the southern border after navigating
12 treacherous, exhausting journeys. They are greeted by a process seemingly designed
13 to disorient and dissuade them from pursuing the protection to which they are legally
14 entitled. Under MPP, immigration officers are instructed not to ask asylum-seekers
15 whether they fear persecution or torture in Mexico.⁵ The only way to avoid transfer
16 to Mexico is for the asylum-seeker to affirmatively articulate a fear of return to a
17 U.S. Department of Homeland Security (“DHS”) officer. That aspect of the policy
18 alone contravenes U.S. *non-refoulement* obligations. *See Innovation Law Lab v.*
19 *Wolf*, 951 F.3d 1073, 1093 (9th Cir. 2020) (“[P]laintiffs have shown a likelihood of
20 success on the merits of their claim that MPP does not comply with the United
21 States’ anti-refoulement obligations.”). And even this insufficient protection under
22 MPP is not always followed, as asylum-seekers are sometimes denied fear
23 screenings *despite* articulating a fear of return to Mexico. In April 2020, for
24 example, U.S. Customs and Border Protection (“CBP”) greatly limited the number
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27 ⁵ Dara Lind, *Exclusive: Civil Servants Say They’re Being Used as Pawns in a*
28 *Dangerous Asylum Program*, Vox (May 2, 2019),
<https://www.vox.com/2019/5/2/18522386/asylum-trump-mpp-remain-mexico-lawsuit>.

1 of asylum-seekers who were referred for fear screenings, using the COVID-19
2 pandemic as pretext.⁶

3 Moreover, before being sent back to Mexico, returnees are generally given no
4 explanation of where they are being sent or why; often, they cannot even access
5 written information about the process in a language they understand. Several
6 returnees told Amnesty International that U.S. officials denied their repeated
7 requests for Spanish-language translations of immigration forms prior to being
8 returned to Mexico.⁷

9 Disturbingly, reports from the field, including testimonies collected by
10 Amnesty International, show that even when individuals express a fear of returning
11 to their country of origin *and* of returning to Mexico, their claims are ignored or
12 misrepresented. In one instance, a 46-year-old man from Guatemala, who requested
13 protection at the border with his 17-year-old son, told agents he feared return to his
14 country of origin and did not feel safe returning to Mexico.⁸ He emphasized that
15 “the only thing we didn’t want was for them to send us back to Mexico.”⁹ However,
16 when Amnesty International reviewed the forms completed by CBP, the forms
17 omitted this information and claimed only that the man sought entry into the United
18 States “to work and lead a better life.”¹⁰

19 A Honduran man forcibly returned to Tijuana shared a similar experience:
20 “They asked me why I had come from my country, I said I was afraid to return to
21 my country. Many people think we are making this up, but the problems in our
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24 ⁶ Human Rights First, *Pandemic as Pretext: Trump Administration Exploits*
25 *COVID-19, Expels Asylum Seekers and Children to Escalating Danger* 5 (May
26 2020) [hereinafter *Pandemic as Pretext*], <https://perma.cc/QU9G-PG7F>.

27 ⁷ Interview by Amnesty International in Ciudad Juárez, Mexico (Apr. 18, 2019).

28 ⁸ Interview by Amnesty International in Tijuana, Mexico (Apr. 9, 2019).

⁹ *Id.*

¹⁰ *Id.*

1 country are out of control. They made me sign a paper, and that was it. They didn't
2 say anything else. They just claimed I'm trying to work.”¹¹

3 There is evidence that U.S. officials are aware of the risks of harm in Mexico.
4 Most shockingly, in March 2020, a DHS attorney admitted on the record to an
5 immigration judge that every asylum-seeker who is returned to Mexico is at risk of
6 being kidnapped.¹² Even an immigration judge expressed—on the record—her
7 reluctance to issue orders of removal for MPP returnees who do not appear for their
8 court dates, because those asylum-seekers who did appear in court described
9 kidnappings and other violent crimes that they experienced in Mexico.¹³ Under these
10 circumstances, placing the burden on asylum-seekers to affirmatively express a fear
11 of return to Mexico is inconsistent with a commitment to uphold *non-refoulement*.

12 **B. Asylum-Seekers Are Subject to an Unreasonably High**
13 **Evidentiary Standard.**

14 If a fear screening is given, MPP further fails to guard against *refoulement*
15 because it requires asylum-seekers to meet an exceedingly high evidentiary
16 threshold, absent minimal procedural protections. U.S. law typically guards against
17 *refoulement* by applying a deliberately low evidentiary threshold for individuals who
18 present at the border seeking asylum: a “significant possibility” of winning asylum,
19 for a credible fear interview, and a “reasonable possibility” of persecution on a
20 protected ground, or torture, for a reasonable fear interview. *See Inspection and*
21 *Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal*
22 *Proceedings; Asylum Procedures*, 62 Fed. Reg. 10312, 10320 (Mar. 6, 1997) (“The
23 credible fear standard sets a low threshold of proof of potential entitlement to
24 asylum.”); *Bartolome v. Sessions*, 904 F.3d 803, 808 n.2 (9th Cir. 2018) (noting that

25 _____
26 ¹¹ Interview by Amnesty International in Tijuana, Mexico (Apr. 9, 2019).

27 ¹² *Lawyer Defending Trump Policy Makes Stunning Admission*, CNN Politics
(Mar. 11, 2020), <https://perma.cc/5YBR-7H9K>.

28 ¹³ Amnesty International Court Observation, San Antonio, Texas (Sept. 2019)
(remote observation of proceedings in Laredo, Texas).

1 the reasonable fear interview was “[m]odeled on the credible fear screening
2 mechanism”).

3 By contrast, to avoid being sent back to Mexico under MPP, individuals must
4 show that they would “more likely than not be persecuted on account of race,
5 religion, nationality, membership in a particular social group, or political opinion
6 . . . or more likely than not be tortured.” Policy Memorandum, USCIS, *PM-602-*
7 *0169: Guidance for Implementing Section 235(b)(2)(C) of the Immigration and*
8 *Nationality Act and the Migrant Protection Protocols*, at 3 (Jan. 28, 2019). Outside
9 of MPP, the “more likely than not” standard appears just twice in U.S. immigration
10 law: to determine whether individuals are eligible for withholding of removal, 8
11 U.S.C. § 1231(b)(3), and relief under the Convention Against Torture (“CAT”),
12 8 C.F.R. § 1208.16(c). Critically, both forms of relief—withholding of removal and
13 CAT protection—are considered only *after* a full immigration court hearing, with
14 all the procedural protections that hearing affords. MPP imposes the same standard
15 at the initial screening interview, with no such opportunity to be heard.

16 Furthermore, many asylum officers have come to learn that, in practice, they
17 are being forced to interpret the “more likely than not” standard such that it is “all
18 but impossible for applicants to meet.”¹⁴ As one asylum officer noted, “[i]f you want
19 to [make a] positive [decision], you will face Herculean efforts to get it through. If
20 your supervisor says yes, headquarters will probably say no.”¹⁵ Another asylum
21 officer said that “more likely than not” feels “closer to 90 or 95 percent than 51.”¹⁶
22 Accordingly, as Senator Jeff Merkley concluded in his report on current asylum
23 policies, it is “virtually impossible” for an asylum-seeker to be granted permission
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25

26 _____
27 ¹⁴ Lind, *supra* note 6.

28 ¹⁵ *Id.*

¹⁶ *Id.*

1 to await their hearing in the United States.¹⁷ Once returnees are placed in the
2 program, it is nearly impossible to escape.

3 **II. RETURNEES UNDER MPP FACE SERIOUS HARMS IN MEXICO.**

4 The deficient screening process is particularly troubling when considering the
5 real dangers migrants and asylum-seekers face in Mexico as they confront their wait
6 there. Although the Mexican government has stated that it “w[ould] . . . offer jobs,
7 healthcare and education” while returnees “await the adjudication of their asylum
8 claims,”¹⁸ these public assurances belie reality. Returnees are routinely exposed to
9 serious harms in Mexico, including from the very authorities tasked with protecting
10 them.

11 This is even more concerning when considering that returnees are now forced
12 to wait indefinitely in Mexico. Before the onset of the COVID-19 pandemic, the
13 U.S. government initially represented that returnees would receive hearings in the
14 United States within forty-five days. The reality was often closer to a year.¹⁹ MPP
15 hearings have now been effectively suspended indefinitely for the duration of the
16 pandemic.²⁰

17 **A. Returnees To Mexico Are Sent Directly Into Harm’s Way.**

18 Asylum-seekers and migrants face an increasingly hostile environment in
19 Mexico. They are targets for petty crime, kidnappings, extortion, and even death—
20 all solely because of their status. *See E. Bay Sanctuary Covenant v. Trump*, 354 F.

21
22 ¹⁷ The Office of U.S. Sen. Jeff Merkley, *Shattered Refuge: A U.S. Senate*
23 *Investigation into the Trump Administration’s Gutting of Asylum* 34 (Nov. 2019),
<https://perma.cc/XZ5P-RV56>.

24 ¹⁸ U.S. Dep’t of State, *U.S.-Mexico Joint Declaration* (June 7, 2019),
<https://perma.cc/U3YB-LVJF>.

25 ¹⁹ Adolfo Flores, *They Were Told 45 Days. Now Asylum-Seekers Are Being*
26 *Forced to Wait Up to a Year in Mexico*, BuzzFeed News (May 21, 2019),
<https://perma.cc/YR4X-PPLC> (court dates for June 2020).

27 ²⁰ Nicole Narea, *The US Has Abandoned Asylum Seekers in Mexico During the*
28 *Pandemic*, Vox (May 13, 2020),
<https://www.vox.com/2020/4/27/21232808/asylum-seekers-mexico-coronavirus-trump>.

1 Supp. 3d 1094, 1118 (N.D. Cal. 2018) (“68.3 percent of the migrant and refugee
2 populations entering Mexico reported being victims of violence during their transit
3 toward the United States.”). According to Human Rights First, as of early May 2020,
4 1,114 of the individuals returned to Mexico under MPP suffered murder, rape,
5 kidnapping, torture and assault.²¹ This number almost certainly grossly
6 underestimates the violence faced by those forced to return, as it encompasses only
7 publicly-reported instances of violence.

8 Indeed, crime rates in border cities like Tijuana and Mexicali have spiked
9 dramatically, to the point where they are considered some of the most violent cities
10 in the world.²² Criminal groups in Mexico purposely prey on migrants and asylum-
11 seekers for profit; recent studies indicate that such targeting brings in approximately
12 \$134 million annually for organized criminal groups.²³ Kidnapping and extortion of
13 migrants and asylum-seekers is likewise rampant. Kidnappers reportedly demand
14 ransoms of between \$500 and \$10,000 from destitute individuals and families.²⁴
15 Those who cannot scrape together a payment have been purportedly killed by their
16 captors.²⁵

17 Alternatively, kidnappers sometimes entice desperate individuals with
18 promises to smuggle them into the United States (or take them by threat of force).²⁶
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21 ²¹ See *Pandemic as Pretext*, *supra* note 6.

22 ²² Kate Linthicum, *Five of the Six Most Violent Cities in the World Are in Mexico*,
L.A. Times (Mar. 14, 2019), <https://www.latimes.com/world/la-fg-mexico-tijuana-violence-20190314-story.html>.

23 ²³ Robert Strauss Center, *Organized Crime and Central American Migration in Mexico Fall 2017–Spring 2018* 14 (June 2018) [hereinafter Strauss Crime Report], <https://perma.cc/3QWU-2HRQ>.

24 ²⁴ Robert Strauss Center, *Migrant Kidnapping in Mexico: Regional Differences* 8 (Nov. 1, 2018) [hereinafter Strauss Kidnapping Report], <https://perma.cc/VL7W-65KP>.

25 ²⁵ Steven Dudley, *Part III: The Gauntlet*, InSight Crime (Nov. 24, 2012), <https://perma.cc/Y3F5-ACY7>.

26 ²⁶ Strauss Kidnapping Report, *supra* note 25, at 4.

1 Some kidnapped migrants and asylum-seekers ultimately find themselves pushed
2 into forced labor, including sex work.²⁷

3 Discrimination and violent crime is especially prevalent towards women and
4 LGBTI individuals.²⁸ In a 2018 survey of migrants and refugees along the transit
5 route in Mexico, nearly one-third of women reported experiencing sexual abuse.²⁹
6 And in 2016 and 2017, the United Nations High Commissioner for Refugees
7 reported that “two-thirds of the LGBTI refugees they spoke with had suffered sexual
8 and gender-based violence in Mexico.”³⁰

9 The following experiences from individuals subjected to MPP provide a
10 human face to the reality on the ground:

- 11 • Ronaldo³¹ (Guatemalan returnee): After being returned to Mexico, Ronaldo
12 was detained for three hours, beaten, and robbed at gunpoint. In court, he
13 stated that he did not want to go back to Mexico because he did not feel safe.³²
- 14 • Ernesto (Salvadoran returnee): Ernesto was fatally stabbed in Tijuana after
15 he and his family were turned away from the border under MPP, despite
16 repeatedly telling immigration officials that he and his family feared returning

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18 ²⁷ Strauss Crime Report, *supra* note 24, at 13.

19 ²⁸ Strauss Crime Report, *supra* note 24, at 13.

20 ²⁹ Médecins Sans Frontières, *Mexico: An Unsafe Country for Thousands of Refugees Fleeing Violence in Central America* (Jun. 20, 2018),
<https://perma.cc/ZZD9-3GA7>.

21 ³⁰ Amnesty International, *No Safe Place* (Nov. 2017), <https://perma.cc/QXU7-5KCK> (citing UNHCR, *Población LGBTI en México y Centroamérica* (2017),
22 <https://www.acnur.org/donde-trabaja/america/mexico/poblacion-lgbti-en-mexico-y-centroamerica/> [only in Spanish]); Molly Hennessy-Fiske, *For Transgender Migrants Fleeing Death Threats, Asylum in the U.S. Is a Crapshoot* (Oct. 29,
23 2019), <https://perma.cc/6HUP-JLNG>; Human Rights Watch, “*Every Day I Live in Fear*”: *Violence and Discrimination Against LGBT People in El Salvador, Guatemala, and Honduras, and Obstacles to Asylum in the United States* (Oct. 7,
24 2020), <https://perma.cc/7T8A-2R6V>.

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26 ³¹ This brief uses aliases for some returnees and asylum-seekers forcibly returned to Mexico.

27 ³² Robert Moore, ‘*I’m in Danger*’: *Migrant Parents Face Violence in Mexico Under New Trump Policy*, *Texas Monthly* (Apr. 25, 2019), <https://perma.cc/M576-EHEB>.

1 to Mexico. His widow said, “I told the judge that I was afraid for my children
2 because we were in a horrible, horrible place, and we didn’t feel safe here.”³³

- 3 • José (Honduran returnee): After appearing for two hearings in the United
4 States, José and his three-year-old son were kidnapped by three men in
5 Reynosa, Mexico. Their abductors demanded \$3,000 in ransom from José’s
6 wife, who was forced to listen to her husband being tortured over the phone.
7 After his wife paid the ransom, José and his son were dropped at the bus
8 station; from there they made it to the U.S. border and expressed fear of
9 remaining in Mexico: “Our lives depend on it. I swear I am telling the truth.”
10 Despite bruises and scrapes all over his body, José and his son were forced
11 back to Mexico once again because an official determined that he “did not
12 establish a clear probability of persecution or torture in Mexico,” four months
13 after they were first returned under MPP.³⁴

- 14 • Nora (Salvadoran returnee): Nora and her three-year-old son were abducted
15 twice after being returned at the border. The first time, she was held hostage
16 until a family member paid their kidnappers \$2,200. Two months later, she
17 was raped by three men in front of her son. She said, “I surrendered to
18 American immigration and thought we would be safe.”³⁵

19 Many crimes against migrants and asylum-seekers in Mexico go unaddressed
20 by law enforcement. A 2017 report concluded that ninety-nine percent of reported
21 crimes committed against migrants from 2014 to 2016 went unpunished.³⁶ And
22 rather than protect the vulnerable, local Mexican officials sometimes collude with
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24 ³³ Delivered to Danger, <https://perma.cc/8SHL-Y6FU> (last accessed Nov. 18,
25 2020).

26 ³⁴ Miriam Jordan, *‘I’m Kidnapped’: A Father’s Nightmare on the Border*, N.Y.
Times (Dec. 21, 2019), <https://perma.cc/CY53-FPHZ>.

27 ³⁵ *Id.*

28 ³⁶ Ximena Suárez et al., *Access to Justice for Migrants in Mexico: A Right That
Exists Only on the Books* 4 (July 2017), <https://perma.cc/8AYK-W7QK>.

1 the very criminals who carry out abuses.³⁷ A survey concluded that in 2017, a
2 quarter of crimes against migrants had been committed by Mexican police and other
3 government officials.³⁸ In some instances, these officials engage in extortion,
4 threatening to abuse, delay, or deport the migrants and asylum-seekers who fail to
5 pay bribes.³⁹ Such practices “may be increasing as [U.S.] policies force migrants to
6 stay longer on the Mexican side of the border.”⁴⁰ On this score, the following
7 accounts are particularly illuminating:

- 8 • Pamela (Salvadoran returnee): “Since I’ve been attacked and assaulted by the
9 Mexican police in Mexico City, I wouldn’t feel safe going to the police if I
10 were attacked by people here in Tijuana. They say Tijuana is a very dangerous
11 place, and I’m afraid to go walk around in the streets by myself.”⁴¹
- 12 • Joharvy (Ecuadoran returnee): “I never in my life thought I was going to get
13 here and be extorted . . . But what was I going to do? I was scared. After so
14 much effort to get here, I prefer to give [the immigration official extorting me]
15 all our money than have to return.”⁴²
- 16 • Lisa (Honduran returnee): “[The federal police] asked me what nationality I
17 was, I told them I was from Honduras then they say: ‘Come with me.’ They
18 grab my head, bend me over, and take me out of the house and put me in a
19 black car. They covered my eyes with gray tape.” Lisa was kidnapped by the
20 police for ransom and raped multiple times. She stated that although her eyes

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22 ³⁷ Strauss Crime Report, *supra* note 24, at 22.

23 ³⁸ Lyndon B. Johnson Sch. of Pub. Affairs et al., *The Implementation and Legacy*
24 *of Mexico’s Southern Border Program* 34 (June 2019), [https://perma.cc/5KWS-](https://perma.cc/5KWS-72ZH)
25 [72ZH](https://perma.cc/5KWS-72ZH).

26 ³⁹ Emily Green, *Exclusive: Mexican Officials Are Extorting Thousands of Dollars*
27 *from Migrants Applying for Asylum*, Vice News (Mar. 13, 2019),
28 <https://perma.cc/F5LP-2YKB>.

⁴⁰ Araine Francisco & Josefina Salomón, *Mexican Officials Extort Asylum Seekers*
on Way to USA, InSight Crime (Mar. 25, 2019), <https://perma.cc/85DL-8YA7>.

⁴¹ Interview by Amnesty International in Tijuana, Mexico (April 8, 2019).

⁴² Green, *supra* note 39.

1 were covered with tape, she managed to see because her tears soaked through
2 the glue.⁴³

- 3 • Diego (Salvadoran returnee): “I was kidnapped while waiting to come to
4 court . . . Mexican patrol cars were there, I thought they would help us. But
5 they kidnapped us for three days. They let me go because of my family,
6 because I didn’t have any money, but I don’t know what happened to [the]
7 other men.”⁴⁴
- 8 • Javier (Guatemalan returnee): Javier was assaulted and robbed in Tijuana in
9 March 2020 after he was forcibly returned to Mexico under MPP. Police
10 officers refused to file a report of the incident because of his status as an
11 asylum-seeker in MPP.⁴⁵

12 For those returned under MPP, local Mexican authorities are too often a source of
13 danger, not protection.

14 **B. The Mexican Government Is Unable To Protect Returnees.**

15 Regardless of whatever public commitments the U.S. and Mexican
16 governments have made regarding the safety of individuals forcibly returned to
17 Mexico, and despite the Mexican government’s obligations under international law,
18 the reality is that the Mexican government cannot protect the thousands of people
19 MPP has herded its way. *See Bringas-Rodriguez v. Sessions*, 850 F.3d 1051, 1072
20 (9th Cir. 2017) (en banc) (noting, as to Mexico’s commitments to the protection of
21 LGBTI individuals, that “[i]t is not unusual that a country’s *de jure* commitments . . .
22 do not align with the *de facto* reality of whether the State is able and willing to
23 provide protection.” (internal quotation marks omitted)).

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25 ⁴³ *Secuestraron Federales a Migrante Hondureña [Federal Police Kidnapped*
26 *Honduran Migrant]*, El Diario de Chihuahua (June 18, 2019),
<https://perma.cc/87PR-RR9H>.

27 ⁴⁴ Amnesty International Court Observation, San Antonio, Texas (Sept. 2019)
(remote observation of proceedings in Laredo, Texas).

28 ⁴⁵ *Pandemic as Pretext*, *supra* note 6, at 10.

1 Mexico's support systems have simply been overwhelmed by MPP.
2 Returnees tend to settle in border cities to await their U.S. immigration proceedings.
3 Reports of overcrowding at shelters in these border cities abound.⁴⁶ A patchwork of
4 ad hoc church shelters have sprung up in response to the growing numbers of
5 asylum-seekers and migrants because of the lack of shelter space and time limits on
6 how long people can stay at existing shelters. Access to food, proper hygiene,
7 clothing, and healthcare is a constant and pressing concern.⁴⁷

8 Under the foregoing circumstances, access to valid identity documentation
9 and a work permit is critical for returnees to ensure their survival in Mexico and
10 prevent their unlawful deportation to their home countries. Yet that access has been
11 effectively nonexistent in practice.

12 Returnees are not receiving the humanitarian visas that would serve as legal
13 identification in Mexico and confer the right to work. Although thousands of
14 individuals have been returned from San Diego and Calexico to Baja California, only
15 a small number of humanitarian visas are being issued by the Mexican state
16 authorities. In the first half of 2019, when the number of MPP returns to Baja
17 California was at its highest, Mexican government statistics show that the issuance
18 of humanitarian visas actually declined as MPP returns were increasing.⁴⁸ As a
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21 ⁴⁶ Molly Hennessy-Fiske, *Pregnant Women, Other Vulnerable Asylum Seekers are*
22 *Returned to Mexico to Await Hearings*, L.A. Times (May 19, 2019),
[https://www.latimes.com/nation/la-na-migrant-remain-in-mexico-20190519-](https://www.latimes.com/nation/la-na-migrant-remain-in-mexico-20190519-story.html)
[story.html](https://www.latimes.com/nation/la-na-migrant-remain-in-mexico-20190519-story.html).

23 ⁴⁷ International Rescue Comm., *Needs Assessment Report, Mexico: Northern*
24 *Border 6-7* (Mar. 25, 2019), <https://perma.cc/DBF8-NR3D>; Peter Orsi &
Christopher Sherman, *Mexico-US Tariff Deal: Questions, Concerns for Migration*,
PBS (June 9, 2019), <https://perma.cc/9Y7X-ZZE4>.

25 ⁴⁸ Mexico Secretariat of the Interior, *Boletín Mensual de Estadísticas Migratorias*
26 *2019* ("Monthly Bulletin of Migratory Statistics") 125 (July 2020),
<https://perma.cc/MS7N-9FQQ>; TRAC Reports. Between January and September
27 2020, the number of humanitarian visas issued in Baja California ranged from 37
28 to 95 per month. Mexico Secretariat of the Interior, *Boletín Mensual de*
Estadísticas Migratorias 2020 ("Monthly Bulletin of Migratory Statistics") 107
(October 2020), <https://perma.cc/7B9H-NMJK>.

1 result, an overwhelming number of returnees have been left to fend for themselves,
2 without access to basic legal documentation critical to their survival in Mexico.

3 **III. MPP SUBJECTS RETURNNEES TO “CHAIN” *REFOULEMENT*.**

4 MPP also violates the principle of *non-refoulement* because the transfer of
5 asylum-seekers to Mexico exposes them to significant risk of eventual removal to
6 their home countries, where they may face persecution or other serious human rights
7 violations.

8 The obligation of *non-refoulement* applies to “any measure attributable to a
9 State which could have the effect of returning an asylum-seeker or refugee to the
10 frontiers of territories where his or her life or freedom would be threatened.”⁴⁹ This
11 obligation includes measures that could result in “chain” *refoulement*: i.e., when a
12 country returns an asylum-seeker to a third country, which turns around and returns
13 the asylum-seeker to an unsafe country. Third countries cannot act as a way station
14 for breaking the law. But MPP risks doing precisely that.

15 Even before the rollout of MPP, *refoulement* from Mexico was pervasive.
16 Between May and September of 2017, Amnesty International surveyed asylum-
17 seekers and migrants in Mexico to determine whether Mexican officials were
18 implementing *non-refoulement* obligations for those seeking asylum in Mexico.
19 Amnesty International found that the National Institute of Migration (“INM”), the
20 body responsible for regulating migration and policing borders in Mexico,
21 systemically ignored the procedural safeguards under Mexican law to protect the
22 legal rights of asylum-seekers. Amnesty International analyzed 500 survey
23 responses and found 120 instances where *refoulement* had likely occurred—
24 approximately twenty-four percent of the total responses.⁵⁰ Many of those surveyed

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26 ⁴⁹ U.N. General Assembly, *Note on International Protection*, ¶ 16, U.N. Doc. A/AC.96/951 (Sept. 13, 2001).

27 ⁵⁰ Amnesty International, *Overlooked, Under-Protected: Mexico’s Deadly*
28 *Refoulement of Central Americans Seeking Asylum* 8 (2018) [hereinafter
Overlooked, Under-Protected], <https://perma.cc/K2F9-YWC2>.

1 were deported to their country of origin despite explicitly expressing a fear of return
2 to the INM. Amnesty International also gathered 297 responses of people who had
3 passed through migration detention centers.⁵¹ Of those, seventy-five percent were
4 never informed of their right to seek asylum in Mexico, and sixty-nine percent stated
5 that INM officers never asked their reasons for leaving their home country.⁵² Both
6 practices directly contravene Mexico’s domestic and international legal obligations.

7 Furthermore, based on Amnesty International’s reporting, it was INM practice
8 to load undocumented migrants and asylum-seekers into vans and take them to
9 detention centers.⁵³ Under Mexican law, these individuals would then have fifteen
10 days to present arguments and seek legal counsel.⁵⁴ Yet INM often pressured (or
11 coerced) detainees to sign papers accepting voluntary return to their country of
12 origin, waiving rights to legal counsel, and foregoing the fifteen-day procedural safe
13 harbor.⁵⁵ Individual requests for asylum were generally ignored.

14 These practices persist today. With the onset of the COVID-19 pandemic,
15 INM has been systematically emptying immigration detention centers by deporting
16 asylum-seekers and migrants en masse, abandoning them at Mexico’s southern
17 border, or illegally forcing them across the southern border into Guatemala.⁵⁶ In
18 April 2020 alone, INM summarily deported more than 3,500 Central American
19 migrants and asylum-seekers from detention centers, including many who had been
20 initially returned from the United States.⁵⁷ Other INM measures have included
21 expedited deportations, carried out without allowing asylum-seekers and migrants

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23 ⁵¹ *Id.* at 9–12.

24 ⁵² *Id.*

25 ⁵³ *Id.* at 10.

26 ⁵⁴ *Id.* at 14.

27 ⁵⁵ *Id.*

28 ⁵⁶ *See Pandemic as Pretext, supra* note 6, at 16–17; International Detention
Coalition & W. Sydney Univ., *COVID-19 Impacts on Immigration Detention: Global Responses* 39 (2020), <https://perma.cc/QNV7-JV82>.

⁵⁷ *Pandemic as Pretext, supra* note 6, at 17.

1 access to legal advice,⁵⁸ and the deployment of thousands of national guard troops,
2 tasked with immigration enforcement responsibilities, throughout the country.⁵⁹
3 Given the Mexican government’s abysmal record of protecting asylum-seekers and
4 its recent enforcement-first approach to migration and asylum, there is every reason
5 to believe returnees are exposed to serious risks of wrongful “chain” return.

6 Concerns about “chain” *refoulement* of returnees are not merely academic or
7 theoretical. On April 30, 2019, a thirty-two-year-old Guatemalan woman subject to
8 MPP was sent to Ciudad Juárez, and told to return to El Paso for a hearing in
9 September.⁶⁰ While on the street with two other Guatemalan women in Ciudad
10 Juárez, Mexican police approached her and attempted to extort her; when she refused
11 to pay, the police took her and the other women to the airport. Although the woman
12 expressed a fear of return to Guatemala and even showed the Mexican police her
13 U.S. immigration court papers, she was nevertheless forcibly returned to Guatemala.

14 The U.S. has no way of determining whether or when a returnee has been
15 unlawfully deported from Mexico. CBP does not appear to be tracking the
16 whereabouts of returnees in Mexico in any meaningful way and is not even
17 attempting to register their addresses (if returnees have them) in Mexico, in some
18 cases simply writing locations as vague as “Baja California” or “*domicilio conocido*”
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24 ⁵⁸ Amnesty International, *Asylum Seekers at Risk of Mass Detention 2* (June 7, 2019), <https://perma.cc/KYG8-9RJ2>.

25 ⁵⁹ Tatiana Arias, *Mexico Sends Nearly 15,000 Troops to the US Border*, CNN
26 (June 24, 2019), <https://perma.cc/ZK6A-4K6H>; see also Duncan Tucker, *Mexico’s*
27 *New National Guard is Breaking Its Vow to Respect Human Rights*, Amnesty Int’l
(Nov. 8, 2020), <https://perma.cc/8YFJ-4QMU> (“There is ample evidence that the
28 deployment of military forces has coincided with an increase in human rights
violations and in levels of violence across Mexico.”)

⁶⁰ Interview with Asylum-Seeker by Amnesty International (June 25, 2019).

1 (“address known”) on returnee documents.⁶¹ In one instance in Baja California, a
2 CBP agent wrote “Facebook” as the address on a returnee’s documents.⁶²

3 The lack of safeguards against wrongful deportation from Mexico is
4 especially concerning given the dire situation faced by individuals fleeing the
5 Northern Triangle of Guatemala, El Salvador, and Honduras. The Ninth Circuit is
6 well-aware of the horrific violence and persecution that affects this region.
7 *Henriquez-Rivas v. Holder*, 707 F.3d 1081, 1083 (9th Cir. 2013) (en banc)
8 (recognizing that “witnesses who testify against gang members” from El Salvador
9 may be cognizable as a particular social group for the purposes of asylum); *Pirir-*
10 *Boc v. Holder*, 750 F.3d 1077, 1080 (9th Cir. 2014) (recognizing similar Guatemala-
11 based claim).

12 These dangers show no signs of abating. El Salvador, Guatemala, and
13 Honduras continue to have homicide rates four to eight times higher than what the
14 World Health Organization considers to be epidemic levels.⁶³ In El Salvador, gangs
15 “exercise extraordinary levels of social control over the population of their
16 territories.”⁶⁴ In Guatemala, “the [g]overnment has lost effective control to gangs
17 and other organized criminal groups and is unable to provide protection to
18 inhabitants” in “certain parts of the country.”⁶⁵ Conditions are similar in Honduras.⁶⁶

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20 ⁶¹ Kate Morrissey, *San Diego Immigration Court ‘Overwhelmed’ by Remain in Mexico Cases*, San Diego Union-Tribune (June 3, 2019), <https://perma.cc/LQX8-ZAQ4>.

21 ⁶² Adolfo Flores, *Border Patrol Agents Are Writing “Facebook” as a Street*
22 *Address for Asylum-Seekers Forced to Wait in Mexico*, BuzzFeed News (Sept. 27,
2019), <https://perma.cc/HJ58-9WGZ>.

23 ⁶³ *Overlooked, Under-Protected*, supra note 50, at 5.

24 ⁶⁴ UNHCR, *Eligibility Guidelines for Assessing the International Protection Needs*
25 *of Asylum-Seekers from El Salvador*, 12, U.N. Doc. HCR/EG/SLV/16/01 (Mar. 15,
2016).

26 ⁶⁵ UNHCR, *Eligibility Guidelines for Assessing the International Protection Needs*
27 *of Asylum-Seekers from Guatemala*, 34, U.N. Doc. HCR/EG/GTM/18/01 (Jan.
2018).

28 ⁶⁶ UNHCR, *Eligibility Guidelines for Assessing the International Protection Needs*
of Asylum-Seekers from Honduras, 18–19, 38–39, U.N. Doc. HCR/EG/HND/16/03
(July 27, 2016).

1 Women and children face particularly acute harms. A 2015 study of 160
2 women fleeing El Salvador, Guatemala, Honduras, and Mexico found that women
3 “consistently stated that police and state law enforcement authorities were not able
4 to provide sufficient protection from [] violence,” and that their children were
5 subject to “direct and devastating attacks.”⁶⁷ MPP puts tens of thousands of these
6 asylum-seekers at risk of being returned to these perilous conditions.

7 * * *

8 MPP dispenses with critical safeguards meant to ensure that asylum-seekers
9 are not returned to danger; results in the transfer of asylum-seekers to Mexico, a
10 country where they face a real risk of serious harm; and exposes asylum-seekers to
11 “chain” *refoulement*. MPP violates the United States’ domestic and international
12 human rights commitments, and should be enjoined.

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27 ⁶⁷ UNHCR, *Women on the Run: First-Hand Accounts of Refugees Fleeing El*
28 *Salvador, Guatemala, Honduras, and Mexico* 4, 21 (Oct. 2015),
<https://perma.cc/M2BW-KQQN>.

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CONCLUSION

Accordingly, Amnesty International respectfully urges this Court to grant Plaintiffs’ motion for a preliminary injunction.

Dated: November 23, 2020

WILKINSON STEKLOFF LLP

By: /s/ Xiao Wang

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12
13 **UNITED STATES DISTRICT COURT**
14 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
15

16
17 IMMIGRANT DEFENDERS LAW
CENTER, ET AL.,

18 Plaintiffs,

19 v.

20 CHAD WOLF, ACTING SECRETARY,
21 DEPARTMENT OF HOMELAND SE-
22 CURITY, ET AL.,

23 Defendants.

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

**[PROPOSED] ORDER GRANTING
EX PARTE APPLICATION FOR
LEAVE TO FILE BRIEF OF
AMICUS CURIAE AMNESTY
INTERNATIONAL USA IN
SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY
INJUNCTION**

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[PROPOSED] ORDER

IT IS HEREBY ORDERED that the *Ex Parte* Application for Leave to File Brief of Amicus Curiae Amnesty International USA in Support of Plaintiffs’ Motion for Preliminary Injunction is **GRANTED**. The proposed brief submitted with the *ex parte* application must be re-filed separately on the docket within three court days of this Order.

IT IS SO ORDERED.

DATED:

HON. JESUS G. BERNAL
UNITED STATES DISTRICT JUDGE