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Immigrant Defenders Law Center et al v. Chad Wolf et al

[2:20-cv-09893-JGB-SHK](#)

Jewish Family Service of San Diego

Immigrant Defenders Law Center

Jaqueline Doe

Ariana Doe

Francisco Doe

Fredy Doe

Victoria Doe

Chepo Doe

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24 **UNITED STATES DISTRICT COURT**
25 **CENTRAL DISTRICT OF CALIFORNIA - EASTERN DIVISION**

26 IMMIGRANT DEFENDERS LAW
27 CENTER, a California corporation; JEWISH
28 FAMILY SERVICE OF SAN DIEGO, a
California corporation; JAQUELINE DOE,
VICTORIA DOE, CHEPO DOE, FREDY
DOE, ARIANA DOE, and FRANCISCO
DOE, individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

ALEJANDRO MAYORKAS, Secretary,
Department of Homeland Security, in his
official capacity; U.S. DEPARTMENT OF
HOMELAND SECURITY; TROY A.
MILLER, Acting Commissioner, U.S.
Customs and Border Protection, in his

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

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

CLASS ACTION

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

Defendants.

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

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1 **INTRODUCTION**

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

9 2. By forcing Individual Plaintiffs and others similarly situated to return to
10 Mexico to await their immigration proceedings, the Protocols functionally denied them
11 access to the U.S. asylum system and left them to contend with assault, robbery, rape,
12 kidnapping, and other harm at the hands of cartels, gang members, and Mexican
13 officials. The Protocols simultaneously deprived these individuals of access to their
14 basic needs and obstructed their efforts to seek legal representation. Moreover,
15 Defendants continually thwarted the efforts of the few legal service providers who
16 represent individuals subject to the Protocols—including Organizational Plaintiffs
17 Immigrant Defenders Law Center and Jewish Family Servi

1 *absentia* removal orders raised serious concerns about the implementation of the
2 program, including whether individuals subjected to MPP had had an adequate
3 opportunity to seek relief and whether conditions in Mexico had led individuals to
4 abandon meritorious claims for protection.²

5 4. Defendants are now using a different set of interlocking policies to wind
6 down MPP. However, their attempted wind-down fails to rectify much of the harm
7 caused by the Protocols. Thousands of individuals subjected to MPP, including
8 Individual Plaintiffs, remain stranded outside the United States and continue to be
9 deprived of security, stability, and access to legal representation, making it virtually
10 impossible for them to pursue their asylum claims. Despite diligent efforts,
11 Organizational Plaintiffs remain unable to meaningfully assist such individuals.

12 5. In late February 2021, DHS began processing individuals in Mexico with
13 “active” MPP cases for return to the United States.³ This initial phase of the wind-
14 down was chaotic, with the result that DHS had processed less than 40 percent of
15 eligible individuals as of May 25, 2021. Moreover, under the Reopened Case Policy,
16 Defendants required the majority of individuals subjected to MPP, who had received
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18 ² Memorandum from Secretary Alejandro N. Mayorkas to Acting Heads of CBP, ICE,
19 and USCIS, Termination of the Migrant Protection Protocols Program, at 7 (June 1,
20 2021),
21 [https://www.dhs.gov/sites/default/files/publications/21_0601_termination_of_mpp_](https://www.dhs.gov/sites/default/files/publications/21_0601_termination_of_mpp_program.pdf)
22 [program.pdf](https://www.dhs.gov/sites/default/files/publications/21_0601_termination_of_mpp_program.pdf).

23 ³ In February 2020, the U.S. Court of Appeals for the Ninth Circuit affirmed a
24 preliminary injunction setting aside the Protocols because they are statutorily
25 unauthorized. *Innovation Law Lab v. Wolf*, 951 F.3d 1073, 1084 (9th Cir. 2020). The
26 U.S. Supreme Court initially stayed the injunction pending the disposition of a
27 petition for a writ of certiorari, 140 S. Ct. 1564 (2020), which was later granted, – S.
28 Ct. – (Oct. 19, 2020). On February 3, 2021, the Court granted the government’s
motion to hold further briefing in abeyance and remove the case from the February
2021 argument calendar. On June 21, 2021, the Court granted the government’s
motion to vacate the judgment. The case was remanded to the Ninth Circuit with
instructions to direct the district court to vacate as moot its prior order granting a
preliminary injunction. The district court vacated the preliminary injunction on
August 6, 2021. *Innovation Law Lab v. Mayorkas*, Case No. 3:19-cv-00807-RS, ECF
131 “Order Vacating Preliminary Injunction; Order to Show Cause” (N.D. Cal. Aug.
6, 2021).

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1 gunpoint. Victoria missed the deadline to file an appeal of the immigration judge's
2 decision in her case. Her removal order became

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1 experienced harm, and is living in fear in Mexico. He is not eligible for processing
2 into the United States under the MPP wind-down. If returned to the United States,
3 Fredy would reside in New Jersey with his mother.

4 14. **Plaintiff Ariana Doe**, a citizen of Guatemala, suffered harm and fled to
5 the United States to seek asylum. She and her young daughter crossed the U.S.-
6 Mexico border on September 2, 2019, were apprehended, and were returned to
7 Mexico under the Protocols approximately ten days later. Ariana does not have legal
8 representation in her removal proceedings and has faced significant obstacles to
9 finding and/or confidentially communicating with counsel. The immigration judge
10 denied her asylum application, and she was unable to find an attorney to assist with
11 an appeal. She received a final order of removal as a result. Her case has not been
12 reopened, and no appeal is pending. Ariana is currently stranded, has experienced
13 harm, and is living in fear in Mexico. She is not eligible for processing into the United
14 States under the MPP wind-down. If returned to the United States, Ariana would
15 reside in Massachusetts with her family.

16 15. **Plaintiff Francisco Doe**, a citizen of El Salvador, suffered harm and fled
17 to the United States to seek asylum. He crossed the U.S.-Mexico border on July 25,
18 2019, was apprehended, and was returned to Mexico under the Protocols
19 approximately a week later. Francisco does not have legal representation in his
20 removal proceedings and has faced significant obstacles to finding and/or
21 confidentially communicating with counsel. The immigration judge denied his
22 application for asylum, and the Mexican attorney he hired for his appeal misfiled the
23 required documents. He received a final order of removal as a result. His case has not
24 been reopened, and no appeal is pending. Francisco is currently stranded, has
25 experienced harm, and is living in fear in Mexico. He is not eligible for processing
26 into the United States under the MPP wind-down. If returned to the United States,
27 Francisco would reside in Florida with his mother's partner.

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

18 **17. Plaintiff Jewish Family Service of San Diego** (“Jewish Family
19 Service”) is a nonprofit organization incorporated in California and based in San
20 Diego. The mission of Jewish Family Service’s Immigration Services Department is
21 to provide holistic, culturally competent, trauma-informed, quality legal and other
22 supportive services to the immigrant community in San Diego and Imperial Counties.
23 Since early 2019, Jewish Family Service has provided legal and other services to
24 individuals subjected to MPP. To achieve its mission, Jewish Family Service manages
25 several programs, including a Removal Defense Program, an Affirmative Services
26 Program, and a Higher Education and Legal Services Program. Jewish Family Service
27 also participates in and manages the San Diego Rapid Response Network (“Rapid
28 Response Network”), which was formed in December 2017 to ensure that all detained

1 noncitizens within San Diego County have access to legal consultations. Through the
2 Rapid Response Network, Jewish Family Service operates the Migrant Shelter
3 Services—which provides critical humanitarian assistance to asylum-seeking
4 individuals and families released from CBP detention including those processed into
5 the United States after being subjected to MPP—and provides transportation from the
6 San Ysidro port of entry to the Shelter. Since February 19, 2021, members of Jewish
7 Family Service’s Removal Defense Program have traveled regularly to the San Ysidro
8 port of entry to assist in welcoming and processing individuals and families subjected
9 to the Protocols who have been permitted to return to the United States to pursue their
10 immigration cases. Jewish Family Service also runs a hotline through which they have
11 advised hundreds of individuals subjected to MPP who have called to ask questions.
12 Jewish Family Service also plays a core role in the CAWTF.

13 **B. Defendants**

14 18. Defendant Alejandro Mayorkas is the Secretary of Homeland Security.
15 He directs each of the components within DHS, including those responsible for
16 enforcing U.S. immigration laws, and bears ultimate responsibility for administering.5021 Tw

1 integrally involved in overseeing the processing of eligible individuals subjected to
2 MPP for return to the United States. He is sued in his official capacity.

3 21. Defendant William A. Ferrara is the Executive Assistant Commissioner
4 of CBP's Office of Field Operations ("OFO"). OFO is the largest component of CBP
5 and is responsible for border security, including immigration and travel through U.S.
6 ports of entry. Defendant Ferrara had responsibility for implementing MPP from
7 August 30, 2020 through June 1, 2021, and is integrally involved in overseeing the
8 processing of eligible individuals subjected to MPP for return to the United States.
9 He is sued in his official capacity.

10 22. Defendant Raul Ortiz is the Chief of U.S. Border Patrol. Border Patrol is
11 responsible for enforcing immigration laws between ports of entry. Since February 2,
12 2020, the Chief of U.S. Border Patrol has had responsibility for detecting, interdicting,
13 and apprehending individuals who attempt to enter the United States between ports
14 of entry, including those who are or were subjected to the Protocols. Defendant Ortiz
15 is sued in his official capacity.

16 23. Defendant CBP is the component of DHS that is responsible for the initial
17 processing and detention of noncitizens who are apprehended at or, in the border
18 region, between U.S. land ports of entry.

19 24. Defendant Tae D. Johnson is the Acting Director of ICE. After
20 individuals subjected to MPP were processed by CBP on the day of their hearings,
21 they were transferred to ICE custody for transport to and from immigration court.
22 Acting Director Johnson is sued in his official capacity.

23 25. Defendant ICE is the component of DHS that is responsible for
24 overseeing immigration detention and carrying out removal orders.

FACTUAL ALLEGATIONS

I. THE U.S. ASYLUM SYSTEM BEFORE THE PROTOCOLS

A. The Right to Apply for Asylum and Nondiscriminatory Treatment

26. The Refugee Act of 1980, the cornerstone of the U.S. asylum system, provides a right to apply for asylum to individuals seeking safe haven in the United

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1 legal representation, *see* 8 U.S.C. § 1158(d)(4); the right to access information in
2 support of an application, *see* 8 U.S.C. § 1158(b)(1)(B) (placing the burden on the
3 applicant to present evidence to establish eligibility); the right to appeal a
4 determination by an immigration judge, *see* 8 U.S.C. § 1229a(c)(5) (referencing the
5 right to appeal); the right to petition federal circuit courts for judicial review of a final
6 order of removal, *see* 8 U.S.C. § 1252(b); and the right to move to reopen proceedings
7 or reconsider a decision regarding removability, *see* 8 U.S.C. § 1229a(c)(6)-(7).

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

0 TD.0-18.44u273 iss.0009 r13 T-4.763

1 registered to provide asylum support in the United States. *See*
2 8 C.F.R. § 1292.11 (recognizing over 750 NGOs providing asylum
3 support in the United States).

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1 accompanied by the appropriate application for relief and all supporting
2 documentation.” 8 C.F.R. § 1003.2(c)(1).

3 43. Thorough preparation is particularly crucial because individuals are
4 typically limited to a single motion to reopen. An individual or their attorney must
5 obtain the underlying A-file, the government file documenting the noncitizen’s
6 immigration history; the Record of Proceedings, a court file that contains hearing
7 recordings and all documents filed with the immigration court; and new and
8 previously unavailable evidence supporting the facts on which the motion is based.
9 Throughout this process, attorneys must meet repeatedly with their clients to build
10 trust and to gather the necessary facts.

11 **II. CONDITIONS IN MEXICO BEFORE IMPLEMENTATION OF THE** 12 **PROTOCOLS**

13 44. When Defendants implemented the Protocols in January 2019, they were
14 aware of the harms that asylum seekers subjected to the Protocols would face.
15 According to recent U.S. Department of State Country Reports on Human Rights
16 Practices, “violence against migrants by government officers and organized criminal
17 groups” was one of “[t]he most significant human rights issues” in Mexico.⁹ The State
18 Department likewise has repeatedly reported that the dangers that forced many
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20 ⁹ U.S. Dep’t of State, *2017 Country Reports on Human Rights Practices: Mexico* at 1
21 (Apr. 20, 2018) (hereafter “2017 State Dep’t Mexico Human Rights Report”),
22 <https://bit.ly/31HD27G>; *see also* U.S. Dep’t of State, *2018 Country Reports on*
23 *Human Rights Practices: Mexico* at 19–20 (Mar. 13, 2019) (hereafter “2018 State
24 Dep’t Mexico Human Rights Report”), <https://bit.ly/3jwz9Z5> (both reports noting
25 “victimization of migrants by criminal groups and in some cases by police,
26 immigration officers, and customs officials” and reported kidnappings and extortion
27 of migrants); U.S. Dep’t of State, *2019 Country Reports on Human Rights Practices:*
28 *Mexico* at 18 (Mar. 11, 2020) (hereafter “2019 State Dep’t Mexico Human Rights
Report”), <https://bit.ly/35FfmSB>; *see also* U.S. Dep’t of State, *2020 Country Reports*
on Human Rights Practices: Mexico (Mar. 30, 2021) (hereafter “2020 State Dep’t
Mexico Human Rights Report”), [https://www.state.gov/reports/2020-country-](https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/mexico/)
reports-on-human-rights-practices/mexico/ (reporting “numerous instances of armed
groups limiting the movements of asylum seekers and other migrants, including by
threats and acts of kidnapping, extortion, and homicide,” often with the complicity of
local government or police).

1 Central American migrants to flee their homes were also present in Mexico, as the
2 presence of Central American gangs has “spread farther into the country and
3 threatened migrants who had fled the same gangs in their home countries.”¹⁰ Human
4 rights groups have similarly reported the escalation of these dangers since 2017,
5 noting that Mexican police and armed forces were often complicit in crimes against
6 migrants.¹¹

7 45. At the time the Protocols were implemented, then-President Trump
8 himself acknowledged that Mexico was not a safe place, tweeting on January 31,
9 2019: “Very sadly, Murder cases in Mexico in 2018 rose 33% from 2017, to 33,341.”
10 He stated further that the situation in Mexico is “[w]orse even than Afghanistan.”¹²

11 46. Since at least 2017, migrants in Mexico’s northern border states have been
12 subject to disappearances, kidnappings, rape, trafficking, extortion, execution, and
13 sexual and labor exploitation by state and non-state actors. Migrants in the immediate
14 vicinity of a port of entry were—and still are—at particular risk of violence and
15 exploitation. Those who seek re4

1 48. Had Defendants properly considered these conditions, of which they were
2 well aware, before implementing the Protocols, they would necessarily have
3 concluded that the Protocols would jeopardize Individual Plaintiffs' safety and
4 security, obstruct their access to legal repr

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1 51. Starting in January 2019, Defendants rapidly rolled out the Protocols’
2 new asylum regime at ports of entry across the U.S.-Mexico border, with full
3 knowledge of the devastating effects they would have on the lives of Individual
4 Plaintiffs.¹⁵

5 52. The repercussions of the Protocols on the Plaintiffs were immediate and
6 have been long-lasting.

7 53. Individuals subjected to MPP were in the custody of DHS for the duration
8 of their removal proceedings.¹⁶ By trapping individuals under dangerous conditions
9 in Mexico, the Protocols jeopardized Individual Plaintiffs’ personal safety, prevented
10 them from being able to fulfill basic human needs, and deprived them of the
11 information and tools necessary to present their asylum claims. Because individuals
12 subjected to the Protocols were required to present at a port of entry on each of their

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14 Secretary of Homeland Security may return certain applicants for admission to the
15 contiguous country from which they are arriving on land (whether or not at a
16 designated port of entry) pending removal proceedings under Section 240 of the
17 INA.”); Memorandum from Todd A. Hoffman, Executive Director of the
18 Admissibility and Passenger Programs of the Office of Field Operations of U.S.
19 Customs and Border Protection, Guidance on Migrant Protection Protocols (Jan. 28,
20 2019), <https://bit.ly/3mpLOPv> (“Under this implementation of section 235(b)(2)(C),
21 referenced as the Migrant Protection Protocols (MPP), DHS is authorized to return
22 certain applicants for admission who arrive via land at the San Ysidro port of entry,
23 and who are subject to removal proceedings under Section 240 of the INA, to Mexico
24 pending removal proceedings.”); Enforcement Programs Division, Guiding
25 Principles for Migrant Protection Protocols (Jan. 28, 2019), <https://bit.ly/3jyIYHb>
26 (“To implement the MPP, aliens arriving from Mexico who are amenable to the
27 process ... and who in an exercise of discretion the officer determines should be
28 subject to the MPP process, will be issued an [sic] Notice to Appear (NTA) and placed
into Section 240 removal proceedings. They will then be transferred to await
proceedings in Mexico.”).

¹⁵ See Dep’t of Homeland Security, ICE Policy Guidance for Implementation of the Migrant Protection Protocols (Feb. 12, 2019), <https://bit.ly/3e1uM76> (implementing at San Ysidro, California). By January 2, 2020, DHS had implemented the Protocols at all ports of entry along the United States–Mexico border, including for persons apprehended between those ports.

¹⁶ DHS regulations provide that individuals returned to Mexico under INA § 235(b)(2)(C) “shall be considered detained for a proceeding within the meaning of section 235(b) of the [Immigration and Nationality] Act and may be ordered removed in absentia by an immigration judge if the alien fails to appear for the hearing.” 8 C.F.R. § 235.3(d).

1 scheduled immigration court hearing dates, they were effectively confined to the
2 extreme danger zones near the border. Most lived in crowded shelters, tent
3 encampments, or other makeshift arrangements.

4 54. The Protocols also obstructed legal representation for all individuals
5 subjected to the Protocols, blocking it entirely for over 90 percent of impacted
6 individuals.¹⁷ Although Defendants provided individuals in MPP proceedings with a
7 list of free or low-cost legal service providers in the United States, most of those
8 providers did not offer legal services to people in MPP. Thus, most individuals were
9 left to navigate the complexities of U.S. asylum law on their own. Ill-equipped to do
10 so, particularly without reliable communication mechanisms, more than 32,400
11 individuals failed to establish their eligibility for asylum and were ordered removed.¹⁸

12 55. Defendants also thwarted the efforts of the few legal service providers
13 who did represent individuals subjected to the Protocols—including Plaintiffs
14 ImmDef and Jewish Family Service—to screen, advise, represent or otherwise assist
15 individuals subjected to the Protocols. In-person attorney-client consultations were
16 limited to an illusory one-hour window before a scheduled hearing.¹⁹ Legal
17 representatives were forced to meet with their clients in a public setting, where they
18 could not speak confidentially, no childcare was available, and tools necessary to
19 provide meaningful legal services were unavailable. Unrepresented individuals were
20 prohibited even from approaching legal representatives present in the immigration
21 court to discuss possible representation.

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24 ¹⁷ As of June 2021, only 6,402 of the 71,034 individuals subjected to MPP had legal
25 representation. *See* TRAC Immigration, *Details on MPP (Remain in Mexico)*
26 *Deportation Proceedings by Hearing Location and Attendance, Representation,*
27 *Nationality, Month and Year of NTA, Outcome, and Current Status* (June 2021),
28 <https://trac.syr.edu/phptools/immigration/mpp/> (filter set to “Hearing Location: All”
and “Represented: Represented”).

¹⁸ *See id.* (filter set to “Hearing Location: All” and “Outcome: Removal Order”).

¹⁹ *See* ERO Memorandum, “Migrant Protection Protocols Guidance,” (Feb. 12, 2019),
<https://bit.ly/3ms8Vc5>.

IV.

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1 64. The Termination Directive acknowledges that “the high percentage of
2 cases completed through the entry of in absentia removal orders (approximately 44
3 percent, based on DHS data) raises questions . . . about the design and operation of
4 the program, whether the process provided enrollees an adequate opportunity to
5 appear for proceedings to present their claims for relief,” and whether “conditions
6 faced by some MPP enrollees in Mexico, including the lack of stable access to
7 housing, income, and safety, resulted in the abandonment of potentially meritorious
8 protection claims.”³⁰

9 65. The Termination Directive clarifies that “[t]he termination of MPP does
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1 69. On June 23, 2021, DHS announced that it was expanding processing of
2 individuals subjected to MPP into the United States to include a joint motion to reopen
3 process for those individuals who had been ordered removed *in absentia*. Unlike the
4 February 11 announcement, the June 23 announcement did not instruct those
5 individuals who did not meet the eligibility criteria to “await further instructions”³³ or
6 otherwise indicate that Defendants had any plans to expand eligibility for
7 processing.³⁴

8 70. Defendants’ latest announcement of expanded processing establishes a
9 route for individuals with *in absentia* removal orders to seek reopening of their cases.
10 However, these individuals have no guarantee that their cases will be reopened, and
11 they will not be eligible for processing into the United States unless and until that
12 happens.

13 71. Upon information and belief, individuals with *in absentia* orders may
14 register with Conecta and will subsequently be contacted by the UNHCR team
15 regarding next steps in the motion to reopen process. Individuals with *in absentia*
16 orders who registered on Conecta before the announcement of expanded MPP
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1 72. For individuals subjected to MPP who have received a final order of
2 removal on grounds other than failure to appear, the only process available to seek
3 reopening, as described in Section I(C), *supra*, is nearly impossible to navigate from
4 a country where one has no security, stability, or access to legal representation.
5 Defendants have directed that individuals subjected to MPP “who may be eligible for
6 processing should stay where they are currently located” while seeking to reopen their
7 cases.³⁵ Because these motions to reopen are likely time-barred, individuals must
8 ensure that DHS joins the motion, make complex legal arguments for equitable
9 tolling, or request that the immigration judge reopen the case *sua sponte*. Individuals
10 outside of the United States lack access to legal representation and resources to
11 communicate with DHS or brief these legal arguments. Moreover, individuals are
12 required to include with their motion to reopen an application for the relief they seek.
13 This requirement is almost insurmountable for individuals stranded in Mexico, who
14 have been cut off from the U.S. asylum system and typically lack the resources and
15 expertise to accurately fill out an English-only asylum application.³⁶ Even if the
16 individual stranded in Mexico is able to find legal representation, the legal
17 representative faces serious obstacles not only to obtain the necessary signatures to
18 review their client’s A-file (a file containing paperwork documenting the individual’s
19 immigration history) and record of proceedings (the trial court record), but also to
20 meet confidentially with their client to review these documents and discuss the facts
21 and circumstance that will inform the motion. For individuals subjected to MPP and
22 still stranded outside the United States, each of the typical steps to filing a motion to
23 reopen is thus fraught with barriers.

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26 _____
27 ³⁵ *Id.*

28 ³⁶ *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 warning of ongoing and increasing violence.³⁹ The State Department has reported
2 continued victimization of migrants by criminal groups, police, immigration officers,
3 and customs officials.⁴⁰ The Overseas Security Advisory Council (OSAC) of the U.S.
4 Department of State’s Bureau of Diplomatic Security has classified multiple border
5 cities (including Tijuana, Nogales, Ciudad Juarez, Nuevo Laredo, and Matamoros) as
6 “CRITICAL-threat locations.”⁴¹

7 81. Documentation by nongovernmental organizations and the media
8 confirms the continued dangers faced by asylum seekers.⁴² In June 2021, for example,
9 Human Rights First identified 3,250 public reports of murder, rape, torture,
10 kidnapping, and other violent assaults against asylum seekers subjected to the
11 Protocols since President Biden took office.⁴³ A number of these attacks were

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13 ³⁹ U.S. Dept. of State, OSAC, Resources (filter set to “Mexico,” then filter to
14 “Travel Advisories and Alerts”)
[https://www.osac.gov/Country/Mexico/Content/Search?contentType=Report&sub
15 ContentType=Travel%20Advisories%20Alerts.](https://www.osac.gov/Country/Mexico/Content/Search?contentType=Report&subContentType=Travel%20Advisories%20Alerts)

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⁴⁰ U.S. Dep’t of State, *2020 Country Reports on Human Rights Practices: Mexico* at

1 stranded in Mexico. Some have sought safety in third countries, while others have
2 been forced to return to their home countries, where they risk the very persecution
3 that caused them to flee in the first place.

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1 Even if she had an attorney, she knows it would be difficult to communicate with
2 them because she cannot always afford internet or a cell phone plan.

3 105. Jaqueline has faced violence or threats of imminent violence throughout
4 her time in Mexico. As a transgender woman living in Tijuana, she has been
5 threatened, verbally abused, and physically assaulted on account of her gender
6 identity. Jaqueline has also received threats to her life through text and audio
7 messages from people she believes to be associated with cartels. She has reported
8 incidents to the police, who made a report but took no action.

9 106. In April 2021, four men entered Jaqueline’s workplace, tied her up, beat
10 her, and robbed her of her money and her phone. Jaqueline later learned that one of
11 the men is a coworker and fears that he has access to pictures of her dressed as a
12 woman. Fearing for her life, she stopped going to work after this incident, and
13 currently lives in hiding.

14 107. Even though Jaqueline is at risk of serious harm or death in Mexico, she
15 has stayed there to ensure that she does not lose the chance to pursue her asylum case.

16 108. Jaqueline registered for expanded MPP processing with UNHCR in or
17 around late June 2021 but has received no further information.

18 109. ~~Without~~ because she cannot identify incident,
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1 118. Victoria and her husband called every attorney on the list provided by the
2 court. Only one answered the phone. This attorney said he could not represent them
3 because MPP cases were too complicated.

4 119. A local migrant aid organization helped Victoria complete her asylum
5 application in English. However, the person who assisted Victoria did not review the
6 form with her.

7 120. Victoria and her family again made the dangerous journey to the Nuevo
8 Laredo port of entry for their second hearing, which was held on December 9, 2019.
9 Victoria submitted her asylum application to the immigration judge, who indicated
10 that the family would have a difficult time winning their case without an attorney.
11 The immigration judge did not explain that they could submit additional evidence in
12 support of their case or what would happen at their next hearing.

13 121. The family's third and final hearing occurred on February 7, 2020. Once
14 again, Victoria and her family made the dangerous journey to the Nuevo Laredo port
15 of entry the day before the hearing and spent the night at the Mexican immigration
16 office.

17 122. At the hearing, Victoria and her husband both testified in support of their
18 claims. The immigration judge then denied their case. Victoria did not fully
19 understand the reason for the judge's decision, but she believes it was because they
20 did not present enough evidence and because the people who harmed them were not
21 police.

22 123. When they indicated that they wanted to appeal, the immigration judge
23 provided them with documents explaining their right to do so.

24 124. After Victoria and her family were returned to Mexico following the
25 hearing, the family got in a taxi. Instead of driving them to their destination, the driver
26 took the family to a different location where two other men got in the car. The driver
27 then took the family to a remote location where Victoria and her husband were both
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1 beaten. Her husband and son were then held at gunpoint while Victoria was brutally
2 raped.

3 125. After the attack, a woman helped the family escape to a shelter. Victoria
4 remains physically and psychologically scarred by her rape. Victoria's son is
5 traumatized and too scared to leave the house.

6 126. Victoria tried to read the documents she had received from the court but
7 did not understand them because they were in English. The family was unable to
8 submit a notice of appeal before the deadline and thus became subject to a final
9 removal order.

10 127. Victoria has continued to look for an attorney to assist her and her family
11 with their immigration case but has not succeeded. Victoria does not know how to
12 seek reopening of her case or what evidence she would need to do so.

13 128. If permitted to return to the United States, Victoria and her husband and
14 son would live with family members in Tennessee.

15 *iii) Plaintiff Chepo Doe*

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

18 130. Defendants detained Chepo and his daughter for two days. During that
19 time, an asylum officer interviewed Chepo about his fear of returning to El Salvador.
20 The asylum officer told Chepo that the laws had changed under President Trump, so
21 Chepo and his daughter would have to defend their cases from Mexico. The asylum
22 officer served Chepo with a Notice to Appear and instructed him to present with his
23 daughter at the San Ysidro port of entry on April 4, 2019, for his first immigration
24 hearing. The asylum officer also gave Chepo a list of attorneys to call. On February
25 28, 2019, Defendants returned Chepo and his daughter to Mexico pursuant to the
26 Protocols. Defendants did not provide them with any resources or support for
27 survival, safety, or general well-being.

1 131. Following their return to Mexico, Chepo called all the attorneys on the
2 list he had received, as well as attorneys he found online. Few picked up, and those
3 who did said either that they did not travel to Mexico or that Chepo would be
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1 137. Around this time, Chepo's daughter started experiencing stomach pain
2 and fevers. They sought medical care from a doctor at a local pharmacy, who advised
3 that Chepo's daughter needed a CT scan or an ultrasound, which were only available
4 at the hospital. They went to the hospital but were refused services because they were
5 not Mexican citizens or residents.

6 138. During the last week of November 2019, Chepo's daughter's condition
7 worsened. Her stomach pain was so severe that she cried for two or three days straight
8 and began vomiting. Chepo and his daughter returned to the hospital but were again
9 refused services.

10 139. On December 3, 2019, Chepo and his daughter once again made the
11 dangerous journey to the port of entry and presented themselves for their third
12 immigration hearing. They were represented by the attorney from Plaintiff ImmDef.
13 At the hearing, Chepo answered questions about his identity, country of origin, and
14 reasons for seeking asylum. He also presented evidence in support of his asylum
15 claim, including written declarations from members of his church, his mother, and his
16 wife. The immigration judge scheduled another hearing for February 25, 2020.

17 140. Following their return to Mexico th
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1 asked the immigration judge to allow them to withdraw their asylum application.
2 Instead, the immigration judge ordered Chepo and his daughter removed *in absentia*.

3 143. Chepo and his family are currently living in a church out of concern for
4 their safety. Since returning to El Salvador, Chepo has received additional threats
5 from gangs.

6 144. If permitted to return to the United States, Chepo and his daughter would
7 live with Chepo's brother in Alabama.

8 *iv) Plaintiff Fredy Doe*

9 145. Around August 6, 2019, Plaintiff Fredy Doe, his wife, and his son
10 crossed the U.S.-Mexico border in Texas, and were processed near McAllen, Texas
11 after indicating that they wanted to seek asylum in the United States.

12 146. Defendants detained Fredy and his family for about eight days.
13 Defendants served Fredy and his wife with a Notice to Appear and ordered them to
14 present themselves at the Brownsville port of entry on September 16, 2019, for their
15 first immigration hearing. Defendants also provided Fredy with a list of attorneys to
16 call. Around August 14, 2019, Defendants returned Fredy and his family to Mexico
17 pursuant to the Protocols. Defendants did not provide them with any resources or
18 support for survival, safety, or general well-being.

19 147. Following their return to Mexico, Fredy attempted to call the attorneys on
20 the list, but they either did not answer his calls or told him that they could not take his
21 case. Because Fredy and his family did not have the resources to hire a private
22 attorney, they remained unrepresented for the duration of their immigration
23 proceedings.

24 148. On September 16, 2019, Fredy and his family made the dangerous
25 journey to the Brownsville port of entry for their first hearing. At the hearing, the
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1 149. Shortly before his next hearing, Fredy obtained a Spanish version of the
2 form from a staff member of a Catholic organization that works with migrants at the
3 border. Although Fredy still did not understand all the questions, a legal worker with
4 the Catholic organization assisted him in filling out the form over the phone. She
5 instructed him to pick up a completed copy of the form at a local migrant camp the
6 next day. Fredy picked up the form but had no way to verify the accuracy of the
7 responses, which were in English, prior to submitting his application to the
8 immigration judge on October 16, 2019.

9 150. Fredy and his family do not feel safe in Matamoros. In November 2019,
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1 163. Unable to find a lawyer to represent her, Ariana prepared her asylum
2 application herself. After completing the application in Spanish and attaching the
3 evidence she was able to gather, she paid to have the asylum application and evidence
4 translated into English. She had no way of knowing whether the translation was
5 accurate.

6 164. In January 2020, Ariana and her daughter again made the dangerous
7 journey to the Brownsville port of entry for her next immigration hearing. Ariana did
8 not understand that this hearing would address the merits of her asylum application.
9 Ariana represented herself at the hearing. At the end of the hearing, the immigration
10 judge denied her asylum application.

11 165. Ariana submitted a timely notice of appeal to the Board of Immigration
12 Appeals but was unable to submit a brief in support of her appeal because she did not
13 know how to do so and, despite diligent efforts, was still unable to find legal
14 representation. As a result, her appeal was dismissed and her order of removal became
15 final.

16 166. Ariana and her daughter have been living in Matamoros since their
17 asylum application was denied. They also do not feel safe in Matamoros, where crime
18 rates are high, gang violence is prevalent, and dead bodies are routinely found within
19 walking distance of their apartment.

20 167. If Ariana and her daughter are able to return to the United States, they
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1 Mexico but did not provide him with information on how to find legal representation.
2 Defendants also did not provide him with any resources or support for survival, safety,
3 or general well-being.

4 170. During his first three months in Matamoros, Francisco was homeless and
5 unemployed. Fortunately, he met people who were able to understand the documents
6 that Defendants had given him and explained when and where he had to go for his
7 immigration hearing.

8 171. In October 2019, Francisco made the dangerous journey to the
9 Brownsville port of entry on the date of his hearing. The immigration judge gave him
10 an asylum application and told him to complete it before his next hearing on
11 November 7, 2019. The immigration judge also gave Francisco a list of lawyers to
12 contact regarding possible representation.

13 172. Upon returning to Mexico, Francisco called the attorneys on the list, but
14 many did not answer or return his calls. The few who responded sa172.

1 177. After Francisco had testified about his experiences in El Salvador and
2 Mexico, the immigration judge denied his asylum application. She ordered him to
3 return to Matamoros and told him he could appeal the decision.

4 178. Following his return to Matamoros, Francisco asked the same attorney to
5 file an appeal. Although the attorney told Francisco he had submitted the necessary
6 documents, Francisco's appeal was rejected because there was no proof of service on
7 the government. Francisco has had no further contact with the attorney, who never
8 told him that his appeal had been rejected nor did the attorney file a corrected appeal.

9 179. Francisco no longer has any means to support himself or his mother and
10 sister, who fled El Salvador after he did and have serious medical conditions that
11 prevent them from working. Francisco was recently fired from his job because his
12 temporary legal status expired. Although he has found another job, he does not earn
13 enough to pay for the medications his mother and sister need.

14 180. If allowed to return to the United States, Francisco would live with his
15 mother's partner in Miami.

16 **C. Defendants' Policies Harm Organizational Plaintiffs**

17 181. Plaintiffs ImmDef and Jewish Family Service are nonprofit organizations
18 that were established to provide legal and other services to detained and non-detained
19 immigrants in California. Before the Protocols were implemented, Organizational
20 Plaintiffs focused on representing and a

1 removal orders must successfully reopen those orders to be eligible for processing
2 into the United States, their continuing deprivation of legal representation to
3 individuals subjected to MPP who remain outside the United States, and their failure
4 to ensure that all individuals eligible for processing know about and can actually
5 access those processes frustrate both Organizational Plaintiffs' missions and require
6 them to expend resources they otherwise would invest in other programs.

7 **1. ImmDef**

8 183. Plaintiff ImmDef is a nonprofit organization committed to creating a
9 public defender system for immigrants facing deportation.

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

1 discussions about their cases. In this way, representing individuals subjected to MPP
2 is different and much more time- and resource-intensive than providing representation
3 in removal proceedings to detained and non-detained individuals inside the United
4 States, where their lives are not constantly at risk.

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

1 ImmDef staff have struggled to set up confidential phone appointments with MPP
2 clients. Even if MPP clients outside the United States can afford cell phone service or
3 internet access, they often lack access to a confidential space for sensitive
4 communications. Moreover, connections are often weak or unreliable, and phone
5 communication is generally less effective than in-person communication for purposes
6 of building trust with clients.

7 196. Despite the termination of MPP, ImmDef continues to divert
8 organizational and staff resources to support individuals who were subjected to the
9 Protocols and remain outside the United States.

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

15 198. Since the wind-down process began, ImmDef staff have spent countless
16 hours responding to telephonic inquiries from individuals subjected to MPP who have
17 questions about their eligibility for processing due to confusion and lack of
18 information about the wind-down process. Since the beginning of the wind-down,
19 ImmDef has been inundated with phone calls from approximately 2,000 families and
20 individuals, most of whom call multiple times. Some have called hundreds of times.
21 Responding to these calls has diverted ImmDef's resources away from its mission of
22 providing universal representation, as staff must spend a significant part of their work
23 day answering calls rather than providing the direct representation the organization is
24 funded to do.

25 199. ImmDef staff have also spent a substantial amount of time trying to
26 trouble-shoot problems with registration through Conecta. ImmDef staff have
27 struggled to communicate with individuals seeking to access this process.

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

7 206. In order to assist individuals subjected to MPP, Jewish Family Service
8 was forced to divert resources away from providing representation and other services
9 to noncitizens in the United States, including individuals detained at the Otay Mesa
10 Detention Center and non-detained individuals in the San Diego area. As a result,
11 Jewish Family Service reduced representation of non-detained immigrants in the
12 United States by approximately 74% and representation of detained immigrants by
13 approximately 27%.

14 207. As of July 30, 2021, Jewish Family Service had provided either full or
15 limited-scope representation to approximately 127 individuals subjected to MPP and
16 over 600 legal consultations to individuals subjected to MPP. In MPP cases where
17 Jewish Family Service was unable to provide full-scope legal representation, they
18 often represented individuals in parole requests, nonrefoulement interviews,
19 affirmative relief, or advocacy with DHS.

20 208. Because many people subjected to the Protocols did not have the ability
21 to contact any of the organizations on EOIR's free-legal-service-provider list, Jewish
22 Family Service expended significant resources to establish cross-border infrastructure
23 to receive calls from individuals subjected to MPP. This infrastructure includes a
24 hotline accessible via cell phone and WhatsApp for individuals waiting in, or near,
25 Tijuana and Mexicali. Before MPP, the staff resources invested in running the MPP
26 hotline would have been dedicated to providing legal services to detained and non-
27 detained individuals in the San Diego area.

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1 209. Jewish Family Service has invested at least seventy-five hours of staff
2 time in producing English and Spanish “Know Your Rights” videos and other
3 materials about MPP. These materials provide basic information about the MPP
4 process and the rights of affected individuals. The videos are publicly available on
5 the internet, and the other materials are shared with individuals who are being
6 processed under the MPP wind-down.

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

8 214. Jewish Family Service’s staff members did not have consistent access to
9 space in Tijuana where they could meet confidentially with clients. In cases where
10 Jewish Family Service conducted meetings in clients’ living spaces, some clients
11 expressed fear that they would be targeted by organized crime if people from the
12 United States were seen entering or leav

CLASS ACTION ALLEGATIONS

220. Individual Plaintiffs bring this action pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2) on

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1 Subclass members raise these same legal claims, as well as an additional shared legal
2 claims under the INA, 8 U.S.C. § 1229a(b)(5)(C), and the APA, 5 U.S.C. § 706(2)(A).
3 Class members' shared common facts will ensure that judicial findings regarding the
4 legality of the challenged practices will be the same for all class members.

5 229. Should Plaintiffs prevail, all class members will benefit: each of them will
6 be entitled to return to the United States, wi

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1 243. By trapping Organizational Plaintiffs’ clients and potential clients outside
2 the United States in a manner that obstructed access to all components of the U.S.
3 asylum system, the Protocols also interfered with Organizational Plaintiffs’ ability to
4 deliver meaningful legal assistance to individuals seeking to apply for asylum as
5 required under the INA. Defendants failed to adequately consider that fact when they
6 implemented the Protocols.

7 244. Defendants’ wind-down of the Protocols has not rectified these violations
8 of the rights of Individual and Organizational Plaintiffs. Defendants’ Reopened Case
9 Policy keeps Individual Plaintiffs stranded outside the United States in untenable
10 conditions that obstruct their access to legal representation and deprive them of a
11 meaningful opportunity to apply for asylum. This Policy also continues to frustrate
12 Organizational Plaintiffs’ core missions and to force them to divert substantial
13 resources away from existing programs.

14 245. The Reopened Case Policy violates the right to seek asylum under the
15 INA and is arbitrary and capricious, is not in accordance with law or is in excess of
16 statutory authority under 5 U.S.C. § 706(2)(A).

17 246. Defendants’ Reopened Case Policy is also arbitrary and capricious or an
18 abuse of discretion because Defendants failed to properly consider important aspects
19 of the problem that gave rise to this policy. In particular, by limiting access to
20 processing to individuals with “active” immigration cases, Defendants failed to
21 adequately consider how other individuals subjected to the Protocols were deprived
22 of full and fair hearings and their right to legal representation. Defendants also failed
23 to adequately consider how leaving individuals stranded outside the United States
24 without access to legal representation impedes their ability to seek reopening of their
25 immigration proceedings and obstructs their access to the U.S. asylum system.

26 247. The Reopened Case Policy is a final agency action that is reviewable
27 under 5 U.S.C. §§ 702 and 706.

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1 their asylum proceedings by stranding them outside the United States in untenable
2 conditions that restrict their access to legal representation.

3 254. Under Defendants’ Reopened Case Policy, Individual Plaintiffs may
4 pursue their asylum claims from within the United States only if reopening is granted.
5 By directing that individuals subjected to MPP “who may be eligible for processing
6 should stay where they are currently located” while seeking to reopen their cases,
7 Defendants have stranded these individuals outside the United States and continue to
8 deprive them of access to legal assistance.

9 255. Defendants’ decision to implement the Reopened Case Policy is not in
10 accordance with law or is in excess of Defendants’ statutory authority because it
11 deprives Individual Plaintiffs of their right to seek reopening of their asylum
12 proceedings, as guaranteed by the INA.

13 256. Defendants’ Reopened Case Policy is also arbitrary and capricious or an
14 abuse of discretion because Defendants failed to consider important aspects of the
15 problem that gave rise to this policy. In particular, by limiting access to processing to
16 individuals with “active” immigration cases, Defendants failed to adequately consider
17 how other individuals subjected to the Protocols were deprived of full and fair
18 hearings and their right to legal representation. Defendants also failed to consider
19 Individual Plaintiffs’ inability to meaningfully access legal representation to assist
20 them in seeking to reopen their asylum proceedings, as well as the risks inherent in
21 stranding asylum seekers in untenable conditions outside the United States.

22 257. By stranding Organizational Plaintiffs’ clients and potential clients with
23 final orders of removal outside the United States in a manner that obstructs access to
24 all components of the U.S. immigration court system, the Reopened Case Policy
25 interferes with Organizational Plaintiffs’ ability to deliver meaningful legal assistance
26 to individuals seeking to reopen their cases as provided for under the INA. Defendants
27 failed to adequately consider that fact when they implemented the Reopened Case
28 Policy.

264. By implementing the Protocols, Defendants detained Individual Plaintiffs

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1 all components of the U.S. immigration court system, the Reopened Case Policy
2 interferes with Organizational Plaintiffs' ability to deliver meaningful legal assistance
3 to individuals seeking to reopen their *in absentia* removal orders as provided for under
4 the INA. Defendants failed to adequately consider that fact when they implemented
5 the Reopened Case Policy.

6 269. Defendants' Reopened Case Policy is a final agency action that is
7 reviewable under 5 U.S.C. §§ 702 and 706.

8 270. Defendants' violation of the APA causes ongoing harm to Individual
9 Plaintiffs and Organizational Plaintiffs.

10 271. Plaintiffs, who have no adequate
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1 other basic needs; and the effect those obstacles would have in exacerbating such
2 individuals' inability to meaningfully access legal representation.

3 276. Defendants' wind-down of the Protocols has not rectified these violations
4 of the rights of Individual Plaintiffs. Defendants' Reopened Case Policy keeps
5 Individual Plaintiffs stranded outside the United States and continues to obstruct their
6 access to legal representation.

7 277. Defendants' Reopened Case Policy is not in accordance with law because
8 the INA provides noncitizens who are seeking asylum, including noncitizens seeking
9 to reopen their immigration proceedings, with a right to counsel. *See* 8 U.S.C. §§
10 1158(d)(4), 1229a(b)(4)(A), 1362.

11 278. Defendants' Reopened Case Policy imposes systemic obstacles to
12 Individual Plaintiffs' ability to access legal representation, the cumulative effect of
13 which is tantamount to a denial of counsel. *See* 8 U.S.C. §§ 1158, 1229a(b)(4)(A),
14 1362.

15 279. Defendants' Reopened Case Policy is arbitrary and capricious or an abuse
16 of discretion because it arbitrarily limits access to processing to individuals with
17 "active" immigration cases. The Reopened Case Policy fails to adequately consider
18 how ongoing lack of access to legal representation for individuals stranded outside
19 the United States impedes their ability to seek reopening of their cases and obstructs
20 their access to the U.S. asylum system.

21 280. Defendants' Reopened Case Policy is not in accordance with law or is
22 arbitrary and capricious.

23 281. Defendants' Reopened Case Policy constitutes a final agency action that
24 is reviewable under 5 U.S.C. §§ 702 and 706. Defendants' violation of the APA
25 causes ongoing and imminent harm to Individual Plaintiffs.

26 282. Individual Plaintiffs have no adequate alternative remedy at law and
27 therefore seek immediate review under the APA and injunctive relief.

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SIXTH CLAIM FOR RELIEF

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1 processed into the United States, leaving them stranded outside the United States in
2 untenable conditions. The Reopened Case Policy thus continues to undermine these
3 individuals' Fifth Amendment rights to counsel and to present the evidence necessary
4 to seek reopening of their immigration proceedings and to access the U.S. asylum
5 system.

6 294. Defendants' violations of the Due Process Clause cause ongoing harm to
7 Individual Plaintiffs.

8 **SEVENTH CLAIM FOR RELIEF**

9 **VIOLATION OF THE FIRST AMENDMENT**

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

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

13 296. Defendants' Reopened Case Policy and its implementation interfere with
14 and obstruct Individual Plaintiffs' and proposed class members' First Amendment
15 rights to hire and consult an attorney and petition the courts.

16 297. "[T]he 'right to hire and consult an attorney is protected by the First
17 Amendment's guarantee of freedom of speech, association and petition.'" *Mothershed v. Justices of Supreme Court*, 410 F.3d 602, 611 (9th Cir. 2005), *as*
18 *amended on denial of reh'g* (9th Cir. July 21, 2005) (quoting *Denius v. Dunlap*, 209
19 F.3d 944, 953 (7th Cir. 2000)). The First Amendment protects the efforts of
20 individuals to seek the assistance of attorneys and petition the courts, including with
21 respect to immigration proceedings.
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23 298. The Protocols and their implementation forced individuals subjected to
24 them, including Individual Plaintiffs and proposed class members, to return to
25 Mexico, and prevented them from returning to the United States except under limited
26 circumstances. Moreover, prior to Defendants' termination of MPP, Individual
27 Plaintiffs and proposed class members were left with, at most, a single hour before
28 court appearances, which often was not available in practice and, in any case, was

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1 and petition the courts. Defendants’ policy therefore places unreasonable restrictions
2 on Individual Plaintiffs’ and proposed class members’ constitutionally protected right
3 to seek the assistance of attorneys and petition the courts and is unconstitutional.

4 302. Individual Plaintiffs and proposed class members have suffered and
5 continue to suffer ongoing injury as a result of Defendants’ violation of their
6 constitutional right to hire and consult an attorney and petition the courts and are thus
7 entitled to declaratory and injunctive relief.

8 **EIGHTH CLAIM FOR RELIEF**

9 **VIOLATION OF FIRST AMENDMENT RIGHTS**

10 **TO ADVISE POTENTIAL AND EXISTING CLIENTS**

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

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

14 304. Defendants’ Reopened Case Policy and its implementation interfere with
15 and obstruct Organizational Plaintiffs’ First Amendment rights to advise potential and
16 existing clients.

17 305. The First Amendment protects legal services providers from government
18 interference when they are “advocating lawful means of vindicating legal rights.”
19 *NAACP v. Button*, 371 U.S. 415, 437 (1963). Pro bono legal assistance to immigrants
20 in removal proceedings falls within this zone of protection. *Nw. Immigrant Rights*
21 *Project v. Sessions*

1 533 (2001); *In re Primus*, 436 U.S. 412; *Button*, 371 U.S. 415; *Torres v. DHS*, 411 F.
2 Supp. 3d 1036 (C.D. Cal. 2019).

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

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

20 310. The Protocols and their implementation also prevented Organizational
21 Plaintiffs from advising potential clients regarding Organizational Plaintiffs’
22 viewpoints regarding the rights of individuals subjected to MPP.

23 311. Defendants’ Reopened Case Policy and its implementation have
24 continued to restrict Organizational Plaintiffs’ ability to meaningfully communicate
25 with potential and existing clients while those clients are outside the United States.
26 The Protocols’ forced exclusion from the United States and its harms have been
27 perpetuated by the Reopened Case Policy, which prevents individuals subjected to it,
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1 MPP proceedings, and whose cases have not been reopened and are
2 not currently pending review before a federal circuit court of appeals.

3 3. Final Order Subclass: All individuals subjected to MPP who remain
4 outside the United States, received a final order of removal for reasons
5 other than failure to appear for an immigration court hearing, and
6 whose cases have not been reopened and are not currently pending
7 review before a federal circuit court of appeals.

8 b) Name all Individual Plaintiffs as representatives of the Reopened
9 Case Class; Jaqueline Doe and Chepo Doe as representatives of the *In Absentia*
10 Subclass; and Victoria Doe, Fredy Doe, Ariana Doe, and Francisco Doe as
11 representatives of the Final Order Subclass; and appoint Plaintiffs' counsel as
12 class counsel;

13 c) Declare that MPP as implemented and the Reopened Case Policy,
14 individually and collectively, violate federal statutes and the U.S. Constitution;

15 d) Enjoin Defendants, their subordinates, agents, employees, and all
16 others acting in concert with them from subjecting Plaintiffs and class members
17 to the Reopened Case Policy, and issue an injunction sufficient to remedy the
18 violations of the rights of both the Individual and Organizational Plaintiffs and
19 class members;

20 e) Allow each of the Individual Plaintiffs and class members to return
21 to the United States, with appropriate precautionary public health measures, for
22 a period sufficient to enable them to seek legal representation, prepare and file
23 their motions to reopen, and pursue their asylum claims from inside the United
24 States if such motions are granted;

25 f) Order Defendants to give adequate notice of the phased wind-down
26 process to all individuals formerly subjected to MPP;

27 g) Order Defendants to facilitate the provision of legal services by
28 Organizational Plaintiffs to individuals subjected to MPP still outside the United

1 States, including class members, for the purpose of informing them of the wind-
2 down process and U.S. immigration law and procedures;

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

7 i) Grant such further relief as this Court deems just and proper.

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1 Dated: August 13, 2021

2 INNOVATION LAW LAB

3 By: /s/ Stephen W. Manning
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