

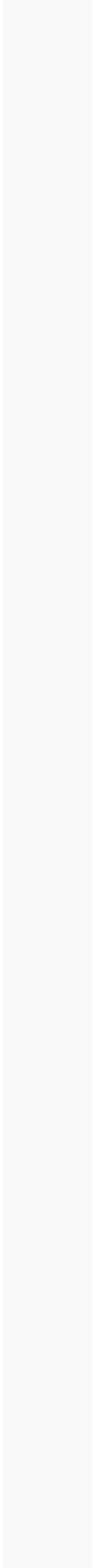
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1 Proposed *amici* are professors with expertise in immigration law. They
2 hereby move for leave to file a brief as *amici curiae* in support of Plaintiffs’
3
4 Emergency Motion for a Preliminary Injunction. Plaintiffs and Defendants have
5 consented to this motion (Defendants have provided blanket consent to *amici*
6
7 briefs). A copy of the proposed order granting this motion, along with a copy of
8 the proposed brief, are submitted herewith.

9
10 Proposed *amici* teach both doctrinal and experiential courses in
11 immigration law, have written numerous scholarly articles on immigration law,
12 and understand the practical aspects of immigration law through client
13 representation, particularly asylum law and asylum processing at the border.
14 They have expertise in the Immigration and Nationality Act (“INA”) and the
15 detention scheme it sets forth. They submit this brief to demonstrate that
16 noncitizens placed in the Migrant Protection Protocols (“MPP”) are considered
17 detained under the INA, regulations, and Department of Homeland Security
18 (“DHS”) guidance on MPP, as well as by the Executive Office for Immigration
19 Review (“EOIR”); at a minimum, they should be considered in constructive
20 custody under relevant caselaw.
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25 Showing that noncitizens in MPP are detained both while in Mexico and
26 while in the United States is relevant to this case because DHS has special
27 obligations to protect access to counsel for detained noncitizens. *See Orantes-*
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19 **UNITED STATES DISTRICT COURT**
20 **CENTRAL DISTRICT OF CALIFORNIA**
21 **EASTERN DIVISON**

22 IMMIGRANT DEFENDERS LAW
23 CENTER, ..

24 Plaintiffs,

25 vs.

26 CHAD WOLF, ..

27 Defendants.

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

**[PROPOSED] ORDER GRANTING
IMMIGRATION LAW
PROFESSORS' UNOPPOSED
MOTION FOR LEAVE TO FILE
BRIEF**

Judge: Honorable Jesus G. Bernal

Date: December 14, 2020

Time: 9:00 a.m.

Crtrm:1

1 Immigration Law Professors' Unopposed Motion for Leave to File

2 Brief in support of Plaintiffs' Motion for Preliminary Injunction is hereby

3
4 GRANTED.

5 IT IS SO ORDERED.

6
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8 Dated: _____ 2020 _____

9 The Honorable Jesus G. Bernal
10 United States District Judge
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 I. INDIVIDUALS SUBJECTED TO MPP ARE DETAINED UNDER
 THE INA AND ITS REGULATIONS.....

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Williams v. Taylor,

1 detention throughout removal proceedings, whether or not the noncitizen is
2 returned to Mexico during those proceedings. *See* 8 U.S.C. § 1225(b)(2).
3

4 Specifically, DHS relies on § 1225(b)(2)(C) as providing legal authority
5 for MPP, which cross-references and expands on the general provision in
6 § 1225(b)(2)(A) by allowing for the return of certain noncitizens arriving by land
7 to a contiguous territory for the pendency of the removal proceedings in
8 immigration court. Under 8 U.S.C. § 1225(b)(2)(A), requires detention “*for a*
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1 proceedings. There is no exception to detention based on being located in
2 Mexico, and inventing exceptions not set forth by Congress would undermine the
3 statutory scheme. *See Hillman v. Maretta*, 133 S. Ct. 1943, 1953 (2013) (“Where
4 Congress explicitly enumerates certain exceptions to a general prohibition,
5 additional exceptions are not to be implied, in the absence of evidence of a
6 contrary legislative intent.”) (citations omitted).
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1 § 235.3(d). Critically, the regulation continues, “such alien shall be *considered*
2 *detained for a proceeding within the meaning of section 235(b) of the Act.*” 8
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4 C.F.R. § 235.3(d) (emphasis added). The plain text of this regulation states
5 “*considered* detained,” instead of simply “detained,” which indicates that the
6 noncitizen does not need to be in an ICE detention center to be classified as
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8 detained under the statute. The ordinary meaning of “considered”
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1 Protection Protocols Guidance,” Feb. 12, 2019, at 2, *available at*

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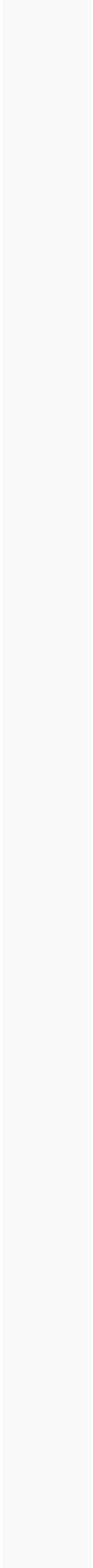
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1 designated port of entry for her immigration court hearing.” *K.M.H.C.*, 437
2 F.Supp.3d at 791. The court erred by failing to consider the individual’s
3 detention classification under the INA, as discussed in Part I above. The court
4 erroneously relied on Ninth Circuit precedent holding that individuals who have
5 *already been removed* to their home countries are no longer subject to any
6 control by U.S. authorities for purposes of a habeas petition. *Miranda v. Reno*,
7 238 F.3d 1156, 1159 (9th Cir. 2001). The INA’s detention classification scheme
8 clearly differentiates between someone who is already removed (and therefore is
9 excluded from the detention scheme) and someone who is being detained during
10 removal proceedings pursuant to 1225(b)(2)(A), which is the case for people in
11 MPP. Additionally, asylum seekers subject to MPP are far from living freely in
12 their home countries or any other country. They are trapped in Mexico near the
13 U.S. border awaiting further proceedings in their removal cases and must comply
14 with numerous restrictions on their liberty, as described above.
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21 CONCLUSION

22 Based on the foregoing, *amici* urge the Court to consider individuals in
23 MPP in custody throughout their removal proceedings, both in Mexico and in the
24 United States. One critical implication of being in custody is that DHS has
25 special obligations to protect access to counsel for noncitizens in MPP regardless
26 of location. *See Orantes-Hernandez v. Thornburgh*, 919 F.2d 549, 566 (9th Cir.
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