

# Exhibit A

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6  
7 **UNITED STATES DISTRICT COURT**  
8 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

9 Al Otro Lado, Inc., *et al.*,

10 Plaintiffs,

11 v.

12 Chad F. Wolf, *et al.*,

13 Defendants.  
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Case No. 17-cv-02366-BAS-KSC

**BRIEF OF FOURTEEN  
ORGANIZATIONS ADVOCATING  
FOR ASYLUM SEEKERS AS AMICI  
CURIAE IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
SUMMARY JUDGMENT**

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**CORPORATE DISCLOSURE STATEMENT**

Pursuant to Federal Rule of Civil Procedure 7.1, each *amicus* party states that it does not have a parent corporation and no publicly held corporation owns 10 percent or more of the stock of any *amicus*.

Dated: October 27, 2020

By: /s/ Harrison J. Frahn IV  
Harrison J. Frahn IV



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**Table of Authorities**

**Cases**

*Al Otro Lado, Inc. v. Chad Wolf*,  
No. 19-56417 (9th Cir. filed Dec. 23, 2019)..... 9

*Matter of A-B-*,  
27 I&N Dec. 316 (A.G. 2018)..... 14

*Wolf v. Innovation Law Lab*,  
No. 19-1212 (certiorari granted Oct. 19, 2020),  
*on appeal from* 951 F.3d 1073 (9th Cir. 2020) ..... 1

**Legislative Materials**

Aliens Subject to a Bar on Entry Under Certain  
Presidential Proclamations; Procedures for  
Protection Claims, 83 Fed. Reg. 55,934, 55,947  
(Nov. 9, 2018). ..... 14

Asylum Eligibility and Procedural Modifications, 84  
Fed. Reg. 33,829, 33,830 (July 16, 2019)..... 16

S. Rep. No. 96-256, at 3 (1979)..... 5

S. Rep. No. 96-590, at 82 (1980) (Conf. Rep.)..... 5

**Other Authorities**

*‘Angel Families’, Trump Aides Rally Against Illegal  
Immigrant Crime*, Fox News (Sept. 7, 2018)  
[https://www.foxnews.com/politics/angel-  
families-trump-aides-rally-against-illegal-  
immigrant-crime](https://www.foxnews.com/politics/angel-families-trump-aides-rally-against-illegal-immigrant-crime) ..... 22

Amnesty Int’l, USA: “You Don’t Have Any Rights  
Here”: Illegal Pushbacks, Arbitrary Detention  
& Ill-Treatment of Asylum-Seekers in the  
United States 15 (Oct. 2018),  
<https://www.amnesty.org/download/Documents>

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Anna Flagg, *Is There a Connection Between  
Undocumented Immigrants and Crime?*, The



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1 2016 surge.<sup>17</sup> While these figures do not refer specifically to the number of  
2 migrants entering POEs, they do demonstrate that the rates of migration  
3 experienced when the Turnback Policy was implemented at the U.S.-Mexico border  
4 are substantially below historical rates. And even if rates of immigration were to  
5 appreciably increase, Defendants already had contingency plans in place to expand  
6 their detention capacity. *See* Ex. 14 to MSJ at 156:23-157:12. As Leutert  
7 explained, “CBP field offices create contingency plans that explain in detail how  
8 POEs can temporarily increase their capacity in response to an increased number of  
9 asylum seekers.” Leutert Report at 978-79, 1014-15. But CBP declined to enact  
10 these plans, instead deciding to “hold at the line if necessary.” *Id.* at 1015-16  
11 (quoting the Executive Director of the Laredo Field Office). As Leutert concluded,  
12 “metering practices and turn-backs have remained in place regardless of the  
13 migration level at the port of entry.” Leutert Report at 1028-29. This does not  
14 make sense unless one concludes that the purpose of the Turnback Policy is not to  
15 address a legitimate concern about capacity to process asylum seekers at POEs on  
16 the U.S.-Mexico border.

17 In sum, despite Defendants’ attempt to create a black box around their  
18 operations that would allow them, at any time, to claim there are serious “capacity”  
19 constraints at a port of entry, it is clear that ports were not at capacity—operational  
20 or otherwise—and that CBP declined to use their significant resources to assist  
21 asylum seekers.

22 **III. THE TRUE MOTIVATIONS FOR METERING ARE TO DETER**  
23 **IMMIGRANTS FROM SEEKING ASYLUM**

24 **A. The policies implemented by Defendants at the U.S.-Mexico**  
25 **Border demonstrate a desire to reduce and deter asylum rather**  
26 **than an effort to address capacity problems at the border.**

27 <sup>17</sup> *See* U.S. Customs & Border Protection, Southwest Border Migration FY 2020,  
28 <https://www.cbp.gov/newsroom/stats/sw-border-migration> (last visited Oct. 26, 2020).

1 Defendants’ true reason for subjecting asylum seekers and other immigrants  
2 to cruel and harsh conditions at the U.S.-Mexico border—conditions with which  
3 unfortunately the *Amici* have grown all too familiar—is animus toward Central and  
4 South American immigrants and a desire to cut off an asylum process that  
5 Defendants view as too permissive. Indeed, the Turnback Policy is just one in  
6 myriad policies put in place by Defendants and the Administration that all work  
7 towards a broader purpose of reducing and deterring asylum seekers. Deterring  
8 asylum is the goal; it is not an unfortunate side effect of a sober analysis of  
9 migration rates or an earnest assessment of capacity and o mentPn1.80 (o)4.70 (f)7.20 (0 (0

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States unless first denied asylum in Mexico or another third country;<sup>26</sup>  
instituting the public charge rule to deny green cards, visas, and other  
forms of legal immigration status to low-income households;<sup>27</sup> and  
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1 Statue of Liberty “was referring back to people coming from Europe.”<sup>45</sup> The  
2 Trump Administration has continued to double-down on its anti-immigrant stance  
3 amidst the 2020 election campaign, instituting new restrictive policies<sup>46</sup> in the  
4 middle of the COVID-19 pandemic and criticizing Joe Biden’s “[p]ermissive  
5 immigration policies.”<sup>47</sup>

6 **C. Defendants and the Administration have expressed particular**  
7 **hostility toward asylum seekers.**

8 In light of the Turnback Policy and other recently enacted immigration  
9 policies, it is clear that Defendants’ overarching goal is to deter migrants from  
10 seeking asylum at all. Defendants have specifically attacked asylum as “an easy  
11 ticket to illegal entry into the United States,” “swamped” with “vague,  
12 insubstantial, and subjective claims.”<sup>48</sup> And the Administration has consistently  
13 referred to important protections for unaccompanied minors as “dangerous  
14 loopholes” that have been exploited by gang members posing as vulnerable  
15 children.<sup>49</sup> In August 2019, the Administration removed these protections and

16 \_\_\_\_\_  
17 <sup>45</sup> Jacey Fortin, ‘Huddled Masses’ in Statue of Liberty Poem Are European, *Trump*  
18 *Official Says*, N.Y. Times (Aug. 14, 2019),  
<https://www.nytimes.com/2019/08/14/us/cuccinelli-statue-liberty-poem.html>.

19 <sup>46</sup> New policies include “broad shutdowns of America’s legal immigration system”  
20 under the guise of protections against the COVID-19 pandemic, including  
21 “blocking the entry of a range of temporary foreign workers and some applicants  
22 for permanent residence.” Ted Hesson & Chris Kahn, *Trump Pushes Anti-*  
23 *Immigrant Message Even as Coronavirus Dominates Campaign*, Reuters (Aug. 14,  
2020, 6:03 AM), <https://www.reuters.com/article/us-usa-election-immigration-insight/trump-pushes-anti-immigrant-message-even-as-coronavirus-dominates-campaign-idUSKCN25A18W>.

24 <sup>47</sup> *Id.*

25 <sup>48</sup> Jeffrey B. Sessions III, *Attorney General Jeff Sessions Delivers Remarks to the*  
26 *Executive Office for Immigration Review*, DOJ (Oct. 12, 2017),  
<https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-delivers-remarks-executive-office-immigration-review>.

27 <sup>49</sup> Donald Trump, *President Donald J. Trump’s Letter to House and Senate Leaders*  
28 *& Immigration Principles and Policies*, The White House (Oct. 8, 2017),

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1 began training CBP agents to conduct initial asylum screenings (i.e., credible fear  
2 interviews, an initial step in the asylum process), purportedly because of a lack of  
3 capacity and manpower due to the supposed surge of immigrants. However, in  
4 reality, members of the Administration indicated that they hoped CBP agents would  
5 be more likely to make negative credible fear determinations, thereby reducing  
6 asylum claims.<sup>54</sup>

7 The *Amici* respectfully request that the Court recognize Defendants’ actions  
8 for what they are—a misbegotten effort to functionally eliminate the availability of  
9 asylum to vulnerable immigrants in service of an unfounded animus toward asylum  
10 seekers.

11 **CONCLUSION**

12 The justifications offered by Defendants for the devastating Turnback Policy  
13 do not stem from legitimate concerns about capacity or ability to accommodate  
14 asylum seekers at the U.S.-Mexico border, but rather they are pretext for a policy  
15 animated by hostility to immigrants, particularly those from Latin America, and a  
16 desire to limit migration to the United States. For the foregoing reasons, the Court  
17 should grant Plaintiffs’ motion for summary judgment.

18  
19 Dated: October 27, 2020

Respectfully submitted,

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28 <sup>54</sup> *Id.* (“One current and one former DHS official, both speaking on the condition of  
anonymity, said Miller has long seen asylum officers as soft and believes border  
agents would be tougher critics of asylum seekers.”).



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