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17 IMMIGRANT DEFENDERS LAW
CENTER, ET AL.,

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19 Plaintiffs,

20 v.

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

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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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** Wilkinson Stekloff wishes to acknowledge and thank Michelle Li, law clerk, for her contributions to this brief.*

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STATEMENT OF INTEREST

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

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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/QUG9-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

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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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27 ¹⁴ Lind, *supra* note 6.

28 ¹⁵ *Id.*

¹⁶ *Id.*

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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

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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*

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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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

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[PROPOSED] ORDER

IT IS HEREBY ORDERED that the *Ex Parte* Application for Leave to File