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7 **UNITED STATES DISTRICT COURT**
8 **SOUTHERN DISTRICT OF CALIFORNIA**
9 **SAN DIEGO DIVISION**

10 AL OTRO LADO, INC., a California Corporation, et al., Case No. 3:17-cv-02366-BAS-

11 Plaintiffs,

12 v.

13 KIRSTEN M. NIELSEN, Secretary,
14 United States Department of Homeland
Security, in her official capacity, et al.,

15 Defendants.
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1 **I. INTRODUCTION AND INTEREST OF AMICI CURIAE**

2 Amici are nineteen non-profit organizations¹ dedicated to ensuring the
3 equitable treatment of immigrants and asylum seekers. In this capacity, they have
4 developed an interest and expertise in the unique issues facing migrants, particularly
5 those from Central America. Amici have observed with considerable alarm the
6 myriad ways in which Defendants have sought to limit or foreclose access to the
7 asylum process through a variety of practices including what Plaintiffs allege
8 amounts to a Turnback Policy,² which has forced people fleeing persecution to wait
9 in dangerous conditions on the Mexican side of the southern border. Amici
10 accordingly write to underscore the devastating consequences of Defendants’
11 Turnback Policy and to call into question its purported rationales—a “surge” of
12 immigrants at the southern border, limited capacity at ports of entry, and the
13 inherent danger posed by immigrants. As explained below, the evidence reveals that
14 there is no immigration crisis at the U.S.-Mexico border compared to historical
15 norms, there is no bona fide lack of capacity at ports of entry that could justify such
16 a policy, and asylum seekers do not pose an increased threat to American safety.
17 Rather, the false and fundamentally misguided excuses that Defendants have offered
18 for implementing the Turnback Policy serve only to mask the true motives for this
19 politically driven attempt to render asylum functionally unavailable to anyone
20 attempting to enter through the U.S.-Mexico border: blatant animus toward
21 immigrants, particularly those from Latin America, and a desire to deter current and
22 future migrants from seeking asylum in the United States.

23 If the Turnback Policy is allowed to continue, amici, all of whom work with
24 asylum seekers and many of whom focus specifically on asylum claims, serving
25 people who enter the United States through the U.S.-Mexico border, will be forced

26 ¹ Amici are listed and described in the accompanying Motion for Leave to File this
Amicus Brief.

27 ² The Turnback Policy, a collection of policies and practices intended to encourage
28 would-be asylum seekers to “turn back” to Mexico or their home countries, is
described at length in Plaintiffs’ First Amended Complaint, ECF No. 176.

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appeared largely empty.¹¹ Similarly, during its investigation of the Administration’s “zero-tolerance policy,” which directed U.S. Attorney’s Offices along the southern

1 motivated by its desire to deter migrants from seeking asylum at ports of entry.”¹⁵

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1 processed 20,524 individuals at ports of entry.¹⁹ By contrast, CBP processed only
2 10,029 individuals in December 2018, which represents a 51% decline in processing
3 volume from October 2016.²⁰ In fact, since October 2016, every field office at the
4 U.S.-Mexico border has reported significant declines in the processing of
5 undocumented immigrants.²¹ The following graph illustrates the substantial
6 reduction in the number of undocumented immigrants arriving at ports of entry
7 along the U.S.-Mexico:

8 **Undocumented Arrivals at Ports of Entry by Southwest Field Office²²**

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17 Additionally, CBP's own data demonstrates historically low numbers of
18 apprehensions at the border in the past several years. In fact, in prior years, CBP
19 has successfully addressed far greater rates of migration at the border than are now
20 occurring.²³ Border patrol agents apprehended approximately 1.7 million people in
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22 ¹⁹ See David Brier, *Obama Tripled Migrant Processing at Legal Ports – Trump*
23 *Halved It*

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1 directed toward immigrant groups, suggesting that the true reason for Defendants’
2 actions is cruel animosity.

3 For example, Secretary Nielsen has criticized media reports for portraying the
4 migrant caravan as a sympathetic group made up mostly of women and children,
5 instead alleging that the caravan includes “500 criminals” and “known gang
6 members.”³⁰ Commissioner Kevin K. McAleenan has likewise asserted that “[w]e
7 have information of participation of over 500 individuals with criminal records as
8 part of the caravan”³¹ and described circumstances at the border as an “extremely
9 dangerous situation” requiring the use of force.³² And President Trump—who
10 initiated the Turnback Policy by directing Secretary Nielsen to “ensure aliens . . . are
11 returned to the territory from which they came pending a formal legal proceeding”
12 because they may “seek to harm Americans through acts of terror or criminal
13 conduct”³³—has similarly stated that the Central American caravan consists of
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20 ³⁰ Richard Gonzales, *DHS Chief Visits U.S.-Mexico Border, Defends*
21 *Administration’s Asylum Rules* (Nov. 20, 2018),
22 [https://www.npr.org/2018/11/20/669826023/dhs-chief-visits-u-s-mexico-border-defeis1-102\(2\)30-has-likw8\(24\)Ts1-102h0-1-42olcd-atiito-.mAmssse-ba-102h0-1-r15.491](https://www.npr.org/2018/11/20/669826023/dhs-chief-visits-u-s-mexico-border-defeis1-102(2)30-has-likw8(24)Ts1-102h0-1-42olcd-atiito-.mAmssse-ba-102h0-1-r15.491)
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1 who crosses the U.S.-Mexico border outside a port of entry;⁴⁶ capping the refugee
2 resettlement program at 30,000;⁴⁷ attempting to deny asylum to domestic violence
3 victims and victims of gang violence;

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1 so great that these children had no other option than to flee alone and travel
2 thousands of miles to the United States.

3 Congress drafted the asylum laws with a clear understanding of the needs of
4 asylum applicants, knowing that “[t]he refugees of tomorrow, like the refugees of
5 today, [would] continue to look to the United States for safe haven and resettlement
6 opportunities – and our government [would] continue to be called upon to help.” S.
7 Rep. No. 96-256, p. 3 (1979). Indeed, Congress sought to “establish a national
8 policy of *welcome* to refugees.” S. Rep. No. 96-590, at 82 (1980) (Conf. Rep.)
9 (emphasis added). This is particularly true for unaccompanied children, who have
10 special asylum protections created by Congress,⁶⁰ which Defendants blatantly
11 ignore.⁶¹

12 Courts, too, recognize that the fundamental purpose of the U.S. asylum
13 system is to “provide refuge to desperate refugees who reach our shores with
14 nowhere else to turn.” *Sall v. Gonzales*, 437 F.3d 229, 233 (2d Cir. 2006); *see also*
15 *Bolanos-Hernandez v. INS*, 767 F.2d 1277, 1280 (9th Cir. 1984) (“In passing the
16 Refugee Act, Congress was motivated by the enduring ‘historic policy of the United
17 States to respond to the urgent needs of persons subject to persecution in their
18 homelands[.]’”) (quoting the Refugee Act of 1980, § 101, Pub. L. No. 96-212, 94
19 Stat. 101, 102 (1982)). Congress explicitly sought to expand the availability of

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21 ⁶⁰ *See* William Wilberforce Trafficking Victims Protection Reauthorization Act of
2008 (“TVPRA”) § 235(d)(7)(B), Public Law 110-457 (not specifying any
restrictions on initial jurisdiction).

22 ⁶¹ *See* L. Francis Cissna, Director, USCIS, Procedural Guidance for Implementing
23 Regulatory Changes Created by Interim Final Rule, Aliens Subject to a Bar on Entry
24 under Certain Presidential Proclamations; Procedures for Protection Claims (Nov. 9,
2018) (“Therefore, while such [unaccompanied minors] will continue to be
25 processed in accordance with 6 U.S.C. § 279 and 8 U.S.C. § 1232, they would per
26 the terms of [the Rule and Proclamation] be barred from asylum eligibility”); Sara
Kinosian & Amanda Holpuch, *Fleeing Home Alone: The Migrant Children Blocked
at Mexican Border*, THE GUARDIAN, Dec. 19, 2018, available at

1 asylum protections in order “to bring United States refugee law into conformance

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1 Defendants' motion to dismiss and declare the Defendants' Turnback Policy and
2 related practices unlawful.

3 Dated: February 21, 2019

Respectfully submitted,
4 By: /s/ Michael D. Kibler
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