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

14 Defendants.

15 [Caption Page Continued - Additional Attorneys for Plaintiffs]

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** *Pro Hac Vice application pending*

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‡ *admitted in Maryland; DC bar admission pending*

>*admitted in New Jersey; GA bar admission forthcoming*

1 and meaningful access to legal representation, making it virtually impossible for them
2 to pursue their claims for protection. These individuals are not included in MPP 2.0
3 but have been unlawfully deprived of meaningful access to the U.S. asylum process.
4 Despite diligent efforts, Organizational Plaintiffs remain unable to meaningfully
5 assist such individuals.

6 9. Through this lawsuit, Plaintiffs seek to facilitate the return of Individual
7 Plaintiffs to the United States, with appropriate precautionary public health measures,
8 to pursue their asylum claims from inside the country; to certify a class of similarly
9 situated individuals; to allow Organizational Plaintiffs to effectively fulfill their
10 missions of providing legal assistance to asylum seekers; and to ensure that members
11 of the proposed class receive meaningful access to the U.S. asylum process.¹⁰

12 **JURISDICTION AND VENUE**

13 10. This case arises under the First and Fifth Amendments to the U.S.
14 Constitution; the Immigration and Nationality Act of 1952 (“INA”), 8 U.S.C. § 1101
15 *et seq.*; and the Administrative Procedure Act (“APA”), 5 U.S.C. § 701 *et seq.*

16 11. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal
17 question) and § 1346 (United States as defendant). Defendants have waived sovereign
18 immunity with respect to the claims alleged in this case. 5 U.S.C. § 702. This Court
19 has jurisdiction to enter declaratory and injunctive relief under 28 U.S.C. §§ 2201 and
20 2202.

21 12. Venue is proper under 28 U.S.C. § 1391(e)(1) because Defendants are
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PARTIES

A. Plaintiffs

13. **Plaintiff Lidia Doe**, a citizen of Honduras, suffered harm and fled to the United States to seek asylum. She and her granddaughter crossed the U.S.-Mexico border on or around May 15, 2019, were apprehended and then detained for approximately three days before Defendants returned them to Mexico under the Protocols. Lidia did not have legal representation in her removal proceedings and has faced significant obstacles to finding counsel. Lidia’s removal proceedings were terminated on March 9, 2020, after she was unable to attend a scheduled hearing due to a hypertensive crisis for which she had been hospitalized two days before. Lidia is currently stranded, has experienced harm, and is living in fear in Mexico. If returned to the United States, Lidia and her granddaughter would reside in Iowa with her son-in-law.

14. **Plaintiff Antonella Doe**, a citizen of Honduras, suffered harm and fled to the United States to seek asylum. She, her husband, and their two young daughters presented themselves at the U.S.-Mexico border in November 2018. They were forced to wait and ultimately processed into the United States in February 2019. Antonella and her family were detained and returned to Mexico under the Protocols approximately five days later. Antonella did not have legal representation in her removal proceedings and has faced significant obstacles to finding counsel. She missed her first and only immigration court hearing after she was told by the owner of the shelter where they were residing that she would not be allowed to enter the United States for her immigration court hearing because she lacked lawful status. At the hearing, the immigration judge terminated Antonella’s case. Antonella did not receive a decision or any notices from the court regarding the status of her case and, until recently, believed her case was still pending. In Mexico, a woman coerced Antonella and her family into working without pay in her home and threatened to report them to the Mexican police if they disobeyed her or tried to leave. This woman

1 with his daughter to get her medical care. Doctors in El Salvador performed
2 emergency surgery and told Chepo that his daughter had nearly died from necrotizing
3 pancreatitis. As a result, they missed their fourth immigration hearing on February
4 25, 2020, and Chepo received an *in absentia* removal order. His case has not been
5 reopened, and no appeal is pending. Chepo is currently stranded, has experienced
6 harm, and is living in fear in El Salvador.¹¹ He was eligible and registered to apply to
7 reopen his case under expanded MPP processing but was not processed for return to
8 the United States before DHS halted the MPP wind-down. If returned to the United
9 States, Chepo and his daughter would reside in Alabama with his brother.

10 17. **Plaintiff Yesenia Doe**, a citizen of Honduras, suffered harm and fled to
11 the United States to seek asylum. She and

1 experienced harm, and is living in fear in Mexico. She was eligible for expanded MPP
2 processing and registered, but she was not processed for return to the United States
3 before DHS halted the MPP wind-down. If returned to the United States, Yesenia and
4 her son would reside in Texas with her friend.

5 18. **Plaintiff Sofia Doe**, a citizen of Honduras, suffered harm and fled to the
6 United States to seek asylum. She, her husband, and their young son crossed the U.S.-
7 Mexico border on or around May 15, 2019, we

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1 she was unable to file an appeal or seek legal representation to assist her with this
2 process. Gabriela received a final order of removal as a result.¹² Her case has not been
3 reopened and no appeal is pending. Gabriela is currently stranded, has experienced
4 harm, and is living in fear in Mexico. If returned to the United States, Gabriela and
5 her daughter would reside in Texas with her friend.

6 20. **Plaintiff Ariana Doe**, a citizen of Guatemala, suffered harm and fled to
7 the United States to seek asylum. She and her young daughter crossed the U.S.-
8 Mexico border on September 2, 2019, were apprehended and then detained for
9 approximately one week before Defendants returned them to Mexico under the
10 Protocols. Ariana did not have legal representation in her removal proceedings and
11 has faced significant obstacles to finding counsel. The immigration judge denied her
12 asylum application, and she was unable to find an attorney to assist with an appeal.
13 She received a final order of removal as a result. Her case has not been reopened, and
14 no appeal is pending. Ariana and her daughter have had to go into hiding to escape a
15 powerful cartel member. Ariana is currently stranded, has experienced harm, and is
16 living in fear in Mexico. If returned to the United States, Ariana and her daughter
17 would reside in Massachusetts with her family.

18 21. **Plaintiff Francisco Doe**, a citizen of El Salvador, suffered harm and fled
19 to the United States to seek asylum. He crossed the U.S.-Mexico border on July 25,
20 2019, was apprehended and then detained for approximately one week before
21 Defendants returned him to Mexico under the Protocols. Francisco has faced
22 significant obstacles to finding counsel. He hired an individual in Mexico to assist
23 him with his asylum application, but he does not know whether the individual was a

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25 ¹² An order of removal is considered “final” after an individual has either (1) failed to
26 attend their hearing (an “*in absentia*” removal order); (2) waived appeal; (3) reserved
27 but failed to file an appeal within 30 days of the removal order; (4) appealed the
28 removal order but subsequently withdrawn their appeal; or (5) had their appeal denied
by the Board of Immigration Appeals (“BIA”) or Attorney Ge

1 qualified attorney or legal representative. The immigration judge denied Francisco's
2 asylum claim, and the Mexican individual who had previously assisted Francisco
3 misfiled the documents required for his appeal. Francisco received a final order of
4 removal as a result. Francisco has been robbed at gunpoint by armed men and is afraid
5 to go outside because of all the shootings in the area where he lives. His case has not
6 been reopened, and no appeal is pending. Francisco is currently stranded, has
7 experienced harm, and is living in fear in Mexico. If returned to the United States,
8 Francisco would reside in Florida with his mother.

9 22. **Plaintiffs Reina and Carlos Doe**, citizens of Honduras, suffered harm
10 and fled to the United States to seek asylum. Reina and Carlos, their two children,
11 and Carlos's son crossed the U.S.-Mexico border in or around the beginning of
12 October 2019, were apprehended and then detained for approximately four days
13 before Defendants returned them to Mexico under the Protocols. Reina and Carlos
14 did not have legal representation in their removal proceedings and have faced
15 significant obsta54nt obsta5he U.S.-3

1 faced significant obstacles to finding counsel. The immigration judge denied her
2 asylum application, and she was unable to find an attorney to assist with her appeal.
3 Dania received a final order of removal as a result. Dania and her daughter lived in
4 dangerous conditions in the migrant camp in Matamoros, and Dania has been
5 kidnapped and brutally raped. Dania is currently stranded, has experienced harm, and
6 is living in fear in Mexico. If returned to the United States, Dania and her daughter
7 would reside in Texas with her family.

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

26 25. **Plaintiff Jewish Family Service of San Diego** (“Jewish Family
27 Service”) is a nonprofit organization incorporated in California and based in San
28 Diego. The mission of Jewish Family Service’s Immigration Services Department is

1 to provide holistic, culturally competent, trauma-informed, quality legal and other
2 supportive services to the immigrant community in San Diego and Imperial Counties.
3 Since early 2019, Jewish Family Service has provided legal and other services to
4 individuals subjected to MPP, including assisting individuals with terminated cases
5 and with motions to reopen. To achieve its mission, Jewish Family Service manages
6 several programs, including an Immigrant Legal Rights Program (“ILRP”), an
7 Affirmative Services Program, and a Higher Education and Legal Services Program.
8 Jewish Family Service also participates in and manages the San Diego Rapid
9 Response Network (“Rapid Response Network”), which was formed in December
10 2017 to ensure that all detained noncitizens within San Diego County have access to
11 legal consultations. Jewish Family Service operates the Rapid Response Network
12 Migrant Shelter, which provides critical

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1 directed its termination on June 1, 2021, and is ultimately responsible for the decision
2 to process into the United States individuals returned to Mexico under MPP. He is
3 sued in his official capacity.

4 27. Defendant DHS is a cabinet-level department of the U.S. government. Its
5 components include U.S. Citizenship and Immigration Services (“USCIS”), U.S.
6 Customs and Border Protection (“CBP”), and U.S. Immigration and Customs
7 Enforcement (“ICE”).

8 28. Defendant Chris Magnus is the Commissioner of CBP. CBP is
9 responsible for the apprehension, detention, and processing of individuals seeking
10 asylum at or near the border, including individuals subject to MPP. He is integrally
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1 37. Because of the life-or-death stakes, the statutory right to apply for asylum
2 is robust. It includes the right to legal representation,¹³ at no expense to the
3 government, *see* 8 U.S.C. §§ 1229a(b)(4)(A), 1362; the right to notice of the right to
4 legal representation, *see* 8 U.S.C. § 1158(d)(4); the right to access information in
5 support of an application, *see* 8 U.S.C. § 1158(b)(1)(B) (placing the burden on the
6 applicant to present evidence to establish eligibility); the right to appeal a
7 determination by an immigration judge, *see* 8 U.S.C. § 1229a(c)(5) (referencing the
8 right to appeal); the right to petition federal circuit courts for judicial review of a final
9 order of removal, *see* 8 U.S.C. § 1252(b); and the right to move to reopen proceedings
10 or reconsider a decision regarding removability, *see* 8 U.S.C. § 1229a(c)(6)-(7).

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B.

1 noncitizens in the United States who have legal representation are over five times
2 more likely to succeed in their cases than those who appear *pro se*.¹⁵

3 44. Before the Protocols, the right to apply for asylum, which necessarily
4 includes the right to access legal representation for this purpose, a
5 providing affected noncitizens with certain

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II. CONDITIONS IN MEXICO BEFORE IMPLEMENTATION OF THE PROTOCOLS

53. When Defendants implemented the Protocols in January 2019, they were

1 vicinity of a port of entry were—and still are—at particular risk of violence and
2 exploitation. Those who seek refuge in shelters may be in particular danger. Some
3 shelters are infiltrated by organized crime; others are sites of vandalism, burglary,
4 threats, and kidnapping.

5 55. The Mexican border cities where Individual Plaintiffs were returned after
6 being subjected to MPP, including Tijuana, Mexicali, Nuevo Laredo, and Matamoros,
7 are among the most violent in Mexico.²²

8 56. Had Defendants properly considered these conditions, of which they were
9 well aware, before implementing the Protocols, they would necessarily have
10 concluded that the Protocols would jeopardize Individual Plaintiffs’ safety and
11 security, obstruct their access to legal representation, and interfere with their ability
12 to gather and present evidence, thereby preventing these individuals from
13 meaningfully exercising their right to apply for asylum.

14 **III. THE IMMEDIATE AND SEVERE REPERCUSSIONS OF THE**
15 **PROTOCOLS**

16 57. The Protocols trap individuals in Mexico under conditions so perilous that
17 they replicate many of the dangers that prompted these individuals to flee their home
18 countries. These conditions obstruct their ability to obtain legal representation and
19 deny them access to the U.S. asylum system.

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21 ²² See e.g., U.S. Dep’t of State, Overseas Security Advisory Council (“OSAC”),
22 *Mexico Country Security Report* (Aug. 6, 2021), <https://bit.ly/3E0sUXV> (assessing
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1 extreme danger zones near the border. The majority lived in crowded shelters, tent
2 encampments, or other makeshift arrangements.

3 61. The Protocols also obstructed legal representation for all individuals
4 subjected to them, blocking it entirely for over 90 percent of impacted individuals.²⁶
5 Defendant Mayorkas has acknowledged that in the implementation of MPP,
6 “[i]nadequate access to counsel casts doubt on the reliability of removal
7 proceeding[s].”²⁷

8 62. Initially, Defendants provided individuals in MPP proceedings with a list
9 of free or low-cost legal service providers in the United States, but most of those
10 providers did not offer legal services to people trapped in Mexico. Thus, most
11 individuals were left to navigate the complexities of U.S. asylum law on their own.
12 Ill-equipped to do so, particularly without reliable communication mechanisms,²⁸
13 only 740 individuals in MPP out of 71,071 cases, or 1 percent, were granted relief
14 from removal.²⁹ Prior to MPP, the general “relief granted rate” for Northern Triangle
15 (Guatemala, Honduras, and El Salvador) asylum-related claims originating in border
16 encounters was more than 26 times greater.³⁰ DHS has conceded that MPP “did not
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18 ²⁶ As of October 2021, only 6,504 of the 71,071 individuals subjected to MPP had
19 legal representation. *See* TRAC Immigration, *Details on MPP*, *supra* n.1 (filters set
to “Hearing Location: All” and “Represented: Represented”).

20 ²⁷ DHS, Second Termination Memo, *supra* n.5, at 17; *see also id.* at 3 (recognizing
21 “difficulties in accessing counsel” as among the “significant issues with MPP”).

22 ²⁸ While far from adequate, MPP 2.0’s additional access to counsel provisions
23 demonstrate that even elementary facilitation of this right was absent in the original
24 version of MPP. For example, now “CBP will provide MPP enrollees information
... about where they can locate places in Mexico to engage in telephonic or video
communications with counsel.” *See* DHS, Reimplementation Guidance, *supra* n.9,
at 6.

25 ²⁹ *See* TRAC Immigration, *Details on MPP*, *supra* n.1 (filters set to “Hearing
Location: All” and “Outcome: Removal Order”).

26 ³⁰ DHS, Second Termination Memo, *supra* n.5, at 20–21. DHS concluded that
27 “[t]hese discrepancies strongly suggest that at least some MPP enrollees with
28 meritorious claims either abandoned or were unable to adequately present their claims
given the conditions faced by migrants in Mexico and barriers to legal access.”
Id. at 21.

1 succeed in a sufficient number of cases at achieving the timely and reliable
2 adjudication of migrants' removal proceedings.”³¹

3 63. Defendants also thwarted the efforts
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1 determine whether to terminate or modify” MPP.³⁴ The executive order directed that
2 “the Secretary of Homeland Security shall promptly consider a phased strategy for
3 the safe and orderly entry into the United States, consistent with public health and
4 safety and capacity constraints, of those individuals who have been subjected to MPP
5 for further processing of their asylum claims.”³⁵

6 **A. The First Termination Memo**

7 71. On June 1, 2021, Defendant Mayorkas announced the termination of
8 MPP. His memorandum directed DHS personnel to immediately “take all appropriate
9 actions to terminate MPP, including taking all steps necessary to rescind
10 implementing guidance and other directives issued to carry out MPP” and to
11 “continue to participate in the ongoing phased strategy for the safe and orderly entry
12 into the United States of individuals enrolled in MPP.”³⁶

13 72. The first termination memo acknowledged that “the high percentage of
14 cases completed through the entry of *in absentia* removal orders (approximately 44
15 percent, based on DHS data) raises questions . . . about the design and operation of
16 the program, whether the process provided enrollees an adequate opportunity to
17 appear for proceedings to present their claims for relief,” and whether “conditions
18 faced by some MPP enrollees in Mexico, including the lack of stable access to
19 housing, income, and safety, resulted in the abandonment of potentially meritorious
20 protection claims.”³⁷

21 73. The first termination memo clarified that “[t]he termination of MPP does
22 not impact the status of individuals who were enrolled in MPP at any stage of their
23 proceedings before EOIR or the phased entry process.”³⁸

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26 ³⁴ Exec. Order No. 14010, 86 Fed. Reg. 8,267 (Feb. 2, 2021), <https://bit.ly/31Tc9AZ>.

27 ³⁵ *Id.*

28 ³⁶ DHS, Termination of the Migrant Protection Protocols Program, *supra* n.4, at 7.

³⁷ *Id.* at 4.

³⁸ *Id.* at 7.

1 cases.”⁴⁶ Defendant Mayorkas later reiterated the importance of the wind-down
2 because those with active MPP cases would otherwise be “denied a chance to seek
3 protection.”⁴⁷

4 79. On February 26, 2021, Defendants began formally winding down MPP.
5 In order to return to the United States, DHS required individuals who qualified to
6 register with the United Nations High Commissioner for Refugees (“UNHCR”).
7 UNHCR would then contact those individuals, process their cases, direct eligible
8 individuals to report to a specified location for COVID-19 testing, and transport them
9 to the port of entry for processing into the United States.

10 80. The roll-out of the MPP wind-down was poorly communicated and
11 implemented, resulting in widespread confusion, pervasive misinformation, and
12 frequent missteps that further endangered the safety of tens of thousands of affected
13 asylum seekers.

14 81. On June 23, 2021, DHS announced that it was expanding processing of
15 individuals subjected to MPP into the United States to include terminated cases and
16 establishing a streamlined process for individuals with *in absentia* orders to seek
17 reopening of their cases by submitting joint motions to reopen.

18 **A. Core Components of the MPP Wind-Down**

19 82. Two components of the wind-down

1 to reopen through the typical statutory process in order to restart their immigration
2 proceedings.

3 88. As discussed *supra* in Section I.C, filing a motion to reopen is a complex
4 process that is nearly impossible to navigate from outside the United States without
5 adequate access to legal repr

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1 contact legal representatives, obtain evidence, contact witnesses, or take other steps
2 necessary to effectively present their cases.

3 98. Defendants were aware that these dangerous conditions persisted
4 throughout the time the Protocols were in effect and continue to date.⁵³ The 2019,
5 2020, and 2021 editions of the State Department’s Trafficking in Persons Report warn
6 that migrants in Mexico are vulnerable to human rights abuses and human trafficking,
7 and that migrants from Central and South America are particularly vulnerable to
8 forced labor and sex trafficking.⁵⁴ Since January 2021, the State Department has
9 issued eight separate security alerts for Mexican border states warning of ongoing and
10 increasing violence.⁵⁵

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1 107. Even asylum seekers who have been able to secure some form of legal
2 representation, like Individual Plaintiffs Chepo Doe, Reina Doe, and Carlos Doe, face
3 serious barriers to communication with their representatives. Individuals often lack
4 access to private spaces where they can have confidential conversations with
5 attorneys or accredited representatives, either in person or by phone. This lack of
6 confidentiality can lead individuals to withhold information that they are afraid to
7 share within earshot of others and impedes trust-building between legal
8 representatives and clients.

9 108. Given the high stakes in asylum cases, legal representation is critical to
10 ensure that motions to reopen and BIA appeals comply with applicable requirements
11 and that applicable claims are presented as completely as possible. Legal assistance
12 is also essential to navigate the complicated process of restarting terminated cases
13 through administrative avenues. However, by forcing Individual Plaintiffs and other
14 similarly situated individuals to remain stranded in precarious circumstances outside
15 the United States, Defendants have effectively deprived them of access to legal
16 representation throughout their removal proceedings and thereby prevented them
17 from pursuing their asylum claims.

18 109. According to one report analyzing government data after the MPP wind-
19 down began, “the likelihood of asylum seekers [subjected to MPP] being represented
20 by an attorney increases after the person is paroled into the United States and increases
21 the longer the person is in the United States.”⁶⁷ Forty-four percent of the nearly 3,000
22 individuals subjected to MPP who were returned to the United States on or before
23 January 31, 2021, were able to secure legal representation by April 2021, compared
24 to just nine percent of individuals who remained stranded in Mexico.⁶⁸

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27 ⁶⁷ TRAC Immigration, *Now Over 8,000 MPP Cases Transferred Into United States*
28 *Under Biden*

1 **C. Defendants’ Policies Harm Individual Plaintiffs**

2 **1. Plaintiff Lidia Doe**

3 110. On or around May 15, 2019, Plaintiff Lidia Doe and her granddaughter
4 crossed the U.S.-Mexico border to seek asylum.

5 111. Defendants apprehended and detained Lidia and her granddaughter for
6 approximately three days. An officer served Lidia with a Notice to Appear and
7 instructed her to present herself at the San Ysidro port of entry on July 23, 2019, for
8 her first immigration hearing. Immigration officers provided Lidia with a list of pro
9 bono attorneys before her release. Defendants then returned her and her
10 granddaughter to Mexico pursuant to the Protocols. Defendants did not provide Lidia
11 and her granddaughter with any resources or support for survival, safety, or general
12 well-being.

13 112. Following their return to Mexico, Lidia and her granddaughter spent two
14 weeks at a crowded migrant shelter in Mexicali. The shelter was filthy and reeked of
15 marijuana. They often went hungry because Lidia initially had no income and they
16 could not afford to buy food. Although Lidia eventually found work cleaning houses,
17 she has not been able to work for the last month and a half due to severe pain resulting
18 from chronic high blood pressure. Her lack of employment authorization has made it
19 extremely difficult for her to find work that is less physically challenging than
20 cleaning houses, and it was only until recently that she was able to secure a part-time
21 job preparing food at a taco stand.

22 113. On July 23, 2019, Lidia and her granddaughter made the dangerous
23 journey by bus to the San Ysidro port of entry for her first immigration hearing. She
24 appeared in immigration court without representation. The immigration judge gave
25 Lidia a list of free legal service organizations and advised her to find an attorney to
26 represent her. After the hearing, Defendants returned Lidia and her granddaughter to
27 Mexico with instructions to return to the San Ysidro port of entry on the day of her
28 next hearing.

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1 and her granddaughter has a heart condition known as tachycardia. Their inconsistent
2 access to prescribed medication and reliable medical care in Mexico put them at even
3 greater risk. Nonetheless, Lidia has stayed in Mexico to ensure that she does not lose
4 the chance to seek protection in the United States.

5 119. Without legal assistance, Lidia has faced significant challenges in
6 navigating the U.S. asylum system. As a result, she fears that she will not be able to
7 reopen her case on her own.

8 120. If permitted to return to the United States, Lidia would live with her son-
9 in-law in Iowa.

10 **2. Plaintiff Antonella Doe**

11 121. In November 2018, Plaintiff Antonella Doe, her husband, and their two
12 young daughters presented themselves at the San Ysidro port of entry to seek asylum.
13 They were directed to join a waiting list and, for the next few months, spent hours
14 every morning at the port of entry waiting for their number to be called.⁶⁹

15 122. In February 2019, Antonella and her family were finally processed for
16 entry into the United States.

17 123. Defendants detained Antonella and her family for approximately five
18 days. Defendants did not ask them if they were seeking asylum or whether they were
19 afraid to return to Mexico. Defendants then separated Antonella and her daughters
20 from her husband.

21 124. While separated from her husband, Antonella was interviewed briefly by
22 an immigration officer. She told the officer that she and her family were seeking
23 asylum from Honduras and that they were afraid to return to Mexico. The officer
24 laughed and began speaking to other immigration officers in English, a language that
25 Antonella does not understand. The officer then presented Antonella with paperwork

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27 ⁶⁹ CBP used a “metering” system to turn back asylum seekers at the border in an
28 attempt to limit the number of individuals who were permitted to access asylum at
ports of entry each day. This policy has since been declared unlawful. *See Al Otro
Lado, Inc. v. Wolf*, No. 3:17-cv-02336-BAS-KSC (S.D. Cal.).

1 in English. Antonella felt compelled to sign the paperwork despite not understanding
2 what it said. Defendants did not explain to Antonella that she and her family would
3 be returned to Mexico.

4 125. Antonella and her daughters were reunited with her husband as they were
5 boarding the van that would return them to Mexico. An immigration officer told
6 everyone boarding the van that they had to attend a hearing on March 27, 2019. The
7 officer then gave Antonella and her family a list of free legal service providers and
8 advised them to call the attorneys on the list. Antonella and her family never received
9 any instructions about how to appear for their hearing.

10 126. Defendants then returned Antonella and her family to Mexico pursuant to
11 the Protocols. Defendants did not provide them with any resources or support for
12 survival, safety, or general well-being.

13 127. A volunteer group assisted Antonella and her family in finding temporary
14 accommodations in Mexico. However, Antonella's husband was sent to a men's
15 shelter while she and her daughters were sent to a different shelter for women and
16 children. Antonella and her family later found a more permanent shelter where they
17 could stay together, but the conditions were so poor that they had to find another place
18 to live.

19 128. Antonella made numerous calls to all the attorneys on the list she had
20 received. Only a few answered. Most told Antonella they could not take her case
21 because she and her family were in Mexico.

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1 130. Antonella has continued to search for an attorney to assist with her case.
2 Even if they had an attorney, Antonella knows that communication would be difficult
3 because she and her family cannot always afford access to internet, which they need
4 to make calls and to send documents.

5 131. Antonella and her family have suffered violence and threats of violence
6 throughout their time in Mexico. In approximately June or July 2020, Antonella and
7 her family began living with a woman in Tijuana. The woman forced Antonella and
8 her family, including Antonella's young daughters, to work for her without pay in
9 exchange for housing. The woman verbally and physically abused Antonella and her
10 daughters, and repeatedly threatened to report the family to the Mexican police if they
11 disobeyed her or tried to leave the house. Antonella and her family were held against
12 their will and forced to work for approximately a year and a half before they were
13 able to escape. They currently live in fear that the woman or the Mexican police will
14 find them and harm them.

15 132. Even though Antonella and her family are at risk of serious harm or death
16 in Mexico, they have stayed there to ensure that they do not lose the chance to pursue
17 their asylum case.

18 133. Antonella registered her family expanded MPP processing with UNHCR in [(s)TJ-17/

1 143. Rodrigo once again made the dangerous journey to the San Ysidro port
2 of entry on September 10, 2019, for his third immigration court hearing. Rodrigo
3 submitted his asylum application at this hearing.

4 144. Rodrigo's fourth hearing was scheduled for October 31, 2019. Unlike the
5 prior three hearings, the notice Rodrigo had received at his prior hearing indicated
6 that he had to be at the San Ysidro port of entry at 4:00 a.m. Aware that the road to
7 the port of entry was too dangerous to walk in the dark, Rodrigo, with the assistance
8 of a friend, booked a taxi the night before his hearing. However, the taxi never arrived,
9 and Rodrigo, who is illiterate, was unable to call for another ride. Desperate to reach
10 the port of entry, he began walking in the dark but quickly recognized the risks of
11 walking through such a high-crime area and ran back to the shelter. When Rodrigo
12 failed to appear for his hearing, the immigration judge terminated his case.

13 145. Rodrigo never received an update from the immigration court on the
14 status of his case and did not realize that it had been terminated until earlier this year.

15 146. Rodrigo has continued to seek legal assistance in his case, to no avail.
16 Because he cannot read, he relies primarily on recommendations from others. All the
17 attorneys he has called have been unable take his case.

18 147. Rodrigo has suffered violence during his time in Mexico. In or around
19 June 2021, he was assaulted while walking back to the shelter after work. Four men,
20 one of whom had a gun, approached him. After one man hit Rodrigo in the face with
21 a skateboard, the others directed him to lie face down on the ground and then stole
22 his phone and wallet.

23 148. Since Rodrigo was robbed, he has been afraid to go outside. He does not
24 leave the shelter except to go to work. In or around the middle of December 2021,
25 Rodrigo was on his way home from work when his phone was stolen. He is terrified
26 that he will be robbed or assaulted again because he lives in a dangerous area, where
27 shootings and kidnappings are common.

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1 155. On April 4, 2019, Chepo and his daughter made the dangerous journey to
2 the San Ysidro port of entry. At the hearing, Chepo requested additional time to
3 prepare his immigration case. The immigration judge scheduled his next hearing for
4 May 13, 2019.

5 156. On May 13, 2019, Chepo and his daughter again made the dangerous
6 journey to the San Ysidro port of entry. The ICE officers who transported Chepo and
7 his daughter to the immigration court told them not to speak to any attorneys in the
8 courtroom. At the hearing, the immigration judge gave Chepo an asylum application
9 and instructed him to complete it before his next hearing on or around July 25, 2019.

10 157. On or around July 25, 2019, Chepo and his daughter again made the
11 dangerous journey to the San

1 and began vomiting. Chepo and his daughter returned to the hospital but were again
2 refused services.

3 161. On December 3, 2019, Chepo and his daughter once again made the
4 dangerous journey to the port of entry and presented themselves for their third
5 immigration hearing. They were represented by the attorney from Plaintiff ImmDef.
6 At the hearing, Chepo answered questions about his identity, country of origin, and
7 reasons for seeking asylum. He also presented evidence in support of his asylum
8 claim. The immigration judge scheduled another hearing for February 25, 2020.

9 162. Following their return to Mexico that evening, Chepo's daughter began
10 experiencing severe pain. Fearing that his daughter might die if she did not get
11 medical care, Chepo made a desperate decision to take her back to El Salvador for
12 treatment.

13 163. When they arrived in El Salvador, Chepo immediately sought medical
14 care for his daughter. The doctors diagnosed her with necrotizing pancreatitis, a life-
15 threatening condition that is incredibly rare in young people. Following emergency
16 surgery, which lasted several hours, the doctor told Chepo that it was a miracle that
17 his daughter had survived.

18 164. Chepo and his daughter could not return to Mexico to attend their
19 February 25, 2020 hearing because of his daughter's ongoing need for medical care.
20 Their attorney attended the hearing on their behalf, explained the circumstances, and
21 asked the immigration judge to allow them to withdraw their asylum application.
22 Instead, the immigration judge ordered Chepo and his daughter removed *in absentia*.

23 165. Since returning to El Salvador, Chepo has received death threats from the
24 Barrio 18 gang. He and his daughter are currently living in a church out of concern
25 for their safety. Chepo's daughter's health remains fragile, and Chepo must constantly
26 monitor her symptoms.

27 166. If permitted to return to the United States, Chepo and his daughter would
28 live with Chepo's brother in Alabama.

1 181. Even though Yesenia and her son are at risk of serious harm or death in
2 Mexico, they have stayed there so that they can attempt to pursue their asylum case.

3 182. With the assistance of the same attorney who had filed her humanitarian
4 exemption request, Yesenia registered for expanded MPP processing in or around
5 August 2021. She received an email from UNHCR confirming her registration but
6 later learned that the wind-down process had been halted.

7 183. Yesenia has been unable to find counsel who can represent her in her
8 removal proceedings and fears that she will be unable to reopen her case on her own.

9 184. If permitted to return to the United States, Yesenia would live with a
10 friend in Texas.

11 **6. Plaintiff Sofia Doe**

12 185. On or around May 15, 2019, Plaintiff Sofia Doe, her husband, and their
13 son crossed the U.S.-Mexico border to seek asylum.

14 186. Defendants detained Sofia and her family for eight days. After separating
15 Sofia and her child from her husband, an immigration officer interviewed her about
16 her fear of returning to Honduras. The officer informed her that the United States was
17 not for people like her and that only important people are granted asylum. The officer
18 did not ask Sofia about her fear of return to Mexico and insisted that she sign a
19 document in English. When Sofia refused to sign the document because she did not
20 understand it, the officer told her that she would be sent to Mexico anyway and not
21 permitted to enter the United States.

22 187. Defendants served Sofia with a Notice to Appear and instructed her to
23 present herself at the San Ysidro port of entry on August 12, 2021 for her first
24 immigration hearing. Defendants then returned Sofia and her family to Mexico
25 pursuant to the Protocols. Defendants did not provide Sofia with any resources or
26 support for survival, safety, or general well-being.

27 188. Sofia and her family stayed temporarily with a family they had met on
28 their way to the border. After a few months, Sofia's husband found a job that enabled

1 them to rent a room. However, after Sofia’s husband lost his job, they could no longer
2 afford to pay rent and went to live in a shelter. They were able to rent another room
3 beginning on or around June 2020, when Sofia’s husband was able to find another
4 job.

5 189. Since then, Sofia’s husband has had a difficult time finding stable work
6 due to pervasive animosity towards migrants in Mexico. Sofia cannot work because
7 she must stay with her child, who has respiratory issues that require constant care and
8 monitoring to make sure he can breathe.

9 190. On August 12, 2019, Sofia and her family made the dangerous journey to
10 the San Ysidro port of entry. They appeared in immigration court without legal
11 representation. The immigration judge gave them a list of free legal service providers
12 and advised them to bring their lawyer to their next hearing. They also received an
13 asylum application form, which they were instructed to complete in English. After
14 their hearing, Defendants returned Sofia and her family to Mexico with instructions
15 to appear for their next hearing on September 11, 2019.

16 191. Sofia and her husband tried calling the numbers on the list many times,
17 but no one answered. They also sought help from Al Otro Lado, which provided some
18 assistance with their asylum application.

19 192. On September 11, 2019, Sofia and her family again made the dangerous
20 journey to the San Ysidro port of entry for their second hearing. They again appeared
21 without legal representation. When the immigration judge asked Sofia and her
22 husband why they did not have a lawyer, they
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1 193. Sofia and her family were unable to attend their third hearing on October
2 23, 2019 for medical reasons. Sofia was approximately three months into a high-risk
3 pregnancy, and she started bleeding the night before the hearing. Sofia had just been
4 released from the hospital with instructions to go on bed rest and return for a doctor's
5 appointment in the morning. Having previously suffered a miscarriage, Sofia was
6 terrified of losing her baby and followed the doctor's instructions. When Sofia failed
7 to appear for her hearing, the immigration judge issued an *in absentia* removal order.

8 194. Sofia does not know how to seek reopening of her case or what evidence
9 she would need to do so. She and her husband tried calling the numbers on the free
10 legal service provider list again but have been unable to find legal representation.
11 Even if they had counsel, Sofia knows that communication would be difficult because
12 she cannot afford continuous access to the internet and the electricity in the area where
13 she lives frequently goes out.

14 195. Sofia's family has faced violence or threats of imminent violence
15 throughout their time in Mexico. In Febr
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1 223. Ariana does not know how to seek reopening of her case or what evidence
2 she would need to do so.

3 224. Since their asylum claim was denied, Ariana and her daughter have been
4 living in Matamoros, where crime rates are high, gang violence is prevalent, and dead
5 bodies are routinely found within walking distance of their apartment. A powerful
6 cartel member in Matamoros has repeatedly sexually propositioned Ariana, forcing
7 her to hide to avoid contact with him. Ariana and her daughter feel so unsafe that they
8 leave their apartment only to go to Ariana’s workplace and to buy food. Even though
9 Ariana and her daughter face a risk of serious harm in Mexico, they have stayed there
10 to ensure that they do not lose a chance to pursue their asylum case.

11 225. If permitted to return to the United States, they would live with family in
12 Massachusetts.

13 **9. Plaintiff Francisco Doe**

14 226. In late July 2019, Plaintiff Francisco Doe crossed the U.S.-Mexico border
15 to seek asylum.

16 227. Defendants detained Francisco for approximately seven days.
17 Defendants then served Francisco with a Notice to Appear and instructed him to
18 return to the Brownsville port of entry in October 2019 for his first immigration
19 hearing. Defendants told Francisco that he had to wait in Mexico, but did not explain
20 how to appear for his hearing. Although Francisco expressed a fear of returning to
21 Mexico, Defendants still sent him back pursuant to the Protocols. Defendants did not
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1 235. Francisco once again made the journey to the Brownsville port of entry
2 for his final hearing in July 2020. He again left his home before 3 a.m. so he could
3 arrive at the port of entry four hours before his hearing. Francisco could not afford to
4 pay the individual who had prepared his asylum application to represent him at his
5 hearing, so he had to represent himself.

6 236. After Francisco testified about his experiences in El Salvador and
7 Mexico, the immigration judge denied his asylum application. She ordered his return
8 to Matamoros and told him he could appeal the decision.

9 237. Following his return to Matamoros, Francisco asked the same individual
10 who had assisted with his asylum application to file an appeal. Although the
11 individual claimed to have submitted the necessary documents, Francisco later
12 learned that his appeal had been rejected because there was no proof of service on the
13 government. Francisco has had no further contact with the individual, who never told
14 him that his appeal had been rejected and did not file a corrected appeal. The
15 individual stopped returning Francisco's calls.

16 238. Francisco has continued to search for an attorney to assist with his case.
17 He does not know how to seek reopening of his case or what evidence he would need
18 to do so.

19 239. If allowed to return to the United States, Francisco would live with his
20 mother in Florida.

21 **10. Plaintiffs Reina Doe and Carlos Doe**

22 240. On or around October 8, 2019, Plaintiff Reina Doe and her husband,
23 Plaintiff Carlos Doe, their two children, and Carlos's son crossed the U.S.-Mexico
24 border to seek asylum.

25 241. Defendants detained Reina, Carlos, and their family for approximately
26 four days. Defendants separated Reina and her daughters from Carlos and his son.
27 Defendants served Reina with a Notice to Appear and told her that she would be
28 returned to Mexico to await her hearing. They also gave Reina other paperwork in

1 English, a language she does not understand. When Reina indicated that she had
2 suffered harm in Mexico, the officer responded that he was sending her and her family
3 back to Mexico because it was the “Trump era.” Defendants similarly served Carlos
4 with a Notice to Appear and told him he would be returned to Mexico. Defendants
5 then returned Reina, Carlos, and their family to Mexico without any resources or
6 support for survival, safety, or general well-being.

7 242. Defendants left Reina, Carlos, and their family in Nuevo Laredo, Mexico.
8 When Reina and Carlos asked Mexican immigration officials for help, the officials
9 initially told them to go back to their country. The officials then pointed to trucks
10 parked by the building, which they said belonged to a cartel waiting to take them
11 away. With help from a local pastor, Reina, Carlos, and their family made it safely to
12 a shelter.

13 243. Carlos has struggled to find work in Mexico, due in large part to
14 discrimination against migrants. He has been unable to find stable work, and instead
15 has had to work odd- and part-time jobs to support his family.

16 244. On November 14, 2019, Reina, Carlos, and their family made the
17 dangerous journey to the Laredo port of entry. They appeared in immigration court
18 without legal representation. The immigration judge gave Reina and Carlos a list of
19 legal service providers and advised them to find an attorney to represent them. Reina
20 and Carlos informed the immigration judge that they had completed their asylum
21 applications in Spanish, but the immigration judge told them it had to be in English.
22 At the hearing, Reina and Carlos expressed fear of being returned to Mexico. After
23 conducting a non-refoulement interview, Defendants returned Reina, Carlos, and their
24 family to Mexico.

25 245. Upon their return, Reina, Carlos, and their family were caught in a gun
26 fight between two cartels in Nuevo Laredo. Carlos’s son was so traumatized by the
27 violence he had witnessed that he ran away and entered the United States without his
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1 their children, the men asked the women what they knew about the bloody man they
2 had seen several days earlier. The men beat Dania and threatened to kill her daughter
3 if she did not tell the truth. They were held for approximately fifteen days, during
4 which Dania was brutally raped every single night. Dania, her daughter, and the other
5 woman and child eventually managed to escape with the assistance of another woman
6 in the house.

7 262. On January 8, 2020, Dania and her daughter presented themselves at the
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1 265. Dania has continued to search for an attorney to assist with her case but
2 has been unable to find one. She did not file

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275. ImmDef diverted substantial resources from planned projects in Los Angeles, including its Family Unity Project, to support the expansion of MPP-related work. This decision was driven by the urgent needs of MPP families and the relative lack of resources from partner organizations to assist them. As a result, since MPP started, ImmDef has taken on far fewer cases of families at risk of separation in the Los Angeles area, despite the continued need.

276. When it became clear that ImmDef staff based in Los Angeles could not travel regularly between Los Angeles and Tijuana, ImmDef diverted funding and fundraising resources to establish an office and the necessary infrastructural support in San Diego.

277. By September 2019, ImmDef
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1 proceedings to detained and non-detained individuals inside the United States, where
2 their lives are not constantly at risk.

3 279. Despite Defendants' stated policy th
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287. Since January 2021, ImmDef's role

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1 time employees to provide legal services to individuals subjected to the Protocols. As
2 of December 2021, Jewish Family Service has four staff members whose full-time
3 focus is on cross-border work, including dealing with the repercussions of
4 Defendants' initial implementation of MPP, as well as three members of the Jewish
5 Family Service immigration services senior leadership team who spend substantial
6 amounts of time on cross-border cases and issues.

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

13 293. In order to assist individuals subjected to MPP, Jewish Family Service
14 was forced to divert resources away from providing representation and other services
15 to noncitizens in the United States, including individuals detained at the Otay Mesa
16 Detention Center and non-detained individuals in the San Diego area. As a result,
17 from February 1, 2019 to October 20, 2020, Jewish Family Service reduced its
18 representation of non-detained immigrants in the United States by approximately 74
19 percent and representation of detained immigrants by approximately 27 percent.

20 294. As of December 2021, Jewish Family Service had provided either
21 limited- or full-scope representation to approximately 130 individuals subjected to
22 MPP and over 600 legal consultations to individuals subjected to MPP. In MPP cases
23 where Jewish Family Service was unable to provide full-scope legal representation,
24 they often represented individuals in parole requests, non-refoulement interviews,
25 applications for affirmative relief, assistance with motions to reopen, or advocacy
26 with DHS.

27 295. Because many people subjected to the Protocols do not have the ability to
28 contact any of the organizations on EOIR's free legal service provider list, Jewish

1 Family Service expended significant resources to establish cross-border infrastructure
2 to receive calls from individuals subjected to MPP. This infrastructure included a
3 hotline accessible via cell phone and WhatsApp that began operating in February
4 2019. Before MPP, the staff resources invested in running the MPP hotline would
5 have been dedicated to providing legal services to detained and non-detained
6 individuals in the San Diego area.

7 296. Jewish Family Service has invested at least 75 hours of staff time in
8 producing English and Spanish “Know Your Rights” videos and other materials about
9 MPP. These materials are publicly available on the internet and provide basic
10 information about the MPP process and the rights of affected individuals. In response
11 to ongoing changes in the MPP process, Jewish Family Service is in the process of
12 updating its online materials and creating additional videos to ensure that individuals
13 subjected to MPP are aware of their rights.

14 297. In September 2019, Jewish Family Service began an ad hoc program at
15 the San Diego immigration court to provide Know Your Rights presentations and
16 rapid intake screenings for unrepresented individuals on the MPP docket. Until MPP
17 hearings were suspended in March 2020, Jewish Family Service made a concerted
18 effort to conduct these activities inside the courtrooms while MPP-affected
19 individuals and families waited for their hearings to start. These presentations were
20 independent of the attorney-client communications ostensibly permitted during the
21 hour before hearings, were not authorized by Defendants, and were not confidential.

22 298. In an effort to address these problems, Jewish Family Service tried
23 repeatedly to formalize the Know Your Rights program and arrange a confidential
24 space in the immigration court building to meet with individuals in need of immediate
25 legal assistance. Both EOIR and ICE denied these requests, severely impeding Jewish
26 Family Service’s ability to identify and advise potential MPP clients.

27 299. Jewish Family Service rarely had the opportunity to meet with its clients
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1 303. Jewish Family Service co-leads the California Welcoming Task Force,
2 which was established in January 2021 to assist people eligible for the MPP wind-
3 down, with the goal of welcoming new arrivals in a dignified and humane way.
4 Specifically, Jewish Family Service leads the humanitarian work group of the
5 CAWTF, which convenes a binational group of humanitarian service providers to
6 share information, best practices, trends, and ensure that the new arrivals have shelter,
7 food, health care, and can be placed in a safe location while their cases are being
8 processed. They participate in weekly meetings with the legal services, advocacy,
9 communications, and facilitators work groups. As a leader in the CAWTF, Jewish
10 Family Service also attends weekly meetings with welcoming task forces in other
11 border regions as well as joint meetings with DHS and the Department of Justice.

12 304. From February 19, 2021, when the MPP wind-down started, through
13 August 24, 2021, Jewish Family Service staff regularly traveled to the San Ysidro
14 port of entry to provide legal and humanitarian support to individuals permitted to
15 enter the United States.

16 305. Since the government halted the wind-down, Jewish Family Service has
17 continued to represent and advise individuals subjected to MPP. They have fielded
18 dozens of MPP-related inquiries, including from individuals who received final orders
19 of removal or had their cases terminated.

20 306. As one of the few California-based organizations that provides
21 representation and other assistance to individuals subjected to MPP, Jewish Family
22 Service regularly receives case referrals from international organizations such as the
23 UNHCR, the International Organization for Migration, and UNICEF, as well as many
24 shelters in and around Tijuana. Given the increasing number of local referrals from
25 these sources, Jewish Family Service decided in December 2021 to shut down its
26 MPP hotline, which had begun drawing a significant number of calls from individuals
27 outside Jewish Family Service's service area.

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CLASS ACTION ALLEGATIONS

311. Individual Plaintiffs bring this action pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2) on behalf of themselves and all other persons similarly situated.

312. Individual Plaintiffs seek to represent a class of individuals who were subjected to MPP prior to June 1, 2021, remain outside the United States, and whose cases are not currently active due to termination or a final removal order in MPP proceedings. Plaintiffs also seek certification of three subclasses of individuals whose cases were terminated, who received *in absentia* removal orders, and who received final removal orders for reasons other than failure to appear.

313. All Individual Plaintiffs seek to represent the proposed “Inactive MPP Class,” defined as:

All individuals subjected to MPP prior to June 1, 2021, who remain outside the United States and whose cases are not currently active due to termination of proceedings or a final removal order.

314. Individual Plaintiffs Lidia Doe, Antonella Doe, and Rodrigo Doe seek to represent the proposed “Terminated Case Subclass,” defined as:

All individuals subjected to MPP prior to June 1, 2021, who remain outside the United States and whose MPP proceedings were terminated and remain inactive.

315. Individual Plaintiffs Chepo Doe, Yesenia Doe, and Sofia Doe seek to represent the proposed “*In Absentia* Subclass,” defined as:

All individuals subjected to MPP prior to June 1, 2021, who remain outside the United States, received an *in absentia* order of removal in MPP proceedings, and whose cases have not been reopened and are not currently pending review before a federal circuit court of appeals.

316. Individual Plaintiffs Gabriela Doe, Ariana Doe, Francisco Doe, Reina Doe, Carlos Doe, and Dania Doe seek to represent the proposed “Final Order Subclass,” defined as:

All individuals subjected to MPP prior to June 1, 2021, who remain outside the United States, received a final order of removal for reasons other than failure to appear for an immigration court hearing, and whose

1 Individual Plaintiffs and class members are

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1 an important aspect of the problem.” *Motor Vehicle Mfrs. Ass’n v. State Farm Mut.*
2 *Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

3 332. The Refugee Act as codified in the INA provides that the United States
4 government must provide a uniform method by which an individual can meaningfully
5 apply for asylum under 8 U.S.C. § 1158(a)(1). This uniform method includes the right
6 to seek reopening of asylum proceedings, 8 U.S.C. §§ 1229a(c)(7), (b)(5)(C), and the
7 right to appeal an unfavorable decision, 8 U.S.C. § 1229a(c)(5).

8 333. Defendants’ Migrant Protection Protocols and their implementation
9 subverted and violated the right to apply for asylum by trapping Individual Plaintiffs
10 and similarly situated individuals in a foreign country under dangerous conditions in
11 a manner that obstructed access to all components of the U.S. asylum system. The
12 ongoing effects of the Protocols’ implementation continue to violate this right,
13 including by impeding individuals’ ability to restart or reopen their immigration cases
14 or appeal an unfavorable decision.

15 334. The Protocols and their implementation have also subverted and violated
16 the right to apply for asylum by irrationally treating asylum seekers at the southern
17 border in a discriminatory and non-uniform way.

18 335. The Protocols were arbitrary and capricious or an abuse of discretion
19 because, in adopting the Protocols in January 2019, Defendants failed to consider how
20 leaving individuals stranded outside the United States in life-threatening conditions
21 and without access to legal representation would obstruct these individuals’ access to
22 the U.S. asylum system, including, where relevant, by impeding their ability to restart
23 or reopen their asylum proceedings or appeal an unfavorable decision. Defendants
24 also failed to consider the obstacles that Organizational Plaintiffs would face in safely
25 meeting and effectively communicating with clients and potential clients who were
26 subjected to MPP, including individuals who were seeking to restart or reopen
27 proceedings from outside the United States.

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1 343. The APA provides that courts “shall . . . hold unlawful and set aside
2 agency action” that is “arbitrary, capricious, an abuse of discretion, . . . otherwise not
3 in accordance with law: . . . [or] in excess of statutory jurisdiction, authority, or
4 limitations, or short of statutory right.” 5 U.S.C. §§ 706(2)(A) & (C).

5 344. An agency action is arbitrary and capricious where the agency “relied on
6 factors which Congress has not intended it to consider” or “entirely failed to consider
7 an important aspect of the problem.” *Motor Vehicle Mfrs. Ass’n*, 463 U.S. at 43.

8 345. The INA provides noncitizens who are seeking asylum with a right to
9 access to counsel. *See* 8 U.S.C. §§ 1158(d)(4), 1229a(b)(4)(A), 1362.

10 346. Defendants’ Migrant Protection Protocols and their implementation have
11 subverted and violated the right to access to counsel by trapping individuals in
12 conditions that obstruct their access to legal representation and impose systemic
13 obstacles to the ability of Individual Plaintiffs and similarly situated individuals to
14 access legal representation, the cumulative effect of which is tantamount to a denial
15 of counsel. The ongoing effects of the Protocols’ implementation continue to violate
16 this right, including by impeding individuals’ ability to access counsel when seeking
17 to restart or reopen their immigration cases or appeal an unfavorable decision.

18 347. The Protocols were also arbitrary and capricious or an abuse of discretion
19 because, in adopting the Protocols, Defendants failed to consider the obstacles that
20 individuals subjected to MPP would face in accessing and communicating with legal
21 representatives in the United States and in accessing food, shelter, health care, and
22 other basic needs, as well as the effect those obstacles would have in exacerbating
23 such individuals’ inability to meaningfully access legal representation. Defendants
24 also failed to consider the obstacles that Organizational Plaintiffs would face in safely
25 meeting and effectively communicating with clients and potential clients who were
26 subjected to MPP, including individuals who were seeking to restart or reopen their
27 proceedings from outside the United States.

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1 348. The Protocols and their implementation have kept Individual Plaintiffs
2 and similarly situated individuals stranded outside the United States and continue to
3 obstruct their access to legal representation, including their right to appeal or seek
4 reopening of their asylum proceedings.

5 349. By stranding Organizational Plaintiffs' clients and potential clients
6 outside the United States in a manner that obstructs their access to counsel, the
7 Protocols have also interfered with Organizational Plaintiffs' ability to deliver
8 meaningful legal assistance to individuals seeking to apply for asylum, including,
9 where relevant, individuals seeking to restart or reopen their asylum proceedings. The
10 impact of Defendants' implementation of the Protocols continues to frustrate
11 Organizational Plaintiffs' core missions, impair their efforts, and force them to divert
12 resources away from existing programs.

13 350. The Protocols and their implementation have thereby violated the right to
14 access to counsel under the INA and are arbitrary and capricious, an abuse of
15 discretion, not in accordance with law, or in excess of statutory authority under
16 5 U.S.C. § 706(2)(A).

17 351. The Protocols are a final agency action that is reviewable under 5 U.S.C.
18 §§ 702 and 706.

19 352. Defendants' violation of the APA causes ongoing harm to Individual
20 Plaintiffs, similarly situated individuals, and Organizational Plaintiffs.

21 353. Plaintiffs do not have an adequate alternative remedy at law and therefore
22 seek immediate review under the APA and injunctive relief.

23 **THIRD CLAIM FOR RELIEF**

24 **VIOLATION OF FIFTH AMENDMENT DUE PROCESS CLAUSE**

25 **RIGHT TO FULL AND FAIR HEARING**

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

27 354. Plaintiffs reallege and incorporate by reference each and every allegation
28 contained in the preceding paragraphs as if set forth fully herein.

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1 was not available in practice and, in any case, was insufficient to obtain

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384. The protection afforded by the First Amendment extends to advising potential clients of their rights. *See, e.g., In re Primus*, 436 U.S. 412, 431–32 (1978); *Nw. Immigrant Rights Project*, 2017 WL 3189032, at *2–3.

385. The protection afforded by the First Amendment also includes providing legal assistance to existing clients. *See, e.g., Legal Servs. Corp. v. Velazquez*, 531 U.S.

1 389. The Protocols and their implementation have continued to restrict
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- 1 2. Terminated Case Subclass: All individuals subjected to MPP prior to
2 June 1, 2021, who remain outside the United States and whose MPP
3 proceedings were terminated and remain inactive.
- 4 3. *In Absentia* Subclass: All individuals subjected to MPP prior to June
5 1, 2021, who remain outside the United States, received an *in absentia*
6 order of removal in MPP proceedings, and whose cases have not been
7 reopened and are not currently pending review before a federal circuit
8 court of appeals.
- 9 4. Final Order Subclass: All individuals subjected to MPP prior to June
10 1, 2021, who remain outside the United States, received a final order
11 of removal for reasons other than failure to appear for an immigration
12 court hearing, and whose cases have not been reopened and are not
13 currently pending review before a federal circuit court of appeals.

14 b) Name all Individual Plaintiffs as representatives of the Inactive MPP
15 Class; Lidia Doe, Antonella Doe, and Rodrigo Doe as representatives of the
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1 f) Pending the release of individuals into the United States, order
2 Defendants to provide an adequate facility in the United States for legal visitation
3 with no less than 20 confidential meeting spaces (adequate under all appropriate
4 precautionary public health measures), accessible by legal representatives,
5 interpreters and individuals subjected to MPP for no less than seven days a week,
6 including holidays, for no less than eight hours a day per day on regular business days
7 and a minimum of four hours per day on weekends and holidays. Such meeting spaces
8 shall provide access to an international telephone line, third-party interpretation, and
9 videoconferencing;

10 g) Award Plaintiffs all costs incurred in maintaining this action, including
11 reasonable attorneys' fees under the Equal Access to Justice Act, as amended,
12 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified by law; and

13 h) Grant such further relief as this Court deems just and proper.

14
15 Dated: December 22, 2021 ARNOLD & PORTER KAYE SCHOLER LLP

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NATIONAL IMMIGRATION PROJECT
OF THE NATIONAL LAWYERS GUILD

2

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