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**UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA**

21 AL OTRO LADO, INC., a California
 22 corporation; ABIGAIL DOE,
 23 BEATRICE DOE, CAROLINA DOE,
 24 DINORA DOE, INGRID DOE and
 JOSE DOE, individually and on behalf
 of all others similarly situated,

Plaintiffs,

v.

27 JOHN F. KELLY, Secretary, United
 28 States Department of Homeland
 Security, in his official capacity;

Case No. 2:17-cv-5111

**COMPLAINT FOR
 DECLARATORY AND
 INJUNCTIVE RELIEF FOR:**

(1) **VIOLATION OF THE
 IMMIGRATION AND
 NATIONALITY ACT, 8
 U.S.C. § 1101, ET SEQ.**

(2) **VIOLATION OF THE
 ADMINISTRATIVE**

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KEVIN K. MCALEENAN, Acting
Commissioner, United States Customs
and Border Protection, in his official
capacity; TODD C. OWEN, Executive
Assistant Commissioner, Office of
Field Operations, United States
Customs and Border Protection, in his
official capacity; and DOES 1-25,
inclusive,

Defendants.

**PROCEDURE ACT, 5 U.S.C.
§ 551, ET SEQ.**

**(3) VIOLATION OF THE FIFTH
AMENDMENT TO THE
UNITED STATES
CONSTITUTION
(PROCEDURAL DUE
PROCESS)**

**(4) VIOLATION OF THE NON-
REFOULEMENT DOCTRINE**

CLASS ACTION

1 **I. INTRODUCTION**

2 Plaintiff Al Otro Lado, Inc. (“Al Otro Lado”), a non-profit legal services
3 organization, and Plaintiffs Abigail Doe, Beatrice Doe, Carolina Doe, Dinora Doe,
4 Ingrid Doe and Jose Doe (“Class Plaintiffs”), acting on their own behalf and on
5 behalf of all similarly situated individuals presenting themselves at Ports of Entry
6 (“POEs,” or individually, “POE”) along the U.S.-Mexico border to seek asylum in
7 the United States, allege as follows:

8 1. U.S. Customs and Border Protection (“CBP”) officials have
9 systematically violated U.S. law and binding international human rights law by
10 refusing to allow individuals, including Class Plaintiffs – who present themselves
11 at POEs along the U.S.-Mexico border and assert their intention to apply for
12 asylum or a fear of returning to their home countries – to seek protection in the
13 United States.

14 2. CBP is violating the law by utilizing various tactics – including
15 misrepresentations, threats and intimidation, verbal abuse and physical force, and
16 coercion – to deny asylum seekers, including Class Plaintiffs, access to the asylum
17 process. CBP officials have, for example, misinformed asylum seekers that they
18 could not apply for asylum because “Donald Trump just signed new laws saying
19 there is no asylum for anyone,” coerced asylum seekers into signing forms
20 abandoning their asylum claims by threatening to take their children away,
21 threatened to deport asylum seekers back to their home countries (where they face
22 persecution) if they persisted in their attempts to seek asylum, and even forcefully
23 removed asylum seekers from POEs.

24 3. The prevalence and persistence of CBP’s illegal practice of denying
25 asylum seekers access to the U.S. asylum process has been observed by Plaintiff Al
26 Otro Lado and Class Plaintiffs and has been well documented as occurring along
27 the entire U.S.-Mexico border through comprehensive reporting by non-
28 governmental organizations, such as Human Rights First, Amnesty International,

1 and Human Rights Watch; other experts working in the U.S.-Mexico border
2 region; as well as numerous news outlets, including The Washington Post, The
3 New York Times, and USA Today.

4 4. CBP’s illegal conduct is occurring as a humanitarian crisis drives
5 vulnerable people experiencing persecution in their home countries to seek refugee
6 protection in the United States. Asylum seekers, including Class Plaintiffs, have
7 fled persecution, violence and death, and face grave and immediate danger to their
8 lives if denied access to the asylum process – a system specifically designed to
9 protect refugees like them. CBP’s unlawful practice of turning asylum seekers
10 away from POEs is forcing asylum seekers, including Class Plaintiffs, to return to
11 Mexico and other countries where they remain susceptible to serious harm such as
12 kidnapping, rape, trafficking, torture or even death.

13 5. On information and belief, CBP’s unlawful acts were performed (and
14 continue to be performed) at the instigation, under the control or authority of, or
15 with the knowledge, consent, direction or acquiescence of, the Defendants named
16 in this action (“Defendants”). By refusing to follow the law, Defendants are
17 engaged in an officially sanctioned policy or practice that has caused, and will
18 continue to cause, Class Plaintiffs and Al Otro Lado concrete and demonstrable
19 injuries and irreparable harm.

20 6. Defendants have deprived Class Plaintiffs and similarly situated
21 individuals of their statutory and regulatory rights to apply for asylum, violated
22 their due process rights under the Fifth Amendment to the United States
23 Constitution and violated the United States’ obligations under international law to
24 uphold the principle of *non-refoulement*. Each Class Plaintiff has attempted to
25 access the asylum process and would seek to do so again, but for Defendants’
26 systematic, illegal practice at issue in this action, which has deprived them of such
27 access.

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1 11. Venue is proper in this district under 28 U.S.C. § 1391(e). All
2 Defendants are sued in their official capacity. Plaintiff Al Otro Lado is an
3 organization that resides and is incorporated in Los Angeles, California.

4 **III. PARTIES**

5 12. Plaintiff Al Otro Lado is a non-profit, non-partisan organization
6 incorporated in California, and was established in 2014. Al Otro Lado is a legal
7 services organization serving indigent deportees, migrants, refugees and their
8 families, principally in Los Angeles, California and Tijuana, Mexico. Al Otro
9 Lado's mission is to coordinate and to provide screening, advocacy and legal
10 representation for individuals in asylum and other immigration proceedings, to
11 seek redress for civil rights violations and to provide assistance with other legal
12 and social service needs. Defendants have frustrated Al Otro Lado's mission and
13 have forced Al Otro Lado to divert significant resources away from its other
14 programs to counteract CBP's illegal practice of turning away asylum seekers at
15 POEs.

16 13. Through its Refugee Program in Tijuana, Mexico, Al Otro Lado
17 assists individuals seeking protection from persecution in the United States. In
18 response to CBP's unlawful practice, Al Otro Lado has had to expend significant
19 organizational time and resources and alter entirely its previously used large-scale
20 clinic model. For example, Al Otro Lado previously held large-scale, mass-advisal
21 legal clinics in Tijuana that provided a general overview on asylum laws and
22 procedures. This type of assistance (similar to the Legal Orientation Program of
23 the Executive Office for Immigration Review) only was workable when CBP
24 allowed asylum seekers into the United States in accordance with the law.

25 14. Since 2016, however, CBP's illegal conduct has compelled Al Otro
26 Lado to expend significant time and resources to send representatives to Tijuana
27 from Los Angeles multiple times per month for extended periods to provide more
28 individualized assistance and coordination of legal and social services, including

1 individual screenings and in-depth trainings to educate volunteer attorneys and
2 asylum seekers regarding CBP's practice and potential strategies to pursue asylum
3 in the face of CBP's tactics. Whereas Al Otro Lado previously was able to
4 accommodate several dozen attorneys and over 100 clients at a time in its large-
5 scale clinics, Al Otro Lado has been forced to transition to an individualized
6 representation model where attorneys are required to work with asylum seekers
7 one-on-one and provide direct representation. Al Otro Lado has expended (and
8 continues to expend) significantly more resources recruiting, training and
9 mentoring pro bono attorneys to help counteract CBP's unlawful practice.
10 Nevertheless, even asylum seekers provided with such individualized pro bono
11 representation are being turned away by CBP in violation of the law.

12 15. Al Otro Lado also has spent time and resources advocating that CBP
13 provide asylum seekers with access to the asylum process and cease using
14 unlawful tactics to circumvent its legal obligations. For example, Al Otro Lado
15 representatives have filed numerous complaints with the U.S. government detailing
16 examples of CBP's unlawful practice depriving asylum seekers of access to the
17 asylum process.

18 16. Such diversion of Al Otro Lado's time and resources negatively
19 impacts its other programs. For example, Al Otro Lado has not been able to pursue
20 funding for or otherwise advance the following programs: (1) its Deportee
21 Reintegration Program through which Al Otro Lado assists deportees who struggle
22 to survive in Tijuana, many of whom have no Mexican identity documents or
23 health coverage, and may not even speak Spanish; and (2) its Cross-Border Family
24 Support Program through which Al Otro Lado assists families with cross-border
25 custody issues, and helps connect family members residing in the United States to
26 social, legal, medical and mental health services. Other programs that have been
27 impacted include Al Otro Lado's Deportee Financial Literacy Program, Deportee
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1 Education Fund, Refugee Mental Health Program and Opioid Recovery Program,
2 among others.

3 17. In addition, the constraints on Al Otro Lado's limited time and
4 resources has negatively impacted its operations in Los Angeles, including
5 delaying the opening of its Los Angeles office through which it coordinates
6 "Wraparound" services for low-income immigrants in Los Angeles. The increased
7 need for on the ground support in Tijuana has impacted Al Otro Lado's ability to
8 satisfy its clinical obligations for low-income immigrants at the Wellness Center,
9 located on the grounds of the Los Angeles County+USC Medical Center, and to
10 conduct outreach to provide free legal assistance to homeless individuals in Los
11 Angeles to allow them to better access permanent supportive housing, employment
12 and educational opportunities.

13 18. Al Otro Lado continues to be harmed by Defendants because CBP's
14 illegal practice at the border frustrates its organizational mission and forces Al
15 Otro Lado to divert resources from its other objectives. If Al Otro Lado had not
16 been compelled to divert resources to address CBP's unlawful conduct at the U.S.-
17 Mexico border, it would have directed these resources toward its other programs to
18 further the advancement of its core mission.

19 19. Plaintiff Abigail Doe ("A.D.") is a female native and citizen of
20 Mexico. She is the mother of two children under the age of ten. A.D. and her
21 family have been targeted and threatened with death or severe harm in Mexico by a
22 large drug cartel that had previously targeted her husband, leaving her certain she
23 would not be protected by local officials. A.D. fled with her two children to
24 Tijuana, where they presented themselves at the San Ysidro POE. On behalf of
25 herself and her children, A.D. expressed her fear of returning to Mexico and her
26 desire to seek asylum in the United States. CBP officials coerced A.D. into
27 recanting her fear and signing a form withdrawing her application for admission to
28 the United States. As a result of this coercion, the form falsely states that A.D.

1 does not have a credible fear of returning to Mexico. As a result of Defendants’
2 conduct, A.D. and her children were unable to access the asylum process and were
3 forced to return to Tijuana, where they remain in fear for their lives. A.D. and her
4 children would like to present themselves again for asylum but, based on their
5 experience and the experience of others with CBP’s practice at the U.S.-Mexico
6 border, she understands that they would likely be turned away again. A.D. and her
7 children are currently living in temporary housing in Tijuana and can no longer
8 remain in Mexico and have no place else to turn for safety but the United States.

9 20. Plaintiff Beatrice Doe (“B.D.”) is a female native and citizen of
10 Mexico. She is the mother of three children under the age of sixteen. B.D. and her
11 family have been targeted and threatened with death or severe harm in Mexico by a
12 dangerous drug cartel; she was also subject to severe domestic violence. B.D. fled
13 with her children and her nephew to Tijuana, where they presented themselves
14 once at the Otay Mesa POE and twice at the San Ysidro POE. On behalf of herself
15 and her children, B.D. expressed her fear of returning to Mexico and her desire to
16 seek asylum in the United States. CBP officials coerced B.D. into recanting her
17 fear and signing a form withdrawing her application for admission to the United
18 States. As a result of this coercion, the form falsely states that B.D. and her
19 children have no fear of returning to Mexico. As a result of Defendants’ conduct,
20 B.D. and her children were unable to access the asylum process and were forced to
21 return to Tijuana, where they remain in fear for their lives. B.D. and her children
22 would like to present themselves again for asylum but, based on their experience
23 and the experience of others with CBP’s practice at the U.S.-Mexico border, she
24 understands that they would likely be turned away again. B.D. and her children are
25 currently living in temporary housing in Tijuana and can no longer remain in
26 Mexico and have no place else to turn for safety but the United States.

27 21. Plaintiff Carolina Doe (“C.D.”) is a female native and citizen of
28 Mexico. She is the mother of three children. C.D.’s brother-in-law was kidnapped

1 and dismembered by a dangerous drug cartel in Mexico, and after the murder, her
2 family also was targeted and threatened with death or severe harm. C.D. fled with
3 her children to Tijuana, where they presented themselves at the San Ysidro, POE.
4 On behalf of herself and her children, C.D. expressed her fear of returning to
5 Mexico and her desire to seek asylum in the United States. CBP officials coerced
6 C.D. into recanting her fear on video and signing a form withdrawing her
7 application for admission to the United States. As a result of this coercion, the
8 form falsely states that C.D. and her children have no fear of returning to Mexico.
9 As a result of Defendants' conduct, C.D. and her children were unable to access
10 the asylum process and were forced to return to Tijuana, where they remain in fear
11 for their lives. C.D. and her children would like to present themselves again for
12 asylum but, based on their experience and the experience of others with CBP's
13 practice at the U.S.-Mexico border, she understands that they would likely be
14 turned away again. C.D. and her children are currently living in temporary
15 housing in Tijuana and can no longer remain in Mexico and have no place else to
16 turn for safety but the United States.

17 22. Plaintiff Dinora Doe ("D.D.") is a female native and citizen of
18 Honduras. D.D. and her eighteen-year-old daughter have been targeted, threatened
19 with death or severe harm, and repeatedly raped by MS-13 gang members. D.D.
20 fled with her daughter to Tijuana, where they presented themselves at the Otay
21 Mesa, POE on three occasions. D.D. expressed her fear of returning to Honduras
22 and her desire to seek asylum in the United States. CBP officials misinformed
23 D.D. about her rights under U.S. law and denied her the opportunity to access the
24 asylum process. As a result of Defendants' conduct, D.D. and her daughter were
25 forced to return to Tijuana, where they remain in fear for their lives. D.D. and her
26 daughter would like to present themselves again for asylum but, based on their
27 experience and the experience of others with CBP's practice at the U.S.-Mexico
28 border, she understands that they would likely be turned away again. D.D. is

1 currently living in temporary housing with her daughter in Tijuana and can no
2 longer remain in Mexico and have no place else to turn for safety but the United
3 States.

4 23. Plaintiff Ingrid Doe (“I.D.”) is a female native and citizen of
5 Honduras. She is the mother of two children and is currently pregnant with her
6 third child. I.D.’s mother and three siblings were murdered by 18th Street gang
7 members in Honduras. After the murders, 18th Street gang members threatened to
8 kill I.D. I.D. and her children were also subject to severe domestic violence. I.D.
9 fled with her children to Tijuana, where they presented themselves at the Otay
10 Mesa POE and at the San Ysidro POE. On behalf of herself and her children, I.D.
11 expressed her fear of returning to Honduras and her desire to seek asylum in the
12 United States. CBP officials misinformed I.D. about her rights under U.S. law and
13 denied her the opportunity to access the asylum process. As a result of
14 Defendants’ conduct, I.D. and her children were forced to return to Tijuana, where
15 they remain in fear for their lives. I.D. and her children would like to present
16 themselves again for asylum but, based on their experience and the experience of
17 others with CBP’s practice at the U.S.-Mexico border, she understands that they
18 would likely be turned away again. I.D. is currently living in temporary housing
19 with her children in Tijuana and can no longer remain in Mexico and have no place
20 else to turn for safety but the United States.

21 24. Plaintiff Jose Doe (“J.D.”) is a male native and citizen of Honduras.
22 J.D. was brutally attacked by 18th Street gang members in Honduras. The 18th
23 Street gang also murdered several of his family members and threatened to kidnap
24 and harm J.D.’s two daughters. J.D. fled Honduras and arrived in Nuevo Laredo,
25 Mexico, where he was accosted by gang members. J.D. presented himself at the
26 Laredo, Texas POE the next day. J.D. expressed his fear of returning to Honduras
27 and his desire to seek asylum in the United States. CBP officials misinformed J.D.
28 about his rights under U.S. law and denied him the opportunity to access the

1 asylum process. As a result of Defendants' conduct, J.D. was forced to return to
2 Nuevo Laredo where he again was approached by gang members. J.D. fled to
3 Monterrey, Mexico, where he remains in fear for his life. J.D. would like to
4 present himself again for asylum but, based on his experience and the experience
5 of others with CBP's practice at the U.S.-Mexico border, he understands that he
6 would likely be turned away again. J.D. is currently staying temporarily with his
7 wife's relatives in Monterrey, Mexico and is afraid to return to Honduras. J.D. can
8 no longer remain in Mexico and have no place else to turn for safety but the United
9 States.

10 25. Defendant John F. Kelly is the Secretary of the United States
11 Department of Homeland Security ("DHS"). In this capacity, he is charged with
12 enforcing and administering U.S. immigration laws. He oversees each of the
13 component agencies within DHS, including CBP, and has ultimate authority over
14 all CBP policies, procedures and practices. He is responsible for ensuring that all
15 CBP officials perform their duties in accordance with the Constitution and all
16 relevant laws.

17 26. Defendant Kevin K. McAleenan is Acting Commissioner of CBP. In
18 this capacity, he has direct authority over all CBP policies, procedures and
19 practices, and is responsible for ensuring that all CBP interactions with asylum
20 seekers are performed in accordance with the Constitution and all relevant laws.
21 Defendant McAleenan oversees a staff of more than 60,000 employees, manages a
22 budget of more than \$13 billion, and exercises authority over all CBP operations.

23 27. Defendant Todd C. Owen is the Executive Assistant Commissioner of
24 CBP's Office of Field Operations ("OFO"). OFO is the largest component of CBP
25 and is responsible for border security, including immigration and travel through
26 U.S. POEs. Defendant Owen exercises authority over 20 major field offices and
27 328 POEs. Defendant Owen oversees a staff of more than 29,000 employees,
28 including more than 24,000 CBP officials and specialists, and manages a budget of

1 more than \$5.2 billion. Defendant Owen is responsible for ensuring that all OFO
2 officials perform their duties in accordance with the Constitution and all relevant
3 laws.

4 28. Does 1 through 25, inclusive, are sued herein under fictitious names
5 inasmuch as their true names and capacities are presently unknown to Al Otro
6 Lado and Class Plaintiffs. Al Otro Lado and Class Plaintiffs will amend this
7 complaint to designate the true names and capacities of these parties when the
8 same have been ascertained. Al Otro Lado and Class Plaintiffs are informed and
9 believe, and on that basis allege, that Does 1 through 25, inclusive, were agents or
10 alter egos of Defendants, or are otherwise responsible for all of the acts hereinafter
11 alleged. Al Otro Lado and Class Plaintiffs are informed and believe, and on that
12 basis allege, that the actions of Does 1 through 25, inclusive, as alleged herein,
13 were duly ratified by Defendants, with each Doe acting as the agent or alter ego of
14 Defendants, within the scope, course, and authority of the agency. Defendants and
15 Does 1 through 25, inclusive, are collectively referred to herein as “Defendants.”

16 **IV. FACTUAL BACKGROUND**

17 **A. Humanitarian Crisis South of the U.S.-Mexico Border**

18 29. In recent years, children and adults have fled horrendous persecution
19 in their home countries and arrived at POEs along the U.S.-Mexico border to seek
20 protection in the United States through the asylum process. The vast majority of
21 these individuals come from Guatemala, Honduras and El Salvador, an area often
22 termed Central America’s “Northern Triangle.”

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1 30. These governments are known for corruption,¹ including having
2 corrupt police forces filled with gang-related members.² Furthermore, the
3 “penetration of the state by criminal groups” is responsible, at least in part, for the
4 fact that as many as 95% of crimes go unpunished.³

5 31. The “pervasive and systematic levels of violence” associated with the
6 increasing reach of gangs in the Northern Triangle have been well documented.⁴
7 Those fleeing the Northern Triangle cite “violence [from] criminal armed groups,
8 including assaults, extortion, and disappearances or murder of family members,”⁵ as
9 reasons for their flight. These armed groups operate with impunity due to their
10 influence and control over the governments of Northern Triangle countries, which
11 have repeatedly proven to be unable or unwilling to protect their citizens.⁶ The
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14 ¹ See Christina Eguizábal *et al.*, *Crime and Violence in Central America’s*
15 *Northern Triangle*, The Wilson Ctr., 2 (2015), https://www.wilsoncenter.org/sites/default/files/FINAL%20PDF_CARSI%20REPORT_0.pdf.

16 ² “Over the past five years, at least 435 members of the [Salvadoran] armed
17 forces were fired for being gang members or having ties to gangs Another 39
18 aspiring police officers were expelled from the National Public Security Academy
19 over the same period, of which 25 ‘belonged to’ the Mara Salvatrucha, or MS13,
20 while 13 were from the Barrio 18 gang. Nine more active police officers were also
21 dismissed for alleged gang ties over the five years.” Mimi Yagoub, *480 Gang*
Members Infiltrated El Salvador Security Forces: Report, InSight Crime (Feb. 22,
2016), <http://www.insightcrime.org/news-briefs/did-480-gang-members-infiltrate-el-salvador-security-forces>.

22 ³ Eguizábal *et al.*, *supra* note 1, at 2.

23 ⁴ UNHCR, *Women on the Run: First-Hand Accounts of Refugees Fleeing El*
Salvador, Guatemala, Honduras, and Mexico, 15 (2015), <http://www.unhcr.org/en-us/publications/operations/5630f24c6/women-run.html> [hereinafter *Women on the*
Run].

24 ⁵ *Id.*

25 ⁶ *Id.* at 16 (finding that citizens of Northern Triangle countries are “murdered
26 with impunity”); *id.* at 23 (finding that 69% of women interviewed tried relocating
27 within their own countries at least once before fleeing and indicating that 10%
28 “stated that the police or other authorities were the direct source of their harm”).

1 degree of violence suffered by people in the Northern Triangle has been compared
2 to that experienced in war zones.⁷

3 32. This violence and corruption is not limited to the Northern Triangle,
4 but also is experienced by individuals fleeing Mexico. Mexico has faced a drastic
5 rise in criminal activity since the early 2000s that is attributed to organized
6 criminal groups and has been accompanied by increases in violence and
7 corruption.⁸ Although the northern half of Mexico was often considered the most
8 dangerous, recent reports reveal an increase in violence in the central and southern
9 states of Mexico, particularly in Guerrero, Michoacán, and the State of Mexico.⁹
10 Along with the increase in violence and organized criminal activity, it is well
11 documented that the police and armed forces operate with impunity in Mexico,
12 leaving victims unable to resort to their own government for protection.¹⁰ Indeed,
13 “[i]n some regions of Mexico the state has become so closely identified with
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17 ⁷ Médecins Sans Frontières (Doctors Without Borders), *Forced to Flee*
18 *Central America’s Northern Triangle: A Neglected Humanitarian Crisis*, 6 (2017),
19 [https://www.doctorswithoutborders.org/sites/usa/files/msf_forced-to-flee-central-](https://www.doctorswithoutborders.org/sites/usa/files/msf_forced-to-flee-central-americas-northern-triangle.pdf)
20 [americas-northern-triangle.pdf](https://www.doctorswithoutborders.org/sites/usa/files/msf_forced-to-flee-central-americas-northern-triangle.pdf) [hereinafter *Forced to Flee*].

21 ⁸ Dominic Joseph Pera, *Drugs Violence and Public [In]Security: Mexico’s*
22 *Federal Police and Human Rights Abuse*, 2-4, 7 (Justice in Mex. Working Paper
23 Series Paper No. 1, 2015), [https://justiceinmexico.org/wp-content/uploads/2015/](https://justiceinmexico.org/wp-content/uploads/2015/12/151204_PERA_DOMINIC_DrugViolenceandPublicInsecurity_FINAL.pdf)
24 [12/151204_PERA_DOMINIC_DrugViolenceandPublicInsecurity_FINAL.pdf](https://justiceinmexico.org/wp-content/uploads/2015/12/151204_PERA_DOMINIC_DrugViolenceandPublicInsecurity_FINAL.pdf); *see*
25 U.S. Dep’t of State, Bureau of Democracy, Human Rights and Labor, *Country*
26 *Reports on Human Rights Practices for 2014*, [https://www.state.gov/j/drl/rls/hrrpt/](https://www.state.gov/j/drl/rls/hrrpt/2014humanrightsreport/index.htm?year=2014&dliid=236702#wrapper)
27 [2014humanrightsreport/index.htm?year=2014&dliid=236702#wrapper](https://www.state.gov/j/drl/rls/hrrpt/2014humanrightsreport/index.htm?year=2014&dliid=236702#wrapper).

28 ⁹ *See, e.g.*, U.S. Dep’t of State, Bureau of Diplomatic Sec., *Mexico 2015*
29 *Crime and Safety Report: Mexico City*, [https://www.osac.gov/pages/](https://www.osac.gov/pages/ContentReportDetails.aspx?cid=17114)
30 [ContentReportDetails.aspx?cid=17114](https://www.osac.gov/pages/ContentReportDetails.aspx?cid=17114) (reporting that a “common practice is for
31 gangs to charge ‘protection fees’ or add their own tax to products and services with
32 the threat of violence for those who fail to pay”).

¹⁰ *See* Pera, *supra* note 8, at 4 (“Drug trafficking organizations have infiltrated
33 government positions in many areas, and their influence over state personnel has
34 dramatic implications.”).

1 criminal gangs and drug cartels that these criminal organizations do not need to
2 corrupt the state – they essentially ‘are’ part of the state.”¹¹

3 33. In addition, women and children often flee severe domestic violence.
4 Women report prolonged instances of physical, sexual and psychological domestic
5 violence, and most of their accounts demonstrate that the authorities in their home
6 countries were either unable or unwilling to provide meaningful assistance.¹²
7 Abusive partners are often members or associates of criminal armed groups.¹³
8 Abusers frequently threaten women with harm to their parents, siblings or children
9 if they try to leave.¹⁴ Some women who fled their countries have heard from
10 family members back home that their abusers continue to look for them.¹⁵

11 34. After fleeing their home countries, children and adults face an arduous
12 and dangerous journey to the United States.¹⁶ The situation along the popular
13 migration routes to the United States has been termed a “humanitarian crisis”
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16 ¹¹ Alberto Díaz-Cayeros *et al.*, *Caught in the Crossfire: The Geography of*
17 *Extortion and Police Corruption in Mexico*, 3-4 (Stanford Ctr. for Int’l Dev., Paper
18 No. 545, 2015), [http://scid.stanford.edu/publications/caught-crossfire-geography-](http://scid.stanford.edu/publications/caught-crossfire-geography-extortion-and-police-corruption-mexico)
19 [extortion-and-police-corruption-mexico](http://scid.stanford.edu/publications/caught-crossfire-geography-extortion-and-police-corruption-mexico).

20 ¹² *Women on the Run*, *supra* note 4, at 25. The women interviewed described
21 repeated rapes and sexual assaults as well as violent physical abuse that included:
22 “beatings with hands, a baseball bat and other weapons; kicking; threats to do
23 bodily harm with knives; and repeatedly being thrown against walls and the
24 ground.” *Id.*

25 ¹³ *Id.*

26 ¹⁴ *Id.* at 27.

27 ¹⁵ *Id.*

28 ¹⁶ *See id.* at 43-45 (describing extortion, sexual violence, and physical
29 violence); *see also* Rodrigo Dominguez Villegas, *Central American Migrants and*
30 *“La Bestia”*: *The Route, Dangers, and Government Responses*, Migration Info.
31 Source (Sept. 10, 2014), [http://www.migrationpolicy.org/article/central-american-](http://www.migrationpolicy.org/article/central-american-migrants-and-%E2%80%9C-la-bestia%E2%80%9D-route-dangers-and-government-responses)
32 [migrants-and-%E2%80%9C-la-bestia%E2%80%9D-route-dangers-and-](http://www.migrationpolicy.org/article/central-american-migrants-and-%E2%80%9C-la-bestia%E2%80%9D-route-dangers-and-government-responses)
33 [government-responses](http://www.migrationpolicy.org/article/central-american-migrants-and-%E2%80%9C-la-bestia%E2%80%9D-route-dangers-and-government-responses) (listing “injury or death from unsafe travelling conditions,
34 gang violence, sexual assault, extortion, kidnapping, and recruitment by organized
35 crime” as dangers faced on the journey to the United States).

1 because of the extraordinary violence faced by those making the journey.¹⁷ In
2 2015 and 2016, 68% of migrants from the Northern Triangle region experienced
3 violence, including sexual assault, on their journeys through Central America and
4 Mexico.¹⁸ Perpetrators of violence “include[] members of gangs and other
5 criminal organizations, as well as members of the Mexican security forces.”¹⁹
6 Thus, the initial mistrust and inability to rely upon government authorities for
7 protection that leads many to flee their home countries accompanies them along
8 their journeys.²⁰

9 35. In addition, Mexico’s northern border region is particularly plagued
10 with crime and violence, presenting renewed dangers for asylum seekers just as
11 they approach their destination.²¹ The most pervasive problems include
12 disappearances, kidnappings, rape, trafficking, extortion, execution and sexual and

13 ¹⁷ See Eguizábal *et al.*, *supra* note 1, at 3.

14 ¹⁸ See *Forced to Flee*, *supra* note 7, at 11. Close to half (44%) of the migrants
15 reported being hit, 40% said they had been pushed, grabbed or asphyxiated, and
16 7% said they had been shot. *Id.* Nearly one-third (31.4%) of women and 17.2% of
17 men surveyed during that same time period had been sexually abused during their
18 journeys. *Id.* at 12.

19 ¹⁹ *Id.* at 5.

20 ²⁰ See, e.g., Villegas, *supra* note 16 (referencing documentation of “the abuse
21 of power by various Mexican authorities, including agents from the National
22 Migration Institute, municipal governments, and state police” against individuals
23 traveling to the U.S. border).

24 ²¹ See U.S. Dep’t of State, *Mexico Travel Warning* (Dec. 8, 2016), [https://
25 travel.state.gov/content/passports/en/alertswarnings/mexico-travel-warning.html](https://travel.state.gov/content/passports/en/alertswarnings/mexico-travel-warning.html)
26 (reporting violent crime and an increase in homicide in the state of Baja California
27 (including Tijuana and Mexicali); criminal activity and violence in the state of
28 Chihuahua (including Ciudad Juarez); violence and criminal activity, including
homicide, armed robbery, carjacking, kidnapping, extortion, and sexual assault in
the state of Coahuila (particularly along the highways between Piedras Negras and
Nuevo Laredo); that the state of Sonora (including Nogales) is a key region in the
international drug and human trafficking trades; and violent crime, including
homicide, armed robbery, carjacking, kidnapping, extortion, and sexual assault in
the state of Tamaulipas (including Matamoros, Nuevo Laredo, and Reynosa),
where state and municipal law enforcement capacity is limited to nonexistent in
most parts of the state).

1 labor exploitation by state and non-state actors.²² Recently, the situation at the
 2 border has worsened: smugglers have increased their prices, cartel members have
 3 increased their surveillance and control of areas around border crossings, and the
 4 number of migrants kidnapped and held for ransom has increased.²³

5 36. By rejecting asylum seekers at POEs, Defendants are forcing them to
 6 return to the dangerous conditions that drove them to flee their countries in the first
 7 place.²⁴

8 **B. Defendants' Systematic, Illegal Practice**

9 37. Since at least the summer of 2016 and continuing to the present, CBP
 10 officials, at or under the direction or with the knowledge of Defendants, have
 11 consistently and systematically prevented asylum seekers arriving at POEs along
 12 the U.S.-Mexico border from accessing the U.S. asylum process.²⁵ CBP's illegal

13 _____
 14 ²² B. Shaw Drake *et al.*, *Crossing the Line: U.S. Border Agents Illegally Reject*
 15 *Asylum Seekers*, Human Rights First, 16 (2017),
 16 <https://www.humanrightsfirst.org/sites/default/files/hrf-crossing-the-line-report.pdf>
 17 [hereinafter *Crossing the Line*].

18 ²³ *Id.*

19 ²⁴ *Id.*; see also B. Shaw Drake, *Violations at the Border: The El Paso Sector*,
 20 Human Rights First, 2-3 (2017), [http://www.humanrightsfirst.org/sites/default/](http://www.humanrightsfirst.org/sites/default/files/hrf-violations-at-el-paso-border-rep.pdf)
 21 [files/hrf-violations-at-el-paso-border-rep.pdf](http://www.humanrightsfirst.org/sites/default/files/hrf-violations-at-el-paso-border-rep.pdf) (explaining the risks facing asylum
 22 seekers who are turned away at U.S. POEs, including being deported back to their
 23 home countries where they face persecution).

24 ²⁵ There is evidence that CBP officials began unlawfully dissuading asylum
 25 seekers from pursuing their claims or flatly refusing them entry to the United
 26 States even prior to 2016. See American Immigration Council, *Mexican and*
 27 *Central American Asylum and Credible Fear Claims: Background and Context*,
 28 10 (2014), [https://www.americanimmigrationcouncil.org/sites/](https://www.americanimmigrationcouncil.org/sites/default/files/research/asylum_and_credible_fear_claims_final_0.pdf)
 29 [default/files/research/asylum_and_credible_fear_claims_final_0.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/research/asylum_and_credible_fear_claims_final_0.pdf) (reporting that
 30 Mexican asylum seekers arriving in El Paso “expressed a fear of persecution [but]
 31 were told by CBP that the U.S. doesn’t give Mexicans asylum, and they [we]re
 32 turned back”); see also U.S. Comm’n on Int’l Religious Freedom, *Report on*
 33 *Asylum Seekers in Expedited Removal: Volume I: Findings & Recommendations*,
 34 54 (2005) [hereinafter 2005 USCIRF Report] (reporting that two groups of asylum
 35 seekers who arrived at the San Ysidro POE were “improperly refused entry to the
 36 United States for . . . lacking proper documentation and [were] ‘pushed back’ . . .
 37 without [being] refer[red] . . . to secondary inspection” and without a “record of the

1 practice, which violates U.S. and international law, has been documented in
 2 hundreds of cases at POEs, including POEs in San Ysidro, California; Otay Mesa,
 3 California; Tecate, California; Calexico, California; Nogales, Arizona; Eagle Pass,
 4 Texas; El Paso, Texas; Laredo, Texas; and Hidalgo, Texas, among others.

5 38. CBP's practice of denying asylum seekers access to the asylum
 6 process has been well documented.²⁶ Al Otro Lado and Class Plaintiffs, as well as
 7 numerous non-governmental organizations²⁷ and news outlets,²⁸ have documented

8 _____
 9 primary inspection" being created); *see also* Human Rights Watch, "*You Don't*
 10 *Have Rights Here*": *US Border Screening and Returns of Central Americans to*
 11 *Risk of Serious Harm*, 2, 8 (2014), [https://www.hrw.org/report/2014/10/16/you-](https://www.hrw.org/report/2014/10/16/you-dont-have-rights-here/us-border-screening-and-returns-central-americans-risk)
 12 [dnt-have-rights-here/us-border-screening-and-returns-central-americans-risk](https://www.hrw.org/report/2014/10/16/you-dont-have-rights-here/us-border-screening-and-returns-central-americans-risk)
 13 [hereinafter *You Don't Have Rights Here*] (concluding that the "cursory screening
 14 [conducted by CBP officials] is failing to effectively identify [asylum seekers]"
 15 and reporting that some "border officials acknowledged hearing [non-citizens']
 16 expressions of fear but pressured them to abandon their claims").

17 ²⁶ *See, e.g.,* Borderland Immigration Council, *Discretion to Deny: Family*
 18 *Separation, Prolonged Detention, and Deterrence of Asylum Seekers at the Hands*
 19 *of Immigration Authorities Along the U.S.-Mexico Border*, 12 (2017), [https://](https://media.wix.com/ugd/e07ba9_72743e60ea6d4c3aa796becc71c3b0fe.pdf)
 20 media.wix.com/ugd/e07ba9_72743e60ea6d4c3aa796becc71c3b0fe.pdf (reporting
 21 that "it is commonplace for asylum seekers to be placed in expedited removal
 22 proceedings and summarily deported . . . , despite expressing fear"); U.S. Comm'n
 23 on Int'l Religious Freedom, *Barriers to Protection: The Treatment of Asylum*
 24 *Seekers in Expedited Removal*, 20 (2016) (reporting that despite findings and
 25 recommendations in a 2005 study relating to primary inspection, USCIRF
 26 observers in 2016 continued to find "several examples of non-compliance with
 27 required procedures" in CBP primary inspection interviews); *see also* 2005
 28 USCIRF Report, *supra* note 25, at 54 (finding that, in approximately half of the
 inspections observed, inspectors failed to read the proper advisals regarding
 asylum to the non-citizen and that "in 15 percent of [the] cases [] where an
 arriving [non-citizen] expressed a fear of return to the inspector, that [non-citizen]
 was not referred" for a credible fear interview).

29 ²⁷ *See, e.g.,* *Crossing the Line*, *supra* note 22; Amnesty Int'l, *Facing Walls:*
 30 *USA and Mexico's Violation of the Rights of Asylum Seekers*, 19-22 (2017),
 31 [https://www.amnestyusa.org/reports/facing-walls-usa-mexicos-violation-rights-](https://www.amnestyusa.org/reports/facing-walls-usa-mexicos-violation-rights-asylum-seekers/)
 32 [asylum-seekers/](https://www.amnestyusa.org/reports/facing-walls-usa-mexicos-violation-rights-asylum-seekers/) [hereinafter *Facing Walls*]; "*You Don't Have Rights Here*," *supra*
 33 note 25, at 2, 4.

34 ²⁸ Joshua Partlow, *U.S. Border Officials Are Illegally Turning Away Asylum*
 35 *Seekers, Critics Say*, Wash. Post (Jan. 16, 2017), [https://www.washingtonpost.](https://www.washingtonpost.com/world/the_americas/us-border-officials-are-illegally-turning-away-asylum-seekers-critics-say/2017/01/16/f7f5c54a-c6d0-11e6-acda-59924caa2450_story)
 36 [com/world/the_americas/us-border-officials-are-illegally-turning-away-asylum-](https://www.washingtonpost.com/world/the_americas/us-border-officials-are-illegally-turning-away-asylum-seekers-critics-say/2017/01/16/f7f5c54a-c6d0-11e6-acda-59924caa2450_story)
 37 [seekers-critics-say/2017/01/16/f7f5c54a-c6d0-11e6-acda-59924caa2450_story](https://www.washingtonpost.com/world/the_americas/us-border-officials-are-illegally-turning-away-asylum-seekers-critics-say/2017/01/16/f7f5c54a-c6d0-11e6-acda-59924caa2450_story).

1 well over 100 cases in which CBP officials have failed to comply with U.S. and
 2 international law and arbitrarily denied access to the asylum process to asylum
 3 seekers presenting themselves at POEs along the U.S.-Mexico border.

4 **1. Defendants Have Violated Each of the Class Plaintiffs'**
 5 **Rights to Seek Asylum**

6 ***Plaintiff Abigail Doe***

7 39. A.D. is a native and citizen of Mexico. She is the mother of two
 8 children under the age of ten, with whom she previously lived in Central Mexico.
 9 In May 2017, A.D.'s husband disappeared after he refused to allow drug cartel
 10 members to use his tractor-trailer to transport drugs.

11 40. When A.D. reported her husband's disappearance to governmental
 12 authorities, members of the drug cartel abducted her, held her at gunpoint, and
 13 threatened to kill her and her children if she continued to investigate her husband's
 14 disappearance. One cartel member told A.D. that she had to leave if she wanted to
 15 live. Fearing for her life, A.D. fled to Tijuana with her children to seek asylum in
 16 the United States.

17 41. After arriving in Tijuana, A.D. and her children immediately went to
 18 the San Ysidro POE, where she informed CBP officials of her intent to apply for
 19 asylum and her fear of returning to Mexico. CBP officials repeatedly misinformed
 20 A.D. that she did not qualify for asylum. One CBP official threatened that her
 21 children would be taken away from her if they allowed her to cross the border and
 22 again misinformed her that only the Mexican government could help her.

23 42. CBP officials coerced A.D. into signing a document in English which
 24 she could not read and did not understand. The document stated that she did not

25 _____
 26 [html?utm_term=.83c7aed8fc6c](https://www.nytimes.com/2017/05/03/us/asylum-border-customs.html); Caitlin Dickerson & Miriam Jordan, *'No Asylum*
 27 *Here': Some Say U.S. Border Agents Rejected Them*, N.Y. Times (May 3, 2017),
 28 <https://www.nytimes.com/2017/05/03/us/asylum-border-customs.html>; Rafael
 Carranza, *Are Asylum Seekers Being Turned Away at the Border?*, USA Today
 (May 5, 2017), <https://www.usatoday.com/story/news/politics/2017/05/05/asylum-seekers-turned-away/311552001/>.

1 have a fear of returning to Mexico and was withdrawing her application for
2 admission. CBP officials then instructed A.D. to say that she had agreed to accept
3 the assistance of the Mexican government and used a video camera to record her
4 statement. A CBP official then took A.D. and her children back to Mexico and left
5 them to fend for themselves.

6 43. The statements CBP coercively obtained from A.D. were and are still
7 false; A.D. does fear returning to and staying in Mexico and does not intend to
8 seek assistance from the Mexican government because she believes such efforts
9 would be futile.

10 44. A.D. and her children would like to present themselves again to seek
11 asylum but, based on their experience and the experience of others with CBP's
12 practice at POEs, she understands that they would likely be turned away again or
13 that CBP would take her children away from her.

14 45. A.D. and her children are currently staying in temporary housing in
15 Tijuana, where A.D. continues to fear for her life and the lives of her children.
16 A.D. can no longer remain in Mexico and has no place else to turn for safety but
17 the United States.

18 ***Plaintiff Beatrice Doe***

19 46. B.D. is a native and citizen of Mexico. In May 2017, B.D. fled her
20 hometown in Mexico with her three children, ages seven, eleven and fifteen, and
21 her nephew. B.D.'s nephew was targeted by the Zetas, a Mexican drug cartel that
22 controls most of Southern Mexico, for failing to pay a fee that the Zetas demanded
23 from all individuals who worked in the market. The Zetas threatened to kill B.D.'s
24 nephew and to harm his family if he did not pay the fees. The cartel also pressured
25 B.D.'s nephew to join their forces and threatened to increase the fee if he refused.
26 On two occasions when B.D.'s nephew failed to pay the fees, the Zetas beat him
27 up.

28

1 47. B.D. herself suffered severe domestic violence at the hands of her
2 husband. In May 2017, she reported his abuse to two government agencies. When
3 Mexican government officials subsequently requested that B.D.'s husband meet
4 with them, he responded that he would continue to do what he wanted with B.D.
5 and his children. Terrified, B.D. left their house the same day.

6 48. B.D. fled with her children and nephew and traveled to Tijuana in
7 order to seek asylum in the United States. Initially, B.D. and her family went to
8 the Otay Mesa POE. When B.D. expressed their intent to seek asylum, a CBP
9 official told her that asylum-related services were not provided at that port, and
10 directed her to go to the San Ysidro POE. B.D. and her family then attempted
11 twice to request asylum at the San Ysidro POE, but CBP officials turned them
12 away both times.

13 49. The first time B.D. and her family presented themselves at the San
14 Ysidro POE, she explained that their lives were at risk in Mexico and that she was
15 afraid of her husband. CBP officials misinformed her that the U.S. government
16 had no obligation to help her or her family, that they did not have a right to enter
17 the United States because they were not born there, and that she should seek help
18 from the Mexican government.

19 50. Another CBP official then threatened to take B.D.'s nephew away
20 from her and to put her in jail if she refused to sign an English document which she
21 did not understand. Believing that she had no other option, she signed the
22 document. CBP officials then escorted B.D. and her family out of the POE.

23 51. The statement CBP coercively obtained from B.D. were and are still
24 false; B.D. and her children do fear returning to and staying in Mexico.

25 52. The next day, B.D. and her family returned to the San Ysidro POE. A
26 CBP official who recognized B.D. from the day before misinformed her that she
27 had no right to enter the United States or seek asylum, and that she would be put in
28 jail for three years if she returned to the POE. After another CBP official

1 separately threatened to transfer B.D.'s nephew to Mexican authorities and return
2 him to Southern Mexico, CBP officials again escorted B.D. and her family out of
3 the San Ysidro POE.

4 53. B.D. and her children would like to present themselves again for
5 asylum, but based on their experience and the experience of others with CBP's
6 practice at POEs, she understands that they would likely be turned away again or
7 put in jail as the CBP officials threatened.

8 54. B.D. and her children are currently staying in temporary housing in
9 Tijuana, where B.D. continues to fear for her life and the lives of her children.
10 B.D. can no longer remain in Mexico and has no place else to turn for safety but
11 the United States.

12 ***Plaintiff Carolina Doe***

13 55. C.D. is a native and citizen of Mexico. In May 2017, C.D. fled her
14 hometown in Mexico with her three children, ages nine, fifteen and eighteen, after
15 her brother-in-law, a high-ranking police official, was kidnapped, tortured and
16 killed by members of a drug trafficking cartel. His dismembered body was found
17 in garbage bags in a cemetery. C.D.'s husband witnessed the kidnapping and
18 showed C.D. a picture of one of the men who was involved. Drug cartel members
19 threatened C.D.'s husband after the murder, and C.D. and her husband saw the van
20 used in the kidnapping drive by their house twice. Two men followed C.D. and
21 her daughters on her way home from work, and several men came to their home at
22 night. C.D. was terrified and hid with her daughters in the bathroom because she
23 feared for her life and the lives of her daughters.

24 56. In May 2017, C.D. fled in the middle of the night with her daughters
25 and traveled to Tijuana in order to seek asylum in the United States. C.D. and her
26 daughters presented themselves at the San Ysidro POE, and C.D. explained that
27 they were afraid of returning to Mexico and wanted to seek asylum. CBP officials
28 locked them in a room overnight at the San Ysidro POE. In the morning, a CBP

1 official told C.D. that she would not be granted asylum and misinformed her that
2 the protection she was seeking in the United States could be provided by the
3 Mexican authorities. The CBP official threatened to take away C.D.'s fifteen-year-
4 old U.S. citizen daughter and put her in foster care, and told C.D. that if she did not
5 want her daughter taken away from her, then she had to make a statement on video
6 that she was not afraid of returning to Mexico.

7 57. The CBP officials coerced C.D. into recanting her fear on video. C.D.
8 initially did not respond as the CBP officials instructed her to do because the
9 responses they told her to say were not true. C.D. was afraid and wanted to
10 respond that she was very scared to return to Mexico. One of the CBP officials
11 repeated that the only way C.D. and her daughters would be able to leave
12 voluntarily without her U.S. citizen daughter being taken away from her was if
13 C.D. stated on video that she was not scared. Having been locked in a room
14 overnight, C.D. was tired and scared and felt like she was in jail. The CBP
15 officials continued to coerce her until she finally did what they told her to do,
16 believing she had no choice.

17 58. The CBP officials also coerced C.D. into signing a document in
18 English which she could not read and did not understand. The document stated
19 that she did not have a fear of returning to Mexico and was withdrawing her
20 application for admission. The statements CBP coercively obtained from C.D.
21 were and are still false; C.D. does fear returning to and staying in Mexico.

22 59. Several days after CBP turned away C.D. and her daughters at the
23 POE, C.D. made arrangements for her U.S. citizen daughter to cross into the
24 United States. C.D. and her other two children would like to present themselves
25 again for asylum, but based on their experience and the experience of others with
26 CBP's practice at POEs, she understands that they would likely be turned away
27 again.

28

1 60. C.D. and her two children are currently staying in temporary housing
2 in Tijuana, where C.D. continues to fear for her life and the lives of her children.
3 C.D. can no longer remain in Mexico and has no place else to turn for safety but
4 the United States.

5 ***Plaintiff Dinora Doe***

6 61. D.D. is a native and citizen of Honduras. MS-13 gang members
7 repeatedly threatened to kill D.D. and her then-seventeen-year-old daughter if they
8 did not leave their house. After receiving the third threat, they fled to another city
9 where they remained in hiding.

10 62. When D.D. and her daughter subsequently returned home, three MS-
11 13 members held them captive for three days and repeatedly raped each of them in
12 front of the other.

13 63. When D.D. and her daughter finally escaped, they fled to a shelter in
14 Mexico. However, after being threatened by MS-13 gang members again in
15 Mexico, they knew they had to leave.

16 64. On three separate occasions in August 2016, D.D. and her daughter
17 went to the Otay Mesa POE and expressed their intent to seek asylum in the United
18 States. Each time, CBP officials turned them away.

19 65. During D.D.'s first attempt, CBP officials misinformed her that there
20 was no asylum in the United States and escorted D.D. and her daughter outside the
21 POE.

22 66. During her second attempt later the same day, one CBP official
23 misinformed D.D. that there was no asylum available in the United States for
24 Central Americans and that if they returned to the POE, they would be handed over
25 to Mexican authorities and deported to Honduras.

26 67. During her third attempt the next morning, a CBP official
27 misinformed D.D. that she could pass through the POE, but would have to leave
28

1 her daughter behind. When D.D. insisted that she and her daughter had a right to
2 apply for asylum, CBP officials escorted them out of the POE.

3 68. D.D. and her children would like to present themselves again for
4 asylum but, based on their experience and the experience of others with CBP's
5 practice at POEs, she understands that they would likely be turned away again or
6 separated from each other.

7 69. D.D. and her daughter are currently staying in Tijuana. In June 2017,
8 D.D. received a call from a person connected to the MS-13 gang trying to identify
9 her location in Mexico. D.D. continues to fear for her life and the life of her
10 daughter. D.D. can no longer remain in Mexico and has no place else to turn for
11 safety but the United States.

12 ***Plaintiff Ingrid Doe***

13 70. I.D. is a native and citizen of Honduras. I.D. has two children and is
14 pregnant and expecting her third child in September.

15 71. 18th Street gang members murdered I.D.'s mother and three siblings.
16 They also threatened to kill I.D.

17 72. For several years, I.D. and her children were subject to severe abuse
18 by her partner and the father of her son and the child that she is expecting. I.D.'s
19 partner regularly raped I.D., sometimes in front of her children. He would also
20 burn and beat I.D. One day, I.D.'s partner put a gun to I.D.'s head and threatened
21 to kill her.

22 73. In June 2017, I.D. fled with her children to Tijuana, where they
23 presented themselves at the Otay Mesa POE to seek asylum in the United States.

24 74. When they arrived at the Otay Mesa POE, I.D. approached CBP
25 officials and expressed her intent to seek asylum. The CBP officials misinformed
26 I.D. that they could not help her at the Otay Mesa POE and that she must go to the
27 San Ysidro POE.

28

1 75. I.D. immediately went to the San Ysidro POE with her children,
2 approached several CBP officials, and expressed her intent to seek asylum. One of
3 the officials misinformed I.D. that there was no asylum and that she could not pass
4 through the POE because she did not have any documents. I.D. again stated that
5 she wanted to seek asylum and that she could not go back to Honduras because she
6 and her children would be killed. The CBP official responded that there was a new
7 law in the United States that meant that there was no more asylum. Another CBP
8 official then escorted I.D. and her children out of the port.

9 76. I.D. and her children would like to present themselves again for
10 asylum but, based on their experience and the experience of others with CBP's
11 practice at POEs, I.D. understands that they would likely be turned away again.

12 77. I.D. and her children are currently staying in a shelter in Tijuana,
13 where I.D. continues to fear for her life and the lives of her children. I.D. can no
14 longer remain in Mexico and has no place else to turn for safety but the United
15 States.

16 ***Plaintiff Jose Doe***

17 78. J.D. is a native and citizen of Honduras. J.D. operated a small banana
18 business in Honduras. 18th Street gang members began targeting his business for
19 extortion and brutally attacked J.D. with a machete when he fell behind on
20 payments. 18th Street later targeted another business J.D. established.

21 79. In 2016, 18th Street kidnapped and killed his wife's cousin after she
22 resisted the gang, and threatened to kidnap and sexually assault J.D.'s two teenage
23 daughters. 18th Street also killed two of his wife's uncles.

24 80. In June 2017, J.D. fled Honduras and took many buses through
25 Honduras and Guatemala to avoid detection. J.D. arrived in Nuevo Laredo and
26 was accosted by multiple gang members. J.D. presented himself at the Laredo,
27 Texas POE the next day after this terrifying encounter, and he explained that he
28 was afraid of returning to Honduras and wanted to seek asylum. CBP officials at

1 the POE misinformed J.D. that he needed a visa to apply for asylum and told him
2 that there was no one to handle his application. CBP officials sent J.D. back to
3 Nuevo Laredo, where he again was approached by gang members.

4 81. J.D. would like to present himself again to seek asylum but, based on
5 his experience and the experience of others with CBP's practice at POEs, he
6 understands that he would likely be turned away again.

7 82. J.D. is currently staying temporarily with his wife's relatives in
8 Monterrey, Mexico where he continues to fear for his life. J.D. cannot remain in
9 Mexico and has no place to turn for safety but the United States.

10 **2. CBP Officials Have Systematically Denied Numerous Other**
11 **Asylum Seekers Access to the Asylum Process**

12 83. Class Plaintiffs' experiences reflect a systematic and persistent
13 practice by CBP that has unlawfully denied numerous other asylum seekers access
14 to the U.S. asylum process.

15 84. CBP officials have carried out Defendants' systematic practice of
16 denying asylum seekers access to the U.S. asylum process by relying on certain
17 categories of tactics, including misrepresentations, threats and intimidation, verbal
18 and physical abuse, and coercion. Asylum seekers and advocates have experienced
19 and/or witnessed firsthand CBP's illegal conduct.

20 **a. Misrepresentations:**

21 85. CBP officials misinform asylum seekers of the following: that the
22 United States is no longer providing asylum; that President Trump signed a new
23 law that ended asylum in the United States; that the law providing asylum to
24 Central Americans recently ended; that Mexicans are no longer eligible for asylum;
25 that the United States is no longer accepting mothers with children; that asylum
26 seekers cannot seek asylum at the POE but must go to the U.S. Consulate in
27 Mexico instead; that visas are required to cross at a POE; and that asylum seekers
28

1 must obtain a “ticket” from a Mexican government agency (Grupo Beta) before
2 they will be allowed to enter the United States to seek asylum.

3 86. Class Plaintiffs A.D., B.D., D.D., I.D., and J.D. each experienced this
4 practice. D.D. and I.D. both were told asylum was no longer available in the
5 United States. A.D. was told that only the Mexican government could help her.
6 B.D. was told that the U.S. government had no obligation to help her and that she
7 had no right to enter the United States. J.D. was told, falsely, that he needed a visa
8 in order to apply for asylum.

9 **b. Use of Threats and Intimidation:**

10 87. CBP officials threaten and intimidate asylum seekers in the following
11 ways: threatening to take asylum seekers’ children away from them if they did not
12 leave the POE; threatening to detain and to deport asylum seekers to their home
13 countries if they persisted in their claims; threatening to call Mexican immigration or
14 otherwise turn asylum seekers over to the Mexican government if they do not leave
15 the POE; threatening to ban asylum seekers from the United States for life if they
16 continued to pursue asylum; and blocking asylum seekers from entering the CBP
17 office and threatening to let dogs loose if they did not leave the POE.

18 88. Class Plaintiffs A.D., B.D. and C.D. each experienced this practice
19 and were threatened that if they tried to cross and pursue their asylum claims, U.S.
20 government officials would take their children away or separate their families.
21 Additionally, D.D. was threatened that if she and her daughter returned to the POE,
22 they would be deported to Honduras. B.D. was told that if she returned to the
23 POE, she would be put in jail for three years.

24 **c. Use of Verbal and Physical Abuse:**

25 89. As part of their systematic practice of denying asylum seekers
26 arriving at POEs access to the U.S. asylum process, CBP officials also regularly
27 resort to verbal and even physical abuse.

28

1 90. For example, CBP officials have resorted to the following verbal and
2 physical abuse: grabbing an asylum seeker's six-year-old daughter's arm and
3 throwing her down onto the ground; holding a gun to an asylum seeker's back and
4 forcing her out of the POE; knocking a transgender asylum seeker to the ground
5 and stepping on her neck; telling an asylum seeker she was scaring her five-year-
6 old son by persisting in her request for asylum and accusing her of being a bad
7 mother; laughing at an asylum-seeking mother and her three children and mocking
8 the asylum seeker's thirteen-year-old son who has cerebral palsy; and yelling
9 profanities at an asylum-seeking mother and her five-year-old son, throwing her to
10 the ground, and forcefully pressing her cheek into the pavement.

11 91. Class Plaintiffs D.D. and B.D. both experienced this practice. One
12 CBP official pulled D.D. inside a gate at the POE to try to separate her from her
13 daughter. Later, as CBP officials escorted D.D. and her daughter out of the POE,
14 one of the CBP officials tried to drag D.D. by her arm. B.D. also experienced
15 rough treatment and cried out in pain when a CBP official forcefully searched her
16 for drugs.

17 **d. Use of Coercion:**

18 92. CBP officials resort to coercion to deny asylum seekers arriving at
19 POEs access to the U.S. asylum process, including: coercing asylum seekers into
20 recanting their fear on video; and coercing asylum seekers into withdrawing their
21 applications for admission to the United States.

22 93. Class Plaintiffs A.D., B.D. and C.D. each experienced this practice of
23 coercion. Each was coerced to sign a form, written in English and not translated,
24 which they did not understand, that stated they were voluntarily withdrawing their
25 claims for asylum on the grounds that they did not fear returning to Mexico. The
26 forms CBP officials coerced them to sign were and still are false: A.D., B.D. and
27 C.D. still have a grave fear of persecution in Mexico.

28

1 94. CBP officials’ use of various tactics, including misrepresentations,
2 threats and intimidation, verbal and physical abuse, and coercion, at the POEs
3 along the U.S.-Mexico border further evidence a systematic practice of denying
4 asylum seekers access to the U.S. asylum process.

5 95. The prevalence and persistence of CBP’s illegal practice has been
6 heavily documented by non-governmental organizations and other experts working
7 in the U.S.-Mexico border region.

8 96. In May 2017, Human Rights First, a respected non-governmental
9 organization, published an Exhaustive Report entitled, “Crossing the Line: U.S.
10 Border Agents Illegally Reject Asylum Seekers.”²⁹ In that report, Human Rights
11 First details firsthand accounts of CBP officials turning away asylum seekers
12 without referring them for further screening or immigration court proceedings at
13 POEs across the U.S.-Mexico border. The report details the following conduct:

- 14 a. CBP officials simply ignore requests by individuals to seek
15 asylum;
- 16 b. CBP officials give false information about U.S. laws and
17 procedures, such as saying that “the United States is not giving
18 asylum anymore” and “[President] Trump says we don’t have
19 to let you in”;
- 20 c. CBP officials mock and intimidate asylum seekers;
- 21 d. CBP officials impose a “gauntlet” and “charade” of procedures,
22 including a “ticketing” system, to discourage asylum seekers;
23 and
- 24 e. CBP officials coerce asylum seekers into denouncing any fear
25 of persecution.

26 97. Despite the complete lack of statistics or recordkeeping on CBP’s
27 failure to comply with the law, Human Rights First’s Report references more than

28 ²⁹ *See Crossing the Line, supra* note 22.

1 125 cases of CBP turning away individuals and families seeking asylum at POEs
2 along the U.S.-Mexico border between November 2016 and April 2017. This is
3 likely a small fraction of the number of asylum seekers being illegally denied
4 access to the asylum process.

5 98. In June 2017, Amnesty International, a non-profit human rights
6 organization, published a report on CBP's ongoing practice of turning away
7 asylum seekers at the U.S.-Mexico border entitled "Facing Walls: USA and
8 Mexico's Violations of the Rights of Asylum-Seekers."³⁰ In compiling the report,
9 Amnesty International interviewed more than 120 asylum seekers as well as
10 approximately 25 government officials and 40 civil society organizations. The
11 report documents numerous instances in which CBP officials denied asylum
12 seekers access to the asylum system at five different POEs along the U.S.-Mexico
13 border. The report details the following conduct:

- 14 a. CBP officials coerce asylum seekers into recanting their fear of
15 persecution on videotape and threaten to deport them back to
16 their home countries if they do not comply;
- 17 b. CBP officials tell asylum seekers that they will first have to get
18 a "ticket" from Mexican authorities before seeking asylum;
- 19 c. CBP officials coerce asylum seekers into signing a voluntary
20 return paper under the threat that, if they do not, then they will
21 be deported and will never be allowed into the United States;
22 and
- 23 d. CBP officials tell Mexican asylum seekers that there is no more
24 asylum for Mexicans.

25 99. From October 2016 to the present, the Women's Refugee
26 Commission, a non-profit organization that advocates for women and children
27 fleeing violence and persecution, has investigated and documented numerous

28 ³⁰ See *Facing Walls*, *supra* note 27.

1 instances in which CBP officials have turned asylum seekers away and refused to
2 process them at four POEs along the U.S.-Mexico border, including POEs in
3 Calexico, California; Nogales, Arizona; McAllen, Texas; and Laredo, Texas. The
4 Women's Refugee Commission has documented the following conduct:

- 5 a. CBP officials tell asylum seekers there is no space for them;
- 6 b. CBP officials tell asylum seekers that the policies have changed
7 and that they no longer qualify for asylum;
- 8 c. CBP officials threaten to call Mexican immigration authorities
9 to remove asylum seekers from the POEs;
- 10 d. CBP officials forcibly remove asylum seekers from the POEs;
11 and
- 12 e. CBP officials tell asylum seekers to go away.

13 100. From October 2016 through the present, the Project in Dilley, which
14 provides pro bono legal services to mothers and children detained at the South
15 Texas Family Residential Center in Dilley, Texas, has identified more than 50
16 asylum-seeking mothers who were turned away by CBP officials at POEs along
17 the U.S.-Mexico border, including POEs in San Ysidro, California; McAllen,
18 Texas; Laredo, Texas; and Eagle Pass, Texas. The Project in Dilley has
19 documented the following conduct:

- 20 a. CBP officials tell asylum seekers that asylum law is no longer
21 in effect;
- 22 b. CBP officials tell asylum seekers that they have orders to send
23 away everyone who is seeking asylum;
- 24 c. CBP officials tell asylum seekers they cannot seek asylum
25 because there is no more space;
- 26 d. CBP officials threaten to deport asylum seekers to their home
27 countries; and

28

1 e. CBP officials use physical force to remove asylum seekers from
2 POEs, including by handcuffing them, throwing them to the
3 ground, shoving them and dragging them out of the POEs.

4 101. Since December 2015, representatives of Plaintiff Al Otro Lado have
5 accompanied more than 160 asylum seekers to the San Ysidro POE. Several
6 representatives have witnessed firsthand and/or otherwise documented the tactics
7 employed by CBP to prevent asylum seekers from accessing the U.S. asylum
8 process. Al Otro Lado representatives have documented the following conduct:

- 9 a. CBP officials tell asylum seekers they have to apply for asylum
10 at the U.S. Consulate in Mexico;
- 11 b. CBP officials tell asylum seekers that they must first obtain a
12 “ticket” from Mexican immigration in order to seek asylum;
- 13 c. CBP officials tell asylum seekers that they are not processing
14 asylum seekers at that POE and they must go to another POE to
15 be processed;
- 16 d. CBP officials tell asylum seekers that they cannot seek asylum
17 at that time and must be put on a waiting list;
- 18 e. CBP officials tell asylum seekers that they do not qualify for
19 asylum; and
- 20 f. CBP officials coerce asylum seekers into withdrawing their
21 asylum claims, including by threatening that they will be
22 deported if they do not do so.

23 102. On January 13, 2017, various non-governmental organizations
24 submitted an administrative complaint to DHS’ Office for Civil Rights and Civil
25 Liberties (“CRCL”) and Office of Inspector General (“OIG”).³¹ The

26 _____
27 ³¹ See American Immigration Council, Complaint Re: U.S. Customs and
28 Border Protection’s Systemic Denial of Entry to Asylum Seekers at Ports of Entry
on U.S.-Mexico Border, 1-2 (Jan. 13, 2017), <https://www.>

1 administrative complaint provided specific examples of CBP turning away asylum
 2 seekers at POEs along the U.S.-Mexico border and urged CRCL and OIG to
 3 conduct a prompt and thorough investigation into this illegal practice and take
 4 swift corrective action.

5 103. Despite this administrative complaint, Defendants' illegal practice
 6 continues. In fact, CBP has acknowledged its illegal practice in sworn testimony
 7 before Congress. On June 13, 2017, in questioning before the House
 8 Appropriations Committee, the Executive Assistant Commissioner for CBP's OFO
 9 admitted that CBP officials were turning away asylum applicants at POEs along
 10 the U.S.-Mexico border.³²

11 V. LEGAL BACKGROUND

12 A. U.S. Law Requires that Individuals Be Provided a Meaningful 13 Opportunity to Seek Asylum in the United States

14 104. U.S. law requires CBP to give individuals who present themselves at a
 15 POE and express a desire to apply for asylum or a fear of persecution in their home
 16 countries the opportunity to seek protection in the United States.

17 105. Specifically, the Immigration and Nationality Act ("INA") and its
 18 implementing regulations set forth a variety of ways in which such individuals may
 19 seek protection in the United States. *See, e.g.*, 8 U.S.C. § 1157 (admission of
 20 refugees processed overseas); 8 U.S.C. § 1158 (asylum); 8 U.S.C. § 1231(b)(3)
 21 (restriction of removal to a country where individual's life or freedom would be
 22 threatened); 8 C.F.R. §§ 208.16-18 (protection under the Convention Against
 23 Torture).

24
 25 _____
 26 [americanimmigrationcouncil.org/sites/default/files/general_litigation/cbp_](http://americanimmigrationcouncil.org/sites/default/files/general_litigation/cbp_systemic_denial_of_entry_to_asylum_seekers_advocacy_document.pdf)
[systemic_denial_of_entry_to_asylum_seekers_advocacy_document.pdf](http://americanimmigrationcouncil.org/sites/default/files/general_litigation/cbp_systemic_denial_of_entry_to_asylum_seekers_advocacy_document.pdf).

27 ³² *Hearing on the Immigration and Customs Enforcement and Customs and*
 28 *Border Protection F.Y. 2018 Budgets*. Before the Subcomm. on Homeland Sec. of
 the H. Appropriations Comm., 115th Cong. (2017) (statement of John Wagner,
 Executive Assistant Comm'r for CBP's Office of Field Operations).

1 106. The INA provides that any noncitizen “who is physically present in
2 the United States or who arrives in the United States” has a statutory right to apply
3 for asylum, irrespective of such individual’s status. 8 U.S.C. § 1158(a)(1). The
4 INA also specifies processes that must be followed when an individual states a
5 desire to seek asylum or expresses a fear of returning to his or her home country.
6 *See* 8 U.S.C. § 1158(d)(1) (“The Attorney General shall establish a procedure for
7 the consideration of asylum applications filed [by individuals physically present in
8 the United States or who arrive in the United States].”). Under the INA, CBP must
9 either:

- 10 a. Refer the asylum seeker for a credible fear interview (*see* 8
11 U.S.C. § 1225(b)(1)); or
- 12 b. Place the asylum seeker directly into regular removal
13 proceedings by issuing a Notice to Appear (“NTA”), which will
14 then allow the asylum seeker to pursue his or her asylum claim
15 before an immigration judge (*see* 8 U.S.C. §§ 1125(b)(2), 1229,
16 1129a).

17 107. The U.S. government has admitted that the duty to allow a noncitizen
18 access to the asylum process is “not discretionary.” *See, e.g.*, Federal Defendant’s
19 Reply Brief in Support of Motion for Summary Judgment and Dismissal for Lack
20 of Jurisdiction, cited in *Munyua v. United States*, No. 03-4538, 2005 U.S. Dist.
21 LEXIS 11499, at *16-19 (N.D. Cal. Jan. 10, 2005) (“[D]efendant acknowledges
22 that [the immigration officers] did not have the discretion to ignore a clear
23 expression of fear of return or to coerce an alien into withdrawing an application
24 for admission”).

25 108. CBP is responsible for the day-to-day operation of POEs along the
26 U.S.-Mexico border. CBP’s obligations include inspecting and processing
27 individuals who present themselves at POEs to enable them to pursue their claims
28

1 for asylum in the United States. CBP officials themselves are not authorized to
2 evaluate, grant or reject an individual's asylum claim.

3 109. All noncitizens arriving at POEs along the U.S.-Mexico border must
4 be inspected by CBP officials. *See* 8 U.S.C. § 1225(a)(3) (“All [noncitizens] . . .
5 who are applicants for admission or otherwise seeking admission . . . **shall be**
6 **inspected** by immigration officers.”) (emphasis added). During inspection, CBP
7 officials must determine whether a noncitizen may be admitted to the United
8 States. *See* 8 U.S.C. § 1182(a) (specifying grounds of inadmissibility). In order to
9 make this determination, CBP scrutinizes an individual's entry documents. *See* 8
10 U.S.C. § 1181(a) (outlining documentation requirements for the admission of
11 noncitizens into the United States). Asylum seekers often flee their countries on
12 very short notice and thus frequently lack valid entry documents. Once a CBP
13 official makes a determination of inadmissibility, the individual becomes subject to
14 removal from the United States.

15 110. CBP officials must then place the noncitizen into either expedited
16 removal proceedings under 8 U.S.C. § 1225(b) or regular removal proceedings
17 under 8 U.S.C. § 1229.

18 111. Expedited removal proceedings involve a more streamlined process
19 than regular removal proceedings and are reserved for people apprehended at or
20 near the border. *See* 8 U.S.C. § 1225(b)(1)(A)(i) (permitting certain persons who
21 are seeking admission at the border to the United States to be expeditiously
22 removed without a full immigration judge hearing). However, Congress included
23 important safeguards in the expedited removal statute in an effort specifically to
24 protect asylum seekers.

25 112. The INA unequivocally states that if a noncitizen placed in expedited
26 removal proceedings “indicates either an intention to apply for asylum . . . or a fear
27 of persecution, the [CBP] officer **shall** refer the [noncitizen] for an interview by an
28 asylum officer.” 8 U.S.C. § 1225(b)(1)(A)(ii) (emphasis added). The requirement

1 to refer an asylum seeker placed in expedited removal proceedings to an asylum
2 officer is mandatory.

3 113. Likewise, the applicable regulations promulgated under the INA
4 reinforce that if an individual in expedited removal proceedings asserts an intention
5 to apply for asylum or a fear of persecution, then “the inspecting officer *shall not*
6 proceed further with removal of the [noncitizen] until the [noncitizen] has been
7 referred for an interview by an asylum officer.” 8 C.F.R. § 235.3(b)(4) (emphasis
8 added).

9 114. Importantly, CBP officials must read a form to noncitizens subject to
10 expedited removal advising them of their right to speak to an asylum officer if they
11 express a desire to apply for asylum or a fear of returning to their home countries.
12 See 8 C.F.R. § 235.3(b)(2)(i); DHS Form I-867A.

13 115. Affirming that the CBP officials themselves are not authorized to
14 adjudicate asylum claims, the regulations specifically charge *asylum officers* from
15 U.S. Citizenship and Immigration Services with making initial determinations as to
16 whether there is a “significant possibility” that an individual can establish
17 eligibility for asylum. See 8 C.F.R. § 235.3(b)(4); see also 8 U.S.C.
18 § 1225(b)(1)(B)(ii). This is because asylum officers are trained in the often
19 complicated and evolving law surrounding asylum, and thus are uniquely
20 positioned to conduct such interviews, which themselves require particular
21 interviewing and assessment skills as well as comprehension of the social and
22 political contexts from which asylum seekers flee. In fact, the INA specifically
23 defines “asylum officer” as an immigration officer who “has had professional
24 training in country conditions, asylum law, and interview techniques comparable to
25 that provided to full-time adjudicators of applications under section 1158.” 8
26 U.S.C. § 1225(b)(1)(E).

27 116. Applicants who establish that they have a “significant possibility” of
28 proving their eligibility for asylum receive positive credible fear determinations.

1 They are taken out of the expedited removal system altogether and placed into
2 regular removal proceedings, where they have the opportunity to submit an asylum
3 application, develop a full record before an Immigration Judge, appeal to the Board
4 of Immigration Appeals and seek judicial review of an adverse decision. 8 U.S.C.
5 § 1225(b)(1)(B)(ii); 8 C.F.R. §§ 235.6(a)(1)(ii), (iii).

6 117. Alternatively, CBP officials may place noncitizens directly into
7 regular removal proceedings by issuing an NTA. 8 U.S.C. §§ 1225(b)(2),
8 1229(a)(1), 1229a. Once in regular removal proceedings, the asylum seeker can
9 submit an asylum application and must receive a full hearing before an
10 Immigration Judge, file an administrative appeal with the Board of Immigration
11 Appeals and seek judicial review. 8 U.S.C. § 1229a(a)(1) (“An immigration judge
12 shall conduct proceedings for deciding the inadmissibility or deportability of an
13 alien.”).

14 118. Despite these prescribed procedures, CBP regularly employs a variety
15 of egregious tactics (including those described above) that have one unlawful
16 result: depriving Class Plaintiffs, and the asylum seekers they represent, of *any*
17 access to the asylum process, and stripping them of their right to seek asylum
18 under U.S. law.

19 **B. Defendants Have No Authority Under the INA to Turn a**
20 **Noncitizen Seeking Admission Away at a POE**

21 119. CBP’s authority is limited to that granted by Congress in the INA.
22 Nothing in the INA authorizes Defendants, through their officers and employees,
23 to turn away a noncitizen who seeks admission at a POE.

24 120. When inspecting a noncitizen who arrives at a POE, CBP officials
25 must follow the procedures mandated by Congress in 8 U.S.C. § 1225. Pursuant to
26 this section, CBP officials are limited to the following possible actions with respect
27 to any arriving noncitizen who is not clearly and beyond a doubt entitled to be
28 admitted:

- 1 a. Place arriving noncitizens who are inadmissible under one of
- 2 two grounds specified by statute in expedited removal
- 3 proceedings pursuant to 8 U.S.C. § 1225(b)(1)(A)(i);
- 4 b. Refer any noncitizen placed in expedited removal proceedings
- 5 who expresses either an intent to apply for asylum or a fear of
- 6 persecution if returned to his or her home country to an asylum
- 7 officer for a credible fear interview pursuant to 8 U.S.C.
- 8 §§ 1225(b)(1)(A)(ii), 1225(b)(1)(B);
- 9 c. Place “other” arriving noncitizens (*i.e.*, those who are not
- 10 placed in expedited removal proceedings under 8 U.S.C.
- 11 § 1225(b)(1)(A) and who are neither crewmen or stowaways) in
- 12 removal proceedings under 8 U.S.C. § 1229a pursuant to 8
- 13 U.S.C. § 1225(b)(2);
- 14 d. Follow other removal procedures with respect to noncitizens
- 15 suspected of being inadmissible on terrorism or related security
- 16 grounds pursuant to 8 U.S.C. § 1225(c); or
- 17 e. Accept from the noncitizen a voluntary (*i.e.*, non-coerced)
- 18 withdrawal of her application for admission pursuant to 8
- 19 U.S.C. § 1225(a)(4) and 8 C.F.R. § 235.4.

20 121. Defendants, through their officers and employees, act without
21 authority and in violation of the law when they turn away an individual at a POE.

22 **C. Class Plaintiffs Are Entitled to Procedural Due Process Rights**
23 **Under the Fifth Amendment to the U.S. Constitution**

24 122. The Due Process Clause of the Fifth Amendment to the U.S.
25 Constitution prohibits the federal government from depriving any person of “life,
26 liberty, or property, without due process of law.” U.S. Const. Amend. V. In
27 addition, where Congress has granted statutory rights and has directed an agency to
28 establish a procedure for providing such rights, the Constitution requires the

1 government to establish a fair procedure and to abide by that procedure. In the
2 asylum context, U.S. law mandates that asylum seekers be provided with such
3 process. Multiple courts have recognized that such procedural rights are critical in
4 the asylum context and can result in life or death decisions, because applicants
5 wrongly denied asylum can be subject to death or other serious harm in their home
6 countries. *See, e.g., Marincas v. Lewis*, 92 F.3d 195, 203 (3d Cir. 1996) (“The
7 basic procedural rights Congress intended to provide asylum applicants . . . are
8 particularly important because an applicant erroneously denied asylum could be
9 subject to death or persecution if forced to return to his or her home country.”).

10 123. The INA and its implementing regulations provide Class Plaintiffs
11 with the right to be processed at a POE and granted access to the asylum process.
12 *See, e.g.,* 8 U.S.C. §§ 1158(a)(1), 1225(a)(3), 1225(b)(1)(A)(ii), 1225(b)(1)(B),
13 1225(b)(2). By systematically turning away asylum seekers presenting themselves
14 at POEs along the U.S.-Mexico border and thus denying them access to the asylum
15 process, Defendants have failed to comply with the due process procedures for
16 processing asylum seekers under the INA and its implementing regulations.

17 **D. The Non-Refoulement Doctrine Under International Law**
18 **Requires Implementation and Adherence to a Procedure to**
19 **Access Asylum**

20 124. The United States is obligated by a number of treaties and protocols to
21 adhere to the duty of *non-refoulement* – a duty that prohibits a country from
22 returning or expelling an individual to a country where he or she has a well-
23 founded fear of persecution and/or torture.

24 125. The primary treaty source for the duty of *non-refoulement* is the 1951
25 Convention on the Rights of Refugees. Article 33 of the Convention prohibits a
26 state from returning “a refugee in any manner whatsoever to the frontiers of
27 territories where his life or freedom would be threatened on account of his race,
28 religion, nationality, membership of a particular social group or political opinion.”

1 1951 Refugee Convention, Art. 33. The United States adopted the protections of
2 Article 33 by signing onto the 1967 Protocol Relating to the Status of Refugees,
3 which incorporated Articles 2-34 of the 1951 Convention.

4 126. The prohibition against *refoulement* is likewise central to other
5 treaties ratified by the United States, including the International Covenant on Civil
6 and Political Rights (“ICCPR”) and the Convention Against Torture (“CAT”), both
7 of which prohibit returning an individual to harm and obligate the United States to
8 implement and follow legal procedures to protect refugees’ right to *non-*
9 *refoulement*. See ICCPR, Art. 13; CAT, Art. 3.

10 127. In order to effectuate an asylum seeker’s right to *non-refoulement*, the
11 United States is obligated to implement and follow procedures to ensure that his or
12 her request for asylum be duly considered. The United States implemented this
13 legal obligation with the passage of the 1980 Refugee Act, which established a
14 procedure for a noncitizen physically present in the United States or at a land
15 border or POE to apply for asylum. See Refugee Act of 1980, Pub. L. No. 96-212,
16 § 201(b), 94 Stat. 102 (1980).

17 128. In practice, the duty of *non-refoulement* covers not only those
18 refugees and asylum seekers already present inside the country, but also those who
19 present themselves at POEs along the U.S. border. The duty requires U.S. officials
20 such as Defendants to consider the claims of those seeking to cross the U.S. border
21 and not to deny them access to a lawful process to present a claim for asylum.

22 129. The norm of *non-refoulement* is specific, universal and obligatory. It
23 is so widely accepted that it has reached the status of *jus cogens* – a norm not
24 subject to derogation. Indeed, in 1996, the United Nations Executive Committee
25 on the International Protection of Refugees explicitly concluded that the *non-*
26 *refoulement* principle had achieved the status of a norm “not subject to
27 derogation.” Executive Committee Conclusion No. 79, *General Conclusion on*
28 *International Protection* (1996). The principle was recognized as such in the 1984

1 Cartagena Declaration on Refugees; was included in a portion of the Refugee
2 Convention from which derogation is not permitted; and has been recognized by
3 bodies, including the Inter-American Commission on Human Rights and the
4 Organization of American States General Assembly.

5 130. Defendants' actions to deny Class Plaintiffs, and the asylum seekers
6 they represent, access to the U.S. asylum process violate their binding and
7 enforceable obligations under international law.

8 **VI. CLASS ACTION ALLEGATIONS**

9 131. Class Plaintiffs bring this action pursuant to Federal Rules of Civil
10 Procedure 23(a) and 23(b)(2) on behalf of themselves and all other persons
11 similarly situated. The proposed class is defined as follows:

12 All noncitizens who present themselves at a POE along the U.S.-
13 Mexico border, assert an intention to seek asylum or express a fear of
14 persecution in their home countries, and are denied access to the U.S.
15 asylum process by CBP officials.

16 132. The class is so numerous that joinder of all members is impracticable.
17 CBP's misconduct toward asylum seekers at POEs along the U.S.-Mexico border
18 has been the focus of monitoring, reporting and advocacy by numerous well-
19 respected non-governmental organizations. These organizations have investigated
20 and documented hundreds of examples of asylum seekers being turned away by
21 CBP officials. Many more asylum seekers have likely been the victims of this
22 unlawful conduct as these abuses often go unreported. Asylum seekers who are
23 turned away at the border are continuously moving and relocating, also making
24 joinder impracticable.

25 133. There are questions of law and fact that are common to the class. The
26 class alleges common harms: a violation of the class members' statutory right to
27 access the U.S. asylum process, procedural due process rights and right not to be
28 returned to countries where they fear persecution. The class members' entitlement

1 to these rights is based on a common core of facts. All members of the proposed
2 class have expressed a fear of return to their home countries or a desire to apply for
3 asylum. These facts entitle all of them to the opportunity to seek asylum. Yet each
4 class member has been and likely will again be unlawfully denied access to the
5 U.S. asylum process by CBP. Moreover, all class members raise the same legal
6 claims: that U.S. immigration laws and the Constitution require CBP officials at
7 POEs to give them access to the asylum process. Their shared common facts will
8 ensure that judicial findings regarding the legality of the challenged practices will
9 be the same for all class members. Should Class Plaintiffs prevail, *all* class
10 members will benefit; each of them will be entitled to a lawful inspection at a POE
11 along the U.S.-Mexico border and an opportunity to seek asylum.

12 134. Class Plaintiffs' claims are typical of the claims of the class. Class
13 Plaintiffs and class members raise common legal claims and are united in their
14 interest and injury. All Class Plaintiffs, like all class members, are asylum seekers
15 to whom CBP officials unlawfully denied access to the U.S. asylum process after
16 they presented themselves at POEs along the U.S.-Mexico border. Class Plaintiffs
17 and class members are thus victims of the same, unlawful course of conduct.

18 135. Class Plaintiffs are adequate representatives. Class Plaintiffs seek
19 relief on behalf of the class as a whole and have no interest antagonistic to other
20 members of the class. Class Plaintiffs' mutual goal is to declare Defendants'
21 challenged policies and practices unlawful and to obtain declaratory and injunctive
22 relief that would cure this illegality. Class Plaintiffs seek a remedy for the same
23 injuries as the class members, and all share an interest in having a meaningful
24 opportunity to seek asylum. Thus, the interests of the Class Plaintiffs and of the
25 class members are aligned.

26 136. Class Plaintiffs are represented by attorneys from the American
27 Immigration Council, the Center for Constitutional Rights and Latham & Watkins
28 LLP. Counsel have a demonstrated commitment to protecting the rights and

1 interests of noncitizens and, together, have considerable experience in handling
2 complex and class action litigation in the immigration field. Counsel have
3 represented numerous classes of immigrants and other victims of systematic
4 government misconduct in actions in which they successfully obtained class relief.

5 137. Defendants have acted or refused to act on grounds that are generally
6 applicable to Class Plaintiffs and the class. Defendants have failed to provide
7 Class Plaintiffs and class members with access to the U.S. asylum process.
8 Defendants' actions violate Class Plaintiffs' and class members' statutory,
9 regulatory and constitutional rights to access to the asylum process. Declaratory
10 and injunctive relief are appropriate remedies.

11 138. In the absence of a class action, there is substantial risk that individual
12 actions would be brought in different venues, creating a risk of inconsistent
13 injunctions to address Defendants' common conduct.

14 **FIRST CLAIM FOR RELIEF**

15 **DECLARATORY RELIEF**

16 **AGAINST ALL DEFENDANTS**

17 **(VIOLATION OF THE RIGHT TO SEEK ASYLUM UNDER THE**
18 **IMMIGRATION AND NATIONALITY ACT)**

19 139. Al Otro Lado and Class Plaintiffs reallege and incorporate by
20 reference each and every allegation contained in the preceding paragraphs as if set
21 forth fully herein.

22 140. INA § 208(a)(1) (8 U.S.C. § 1158(a)(1)) gives any noncitizen who is
23 physically present in or who arrives in the United States a statutory right to seek
24 asylum, regardless of such individual's immigration status.

25 141. When a noncitizen presents himself or herself at a POE and indicates
26 an intention to apply for asylum or a fear of persecution, CBP officials must refer
27 the noncitizen for a credible fear interview under 8 U.S.C. § 1225(b)(1)(A)(ii) and
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1 8 C.F.R. § 235.3(b)(4), or, in accordance with 8 U.S.C. § 1225(b)(2), place the
2 noncitizen directly into regular removal proceedings under 8 U.S.C. § 1229(a)(1).

3 142. Class Plaintiffs presented themselves at U.S. POEs along the U.S.-
4 Mexico border and asserted an intention to apply for asylum and/or a fear of
5 persecution in their countries of origin. Nevertheless, CBP officials did not refer
6 Class Plaintiffs to an asylum officer for credible fear interviews pursuant to 8
7 U.S.C. § 1225(b)(1)(A)(ii), or, in accordance with 8 U.S.C. § 1225(b)(2), place
8 Class Plaintiffs directly into regular removal proceedings pursuant to 8 U.S.C.
9 § 1229(a)(1).

10 143. Instead, in direct contravention of the INA, CBP officials engaged in
11 unlawful tactics that prevented Class Plaintiffs from accessing the statutorily
12 prescribed asylum process and forced them to return to Mexico.

13 144. CBP officials' treatment of Class Plaintiffs at the U.S.-Mexico border
14 was inflicted at the instigation, under the control or authority, or with the
15 knowledge, consent, direction or acquiescence of Defendants.

16 145. As a result of Defendants' violations of the INA, Class Plaintiffs have
17 been damaged – through the denial of access to the asylum process and by being
18 forced to return to Mexico or other countries where they face threats of further
19 persecution.

20 146. As a result of Defendants' violations of the INA, Plaintiff Al Otro
21 Lado has been damaged – namely its core mission has been frustrated and it has
22 been forced to divert substantial resources away from its programs to counteract
23 CBP's unlawful practices at POEs along the U.S.-Mexico border.

24 147. Defendants' practices have resulted and will continue to result in
25 irreparable injury, including a continued risk of violence and serious harm to Class
26 Plaintiffs and further violations of their statutory rights. Class Plaintiffs and Al
27 Otro Lado do not have an adequate remedy at law to redress the violations alleged
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1 herein, and therefore seek injunctive relief restraining Defendants from continuing
2 to engage in the unlawful practices and policies alleged herein.

3 148. Pursuant to Federal Rule of Civil Procedure 57 and 28 U.S.C. §§ 2201
4 and 2202, this Court may declare the rights or legal relations of any party in any
5 case involving an actual controversy.

6 149. An actual controversy has arisen and now exists between Class
7 Plaintiffs and Al Otro Lado, on one hand, and Defendants, on the other. Class
8 Plaintiffs and Al Otro Lado contend that Defendants' conduct and practices, as
9 alleged in this Complaint, violate the INA. On information and belief, Defendants
10 contend that the conduct and practices are lawful.

11 150. Class Plaintiffs and Al Otro Lado therefore request and are entitled to
12 a judicial determination as to the rights and obligations of the parties with respect
13 to this controversy, and such a judicial determination of these rights and
14 obligations is necessary and appropriate at this time.

15 **SECOND CLAIM FOR RELIEF**

16 **DECLARATORY RELIEF**

17 **AGAINST ALL DEFENDANTS**

18 **(VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT)**

19 151. Al Otro Lado and Class Plaintiffs reallege and incorporate by
20 reference each and every allegation contained in the preceding paragraphs as if set
21 forth fully herein.

22 152. The Administrative Procedure Act ("APA") (5 U.S.C. § 551, *et. seq.*)
23 authorizes suits by "[a] person suffering legal wrong because of agency action, or
24 adversely affected or aggrieved by agency action within the meaning of a relevant
25 statute." 5 U.S.C. § 702. The APA also provides relief for a failure to act: "The
26 reviewing court shall . . . compel agency action unlawfully withheld or
27 unreasonably delayed." 5 U.S.C. § 706(1).

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1 153. CBP officials have failed to take actions mandated by the following
2 statutes and implementing regulations in violation of the APA:

- 3 • 8 U.S.C. § 1158(a)(1) (“Any alien who is physically present in the
4 United States or who arrives in the United States . . . irrespective of
5 such alien’s status, *may apply for asylum*. . . .”) (emphasis added);
- 6 • 8 U.S.C. § 1225(a)(1)(3) (“All aliens . . . who are applicants for
7 admission or otherwise seeking admission or readmission to or
8 transit through the United States *shall be inspected by*
9 *immigration officers*.”) (emphasis added);
- 10 • 8 U.S.C. § 1225(b)(1)(A)(ii) (“If an immigration officer
11 determines that an alien . . . who is arriving in the United States . . .
12 is inadmissible . . . and the alien indicates either an intention to
13 apply for asylum under section 1158 of this title or a fear of
14 persecution, *the officer shall refer the alien for an interview by an*
15 *asylum officer*. . . .”) (emphasis added);
- 16 • 8 U.S.C. § 1225(b)(2) (“[I]n the case of an alien who is an
17 applicant for admission, if the examining immigration officer
18 determines that an alien seeking admission is not clearly and
19 beyond a doubt entitled to be admitted, the alien shall be detained
20 for a proceeding under section 1229a of this title.”);
- 21 • 8 C.F.R. § 235.3(b)(4) (“[T]he inspecting officer *shall not proceed*
22 *further* with removal of the alien *until the alien has been referred*
23 *for an interview by an asylum officer*. . . .”) (emphasis added); and
- 24 • 8 C.F.R. § 235.4 (“The alien’s decision to withdraw his or her
25 application for admission must be made voluntarily”).

26 154. In addition, CBP officials have acted in excess of their statutorily
27 prescribed authority and without observance of the procedures required by law in
28 violation of the APA. *See* 5 U.S.C. §§ 706(2)(C), (D). Congress mandated the

1 various procedures that Defendants are authorized to follow when inspecting
2 individuals who seek admission at POEs. *See* 8 U.S.C. § 1225. None of these
3 procedures authorizes a CBP official to turn back a noncitizen seeking asylum at a
4 POE.

5 155. In turning Class Plaintiffs and purported class members away at POEs
6 along the U.S.-Mexico border without following the procedures mandated by the
7 INA, CBP officials have acted and continue to act in excess of the authority
8 granted them by Congress and without observance of procedure required by law.

9 156. CBP's treatment of Class Plaintiffs at the U.S.-Mexico border was
10 inflicted at the instigation, under the control or authority, or with the knowledge,
11 consent, direction or acquiescence of Defendants.

12 157. Defendants' repeated and pervasive failure to act and the actions taken
13 in excess of their authority, which denied Class Plaintiffs access to the statutorily
14 prescribed asylum process, constitute unlawfully withheld or unreasonably delayed
15 agency action, is arbitrary and capricious, an abuse of discretion, and otherwise not
16 in accordance with the law, and therefore gives rise to federal jurisdiction and
17 mandates relief under the APA.

18 158. As a result of the acts constituting violations of the APA, Class
19 Plaintiffs have been damaged through the denial of access to the asylum process
20 and by being forced to return to Mexico or other countries where they face threats
21 of further persecution.

22 159. As a result of the acts constituting violations of the APA, Plaintiff Al
23 Otro Lado has been damaged – namely, its core mission has been frustrated and it
24 has been forced to divert substantial resources away from its programs to
25 counteract CBP's unlawful practices at POEs along the U.S.-Mexico border.

26 160. Defendants' practices have resulted and will continue to result in
27 irreparable injury, including a continued risk of violence and serious harm to Class
28 Plaintiffs and further violations of their statutory and regulatory rights. Class

1 Plaintiffs and Al Otro Lado do not have an adequate remedy at law to redress the
2 violations alleged herein, and therefore seek injunctive relief restraining
3 Defendants from continuing to engage in the unlawful practices alleged herein.

4 161. Al Otro Lado and Class Plaintiffs have exhausted all available
5 administrative remedies and have no adequate remedy at law.

6 162. Pursuant to Federal Rule of Civil Procedure 57 and 28 U.S.C. §§ 2201
7 and 2202, this Court may declare the rights or legal relations of any party in any
8 case involving an actual controversy.

9 163. An actual controversy has arisen and now exists between Class
10 Plaintiffs and Al Otro Lado, on one hand, and Defendants, on the other. Class
11 Plaintiffs and Al Otro Lado contend that Defendants' conduct and practices, as
12 alleged in this Complaint, violate the APA. On information and belief, Defendants
13 contend that the conduct and practices are lawful.

14 164. Class Plaintiffs and Al Otro Lado therefore request and are entitled to
15 a judicial determination as to the rights and obligations of the parties with respect
16 to this controversy, and such a judicial determination of these rights and
17 obligations is necessary and appropriate at this time.

18 **THIRD CLAIM FOR RELIEF**

19 **DECLARATORY RELIEF**

20 **AGAINST ALL DEFENDANTS**

21 **(VIOLATION OF PROCEDURAL DUE PROCESS)**

22 165. Al Otro Lado and Class Plaintiffs reallege and incorporate by
23 reference each and every allegation contained in the preceding paragraphs as if set
24 forth fully herein.

25 166. The Due Process Clause of the Fifth Amendment to the U.S.
26 Constitution prohibits the federal government from depriving any person of "life,
27 liberty, or property, without due process of law." U.S. Const. Amend. V.

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1 167. Congress has granted certain statutory rights to asylum seekers, such
2 as Class Plaintiffs and the asylum seekers they represent, and has directed DHS to
3 establish a procedure for providing such rights. The Due Process Clause thus
4 requires the government to establish a fair procedure and to abide by that
5 procedure.

6 168. As set forth above, the INA and its implementing regulations provide
7 Class Plaintiffs the right to be processed at a POE and granted access to the asylum
8 process. *See* 8 U.S.C. §§ 1158(a)(1), 1225(a)(3), 1225(b)(1)(A)(ii), 1225(b)(1)(B),
9 1225(b)(2); *see also* 8 C.F.R. § 235.3(b)(4).

10 169. By using a variety of tactics to turn away asylum seekers at POEs
11 along the U.S.-Mexico border, CBP officials have denied Class Plaintiffs access to
12 the asylum process and failed to comply with procedures set forth in the INA and
13 its implementing regulations.

14 170. CBP officials' treatment of Class Plaintiffs at the U.S.-Mexico border
15 was inflicted at the instigation, under the control or authority, or with the
16 knowledge, consent, direction or acquiescence of Defendants.

17 171. By denying Class Plaintiffs access to the asylum process, Defendants
18 have violated Class Plaintiffs' procedural due process rights under the Fifth
19 Amendment to the U.S. Constitution.

20 172. As a result of the Defendants' violations of the Fifth Amendment to
21 the U.S. Constitution, Class Plaintiffs have been damaged through the denial of
22 access to the asylum process and by being forced to return to Mexico or other
23 countries where they face threats of further persecution.

24 173. As a result of Defendants' violations of the Fifth Amendment to the
25 U.S. Constitution, Al Otro Lado has been damaged – namely, its core mission has
26 been frustrated and it has been forced to divert substantial resources away from its
27 programs to counteract CBP's unlawful practices at POEs along the U.S.-Mexico
28 border.

1 which forbids a country from returning or expelling an individual to a country
2 where he or she has a well-founded fear of persecution and/or torture.

3 179. CBP officials' treatment of Class Plaintiffs at the U.S.-Mexico border
4 was inflicted at the instigation, under the control or authority, or with the
5 knowledge, consent, direction or acquiescence of Defendants.

6 180. Defendants' conduct is actionable under the Alien Tort Statute, 28
7 U.S.C. § 1350, which authorizes declaratory and injunctive relief.

8 181. As a result of the acts constituting violations of the *jus cogens* norm of
9 *non-refoulement*, Class Plaintiffs have been damaged through denial of access to
10 the asylum process and by being forced to return to Mexico or other countries
11 where they face threats of further persecution.

12 182. As a result of the acts constituting violations of the norm of *non-*
13 *refoulement*, Al Otro Lado has been damaged – namely, its core mission has been
14 frustrated and it has been forced to divert substantial resources away from its
15 programs to counteract CBP's unlawful practices at POEs along the U.S.-Mexico
16 border.

17 183. Defendants' practices have resulted and will continue to result in
18 irreparable injury, including a continued risk of violence and serious harm to Class
19 Plaintiffs and further denials of the protections afforded to them under international
20 law. Class Plaintiffs and Al Otro Lado do not have an adequate remedy at law to
21 redress the violations alleged herein, and therefore seek injunctive relief restraining
22 Defendants from engaging in the unlawful conduct and practices alleged herein.

23 184. An actual controversy exists between Class Plaintiffs and Al Otro
24 Lado, on one hand, and Defendants, on the other. Class Plaintiffs and Al Otro
25 Lado contend that Defendants' conduct and practices, as alleged in this Complaint,
26 violate the norm of *non-refoulement*. On information and belief, Defendants
27 contend that the conduct and practices are lawful.

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behalf, from engaging in the unlawful policies, practices, acts and/or omissions described herein at POEs along the U.S.-Mexico border;

g. Issue injunctive relief requiring Defendants to implement procedures to provide effective oversight and accountability in the inspection and processing of individuals who present themselves at POEs along the U.S.-Mexico border and indicate an intention to apply for asylum or assert a fear of persecution in their home countries;

h. Award Plaintiffs their reasonable attorneys’ fees, costs and other expenses pursuant to 28 U.S.C. § 2412, and other applicable law; and

i. Grant any and all such other relief as the Court deems just and equitable.

Dated: July 12, 2017

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