

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

ANDRÉS OSWALDO BOLLAT VASQUEZ, individually and as next friend to Luisa Marisol Vasquez Perez de Bollat, and as father and next friend to A.B., LUISA MARISOL VASQUEZ PEREZ DE BOLLAT, JOSÉ MANUEL URIAS MARTINEZ, individually and as next friend to Rosa Maria Martinez de Urias, ROSA MARIA MARTINEZ DE URIAS, SALOMÉ OLMOS LÓPEZ, individually and as next friend to Evila Floridalma Colaj Olmos and J.C., EVILA FLORIDALMA COLAJ OLMOS, JORGE ALBERTO GUEVARA DIAZ, individually and as next friend to Nora Idalia Alvarado Reyes, and as father and next friend to J.G., S.G., and M.G., NORA IDALIA ALVARADO REYES, MATEO LÓPEZ, individually and as next friend to Hermes Arnulfo López Merino, María de la Cruz Abarca de López, T.L., D.L., and A.L., HERMES ARNULFO LÓPEZ MERINO, MARÍA DE LA CRUZ ABARCA DE LÓPEZ, ROSI LISBETH ZUNIGA POSADAS, individually and as next friend to Miriam Yanett Zuniga Posadas, G.Z., D.Z., and K.Z., and MIRIAM YANETT ZUNIGA POSADAS,

Plaintiffs,

v.

ALEJANDRO MAYORKAS, Secretary of Homeland Security, TROY A. MILLER, Commissioner, U.S. Customs and Border Protection, UR MENDOZA JADDOU, Director, U.S. Citizenship and Immigration Services, TAE D. JOHNSON, Acting Director, U.S. Immigration and Customs Enforcement, MERRICK B. GARLAND, Attorney General, JOSPEH R. BIDEN, JR., President,

Defendants.

No. 20-cv-10566-IT

**DEFENDANTS'
ANSWER TO
PLAINTIFFS' FIRST
AMENDED
COMPLAINT**

Defendants, by and through their attorney, Nathaniel R. Mendell, Acting United States Attorney for the District of Massachusetts, respectfully submit the following Answer to Plaintiffs' First Amended Complaint.

ANSWER¹

By way of general response, all allegations made or intended to be made against Defendants are denied unless specifically admitted, and any factual averment admitted is admitted only as to the specific facts and not as to any conclusions, characterizations, implications, or speculations stated, incorporated, or implied in connection therewith. The foregoing is incorporated into each paragraph of this Answer.

Defendants respond as follows to the individual paragraphs set forth in the Amended Complaint:

INTRODUCTION²

1. The allegations in Paragraph 1 consist of Plaintiffs' characterizations of this lawsuit, to which no response is required.
2. Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 2.
3. The allegations in Paragraph 3 consist of Plaintiffs' characterizations of this lawsuit, to which no response is required. Additionally, the allegations in Paragraph 3 are an opinion to which Defendants lack sufficient knowledge or information to admit or deny.

¹ The allegations in Plaintiffs' First Amended Complaint concern the Migrant Protection Protocols (MPP), a program that existed from January 25, 2019 to June 1, 2021. All admissions and denials are based on MPP as it existed between January 25, 2019 and June 1, 2021.

² For ease of reference, Defendants refer to Plaintiff's headings and titles, but to the extent those headings and titles could be construed to contain factual allegations, those allegations are denied.

4. The allegations in Paragraph 4 consist of Plaintiffs' characterizations of this lawsuit, to which no response is required. Additionally, the allegations in Paragraph 4 are an opinion to which Defendants lack sufficient knowledge or information to admit or deny.

5. The allegations in Paragraph 5 consist of Plaintiffs' characterizations of this lawsuit, to which no response is required.

6. The allegations in Paragraph 6 are legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 6.

PARTIES

7. Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 7.

8. Defendants admit that A.B. was returned to Mexico pursuant to MPP in September 2019. Defendants further admit he was processed out of MPP on May 15, 2020, pursuant to the Court's May 14, 2020 Order. Defendants lack sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 8.

9. Defendants admit that Luisa Marisol Vasquez Perez de Bollat was returned to Mexico pursuant to MPP in September 2019. Defendants further admit she was processed out of MPP on May 15, 2020, pursuant to the Court's May 14, 2020 Order. Defendants lack sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 9.

10. Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 10.

11. Defendants admit that Rosa Maria Martinez de Urias was returned to Mexico pursuant to MPP in September 2019 and January 2020. Defendants further admit she was processed out of MPP in May 2020, pursuant to the Court's May 14, 2020 Order. Defendants lack sufficient knowledge or information to admit or deny the remaining allegations in

Paragraph 11.

12. Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 12.

13. Defendants admit J.C. was returned to Mexico pursuant to MPP in July 2019. Defendants further admit she was processed out of MPP in May 2020, pursuant to the Court's May 14, 2020 Order. Defendants lack sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 13.

14. Defendants admit Evila Floridalma Colaj Olmos was returned to Mexico pursuant to MPP in July 2019. Defendants further admit she was processed out of MPP in May 2020, pursuant to the Court's May 14, 2020 Order. Defendants lack sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 14.

15. Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 15.

16. Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 16.

17. Defendants admit that S.G. was processed out of MPP in October 2020. Defendants lack sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 17.

18. Defendants admit that M.G. was processed out of MPP in October 2020. Defendants lack sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 18.

19. Defendants admit Nora Idalia Alvarado Reyes was returned to Mexico pursuant to MPP. Defendants further admit she was processed out of MPP in February 2021, pursuant to the Court's February 13, 2021 Order. Defendants lack sufficient knowledge or information to

admit or deny the remaining allegations in Paragraph 19.

20. Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 20.

21. Defendants admit Hermes Arnulfo Lopez Merino was returned to Mexico pursuant to MPP. Defendants further admit he was processed out of MPP in February 2021, pursuant to the Court's February 13, 2021 Order. Defendants lack sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 21.

22. Defendants admit Maria de la Cruz Abarca de Lopez was returned to Mexico pursuant to MPP. Defendants further admit she was processed out of MPP in February 2021, pursuant to the Court's February 13, 2021 Order. Defendants lack sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 22.

23. Defendants admit T.L. was returned to Mexico pursuant to MPP. Defendants further admit she was processed out of MPP in February 2021, pursuant to the Court's February 13, 2021 Order. Defendants lack sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 23.

24. Defendants admit D.L. was returned to Mexico pursuant to MPP. Defendants further admit she was processed out of MPP in February 2021, pursuant to the Court's February 13, 2021 Order. Defendants lack sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 24.

25. Defendants admit A.L. was returned to Mexico pursuant to MPP. Defendants further admit she was processed out of MPP in February 2021, pursuant to the Court's February 13, 2021 Order. Defendants lack sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 25.

26. Defendants lack sufficient knowledge or information to admit or deny the

allegations in Paragraph 26.

27. Defendants admit that G.Z. was processed out of MPP in September 2020.

Defendants lack sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 27.

28. Defendants admit that D. Z. was processed out of MPP in September 2020.

Defendants lack sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 28.

29. Defendants admit that K.Z. was processed out of MPP in September 2020.

Defendants lack sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 29.

30. Defendants admit Miriam Yanett Zuniga Posadas was returned to Mexico pursuant to MPP. Defendants further admit she was processed out of MPP in February 2021, pursuant to the Court's February 13, 2021 Order. Defendants lack sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 30.

31. Defendants admit that Alejandro Mayorkas, who has been substituted as the proper defendant in this action in place of Chad F. Wolf pursuant to Federal Rule of Civil Procedure 25(d), is the Secretary of Homeland Security. Defendants admit that the Department of Homeland Security (DHS) is a cabinet level agency. Defendants further admit Secretary Mayorkas is sued in his official capacity.

32. Defendants admit that Troy A. Miller, who has been substituted as the proper defendant in this action in place of Mark A. Morgan pursuant to Federal Rule of Civil Procedure 25(d), is the Commissioner of U.S. Customs and Border Protection (CBP). Defendants admit that CBP is a component of DHS that is involved with the initial encounter of noncitizens subject to MPP. Defendants further admit Acting Commissioner Miller is sued in

his official capacity.

33. Defendants admit that Ur Mendoza Jaddou, who has been substituted as the proper defendant in this action in place of Kenneth T. Cuccinelli pursuant to Federal Rule of Civil Procedure 25(d), is the Director of U.S. Citizenship and Immigration Services (USCIS). Defendants admit that USCIS is the DHS component that administers asylum laws and interviews noncitizens who express a fear of return to another country, including the nonrefoulement interviews it conducts as part of MPP. Defendants further admit that Director Jaddou is sued in her official capacity.

34. Defendants admit that Tae D. Johnson, who has been substituted as the proper defendant in this action in place of Tony H. Pham pursuant to Federal Rule of Civil Procedure 25(d), is the Acting Director for U.S. Immigration and Customs Enforcement (ICE). Defendants admit that ICE is a DHS component that manages all aspects of the immigration enforcement process including removing undocumented noncitizens ordered removed from the United States and denies any characterization of ICE inconsistent therewith. Defendants admit that Acting Director Johnson is sued in his official capacity.

35. Defendants admit that Merrick B. Garland, who has been substituted as the proper defendant in this action in place of William Barr pursuant to Federal Rule of Civil Procedure 25(d), is the Attorney General of the United States. Defendants admit that the Attorney General shares responsibility for implementing immigration laws. Defendants further admit that the Attorney General is sued in his official capacity.

36. Defendants admit that Joseph R. Biden, Jr., who has been substituted as the proper defendant in this action in place of Donald J. Trump pursuant to Federal Rule of Civil Procedure 25(d), is the President of the United States. Defendants admit that President Biden is sued in his official capacity.

JURISDICTION AND VENUE

37. The allegations in Paragraph 37 are legal conclusions to which no response is required.

38. The allegations in Paragraph 38 are legal conclusions to which no response is required.

BACKGROUND

39. The allegations in Paragraph 39 are legal conclusions to which no response is required.

40. The allegations in Paragraph 40 are legal conclusions to which no response is required. To the extent a response is required, Defendants respectfully refer the Court to the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees for a complete and accurate statement of their contents.

41. The allegations in Paragraph 41 are legal conclusions to which no response is required. Defendants respectfully refer the Court to the 1951 Convention Relating to the Status of Refugees for a complete and accurate statement of its contents.

42. The allegations in Paragraph 42 are legal conclusions to which no response is required. Defendants respectfully refer the Court to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment for a complete and accurate statement of its contents.

43. The allegations in Paragraph 43 are legal conclusions to which no response is required. To the extent a response is required, Defendants aver that the cited statutory and regulatory provisions speak for themselves and respectfully refer the Court to the cited statutory and regulatory provisions for complete and accurate statements of their contents.

44. The allegations in Paragraph 44 are legal conclusions to which no response is

required.

45. The allegations in Paragraph 45 are legal conclusions to which no response is required. To the extent a response is required, Defendants aver that the cited statutory provisions speak for themselves and respectfully refer the Court to the cited statutory provisions for complete and accurate statements of their contents.

46. The allegations in Paragraph 46 are legal conclusions to which no response is required. To the extent a response is required, Defendants aver that the cited statutory and regulatory provisions speak for themselves and respectfully refer the Court to the cited statutory and regulatory provisions for complete and accurate statements of their contents.

47. The allegations in Paragraph 47 are legal conclusions to which no response is required.

48. The allegations in Paragraph 48 are legal conclusions to which no response is required. To the extent a response is required, Defendants aver that the cited statutory and regulatory provisions speak for themselves and respectfully refer the Court to the cited statutory and regulatory provisions for complete and accurate statements of their contents.

49. The allegations in Paragraph 49 are legal conclusions to which no response is required. To the extent a response is required, Defendants aver that the cited regulatory provisions speak for themselves and respectfully refer the Court to the cited regulatory provisions for complete and accurate statements of their contents.

50. The allegations in Paragraph 50 are legal conclusions to which no response is required. To the extent a response is required, Defendants aver that the cited regulatory provisions speak for themselves and respectfully refer the Court to the cited regulatory provisions for complete and accurate statements of their contents.

51. Defendants deny the allegations in Paragraph 51.

52. Defendants deny the allegations in Paragraph 52.

53. Defendants respectfully refer the Court to the cited material for complete and accurate statements of their contents and deny the remaining allegations in Paragraph 53.

54. Defendants deny the allegations in Paragraph 54.

55. Defendants respectfully refer the Court to the cited material for complete and accurate statements of their contents.

56. Defendants respectfully refer the Court to the cited material for complete and accurate statements of their contents.

57. The allegations consist of Plaintiffs' characterization of this lawsuit, to which no response is required. Defendants respectfully refer the Court to the cited material for complete and accurate statements of their contents and deny the remaining allegations in Paragraph 57.

58. Defendants deny the allegations in Paragraph 58. Defendants respectfully refer the Court to the cited materials for complete and accurate statements of their contents.

59. Defendants respectfully refer the Court to the cited cases for complete and accurate statements of their contents.

60. The allegations in Paragraph 60 are an opinion to which Defendants lack sufficient knowledge or information to admit or deny.

61. Defendants admit that MPP was announced on December 20, 2018. Defendants refer the Court to the cited Executive Order for a complete and accurate statement of its contents.

62. Defendants respectfully refer the Court to the cited material for a complete and accurate statement of its contents.

63. Defendants respectfully refer the Court to the cited material for a complete and

accurate statement of its contents.

64. Defendants admit that DHS has not promulgated any regulations constituting or governing MPP and implemented MPP through policy memorandum. Defendants deny the remaining allegations in Paragraph 64.

65. Defendants admit that there are no statutory or regulatory procedures for MPP non-refoulement interviews.

66. Defendants admit that non-refoulement interviews comply with international and humanitarian obligations.

67. Defendants admit migrants were required to establish they were “more likely than not” to experience persecution on account of a protected ground or torture and that this standard is different than the “reasonable possibility” standard used in reasonable fear screenings or the “significant possibility” standard used in credible fear standings.

68. Defendants admit that under past DHS policy, DHS would not ask migrants whether they feared persecution and provided non-refoulement interviews only to those who affirmatively expressed a fear of return. Defendants further admit migrants were required to establish they were “more likely than not” to experience persecution on account of a protected ground or torture and that this standard is higher than the “reasonable possibility” standard used in reasonable fear screenings or the “significant possibility” standard used in credible fear screenings. Defendants admit that the prior “more likely than not” standard is the same as the merits standard required for withholding of removal in front of an immigration judge.

69. Defendants admit that there is no review of a non-refoulement determination by an immigration judge.

70. The allegations in Paragraph 70 are a legal conclusion to which no response is required.

71. The allegations in Paragraph 71 are an opinion to which Defendants lack sufficient knowledge or information to admit or deny.

72. Defendants respectfully refer the Court to the cited material for a complete and accurate statement of their contents. Additionally, the allegations in Paragraph 72 are an opinion to which Defendants lack sufficient knowledge or information to admit or deny.

73. Defendants respectfully refer the Court to the cited material for a complete and accurate statement of their contents. Additionally, the allegations in Paragraph 73 are an opinion to which Defendants lack sufficient knowledge or information to admit or deny.

74. Defendants deny the allegations in Paragraph 74.

75. Defendants deny the allegations in Paragraph 75.

76. Defendants admit the allegations in the first sentence of Paragraph 76. The allegations in the second sentence of Paragraph 76 are legal conclusions to which no response is required. To the extent a response is required, Defendants respectfully refer the Court to the cited case for a complete and accurate statements its contents. The allegations in the third sentence of Paragraph 76 do not pertain to factual information at issue in this action, therefore no response is required.

77. Defendants admit that under the previous iteration of MPP, the immigration proceedings were closed due to the COVID-19 pandemic. Defendants respectfully refer the Court to the cited material for a complete and accurate statement of their contents.

78. Defendants respectfully refer the Court to the cited material for a complete and accurate statement of its contents.

79. Defendants admit that there were migrants living in camps in Northern Mexico during the implementation of the previous iteration of MPP. Defendants lack sufficient knowledge and information to admit or deny the remaining allegations in Paragraph 79.

80. The allegations in Paragraph 80 are legal conclusions to which no response is required. To the extent a response is required, Defendants aver that the cited statutory provision speaks for itself and respectfully refer the Court to the cited statutory provision for a complete and accurate statements of its contents.

81. The allegations in Paragraph 81 are legal conclusions to which no response is required. To the extent a response is required, Defendants aver that the cited statutory and regulatory provisions speak for themselves and respectfully refer the Court to the cited statutory and regulatory provisions for complete and accurate statements of their contents.

82. The allegations in Paragraph 82 are legal conclusions to which no response is required. To the extent a response is required, Defendants aver that the cited statutory provisions speak for themselves and respectfully refer the Court to the cited statutory provisions for complete and accurate statements of their contents.

83. The allegations in Paragraph 83 are legal conclusions to which no response is required. To the extent a response is required, Defendants aver that the cited statutory provisions speak for themselves and respectfully refer the Court to the cited statutory provisions for complete and accurate statements of their contents.

FACTS

84. Defendants admit that Plaintiffs Luisa Marisol Vasquez Perez de Bollat, A.B., Rosa Maria Martinez de Urias, Evila Foridalma Colaj Olmos, and J.C. crossed the U.S.- Mexico border and were subject to MPP. Defendants further admit that on May 14, 2020, the Court granted in part the motion for a preliminary injunction, requiring their removal from MPP, and they were processed out of MPP in May 2020. Defendants respectfully refer the Court to the cited opinion for a complete and accurate statement of its content. Defendants lack knowledge or information sufficient to admit or deny the remaining allegations in Paragraph 84.

85. Defendants admit that Plaintiffs Nora Idalia Alvarado Reyes, Miriam Yanett Zuniga Posadas, and Hermes Arnulfo López Merino, María de la Cruz Abarca de López, T.L., D.L., and A.L. crossed the U.S.-Mexico border and were subject to MPP. Defendants further aver that on February 13, 2021, the Court granted in part the second motion for a preliminary injunction, requiring their removal from MPP, and that they were processed out of MPP in February 2021. The last sentence in Paragraph 85 contains conclusions of law to which no response is required.

86. The allegations in Paragraph 86 do not pertain to factual information at issue in this action, therefore no response is required. To the extent a response is required, Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 86.

87. Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 87.

88. The allegations in the first sentence of Paragraph 88 are an opinion to which Defendants lack sufficient knowledge or information to admit or deny. Defendants admit that on July 16, 2019, the Department of Justice and DHS published an interim final rule, “Asylum Eligibility and Procedural Modifications” or the “Third Country Transit Bar.” Defendants respectfully refer the Court to the rule for a complete and accurate statement of its contents. Defendants admit the allegations in the third sentence of Paragraph 88.

89. Defendants admit the allegations in Paragraph 89.

90. Defendants admit the allegations in Paragraph 90.

91. Defendants admit the allegations in Paragraph 91.

92. Defendants admit the allegations in Paragraph 92.

93. Defendants admit the allegations in Paragraph 93.

94. Defendants lack sufficient knowledge or information to admit or deny the

allegations Paragraph 94.

95. Defendants admit that Matamoros is part of the Mexican state of Tamaulipas. Defendants respectfully refer the Court to the cited materials for complete and accurate statements of their contents.

96. Defendants respectfully refer the Court to the cited material for a complete and accurate statement of its contents.

97. Defendants respectfully refer the Court to the cited material for a complete and accurate statement of its contents.

98. Defendants admit that concerns have been expressed regarding migrants' safety and security in Mexico that, combined with other considerations, made it challenging for some to remain in Mexico pending the duration of their proceedings.

99. Defendants admit that DHS is aware of the conditions set forth in Defendants' response to the allegations in Paragraph 98.

100. Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 100.

101. Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 101.

102. Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 102.

103. Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 103.

104. Defendants admit that Ms. Vasquez and A.B. were returned to Mexico pursuant to MPP. Defendants lack sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 104.

105. Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 105.

106. Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 106.

107. Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 107.

108. Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 108.

109. Defendants refer the Court to the cited material for a complete and accurate statement of its contents. Defendants lack sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 109.

110. Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 110.

111. Defendants admit that Ms. Vasquez and A.B. had immigration court hearings in October 2019 and February 2020. Defendants lack sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 111.

112. Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 112.

113. Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 113.

114. Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 114.

115. Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 115.

116. Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 116.

117. Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 117.

118. Defendants admit that the Complaint was filed on March 20, 2020.

119. Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 119.

120. Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 120.

121. Defendants admit that Ms. Vasquez and A.B. were processed out of MPP on May 15, 2020, pursuant to the Court's May 14, 2020 Order. Defendants lack sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 121.

122. Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 122.

123. Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 123.

124. Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 124.

125. Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 125.

126. Defendants admit that Plaintiffs crossed the U.S.-Mexico border in September 2019, were enrolled in MPP, and returned at Brownsville, Texas Port of Entry.

127. Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 127.

128. Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 128.

129. Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 129.

130. Defendants admit that concerns have been expressed regarding migrants' safety and security in Mexico that, combined with other considerations, made it challenging for some to remain in Mexico pending the duration of their proceedings.

131. Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 131.

132. Defendants admit that immigration court hearings for Ms. Martinez were held in October 2019 and February 2020. Defendants lack sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 132.

133. Defendants admit that in January 2020, Ms. Martinez's granddaughter crossed the border without her legal guardian and the granddaughter was turned over to the Office of Refugee Resettlement. Defendants further admit that Ms. Martinez was apprehended crossing the border in January 2020 and was returned to Mexico through the Brownsville, Texas Port of Entry. Defendants lack sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 133.

134. Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 134.

135. Defendants admit that an immigration court hearing for Ms. Martinez was held on February 13, 2020. Defendants admit that Ms. Martinez had a nonrefoulement interview on February 13, 2020, and the asylum officer determined that she had not established that she was more likely than not to suffer persecution on a protected ground or torture in Mexico.

Defendants lack sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 135.

136. Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 136.

137. Defendants admit that Ms. Martinez was processed out of MPP in May 2020, pursuant to the Court's May 14, 2020 Order. Defendants lack sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 137.

138. Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 138.

139. Defendants admit that Plaintiffs Evila Floridalma Colaj Olmos and J.C. are citizens and nationals of Guatemala who crossed the border from Mexico into the United States in July 2019. Defendants lack sufficient information to admit or deny the remaining allegations in Paragraph 139.

140. Defendants admit that Plaintiffs Evila Floridalma Colaj Olmos and J.C. were returned to Mexico pursuant to MPP at the Brownsville, Texas Port of Entry. Defendants lack sufficient information to admit or deny the remaining allegations in Paragraph 140.

141. Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 141.

142. Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 142.

143. Defendants admit that immigration court hearings for Ms. Colaj and J.C. were held in October and November 2019. Defendants lack sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 143.

144. Defendants lack sufficient knowledge or information to admit or deny the

allegations in Paragraph 144.

145. Defendants admit that Ms. Colaj had two nonrefoulement interviews and the asylum officers determined that she had not established she was more likely than not to suffer persecution on a protected ground or torture in Mexico.

146. Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 146.

147. Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 147.

148. Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 148.

149. Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 149.

150. Defendants admit that Ms. Colaj and J.C. were processed out of MPP in May 2020, pursuant to the Court's May 14, 2020 Order. Defendants lack sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 150.

151. Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 151.

152. The allegations in the first sentence of Paragraph 152 do not pertain to factual information at issue in this action, therefore no response is required. Defendants lack sufficient knowledge or information to admit or deny the allegations in the third sentence of Paragraph 152.

153. Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 153.

154. Defendants admit the allegations in Paragraph 154.

155. Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 155.

156. Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 156.

157. Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 157.

158. Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 158.

159. Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 159.

160. Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 160.

161. Defendants admit that in October 2020, S.G. and M.G. crossed the border again and were processed out of MPP, with their father as their U.S. point of contact. Defendants lack sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 161.

162. Defendants admit that Ms. Reyes was apprehended by a Border Patrol officer on November 7, 2020, after unlawfully entering the United States. Defendants further admit that Ms. Reyes had a non-refoulement interview and the asylum officer determined that she had not established a clear probability of persecution on a protected ground or torture in Mexico, and she was returned to Mexico. Defendants lack sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 162.

163. Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 163.

164. Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 164.

165. Defendants admit that Plaintiffs were apprehended by CBP in September 2019 and returned to Mexico pursuant to MPP at the Brownsville, Texas Port of Entry. Defendants lack sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 165.

166. Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 166.

167. Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 167.

168. Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 168.

169. Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 169.

170. Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 170.

171. Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 171.

172. Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 172.

173. Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 173.

174. Defendants admit that Plaintiffs crossed the border from the Mexican state of Coahuila in September 2019 and were returned to Nuevo Laredo, Mexico pursuant to MPP.

175. Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 175.

176. Defendants admit that Nuevo Laredo is located in the Mexican state of Tamaulipas. Defendants respectfully refer the court to the cited material for a full and accurate statement of its content.

177. Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 177.

178. Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 178.

179. Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 179.

180. Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 180.

181. Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 181.

182. Defendants admit that an immigration court hearing was held for Ms. Zuniga in February 2020. Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 182.

183. Defendants admit that Ms. Zuniga had a nonrefoulement interview and that the asylum officer found she had not established she was more likely than not to suffer of torture or persecution on a protected ground in Mexico. Defendants lack sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 183.

184. Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 184.

185. Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 185.

186. Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 186.

187. Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 187.

188. Defendants admit that G.Z., D.Z., and K.Z. crossed the border again in September 2020 and were processed out of MPP, with their aunt as their U.S. point of contact. Defendants lack sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 188.

189. Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 189.

CLAIMS FOR RELIEF

Count 1

Violation of the INA and APA – Contiguous Territory Return Provision (8 U.S.C. § 1225(b)(2)(C); 8 C.F.R. § 235.3(d); 5 U.S.C. § 706(2))

190. Defendants incorporate their responses to the allegations in the preceding paragraphs as if fully set forth herein.

191. The allegations in Paragraph 191 are legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 191.

192. The allegations in Paragraph 192 are legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 192.

193. The allegations in Paragraph 193 are legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph

193.

194. The allegations in Paragraph 194 are legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph

194.

Count 2
Violation of the INA and APA – Asylum Law
(8 U.S.C. § 1158; 8 C.F.R. § 208.1 et seq.; 5 U.S.C. § 706(2))

195. Defendants incorporate their responses to the allegations in the preceding paragraphs as if fully set forth herein.

196. The allegations in Paragraph 196 are legal conclusions to which no response is required.

197. The allegations in Paragraph 197 are legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 197.

198. The allegations in Paragraph 198 are legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 198.

199. The allegations in Paragraph 199 are legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 199.

Count 3
Violation of Defendants’ Non-Refoulement Obligations
(8 U.S.C. § 1231(b)(3); 5 U.S.C. § 706(2); international law)

200. Defendants incorporate their responses to the allegations in the preceding paragraphs as if fully set forth herein.

201. The allegations in Paragraph 201 are legal conclusions to which no response is

required.

202. The allegations in Paragraph 202 are legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 202.

203. The allegations in Paragraph 203 are legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 203.

204. The allegations in Paragraph 204 are legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 204.

205. The allegations in Paragraph 205 are legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 205.

Count 4
Violation of the APA -- Notice and Comment
(5 U.S.C. § 553)

206. Defendants incorporate their responses to the allegations in the preceding paragraphs as if fully set forth herein.

207. The allegations in Paragraph 207 are legal conclusions to which no response is required.

208. The allegations in Paragraph 208 are legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 208.

209. Defendants admit that MPP was not done through regulations and notice and comment. The remaining allegations in Paragraph 209 are legal conclusions to which no

response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 209.

Count 5
Violation of the APA – Arbitrary, Capricious, and Unlawful Agency Action
(5 U.S.C. § 706)

210. Defendants incorporate their responses to the allegations in the preceding paragraphs as if fully set forth herein.

211. The allegations in Paragraph 211 are legal conclusions to which no response is required.

212. The allegations in Paragraph 212 are legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 212.

213. The allegations in Paragraph 211 are legal conclusions to which no response is required.

214. The allegations contained in Paragraph 214 consists of a legal conclusion, to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 214.

215. The allegations contained in Paragraph 215 consists of a legal conclusion, to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 215.

216. The allegations contained in Paragraph 216 consists of a legal conclusion, to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 216.

217. The allegations contained in Paragraph 217 consists of a legal conclusion, to which no response is required. To the extent a response is required, Defendants deny the

allegations in Paragraph 217.

Count 6
Violation of Equal Protection
(U.S. Constitution, amend. V)

218. Defendants incorporate their responses to the allegations in the preceding paragraphs as if fully set forth herein.

219. The allegations contained in Paragraph 219 consists of a legal conclusion, to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 219.

220. The allegations contained in Paragraph 220 consists of a legal conclusion, to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 220.

PRAYER FOR RELIEF

The remainder of the Amended Complaint consists of Plaintiffs' Prayer for Relief, to which no response is required. To the extent a response is deemed required, the allegations of the prayer for relief are denied. Plaintiffs are not entitled to any relief.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiffs' First Amended Complaint fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

The Court lacks subject matter jurisdiction over Plaintiffs' First Amended Complaint.

THIRD AFFIRMATIVE DEFENSE

Any final agency action at issue should be affirmed because it is supported by substantial evidence in the record and is not arbitrary, capricious, an abuse of discretion, or otherwise contrary to law.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs are not entitled to fees or costs.

Defendants respectfully request and reserve the right to amend, alter, and supplement the defenses contained in this Answer as the facts and circumstances giving rise to the First Amended Complaint become known through the course of the litigation.

WHEREFORE, Defendants pray that:

1. Plaintiffs take nothing by their First Amended Complaint;
2. The First Amended Complaint be dismissed with prejudice;
3. No injunctive relief be awarded to Plaintiffs;
4. Defendants be awarded its costs of suit;
5. Judgment be entered in favor of Defendants;
6. The Court grant such other and further relief as it may deem proper.

Respectfully submitted,

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