

**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.,  
LUIÑA 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.

CHAD F. WOLF, Acting Secretary of Homeland Security,  
MARK A. MORGAN, senior official in charge of U.S. Customs and Border Protection,  
KENNETH T. CUCCINELLI, II, senior official in charge of U.S. Citizenship and Immigration Services,  
TONY H. PHAM, senior official in charge of U.S. Immigration and Customs Enforcement,  
WILLIAM BARR, Attorney General,  
DONALD J. TRUMP, President,

Defendants.

No. 20-cv-10566-IT

**COMPLAINT FOR  
DECLARATORY  
AND INJUNCTIVE  
RELIEF**

**Leave to file granted  
on December 22, 2020**

## INTRODUCTION

1. This case seeks to bring to safety twelve asylum seekers—including five children—who were forced into danger and abject misery by the Trump administration’s misnamed “Migrant Protection Protocols” (MPP). Because the MPP has imperiled them each day, and because it unlawfully abandons America’s legal obligations to asylum seekers, plaintiffs ask this court to enjoin the policy’s application to them.

2. Plaintiff Andrés Oswaldo Bollat Vasquez fled Guatemala for his life in 2016. In 2019, when the men who had threatened Mr. Bollat intensified their threats against his wife and son—plaintiffs Luisa Marisol Vasquez Perez de Bollat and A.B.—they, too, fled for the United States. That same year, plaintiff Rosa Maria Martinez de Urias fled El Salvador after her life was threatened there, and plaintiffs Evila Floridalma Colaj Olmos and J.C. fled Guatemala after enduring years of violence. In addition, plaintiff Nora Idalia Alvarado Reyes fled El Salvador, plaintiff Miriam Yanett Zuniga Posadas fled Honduras, and plaintiffs Hermes Arnulfo López Merino and María de la Cruz Abarca de López fled el Salvador with their daughters, plaintiffs T.L., D.L. and A.L. Each hoped to find safety in the United States.

3. But as these plaintiffs traveled north to seek America’s help, U.S. officials were engaged in a far-reaching effort to prevent them from receiving it.

4. The MPP seeks to keep out Central American migrants at any cost. Under this policy, American authorities expel migrants into dangerous Mexican border cities and require them to report back to a port of entry every time they are due to appear in American immigration court. The policy is a boon for violent criminal groups that specifically persecute migrants in Mexico. For nearly two years, it has left tens of thousands of migrants to survive in unimaginable squalor and daily peril.

5. These dangers are an intended consequence, not an accidental byproduct, of the MPP; they are used by American officials to dissuade migrants from moving forward with their immigration cases.

6. As alleged below, defendants' actions violate the statute and regulation governing the asserted authority to force migrants into Mexico; the legal framework governing asylum; defendants' duty of non-refoulement, which prohibits sending people to places where they will be persecuted; the Administrative Procedure Act; and the U.S. constitutional guarantee of equal protection. Plaintiffs ask this court to enjoin the MPP's application to Ms. Vasquez and A.B., to Ms. Martinez, to Ms. Colaj and J.C., to Ms. Reyes, to Mr. López and his family, and to Ms. Zuniga.

### **PARTIES**

7. Plaintiff Andrés Oswaldo Bollat Vasquez is an asylum-seeker living in Massachusetts. He brings suit on his own behalf and as next friend to his five-year-old son, A.B., and his wife, Luisa Marisol Vasquez Perez de Bollat.

8. Plaintiff A.B. fled Guatemala to seek asylum in the United States, and was stranded in Mexico under the MPP for approximately eight months, until this court issued a preliminary injunction that required the government to remove him from the MPP. He appears by and through his father and next friend, Mr. Bollat.

9. Plaintiff Luisa Marisol Vasquez Perez de Bollat fled Guatemala to seek asylum in the United States, but was stranded with A.B. in Mexico under the MPP for approximately eight

months before this court issued its preliminary injunction. She appears personally and, alternatively, by and through her husband and next friend, Mr. Bollat.<sup>1</sup>

10. Plaintiff José Manuel Urias Martinez is an asylum-seeker living in Massachusetts. He brings suit on his own behalf and as next friend to his mother, Rosa Maria Martinez de Urias.

11. Plaintiff Rosa Maria Martinez de Urias fled El Salvador to seek asylum in the United States, but was stranded in Mexico under the MPP for approximately eight months before this court issued a preliminary injunction. She appears personally and, alternatively, by and through her son and next friend, Mr. Urias.

12. Plaintiff Salomé Olmos López resides in Massachusetts. He brings suit on his own behalf and as next friend to his niece, Evila Floridalma Colaj Olmos, and her five-year-old daughter, J.C.

13. Plaintiff J.C. fled Guatemala to seek asylum in the United States, but was stranded in Mexico under the MPP for approximately ten months before this court issued a preliminary injunction. She appears by and through her next friend, Mr. Olmos.

14. Plaintiff Evila Floridalma Colaj Olmos fled Guatemala to seek asylum in the United States, but was stranded with J.C. in Mexico under the MPP for approximately ten months before this court issued a preliminary injunction. She appears personally and, alternatively, by and through her uncle and next friend, Mr. Olmos.

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<sup>1</sup> Due to the danger faced by each of the adult plaintiffs who are presently in Mexico or who would be in Mexico but for the preliminary injunction, and the uncertainty regarding their ability to maintain contact with counsel while in Mexico, each appears here both personally and by and through a next friend.

15. Plaintiff Jorge Alberto Guevara Diaz is an asylum-seeker living in Massachusetts. He brings suit on his own behalf and as next friend to his wife, Nora Idalia Alvarado Reyes, and their children, J.G., S.G., and M.G.

16. Plaintiff J.G. is an 11-year-old asylum-seeker living in Massachusetts. He appears by and through his father and next friend, Mr. Guevara.

17. Plaintiff S.G. is an eight-year-old asylum-seeker who was initially placed in MPP but is now living in Massachusetts. He appears by and through his father and next friend, Mr. Guevara.

18. Plaintiff M.G. is a four-year-old asylum-seeker who was initially placed in MPP but is now living in Massachusetts. She appears by and through her father and next friend, Mr. Guevara.

19. Plaintiff Nora Idalia Alvarado Reyes fled El Salvador to seek asylum in the United States, but is now stranded in Mexico under the MPP. She appears personally and, alternatively, by and through her husband and next friend, Mr. Guevara.

20. Plaintiff Mateo López is a U.S. citizen living in Massachusetts. He brings suit on his own behalf and as next friend to his brother and sister-in-law—plaintiffs Hermes Arnulfo López Merino and María de la Cruz Abarca de López—and their daughters, plaintiffs T.L., D.L, and A.L.

21. Plaintiff Hermes Arnulfo López Merino fled El Salvador to seek asylum in the United States, but is now stranded in Mexico with his wife and three daughters under the MPP. He appears personally and, alternatively, by and through his brother and next friend, Mateo López.

22. Plaintiff María de la Cruz Abarca de López fled El Salvador to seek asylum in the United States, but is now stranded in Mexico under the MPP. She appears personally and, alternatively, by and through her next friend, Mateo López.

23. Plaintiff T.L. fled El Salvador to seek asylum in the United States, but is now stranded in Mexico under the MPP. She is 12 years old. She appears by and through her uncle and next friend, Mateo López.

24. Plaintiff D.L. fled El Salvador to seek asylum in the United States, but is now stranded in Mexico under the MPP. She is ten years old. She appears by and through her uncle and next friend, Mateo López.

25. Plaintiff A.L. fled El Salvador to seek asylum in the United States, but is now stranded in Mexico under the MPP. She is seven years old. She appears by and through her uncle and next friend, Mateo López.

26. Plaintiff Rosi Lisbeth Zuniga Posadas is an asylee living in Massachusetts. She brings suit on her own behalf and as next friend to her sister Miriam Yanett Zuniga Posadas, her niece, G.Z., and her nephews, D.Z and K.Z.

27. Plaintiff G.Z. is a 17-year-old asylum-seeker who was initially placed in MPP but is now living in Massachusetts. She appears by and through her aunt and next friend, Rosi Lisbeth Zuniga Posadas.

28. Plaintiff D.Z. is a seven-year-old asylum-seeker who was initially placed in MPP but is now living in Massachusetts. He appears by and through his aunt and next friend, Rosi Lisbeth Zuniga Posadas.

29. Plaintiff K.Z. is a seven-year-old asylum-seeker who was initially placed in MPP but is now living in Massachusetts. He appears by and through his aunt and next friend, Rosi Lisbeth Zuniga Posadas.

30. Plaintiff Miriam Yanett Zuniga Posadas fled Honduras to seek asylum in the United States, but is stranded in Mexico under the MPP. She appears personally and, alternatively, by and through her next friend, Rosi Lisbeth Zuniga Posadas. She is the mother of plaintiffs G.Z., D.Z., and K.Z.

31. Defendant Chad F. Wolf is the Acting Secretary of Homeland Security and the Cabinet-level officer responsible for the administration of U.S. immigration law, including implementing the MPP. He is sued in his official capacity.

32. Defendant Mark A. Morgan is the senior official performing the duties of the Commissioner of U.S. Customs and Border Protection (CBP), the component of the Department of Homeland Security (DHS) that is responsible for the initial processing of migrants at the border, including operating the MPP. He is sued in his official capacity.

33. Defendant Kenneth T. Cuccinelli holds himself out as the senior official in charge of U.S. Citizenship and Immigration Services (USCIS). USCIS is the DHS component responsible for administering our asylum laws and interviewing migrants who express a fear of return to a country, including as part of the MPP. Mr. Cuccinelli is simultaneously serving as the senior official performing the duties of Deputy Secretary of DHS. Mr. Cuccinelli is sued in his official capacity.

34. Defendant Tony H. Pham is the senior official performing the duties of Director of Immigration and Customs Enforcement (ICE). ICE is the DHS component that carries out removal orders and oversees immigration detention. Mr. Pham is sued in his official capacity.

35. Defendant William Barr is the Attorney General of the United States and shares responsibility for implementing asylum and other immigration laws, including protecting noncitizens from being sent to countries where they face persecution or torture. He is sued in his official capacity.

36. Defendant Donald J. Trump is the President of the United States and is ultimately responsible for DHS's policies. He is sued in his official capacity.

### **JURISDICTION AND VENUE**

37. This Court has jurisdiction under 28 U.S.C. §§ 2201-2202 (declaratory judgment) and 28 U.S.C. § 1331 (federal question), as plaintiffs' claims arise under the Administrative Procedure Act (APA), 5 U.S.C. §§ 701 et seq., immigration laws, international law, and the U.S. Constitution.

38. Venue is proper in the District of Massachusetts because defendants are officers of the United States and plaintiffs Mr. Bollat; Mr. Urias; Mr. Olmos; Mr. Guevara and his children J.G., S.G., and M.G.; Mateo López; and Rosi Lisbeth Zuniga Posadas and G.Z., D.Z., and K.Z. reside in this district. 28 U.S.C. § 1391.

### **BACKGROUND**

#### **I. United States law requires protecting people from persecution.**

39. United States law protects asylum seekers like the plaintiffs in this case. The law forbids sending people to countries where they will be persecuted or tortured, and it allows those with credible claims of persecution to present their case to an immigration judge.

##### **A. The United States has committed itself not to return people to places where they face persecution or torture.**

40. Two key agreements—the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees—arose from a commitment to protect



refugees after the international community's failures during the Holocaust and World War II.

The United States acceded to the Protocol in 1968, binding itself to the substantive provisions of the Convention.

41. The principle of non-refoulement is the core of these agreements. Under Article 33 of the Convention, the United States may not “expel or return (‘refouler’) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group, or political opinion.”

42. The United States also signed the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) in 1988, pledging not to “expel, return . . . or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.”

**B. U.S. statutes and regulations require review by an immigration judge before the government removes someone who fears persecution.**

43. United States statutes and regulations implement these commitments by expressly barring the U.S. government from returning people to countries where they will be persecuted or tortured. See 8 U.S.C. § 1231(b)(3); 8 C.F.R. § 208.16.

44. Individuals in removal proceedings may apply for asylum and for two other related, non-discretionary forms of protection— withholding of removal and protection under CAT.

45. Asylum is a discretionary form of relief that may be granted to individuals with a well-founded fear of persecution on account of a protected ground—*i.e.*, their race, religion, nationality, membership in a particular social group, or political opinion. 8 U.S.C. §§ 1101(a)(42)(A), 1158.

46. Withholding of removal under 8 U.S.C § 1231(b)(3) *must* be granted to noncitizens who demonstrate that their “life or freedom would be threatened” on account of a protected ground in the country to which they face removal. Relief under CAT *must* be granted to noncitizens who demonstrate that they are more likely than not to be tortured in the country to which they face removal. 8 C.F.R. §§ 208.16-208-18. These two forms of mandatory protection implement the United States’ non-refoulement obligations.

47. Because they are mandatory forms of protection, withholding of removal and CAT relief are available even when noncitizens are otherwise subject to summary removal processes in which an immigration officer orders removal without a proceeding in front of an immigration judge.

48. For example, when individuals with certain criminal convictions are placed in a summary process called “administrative removal,” or when those previously-removed are placed in a summary process to “reinstate” their prior removal order, they can still assert a fear of return to the country of intended removal. See 8 U.S.C. §§ 1228(b), 1231(a)(5); 8 C.F.R. §§ 208.31(a), 238.1(b)(2)(i), 238.1(f)(3), 241.8(e). Regulations then provide them with an interview in which an asylum officer conducts an initial assessment of their fear. 8 C.F.R. §§ 208.31, 238.1(f)(3), 241.8(e). Where the officer finds a “reasonable fear”—defined as a “reasonable possibility” that a noncitizen would be persecuted on account of a protected ground, or tortured—the noncitizen is referred for full withholding of removal or CAT proceedings in front of an immigration judge. *Id.* § 208.31. And where an asylum officer does not find such a fear, an individual receives a review of that reasonable fear determination by an immigration judge. *Id.* § 208.31(g).

49. DHS thus lacks authority to send noncitizens to a country in which they fear persecution or torture without review by an immigration judge. See 8 C.F.R. §§ 208.31,

1208.16(a).

50. Another summary removal process is the “expedited removal” of certain individuals at the border. Expedited removal procedures apply to noncitizens who arrive in the United States at a port of entry and who engage in misrepresentation or lack a visa or other document permitting their admission, 8 U.S.C. § 1225(b)(1). DHS may also apply these proceedings to recent illegal border crossers, *i.e.*, those apprehended within 100 miles of the border and who cannot show that they have been in the United States for more than two weeks. See 8 U.S.C. § 1225(b)(1)(A)(iii); Designating Aliens for Expedited Removal, 69 Fed. Reg. 48877, 48880 (2004). But noncitizens who demonstrate a “credible fear of persecution or torture” avoid expedited removal and are placed into regular removal proceedings under 8 U.S.C. § 1229a, where they may apply for asylum, withholding of removal, and CAT relief. 8 U.S.C. § 1225(b)(1)(B)(ii); 8 C.F.R. §§ 208.30(e)(2)-(3), 235.6. If an asylum officer does not find a credible fear, the decision is reviewable by an immigration judge. 8 U.S.C. § 1225(b)(1)(B)(iii)(III).

**II. The Trump administration is violating laws governing its treatment of those fleeing persecution, and it is doing so as a result of animus against Central American and non-white immigrants.**

51. The Trump administration dislikes the laws affording protections to people seeking asylum, and it is especially hostile to asylum protections for people from Central American nations and people of color.

52. This hostility is due in substantial part to animus toward Central Americans and other people of color.

53. President Trump’s animus toward Central American asylum seekers seeking protection in the United States is so strong that he has repeatedly voiced a desire to physically

harm them. The President has reportedly suggested electrifying the border wall, fortifying it with an alligator moat, installing spikes on top to pierce human flesh, and having soldiers shoot migrants' legs to slow them down.<sup>2</sup>

54. On information and belief, in addition to his own bigotry, President Trump's eagerness to harm Central American asylum seekers is driven by his view that scapegoating Central Americans and people of color helps him politically.

55. While campaigning for President, Trump repeatedly made racist statements about people of color, stating that Mexican immigrants were "rapists," and people who "bring[ ] drugs . . . [and] crime," and that others "coming from all over South and Latin America," and "probably—from the Middle East" were "not the right people."<sup>3</sup>

56. As President, Trump has asked why the United States would want more people from Haiti, El Salvador, and other nations he called "shithole countries," rather than people from countries like Norway,<sup>4</sup> which is predominantly white. Trump has also said that Mexican migrants "aren't people" but "animals."<sup>5</sup>

57. As a consequence of this animus, defendants have acted to undermine and destroy the asylum process. The President and defendant Cuccinelli have repeatedly identified laws that

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<sup>2</sup> Michael D. Shear & Julie Hirschfeld Davis, *Shoot Migrants' Legs, Build Alligator Moat: Behind Trump's Ideas for Border*, N.Y. TIMES (Oct. 2, 2019), [www.nytimes.com/2019/10/01/us/politics/trump-border-wars.html](http://www.nytimes.com/2019/10/01/us/politics/trump-border-wars.html).

<sup>3</sup> *Here's Donald Trump's Presidential Announcement Speech*, TIME (June 16, 2015), [time.com/3923128/donald-trump-announcement-speech](http://time.com/3923128/donald-trump-announcement-speech).

<sup>4</sup> Ryan T. Beckwith, *President Trump Called El Salvador, Haiti 'Shithole Countries': Report*, TIME (Jan. 11, 2018), [time.com/5100058/donald-trump-shithole-countries/](http://time.com/5100058/donald-trump-shithole-countries/).

<sup>5</sup> Gregory Korte & Alan Gomez, *Trump Ramps Up Rhetoric on Undocumented Immigrants: 'These Aren't People. These Are Animals.'*, USA TODAY (May 17, 2018), [www.usatoday.com/story/news/politics/2018/05/16/trump-immigrants-animals-mexico-democrats-sanctuary-cities/617252002/](http://www.usatoday.com/story/news/politics/2018/05/16/trump-immigrants-animals-mexico-democrats-sanctuary-cities/617252002/).

preserve access to the asylum process as a “loophole”; the President has also called asylum a “scam” and a “hoax,” and argued that most asylum requests are a fraudulent ploy to enter the country illegally.<sup>6</sup> Indeed, the President has repeatedly denounced the very existence of immigration courts or due process for asylum claims, suggesting that “[w]hen somebody comes in, we must immediately, with no Judges or Court Cases, bring them back from where they came from.”<sup>7</sup>

58. In response to President Trump’s demand that DHS keep out Central American asylum seekers by any means necessary,<sup>8</sup> Defendants have worked to harm these asylum seekers and destroy the asylum system through an onslaught of illegal measures. These include taking migrant children from their parents, refusing to process asylum seekers at ports of entry, undermining the independence of asylum officers and the immigration courts, and engaging in a multi-faceted attempt to remake the law of asylum eligibility for the singular purpose of denying protection to Central American and other migrants.

59. For example, DHS attempted to ban asylum for individuals who illegally crossed

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<sup>6</sup> See, e.g., *Rep. Tim Ryan calls Trump’s history visit to the DMZ an ‘appeasement tour’*, FOX NEWS (June 30, 2019), [www.foxnews.com/transcript/rep-tim-ryan-calls-trumps-historic-visit-to-the-dmz-an-appeasement-tour](http://www.foxnews.com/transcript/rep-tim-ryan-calls-trumps-historic-visit-to-the-dmz-an-appeasement-tour); The White House, *President Donald J. Trump Is Working to Stop the Abuse of Our Asylum System and Address the Root Causes of the Border Crises* (Apr. 29, 2019), [www.whitehouse.gov/briefings-statements/president-donald-j-trump-working-stop-abuse-asylum-system-address-root-causes-border-crisis/](http://www.whitehouse.gov/briefings-statements/president-donald-j-trump-working-stop-abuse-asylum-system-address-root-causes-border-crisis/); *Trump Says Some Asylum Seekers Are Gang Members*, CBS NEWS (Apr. 5, 2019), [www.cbsnews.com/news/trump-says-some-asylum-seekers-are-gang-members-border-calexico-2019-04-05-today/](http://www.cbsnews.com/news/trump-says-some-asylum-seekers-are-gang-members-border-calexico-2019-04-05-today/).

<sup>7</sup> Donald J. Trump (@realDonaldTrump), Twitter (June 24, 2018, 11:02 AM), [twitter.com/realDonaldTrump/status/1010900865602019329](https://twitter.com/realDonaldTrump/status/1010900865602019329).

<sup>8</sup> Julie H. Davis & Michael D. Shear, BORDER WARS: INSIDE TRUMP’S ASSAULT ON IMMIGRATION 334-37 (2019) (Trump “gave Nielsen a direct order: Do not let any more people in”; he “wanted the troops to keep the ‘illegals’ out at all costs” and “refused to acknowledge that there were any legal limits on what the military could do”).

the southern border and then for those at the southern border who have not applied for and been denied asylum or similar protection in a country that they transited through. See *East Bay Sanctuary Covenant v. Trump*, 950 F.3d 1242 (9th Cir. 2020) (affirming preliminary injunction of unlawful entry bar), *petition for reh'g en banc pending*, No. 18-17274; *CAIR Coalition v. Trump*, --- F. Supp. ----, 2020 WL 3542481 (D.D.C. June 30, 2020) (vacating third country transit bar), appeal pending, D.C. Cir. No. 20-5271.

**III. The so-called “Migrant Protection Protocols” are a centerpiece of Defendants’ efforts to deny migrants the protection of U.S. law.**

60. The “Migrant Protection Protocols” are an effort by the Trump administration to choke off the asylum system, hurt migrants, and prevent Central Americans and other people of color from entering the United States.

61. Although the MPP policy was not announced until late in 2018, it is the consequence of an Executive Order issued by President Trump just five days into his presidency. Under Executive Order 13767 in January 2017, President Trump declared a policy to “end the abuse of parole and asylum provisions” and to ensure that noncitizens who could be “returned to the territory from which they came” under 8 U.S.C. § 1225(b)(2)(C) were returned there.<sup>9</sup>

**A. The MPP is designed to deny migrants the protections of U.S. law.**

62. In a December 20, 2018 press release, DHS announced that individuals “arriving in or entering the United States from Mexico—illegally or without proper documentation—may be returned to Mexico for the duration of their immigration proceedings.”<sup>10</sup>

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<sup>9</sup> Executive Order 13767: *Border Security and Immigration Enforcement Improvements* (Jan. 25, 2020), [www.whitehouse.gov/presidential-actions/executive-order-border-security-immigration-enforcement-improvements/](http://www.whitehouse.gov/presidential-actions/executive-order-border-security-immigration-enforcement-improvements/).

<sup>10</sup> DHS, *Secretary Kirstjen M. Nielsen Announces Historic Action to Confront Illegal Immigration: Announces Migrant Protection Protocols* (Dec. 20, 2018), [www.dhs.gov/](http://www.dhs.gov/)

63. The release explained that, under these new “Migrant Protection Protocols,” the United States would detain asylum seekers at the border, process them, schedule their removal hearings, expel them to Mexico, and require them to present themselves at the border to attend court.

64. Defendants have not promulgated any regulations constituting or governing the MPP, but have instead created this policy through press releases, memorandums, and shifting unilateral practices.

65. Under the MPP, defendants send migrants to Mexico without the benefit of any of the existing statutory or regulatory procedures for evaluating whether they have a credible fear or reasonable fear of persecution in Mexico.

66. Instead, DHS purports to comply with its international and humanitarian obligations by providing “non-refoulement” interviews.

67. But these MPP non-refoulement interviews employ procedures and standards that drastically differ from credible fear or reasonable fear interviews and are designed to make it all but impossible for migrants to avoid the MPP.

68. For example, to reduce the number of non-refoulement interviews, DHS decided that it would not ask migrants whether they feared persecution, but instead would provide interviews only to those who *affirmatively* express a fear.<sup>11</sup> DHS also set an almost impossibly high standard, requiring migrants to remain in the MPP unless they are “more likely than not” to

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news/2018/12/20/secretary-nielsen-announces-historic-action-confront-illegal-immigration.

<sup>11</sup> DHS, *Assessment of the Migrant Protection Protocols (MPP), Appendix A: Additional Analysis of MPP Fear-Assessment Protocol* (Oct. 28, 2019), [www.dhs.gov/sites/default/files/publications/assessment\\_of\\_the\\_migrant\\_protection\\_protocols\\_mpp.pdf](http://www.dhs.gov/sites/default/files/publications/assessment_of_the_migrant_protection_protocols_mpp.pdf).

experience persecution on account of a protected ground or torture—a standard much higher than “reasonable fear.” In fact, “more likely than not” is the same as the *merits* standard required to win withholding of removal in front of an immigration judge.<sup>12</sup>

69. DHS’s decision to return a noncitizen to Mexico is also unilateral. Unlike in the reasonable fear or other summary removal contexts, a noncitizen who fears persecution in Mexico receives no review by an immigration judge.

70. DHS employs these procedures even though it knows or should know that Central Americans and other migrants subjected to the MPP face a high likelihood of persecution in Mexico on account of their race, national origin, and particular social group.

71. These procedural shortcomings reflect the MPP’s goal: to bar Central American and other migrants from the United States.

72. The goal has been clear from the start of the MPP. While DHS’s December 2018 press release asserted that the MPP would stop what it called the “exploit[ation]” of “asylum loopholes” by “[i]llegal aliens” and “fraudsters,” it also made clear that the policy is not, in fact, designed to weed out illegal or fraudulent asylum claims in particular. Instead, as reflected in the press release, under the MPP *all* individuals “arriving in or entering the United States from Mexico . . . illegally or without proper documentation”—in other words, substantially all asylum seekers coming in from Mexico—may be forcibly returned to Mexico.

73. The press release hypothesized that because the MPP would impose brutal

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<sup>12</sup> See Kirstjen M. Nielsen, *Policy Guidance for Implementation of the Migrant Protection Protocols* (Jan. 25, 2019), [www.dhs.gov/sites/default/files/publications/19\\_0129\\_OPA\\_migrant-protection-protocols-policy-guidance.pdf](http://www.dhs.gov/sites/default/files/publications/19_0129_OPA_migrant-protection-protocols-policy-guidance.pdf); USCIS, *Policy Memorandum: Guidance for Implementing Section 235(b)(2)(C) of the Immigration and Nationality Act and the Migrant Protection Protocols*, PM-602-0169 (Jan. 28, 2019), [www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2019/2019-01-28-Guidance-for-Implementing-Section-35-b-2-C-INA.pdf](http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2019/2019-01-28-Guidance-for-Implementing-Section-35-b-2-C-INA.pdf).



conditions on all asylum seekers, “false asylum claims are expected to decline.” But on information and belief, in promulgating and implementing the MPP, defendants also expected, and wanted, meritorious asylum claims to decline.

74. The MPP was designed to keep migrants out regardless of the strength of their asylum claims, and—by harming migrants rather than protecting them—to dramatically reduce the numbers of people who seek safety on our shores.

75. The policy is achieving its intended harm: it is brutally punishing migrants who seek to invoke the protection of the United States, in the hope that the numbers of asylum claims—whether legitimate or not—will decline.

76. In March 2020, DHS ceased placing Central Americans in MPP in all but a small number of cases. Instead, citing a public health law that does not provide such authority, see *P.J.E.S. v. Wolf*, --- F. Supp. ----, 2020 WL 6770508 (D.D.C. Nov. 18, 2020), appeal pending, D.C. Cir. No. 20-5357, the government began to expel Central American migrants at the southern border back into Mexico without placing them in removal proceedings and without any screening or consideration of their asylum claims. White House officials reportedly forced the Centers for Disease Control and Prevention (CDC) to adopt these measures on threat of firing, even though the health officials opposed them.<sup>13</sup>

77. The administration has also shut MPP court proceedings indefinitely and kept them closed even as immigration courts within the United States have reopened. In March, April, May, and June 2020, the government issued notices cancelling MPP hearings for weeks at a

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<sup>13</sup> See Jason Dearen & Garance Burke, *Pence ordered borders closed after CDC experts refused*, AP (Oct. 3, 2020), [apnews.com/article/virus-outbreak-pandemics-public-health-new-york-health-4ef0c6c5263815a26f8aa17f6ea490ae](https://apnews.com/article/virus-outbreak-pandemics-public-health-new-york-health-4ef0c6c5263815a26f8aa17f6ea490ae).

time.<sup>14</sup> And in July 2020, the government postponed MPP proceedings indefinitely. Under what it called a “Plan to Restart MPP Hearings,” DHS will develop location-specific plans to restart MPP proceedings only after: “California, Arizona and Texas progress to Stage 3 of their reopening plans”; the Department of State and CDC “lower their global health advisories to Level 2, and/or a comparable change in health advisories, regarding Mexico in particular”; and the Mexican Government characterizes all of the Mexican border states as a “yellow” risk in its “stoplight” system.<sup>15</sup> The measure has left migrants in MPP stranded, with no end to their ordeal in sight.

78. President Trump reportedly stated, “it’s a great feeling to have closed up the border.”<sup>16</sup>

79. As a consequence of the MPP and other Trump administration policies, thousands of migrants are living in encampments near the border. On information and belief, thousands have experienced kidnappings and other forms of violence.

**B. The MPP relies on inapplicable statutory and regulatory authority.**

80. The MPP purports to invoke 8 U.S.C. § 1225(b)(2)(C), entitled “Treatment of aliens arriving from contiguous territory.” But that provision is inapplicable to the plaintiffs in this case, for two reasons.

81. First, while each plaintiff who has been subject to the MPP entered the United States by illegally crossing the border *between ports of entry*, § 1225(b)(2)(C) on its face applies

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<sup>14</sup> See, e.g., DHS, *Joint DHS/EOIR Statement on MPP Rescheduling* (June 16, 2020), [dhs.gov/news/2020/06/16/joint-dhseoir-statement-mpp-rescheduling](https://dhs.gov/news/2020/06/16/joint-dhseoir-statement-mpp-rescheduling).

<sup>15</sup> DHS, *Department of Justice and Department of Homeland Security Announce Plan to Restart MPP Hearings* (July 17, 2020), [justice.gov/opa/pr/department-justice-and-department-homeland-security-announce-plan-restart-mpp-hearings](https://justice.gov/opa/pr/department-justice-and-department-homeland-security-announce-plan-restart-mpp-hearings).

<sup>16</sup> Dearen & Burke, *supra* n.13.

only to noncitizens who are “arriving”—a term that DHS has defined as being limited to those who arrive *at a port of entry* (or after being interdicted at sea). See 8 C.F.R. §§ 1.2, 1001.1(q). The DHS regulation implementing § 1225(b)(2)(C) makes this limitation clear by permitting the return to Mexico only of noncitizens “who arrive[] *at a land border port-of-entry from Canada or Mexico.*” 8 C.F.R. § 235.3(d) (emphasis added). Because the plaintiffs here did not arrive at ports of entry, 8 U.S.C. § 1225(b)(2)(C) and 8 C.F.R. § 235.3(d) forbid the defendants from returning them to Mexico.

82. Second, the plaintiffs in this case are not subject to 8 U.S.C. § 1225(b)(2)(C) because that authority does not apply to migrants who are eligible for expedited removal procedures under § 1225(b)(1). The contiguous-return provision of § 1225(b)(2)(C) states that “[i]n the case of an alien described in Subparagraph (A) who is arriving on land (whether or not at a designated port of arrival) from a foreign territory contiguous to the United States, the Attorney General may return the alien to that territory pending a proceeding under section 1229a of this title.” Subparagraph (A) refers to 8 U.S.C. § 1225(b)(2)(A), which requires DHS to detain and initiate removal proceedings under 8 U.S.C. § 1229a against noncitizens arriving in the United States who have facially valid entry documents, such as permanent resident cards or visas, but are nevertheless inadmissible due to visas violations, criminal history, or other reasons. Thus, for those noncitizens, § 1225(b)(2)(C) authorizes DHS to return them to Mexico or Canada during removal proceedings if they arrived by land from these countries.

83. But § 1225(b)(2)(A) does not apply, and consequently § 1225(b)(2)(C) does not apply, to those who arrive in the United States *without valid documents at all*, as most asylum seekers do. Those individuals are subject to different procedures, including the possibility of

“expedited removal.” 8 U.S.C. § 1225(b)(1). They cannot, however, be returned to a contiguous territory under § 1225(b)(2)(C).

### **FACTS**

84. Plaintiffs Luisa Marisol Vasquez Perez de Bollat and A.B., Rosa Maria Martinez de Urias, and Evila Floridalma Colaj Olmos and J.C. all fled persecution and threats against their lives in Central America and crossed the U.S.-Mexico border in order to seek safety in the United States. Under the MPP, each was sent back to Mexico, where each spent between eight and ten months in peril. On May 14, 2020, this court determined that the plaintiffs were likely to succeed on count 1 of their complaint because 1) they were not “arriving” within the meaning of 8 U.S.C. § 1225(b)(2)(C), and 2) § 1225(b)(1) applies to them, not § 1225(b)(2). Accordingly, the court granted preliminary injunctive relief requiring Ms. Vasquez, A.B., Ms. Martinez, Ms. Colaj, and J.C. to be removed from the MPP. They now live in Massachusetts.

85. 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. also fled persecution and threats in Central America and crossed the U.S.-Mexico border in order to seek safety in the United States. They were also sent back to Mexico under the MPP, and have spent the last 14 to 15 months in peril while waiting for their immigration court hearings in the United States. They, too, were not properly subject to contiguous return under § 1225(b)(2)(C) 1) because they are not “arriving” within the meaning of § 1225(b)(2)(C); 2) because § 1225(b)(1) applies to them, not § 1225(b)(2); and for other reasons contained in this complaint.

#### **I. The Bollat Vasquez family.**

86. Andrés Oswaldo Bollat Vasquez fled Guatemala in 2016 after his life was repeatedly threatened, leaving behind his wife, Luisa Marisol Vasquez Perez de Bollat, and their

one-year-old son, A.B.<sup>17</sup> Mr. Bollat crossed the border and was apprehended by Customs and Border Protection (CBP). After demonstrating credible fear of persecution in Guatemala, see 8 U.S.C. § 1225(b)(1)(B)(ii), he was given a Notice to Appear in immigration court. He was eventually granted bond and released to pursue his asylum claim in the United States. He lives in Massachusetts and is awaiting a date for his final asylum hearing.

87. While Mr. Bollat's asylum case moved forward in the United States, Ms. Vasquez and A.B. began receiving threats in Guatemala. In 2018, these threats caused Ms. Vasquez so much anxiety that she was hospitalized for a week. By 2019, the demands that Ms. Vasquez's husband return—or else—mounted, and Ms. Vasquez fled Guatemala with A.B.

88. As Ms. Vasquez and A.B. journeyed to seek safety in the United States, the Trump administration had deepened its efforts to keep them from receiving any protection. On July 16, 2019, DHS enacted a rule making migrants at the Southern border ineligible for asylum if they had not applied for it in Mexico or another country. And in South Texas, DHS had rolled out an expansion of the MPP.

89. On or around September 18, 2019, Ms. Vasquez and A.B. crossed the border from Mexico into the United States. They were apprehended by CBP and issued Notices to Appear in immigration court for removal proceedings.

90. But CBP officials also issued Ms. Vasquez and A.B. a notice stating that they had been “identified for processing under the Migrant Protection Protocols.” The notice stated that Ms. Vasquez and A.B. would be sent to Mexico and could not return to the United States until it was time to report to the port of entry for their next hearing.

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<sup>17</sup> The details of plaintiffs' asylum claims are omitted due to safety and privacy concerns.

91. The notice provided that Ms. Vasquez and A.B. could consult with counsel “through any available mechanism,” including arranging to meet with an attorney at the hearing facility on the day of their hearing. They could also meet with an attorney “at a location in Mexico of [their] choosing” or by phone or email, or another “remote communication method of [their] choosing.”

92. As the notice explained, to pursue their claims for protection Ms. Vasquez and A.B. would have to appear for their next court date, approximately one month later, by presenting themselves at a bridge connecting Matamoros, Mexico to Brownsville, Texas at 4:30am.

93. A.B.’s attendance was expressly required.

94. Neither Ms. Vasquez and A.B. had ever been to Matamoros when they were first processed for the MPP.

95. Matamoros is part of the Mexican state of Tamaulipas, for which the U.S. Department of State has issued a travel advisory of “Level 4: Do Not Travel”—the same level issued for Syria and Afghanistan.

96. The State Department warns against travel to Tamaulipas, stating that “[h]eavily armed members of criminal groups often patrol areas of the state . . . and operate with impunity.” The State Department notes that criminal activity is common—including “gun battles, murder, armed robbery, carjacking, kidnapping, forced disappearances, extortion, and sexual assault”—and “law enforcement has limited capability to respond.”

97. U.S. government employees may travel in Tamaulipas only in limited areas. They may not use Mexican highways to travel between cities in Tamaulipas or be out between

midnight and 6am in Matamoros.<sup>18</sup>

98. Migrants are specifically hunted by violent criminal groups in Tamaulipas and Mexico, and Central American migrants are especially targeted and vulnerable. In Matamoros, which has few shelters, thousands of migrants seek safety by sleeping in an outdoor encampment at the foot of the Gateway Bridge from Brownsville, Texas. Nevertheless, they lack access to basic sanitation and face a constant risk of sexual assault, kidnapping, and other violent crime.

99. DHS is or should be aware of these conditions.

100. When Ms. Vasquez and A.B. were apprehended by CBP, an official asked Ms. Vasquez whether she wanted to be returned to Mexico, or go back to Guatemala. Ms. Vasquez explained that she and A.B. would neither be safe in Guatemala nor Mexico.

101. On the day she and A.B. were sent back to Mexico along with other migrants, Ms. Vasquez saw a CBP officer aggressively push a deaf-mute woman who did not go in the direction she was expected to go in.

102. Ms. Vasquez did not know and was not informed that she could have a non-refoulement interview, and that, if DHS found it more likely than not that she and A.B. would face persecution or torture in Mexico, they could not be sent there.

103. Ms. Vasquez did not know that because CBP followed the DHS policy seeking to reduce the number of non-refoulement interviews by declining to inform migrants about them. But CBP officials also *failed* to follow their own guidance requiring noncitizens who express a fear of return to Mexico to be referred for an interview. Had Ms. Vasquez been informed that she could have a non-refoulement interview, she would have requested one.

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<sup>18</sup> Department of State, *Mexico Travel Advisory* (Dec. 17, 2019), [travel.state.gov/content/travel/en/traveladvisories/traveladvisories/mexico-travel-advisory.html](https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/mexico-travel-advisory.html).

104. Instead, Ms. Vasquez, A.B., and a group of other migrants were transported to the Gateway Bridge connecting Brownsville, Texas to Matamoros, Mexico, and handed off to Mexican officials. After being escorted over the bridge and into a Mexican immigration building for processing, Ms. Vasquez and A.B. were sent outside.

105. Ms. Vasquez had nowhere to go. She found a spot on the sidewalk on the edge of the encampment where thousands of migrants were staying outside, and prepared to sleep there with A.B., who was just four years old.

106. She reached her husband in Massachusetts, who called around to hotels in Matamoros, but was told that they would not take migrants like Ms. Vasquez and A.B.

107. Ms. Vasquez was fortunate. Another migrant family had managed to get a hotel room and took her and A.B. in for the night. And her husband secured help from the only person he could find—a Mexican friend who drove more than 15 hours across Mexico from his home in Sinaloa and picked up Ms. Vasquez and A.B. the following day.

108. The friend drove Ms. Vasquez and A.B. to his family's home, where they rented a room.

109. Sinaloa, like Tamaulipas, is one of five Mexican states carrying a travel advisory of "Level 4: Do Not Travel." And Ms. Vasquez and A.B. stayed in an area U.S. government employees are forbidden from traveling to.

110. Ms. Vasquez and A.B. regularly heard gun shots and stayed inside the house most of the time.

111. In October and again in February, Ms. Vasquez and A.B. returned to Matamoros to attend court hearings. They would need to return at least one more time for a final hearing.

112. To attend court hearings, Ms. Vasquez and A.B. were required to be on the



Gateway Bridge in Matamoros at 4:30am—a time when U.S. government officials are not permitted to be outside.

113. Because of the dangers involved in traveling by bus, Mr. Bollat paid for a driver to take Ms. Vasquez and A.B. through cartel-controlled areas and into Matamoros. On one of these trips, Ms. Vasquez was even harassed by Mexican officials who threatened to rip up her paperwork and deport her to Guatemala despite her nominal permission to remain in Mexico.

114. Like other migrants, Ms. Vasquez and A.B. attended their hearings by video from a tent courtroom just over the bridge in Brownsville, Texas. After their hearings, they were escorted back to Matamoros, Mexico.

115. While Ms. Vasquez was in Mexico, her immigration attorney was unable to communicate regularly with her and could not discuss the highly sensitive details of her asylum claim with her in order to prepare for her final immigration court hearing.

116. Ms. Vasquez also could not communicate regularly with Mr. Bollat. She felt insecure and depressed. She knew that it was unsafe for her to return to Guatemala, but sometimes felt that she could no longer endure life in waiting.

117. Over the phone, Mr. Bollat regularly heard the gunshots near his family, and A.B. asked him what to do. Mr. Bollat was in agony, unable to do more to secure his family's safety.

118. On March 20, 2020, Mr. Bollat, Ms. Vasquez and A.B. filed this case—with the Martinez Urias and Colaj Olmos families—seeking safety from the MPP.

119. Around the same time, with Mexico beginning to shut down due to the Covid-19 pandemic, Ms. Vasquez and A.B. traveled to Matamoros in advance of their final court hearing. That hearing was ultimately cancelled when MPP courts closed as a result of the pandemic.

120. Through a pastor, Mr. Bollat found a house for Ms. Vasquez and A.B. to stay at in

Matamoros. Ms. Vasquez saw armed men in the streets and knew that it was unsafe to go outside.

121. On May 14, 2020, this Court granted a preliminary injunction requiring Ms. Vasquez and A.B., and three other plaintiffs in this case, to be processed out of MPP and permitted to continue their asylum cases within the United States. The following day, Ms. Vasquez and A.B. crossed the bridge into Brownsville, Texas and presented themselves to U.S. authorities. They were processed out of MPP. After a night in DHS custody, they were released. They traveled to Massachusetts and were reunited with Mr. Bollat.

## **II. The Martinez Urias family.**

122. Around the day Ms. Vasquez and A.B. narrowly escaped the misery and dangers of the migrant encampment in Matamoros, plaintiff Rosa Maria Martinez de Urias began her life there.

123. Ms. Martinez fled El Salvador in August 2019 with the five-year-old granddaughter that she had raised since the child was one year old. The little girl's father, plaintiff José Manuel Urias Martinez, had left her in Ms. Martinez's care when he fled the country in 2015.

124. Mr. Urias's young daughter was diagnosed with a heart malformation that required her to have heart surgery when she was two. Her heart requires regular monitoring and is a constant concern to her family.

125. While Mr. Urias traveled to the United States and eventually settled in Massachusetts, the men who targeted him continued to threaten his family, "disappearing" Ms. Martinez's youngest son—who was never heard from again—and later intensifying their threats against her and Mr. Urias's daughter. Ms. Martinez and her young granddaughter fled.

126. After crossing the border into the United States in September 2019, they were processed into the MPP and escorted to Matamoros.

127. Ms. Martinez and her granddaughter had never been to Matamoros. After Mexican authorities processed them, Ms. Martinez and her granddaughter were sent outside. They knew no one and had nowhere to go.

128. Like thousands of other migrants forced into Matamoros by U.S. authorities, Ms. Martinez and her five-year-old granddaughter had to sleep outside in the encampment by the river.

129. On her first night, Ms. Martinez found a piece of cardboard, and she and her granddaughter slept on it for days. Eventually, someone gave them a tent. They ate food handed out by aid workers or sometimes purchased food with money sent by Mr. Urias and other family in Massachusetts.

130. Life in the Matamoros encampment is grueling and dangerous. The encampment lacks basic sanitation, and women and children face a particularly high risk of violence.

131. Ms. Martinez also worried daily about her granddaughter's health, and whether the child would survive life outside in such difficult conditions.

132. In October, they attended a court hearing and were scheduled for a second court hearing months later.

133. By January, Ms. Martinez could no longer take it. She crossed the border illegally a second time. This time, U.S. officials separated her from her granddaughter, placed the child in a shelter, and returned Ms. Martinez to Matamoros. Approximately a month later, the child was released to the care of her father, Mr. Urias, in Massachusetts.

134. After her second stay in U.S. custody, Ms. Martinez lost her tent. She slept

wherever she could, sometimes in the tent of another migrant woman at the camp, or sometimes—for a few days at a time—in a room rented by another migrant family that she had gotten to know.

135. In February, she attended a second court hearing and was scheduled to return for a final hearing months later. After her February court date, she also had a non-refoulement interview. Although she explained her fear of persecution in Mexico, she was not removed from the MPP.

136. In Massachusetts, Mr. Urias's daughter cried for the grandmother who had raised her for as long as she could remember. Mr. Urias struggled with the financial cost of taking care of Ms. Martinez's legal bills and other needs and the emotional toll of knowing that his mother was homeless and in danger in Matamoros.

137. In May 2020, Ms. Martinez was processed out of MPP and reunited with her family under the preliminary injunction in this case. She lives in Massachusetts.

138. Three months after being processed out of MPP, Ms. Martinez was hospitalized, and the cancer that she had fought off in El Salvador was found to have come back. With the healthcare she is able to access in Massachusetts, Ms. Martinez is now undergoing treatment.

### **III. The Colaj Olmos family.**

139. Plaintiffs Evila Floridalma Colaj Olmos and J.C. are Mayans who left Guatemala around June 2019 after years of persecution and violence. In July, they crossed the border from Mexico into the United States in order to seek asylum.

140. They, too, were processed under the MPP and sent to Matamoros, a dangerous city where they had never been.

141. After being processed by Mexican immigration authorities, Ms. Colaj went

outside with J.C., who had a fever. J.C. was four years old.

142. With nowhere to go, Ms. Colaj and J.C. slept in a recessed area along the side of the road, near the cars that drove off the bridge from the United States. Eventually, a pastor gave them a tent.

143. Ms. Colaj and J.C. attended court hearings in October and November.

144. In January, Ms. Colaj went to court for what was supposed to be her final merits hearing, but her case was rescheduled because the court did not have a K'iche' interpreter.

145. Ms. Colaj requested and obtained two non-refoulement interviews. Although she explained her fear of persecution in Mexico, she and J.C. were not removed from the MPP.

146. For more than eight months, Ms. Colaj and J.C. slept in their tent in the encampment, without basic sanitation or regular access to clean water. J.C. was frequently sick.

147. At the encampment, they heard frequent gunfire and witnessed regular fighting. Ms. Colaj was aware of the frequent rapes and kidnappings of migrant women and children. She was terrified when she had to leave the encampment and venture further into Matamoros to buy food. And at night she could not sleep, always afraid that this would be the night someone that someone came into her tent to harm her or her daughter.

148. Ms. Colaj felt desperate, alone, and terrified each day.

149. In Massachusetts, Ms. Colaj's uncle, plaintiff Salomé Olmos López worried daily about J.C. and Ms. Colaj. He struggled to find help for Ms. Colaj, to take care of her teenaged brother—who is in his care—and to send money for Ms. Colaj and J.C.'s legal representation and survival.

150. In May, 2020, Ms. Colaj and J.C. were processed out of MPP and reunited with their family following the preliminary injunction in this case. They now live in Massachusetts.

**IV. The Guevara Reyes family.**

151. Plaintiff Nora Idalia Alvarado Reyes and her family fled El Salvador after a violent group murdered her brother and targeted her family.

152. Her husband, plaintiff Jorge Alberto Guevara Diaz, crossed the U.S.-Mexico border with their oldest son, J.G., in May 2019. Mr. Guevara and their son were put into removal proceedings and released to await their immigration court hearings in the United States. They live in Massachusetts.

153. Ms. Reyes initially stayed behind with the couple's two youngest children. But as threats against them escalated, they also fled.

154. After crossing the U.S.-Mexico border in August 2019, they were apprehended by CBP and put into MPP.

155. They were sent to Matamoros, where Ms. Reyes and her children had never been. When Ms. Reyes asked a Mexican official where she should go, he told her that was her problem. S.G. was six years old and M.G. was just three.

156. Ms. Reyes and her children slept on the sidewalk under an improvised canopy. It rained hard, and they were cold and soaked. After a few days, they took a bus to Chiapas, a state in southern Mexico where Ms. Reyes has a sister.

157. They returned in November to attend their first court hearing. On the way back to Matamoros, a Mexican official falsely told Ms. Reyes that the documents Mexican authorities had given her did not authorize her to be away from the border, and threatened to deport her to El Salvador.

158. After that, Ms. Reyes decided that it was too far away and too dangerous to return to Chiapas. Instead, she and her children began living in a tent in the encampment by the bridge.

At one point, Ms. Reyes rented a house with another migrant family, but they soon fled the home after learning of frightening incidents nearby.

159. They returned to court in January 2020 and then were scheduled to return again in March 2020, but their hearing was cancelled due to the Covid-19 pandemic.

160. Ms. Reyes remained at the encampment with her children for approximately a year without adequate access to sanitation, clean water, or food. They endured bitterly cold nights. Her children's skin scarred from a skin infection likely brought on by poor sanitation. They witnessed and heard about violent attacks against other migrants at the camp. And at night, fear kept them awake.

161. As month after month passed without a return to MPP hearings, and cold weather returned, Ms. Reyes could no longer bear living in the camp with her two young children. In October 2020, Ms. Reyes's children—S.G. and M.G.—crossed the border again. They were processed out of MPP and reunited with their father, Mr. Guevara.

162. Ms. Reyes also crossed the border again in November. Although she was provided with a non-refoulement interview and explained her fear of returning to Mexico, U.S. authorities returned her to Matamoros. She is heartbroken, alone, and fearful about what will happen to her and her family.

163. In Massachusetts, Mr. Guevara is overwhelmed by the preoccupation and responsibility of providing for Ms. Reyes and caring for their three children—plaintiffs J.G., S.G., and M.G.—on his own.

**V. The López Abarca family.**

164. Plaintiffs Hermes Arnulfo López Merino and María de la Cruz Abarca de López fled El Salvador with their three children—plaintiffs T.L., D.L., and A.L.— after years of escalating threats and violence against their family.

165. After crossing the U.S.-Mexico border in September 2019, they were apprehended by CBP and put into MPP. They were sent to Matamoros, where they had never been.

166. Mr. López and his family stayed at the encampment for a few days, until an incident there caused them to seek help from Mexican authorities. A Mexican official told Mr. López that his family would be in danger if they reported the incident and that, for their safety, they should leave the encampment.

167. The family stayed in a hotel for approximately a month with funds sent by Mr. López's siblings in Massachusetts. But when it became difficult for Mr. López's siblings to continue to pay for the hotel, Mr. López found a one-bedroom house to rent for his family.

168. Mr. López's siblings in Massachusetts, including plaintiff Mateo López, send help when they can. Mr. López also found a job near the home working seven days a week as a carpenter. Even so, his family barely gets by.

169. Mr. López and his family live in a dilapidated home. In one room, the roof has collapsed and they can look out at the sky. Since there is no heating and little insulation, the home has become brutally cold during the winter months. The five of them sleep on wooden bedframes in a single room because they have been unable to afford mattresses. Mr. López can barely buy enough food for his family, and some days, they eat only bread. To make matters



worse, in December 2020, just before he would have been entitled to an end-of-year bonus, Mr. López was laid off.

170. Ms. Abarca and their daughters stay home at all times because it is too dangerous to leave. They have grown accustomed to hearing gunshots—in the morning, in the middle of the day, and at night—and hiding under the bed. Mr. López leaves the home only when necessary. When in public, he tries to avoid speaking for fear of being recognized as Central American.

171. With MPP hearings cancelled and winter settling in, the family is in constant anguish, unsure how much longer they can go on.

172. Meanwhile in Massachusetts, plaintiff Mateo López worries about his brother and the family, and tries to help out financially.

#### **VI. The Zuniga Posadas family.**

173. Plaintiff Miriam Yanett Zuniga Posadas fled Honduras with her three children to escape threats from her partner and a violent armed group.

174. In September 2019, Ms. Zuniga and her children crossed the border into the United States from the Mexican state of Coahuila. They were transported approximately 150 miles and expelled into Nuevo Laredo, Mexico under the MPP.

175. Ms. Zuniga and her children were instructed to return to the bridge in February, when they would cross into Laredo, Texas for their first court hearing.

176. Like Matamoros, Nuevo Laredo is also located in the Mexican state of Tamaulipas. U.S. officials are not permitted to be out in Nuevo Laredo between midnight and 6 a.m.

177. But Nuevo Laredo is especially dangerous for migrants. Migrants in Nuevo Laredo are hunted by cartels in broad daylight. They are particularly vulnerable to extortion and

kidnapping around the bridge from Laredo, Texas, and near migrant shelters, the bus station, and other locations.

178. Ms. Zuniga and her children were in grave danger every time they stepped outside in Nuevo Laredo.

179. After they were first placed in MPP and processed by Mexican authorities, Ms. Zuniga and her children were surrounded by heavily armed men the moment they set foot outside the immigration building in Nuevo Laredo. They were saved by a pastor who interceded and took them to a shelter.

180. At the shelter, migrants warned Ms. Zuniga never to go outside.

181. As much as she could, Ms. Zuniga heeded the warning.

182. In February, she and her children were scheduled for court. But as they walked towards the bridge along with a large group of migrants who had court that day, armed men again appeared and grabbed Ms. Zuniga's son. As other migrants to the bridge and alerted Mexican authorities to the situation, Mexican officials appeared and escorted Ms. Zuniga and her children to the Mexican immigration building at the foot of the bridge.

183. In court, Ms. Zuniga tried to tell the judge about the dangerous situation they faced in Mexico, but he would only allow her to answer his yes or no questions. The Judge referred Ms. Zuniga to a non-refoulement interview. She told the official what had happened, but she and her children were sent back to Mexico.

184. Back in Nuevo Laredo, Mexican authorities processed Ms. Zuniga and other migrants and forced them outside. As Ms. Zuniga and her children tried to stay inside the immigration building as long as possible, they saw other migrants who had been in U.S. immigration court with them being kidnapped by armed men just outside.

185. That same day, on their way back to the shelter, the pastor's van was intercepted by armed men. The armed men kidnapped several immigrant families but spared others, including Ms. Zuniga and her children.

186. The shelter had to move twice because it was invaded by armed men.

187. In September, Ms. Zuniga and her children had to return to the Mexican immigration building to renew their permission to remain in Mexico while MPP hearings were suspended. When they left, they were surrounded by armed men who demanded to know who they were and what they were doing. One of them menacingly stroked 17-year-old G.Z.'s face and told her that she was beautiful. G.Z. was crying and shaking. Ms. Zuniga and her children again escaped thanks to the intervention of good samaritans who returned them to the shelter.

188. After these incidents, Ms. Zuniga could no longer bear the dangers of living in Nuevo Laredo with her children. Days later, her children crossed the border into the United States, and were released to the care of their aunt, plaintiff Rosi Lisbeth Zuniga Posadas, who is doing her best to care for her niece and nephews' emotional and other needs among her other responsibilities. The children cry for their mother with frequency. They know all too well the dangers that their mother faces, and worry that will never see her again.

189. Ms. Zuniga is alone and afraid. Every day she worries that men will break into the shelter again, and that she will not be able to be there for her children.

### **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. The foregoing allegations are realleged and incorporated herein.

191. Title 8, Section 1225(b)(2)(C)—which authorizes DHS to return certain individuals to a contiguous territory during their immigration proceedings—does not apply to Ms. Vasquez, A.B., Ms. Martinez, Ms. Colaj, J.C., Ms. Reyes, Mr. López, Ms. Abarca, T.L., D.L., A.L., and Ms. Zuniga, for two independent reasons.

192. First, § 1225(b)(2)(C) does not apply to individuals who entered the United States without inspection, *i.e.*, by crossing the border between ports of entry. Instead, it applies only to noncitizens who presented themselves at a port of entry. See 8 U.S.C. § 1225(b)(2)(C) (providing for contiguous return of noncitizens “arriving” by land); 8 C.F.R. § 235.3(d) (implementing § 1225(b)(2)(C) to permit DHS to “require any alien who appears inadmissible and who arrives at a land border port-of-entry from Canada or Mexico, to remain in that county while awaiting a removal hearing”); see also 8 C.F.R. §§ 1.2, 1001.1(q).

193. Second, § 1225(b)(2)(C) applies only to noncitizens to whom § 1225(b)(2) applies, not to noncitizens to whom § 1225(b)(1) applies. Sections 1225(b)(1) and (b)(2) divide noncitizens into two categories, and provide different procedures for each. And § 1225(b)(2)’s express terms make it inapplicable to noncitizens to whom § 1225(b)(1) applies, including the plaintiffs here.

194. Applying the MPP to Ms. Vasquez, A.B., Ms. Martinez, Ms. Colaj, J.C., Ms. Reyes, Mr. López, Ms. Abarca, T.L., D.L., A.L., and Ms. Zuniga is thus contrary to the Immigration and Nationality Act (INA) and its regulations, and in violation of the APA. See 5 U.S.C. § 706(2).

**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. The foregoing allegations are realleged and incorporated herein.

196. U.S. law permits noncitizens to apply for asylum in the United States regardless of their status or manner of entry, and balances the protection of asylum seekers with other American interests, including in expeditious removal procedures and in ensuring that the United States is not alone in bearing responsibility for those fleeing persecution. See generally 8 U.S.C. §§ 1158, 1225(b)(1); 8 C.F.R. §§ 208.1 et seq.

197. The MPP policy upends Congress's scheme for addressing asylum in the context of third countries and its scheme for protecting and—when appropriate—removing individuals who express a fear of persecution.

198. Applying the MPP to Ms. Vasquez, A.B., Ms. Martinez, Ms. Colaj, J.C., Ms. Reyes, Mr. López, Ms. Abarca, T.L., D.L., A.L., and Ms. Zuniga is thus contrary to the INA and its regulations, in violation of the APA. See 5 U.S.C. § 706(2).

199. Further, to the extent challengeable in this proceeding, the government's bar on asylum for Ms. Vasquez, A.B., Ms. Martinez, Ms. Colaj, J.C., Ms. Reyes, Mr. López, Ms. Abarca, T.L., D.L., A.L., and Ms. Zuniga based on their failure to apply for asylum in Mexico, see 8 C.F.R. § 208.13(c)(4), violates 8 U.S.C. § 1158 and applicable regulations.

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

200. The foregoing allegations are realleged and incorporated herein.

201. The INA bars removing a noncitizen to a country where it is more likely than not that the noncitizen will face persecution or torture. 8 U.S.C. § 1231(b)(3); 8 C.F.R. § 208.16.

202. The duty of non-refoulement is also a *jus cogens*—that is, a universal, and obligatory norm of customary international law from which the United States cannot derogate, and which U.S. courts are bound to enforce.

203. Recognizing this duty, DHS and Department of Justice regulations ensure that noncitizens have the opportunity to see an immigration judge before being sent to a country in which they fear persecution or torture.

204. Ms. Vasquez, A.B., Ms. Martinez, Ms. Colaj, J.C., Ms. Reyes, Mr. López, Ms. Abarca, T.L., D.L., A.L., and Ms. Zuniga did not receive non-refoulement procedures consistent with U.S. and international law. Each was unlawfully sent to Mexico despite the high likelihood of persecution and torture that they and other Central American migrants face there.

205. DHS failed to comply with non-refoulement procedures and plaintiffs' right not to be removed to a country where they face persecution. The United States thus violated its obligations under international law, the INA, its regulations, and the APA, see 5 U.S.C. § 706.

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

206. The foregoing allegations are realleged and incorporated herein.

207. The APA renders invalid legislative rules that are adopted without notice and an opportunity for comment during a 30-day period. 5 U.S.C. § 553.

208. The MPP and its procedures for determining whether an individual is more likely than not to face persecution or torture in Mexico are legislative rules. The MPP has brought a sea-change in the processing of asylum claims at the border and created a new mandatory process for non-refoulement determinations that does not comply with the regulations for *any* existing process for assessing fear of return.

209. The government did not promulgate regulations or provide opportunity for public comment relating to the MPP, including non-refoulement procedures. Instead, DHS issued only vague guidance and has been making up the procedures governing the MPP as it goes. The MPP

and its non-refoulement procedures are operating in violation of the notice-and-comment requirements of the APA.

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

210. The foregoing allegations are realleged and incorporated herein.

211. The APA requires courts to “compel agency action unlawfully withheld.” 5 U.S.C. § 706(1).

212. DHS has unlawfully deprived Ms. Vasquez, A.B., Ms. Martinez, Ms. Colaj, J.C., Ms. Reyes, Mr. López, Ms. Abarca, T.L., D.L., A.L., and Ms. Zuniga of procedures required by law before sending noncitizens to countries where they fear persecution. See 8 C.F.R. § 208.31.

213. Courts shall also “hold unlawful and set aside agency action” that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” “contrary to constitutional right, power, privilege, or immunity,” “in excess of statutory jurisdiction, authority, or limitation, or short of statutory right” or “without observance of procedure required by law.” 5 U.S.C. § 706(2).

214. The MPP’s non-refoulement procedures are arbitrary and capricious, an abuse of discretion, unlawful, unconstitutional, and *ultra vires*. Through the MPP, DHS has unlawfully claimed authority to make unilateral determinations about whether migrants may be sent to Mexico notwithstanding their fear of persecution. The MPP is a drastic and unexplained departure from prior practice, including from all existing procedures for determining whether noncitizens may be sent to countries where they fear persecution.

215. This departure from prior non-refoulement procedures has occurred even though DHS is or should be aware that all or virtually all Central American migrants face a reasonable

fear of persecution in Tamaulipas and Mexico, where they are targeted by violent criminal groups based on their identity as Central Americans and migrants.

216. The MPP's inadequate non-refoulement procedures are also evidence that the MPP as a whole is arbitrary, capricious, and unlawful. The MPP relies on an unexplained change in DHS's interpretation of 8 U.S.C. § 1225(b)(2)(C) and 8 C.F.R. § 235.3(d); it represents a drastic departure from DHS's prior system for addressing asylum seekers at the border; and it is not minimally calculated to "protect" migrants with legitimate asylum claims. Instead, the MPP is *designed* to punish those fleeing violence with exposure to conditions DHS knows to be perilous and even fatal, in order to make it unbearable for asylum seekers to seek the protection of U.S. law.

217. The MPP and its non-refoulement procedures, including as applied to Ms. Vasquez, A.B., Ms. Martinez, Ms. Colaj, J.C., Ms. Reyes, Mr. López, Ms. Abarca, T.L., D.L., A.L., and Ms. Zuniga, are arbitrary and capricious and otherwise violate 5 U.S.C. § 706.

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

218. The foregoing allegations are realleged and incorporated herein.

219. Plaintiffs have a right under the Fifth Amendment to the U.S. Constitution to equal protection of the laws. The MPP and its inadequate non-refoulement process are motivated by racial animus and animus based on national origin and are unlawful. *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 265-66 (1977).

220. Through the application of the MPP, plaintiffs have been harmed by defendants' violation of equal protection.



**PRAYER FOR RELIEF**

Plaintiffs ask that this court grant the following relief:

1. Declare that the MPP and its non-refoulement procedures are unlawful, and that Ms. Vasquez, A.B., Ms. Martinez, Ms. Colaj, J.C., Ms. Reyes, Mr. López, Ms. Abarca, T.L., D.L., A.L., and Ms. Zuniga's inclusion in the MPP was and is unlawful;
2. Enjoin defendants from applying the MPP to Ms. Vasquez, A.B., Ms. Martinez, Ms. Colaj, J.C., Ms. Reyes, Mr. López, Ms. Abarca, T.L., D.L., A.L., and Ms. Zuniga;
3. Order that Ms. Vasquez, A.B., Ms. Martinez, Ms. Colaj, J.C., Ms. Reyes, Mr. López, Ms. Abarca, T.L., D.L., A.L., and Ms. Zuniga be paroled into the United States and remain during the pendency of their 8 U.S.C. § 1229a removal proceedings and any appeals;
4. Alternatively, order that Ms. Vasquez, A.B., Ms. Martinez, Ms. Colaj, J.C., Ms. Reyes, Mr. López, Ms. Abarca, T.L., D.L., A.L., and Ms. Zuniga be provided with a non-refoulement interview that is, at a minimum, consistent with the requirements and pre-existing practice for reasonable fear interviews under 8 C.F.R. § 208.31, including the opportunity for review by an immigration judge.
5. Award attorney's fees under the Equal Access to Justice Act, 28 U.S.C. § 2412(d) and 5 U.S.C. § 504, if applicable; and,
6. Order any further relief this court deems just and proper.

Respectfully submitted this 22nd day of December, 2020.

*/s/Adam J. Kessel*

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