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12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**

14 Innovation Law Lab; Central American Resource Center
of Northern California; Centro Legal de la Raza;
15 Immigration and Deportation Defense Clinic at the
University of San Francisco School of Law; Al Otro
16 Lado; Tahirih Justice Center; John Doe; Gregory Doe;
Bianca Doe; Dennis Doe; Alex Doe; Christopher Doe;
17 Evan Doe; Frank Doe; Kevin Doe; Howard Doe; Ian
Doe,

18 *Plaintiffs,*

19 v.

20 Kirstjen Nielsen, Secretary of Homeland Security, in
21 her official capacity; U.S. Department of Homeland
Security; Lee Francis Cissna, Director, U.S. Citizenship
22 and Immigration Services, in his official capacity; John
L. Lafferty, Chief of Asylum Division, U.S. Citizenship
23 and Immigration Services, in his official capacity; U.S.
Citizenship and Immigration Services; Kevin K.
24 McAleenan,

1 Lee Gelernt*
Anand Balakrishnan*
2 Daniel Galindo**(SBN 292854)

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1 11. Venue is proper under 28 U.S.C. § 1391(e)(1) because Defendants are agencies of the
2 United States and officers of the United States acting in their official capacity; three of the Plaintiff
3 organizations have their principal residence in this District; and another two Plaintiff organizations
4 have offices in this District.

5 **PARTIES**

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7 12. Plaintiff John Doe fled Guatemala to seek asylum in the United States. On January 30, 2019,
8 he was returned to Mexico pursuant to Defendants' new forced return policy. He is currently in
9 Tijuana, where he fears for his life.

10 13. Plaintiff Gregory Doe fled Honduras to seek asylum in the United States. On January 30,
11 2019, he was returned to Mexico pursuant to Defendants' new forced return policy. He is currently
12 in Tijuana where he fears for his life.

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14 14. Plaintiff Bianca Doe fled Honduras to seek asylum in the United States. On January 30,
15 2019, she was returned to Mexico pursuant to Defendants' new forced return policy. She is
16 currently in Tijuana where she fears for her life.

17 15. Plaintiff Dennis Doe fled Honduras to seek asylum in the United States. On January 30,
18 2019, he was returned to Mexico pursuant to Defendants' new forced return policy. He is currently
19 in Tijuana where he fears for his life.

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21 16. Plaintiff Alex Doe fled Honduras to seek asylum in the United States. On January 30, 2019,
22 he was returned to Mexico pursuant to Defendants' new forced return policy. He is currently in
23 Tijuana where he fears for his life.

24 17. Plaintiff Christopher Doe fled Honduras to seek asylum in the United States. On January 30,
25 2019, he was returned to Mexico pursuant to Defendants' new forced return policy. He is currently
26 in Tijuana where he fears for his life.

1 18. Plaintiff Evan Doe fled El Salvador to seek asylum in the United States. On January 30,
2 2019, he was returned to Mexico pursuant to Defendants’ new forced return policy. He is currently
3 in Tijuana where he fears for his life.

4 19. Plaintiff Frank Doe fled Honduras to seek asylum in the United States. On February 4, 2019,
5 he was returned to Mexico pursuant to Defendants’ new forced return policy. He is currently in
6 Tijuana where he fears for his life.

7 20. Plaintiff Kevin Doe fled Honduras to seek asylum in the United States. On January 30,
8 2019, he was returned to Mexico pursuant to Defendants’ new forced return policy. He is currently
9 in Tijuana where he fears for his life.

10 21. Plaintiff Howard Doe fled Honduras to seek asylum in the United States. On February 5,
11 2019, he was returned to Mexico pursuant to Defendants’ new forced return policy. He is currently
12 in Tijuana where he fears for his life.

13 22. Plaintiff Ian Doe fled Honduras to seek asylum in the United States. On February 5, 2019,
14 he was returned to Mexico pursuant to Defendants’ new forced return policy. He is currently in
15 Tijuana where he fears for his life.

16 23. Plaintiff Innovation Law Lab (the “Law Lab”) is a nonprofit organization that has projects
17 in multiple states throughout the country, including California, New Mexico, Texas, Oregon, and
18 North Carolina. The Law Lab seeks to advance the legal rights of immigrants and refugees in the
19 United States, with a focus on providing and facilitating representation to asylum seekers through
20 innovative, technology-driven models. The Law Lab has an office in Oakland, California.

21 24. Plaintiff Central American Resource Center of Northern California (“CARECEN”) is a
22 nonprofit organization founded in 1986 by Central American refugees, which provides pro bono
23 and low cost immigration services to primarily low-income, immigrant, Latino, and monolingual
24 Spanish speakers. A central part of CARECEN’s mission is to provide legal counseling and
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1 representation to asylum seekers, the vast majority of whom enter the United States through the
2 southern border. The organization is incorporated in California and headquartered in San Francisco,
3 California.

4 25. Plaintiff Centro Legal de la Raza (“Centro Legal”) is nonprofit organization incorporated in
5 California. Centro Legal is a comprehensive immigration services agency focused on protecting
6 and expanding the rights of low-income people, particularly Latino immigrants and asylum
7 seekers. Centro Legal’s comprehensive immigration practice specializes in providing removal
8 defense for asylum seekers and others throughout California, including asylum seekers arriving
9 through the U.S.-Mexico border. Centro Legal is the largest provider of removal defense services
10 in California, and has offices in Oakland, Hayward, and San Francisco, California.

11 26. Plaintiff Immigration and Deportation Defense Clinic at the University of San Francisco
12 School of Law (the “USF Clinic”) is a nonprofit organization that provides removal defense and
13 engages in advocacy in California. The USF Clinic’s twofold mission is to provide free legal
14 services to noncitizens in removal proceedings, with an emphasis on asylum, and to train law
15 students to be effective and ethical immigration lawyers in the area of defensive asylum cases. The
16 USF Clinic is headquartered in San Francisco, California.

17 27. Plaintiff Al Otro Lado (“AOL”) is a nonprofit legal services organization based in Los
18 Angeles, California that serves indigent deportees, migrants, refugees, and their families in
19 Southern California and Tijuana, Mexico. Al Otro Lado’s mission is to provide screening,
20 advocacy, and legal representation for individuals in asylum and other immigration proceedings; to
21 seek redress for civil rights violations; and to provide assistance with other legal and social service
22 needs.

23 28. Plaintiff Tahirih Justice Center (“Tahirih”) is a nonprofit and non-partisan organization
24 providing free legal immigration services to survivors of gender-based violence. Tahirih’s mission
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1 53. For example, Mexican police detained Plaintiff Ian Doe several times and demanded his
2 immigration documents. About a month ago, officers required him to pay a bribe of 1,500 pesos to
3 avoid being arrested and taken to jail.

4 54. Similarly, Plaintiff Christopher Doe was stopped by the Mexican police who threatened that
5 they would take him to jail if they saw him on the street again.

6 55. Plaintiff Howard Doe was robbed at gunpoint by two Mexican men in Tijuana just days
7 before he presented himself at the port of entry. The robbers said they knew that he was Honduran,
8 and that if they saw him again, they would kill him.

9 56. Plaintiff Gregory Doe was staying at a shelter in Tijuana when a mob of young men
10 wielding sticks surrounded the shelter and threatened the residents.

11 57. Plaintiff Alex Doe was staying in the Playas neighborhood of Tijuana when he and other
12 asylum seekers were forced to flee in the middle of the night after a group of Mexicans threw stones
13 at them and additional attackers began to gather with sticks and other weapons.

14 58. While traveling through Mexico on his way to the U.S.-Mexico border, Plaintiff Howard
15 Doe was kidnapped and held for more than two weeks by members of a Mexican drug cartel until
16 he and several others were able to escape. He fears that the well-connected cartel will find him in
17 the border region and torture and murder him for escaping.

18 59. President Trump has himself acknowledged that Mexico is not a safe place for migrants,
19 tweeting on January 31, 2019: “Very sadly, Murder cases in Mexico in 2018 rose 33% from 2017,
20 to 33,341.” He further stated that the situation in Mexico is “[w]orse even than Afghanistan.”

21 60. Moreover, the border regions where asylum seekers subjected to Defendants’ new policy
22 will be returned are especially dangerous. Tijuana, the city where Individual Plaintiffs and other
23 migrants returned from the San Ysidro port of entry are being dumped, is one of the deadliest cities
24 in the world. Tijuana had its highest number of reported murders ever last year, and Baja
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1 California, the state in which Tijuana is located, was the state in Mexico with the highest number
2 of reported murders last year. Asylum seekers in Tijuana have been the direct targets of violence.
3 Among the incidents of violence documented by human rights groups in recent months, two
4 teenagers from Honduras were kidnapped and murdered in Tijuana last December.

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6 61. Similar dangers face asylum seekers who will soon be forced to return from the Eagle Pass
7 Port of Entry and will be dumped in Coahuila state. The U.S. Department of State advises that
8 Americans reconsider travel to Coahuila because violent crime and gang activity are common, and
9 U.S. employees traveling in Piedras Negras, the town across from Eagle Pass, must observe a
10 nighttime curfew.

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12 62. In addition to fearing discrimination and violence in Mexico, several of the Individual
13 Plaintiffs fear that Mexico will unlawfully deport them to their home countries where they face
14 persecution.

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16 63. There is no functioning asylum system in Mexico, and Central American asylum seekers
17 face a substantial risk of being involuntarily repatriated to the countries they have fled.
18 Intergovernmental and human rights organizations have documented widespread instances of
19 Mexican officials returning Central American migrants to their home countries despite their fears
20 of persecution or torture, without any meaningful process.

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22 64. The U.S. Department of State's 2017 Human Rights Report on Mexico notes "incidents in
23 which immigration agents had been known to threaten and abuse migrants to force them to accept
24 voluntary deportation and discourage them from seeking asylum."

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26 65. For example, when Plaintiff Dennis Doe first entered Mexico en route to the United States,
27 he was apprehended by Mexican officials who deported him without asking him if he wished to
28 apply for asylum or if he feared returning to his home country.

1 66. Similarly, Plaintiff Alex Doe witnessed Mexican authorities deport several immigrants
2 simply for being in an area where someone had started a fight.

3 67. Plaintiff Kevin Doe and his wife were arrested by Mexican immigration authorities after
4 they entered the country. The authorities separated Kevin from wife and deported her to Honduras,
5 even though she told them that she was pregnant and scared to return to Honduras
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7 68. President Trump recently advocated for Mexico to deport individuals who arrived on
8 “caravans,” regardless of their claims for asylum and other protection: “Mexico should move the
9 flag waving Migrants, many of whom are stone cold criminals, back to their countries. Do it by
10 plane, do it by bus, do it anyway (sic) you want, but they are NOT coming into the U.S.A. We will
11 close the Border permanently if need be.”

12 69. The conditions in Mexico will make it difficult if not impossible for asylum seekers to
13 meaningfully exercise their right to apply for asylum. Asylum seekers who are attacked,
14 kidnapped, or killed in Mexico will be wholly unable to pursue their asylum applications.
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16 70. For those who escape violence but nonetheless live in fear of harm, the psychological
17 strains of navigating danger, necessary limitations on their movement to avoid violence, lack of a
18 secure place to live, and other challenges will prevent them from being able to devote the time
19 needed to meaningfully prepare for their asylum proceedings—a process that, under normal
20 conditions, can require hundreds of hours.
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22 71. Instead of being able to focus on preparing their cases, asylum seekers forced to return to
23 Mexico will have to focus on trying to survive. These pressures may deter even those with the
24 strongest asylum claims to give up, rather than endure the wait under such conditions.

25 **C. Asylum Procedures at the U.S.-Mexico Border**

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1 removal proceedings under INA § 240, 8 U.S.C. § 1229a.

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D. Defendants’ New Forced Return Policy

78. On December 20, 2018, DHS Secretary Nielsen announced an “unprecedented” change to the existing policy. In what DHS described as an “historic action to confront illegal immigration,” Defendant Nielsen announced a new policy, dubbed the “Migrant Protection Protocols” (“MPP”), under which DHS would begin requiring noncitizens who seek admission from Mexico “illegally or without proper documentation” to be “returned to Mexico for the duration of their immigration proceedings.”

79. According to DHS, the new policy would address the problem of noncitizens who allegedly

1 83. A few days later, a memorandum issued by CBP Commissioner McAleenan announced
2 that Defendants would begin im
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1 of detention space or whether the individual could be released on parole in lieu of being returned to
2 Mexico.

3 95. Nor are officers required to consider whether the individual has a legal status in Mexico for
4 the duration of removal proceedings or has a place to reside, nor whether the individual could be
5 gravely harmed in ways that may not amount to persecution or torture.
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8 **F. Plaintiffs Have Been Harmed by Defendants' Inadequate Procedures for Determining**
9 **Whether They Will Face Persecution or Torture in Mexico.**

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1 or torture, or other changed circumstances arise that might affect the determination, there is no
2 opportunity to revisit a negative determination, until the individual returns to the port of entry for
3 their scheduled removal hearing

4 101. These procedures are a stark departure from procedures the Executive Branch has adopted to
5 implement its duty of *nonrefoulement*. In regular removal proceedings, for example, the decision
6 whether an individual faces persecution or torture is made in a hearing before an immigration judge,
7 with a right to counsel, present evidence, and cross-examine witnesses, and then with a right to seek
8 administrative and judicial review.
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10 102. Although this new procedure effects a sea change in the treatment of asylum seekers,
11 Defendants adopted it without undertaking notice-and-comment rulemaking. A proposed
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1 106. Moreover, the Individual Plaintiffs' interviews were cursory. For example, Kevin Doe's
2 interview with CBP lasted all of five minutes, and he was never asked about his fear of being
3 returned to Mexico.

4 107. Christopher Doe—who has a first-grade education and childhood head injury that impairs
5 his learning and memory—tried to explain that he had been attacked while in Mexico at his
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1 would also pose significant obstacles and be more resource intensive, requiring extensive travel and
2 other changes to current practice to provide adequate representation.

3 137. Defendants' policy will also significantly harm the USF Clinic's core mission of training
4 law students to be effective advocates. The USF Clinic requires in-person access to its clients in
5 order to effectively train law students consistent with its mission. However, law students lack the
6 necessary flexibility in their schedules to travel repeatedly to San Diego for court hearings and
7 Mexico for the multiple, lengthy client meetings typically required to prepare for an asylum
8 hearing. Shifting the organization's representation model to provide services to clients at a distance
9 would be extremely difficult and compromise the Clinic's ability to effectively represent clients and
10 train law students.
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12 138. Plaintiff Al Otro Lado is a nonprofit organization based in Los Angeles that provides legal
13 representation or other assistance to individuals in asylum and other immigration proceedings in
14 Southern California. The organization also provides know-your-rights workshops and other services
15 to asylum seekers in Tijuana, Mexico.
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17 139. With its policy of returning asylum seekers, Defendants have frustrated Al Otro Lado's
18 mission and have forced the organization to divert significant resources away from its other
19 programs. For example, the organization's small staff has had to pull its attention from integral
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1 re-work its volunteer training and know-your-rights presentations and overhaul its training
2 materials to incorporate new and critical information.

3 140. Al Otro Lado has also been forced to divert significant staff resources to help returned
4 migrants find safe housing in Mexico and provide emotional support. Because many returned
5 asylum seekers will be unable to retain legal counsel from Mexico, Al Otro Lado has had to begin
6 developing workshops to provide pro se support to those who need assistance completing the
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1 Mexico to conduct intakes and to effectively represent to these asylum seekers. This will
2 significantly increase the time and cost Tahirih spends to develop cases, as working with survivors
3 of gender-based violence, who are typically traumatized, requires repeated face-to-face meetings
4 and consultations. Furthermore, Tahirih will be required to spend additional time and money to
5 represent individuals returned to Mexico whose cases have been assigned to the San Diego
6 Immigration Court.
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8 143. Tahirih will have to divert substantial resources to researching and understanding Mexican
9 law regarding the practice of law by foreign lawyers, including complicated questions of licensing,
10 reciprocity, the effect of NAFTA, any criminal penalties and visa requirements, and how all of
11 those issues interact with lawyers' professional obligations in each state in which a Tahirih attorney
12 or one of its hundreds of pro bono attorneys is barred. The risk of potential legal sanctions may
13 deter attorneys from taking on asylum seekers returned to Mexico, thereby frustrating Tahirih's
14 mission.
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16 144. Tahirih will also be unable to obtain the expert services, including psychological
17 evaluations, that are necessary to represent many survivors of gender-based violence. Tahirih
18 anticipates needing to transport experts to Mexico for psychological evaluations, again requiring a
19 substantial diversion of time and funds for that travel. In addition, Tahirih will be required to divert
20 resources to understanding Mexican laws relating to licensing and the practice of psychology by a
21 foreigner in Mexico.
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23 145. Finally, Defendants' new policy will jeopardize Tahirih's funding streams. Tahirih's San
24 Francisco office receives grant funding from Santa Clara County, California to provide
25 immigration-related legal services to vulnerable individuals who reside in or are employed in Santa
26 Clara County. Under Defendants' policy, fewer individuals will be permitted to enter the United
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1 States pending their removal proceedings, meaning there will be fewer potential clients for Tahirih
2 to serve in Santa Clara County.

3 146. The Organizational Plaintiffs have also been harmed because they were denied the
4 opportunity to comment on Defendants' policy through a notice-and-comment rulemaking. If
5 Defendants had provided an opportunity for notice and comment before Defendant began
6 implementing the policy, Plaintiffs could have informed Defendants of their serious objections to
7 the policy, and they may have convinced Defendants to adopt a different approach.
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10 **CAUSES OF ACTION**

11 **FIRST CLAIM FOR RELIEF**

12 **(VIOLATION OF INA § 235(b)(2)(C), 8 U.S.C. § 1225(b)(2)(C),**
13 **TREATMENT OF ALIENS ARRIVING FROM FOREIGN CONTIGUOUS TERRITORY,**
14 **AND ADMINISTRATIVE PROCEDURE ACT, 5 U.S.C. § 706(2)(A))**

15 147. The foregoing allegations are repeated and realleged as if fully set forth herein.

16 148. INA § 235(b)(2)(C), 8 U.S.C. § 1225(b)(2)(C) permits the return to a contiguous territory
17 only of an "alien described in subparagraph (A) who is arriving on land (whether or not at a
18 designated port of arrival) from a foreign territory contiguous to the United States." *Id.* Section
19 1225(b)(2)(B) further provides that the return authorized in Section 1225(b)(2)(C) shall not be
20 applied to any noncitizen "to whom paragraph (1) [Section 1225(b)(1) expedited removal] applies."
21 8 U.S.C. § 1225(b)(2)(B)(ii).
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23 149. In addition, Section 1225(b)(2)
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1 the right to a meaningful opportunity to apply for asylum; and other restrictions on countries to
2 which a noncitizen may be removed or returned.

3 150. Defendants are applying their policy of returning asylum seekers to Mexico (the “forced
4 return policy”) to individuals, including the individual Plaintiffs, who cannot lawfully be
5 returned under Section 1225(b)(2)(C).
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1 164. The 1951 Refugee Convention and the 1967 Protocol relating to the Status of Refugees, to
2 which the United States is party, requires that the United States not “expel or return (‘refouler’) a
3 refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be
4 threatened on account of his race, religion, nationality, membership of a particular social group or
5 political opinion.” United Nations Convention Relating to the Status of Refugees, art. 33, July 28,
6 1951, 189 U.N.T.S. 150; *see also* Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19
7 U.S.T. 6223, 606 U.N.T.S. 267.

9 165. The Refugee Convention prohibits the return of individuals to countries where they would
10 directly face persecution on a protected ground as well as to countries that would deport them to
11 conditions of persecution.

12 166. Congress has codified these prohibitions in the “withholding of removal” provision at INA §
13 241(b)(3), 8 U.S.C. § 1231(b)(3), which bars the removal of an individual to a country where it is
14 more likely than not that he or she would face persecution.
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16 167. Pursuant to regulation, only an immigration judge can determine whether an individual
17 faces such a risk of persecution and is entitled to withholding of removal after full removal
18 proceedings in immigration court. 8 C.F.R. § 1208.16(a).

19 168. The forced return policy provides none of these safeguards to ensure the critical protection
20 against *nonrefoulement* and therefore violates Section 1231(b)(3). It permits an asylum officer to
21 determine whether it is more likely than not that an individual faces persecution in Mexico through
22 a truncated procedure, without any right to review or a hearing before an immigration judge.
23 Moreover, the procedure does not assess whether an individual is at risk of *refoulement* to his or her
24 country of origin by Mexico, and does not account for whether an individual will be able to exercise
25 his or her right to apply for asylum from Mexico.
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27 169. This procedure violates Section 1231(b)(3) and its implementing regulations.
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1 170. As a result, the forced return policy is contrary to law. *See* 5 U.S.C. § 706(2)(A).

2 **FIFTH CLAIM FOR RELIEF**

3 **(VIOLATION OF CUSTOMARY INTERNATIONAL LAW:**
4 **PROHIBITION ON *REFOULEMENT*)**

5 171. All of the foregoing allegations are repeated and realleged as if fully set forth herein.

6 172. The prohibition on *refoulement* is a specific, universal, and obligatory norm of customary
7 international law. That norm prohibits returning an individual to a country where there exists a
8 threat of subsequent forcible return to a country where the individual would be subject to torture or
9 where the individual's life or freedom would be threatened on account of their race, religion,
10 nationality, membership of a particular social group, or political opinion.

11 173. Defendants have not undertaken a proper evaluation of the risk of *refoulement* by Mexico.
12 The procedures for carrying out the forced return policy are inadequate to guard against such
13 indirect *refoulement* in violation of the law of nations.

14 174. Defendants were aware or reasonably should have known that indirect *refoulement* by
15 Mexico was a foreseeable consequence of its forced return policy.

16 175. Defendants knowingly and purposefully designed and, directly or through their agents,
17 applied their forced return policy to the individual Plaintiffs.

18 176. Defendants' actions have placed the individual Plaintiffs at risk of return to their countries
19 of origin, where their lives or freedom would be threatened on account of their race, religion,
20 nationality, membership in a particular social group, or political opinion, or where they face a
21 substantial risk of torture or other cruel, inhumane, and degrading treatment.

22 177. Defendants' actions have caused and will continue to cause a grave and foreseeable injury to
23 Plaintiffs, including a continued risk of *refoulement* in violation of the protections afforded to them
24 under international law.
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1 178. Plaintiffs do not have an adequate damages remedy at law to address the violations alleged
2 herein.

3 **SIXTH CLAIM FOR RELIEF**

4 **(VIOLATION OF INA § 208(a), 8 U.S.C. § 1108(a), ASYLUM, AND ADMINISTRATIVE**
5 **PROCEDURE ACT, 5 U.S.C. § 706(2)(A))**

6 179. The foregoing allegations are repeated and realleged as though fully set forth herein.

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- 1 d. Enter an order providing relief for the Individual Plaintiffs by ordering that Defendants
2 return them to the San Ysidro Port of Entry for reprocessing of their applications for admission
3 without subjecting them to the unlawful forced return policy;
4
5 e. Award Plaintiffs' counsel reasonable attorneys' fees under the Equal Access to Justice Act,
6 and any other applicable statute or regulation; and,
7
8 f. Grant such further relief as the Court deems just, equitable, and appropriate.

8 Dated: February 14, 2019

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12 **Pro hac vice application forthcoming*

13 ***Application for admission forthcoming*

CERTIFICATION OF INTERESTED ENTITIES OR PARTIES

Under Civil Local Rule 3-15, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.

Dated: February 14, 2019

Respectfully submitted,

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