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12
13 **UNITED STATES DISTRICT COURT**
14 **SOUTHERN DISTRICT OF CALIFORNIA**

15 Cristian Doe, Diana Doe,
16
17 Plaintiff-Petitioners,

18 v.

19 KEVIN K. McALEENAN, Acting Secretary
20 of Homeland Security; KENNETH T.
21 CUCCINELLI, Acting Director of U.S.
22 Citizenship and Immigration Services;
23 MARK A. MORGAN, Acting
24 Commissioner of U.S. Customs and Border
25 Protection; DOUGLAS HARRISON, Chief
26 Patrol Agent, U.S. Border Patrol San Diego
27 Sector; RYAN SCUDDER, Acting Chief
28 Patrol Agent, U.S. Border Patrol El Centro
Sector; ROBERT HOOD, U.S. Customs and
Border Protection Officer in Charge, San
Ysidro Port of Entry; SERGIO BELTRAN,
U.S. Customs and Border Protection Officer
in Charge, Calexico Port of Entry;
WILLIAM BARR, Attorney General of the
United States,

Defendants-Respondents.

Case No. '19CV2119 DMS AGS

PLAINTIFF- PETITIONERS'
NOTICE OF MOTION AND
MOTION FOR EMERGENCY
TEMPORARY
RESTRAINING ORDER, AND
FOR CLASS-WIDE
PRELIMINARY
INJUNCTION

Date: TBD

Time: TBD

Courtroom: TBD

Judge: TBD

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that as soon as the matter may be heard before the
judge assigned to this case at a date and time to be designated by the assigned
judge, of which Plaintiff-Petitioners will serve notice, Plaintiff-Petitioners will and

1 hereby do move this Court for an order granting an emergency temporary
2 restraining order requiring the government to refrain from denying Plaintiff-
3 Petitioners, who are in the custody of Customs and Border Protection, access to
4 their retained counsel.

5 PLEASE TAKE FURTHER NOTICE that as soon as the matter may be
6 heard before the judge assigned to this case at a date and time to be designated by
7 the assigned judge, of which Plaintiff-Petitioners will serve notice, Plaintiff-
8 Petitioners will and hereby do move this Court for an order granting a class-wide
9 preliminary injunction requiring the government to refrain from denying access to
10 retained counsel for all class members that Plaintiff-Petitioners seek to represent,
11 defined as follows:

12 All individuals who are detained in CBP custody in California awaiting or
13 undergoing *non-refoulement* interviews pursuant to what the government
14 calls the “Migrant Protection Protocols” program and who have retained
15 lawyers.

16 Plaintiff-Petitioners’ Motion is based on this Notice of Motion and Motion;
17 the concurrently-filed supporting Memorandum of Points and Authorities, and
18 declarations attached thereto; on all papers, pleadings, records and files in this case,
19 including the concurrently filed Motion for Class Certification; on all matters of
20 which judicial notice may be taken; and on such other argument and/or evidence as
21 may be presented to this Court at a hearing on this motion.

22 Immediately upon filing this motion, Plaintiff-Petitioners’ counsel will email
23 copies of all case filings to Katherine Parker, Chief, Civil Division of the U.S.
24 Attorney’s Office for the Southern District of California at
25 Katherine.Parker@usdoj.gov. Plaintiffs’ counsel has also arranged for copies of all
26 case filings to be hand delivered to the U.S. Attorney’s Office for the Southern
27 District of California today, November 5, 2019, at 880 Front Street, Rm. 6293, San
28 Diego, CA 92101.

1 Plaintiff-Petitioners respectfully request an immediate hearing on this Motion
2 to the extent it seeks an emergency temporary restraining order and a separate
3 hearing on this Motion to the extent it seeks a class-wide preliminary injunction..
4

5 Dated: November 5, 2019

Respectfully submitted,

6 s/Monika Y. Langarica

7 Monika Y. Langarica

8 Jonathan Markovitz

9 Bardis Vakili

David Loy

10 ACLU FOUNDATION OF SAN
11 DIEGO & IMPERIAL COUNTIES

12 Attorneys for Plaintiffs-Petitioners
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12 **SOUTHERN DISTRICT OF CALIFORNIA**

13 Cristian Doe, Diana Doe,
14 Plaintiff-Petitioners,

15 v.

16 KEVIN K. McALEENAN, Acting Secretary
17 of Homeland Security; *et. al.*

18 Defendants-Respondents.

Case No. **'19CV2119 DMS AGS**

**MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT OF PLAINTIFF-
PETITIONERS' MOTION
FOR EMERGENCY
TEMPORARY
RESTRAINING ORDER, AND
FOR CLASS-WIDE
PRELIMINARY
INJUNCTION**

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INTRODUCTION

1 To prevent imminent and irreparable harm to their lives and safety, Plaintiffs
2 seek an emergency temporary restraining order enforcing their fundamental right to
3 assistance of retained counsel. They also seek a preliminary injunction to protect
4 that right for the class they represent, which can be decided in due course, but for
5 the moment, Plaintiffs ask the Court to grant an immediate temporary restraining
6 order to protect them against the risk of persecution, torture, or death. This risk
7 would be incurred should they be denied the right to counsel at interviews that
8 could be conducted in as soon as the next two days.

9 Plaintiffs are parents of a family with five children that suffered extortion,
10 death threats, and rape in Guatemala. Like many other families, they fled their
11 homelands in fear of their lives and endured assault, robbery, and humiliation in
12 Mexico en route to seeking asylum in the United States, as is their right under
13 international and federal law.

14 Like thousands of other similar families, Plaintiffs have been forced to wait
15 in Mexico during their immigration proceedings, under the government's so-called
16 "Migrant Protection Protocols" ("MPP"). While doing so, they have suffered
17 further assault, robbery, and harm, an increasingly common reality for families
18 subjected to MPP who must endure months in limbo in a Mexican border region ill-
19 equipped to protect them. Now represented by counsel, Plaintiffs have appeared in
20 immigration court and expressed fear of return to Mexico, triggering their legal
21 right to a determination whether the United States may again force them back into
22 Mexico. That determination arises from treaty obligations, implemented by statute,
23 under which the United States is bound by a duty of non-*refoulement* not to return
24 individuals to a country where their life or freedom would be threatened on
25 specified grounds.

26 As with other MPP detainees expressing fear of return, the government has
27 detained Plaintiffs and their children virtually incommunicado in deplorable
28

1 conditions to await imminent non-*refoulement* interviews that could determine
2 whether they live or die if forced to return to Mexico. The outcome of the
3 interviews turns on complex factual and legal questions that vulnerable and
4 traumatized people are ill-equipped to answer without support of counsel. However,
5 the government categorically denies MPP detainees the right of access to or
6 assistance of retained counsel before and during such interviews, greatly increasing
7 the risk of erroneous decisions that could jeopardize their life or safety.

8 In these circumstances, the Court should issue a temporary restraining order
9 now to protect Plaintiffs' fundamental right to counsel. Plaintiffs do not seek
10 appointment of counsel. They ask only to enforce their right to assistance of their
11 retained counsel. The Court should also grant a preliminary injunction to safeguard
12 that right for the class members represented by Plaintiffs until this case can be
13 decided. Plaintiffs are likely to prevail on claims that the government is violating
14 both statutory and constitutional rights to assistance of retained counsel, especially
15 since the government recognizes the right to counsel in effectively identical
16 circumstances outside the MPP program. There can be no legitimate justification
17 for depriving persons in detention of the right to counsel. Given the life or death
18 stakes of non-*refoulement* interviews, Plaintiffs are likely to suffer irreparable harm
19 if the temporary restraining order is denied, and class members will suffer the same
20 without a preliminary injunction. The balance of hardships and public interest both
21 favor a temporary restraining order and injunction, because the government has no
22 cognizable interest in not following the law and the public interest always favors
23 protecting fundamental rights.

24 **FACTS**

25 Until recently, individuals seeking asylum at or near a port of entry were
26 usually placed in expedited removal ("ER") proceedings, which can result in swift
27 removal without seeing an immigration judge. 8 U.S.C. § 1225(b)(1). But if such
28 individuals expressed a fear of persecution or torture upon removal, they were

1 given a credible fear interview (“CFI”) to determine if there was a significant
 2 possibility they would establish eligibility for asylum. 8 U.S.C. § 1225(b)(1)(A)(i).
 3 If they passed the CFI, they were placed in full removal proceedings before an IJ to
 4 present their asylum claims. 8 U.S.C. §§ 1229a(c)(4), 1225(b)(1)(B)(ii); 8 C.F.R.
 5 §§ 208.30, 235.3. When detained pending a CFI, individuals have the right to
 6 consult confidentially with retained counsel, and such counsel is allowed to
 7 participate in the CFI. 8 U.S.C. § 1225(b)(1)(B).

8 The asylum process at the border changed radically in December 2018, when
 9 Department of Homeland Security (“DHS”) launched MPP. Under MPP, persons
 10 arriving on land from Mexico who seek asylum are placed directly into full removal
 11 proceedings before an IJ but are forced to remain in Mexico while those
 12 proceedings are pending.¹ MPP rolled out at the San Ysidro port of entry in January
 13 2019.² The government notifies individuals of their first immigration court hearing,
 14 usually several weeks away, on which date they must return to the port of entry for
 15 transportation in DHS custody to the hearing.³ After the hearing, they are returned
 16 to Mexico to repeat the process for the next hearing.⁴ The government initially
 17 applied MPP only to single adults, but today it largely forces families with children
 18
 19

20 ¹ *Press Release: Migrant Protection Protocols*, U.S. Department of Homeland
 21 Security (Jan. 24, 2019), <https://www.dhs.gov/news/2019/01/24/migrant-protection-protocols> (last visited on Oct. 31, 2019).

22 ² *Implementation of the Migrant Protection Protocols*, U.S. Immigration and
 23 Customs Enforcement, (“ICE OPLA Memo”)(Feb. 12, 2019),
 24 <https://www.ice.gov/sites/default/files/documents/Fact%20sheet/2019/ICE-Policy-Memorandum-11088-1.pdf> (last visited on Oct. 31, 2019).

25 ³ *MPP Guiding Principles*, U.S. Customs and Border Protection (“CBP Guiding
 26 Principles”)(Jan. 28, 2019)
 27 <https://www.cbp.gov/sites/default/files/assets/documents/2019-Jan/MPP%20Guiding%20Principles%201-28-19.pdf> (last visited on Oct. 31, 2019).

28 ⁴ *Migrant Protection Protocols Guidance*, U.S. Immigration and Customs
 Enforcement (“ICE ERO Memo”)(Feb. 12, 2019),
<https://www.ice.gov/sites/default/files/documents/Fact%20sheet/2019/ERO-MPP-Implementation-Memo.pdf> (last visited on Oct. 31, 2019).

1 into the program. As of September 2019, over 12,700 MPP cases were pending in
2 the San Diego immigration court.⁵

3 In practice, the “Migrant Protection Protocols” are often anything but, as
4 Plaintiffs’ experience demonstrates.⁶ They fled their home in Guatemala in April
5 2019 with their five children after their family was extorted and their 17-year-old
6 daughter was raped and threatened with death. Declaration of Monika Y. Langarica
7 (“Langarica Decl.”): Ex. 3 Declaration of Cristian Doe (“Cristian Decl.”) ¶ 4; Ex. 4
8 Declaration of Diana Doe (“Diana Decl.”) ¶ 7. After experiencing rape, the 17-
9 year-old girl suffered extreme trauma and pain and expressed a desire to take her
10 life. Diana Decl. ¶ 7. Plaintiffs fear they will be killed if forced to return to
11 Guatemala; multiple relatives of Diana’s have already been killed, including one
12 who was shot to death in her own home in front of Diana. *Id.* ¶ 6. “I would never
13 have fled my country if it were not for the safety of my children. If this were not
14 about keeping them alive and safe, we would never have left our country... our
15 home. If we return to Guatemala, I fear they will kill us and our children.” *Id.* ¶ 10.

16 While the family was traveling through Mexico, masked men in apparent
17 Mexican government uniforms threatened them with a gun and machetes, assaulted
18 them, beat Cristian, knocked Diana to the ground, stripped the family of their
19 clothes, robbed them, choked the 17-year-old daughter as she was undressed, and
20 threatened to kill them if they reported the incident, which continues to terrify them.
21 Cristian Decl. ¶¶ 7-9; Diana Decl. ¶¶ 11-13. United States immigration agents took
22 the family into custody in August, and Cristian and Diana immediately requested
23 asylum. After two days in Border Patrol detention, the family was forced to return
24 to Mexico under MPP without any inquiry into their fear of return. *Id.* at ¶¶ 25-26.

25 ⁵ *Access to Attorneys Difficult for Those Required to Remain in Mexico*,
26 Transactional Records Access Clearinghouse (“TRAC”) at Syracuse University
(2019), <https://trac.syr.edu/immigration/reports/568> (last visited on Oct. 31, 2019);
27 Declaration of Monika Y. Langarica ¶ 7.

28 ⁶ Plaintiffs are anonymous in this case for their protection; for convenience, they
are called by the pseudonyms “Cristian” and “Diana.”

1 Although they could stay in the United States with Cristian’s U.S. citizen aunt, the
 2 family is forced to stay in Mexico, where they lack permanent shelter or access to
 3 medical care for their children, including a 9-year-old son who had been treated for
 4 symptoms consistent with Leukemia. *Id.* at ¶¶ 4-5. While in Tijuana, the family
 5 survived a shoot-out just outside their temporary shelter, apparently between drug
 6 traffickers and members of the military. *Id.* at ¶29.

7 Their experiences are typical of migrants forced into MPP.⁷ A recent study
 8 found that approximately 23% of migrants in MPP have been threatened with
 9 physical violence while waiting in Mexico, over half of which “turned into actual
 10 experiences of physical violence, including being beaten, robbed, and extorted,”
 11 and that the likelihood of experiencing violence increases with the amount of time
 12 spent in MPP, rising to about 32% likelihood of experiencing violence over the
 13 average time migrants spend in the program.⁸

14 Under treaty obligations codified in statute, the United States is bound by the
 15 duty of non-*refoulement* not to return persons to a country where they are more
 16 likely than not to face persecution or torture. 8 U.S.C. § 1231(b)(3) (implementing
 17 Article 33 of the 1951 Convention Relating to the Status of Refugees). DHS

18
 19 ⁷ “There are more than one hundred and ten publicly reported cases of rape,
 20 kidnapping, sexual exploitation, assault, and other violent crimes against asylum
 21 seekers returned to Mexico under MPP.” Human Rights First, *Delivered to Danger: Illegal Remain in Mexico Policy Imperils Asylum Seekers’ Lives and Denies Due Process* (Aug. 2019),
 22 <https://www.humanrightsfirst.org/sites/default/files/Delivered-to-Danger-August-2019%20.pdf> (“The Trump administration is delivering asylum seekers and
 23 migrants to rape, kidnapping, and violent assault in Mexico, where they are targeted
 24 based on characteristics that mark them as foreign—their accent, skin color, and
 25 appearance”); Kate Morrissey, *CBP Sends Asylum Seekers Back to Mexico Without Required Screening*, San Diego Union Tribune (Mar. 21, 2019) (describing kidnapping), <https://www.sandiegouniontribune.com/news/immigration/sd-me-cbp-questions-20190321-story.html>; Gustavo Solis, *Remain in Mexico: Migrants Face Uphill Climb to Get Out of Program*, San Diego Union Tribune (Aug. 12, 2019),
 26 <https://www.sandiegouniontribune.com/news/border-baja-california/story/2019-08-10>.

27 ⁸ Tom K. Wong, Vanessa Cecena, *Seeking Asylum, Part 2* at 4-5, U.S. Immigration
 28 Policy Center (Oct. 29, 2019). Available at <https://usipc.ucsd.edu/publications/usipc-seeking-asylum-part-2-final.pdf>.

acknowledges MPP is subject to the duty of non-*refoulement*.⁹ However, immigration officials do not ask asylum seekers such as Plaintiffs if they have a fear of return to Mexico, and such persons often do not know they can or should express such fear. *Innovation Law Lab v. McAleenan*, 924 F.3d 503, 511 (9th Cir. 2019) (Watford, J., concurring). Instead, under MPP, DHS only recognizes non-*refoulement* obligations when persons volunteer a fear of return, which typically occurs during an immigration court appearance. Langerica Decl., Ex. 5, Declaration of L.J.C. (“L.J.C. Decl.”) ¶ 14; Ex. 6, Declaration of J.C.C.M. (“J.C.C.M. Decl.”) ¶ 10; Ex. 7, Declaration of A.L.O.V. (“A.L.O.V. Decl.”) ¶¶ 9–10.

Once individuals in MPP express a fear of return to Mexico, they are detained by Customs and Border Protection (“CBP”) pending a non-*refoulement* interview with a U.S. Citizenship and Immigration Services (“USCIS”) asylum officer to determine whether they are more likely than not to face persecution or torture in Mexico.¹⁰ The governing standards are complex, and interviews, which are conducted telephonically in a small windowless room, can last up to several hours, during which time the individual is often handcuffed. *See, e.g.*, Cristian Decl. ¶ 25–26; J.C.C.M. Decl. ¶ 13; L.J.C. Decl. ¶ 17; Langerica Decl., Ex. 9 Declaration of J.Z.V.C. (“J.Z.V.C. Decl.”) ¶ 24.

As to fear of persecution, the officer must assess credibility, whether an individual has suffered past harm and, if so, whether the harm rises to the level of persecution and occurred on account of race, religion, nationality, political opinion,

⁹ *Policy Guidance for Implementation of the Migrant Protection Protocols*, Department of Homeland Security (“Nielsen Memo”) (Jan. 25, 2019), https://www.dhs.gov/sites/default/files/publications/19_0129_OPA_migrant-protection-protocols-policy-guidance.pdf (last visited on Oct. 31, 2019).

¹⁰ *Policy Memo PM-602-0169, Guidance for Implementing Section 235(b)(2)(C) of the Immigration and Nationality Act and the Migrant Protection Protocols*, U.S. Citizenship and Immigration Services (“USCIS Memo”) (Jan. 28, 2019) at 3–4, <https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2019/2019-01-28-Guidance-for-Implementing-Section-35-b-2-C-INA.pdf> (last visited on Oct. 31, 2019).

1 or membership in a particular social group.¹¹ The officer must also determine
2 whether the perpetrator is an agent of the Mexican government or an entity the
3 Mexican government is unable or unwilling to control and whether any bars to
4 withholding of removal apply. *Id.* In the absence of past harm, the officer must
5 assess whether the individual's life or freedom would be threatened in Mexico. *Id.*

6 As to fear of torture, which is defined differently than persecution, the officer
7 must assess whether the individual would be subject to severe physical or mental
8 pain or suffering. *Id.*; 8 C.F.R. § 208.18; *Narayan v. Ashcroft*, 384 F.3d 1065, 1067
9 (9th Cir. 2004). The officer must determine whether the harm would be inflicted by,
10 instigated by, consented to, or acquiesced to by a public official or anyone acting in
11 an official capacity, and whether the harm would occur while the individual is in
12 their custody or physical control. *See* Assessment Worksheet. Finally, the officer
13 must determine whether the harm would be intended to hurt the individuals and
14 whether it would arise from or be inherent in or incidental to lawful sanctions. *Id.*

15 Individuals who pass the complex non-*refoulement* interview are removed
16 from MPP and released or detained in the United States pending removal
17 proceedings. Those who do not pass are forced to return to Mexico, where their
18 lives or safety may be in danger. Non-*refoulement* determinations are not
19 reviewable in immigration court or otherwise and never become a part of the record
20 in removal proceedings. USCIS Memo at 4.

21 Given the potential life or death stakes and the complex factual and legal
22 issues, the assistance of counsel before and during the interview is self-evidently
23 important, as it is for CFIs under the non-MPP asylum process. However, by
24 longstanding practice and formal policy (collectively, "Policy"), Defendants refuse
25 to allow persons in CBP custody to talk confidentially with retained counsel before
26

27 ¹¹ Langarica Decl., Ex. 2, *Migrant Protection Protocols (MPP) Assessment*
28 *Worksheet*, U.S. Citizenship and Immigration Services ("Assessment Worksheet")
(Feb. 13, 2019).

1 non-*refoulement* interviews, and they refuse to allow retained counsel to participate
2 in the interviews themselves. J.C.C.M. Decl. ¶¶ 12–13; L.J.C. Decl. ¶ 17.

3 Under longstanding practice, as it has admitted, CBP denies persons in civil
4 custody the right to legal visits by counsel, confidential or otherwise. See Langarica
5 Decl. ¶ 5, Ex. 16 Declaration of Dorien Ediger-Seto (“Ediger-Seto Decl.”) ¶¶ 13–
6 14. When telephones are working, which is not certain, detainees can have only
7 monitored calls with counsel. See *e.g.* J.C.C.M. Decl. ¶¶ 11–12. CBP often refuses
8 to inform counsel where their clients are detained, and lawyers seeking information
9 about their clients face stonewalling, obfuscation, silence, or misinformation.¹²
10 Langarica Decl., Ex. 10 Declaration of Luiz Gonzalez (“Gonzalez Decl.”) ¶ 35; Ex.
11 11, Declaration of Leah Chavarria (“Chavarria Decl.”) ¶ 15; Ex. 13 Declaration of
12 Margaret Cargioli (“Cargioli Decl.”) ¶ 16; Ex. 14, Declaration of Siobhan Waldron
13 (“Waldron Decl.”) ¶¶ 7–10. In effect, CBP detains persons virtually
14 incommunicado before non-*refoulement* interviews. During the interviews
15 themselves, by the government’s express written declaration, counsel may not be
16 present or participate, in person or by telephone. USCIS Memo at 3.

17 The deplorable conditions of detention before non-*refoulement* interviews
18 compound the problem. CBP detention facilities are commonly known as *hieleras*
19 or iceboxes for their cold temperatures. In the overcrowded *hieleras*, CBP holds
20 people “crammed” together with little room to walk. L.J.C. Decl. ¶¶ 7–8. Agents
21 aggravate the cold by forcing people to remove jackets and sweaters. Cristian Decl.
22 ¶ 14; Diana Decl. ¶ 22. Individuals, including children, must sleep on the floor and
23 risk exposure to illness and lice. Cristian Decl. ¶ 15; J.Z.V.Z. Decl. ¶ 8; L.J.C. Decl.
24 ¶ 8; Langarica Decl., Ex. 8, Declaration of A.V.D. (“A.V.D. Decl.”) ¶ 7. CBP keeps

25 ¹² See also Maya Srikrishnan, *She Escaped a Kidnapping at Gunpoint – and Then a*
26 *New Nightmare Began*, Voice of San Diego (Oct. 16, 2019),
27 [https://www.voiceofsandiego.org/topics/news/she-escaped-a-kidnapping-at-](https://www.voiceofsandiego.org/topics/news/she-escaped-a-kidnapping-at-gunpoint-and-then-a-new-nightmare-began)
28 [gunpoint-and-then-a-new-nightmare-began](https://www.voiceofsandiego.org/topics/news/she-escaped-a-kidnapping-at-gunpoint-and-then-a-new-nightmare-began) (quoting an immigration attorney
describing what it was like to unsuccessfully try to locate her MPP client in CBP
custody: “I felt sick to my stomach, personally. . . . [t]he way the government made
me run around – I felt like a hamster in a wheel.”)

1 the lights on around the clock, rarely allows detainees to shower, and denies them
 2 toothpaste, hygiene products, and changes of clothes. Cristian Decl. ¶ 13; Diana
 3 Decl. ¶ 33; L.J.C. Decl. ¶ 8; A.L.O.V. Decl. ¶ 6; A.V.D. Decl. ¶¶ 7, 10. The cells
 4 contain a single exposed toilet and sink which people must use with no privacy.
 5 J.C.C.M. Decl. ¶ 11. CBP refuses to replace spoiled food and forces people to eat
 6 foul burritos or go hungry. Diana Decl. ¶ 34. Agents have abused and berated
 7 detainees, especially when they ask for their attorneys, telling them lawyers are
 8 “not allowed” and once shouting, “I don’t give a fuck! Who do you think you are to
 9 be able to call your lawyer?!” L.J.C. Decl. ¶ 16.

10 While awaiting their interviews, individuals must navigate these harsh
 11 conditions while also attempting to care for their small children. For Cristian and
 12 Diana, that includes protecting their traumatized daughter as well as their 9-year-
 13 old son who was treated in Guatemala for symptoms consistent with Leukemia and
 14 currently experiences dizziness, nausea, gastrointestinal problems, and fatigue as he
 15 has gone untreated in Mexico due to the family’s lack of resources. Cristian Decl. ¶
 16 18; Diana Decl. ¶¶ 4–5.

17 Cristian, Diana and their children are now detained by CBP awaiting
 18 imminent non-*refoulement* interviews. Represented by counsel, they expressed a
 19 fear of return to Mexico in immigration court on November 5, 2019. Langarica
 20 Decl., Ex. 17, Declaration of Stephanie Blumberg (“Blumberg Decl.”) ¶¶ 3–4.
 21 The interviews could determine if they and their children live or die, yet the Policy
 22 prohibits them from talking confidentially with their lawyer before the interviews
 23 and forbids their attorney to participate in the interviews. Their attorney has been
 24 unable to communicate with them as they await their interviews in detention. *Id.* ¶¶
 25 6–9. The same is true for all persons with counsel who are forced into MPP and
 26 detained by CBP pending similar interviews, on whose behalf Plaintiffs bring this
 27 class action. Gonzalez Decl. ¶¶ 25–26, 34–35; Chavarria Decl. ¶¶ 15–16, 18;
 28 Cargioli Decl. ¶¶ 16–17, 21; Waldron Decl. ¶¶ 7–9.

ARGUMENT

To obtain a preliminary injunction, Plaintiffs must establish (1) they are likely to succeed on the merits; (2) they are likely to suffer irreparable harm; (3) the balance of equities favors them; and (4) an injunction is in the public interest. *Arc of Cal. v. Douglas*, 757 F.3d 975, 983 (9th Cir. 2014). The Court applies a sliding scale under which serious questions on the merits and a balance of hardships in plaintiffs' favor support an injunction as long as there is irreparable harm and the injunction is in the public interest. *Id.* The standard for a temporary restraining order is identical. *George v. United States*, No. 3:19-cv-01557-BAS-BLM, 2019 WL 4962979, at *4 (S.D. Cal. Oct. 7, 2019).

Plaintiffs meet the standard because they are likely to prevail or at least demonstrate serious questions on the merits and they will suffer irreparable harm from denial of their right to counsel. The balance of hardships is clearly in their favor, and the public interest always favors an injunction requiring the government to follow the law. Plaintiffs are entitled to a temporary restraining order on their behalf and a preliminary injunction protecting the class they have moved to certify. The Court may issue a class-wide preliminary injunction if it provisionally certifies the class or finds the violations are sufficiently pervasive. *Adtrader, Inc. v. Google LLC*, No. 17-CV-07082-BLF, 2018 WL 1876950, at *6 (N.D. Cal. Apr. 19, 2018); *Carrillo v. Schneider Logistics, Inc.*, No. 11-cv-8557, 2012 WL 556309, at *9 (C.D. Cal. Jan. 31, 2012).

I. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS.

The Policy unlawfully deprives Plaintiffs of confidential access to retained counsel while in detention before non-*refoulement* interviews and the participation of retained counsel during the interviews.

A. Plaintiffs Have Statutory Rights to Retained Counsel in Non-*Refoulement* Interviews.

Under the Administrative Procedure Act ("APA"), a "person compelled to appear in person before an agency or representative thereof is entitled to be

1 accompanied, represented, and advised by counsel. . . .” 5 U.S.C. § 555(b). The
 2 APA protects the right to “counsel of [an individual’s] choice” whenever an
 3 individual is “compelled to appear in person before any agency.” *SEC v. Higashi*,
 4 359 F.2d 550, 551 n.1, 553 (9th Cir. 1966). The statute applies to formal hearings,
 5 other proceedings, and investigative interviews. *Prof’l Reactor Operator Soc. v.*
 6 *U.S. Nuclear Regulatory Comm’n*, 939 F.2d 1047, 1051 (D.C. Cir. 1991); *United*
 7 *States v. Weiner*, 578 F.2d 757, 773 (9th Cir. 1978); *Higashi*, 359 F. 2d at 553.

8 The APA right to counsel applies to proceedings in which individuals seek
 9 benefits from the government such as disability or workers’ compensation benefits.
 10 *Smiley v. Dir., Office of Workers Comp. Programs*, 984 F.2d 278, 282 (9th Cir.
 11 1993); *Coyle v. Gardner*, 298 F. Supp. 609, 611 n.4 (D. Haw. 1969). The same
 12 right necessarily applies to non-*refoulement* interviews under MPP because persons
 13 who express fear of return to Mexico are detained and “compelled to appear” before
 14 USCIS asylum officers. *Higashi*, 359 F.2d at 553.

15 The APA right to counsel applies unless a “[s]ubsequent statute” supersedes
 16 that right “expressly.” 5 U.S.C. § 559. No statute has expressly superseded the APA
 17 right to counsel as applied to non-*refoulement* interviews. The Immigration and
 18 Nationality Act (“INA”) states that removal proceedings before an immigration
 19 judge “shall be the sole and exclusive procedure for determining whether
 20 an alien may be admitted to the United States or, if the alien has been so admitted,
 21 removed from the United States,” and provides a right to retain counsel in such
 22 proceedings. 8 U.S.C. §§ 1229a(a)(3), 1229a(b)(4)(A), 1362; *Colmenar v. INS*, 210
 23 F.3d 967, 971 (9th Cir. 2000). However, non-*refoulement* interviews under MPP
 24 are not removal proceedings, which are “proceedings for deciding the
 25 inadmissibility or deportability of an alien” conducted by “an immigration judge.” 8
 26 U.S.C. § 1229a(a)(1). The interviews do not decide the merits of inadmissibility or
 27 deportability. Instead, they merely determine where a person must remain—in
 28 Mexico or the United States—while removal proceedings are pending. As such,

1 they resemble bond hearings, which also determine where a person shall remain
 2 pending decision on the merits—at liberty or detained—but which are “separate and
 3 apart from” and “no part of, any deportation or removal hearing or proceeding.” 8
 4 C.F.R. § 1003.19(d); *see also* 8 C.F.R. § 235.3(d) (persons forced to remain in
 5 Mexico during removal proceedings “shall be considered detained”). Any detention
 6 in or parole into the United States as a result of passing the non-*refoulement*
 7 interview is not “admission” into the country. 8 U.S.C. § 1101(a)(13).

8 Accordingly, the INA does not displace the APA right to counsel as applied
 9 to non-*refoulement* interviews, but even if it did, the INA right to counsel would
 10 still apply. Implementing the INA right to counsel, DHS regulations “recognize that
 11 a right to counsel attaches whenever an individual is examined” by immigration
 12 agents, not only in removal proceedings. *Pangea Legal Servs. v. McAleenan*, No.
 13 19-CV-04027-SK (JD), 2019 WL 3068362, at *3 (N.D. Cal. July 13, 2019) (citing
 14 8 C.F.R. § 292.5(b) (“Whenever an examination is provided for in this chapter, the
 15 person involved shall have the right to be represented by an attorney. . . .”)); *cf.*
 16 *United States v. Caceres*, 440 U.S. 741, 752 n.14 (1979) (“Where the rights of
 17 individuals are affected, it is incumbent upon agencies to follow their own
 18 procedures. . . even where the internal procedures are possibly more rigorous than
 19 otherwise would be required.”). Therefore, Plaintiffs retain a statutory right to
 20 retained counsel as applied to non-*refoulement* interviews under the APA or INA.

21 **B. Defendants Are Violating § 706(2) of the APA by Denying the Right**
 22 **to Counsel in Non-*Refoulement* Interviews.**

23 Under the APA, courts “shall. . . hold unlawful and set aside agency action”
 24 that is “in excess of statutory jurisdiction, authority, or limitations, or short of
 25 statutory right” or “arbitrary, capricious, an abuse of discretion, or otherwise not in
 26 accordance with the law.” 5 U.S.C. § 706(2). The Policy violates the APA because
 27 it is final agency action in violation of statute and arbitrary and capricious.

28 To be subject to judicial review and injunction under § 706(2), the Policy

1 forbidding access to counsel for persons in detention must be final agency action.
 2 5 U.S.C. §§ 702, 704, 706. The Policy qualifies as “agency action” because it is
 3 both a “rule” and a “sanction.” 5 U.S.C. §§ 551(13), 701(b)(2). It is a “rule”
 4 because it is “an agency statement of general or particular applicability and future
 5 effect designed to implement, interpret, or prescribe law or policy or describing the
 6 organization, procedure, or practice requirements of an agency,” 5 U.S.C. §§
 7 551(4), 701(b)(2), *i.e.*, denial of access to counsel to MPP detainees before and
 8 during non-*refoulement* interviews. It is a “sanction” because it is a “prohibition,
 9 requirement, limitation, or other condition affecting the freedom of a person” or
 10 taking “restrictive action.” 5 U.S.C. §§ 551(10), 701(2). The detention of Plaintiffs
 11 without confidential access to counsel or participation of counsel in interviews
 12 “‘affects’ their freedom, as well as constitutes ‘restrictive action.’” *Muniz-Muniz v.*
 13 *U.S. Border Patrol*, No. 3:09 CV 2865, 2012 WL 5197250, at *5 (N.D. Ohio Oct.
 14 19, 2012), *rev’d on other grounds*, 741 F.3d 668 (6th Cir. 2013).

15 The Policy is also “final agency action for which there is no other adequate
 16 remedy in a court.” 5 U.S.C. § 704. The finality inquiry is pragmatic. *Rhea Lana,*
 17 *Inc. v. Dep’t of Labor*, 824 F.3d 1023, 1027 (D.C. Cir. 2016). The Policy is final
 18 because it is the consummation of a decision making process by which rights to
 19 counsel have been denied. *Bennett v. Spear*, 520 U.S. 154, 177–78 (1997).
 20 Although partially reduced to writing, it need not be in writing to be final and
 21 reviewable. *Al Otro Lado, Inc. v. Nielsen*, 327 F. Supp. 3d 1284, 1319 (S.D. Cal.
 22 2018). There is no other adequate remedy because there is no procedure other than
 23 this action to challenge the denial of access to counsel and the issue is a systemic
 24 denial of counsel, not the determination made in any particular interview. *Darby v.*
 25 *Cisneros*, 509 U.S. 137, 146 (1993); *Bowen v. Massachusetts*, 487 U.S. 879, 903
 26 (1988); *Cohen v. United States*, 650 F.3d 717, 732 (D.C. Cir. 2011). Because the
 27 Policy is final agency action, it is reviewable and must be “set aside” and held
 28 unlawful under § 706(2).

1 **1. The Policy Violates Clear Statutory Rights to Counsel.**

2 As already explained, the Policy violates statutory rights to counsel under the
 3 APA or INA. Because “the intent of Congress is clear, that is the end of the matter,”
 4 and the Court should enjoin the Policy. *City of Arlington v. FCC*, 569 U.S. 290, 296
 5 (2013). There is no ambiguity in the statutes, and the Policy is thus entitled to no
 6 deference, because Congress has “directly addressed the precise question at issue.”
 7 *Mayo Found. for Med. Educ. & Research v. United States*, 562 U.S. 44, 52 (2011).
 8 “Where an administrative regulation conflicts with a statute, the statute controls.”
 9 *United States v. Doe*, 701 F.2d 819, 823 (9th Cir. 1983); *Texas v. E.P.A.*, 726 F.3d
 10 180, 195 (D.C. Cir. 2013) (noting clear and “valid statute always prevails over a
 11 conflicting regulation”). The same is necessarily true for the Policy, which does not
 12 even amount to a “regulation.”

13 Even if there was a statutory “ambiguity” leaving Defendants responsible for
 14 “filling the gap,” *EPA v. EME Homer City Generation, L.P.*, 572 U.S. 489, 513
 15 (2014) (internal quotation omitted), and even if the Policy otherwise qualifies for
 16 *Chevron* or any other deference, the Policy must fail because it is not “based on a
 17 permissible construction of the statute,” *City of Arlington*, 569 U.S. at 296.
 18 Defendants cannot justify the Policy by relying on 8 C.F.R. § 292.5(b), which
 19 denies “any applicant for admission in either primary or secondary inspection the
 20 right to representation, unless the applicant for admission has become the focus of a
 21 criminal investigation and has been taken into custody.” See USCIS Memo at 3.
 22 Leaving aside whether that regulation is reasonable on its terms, it does not apply to
 23 non-*refoulement* interviews under MPP, which typically occur while immigration
 24 proceedings are pending. Such proceedings occur after “primary or secondary
 25 inspection.” 8 U.S.C. § 1225(b)(2)(A) (describing “Inspection of Other Aliens” and
 26 stating that “alien seeking admission” shall be detained for removal proceedings “if
 27 the examining immigration officer determines” that she “is not clearly and beyond a
 28 doubt entitled to be admitted”); 8 C.F.R. § 235.6(a)(1) (requiring a Notice to

1 Appear for removal proceedings be filed after “the examining immigration officer
 2 detains an alien for a proceeding before an immigration judge”); *Am. Immigration*
 3 *Lawyers Ass’n v. Reno*, 18 F. Supp. 2d 38, 42 (D.D.C. 1998) (“If the immigration
 4 officer determines during secondary inspection that the alien is inadmissible either
 5 because she possesses fraudulent documentation. . . or no valid documentation. . . ,
 6 the alien becomes subject to expedited removal. . . . If the alien is found to be
 7 inadmissible for some other reason, she is referred” for full removal proceedings).

8 Even if a few non-*refoulement* interviews occur before immigration
 9 proceedings begin, they are not part of “inspection.” The prolonged and complex
 10 interviews conducted by USCIS asylum officers do not resemble the relatively brief
 11 primary or secondary inspection by CBP officers at ports of entry, which typically
 12 involve “only a few seconds to examine documents, run basic lookout queries, and
 13 ask pertinent questions,” or an additional inquiry into “discrepancies in documents”
 14 or other matters going to customs issues or potential admissibility into the United
 15 States. *Am. Immigration Lawyers Ass’n*, 18 F. Supp. 2d at 42. Neither primary nor
 16 secondary inspection addresses the complex and fact-intensive issues that require at
 17 least several hours to discuss in non-*refoulement* interviews occurring up to a week
 18 if not longer after initial apprehension or inspection. Therefore, even if the
 19 governing statutes were ambiguous, the Policy is an unreasonable interpretation of
 20 the statutory right to counsel under the APA or INA. *Cf. id.* at 54–55 (holding
 21 access to counsel may be denied to applicants for admission in secondary
 22 inspection, but not after secondary inspection while they await a CFI).

23 **2. The Policy Is Arbitrary and Capricious.**

24 The Policy is arbitrary and capricious. Defendants deny the right to counsel
 25 in MPP non-*refoulement* interviews, but in every other context in which
 26 immigration agencies consider claims of persecution or torture, Defendants
 27 recognize the right to counsel. “[C]ourts retain a role, and an important one, in
 28 ensuring that agencies have engaged in reasoned decisionmaking.” *Judulang v.*

1 *Holder*, 565 U.S. 42, 53 (2011). Where “high stakes” are involved, courts will
 2 scrutinize an agency policy to ensure it bears a reasonable relationship with a
 3 legitimate policy goal. *Id.* at 58–59. The stakes could not be higher than in non-
 4 *refoulement* interviews, which could determine whether people live or die. In light
 5 of those stakes, the Policy violates the APA as arbitrary and capricious.

6 For relevant purposes, non-*refoulement* interviews are effectively identical to
 7 credible and reasonable interviews conducted for purposes of seeking asylum or
 8 withholding of removal. A non-*refoulement* interview is conducted in “a non-
 9 adversarial manner, separate and apart from the general public. The purpose of the
 10 interview is to elicit all relevant and useful information bearing on whether the alien
 11 would more likely than not face persecution. . . .”¹³ Likewise, a CFI is conducted
 12 “in a nonadversarial manner, separate and apart from the general public. The
 13 purpose of the interview shall be to elicit all relevant and useful information bearing
 14 on whether the applicant has a credible fear of persecution or torture.” 8 C.F.R.
 15 § 208.30(d). A reasonable fear interview (“RFI”) is conducted in the same way and
 16 concerns the similar issue of “reasonable fear of persecution or torture.”¹⁴ 8 C.F.R.
 17 § 208.31(c). The government recognizes the right to consult counsel before CFIs
 18 and RFIs and to have counsel present during the interviews, even for persons in
 19 detention. 8 C.F.R. §§ 208.30(d), 208.31(c). Indeed, the INA even anticipates that a
 20 CFI may occur in CBP custody at ports of entry and expressly protects the right to
 21 consult counsel prior to such interviews. 8 U.S.C. § 1225(b)(1)(B)(i), (iv).

22 In addition, the standard for non-*refoulement* in MPP is identical to the
 23 statutory standard for withholding of removal, which implements the government’s
 24 non-*refoulement* obligations in removal proceedings. 8 U.S.C. § 1231(b)(3);
 25 8 C.F.R. § 208.16(b)(1)–(b)(2); USCIS Memo at 3–4. In the context of withholding

26 ¹³ USCIS Memo at 3.

27 ¹⁴ Indeed, the worksheet that non-*refoulement* adjudicators use reflects an analysis
 28 that is nearly identical to one contained within the worksheet used in RFIs. MPP
 Assessment Worksheet; Langerica Decl. ¶¶ 3–4, Ex 1. (“RFI Worksheets”).

1 of removal, CFIs, and RFIs, the government recognizes the right to counsel. 8
 2 U.S.C. §§ 1158(d)(4), 1225(b)(1)(B); 8 C.F.R. §§ 208.5(a), 208.30(d)(4), 208.31(c),
 3 292.5(b). Yet it arbitrarily refuses to do so in the effectively identical context of
 4 MPP non-*refoulement* interviews, which concern the same issues of fear of
 5 persecution or torture if returned to another country. The government compounds
 6 the arbitrariness by denying any opportunity for review of non-*refoulement*
 7 decisions, unlike credible or reasonable fear decisions.

8 In denying access to counsel, Defendants make no “rational connection
 9 between the facts found and the choice made.” *Motor Vehicle Mfrs. Ass’n v. State*
 10 *Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). The Policy is purportedly based
 11 on “limited capacity and resources at ports-of-entry and Border Patrol stations as
 12 well as the need for the orderly and efficient processing of individuals.” USCIS
 13 Memo at 3. That justification is transparently absurd.

14 First, it is a problem of Defendants’ own making. No law required
 15 Defendants to create MPP in the first place or forces them to continue detaining
 16 persons who express fear of return to Mexico. 8 U.S.C. § 1182(d)(5)(A) (permitting
 17 parole of arriving aliens). If Defendants released persons into the community—for
 18 instance releasing Plaintiffs’ family to Cristian’s U.S. citizen aunt—they would not
 19 be obligated to provide access to counsel before non-*refoulement* interviews.
 20 Second, it is not challenging to provide access to counsel. By CBP’s own standards,
 21 persons in its custody must have at least telephonic access to counsel.¹⁵ In criminal
 22 cases, when this Court has required CBP to provide confidential access to
 23 represented detainees, CBP has accommodated that requirement without
 24 jeopardizing its operations. Langarica Decl., Ex. 18, Declaration of Ryan Stitt

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 26 ¹⁵ “Persons detained for more than 24 hours will be given access to a telephone for
 27 purposes of contracting an attorney or other party... and will be given access at a
 28 minimum of once per day until they are no longer in Border Patrol custody.” *Hold*
Rooms and Short-Term Custody Policy at 6.21, U.S. Border Patrol (Jan. 31, 2008),
<https://assets.documentcloud.org/documents/818095/bp-policy-on-hold-rooms-and-short-term-custody.pdf> (last visited on Oct. 31, 2019).

(“Stitt Decl.”) ¶¶ 4-5. Persons held by Immigrations and Customs Enforcement have confidential access to counsel. Third, under the credible fear system, individuals seeking asylum are regularly provided with CFIs at ports of entry or ICE custody, and they are entitled to access to and participation of counsel in and prior to those interviews while detained. Gonzalez Decl. ¶¶ 46–47; Chavarria Decl. ¶ 28, Waldron Decl. ¶¶ 24–26; 8 U.S.C. § 1225(b)(1)(B). Fourth, since the MPP non-*refoulement* interviews are conducted by telephone, it would be a simple matter to connect retained counsel to the conversation telephonically. By ignoring these obvious facts, the government “entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *State Farm*, 463 U.S. at 43. As a result, the Policy is arbitrary and capricious and must be enjoined under the APA.

C. The Policy Violates Procedural Due Process.

The Due Process Clause of the Fifth Amendment guarantees essential “procedural safeguards.” *McNabb v. United States*, 318 U.S. 332, 347 (1943). In particular, persons in removal proceedings have a due process right to assistance of retained counsel. *Biwot v. Gonzales*, 403 F.3d 1094, 1098 (9th Cir. 2005); *Tawadrus v. Ashcroft*, 364 F.3d 1099, 1103 (9th Cir. 2004). By definition, Plaintiffs and the class members are immigration detainees represented by retained counsel. Defendants are violating due process by depriving them of confidential communications with counsel. See *Orantes-Hernandez v. Thornburgh*, 919 F.2d 549, 565–66 (9th Cir. 1990); *Arroyo v. U.S. Dep’t of Homeland Sec.*, No. SACV 19-815 JGB (SHKx), 2019 WL 2912848, at *17 (C.D. Cal. June 20, 2019); *Pangea Legal Services v. McAleenan, et al.*, No. 19-CV-04027-SK (JD), 2019 WL 3068362, at *3 (N.D. Cal. July 13, 2019); *Castillo v. Nielsen*, No. 5:18-cv-01317-ODW-MAA, 2018 WL 6131172 (C.D. Cal. June 21, 2018).

The disruption of “an established, on-going attorney-client relationship” is a

1 *per se* “constitutional deprivation.” *Comm. of Cent. Am. Refugees v. I.N.S.*, 795
 2 F.2d 1434, 1439 (9th Cir. 1986). But to the extent any balancing of factors is
 3 required, it only confirms the due process violation. Procedural due process analysis
 4 balances (a) the private interest at stake, (b) the risk of error and value of additional
 5 safeguards, and (c) the burden on the government. *Mathews v. Eldridge*, 424 U.S.
 6 319, 335 (1976); *Oviatt v. Pearce*, 954 F.2d 1470, 1475–76 (9th Cir. 1992). Those
 7 factors compel the holding that the Policy violates procedural due process by
 8 depriving class members of access to retained counsel before non-*refoulement*
 9 interviews and the participation of counsel during those interviews.

10 The private interest is paramount—avoiding persecution, torture, and death.
 11 See *Oshodi v. Holder*, 729 F.3d 883, 894 (9th Cir. 2013) (in asylum and
 12 withholding of removal cases, “the private interest could hardly be greater” because
 13 “[i]f the court errs, the consequences for the applicant could be severe persecution,
 14 torture or even death”). The risk of error is large, and the value of additional
 15 safeguards evident. Without preparation with counsel beforehand and participation
 16 of counsel during interviews to ensure development of a full record that meets
 17 complex legal standards, Plaintiffs and other vulnerable traumatized individuals
 18 face significant risk of erroneous return to Mexico. *Cf. Oviatt*, 954 F.2d at 1476
 19 (where inmates “did not speak English and were unlikely to know of their legal
 20 rights” or “were not in contact with their families or lawyers. . . [t]he risk of an
 21 erroneous deprivation of plaintiff’s liberty interest. . . was enormous”). Of all the
 22 rights an MPP detainee has, “the right to be represented by [retained] counsel is by
 23 far the most pervasive for it affects his ability to assert any other rights he may
 24 have.” *United States v. Cronin*, 466 U.S. 648, 654 (1984).

25 Plaintiffs need not show that any particular non-*refoulement* decision was or
 26 is likely to be erroneous without access to counsel. In due process analysis, the
 27 Court must “consider the interest of the *erroneously* detained individual,” or in this
 28 case, the individual erroneously returned to Mexico. *Hamdi v. Rumsfeld*, 542 U.S.

1 507, 530 (2004). The “right to procedural due process is ‘absolute’ in the sense that
 2 it does not depend upon the merits of a claimant’s substantive assertions.” *Carey v.*
 3 *Piphus*, 435 U.S. 247, 266 (1978). Therefore, “procedural due process rules are
 4 shaped by the risk of error inherent in the truthfinding process as applied to the
 5 generality of cases,” not any single case. *Mathews*, 424 U.S. at 344; *see also*
 6 *Cancino Castellar v. McAleenan*, 388 F. Supp. 3d 1218, 1240 (S.D. Cal. 2019)
 7 (holding plaintiffs need not “allege that they were erroneously detained” to state
 8 due process claim). Plaintiffs need not show they will pass their non-*refoulement*
 9 interviews. The purpose of this case is to protect the due process right to counsel,
 10 not direct the result of the interviews.

11 Finally, any burden on the government is insignificant compared to the life or
 12 death issues at stake and the high risk of erroneous return to Mexico. In any event,
 13 as discussed above, any alleged burdens are of the government’s own making and
 14 are easily addressed, as they are in the parallel context of CFIs. Any assertion as to
 15 “‘administrative convenience’ is a thoroughly inadequate basis for the deprivation
 16 of core constitutional rights.” *Lopez-Valenzuela v. Arpaio*, 770 F.3d 772, 785 (9th
 17 Cir. 2014).

18 The so-called “entry fiction” does not absolve the government. Under the
 19 entry fiction, a noncitizen who presents at a port of entry and is detained or paroled
 20 for immigration court “has not ‘entered’ the United States, even if the alien is in
 21 fact physically present” in the country, and thus has “no procedural due process
 22 rights in the admission process” beyond what is provided by Congress. *Kwai Fun*
 23 *Wong v. United States*, 373 F.3d 952, 971 (9th Cir. 2004). The entry fiction does
 24 not apply for two reasons. First, Plaintiffs and many class members were initially
 25 apprehended inside the United States, not at the port of entry, making the entry
 26 fiction entirely inapplicable to them. Cristian Decl. ¶ 12; Diana Decl. ¶ 18;
 27 J.C.C.M. Decl. ¶ 4; L.J.C. Decl. ¶ 3; A.L.O.V. Decl. ¶ 4; *United States v. Raya-*
 28 *Vaca*, 771 F.3d 1195, 1203 (9th Cir. 2014). Second, the entry fiction does not apply

1 to other class members because it pertains only to “the narrow question of the scope
 2 of procedural rights available in the admission process” for deciding the ultimate
 3 merits of their asylum claims, which are not at issue, and it “is not necessarily
 4 applicable with regard to other constitutional rights.” *Kwai Fun Wong*, 373 F.3d at
 5 972. As discussed, non-*refoulement* is unrelated to the merits of whether a person is
 6 ultimately entitled to asylum or other lawful status in the United States. It is a
 7 narrow collateral issue going only to where the person must remain while
 8 immigration proceedings are pending. The entry fiction must be defined narrowly
 9 to prevent “any number of abuses” from being “deemed constitutionally
 10 permissible merely by labelling certain ‘persons’ as non-persons.” *Id.* at 973.
 11 Therefore, it does not “deny all constitutional rights to non-admitted aliens” or
 12 extinguish rights separate from the ultimate question of admissibility, such as the
 13 right of access to and assistance of counsel. *Id.* at 971.

14 **D. The Policy Violates Substantive Due Process.**

15 Due process includes “a substantive component, which forbids the
 16 government to infringe certain ‘fundamental’ liberty interests at all, no matter what
 17 process is provided.” *Reno v. Flores*, 507 U.S. 292, 302 (1993). The government
 18 violates the constitutional rights of pretrial detainees and convicted prisoners by
 19 depriving them of confidential access to or assistance of counsel. *See Benjamin v.*
 20 *Fraser*, 264 F.3d 175, 186–87 (2d Cir. 2001); *Gomez v. Vernon*, 255 F.3d 1118,
 21 1133 (9th Cir. 2001); *Ching v. Lewis*, 895 F.2d 608, 609–10 (9th Cir. 1990);
 22 *Johnson-El v. Schoemehl*, 878 F.2d 1043, 1051–53 (8th Cir. 1989); *Dreher v.*
 23 *Siellaff*, 636 F.2d 1141, 1143, 1146 (7th Cir. 1980); *Adams v. Carlson*, 488 F.2d
 24 619, 631 (7th Cir. 1973); *Jones v. City & County of San Francisco*, 976 F. Supp.
 25 896, 913 (N.D. Cal. 1997); *In re Jordan*, 7 Cal. 3d 930, 941 (1972).

26 The same is necessarily true for persons in civil immigration detention such
 27 as MPP detainees, who necessarily enjoy greater rights than criminal detainees or
 28 convicted prisoners. *Jones v. Blanas*, 393 F.3d 918, 931 (9th Cir. 2004); *cf.*

1 *Cancino*, 388 F. Supp. 3d at 1234 (“Criminal detention cases provide useful
 2 guidance in determining what process is due non-citizens in immigration
 3 detention.”) (quoting *Hernandez v. Sessions*, 872 F.3d 976, 993 (9th Cir. 2017)).
 4 Even assuming it applies, the entry fiction does not foreclose a substantive due
 5 process claim for denial of access to or assistance of counsel. *Cancino*, 388 F.
 6 Supp. 3d at 1246.

7 Because access to and assistance of retained counsel are “implicit in the
 8 concept of ordered liberty,” it necessarily “shocks the conscience” to deprive MPP
 9 detainees of that fundamental right before and during non-*refoulement* interviews
 10 with potential life or death stakes. *Id.* at 1236. When the government recognizes the
 11 same right before and during credible and reasonable fear interviews, the
 12 “inexplicable failure” to do so for MPP detainees violates substantive due process.
 13 *Id.* Persons facing non-*refoulement* interviews “have no less an interest” in
 14 protection against persecution and torture than “persons the government detains”
 15 for credible and reasonable fear interviews. *Id.* at 1238. If the government
 16 recognizes the right to counsel in the latter context, it cannot offer a “compelling
 17 interest,” much less one that is “legitimate” or “reasonable,” to justify denying it in
 18 the former. *Id.* at 1237. Accordingly, the Policy violates substantive due process.

19 **II. The Policy Causes Irreparable Harm, and the Balance of Hardships** 20 **and Public Interest Favor an Injunction.**

21 Given the compelling interests and fundamental rights at stake, this case
 22 meets the elements of irreparable harm, balance of hardships, and public interest.
 23 Without access to and assistance of counsel, Plaintiffs and their children risk the
 24 irreparable harm of a non-reviewable erroneous decision to return them to Mexico.
 25 The denial of access to or assistance of counsel impairs their ability to prepare for
 26 and answer the complex questions they will be asked during their non-*refoulement*
 27 interviews and risks an erroneous decision that could result in their persecution,
 28 torture or death. In any event, the denial of fundamental rights is inherently

1 irreparable harm. *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012);
 2 *Warsoldier v. Woodford*, 418 F.3d 989, 1001–02 (9th Cir. 2005).

3 Given the “preventable human suffering” at issue, the “balance of hardships
 4 tips decidedly in plaintiffs' favor.” *Hernandez*, 872 F.3d at 996. Plaintiffs and class
 5 members face the risk of “severe persecution, torture or even death.” *Oshodi*, 729
 6 F.3d at 894. The government “cannot reasonably assert that it is harmed in any
 7 legally cognizable sense” by being compelled to follow the law. *Zepeda v. I.N.S.*,
 8 753 F.2d 719, 727 (9th Cir. 1983). The balance of equities thus favors preventing
 9 the violation of “requirements of federal law.” *Arizona Dream Act Coal. v. Brewer*,
 10 757 F.3d 1053, 1069 (9th Cir. 2014). Finally, it is always in the public interest to
 11 prevent violations of fundamental rights. *Melendres*, 695 F.3d at 1002.

12 CONCLUSION

13 For the foregoing reasons, the Court should issue a temporary restraining
 14 order requiring Defendants to provide Plaintiffs access to their lawyer while in
 15 custody awaiting their non-*refoulement* interviews and during those interviews and
 16 grant a class-wide preliminary injunction requiring Defendants to provide access to
 17 counsel for all individuals with retained counsel who are detained in CBP custody
 18 in California while awaiting or undergoing non-*refoulement* interviews pursuant to
 19 the so-called “Migrant Protection Protocols” program.

20
 21 Respectfully submitted,

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 23 DATED: November 5, 2019

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7
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9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 Cristian Doe, Diana Doe,
11 Plaintiff-Petitioners,
12 v.
13 KEVIN K. McALEENAN, Acting Secretary
14 of Homeland Security; et al.,
15 Defendants-Respondents.

Case No. **'19CV2119 DMS AGS**

**DECLARATION OF MONIKA
Y. LANGARICA IN SUPPORT
OF MOTION FOR
EMERGENCY TEMPORARY
RESTRAINING ORDER AND
CLASS-WIDE
PRELIMINARY
INJUNCTION [REDACTED]**

1 I, Monika Y. Langarica, hereby declare as follows:

2 1. I am an attorney licensed to practice in California and before this Court.
3 I am a Staff Attorney with the ACLU Foundation of San Diego & Imperial Counties
4 and counsel of record for Plaintiff-Petitioners. I have personal knowledge of the facts
5 set forth below and if called to testify, I could and would do so competently.

6 2. Prior to my current position, I worked as a supervising attorney with the
7 American Bar Association's Immigration Justice Project in San Diego, where I
8 provided pro bono and court-appointed representation to individuals detained for
9 removal proceedings in the Otay Mesa Detention Center, Imperial Regional
10 Detention Facility, and Adelanto Detention Facility.

11 3. In my career, I have represented, assisted, and supervised others in
12 representing and assisting hundreds of immigrants in removal proceedings and
13 procedures before the U.S. Citizenship & Immigration Service ("USCIS") asylum
14 office, including credible fear interviews and reasonable fear interviews. In my
15 experience, after individuals undergo credible fear interviews and reasonable fear
16 interviews, they are given documents memorializing the interviews, asylum officers'
17 analyses, and the results of the interviews. Attached hereto as Exhibit 1 are redacted
18 true and correct copies of documents titled "Record of Determination/Reasonable
19 Fear Worksheet" and "Reasonable Fear Determination Checklist And Written
20 Analysis" (collectively "RFI Worksheets") pertaining to an individual I previously
21 represented. They are redacted only to conceal information specific to my former
22 client, whose individual circumstances are not relevant.

23 4. Attached hereto as Exhibit 2 are redacted true and correct photographic
24 copies of a redacted four-page document titled "Migrant Protection Protocols (MPP)
25 Assessment Worksheet." They are redacted only to conceal information specific to
26 the applicant, whose individual circumstances are not relevant. Although I do not
27 know to whom this particular worksheet pertains, I believe that this general
28 worksheet or something substantially similar has been used internally by USCIS

1 asylum officers to process non-*refoulement* interviews under the so-called Migrant
2 Protection Protocols.

3 5. On August 23, 2019, I attended a meeting between representatives of
4 the Border Patrol San Diego Sector, including then-Interim Sector Chief Harrison,
5 and various representatives from community-based organizations. At that meeting,
6 representatives of the Border Patrol San Diego Sector confirmed there is no
7 possibility for individuals detained in Border Patrol custody in the San Diego Sector
8 to make confidential phone calls to their lawyers. The representatives of the Border
9 Patrol San Diego Sector also confirmed any calls that individuals do make must be
10 made collect.

11 6. On October 24, 2019, I accessed the Transaction Records Access
12 Clearinghouse (“TRAC”) MPP data query tool located at
13 <https://trac.syr.edu/phptools/immigration/mpp/>. According to its website, TRAC is
14 a “data gathering, data research and data distribution organization at Syracuse
15 University” that analyzes and reports on data obtained from the federal government
16 through the Freedom of Information Act. See “Transaction Records Access Clearing
17 House: About Us.” <https://trac.syr.edu/aboutTRACgeneral.html>.

18 7. The TRAC MPP query tool allows users to filter the data to ascertain
19 the total number of people subject to MPP by “Hearing Location.” The tool lists
20 “MPP Court San Ysidro Port,” “MPP Court Calexico Port,” “San Diego, California,”
21 and “Otay Mesa Detention Center,” among others, as distinct “Hearing Location[s].”
22 Because cases of individuals currently in MPP along the California-Mexico border
23 are being heard exclusively before the San Diego Immigration Court, and because it
24 is well known there currently are no immigration courts at the San Ysidro Port or the
25 Calexico Port, I surmise that these four “Hearing Location[s]” all refer to MPP cases
26 being processed at the San Diego immigration court. I therefore added the number of
27 MPP cases before each of those four distinct locations, which amounted to 12,719. I
28 believe this number accurately reflects the number of individuals subject to MPP

1 along the California-Mexico border whose cases are heard before the San Diego
2 Immigration Court as of October 24, 2019, as recorded by TRAC.

3 8. The tool allows users to further filter to ascertain the number of people
4 subject to MPP at particular "Hearing Location[s]" who are represented by counsel.
5 Using the same four hearing locations, I filtered through the data to ascertain the
6 number of people subject to MPP whose cases are before the San Diego Immigration
7 Court and who are represented by counsel. I added the total number of people before
8 "MPP Court San Ysidro Port," "MPP Court Calexico Port," "San Diego, California,"
9 and "Otay Mesa Detention Center," who are represented by counsel, which amounted
10 to 380. I believe this number accurately reflects the number of individuals subject to
11 MPP along the California-Mexico border whose cases are heard before the San Diego
12 Immigration Court and who are represented by counsel as of October 24, 2019, as
13 recorded by TRAC.

14 9. Attached hereto as Exhibit 3 is a true and correct copy of the Declaration
15 of Plaintiff-Petitioner C [REDACTED], referred to in this case by
16 pseudonym Cristian Doe, dated October 18, 2019, with certified English Translation.

17 10. Attached hereto as Exhibit 4 is a true and correct copy of the Declaration
18 of Plaintiff-Petitioner D [REDACTED], referred to in this case by pseudonym
19 Diana Doe, dated October 18, 2019, with certified English Translation.

20 11. Attached hereto as Exhibit 5 is a true and correct copy of the Declaration
21 of L [REDACTED] J [REDACTED] C [REDACTED], referred to in this case by initials L.J.C., dated October 17, 2019,
22 with certified English Translation.

23 12. Attached hereto as Exhibit 6 is a true and correct copy of the Declaration
24 of J [REDACTED] C [REDACTED] C [REDACTED] M [REDACTED], referred to in this case by initials J.C.C.M., dated
25 September 30, 2019, with certified English Translation.

26 13. Attached hereto as Exhibit 7 is a true and correct copy of the Declaration
27 of A [REDACTED] L [REDACTED] O [REDACTED] V [REDACTED], referred to in this case by initials A.L.O.V., dated October
28 09, 2019, with certified English Translation.

1 14. Attached hereto as Exhibit 8 is a true and correct copy of the Declaration
2 of A [REDACTED] V [REDACTED] D [REDACTED], referred to in this case by initials A.V.D., dated October
3 18, 2019, with certified English Translation.

4 15. Attached hereto as Exhibit 9 is a true and correct copy of the Declaration
5 of J [REDACTED] Z [REDACTED] V [REDACTED] C [REDACTED], referred to in this case by initials J.Z.V.C., dated
6 October 18, 2019, with certified English Translation.

7 16. Attached hereto as Exhibit 10 is a true and correct copy of the
8 Declaration of Attorney Luis Gonzalez, dated October 24, 2019.

9 17. Attached hereto as Exhibit 11 is a true and correct copy of the
10 Declaration of Attorney Leah Chavarria, dated October 28, 2019.

11 18. Attached hereto as Exhibit 12 is a true and correct copy of the
12 Declaration of Attorney Vanessa Dojaquez-Torres, dated October 23, 2019.

13 19. Attached hereto as Exhibit 13 is a true and correct copy of the
14 Declaration of Attorney Margaret Cargioli, dated October 22, 2019.

15 20. Attached hereto as Exhibit 14 is a true and correct copy of the
16 Declaration of Attorney Siobhan Marie Waldron, dated October 21, 2019.

17 21. Attached hereto as Exhibit 15 is a true and correct copy of the
18 Declaration of Attorney Lisa Knox, dated October 25, 2019.

19 22. Attached hereto as Exhibit 16 is a true and correct copy of the
20 Declaration of Attorney Dorien Ediger-Seto, dated October 28, 2019.

21 23. Attached hereto as Exhibit 17 is a true and correct copy of the
22 Declaration of Attorney Stephanie Blumberg dated November 5, 2019.

23 24. Attached hereto as Exhibit 18 is a true and correct copy of the
24 Declaration of Attorney Ryan Stitt, dated November 4, 2019.

25
26 I declare under penalty of perjury of the laws of the State of California and the United
27 States that the foregoing statements are true and correct.
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1 Executed this 5th day of November 2019 in San Diego, California.

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3 /s Monika Y. Langarica

4 Monika Y. Langarica
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DECLARATION OF MONIKA Y. LANGARICA

Cristian Doe, Diana Doe,

v.

Kevin K. McAleenan, Acting Secretary of Homeland Security, et al.

Case No:

EXHIBIT INDEX

- Exhibit 1: Record of Determination/Reasonable Fear Worksheet and Reasonable Fear Determination Checklist and Written Analysis (collectively “RFI Worksheets”)
- Exhibit 2: Migrant Protection Protocols (MPP) Assessment Worksheet
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- Exhibit 4: Declaration of Plaintiff-Petitioner D [REDACTED]
- Exhibit 5: Declaration of L [REDACTED] J [REDACTED] C [REDACTED]
- Exhibit 6: Declaration of J [REDACTED] C [REDACTED] C [REDACTED] M [REDACTED]
- Exhibit 7: Declaration of A [REDACTED] L [REDACTED] O [REDACTED] V [REDACTED]
- Exhibit 8: Declaration of A [REDACTED] V [REDACTED] D [REDACTED]
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Exhibit 18: Declaration of Attorney Ryan Stitt

EXHIBIT 1

Department of Homeland Security
U.S. Citizenship and Immigration Services

Record of Determination/Reasonable Fear Worksheet

<u>LOS</u> District Office Code	<u>ZLA</u> Asylum Office Code	[REDACTED] Alien's File Number	
<u>Gelber</u> Asylum Officer's Last Name	<u>S</u> Asylum Officer's First Name	[REDACTED] Alien's Nationality	
		[REDACTED] Alien's Last/ Family Name	[REDACTED] Alien's First Name

All statements in italics must be read to the applicant

SECTION I:

INTERVIEW PREPARATION

- 1.1 [REDACTED] 1.2 ZLA Telephonic
Date of interview [MM/YY/DD] Interview site
- 1.3 ☒ Applicant received and signed Form M-488 and relevant *pro bono* list on [REDACTED]
Date signed [MM/DD/YY]
- 1.4 Representative name, address, telephone number and relationship to applicant:
[REDACTED]
- 1.5 Persons present at the interview (check which apply)
☒ Representative
☒ Other(s), list: Telephonic Interpreter
☐ No one other than applicant and asylum officer
- 1.6 Language used by applicant in interview: Spanish
- 1.7 [REDACTED] ☒ Yes ☐ No 11:54am 1:31pm
Interpreter Service, Interpreter ID Number. Interpreter Has Forms Time Started Time Ended
- 1.8 [REDACTED] ☒ Yes ☐ No 1:32pm 2:22pm
Interpreter Service, Interpreter ID Number. Interpreter Has Forms Time Started Time Ended
- 1.9 [REDACTED] ☐ Yes ☐ No
Interpreter Service, Interpreter ID Number. Interpreter Has Forms Time Started Time Ended
- 1.10 ☒ Interpreter oath completed.
- 1.11 ☒ Interpreter was not changed during the interview
- 1.12 ☐ Interpreter was changed during the interview for the following reason(s):
- 1.13 ☐ Applicant requested a female interpreter replace a male interpreter, or vice versa
- 1.14 ☐ Applicant found interpreter was not competent 1.15 ☐ Applicant found interpreter was not neutral
- 1.16 ☐ Officer found interpreter was not competent 1.17 ☐ Officer found interpreter was not neutral
- 1.18 ☐ Bad telephone connection
- 1.19 ☒ Asylum officer read the following paragraph to the applicant at the beginning of the interview:

The purpose of this interview is to determine whether you should be referred to an immigration judge to apply for withholding or deferral of removal. You will be eligible for such a referral if the INS finds that there is a reasonable possibility you would be persecuted or tortured in the country to which you have been ordered removed. I am going to ask you questions about why you fear returning to the country to which you have been ordered removed, or any other country. It is very important that you tell the truth during the interview and that you respond to all of my questions. This may be your only opportunity to give such information. Please feel comfortable telling me why you fear harm. U.S. law has strict rules to prevent the disclosure of what you tell me today about the reasons you fear harm. The information you tell me about the reasons for your fear will not be disclosed to your government, except in exceptional circumstances. The statements you make today may be used in deciding your claim and in any future immigration proceedings. It is important that we understand each other. If at any time I make a statement you do not understand, please stop me and tell me you do not understand so that I can explain it to you. If at any time you tell me something I do not understand, I will ask you to explain.

Alien's File Number: [REDACTED]

SECTION II:**BIOGRAPHIC INFORMATION**

- 2.1 [REDACTED]
Last Name/ Family Name [ALL CAPS]
- 2.2 [REDACTED]
First Name
- 2.3 [REDACTED]
Middle Name
- 2.4 [REDACTED]
Date of birth [MM/DD/YY]
- 2.5 Gender ☒ Male ☐ Female
- 2.6 None
Other names and dates of birth used
- 2.7 [REDACTED]
Country of birth
- 2.8 [REDACTED]
Country (countries) of citizenship (list all)
- 2.9 Prior address in last country in which applicant fears persecution or torture (List Address, City/Town, Province, State, Department and Country):
[REDACTED]
- 2.10 [REDACTED]
Date of last arrival [MM/DD/YY]
- 2.11 [REDACTED]
Port of arrival
- 2.12 [REDACTED]
Date of detention [MM/DD/YY]
- 2.13 Adelanto ICE Processing Center, 10400 Rancho Road,
Adelanto, CA 92301 (760) 246-3328
Place of detention
- 2.14 Grounds provided by Deportation Officer for removal:
☒ Prior order reinstated pursuant to 241 (a)(5) of the INA
☐ Removal order pursuant to 238(b) of the INA (based on aggravated felony conviction)
- 2.15 [REDACTED]
Applicant's race or ethnicity
- 2.16 [REDACTED]
Applicant's religion
- 2.17 [REDACTED]
All languages spoken fluently by applicant
- 2.18 Does the applicant claim to have a medical condition (physical or mental), or has the officer observed any indication that a medical condition (physical or mental) exists? ☐ Yes ☒ No
- 2.19 If YES, Explain:
-
- 2.20 Does applicant indicate, or does officer believe medical condition is serious? ☐ Yes ☐ No
- 2.21 Does applicant request immediate attention for a medical condition, or does the officer believe applicant needs immediate attention for a medical condition? ☐ Yes ☐ No
- 2.22 Does applicant claim that medical condition relates to torture? ☐ Yes ☐ No

Alien's File Number: [REDACTED]

SECTION III:**REASONABLE FEAR FINDING**

TYPED SWORN STATEMENT IN QUESTION AND ANSWER FORMAT AND ASSESSMENT OF REASONABLE FEAR MUST BE ATTACHED TO THIS WORKSHEET. If the asylum officer finds the applicant not credible, the sworn statement must reflect that the applicant was asked to explain any inconsistencies or lack of detail on material issues.

A person has a reasonable fear of persecution or torture if there is a reasonable possibility the person would be persecuted or subjected to torture.

A. Credibility Determination

- 3.1 ☒ ~~The applicant's testimony was sufficiently detailed, consistent and plausible in material respects and therefore is found credible.~~ ^{Applicant}
- 3.2 ☐ The applicant's testimony was found not credible in material respects. [Assessment must (1) identify specific discrepancies, inconsistencies, kind of detail applicant was unable to provide, etc. (2) Summarize applicant's explanation for the inconsistencies, inability to provide detail, etc.; and why the explanation failed to overcome reasons for finding the applicant not credible; and (3) explain how the non-credible aspects of the testimony are material to the claim.]
- 3.3 ☐ Material aspects of the applicant's testimony were found credible in part and not credible in part. [Assessment must identify which material aspects were credible and which were not credible. For part of testimony found not credible, (1) identify specific discrepancies, inconsistencies, kind of detail applicant was unable to provide, etc.; (2) Summarize applicant's explanation for the inconsistencies, inability to provide detail, etc.; and (3) Explain how the non-credible aspects of testimony are material to the claim.]

B. Reasonable Fear Determination

- 3.4 ☐ **Reasonable Fear of Persecution Established (I-863 Box 6)**
[The applicant has established that there is a reasonable possibility of suffering harm constituting persecution in the country to which the applicant has been ordered removed, AND the applicant has established that there is a reasonable possibility the persecution she/he fears is on account of race, religion, nationality, membership in a particular social group, or political opinion.]
Is political opinion related to Coercive Family Planning? ☐ Yes ☐ No
- 3.5 ☐ **Reasonable Fear of Torture Established (I-863 Box 6)**
[The applicant has established that there is a reasonable possibility that 1) the applicant would be subject to severe pain or suffering in the country to which the applicant has been ordered removed; 2) the feared harm would be specifically intended to inflict severe physical or mental pain or suffering; 3) the pain or suffering would be inflicted by or at the instigation of, or with the consent or acquiescence of, a public official or other person acting in an official capacity; 4) the feared harm would be inflicted while the applicant is in the custody or physical control of the offender; and 5) there is a reasonable possibility that the feared harm would not be in accordance with lawful sanctions.]
- 3.6 ☒ **No Reasonable Fear of Persecution Established and No Reasonable Fear of Torture Established (I-863 Box 5, if applicant requests review)** [Assessment must explain reasons for both findings.]

ASYLUM OFFICER / SUPERVISOR NAMES AND SIGNATURES

3.7 S Gelber ZOL00J
Asylum officer name and ID CODE (print)

3.8 [Signature]
Asylum officer's signature

3.9 11/6/17
Decision date

3.10 Sharon Yasrobi ZOL01D
Supervisory asylum officer name

3.11 [Signature]
Supervisor's signature

3.12 11/10/17
Date supervisor approved decision

REASONABLE FEAR DETERMINATION CHECKLIST AND WRITTEN ANALYSIS

COUNTRY: [REDACTED]	AFSO Name: S. GELBER	DATE: 11/6/2017
JURISDICTION:	☒ Reinstatement of A Prior Order	☐ Final Administrative Removal Order under INA §238(b)
<i>If there is a reasonable possibility of establishing persecution, complete Sections A., B., and C. If there is a reasonable possibility of establishing torture, complete Sections A., B., and D. If there is not a reasonable possibility of establishing a reasonable fear of persecution or torture, complete Sections A., B., C., and D. unless the claim falls in Section A.2. (Future Harm) or Section B. (Credibility), in which case, stop and complete Form I-899.</i>		
A. Harm (If yes to A.2., proceed with the analysis. If no to A.2., STOP and complete Form I-899.)		
1. Has the applicant testified that he or she has experienced <u>past</u> harm in his or her country? <i>If yes, identify any past harm or mistreatment suffered, and identify the relevant entity.</i> [REDACTED]		Yes ☒ No ☐
2. Has the applicant testified that he or she fears <u>future</u> harm if returned to his or her country? <i>If yes, identify any harm or mistreatment feared, and identify the relevant entity. If no, explain and complete Form I-899.</i> [REDACTED]		Yes ☒ No ☐
B. Credibility (Select the appropriate box and analyze whether the applicant's testimony was fully credible, credible in part, or not credible.)		
Applicant's testimony was credible: Considering the totality of the circumstances and all relevant factors, the applicant's testimony was consistent, detailed, and plausible. Therefore, it is found credible. (Check box and move to Section C. or D.)		☒
Applicant's testimony was partially credible: Considering the totality of the circumstances and all relevant factors, the applicant's testimony was found partially credible. The applicant's testimony was found credible regarding the relevant elements of the claim. (Check box, explain, and move to Section C. or D.)		☐
Applicant's testimony was not credible: Considering the identified credibility issues, the absence of reasonable explanations for those issues, and taking into consideration the applicant's individual circumstances, the applicant's testimony is found not credible under the totality of the circumstances and all relevant factors. (Check box, explain, STOP and complete Form I-899.)		☐
C. Persecution (If no to C.1.a and C.1.b, complete C.2 and C.3. If no to C.2, complete C.3 and proceed to Section D. The applicant must meet all elements of C.1. or C.2 to establish a reasonable fear of persecution.)		
1.a. Past Persecution: The applicant established that: - The harm experienced was sufficiently serious to amount to persecution; - The entity that harmed the applicant was motivated to harm the applicant on account of his or her race, religion, nationality, membership in a particular social group, or political opinion, applying the one central reason standard; and - The entity that harmed the applicant was an agent of the government or an entity that the government was unable or unwilling to control. AND 1.b. The presumption of well-founded fear has not been rebutted by a preponderance of the evidence that 1) there has been a fundamental change in circumstances such that the applicant no longer has a well-founded fear, or 2) it would be reasonable, under all the circumstances, for the applicant to relocate within the applicant's country to avoid future persecution.		Yes ☐ No ☒
2. Future Persecution: The applicant established a reasonable possibility of persecution on account of a protected ground: - The harm feared is sufficiently serious to amount to persecution; - The applicant 1) either <u>possesses</u> a protected characteristic of which the feared entity is or could become <u>aware</u> or the feared entity believes that the applicant possesses a protected characteristic, and 2) the feared entity has the <u>capability</u> and <u>inclination</u> to persecute the applicant, OR there is a <u>pattern or practice</u> of persecution of a group of persons similarly situated to the applicant on account of a protected ground; and - Under all the circumstances, it would not be reasonable for the applicant to relocate within the applicant's country to avoid future persecution.		Yes ☐ No ☒

REASONABLE FEAR DETERMINATION CHECKLIST AND WRITTEN ANALYSIS

3. <u>Written Analysis:</u> Provide a brief reasoned analysis of past and future persecution. Focus on determinative factors, applying the eligibility elements to the facts.		
D. Torture (Fill out D.1., D.2., and D.3. The applicant must meet all elements of D.2. in order to establish a reasonable fear of torture.)		
1. <u>Past Torture:</u> The applicant established that: • The harm was specifically intended to inflict severe pain or suffering on the applicant; • The harm experienced constituted severe physical or mental pain or suffering; • The entity that harmed the applicant is a public official or other person acting in an official capacity, or someone acting at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity; • The applicant was in the entity's custody or physical control; and • The harm did not arise only from, was not inherent in, and was not incidental to, lawful sanctions.		Yes ☐ No ☒
2. <u>Future Torture:</u> The applicant established a reasonable possibility of torture: • The feared harm would be specifically intended to inflict severe pain or suffering on the applicant; • The feared harm would constitute severe physical or mental pain or suffering; • The entity the applicant fears is a public official or other person acting in an official capacity, or someone acting at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity; • The applicant would be in the entity's custody or physical control; and • The harm would not arise only from, would not be inherent in, and would not be incidental to, lawful sanctions. In making this determination, the following evidence has been considered: • Evidence of past torture inflicted upon the applicant; • Evidence that the applicant could relocate to a part of the country of removal where he or she is not likely to be tortured; • Evidence of gross, flagrant or mass violations of human rights within the country of removal; and • Other relevant information regarding conditions in the country of removal.		Yes ☐ No ☒
3. <u>Written Analysis:</u> Provide a brief reasoned analysis of past and future torture. Focus on determinative factors, applying the eligibility elements to the facts.		

REASONABLE FEAR DETERMINATION CHECKLIST AND WRITTEN ANALYSIS



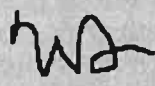
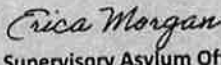
EXHIBIT 2

Migrant Protection Protocols (MPP) Assessment Worksheet

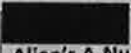
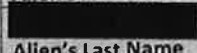
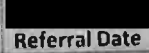
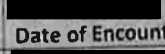
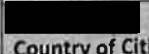
Assessment

- ☐ Clear Probability of Persecution on Account of a Protected Ground in Mexico Established
- ☐ Clear Probability of Torture in Mexico Established
- ☐ Clear Probability of Persecution on Account of a Protected Ground in Mexico Established But Alien Subject to Bar to Withholding And No Clear Probability of Torture in Mexico
- ☒ No Clear Probability of Persecution on Account of a Protected Ground or Torture in Mexico Established

Asylum Officer/Supervisory Asylum Officer Names and Signatures

William Shwayri Asylum Officer Name	 Asylum Officer Signature	07/19/2019 Determination Date (mm/dd/yy)
Erica Morgan Supervisory Asylum Officer Name	 Supervisory Asylum Officer Signature	07/19/2019 Date of Approval by Supervisory Asylum Officer (mm/dd/yy)

Alien Biographical Information and Interview Data

 Alien's A-Number	ZAC Asylum Office Code
 Alien's Last Name	 Referral Date
 Alien's First Name	 Date of Encounter/Apprehension
N/A Aliases	 Port of Arrival or Border Patrol Station
 Country of Citizenship	 Interview Date

Country of Birth	Interview Location ☒ Telephonic
Date of Birth	Language Used
	Interpreter Used?
	☒ Yes ☐ No

AO must read the following statement to the applicant:

The purpose of this screening interview is to determine whether there is a clear probability that you would be persecuted on account of a protected ground or tortured in Mexico. We understand that you may be amenable to Migrant Protection Protocols (MPP) and you have expressed a fear about returning to Mexico. I am an asylum officer and I am going to ask you questions about why you fear returning to Mexico. If you are determined to have a clear probability of persecution on account of a protected ground or torture in Mexico, you may be permitted to remain in the United States for immigration processing. If you are not determined to have a clear probability of persecution on account of a protected ground or torture in Mexico, you may be returned to Mexico to await immigration processing. DHS will provide you with additional information regarding how you will be processed.

It is very important to tell the truth during this interview and that you respond to all of my questions. This may be your only opportunity to give such information. Please feel comfortable telling me why you fear harm. U.S. law has strict rules to prevent the disclosure of what you tell me today about the reasons you fear harm. The statements you make today may be used in deciding your claim and in any future immigration proceedings. It is very important that we understand each other. If at any time I make a statement you do not understand, please stop me and tell me you do not understand so that I can explain it to you. If at any time you tell me something I do not understand, I will ask you to explain. Do you understand everything that I have read to you? ☒ Yes ☐ No

☒ AO placed applicant and interpreter under oath

Notes (Officer should add additional cells as needed using tab button on keyboard)

Asylum Officer Question	Applicant Response
What is your true and complete name?	
What is your date of birth?	
My records show [REDACTED]. Did you previously tell that to an immigration official?	
But why did you say that?	
But why did you say [REDACTED] and not your correct date of birth?	
What country are you a citizen of?	
I see here you left [REDACTED] on [REDACTED] and you arrived in [REDACTED] on [REDACTED]. Is that correct?	
When you traveled through Mexico on your way to [REDACTED] did you face any threats or harm?	

Why do you have a fear of waiting immigration processing in Mexico?	
Did you previously tell someone that you have a fear of returning to Mexico?	
So why are you at this interview today?	
To confirm, you have never been threatened or harmed in Mexico?	
And you are unsure why you came today?	

Analysis

A. Credibility (Select the appropriate box)	
Applicant's testimony was credible: Considering the totality of the circumstances and all relevant factors, the applicant's testimony was consistent, detailed, and plausible. Therefore, it is found credible.	☒
Applicant's testimony was not credible: Considering the identified credibility issues, the absence of reasonable explanations for those issues, and taking into consideration the applicant's individual circumstances and all other relevant evidence, the applicant's testimony is found not credible under the totality of the circumstances and all relevant factors.	☐
B. Persecution – If finding a “clear probability of persecution in Mexico established” in Assessment section above, boxes 1-4 in Part B must be checked “yes” and box 5 must be checked “no”. There is no need to complete Part C unless the alien is subject to a bar to withholding. If finding no clear probability of persecution in Mexico established, only check “no” for the element in Part B on which the claim fails and then move to Part C. If finding clear probability of persecution in Mexico established but a bar applies, only check “yes” in box 5 and then move to Part C. Include any additional facts relied upon that are not in the notes section of the assessment worksheet in the box at the end of the assessment.	
1. Has the applicant suffered past persecution in Mexico and the presumption that the applicant's life or freedom would be threatened in Mexico is not rebutted OR in the absence of past persecution, would the applicant's life or freedom be threatened in Mexico?	Yes ☐ No ☒
2. Would the future harm in Mexico be on account of a protected ground? (If yes, select one) ☐ Race ☐ Religion ☐ Nationality ☐ Political Opinion ☐ Membership in a Particular Social Group	Yes ☐ No ☐
3. Would the future harm in Mexico rise to the level of persecution?	Yes ☐ No ☐
4. Is the feared entity an agent of the Mexican government or an entity the Mexican government would be unable or unwilling to control?	Yes ☐ No ☐
5. Is the applicant subject to any bars to withholding of removal?	Yes ☐ No ☐
C. Torture – If finding a clear probability of torture in Mexico established, boxes 1-5 in Part C must be checked “yes”. There is no need to complete Part B. If finding no clear probability of torture in Mexico, only check “no” for the element in Part C on which the claim fails. Include any additional facts relied upon that are not in the notes section of this assessment worksheet in the box at the end of the assessment.	
1. Would the applicant be subjected to severe physical or mental pain or suffering in Mexico?	Yes ☐ No ☒

2. Would the severe pain or suffering in Mexico be inflicted by, instigated by, consented to or acquiesced to, by a public official or other person acting in an official capacity?	Yes ☐ No ☐
3. Would the severe pain or suffering in Mexico be specifically intended to inflict severe pain or suffering on the applicant?	Yes ☐ No ☐
4. Would the applicant be in the offender's custody or physical control in Mexico?	Yes ☐ No ☐
5. Would the severe pain or suffering in Mexico not arise only from or be inherent in or incidental to lawful sanctions?	Yes ☐ No ☐

Additional facts relied upon when making determination (COI, family processing notes, previously undocumented mandatory bar issues, etc):

EXHIBIT 3

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2 **JONATHAN MARKOVITZ** (SBN 301767)(jmarkovitz@aclusandiego.org)
3 **BARDIS VAKILI** (SBN 247783)(bvakili@aclusandiego.org)
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6 Counsel for Plaintiff-Petitioners

7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 Cristian Doe, Diana Doe,
11 Plaintiff-Petitioners,
12 v.
13 KEVIN K. McALEENAN, Acting Secretary
14 of Homeland Security; et al.,
15 Defendants-Respondents.

Case No. _____

DECLARATION OF
CRISTIAN DOE [REDACTED]

1 **DECLARATION OF C [REDACTED]**

2 I, C [REDACTED], hereby declare as follows:

3 1. I have personal knowledge of the facts set forth below and if called to
4 testify, I could and would do so competently.

5 2. My name is C [REDACTED]. I was born on January 24, 1984
6 in Guatemala. I am seeking asylum with my wife and our five children. We are
7 currently subject to the Remain in Mexico (or MPP) program. We are obligated to
8 remain in Mexico while we go through our immigration proceedings. The lawyer
9 representing us in our immigration proceedings is Stephanie Blumberg.

10 3. My wife and I have five children: a four-year-old son, nine-year-old son,
11 ten-year-old son, 12-year-old son and 17-year-old daughter. My 17-year-old daughter
12 is not my biological daughter, but I have raised her and I love her as my daughter.
13 Not even my sons know she is not my biological daughter.

14 4. In Guatemala, my family was extorted by cartel members. We did not
15 respond to their extortion. Horribly, those same individuals raped my daughter and
16 threatened to kill her, they told her it was my fault because I had not paid the
17 extortion.

18 5. After suffering the rape and death threat, my daughter fell into a
19 depression. She would not leave the house, she would hardly speak, and she
20 expressed thoughts of ending her life.

21 6. We decided to flee Guatemala in April of 2019.

22 7. At the end of April of 2019 my family was in route to the United States.
23 In Arriaga, Chiapas, Mexico, three men assaulted us and robbed us at gun point. We
24 think they were federal officers due to how they were dressed. They wore a shirt with
25 the Mexican flag and their faces were covered with scarves. All three were armed.

26 8. They robbed us of all the money we had, even the money I had hid in
27 my wife's purse. They forced us all to undress, even my children. They hit me on the
28

1 neck with a gun and then had me at gun point. The only thing I said to them was to
2 take what they wanted but to leave me and my children. I thought if I made any
3 movements, they could kill me—and possibly my wife and children also—and end
4 everything right there. I felt horrible not being able to protect my family, as if I had
5 completely failed.

6 9. Our attackers told us if we reported what had happened, they would find
7 us and kill us.

8 10. We were left with hardly anything. When I found a coin worth fifty
9 cents, one of my sons hopefully told me, “dad, with that we can buy water for
10 everyone.”

11 11. After, when we were finally on a bus in route to Tijuana from Mexico
12 City, federal officers stopped the bus. An armed officer and dressed in dark colored
13 pants, a white polo shirt and wearing a nude colored hat, got on the bus. He asked
14 me, “How many?” I did not understand his question. He yelled at me, “Don’t pretend
15 to be a dumbass, how many are with you?!” I told him that my wife, five children
16 and I were together. He asked to see my documents and for my wallet. That officer
17 took \$500 Mexican pesos from my wallet. He asked us if our children were ours. I
18 thought he might take my children away. I told him he could ask my children himself
19 and that they would tell him the truth. When the officer got off the bus, we continued
20 our route, after that I could not relax. I did not feel at ease and I could not sleep. I
21 again realized that we could not trust the Mexican authorities. Soon after, we arrived
22 in Tijuana.

23 12. On or about August 8, we were arrested by U.S. immigration officers.
24 We immediately requested asylum.

25 13. We were all taken to the Chula Vista Border Patrol station. Once inside
26 I was separated from my wife and children. I was detained in a dirty cell. There was
27 a window, but you could not see out. I was not given a toothbrush or toothpaste.
28

1 When I asked an officer if I could grab mine from my luggage, he ignored me and
2 slammed the cell door in my face. To eat, we were given bean burritos that smelled
3 rotten.

4 14. The cell where I was detained was cold and they forced me to take off
5 my jacket and the shirt I had on top of my undershirt. At first, when I had only taken
6 off my jacket, the officer asked me, "are you a dumbass? I said take it off" and
7 demanded I take off my shirt as well.

8 15. During the entire time that I was detained I never saw my wife or
9 children. The night I spent in the cell I did not sleep. I felt without strength and I did
10 not know what to do. I worried about my children, if they had eaten, if they had
11 blankets and if they were treating them well. The immigration officers never gave
12 me information regarding my wife or children.

13 16. The following morning an officer came into the cell and told me that I
14 would be returned to Mexico. My wife and children were released with me. While I
15 was detained, the immigration officers never asked me about my fear of returning to
16 Mexico. Our first court date was scheduled for September 3, 2019 at 8 in the morning.

17 17. In Tijuana we attempted to find a lawyer. We called different people
18 from the list that immigration gave us. We attended a workshop in Tijuana for
19 migrants seeking asylum.

20 18. In Tijuana it has been very difficult to find housing and to provide for
21 my children due to lack of work. I have not even been able to pay for my children to
22 see a doctor or dentist. One of my sons is very sick and another is in a lot of pain
23 because of a molar that needs a Dentist's attention.

24 19. On September 2, 2019 we had not secured transportation to take us to
25 the port of entry on time for our court hearing. We had to be at the port of entry at 3
26 in the morning to make it to our court hearing at 8 in the morning. We searched for a
27 hotel close to the port of entry, but they charged \$1,500 Mexican pesos. We do not
28

1 have that much money and it has been extremely difficult to find work in Tijuana.
2 With no other option, we decided to spend the night in front of the port of entry in
3 Tijuana. We arrived there at 9 at night on September 2. That night I did not sleep to
4 protect my family. I had to be on watch the entire night to make sure no one was
5 going to harm us. My children slept on the street without a blanket, we used our
6 sweaters to cover them. I feel that my children have lost a year of their lives going
7 through this entire process.

8 20. On September 3 at three in the morning we were allowed to enter the
9 port of entry. We were all tired. We were processed and registered. After, we were
10 taken to the court.

11 21. When we arrived at court, they put us in a waiting room before being
12 allowed to enter the courtroom. There was a lot of people, everyone waiting for their
13 case just like us. The court room was filled with people. All of us were waiting for
14 the judge. When the judge arrived, he spoke with everyone in the courtroom. He
15 explained our rights and that he would reschedule our hearings. He gave us a lot of
16 information, but it was very difficult to pay attention. My children were all very tired.
17 They could hardly keep their eyes open. My nine-year-old son asked me to carry him
18 in my arms so he could sleep. He told me he did not want to be in jail. At the end of
19 the hearing the judge asked everyone who feared returning to Mexico. My wife and
20 I raised our hands.

21 22. After court, we were returned to the port of entry before being
22 transferred to the Chula Vista Border Patrol station, where we were originally
23 detained.

24 23. Upon arrival, I was again separated from my wife and children.

25 24. This time, I saw how they mistreat people in the holding cells. I saw one
26 officer push an older man's head into the trash can after the man had thrown
27 something away in the trash. I told the officer that he should respect the man because
28

1 he was of older age, the officer told me "shut up mother fucker." That day I was not
2 given dinner.

3 25. That same day an officer came to my cell and called me by name. He
4 ordered me to turn and face the cell wall, put my hands behind my back and
5 handcuffed me. The handcuffs were so tight they hurt my wrists.

6 26. The officer took me to a small, windowless room. In the room there was
7 a table, chairs and a telephone. Two officers were waiting for me on the telephone,
8 one asked me questions in English and the other translated. The officer that brought
9 me to the room, together with another officer who was dressed in green, took a seat
10 inside the room and were present for my interview. I did not feel comfortable
11 responding to the questions that they asked me over the phone with those officers
12 present. The officers distracted me, they would speak in English to each other and
13 would laugh. I do not know what they said, but it was very difficult to navigate it all.
14 The officer over the phone asked me to raise my hand to swear in, but I told him I
15 could not because the handcuffs were so tight. I went through the entire interview
16 handcuffed.

17 27. Halfway through the interview there was a change in shift and the two
18 officers left the room and another entered to be present for my interview.

19 28. I know that the officers in the room were listening to the interview
20 because at one point during the interview, one of the officers responded to something
21 that I said. The officers were staring at me during the entire interview.

22 29. The interview was a horrible experience. They only let me respond to
23 questions with a yes or no, I was not allowed to give explanations. With so much
24 movement surrounding me, so much pressure and with my nerves, I forgot basic
25 details and I did not say everything that I wanted to. I noticed that in a moment like
26 that, one wrong detail can cost you your life.
27
28

1 30. The next day, an officer entered my cell and told me I would be returned
2 to Mexico. I did not know if my wife or children would be returned with me, if they
3 had been given an interview or where they were. I was never given an explanation or
4 told what the results of the interview were. They made me sign some documents and
5 returned me to Mexico, along with my wife and children.

6 31. Our next court date was scheduled for October 17, 2019.

7 32. Again in Mexico, around the end of September of 2019, I was assaulted
8 in Tijuana. I was in route to a possible job. They asked me to arrive at 7:30 at night
9 and to use black clothing. I thought I was going to work as a night security guard. On
10 my way I was assaulted by three armed men who were dressed in black. Two had a
11 gun and showed them to me. One cocked his gun and placed it on my back. They
12 took away some immigration documents that I had with me. They robbed me of \$320
13 Mexican pesos.

14 33. I decided to not file a police report. After what happened to us on our
15 way to Tijuana, I do not trust the Mexican authorities. A lot of our neighbors tell us
16 that we can not go to the police because one cannot trust them due to corruption.

17 34. On October 10 of 2019, attorney Stephanie Blumberg called us to let us
18 know that she could represent us in our immigration proceeding. I hope that with her
19 help we can get out of this situation.

20 35. On October 17, our lawyer Stephanie was present at our court hearing.
21 She asked the judge for more time to prepare our case. We did not tell the judge about
22 our fear of returning to Mexico. Our next court date is scheduled for November 5,
23 2019 at 8 in the morning.

24 36. I understand that at our next court we can ask for another fear of return
25 to Mexico interview and that we might have to be sent back to the holding cell. Even
26 though my children have begged me not to return there, I feel it is necessary due to
27 the severity of our situation in Mexico.
28

1 37. I worry that without Stephanie at the interview with us, we will not be
2 able to communicate our fear. I would like to have her there so she can explain if we
3 do not know the questions and she could help us better explain our fear. I fear that
4 my family will not pass the interview and that we will again be obligated to return to
5 Mexico, where our lives are in danger.

6 38. I would like for my family's identity to remain private. If it was publicly
7 known who we are it could be very dangerous for us. No one in Guatemala knows
8 that we are in Tijuana. People know that we left for the U.S., but that is the extent of
9 it. I fear that if our names were made public, the cartels we escaped from could send
10 for someone to kill me and my family.

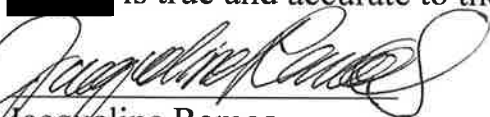
11
12 I declare under penalty of perjury of the laws of the United States of America that
13 the foregoing is true and correct.

14
15 Signed this October 24, 2019 in San Diego, California.

16
17
18 _____
19 C [REDACTED]
20
21
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CERTIFICATE OF TRANSLATION

I, Jacqueline Ramos, certify that I am competent to translate from Spanish to English, and certify that the translation of the Declaration of C [REDACTED] [REDACTED] is true and accurate to the best of my abilities.



Jacqueline Ramos

10/30/2019
Date

DECLARACION DE C

Yo, C, declaro lo siguiente:

1. Tengo conocimiento personal de los hechos establecidos a continuación y, si me llamaran para testificar, podría hacerlo y lo haría de manera competente.

2. Mi nombre es C. Nací el 24 de enero del 1984 en Guatemala. Junto con mi esposa y nuestros cinco hijos, estoy solicitando el asilo. Actualmente estamos sujetos al programa de Regreso a México (o MPP por sus siglas en inglés). Estamos obligados a permanecer en México mientras se llevan a cabo nuestros procedimientos de inmigración. La abogada que nos está representando en nuestros procedimientos de inmigración es Stephanie Blumberg.

3. Mi esposa y yo tenemos cinco hijos: un niño de cuatro años, uno de nueve años, uno de diez años, uno de 12 años, y una hija de 17 años. Mi hija de 17 años no es mi hija biológica, pero la he criado y la quiero como mi hija. Ni mis hijos saben que no es mi hija biológica.

4. En Guatemala, mi familia fue extorsionada por miembros del cartel. Negamos a responderles. Horriblemente, las mismas personas violaron a mi hija y la amenazaron con muerte, diciéndole que era mi culpa por no haberles pagado.

5. Después de que sufrió la violación y amenaza de muerte, mi hija cayó en una depresión. Ya no salía de la casa, casi no hablaba, y expresó deseos de quitarse la vida.

6. Decidimos huir de Guatemala en abril del 2019.

7. A finales de abril del 2019 estábamos en ruta a los Estado Unidos. En Arriaga, Chiapas, México, tres hombres nos atacaron y nos robaron a punta de pistola. Pensamos que eran oficiales federales por la manera en que estaban vestidos. Usaban una camisa con una bandera mexicana y tenían las caras tapadas con bufandas. Los tres estaban armados.

8. Nos robaron todo el dinero que teníamos, hasta el dinero que había

1 escondido en la bolsa de mi esposa. Nos obligaron a desnudar hasta a mis hijos. Me
2 pegaron en el cuello con una pistola y luego me tenían a punto de pistola. Lo único
3 que les decía era que se llevaran lo que querían pero que nos dejaran a mi y a mis
4 hijos. Pensé que si hacía un movimiento, me podían matar—y quizás también a mi
5 esposa y mis hijos—y allí terminaría todo. Sentí lo más horrible sin poder proteger a
6 mi familia, como que había fallado completamente.

7 9. Nuestros asaltantes nos dijeron que si reportábamos lo que había pasado,
8 nos encontrarían y nos matarían.

9 10. Nos quedamos con casi nada. Cuando encontré una moneda de
10 cincuenta centavos, uno de mis hijos me dijo con esperanzas, “papi, compremos agua
11 para todos con eso.”

12 11. Después, cuando por fin íbamos en un autobús desde la ciudad de
13 México a Tijuana, oficiales federales detuvieron al autobús. Un oficial armado y
14 vestido de pantalón oscuro, playera polo color blanco y con gorra color piel, se subió
15 al autobús. Me preguntó, “¿cuántos?” No entendí que me quiso preguntar. Me gritó,
16 “No te hagas el pendejo, ¡cuantos vienen contigo?!” Le dije que venía con mi esposa
17 y nuestros cinco hijos. Pidió ver mis documentos y que sacara la cartera. El oficial
18 me quitó \$500 pesos mexicanos de la cartera. Nos preguntó si nuestros hijos eran de
19 nosotros. Pensé que quizás me iba a quitar a mis hijos. Le dije que podía preguntarles
20 a mis hijos para que ellos les dijeran la verdad. Cuando se bajó el oficial del autobús
21 y seguimos en ruta, ya no me podía relajar. No me sentí tranquilo y no pude dormir.
22 Me di cuenta de nuevo que no podemos confiar en las autoridades mexicanas. Pronto
23 después llegamos a Tijuana.

24 12. Alrededor del 8 de agosto, fuimos arrestados por oficiales de
25 inmigración estadounidenses. Inmediatamente solicitamos el asilo.

26 13. Nos llevaron todos juntos a la estación de Chula Vista de la Patrulla
27 Fronteriza. Ya adentro de la estación fui separado de mi esposa e hijos. Me detuvieron
28

1 en una celda sucia. Había una ventana, pero no se podía ver para afuera. No me dieron
2 cepillo de dientes ni pasta. Cuando le pregunte a un oficial si me permitía conseguir
3 el mío de mi maleta, me ignoró y cerró la puerta de la celda en mi cara. Para comer,
4 nos dieron burritos de frijoles que olían podridos.

5 14. La celda donde me detuvieron estaba helada y aparte hicieron que me
6 quitara mi chamarra y hasta la camisa que tenía puesta arriba de una playera. Primero,
7 cuando solamente me quite la chamarra, el oficial me pregunto, “¿eres pendejo? Dije
8 que te la quites” y exigió que me quitara la camisa también.

9 15. Durante todo el tiempo de mi detención nunca vi a mi esposa o hijos.
10 Esa noche que pasé en la celda no dormí. Me sentí sin fuerza y no supe qué hacer.
11 Me preocupaba por si mis hijos habían comido, si tenían cobijas y si los estaban
12 tratando bien. Los oficiales de inmigración nunca dieron información sobre mi
13 esposa o hijos.

14 16. La mañana siguiente un oficial entró a la celda y me dijo que iba de
15 regreso a México. Soltaron a mis hijos y a mi esposa juntos conmigo. Los oficiales
16 de inmigración nunca me preguntaron sobre mi temor de regresar a México mientras
17 estuve detenido. Nuestra primera corte fue agendada para el 3 de septiembre del 2019
18 a las 8 de la mañana.

19 17. En Tijuana intentamos buscar un abogado. Llamamos a diferentes
20 personas de la lista que nos dio inmigración. Fuimos a un taller en Tijuana para
21 migrantes solicitando asilo.

22 18. En Tijuana también ha sido muy difícil encontrar vivienda y mantener
23 a mis hijos por falta de trabajo. Ni si quiera he podido pagar para que mis hijos vean
24 a un doctor o dentista. Uno de mis hijos está muy enfermo y el otro tiene mucho dolor
25 por una muela que necesita atención de un dentista.

26 19. El 2 de septiembre no habíamos conseguido transportación para llegar a
27 la puerta de entrada a tiempo para nuestra audiencia. Tuvimos que estar en la puerta
28

1 de entrada a las 3 de la mañana para llegar a nuestra audiencia a las 8 de la mañana.
2 Buscamos un hotel cerca de la puerta de entrada, pero nos cobraban \$1,500 pesos
3 mexicanos. No contamos con tanto dinero y ha sido muy difícil conseguir trabajo en
4 Tijuana. Sin otra opción, decidimos pasar la noche enfrente de la puerta de entrada
5 en Tijuana. Llegamos ahí a las 9 de la noche el 2 de septiembre. Esa noche no dormir
6 para proteger a mi familia. Tuve que vigilar toda la noche para asegurar que nadie
7 nos iba dañar. Mis hijos durmieron en el piso sin cobija, usamos nuestros suéteres
8 para cubrirlos. Siento que mis hijos han perdido un año de vida pasando por todo este
9 proceso.

10 20. El 3 de septiembre a las tres de la mañana nos dejaron entrar a la puerta
11 de entrada. Todos teníamos sueño. Fuimos procesados y registrados. Luego nos
12 llevaron a la corte.

13 21. Cuando llegamos a la corte nos pusieron en la sala de espera antes de
14 ser permitidos entrar al tribunal. Había muchas personas, todos esperando su caso
15 igual que nosotros. El tribunal se llenó de personas. Todos esperábamos al juez.
16 Cuando salió el juez habló con todos en el tribunal. Nos explicó nuestros derechos y
17 que iba reagendar nuestra audiencia. Nos dio mucha información, pero fue difícil
18 prestar atención. Mis hijos venían con muchísimo sueño. Apenas pudieron mantener
19 sus ojos abiertos. Mi hijo de nueve años pidió que lo cargara en mis brazos para que
20 pudiera dormir. Me dijo que ya no quería estar preso. Al final de la corte el juez nos
21 preguntó a todos si teníamos temor de regresar a México. Mi esposa y yo levantamos
22 las manos.

23 22. Después de la corte, nos regresaron a la puerta de entrada antes de
24 trasladarnos de nuevo a la estación de Chula Vista de la Patrulla Fronteriza, donde
25 originalmente estuvimos detenidos.

26 23. Al llegar fui separado de mi esposa e hijos de nuevo.
27
28

1 24. Esa ves, vi como maltratan a la gente adentro de la hielera. Vi que un
2 oficial metió la cabeza de un viejito al bote de la basura después de que el señor tiro
3 algo a la basura. Respondí que debería de respetar al señor porque es un señor de
4 edad, y el oficial me dijo “shut up mother fucker.” Ese día no me dieron la cena.

5 25. Ese mismo día un oficial llegó a mi celda y me llamó por nombre. Me
6 ordenó que me volteara hacia la pared, que pusiera mis manos detrás de la espalda y
7 me esposó. Las esposas estuvieron tan apretadas que me dolían las muñecas.

8 26. El oficial me llevó a un cuarto pequeño y sin ventanas. En el cuarto
9 había una mesa, sillas y un teléfono. Por teléfono me esperaban dos oficiales, uno
10 quien me hizo preguntas en inglés y otro que tradujo. El oficial quien me trajo
11 esposado al cuarto, junto con otra oficial de inmigración que estaba vestida de verde
12 tomaron asiento dentro del cuarto y estuvieron presente para mi entrevista. No me
13 sentí cómodo respondiendo a las preguntas que me hacían por teléfono con esos
14 oficiales ahí. Los oficiales me distraían, hablan en inglés entre ellos y se reían. No sé
15 de qué hablaban, pero fue demasiado difícil navegarlo todo. El oficial por teléfono
16 me pidió que levantara la mano para tomar un juramento, pero le dije que no podía
17 por lo apretado que estaban las esposas. Pase toda la entrevista esposado.

18 27. A mitades de la entrevista hubo un cambio de turno y los dos oficiales
19 salieron del cuarto y entro otro para estar presente en mi entrevista.

20 28. Se que los oficiales en el cuarto estaban escuchando la entrevista porque
21 en un momento durante la entrevista, uno de los oficiales respondió a algo que yo
22 dije. Los oficiales me estuvieron mirando durante toda la entrevista.

23 29. La entrevista fue una experiencia horrible. Solo me dejaron responder a
24 preguntas de si o no, no me permitieron dar explicaciones. Con tanto movimiento a
25 mi alrededor, tanta presión, y con mis nervios, se me olvidaron datos básicos y no
26 dije todo lo que quería decir. Me di cuenta de que en un momento como ese, un
27 detalle equivocado te puede costar la vida.
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1 30. Al siguiente día, un oficial entró a mi celda y me dijo que iba ser
2 regresado a México. No supe si mi esposa e hijos venían de regreso conmigo, si les
3 habían dado una entrevista, o donde estaban. No me dieron explicación o que
4 resultado tuve en la entrevista. Me hicieron firmar unos documentos y me regresaron
5 a México, junto con mi esposa e hijos.

6 31. Nuestra próxima audiencia fue agendada para el 17 de octubre del 2019.

7 32. De nuevo en México, a finales de septiembre del 2019, fui asaltado en
8 Tijuana. Iba en ruta a un posible trabajo. Me pidieron llegar a las 7:30 de la noche y
9 que usara ropa negra. Pensaba que iba a trabajar como seguridad de noche. En camino
10 fui asaltado por tres hombres armados y vestidos de negro. Dos tenían una pistola y
11 me la mostraron. Uno cargó su pistola y me la puso sobre la espalda. Me quitaron
12 unos documentos de inmigración que tenía conmigo. Me robaron \$320 peso
13 mexicanos.

14 33. Decidí no levantar una denuncia. Después de lo que nos sucedió en
15 camino a Tijuana no le tengo confianza a las autoridades mexicanas. Muchos de
16 nuestros vecinos nos comentan que no podemos ir con la policía porque uno no puede
17 confiar en ellos debido a la corrupción.

18 34. El 10 de octubre del 2019, la abogada Stephanie Blumberg nos llamó
19 para dejarnos saber que nos iba representar en nuestros procedimientos de
20 inmigración. Espero que con su apoyo podamos salir de esta situación.

21 35. El 17 de octubre, nuestra abogada Stephanie estuvo presente para
22 nuestra audiencia en corte. Ella le pidió al juez más tiempo para preparar nuestro
23 caso. No le dijimos al juez nuestro temor de regresar a México. Nuestra próxima
24 audiencia esta agenda para el 5 de noviembre del 2019 a las 8 de la mañana.

25 36. Entiendo que para nuestra próxima corte podemos pedir otra entrevista
26 de nuestro temor de regresar a México, y que quizás tengamos que regresarnos a la
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1 hielera. Aunque mis hijos me han suplicado que no regresemos a ese lugar, siento
2 que es necesario por lo grave que esta nuestra situación en México.

3 37. Me preocupa mucho que sin Stephanie en la entrevista con nosotros no
4 vayamos a poder comunicar nuestro temor. Me gustaría tenerla ahí para que nos
5 explique si no entendemos las preguntas y nos ayude a explicar nuestro temor. Temo
6 que mi familia no pase la entrevista y de nuevo seamos obligados a regresar a México
7 donde nuestras vidas corren peligro.

8 38. Me gustaría que la identidad de mi familia se quedara privada. Si el
9 publico supiera quienes somos pudiera poner a mi familia en peligro. Nadie en
10 Guatemala sabe que estamos en Tijuana. Saben que nos fuimos para los EE. UU.,
11 pero hasta ahí saben. Temo que si nuestros nombres fueran públicos los carteles de
12 cuales huimos, pudieran mandar a matar a mi familia y yo.

1 Declaro bajo pena de perjuicio bajo las leyes de los Estados Unidos de América que
2 lo anterior es correcto y verdadero.

3 Firmado este 24 de octubre del 2019 en Tijuana, Baja California, México.
4

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6
7 X
C

EXHIBIT 4

1 **MONIKA Y. LANGARICA** (SBN 308518)(mlangarica@aclusandiego.org)
2 **JONATHAN MARKOVITZ** (SBN 301767)(jmarkovitz@aclusandiego.org)
3 **BARDIS VAKILI** (SBN 247783)(bvakili@aclusandiego.org)
4 **DAVID LOY** (SBN 229235)(davidloy@aclusandiego.org)
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9 Telephone: (619) 398-4493

6 Counsel for Plaintiff-Petitioners

7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 Cristian Doe, Diana Doe,
11 Plaintiff-Petitioners,

12 v.

13 KEVIN K. McALEENAN, Acting Secretary
14 of Homeland Security; et al.,

15 Defendants-Respondents.

Case No. _____

**DECLARATION OF DIANA
DOE [REDACTED]**

DECLARATION OF D [REDACTED]

I, D [REDACTED], hereby declare as follows:

1. I have personal knowledge of the facts set forth below and if called to testify, I could and would do so competently.

2. My name is D [REDACTED] I was born on July 27, 1984 in Guatemala. My husband, our five children and I are seeking asylum. Currently we are subject to the Remain in Mexico (or MPP) program. We are obligated to remain in Mexico while we go through our immigration proceedings. The lawyer representing us in our immigration proceedings is Stephanie Blumberg.

3. My husband and I have five children: a four-year-old son, nine-year-old son, ten-year-old son, 12-year-old son and 17-year-old daughter. My 17-year-old daughter is not my husband's biological father, but he has raised her, and she only knows him as her father. My sons do not know that my husband, their father, is not their sister's father.

4. My nine-year-old son was previously treated for symptoms consistent with leukemia. Four years ago, he suffered from dizziness, his nose would bleed, lack of appetite, exhaustion and fatigue. It was detected that he had weak platelets and we acquired him treatment. In Guatemala he was hospitalized, they gave him a lot of treatment in the form of pills and syrups every day.

5. It's supposed to be that my son has at least one vitamin rich milk per day, we know this milk as "pediasure". But in Mexico I do not have the money to buy it for him. After so much treatment his stomach and intestines were left very weak. Now, there is very little that he can eat without having pain and discomfort. The last time my son was seen by a doctor was in Guatemala. In Mexico he has not received treatment due to lack of resources. He is now again suffering from dizziness, loss of appetite, digestive problems and fatigue.

1 6. In Guatemala, our family was extorted by cartel members. We do not
2 know the people who extorted my husband, but I take people who are involved in
3 organized crime in our town very seriously. Years ago, they extorted members of my
4 family. When they didn't pay, they killed several, including my cousin, who was shot
5 in their own house in front of me. I remember hugging her while she was bleeding.

6 7. In March 2019, my daughter was coming home from school. Along the
7 way, she was a victim of rape. Her assailants told her it was her dad's fault for not
8 paying them. They threatened her with death. After she suffered the rape and death
9 threat, my daughter fell into a depression. She no longer left the house, hardly spoke,
10 and expressed the desire to take her own life.

11 8. We decided to flee Guatemala in April 2019.

12 9. In Guatemala, I worked as an esthetician. I liked my job. We also had
13 our house, the same one in which I was born and raised by my grandparents. I loved
14 our house.

15 10. I would never have fled my country if it were not for the safety of my
16 children. If this were not about keeping them alive and safe, we would never have
17 left our country... our home. If we return to Guatemala, I fear they will kill us and
18 our children.

19 11. At the end of April 2019, we were in route to the United States. In
20 Arriaga, Chiapas, Mexico, three men assaulted us at gunpoint. We thought they were
21 federal officers because of the way they were dressed. The three wore a long-sleeved
22 polo shirt with the Mexican flag on the arm of the shirt and a gray plaque stitched to
23 the uniform. They wore dark colored pants. They covered half of their faces with a
24 scarf. All three were armed. One had a gun and the other two carried a machete. They
25 told us to give them everything we had; they demanded to empty our bags and
26 suitcases and at gun point they told us to undress. They hit my husband on his neck
27 with a gun. We were all completely naked.
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1 12. To my 17-year-old daughter, one of the assailants grabbed her by the
2 neck and tried to suffocate her. I was so scared and worried that I started crying. I
3 tried to shout to defend her, but an officer hit me on the back and knocked me onto
4 the floor. I felt so impotent. My job as a mother is to protect my daughter and I had
5 failed.

6 13. Those assailants robbed us of 5,000 Mexican pesos. They took the
7 money and ordered us to put our clothes back on. Before going, they told us, "If you
8 talk, we will look for you and kill you." Even so, my husband and I decided to report
9 them to the police. We filed a complaint, but to date there has been no response.
10 Every day we fear that they will find out that we reported them, and they will kill us.

11 14. I believe that everything my daughter suffered in Arriaga caused her to
12 relive what happened to her in Guatemala. It has affected her a lot and causes her a
13 lot of depression. She tells me that she never wants to get married. There are days
14 that she does not even want to leave her room. I want my daughter to get therapy.
15 She has told me crying, "Do you think therapy would help me forget? It hurts."

16 15. Apart from the trauma of being assaulted, that same night we were left
17 with nothing. We had to sleep in a park without money for a hotel or to eat. We
18 looked for shelters, but could not find any.

19 16. When we were finally on our way to Tijuana, the truck we were going
20 in caught fire. We all got off the truck and had to sleep one night on the side of the
21 road. The next day they put us in trucks, and we continued on our way.

22 17. When we finally arrived in Tijuana, we tried to present ourselves to ask
23 for asylum, but we never got to the port of entry because other people told us there
24 were 12,000 people on 'the list,' as they called it.

25 18. On or about August 8, we were arrested by US immigration officers. We
26 immediately request protection in the form of asylum.

27 19. They took us all together to the Chula Vista Border Patrol station. Inside
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1 the station they separated my husband from my children and me.

2 20. The cell was cold and dirty. They only gave us cold burritos to eat. I
3 asked an officer if they had something different to eat for the children.

4 21. Ever since my nine-year-old son went through treatment in Guatemala,
5 he has a limited diet. The officer responded by shouting, "This is not a hotel! I'm fed
6 up with you!"

7 22. We were not given toothpaste, toothbrushes, or soap. They took my
8 husband's sweater and my 17-year-old daughter's sweater as well. I think they do this
9 to punish you. My 10-year-old son got sick a cough.

10 23. The bathroom was inside the cell and everyone could see when we used
11 it. They left the lights on all night and all day.

12 24. I did not know that I could declare our fear of returning to Mexico and
13 nobody asked me.

14 25. On our second day, an officer entered our cell and called me by name.
15 He told me that we were going to be returned to Mexico. I begged the officer to let
16 us stay in the US. The officer replied that, even if we didn't like it, we were going to
17 be returned. The immigration officers never asked me about our fear of returning to
18 Mexico. I was told that our first court was on September 3, 2019.

19 26. We were detained for two days in total before being returned to Tijuana.

20 27. In Tijuana we tried to find a lawyer for our asylum case. We called
21 different people from the list that immigration gave us. We went to a workshop for
22 migrants requesting asylum. We could not find a lawyer before our first court
23 hearing.

24 28. We are very afraid of being in Tijuana. There is a lot of violence and we
25 cannot trust the police. I think a lot about my daughter who is still dealing with
26 trauma. I worry a lot about my son who is sick.

1 29. I worry about the safety of my children in Tijuana. At the end of August
2 2019 there was a shooting in front of where we were staying here in Tijuana. We
3 heard the shots and we all hid in a room. The owner of the house told us that it was a
4 confrontation between drug traffickers and the Mexican navy. My children are very
5 afraid to leave the house. My daughter doesn't even let me go to other rooms alone.
6 My children do not sleep. My youngest son, the four-year-old, asks me if they will
7 come to kill him.

8 30. On September 2, 2019, in preparation for our first hearing, we tried to
9 find a hotel near the port of entry. Immigration officials told us that we had to be
10 present at the port of entry at 3 in the morning to arrive at our hearing at 8 in the
11 morning on time. We could not get transportation for that time. With no other option
12 we had to spend the night on the street in front of the port of entry. That night I could
13 not rest. And although I did not know what to expect in court, I had hope. I felt happy
14 that maybe the judge would give us the opportunity to stay in the U.S. with our
15 sponsor who is waiting for us. Our sponsor is my husband's aunt who is a US citizen.

16 31. When we arrived at the court, they put us in a waiting room before being
17 allowed to enter the court room. There were a lot of people, all waiting for their case
18 just like us. The courtroom filled with people, we were all waiting for the judge.
19 When the judge came out, he talked to everyone in the courtroom. He explained our
20 rights and that he was going to reschedule our hearing. He gave us a lot of
21 information, but it was difficult to pay attention. My children were very tired. They
22 could barely keep their eyes open. At the end of the hearing the judge asked everyone
23 in the courtroom if we were afraid to return to Mexico. My husband and I raised our
24 hands.

25 32. After the court, we were returned to the port of entry before being sent
26 to the Chula Vista Border Patrol station, where we were originally detained.
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1 33. Upon arriving I was separated from my husband again, my children
2 stayed with me. We were again detained with the lights on 24 hours a day, being very
3 cold and packed with many people.

4 34. They gave us rotten burritos. I worried about my son's digestive
5 problems. When I asked to change the burritos, an officer told us that they were not
6 so bad. We had to throw the burritos away and we were not given more. They only
7 gave us cookies.

8 35. The cold bothered me a lot and, as I suffer from asthma, I had a hard
9 time breathing.

10 36. On the second day, I was so tired I was asleep when they gave us dinner
11 at 11 p.m. When my daughter went for the food, the officer scolded her and asked
12 where the children's mother was. My daughter told the officer I was asleep, and the
13 officer became upset.

14 37. When my daughter told me what had happened, another lady who was
15 in the cell told me to be careful because that officer reports the mothers that she says
16 don't take care of their children to separate them. My worst nightmare is losing my
17 children, therefore I kept quiet.

18 38. That same day they interviewed me and my children. My husband was
19 not present for the interview, only my children and I were there. They took us to a
20 small windowless room. Two officers interviewed me by phone. One asked me
21 questions in English and the other translated. During our interview, a Border Patrol
22 officer wearing a green uniform was present. He sat in the room with us and watched
23 me. I did not feel comfortable with him present because he could hear all my answers.

24 39. During the interview, another officer came in and brought coffee and
25 breakfast to the officer who was already sitting inside with us. I was so hungry that
26 it was very difficult to ignore the smell of food and coffee. When the officers over
27 the phone finished with me, they questioned my 17-year-old daughter and my 12-
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1 year-old son. They were asked about what happened to us in Chiapas and if they were
2 afraid of being in Mexico. They only allowed us to answer yes or no. They did not
3 want explanations.

4 40. We were detained three days in total. At some point I asked to use the
5 phone. I wanted to speak with my husband's aunt. The officer told me, "Yes, you can
6 use the telephone to speak to the consulate, but that is only to be deported." I told
7 them that I did not want to use the telephone.

8 41. The next day they took us out of the cell to sign documents. My husband
9 was never with me. I didn't know anything about him, if he had been given an
10 interview or if he was going to be returned with us. They never explained to me the
11 results of the interview. When I asked the officers about my husband, they replied,
12 "I don't know, I'm not taking care of him." My husband was returned along with us.

13 42. On September 19 we had our second court. This time when the judge
14 asked, who is afraid to return to Mexico? My husband and I did not raise our hand.
15 We continue with the same fear, perhaps more, but our experiences in the holding
16 cells have been terrible and I feared it would be useless if they were going to deny us
17 again. Our next court is on October 17.

18 43. I am still afraid of staying here in Mexico. Apart from everything else,
19 they have found many dead near where we are staying.

20 44. On October 10, 2019, attorney Stephanie Blumberg called us to let us
21 know that she could represent us in our immigration proceedings. She gave us hope.
22 I hope she can help us out of this situation.

23 45. On October 17, our lawyer Stephanie was present at our court hearing.
24 She asked the judge for more time to prepare our case. We did not tell the judge about
25 our fear of returning to Mexico. Our next court date is scheduled for November 5,
26 2019 at 8 in the morning.

1 46. I understand that at our next court we can ask for another fear of return
2 to Mexico interview.

3 47. I worry that without Stephanie at the interview with us, we will not be
4 able to communicate our fear in a way that the officers want or that we will not know
5 what to say so that they will understand what we have suffered here in Mexico. I
6 would like to have her there to control my nerves, get the necessary information, and
7 to explain if we do not understand the questions. I fear that my family will not pass
8 the interview and we will be forced to return to Mexico where our lives are in danger.

9 48. I would like to maintain my family's identity private. I worry that, if our
10 names were revealed, it could affect our immigration case. All I want is for my family
11 to go through our immigration proceedings without interference and from a place
12 where we feel safe.

13
14 I declare under penalty of perjury of the laws of the United States of America that
15 the foregoing is true and correct.

16
17 Signed this October 24, 2019 in San Diego, California.
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20 _____
21 D [REDACTED]
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CERTIFICATE OF TRANSLATION

I, Jacqueline Ramos, certify that I am competent to translate from Spanish to English, and certify that the translation of the Declaration of D [REDACTED] [REDACTED] is true and accurate to the best of my abilities.


Jacqueline Ramos

10/30/2019
Date

DECLARACION DE D

Yo, D declaro lo siguiente:

1. Tengo conocimiento personal de los hechos establecidos a continuación y, si me llamaran para testificar, podría hacerlo y lo haría de manera competente.

2. Mi nombre es D. Nací el 27 de julio del 1984 en Guatemala. Junto con mi esposo y nuestros cinco hijos, estamos solicitando el asilo. Actualmente estamos sujetos al programa de Regreso a México (o MPP por sus siglas en inglés). Estamos obligados a permanecer en México mientras se llevan a cabo nuestros procedimientos de inmigración. La abogada que nos está representando en nuestros procedimientos de inmigración es Stephanie Blumberg.

3. Mi esposo y yo tenemos cinco hijos: un niño de cuatro años, uno de nueve años, uno de diez años, uno de 12 años, y una hija de 17 años. Mi hija de 17 años no es hija biológica de mi esposo, pero el la ha criado y ella solo lo conoce a el como su papa. Mis niños no saben que mi esposo, su papa, no es papa de su hermana.

4. Anteriormente mi hijo de nueve años fue tratado por síntomas consistentes con leucemia. Hace cuatro años, sufría de mareo, le salía sangre de la nariz, falta de apetito, cansancio y se sentía fatigado. Se detectó que tenía plaquetas débiles y le conseguimos tratamiento. En Guatemala lo internaron y le dieron mucho tratamiento de pastillas y jarabe todos los días.

5. Se supone que por lo menos tiene que tomar una leche con muchas vitaminas que conocemos como "pediasure" todos los días, aunque en México no tengo dinero para comprárselo. Después de tanto tratamiento le dejó sus estomago e intestinos muy débiles. Ahora hay muy poco que puede comer sin tener dolor y incomodidad. La última vez que mi hijo fue revisado por un doctor fue en Guatemala. En México no ha recibido tratamiento por falta de recursos. Nuevamente sufre de mareo, falta de apetito, problemas digestivos, y fatigación.

1 6. En Guatemala, nuestra familia fue extorsionada por miembros de
2 carteles. No conocemos a las personas que extorsionaron a mi esposo, pero tomo muy
3 en serio a las personas que están metidas en el crimen organizado en nuestro pueblo.
4 Hace años, extorsionaron a miembros de mi familia. Cuando no pagaron, mataron a
5 varios, incluyendo a mi prima, a quien balacearon en su propia casa en frente de mí.
6 Me acuerdo de abrazarla mientras sangraba.

7 7. En marzo del 2019, mi hija venia en camino a casa de la escuela.
8 Durante el camino, fue víctima de una violación. Sus asaltantes le dijeron que fue
9 culpa de su papa por no pagarles. La amenazaron con muerte. Después de que sufrió
10 la violación y amenaza de muerte, mi hija cayó en una depresión. Ya no salía de la
11 casa, casi no hablaba, y expresó deseos de quitarse la vida.

12 8. Decidimos huir de Guatemala en abril del 2019.

13 9. En Guatemala, yo trabajaba de esteticista. Me gustaba mi trabajo.
14 También teníamos nuestra casa, la misma en la cual yo nací y me criaron mis abuelos.
15 Me encantaba nuestra casa.

16 10. Nunca hubiera huido mi país si no fuera por la seguridad de mis hijos.
17 Si esto no se tratara de mantenerlos vivos y seguros, nunca nos hubiéramos ido de
18 nuestro país... nuestro hogar. Si regresamos a Guatemala temo que nos maten a
19 nosotros y a nuestros niños.

20 11. A finales de abril del 2019 estábamos en ruta a los Estado Unidos. En
21 Arriaga, Chiapas, México tres hombres nos asaltaron a punta de pistola. Pensamos
22 que eran oficiales federales por la manera en que estaban vestidos. Los tres usaron
23 una camisa polo de manga larga con la bandera mexicana en el brazo de la camisa y
24 una placa gris cosida al uniforme. Usaron un pantalón color oscuro. Se taparon la
25 mitad de sus caras con una bufanda. Los tres estaban armados. Uno tenía una pistola
26 y los otros dos cargaban un machete. Nos dijeron que les diéramos todo lo que
27 teníamos; nos exigieron vaciar nuestras bolsas y maletas y a punto de pistola nos
28

1 dijeron que nos desnudáramos. A mi esposo le pegaron con la pistola en el cuello.
2 Todos estuvimos completamente desnudos.

3 12. A mi hija de 17 años, uno de los asaltantes la agarró por el cuello y la
4 intentó sofocar. Empecé a llorar de lo asustada y preocupada que estaba. Intenté gritar
5 para defenderla, pero otro oficial me pegó sobre la espalda y me tumbo hacia al piso.
6 Me sentí tan impotente. Mi trabajo como madre es proteger a mi hija y había fallado.

7 13. Esos asaltantes nos robaron 5,000 pesos mexicanos. Se llevaron el
8 dinero y nos ordenaron a ponernos nuestra ropa de nuevo. Antes de ir nos dijeron, “si
9 hablan, los buscamos y los matamos”. Aun así, mi esposo y yo decidimos reportarlos
10 con la policía. Levantamos una denuncia, pero hasta la fecha no habido respuesta.
11 Todos los días tememos que se van a enterar que los denunciarnos y nos van a matar.

12 14. Yo creo que todo lo que mi hija sufrió en Arriaga causó que viviera de
13 nuevo lo que le paso en Guatemala. Le ha afectado mucho y le causa mucha
14 depresión. Me comenta que nunca se quiere casar. Hay días que ni quiere salir de su
15 cuarto. Quiero que mi hija consiga terapia. Llorando ella me ha comentado, “¿crees
16 que terapia me ayudaría olvidar? Duele.”

17 15. Aparte del trauma de ser asaltados, esa misma noche nos quedamos
18 completamente sin nada. Tuvimos que dormir en un parque sin dinero para un hotel
19 o para comer. Buscamos albergues, pero no encontramos.

20 16. Cuando por fin pudimos agarrar camino hacia Tijuana, el camión en el
21 que íbamos agarro fuego. Nos bajaron a todos del camión y tuvimos que dormir una
22 noche al lado de la carretera. Al día siguiente nos subieron a camionetas y seguimos
23 nuestro camino.

24 17. Cuando por fin llegamos a Tijuana, tratamos de presentarnos para pedir
25 asilo, pero nunca llegamos a la garrita porque nos dijeron otras personas ahí que
26 estaban 12,000 personas en ‘la lista,’ como le decían ellos.

27 18. Alrededor del 8 de agosto, fuimos arrestados por oficiales de
28

1 inmigración estadounidenses. Inmediatamente solicitamos protección en la forma de
2 asilo.

3 19. Nos llevaron todos juntos a la estación de Chula Vista de la Patrulla
4 Fronteriza. Ya adentro de la estación nos separaron a mi y a mis hijos de mi esposo.

5 20. La celda estuvo fría y sucia. Solo nos daban burritos helados para comer.
6 Le pregunte a un oficial si tenían algo diferente de comer para los niños.

7 21. Desde que mi hijo de nueve años paso por tratamiento en Guatemala,
8 tiene una dieta limitada. El oficial me respondió gritando, “¡Aquí no es un hotel! ¡Ya
9 me tienen hartos!”

10 22. No nos dieron pasta de dientes, cepillo de dientes, ni jabón. Nos quitaron
11 el suéter a mi esposo y a mi hija de 17 años también. Creo que lo hacen por castigar
12 a uno. Mi hijo de 10 años se enfermó de la tos.

13 23. El baño estaba adentro de la celda y todos podían ver cuando lo
14 usábamos. Dejaban las luces prendidas toda la noche y todo el día.

15 24. Yo no supe que podía declarar nuestro temor de regresar a México y
16 nadie me lo pregunto.

17 25. Nuestro segundo día detenidos un oficial entro a nuestra celda y me
18 llamó por nombre. Me dijo que íbamos a ser regresados a México. Yo le supliqué al
19 oficial que dejara que nos quedáramos en los EE.UU. El oficial me respondió que,
20 aunque no nos gustara, íbamos a ser regresados. Los oficiales de inmigración nunca
21 me preguntaron sobre nuestro temor de regresar a México. Me dijeron que nuestra
22 primera corte era para el 3 de septiembre del 2019.

23 26. Estuvimos detenidos por dos días en total antes de ser regresados a
24 Tijuana.

25 27. En Tijuana intentamos buscar un abogado para nuestro caso de asilo.
26 Llamamos a diferentes personas de la lista que nos dio inmigración. Fuimos a un
27
28

1 taller para migrantes solicitando asilo. No pudimos encontrar abogado antes de
2 nuestra primera audiencia de la corte.

3 28. Tenemos mucho temor de estar en Tijuana. Hay mucha violencia y no
4 podemos confiar en la policía. Pienso mucho en mi hija que aún está lidiando con
5 trauma. Me preocupo mucho por mi hijo que está enfermo.

6 29. Me preocupo por la seguridad de mis hijos en Tijuana. A finales de
7 agosto del 2019 hubo una balacera enfrente de donde nos estábamos quedando aquí
8 en Tijuana. Oímos los disparos y todos nos escondimos en un cuarto. El dueño de la
9 casa nos dijo que fue un enfrentamiento entre narcotraficantes y la marina mexicana.
10 Mis hijos tienen mucho temor a salir de la casa. Mi hija hasta no me deja ir a otros
11 cuartos sola. Mis hijos no duermen. Mi hijo más pequeño, el de cuatro años, me
12 pregunta si van a venir a matarlo.

13 30. El 2 de septiembre del 2019, en preparación para nuestra primera
14 audiencia, intentamos buscar un hotel cerca de la puerta de entrada. Los oficiales de
15 inmigración nos dijeron que teníamos que estar presente en la puerta de entrada a las
16 3 de la mañana para llegar a nuestra audiencia a las 8 de la mañana con tiempo. No
17 pudimos conseguir transportación para esa hora. Sin otra opción tuvimos que pasar
18 la noche en la calle en frente de la puerta de entrada. Esa noche no pude descansar.
19 Y aunque no supe qué esperar en corte tuve esperanza. Me sentí feliz que quizás el
20 juez nos diera oportunidad de quedarnos en los EE.UU. con nuestra patrocinadora
21 que nos espera, la tía de mi esposo quien es ciudadana estadounidense.

22 31. Cuando llegamos a la corte nos pusieron en la sala de espera antes de
23 ser permitidos entrar al tribunal. Había muchas personas, todos esperando su caso
24 igual que nosotros. El tribunal se llenó de personas todos esperábamos al juez.
25 Cuando salió el juez habló con todos en el tribunal. Nos explicó nuestros derechos y
26 que iba reagendar nuestra audiencia. Nos dio mucha información, pero fue difícil
27 prestar atención. Mis hijos venían con muchísimo sueño. Apenas podían mantener
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1 sus ojos abiertos. Al final de la corte el juez nos preguntó a todos si teníamos temor
2 de regresar a México. Mi esposo y yo levantamos las manos.

3 32. Después de la corte, nos regresaron a la puerta de entrada antes de
4 trasladarnos de nuevo a la estación de Chula Vista de la Patrulla Fronteriza, donde
5 originalmente estuvimos detenidos.

6 33. Al llegar fui separada de mi esposo de nuevo, mis hijos se quedaron
7 conmigo. Nuevamente nos detuvieron con las luces prendidas 24 horas al día con
8 muchísimo frío y amontonados con mucha gente.

9 34. Nos dieron burritos podridos. Me preocupe por los problemas digestivos
10 que tiene mi hijo. Cuando pedí cambiar los burritos, un oficial nos dijo que no estaban
11 tan mal. Tuvimos que tirar los burritos y no nos dieron más. Solo nos dieron galletas.

12 35. El frío me molestó mucho y, como padezco del asma, se me dificultaba
13 respirar.

14 36. El segundo día, nos dieron la cena a las 11 de la noche y no estaba
15 despierta por tan cansada que estaba. Cuando mi hija fue por la comida, la oficial la
16 regañó y le preguntó dónde estaba la mamá de los niños. Mi hija le dijo que estaba
17 dormida y la oficial se molestó.

18 37. Cuando mi hija me contó lo que había pasado, otra señora que estaba en
19 la celda me dijo que tuviera cuidado porque esa oficial reporta a las mamás que dice
20 que no cuidan a sus hijos para separarlos. Mi peor pesadilla es perder a mis hijos así
21 que mejor me quede callada.

22 38. Ese mismo día nos hicieron una entrevista a mí y a mis hijos. Mi esposo
23 no estuvo presente para la entrevista, solo estuvieron mis hijos y yo. Nos llevaron a
24 un cuarto pequeño sin ventanas. Dos oficiales me entrevistaron por teléfono. Uno me
25 hizo preguntas en inglés y el otro tradujo. Durante nuestra entrevista estuvo presente
26 un oficial de la patrulla fronteriza que usaba uniforme verde. Se sentó en el cuarto
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1 con nosotros y me vigiló. No me sentí cómoda con el presente porque oía todas mis
2 respuestas.

3 39. Durante la entrevista entró otro oficial y le trajo café y desayuno al
4 oficial que ya estaba sentado adentro con nosotros. Tenía tanta hambre que fue muy
5 difícil ignorar el olor de la comida y el café. Cuando los oficiales por teléfono
6 terminaron conmigo, les hicieron preguntas y mi hija de 17 años y a mi hijo de 12
7 años. Les preguntaron sobre qué nos sucedió en Chiapas y si tenía temor de estar en
8 México. Solo nos permitieron responder con sí o no. No querían explicaciones.

9 40. Estuvimos encerrados tres días en total. En algún momento pedí usar el
10 teléfono. Quería hablar con la tía de mi esposo. El oficial me dijo, “sí, puedes usar el
11 teléfono para hablar al consulado, pero eso solo es para ser deportada.” Mejor les dije
12 que no deseaba usar el teléfono.

13 41. Al siguiente día nos sacaron de la celda para firmar documentos. Mi
14 esposo nunca estuvo conmigo. No sabía nada de él, si le habían dado una entrevista
15 o si iba ser regresado con nosotros. Nunca me explicaron que resultó de la entrevista.
16 Cuando les pregunte a los oficiales por mí esposo me contestaron, “yo no sé, yo no
17 lo estoy cuidando.” Regresaron a mi esposo a Mexico junto con nosotros.

18 42. El 19 de septiembre tuvimos nuestra segunda corte. Esta vez cuando el
19 juez preguntó, ¿quién tiene temor de regresar a México? Mi esposo y yo no
20 levantamos la mano. Seguimos con el mismo temor, quizás más, pero nuestras
21 experiencias en la hielera han sido terribles y temía que fuera inútil si nos iban a negar
22 de nuevo. Nuestra próxima corte es para el 17 de octubre.

23 43. Aún tengo temor de quedarme aquí en México. Aparte de todo lo demás,
24 han encontrado a muchos muertos cerca de donde nos estamos quedando.

25 44. El 10 de octubre del 2019, la abogada Stephanie Blumberg nos llamó
26 para dejarnos saber que nos iba representar en nuestros procedimientos de
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1 inmigración. Nos dio muchas esperanzas. Espero que nos pueda ayudar salir de esta
2 situación.

3 45. El 17 de octubre, nuestra abogada Stephanie estuvo presente para
4 nuestra audiencia en corte. Ella le pidió al juez más tiempo para preparar nuestro
5 caso. No le dijimos al juez nuestro temor de regresar a México. Nuestra próxima
6 audiencia esta agenda para el 5 de noviembre del 2019 a las 8 de la mañana.

7 46. Entiendo que para nuestra próxima corte podemos pedir otra entrevista
8 de nuestro temor de regresar a México.

9 47. Me preocupa mucho que sin Stephanie ahí en la entrevista con nosotros
10 no vayamos a poder comunicar nuestro temor de manera en que los oficiales quieran
11 o que no sepamos que tenemos que decirles para que entiendan todo lo que hemos
12 sufrido aquí en México. Me gustaría tener Stephanie ahí para controlar mis nervios,
13 sacar la información necesaria, y para que nos explique si no entendemos las
14 preguntas. Temo que mi familia no pase la entrevista y seamos obligados a regresar
15 a México donde nuestras vidas corren peligro.

16 48. Me gustaría que la identidad de mi familia se mantuviera privada. Me
17 preocupa que, si nuestros nombres fueran revelados, pudiera afectar nuestro caso de
18 inmigración. Lo único que quiero es poder llevar a cabo nuestro procedimiento de
19 inmigración sin interferencia y de un lugar donde nos sentimos seguros.

1 Declaro bajo pena de perjuicio bajo las leyes de los Estados Unidos de America que
2 lo anterior es correcto y verdadero.

3 Firmado este 24 de octubre del 2019 en San Diego, California.

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EXHIBIT 5

DECLARATION OF L [REDACTED] C [REDACTED]

I, L [REDACTED] C [REDACTED], declare the following:

1. I have personal knowledge of the facts set forth below and if called to testify, I could and would do so competently.

2. My name is L [REDACTED] J [REDACTED] C [REDACTED]. I was born on January 6, 1983 in Honduras. I am requesting asylum. I am currently under the Migrant Protection Protocol (or MPP) program and am forced to stay in Tijuana as I go through my immigration proceedings.

3. On or about May 9, 2019, I, along with my 10-year-old son, sister, cousins and their children were arrested by immigration officers in the United States. We immediately requested protection in the form of asylum.

4. We were taken to a Border Patrol Station where my son and I were processed separately from the rest of my family. On our third day detained, two Border Patrol officers asked many questions about why I had left Honduras and what my intentions were when coming to the United States. They asked me about my family in Honduras. I mentioned to the officers about my other children who had stayed behind. An officer told me that I was a horrible mother, that I had saved my 10-year-old son who came with me, but that I had left the others to face death on their own.

5. After their questions the officers asked me to sign several documents. These documents were in English, therefore I do not know what they said. The Border Patrol officers told me that I had to sign, and I eventually did.

6. They interviewed me the next day and asked the same questions. I tried to explain that I had been a victim of rape and a kidnapping while I was in Chiapas, Mexico. Again and again the officers asked for details. I did not know what more information I could give them. I asked, "Do you want me to explain how someone is raped?"

1 7. After the interview I was returned to the holding cell. Our cell was full
2 of people. In order to use the restroom, which was on the opposite side of the cell, I
3 had to step on other people's mattresses. Many of those in the cell with us were very
4 sick.

5 8. The situation was so serious that my son got head lice. We were so
6 cramped in the cell that it was inevitable. During the 7 or 8 days that we were
7 detained we were only allowed to shower once, without a change of clothes. They
8 forced us to wear the same clothes we had on when we entered the country.

9 9. For each meal we were given a burrito, a cookie and juice. My son could
10 no longer stand the food after a few days and stopped eating. He suffered from a
11 stomachache.

12 10. On our seventh or eighth day in detention, Border Patrol officers entered
13 our cell and called me by name. They never explained where they were taking me.
14 All they told me was that my son and I were going to have a court day on August 6,
15 2019 and sent us back to Tijuana.

16 11. I tried to get a lawyer in Tijuana by calling several legal service
17 providers. A day before my hearing I received a call from lawyer, Luis Gonzalez,
18 who told me he could represent me.

19 12. The noon of August 6, 2019, I had my first hearing. In order to arrive
20 on time, I had to be at the San Ysidro Port of Entry before 9 in the morning. I could
21 not sleep the night before my hearing. I woke up at 6 in the morning to get my son
22 and I ready. When we arrived at the Port of Entry, the immigration officials reviewed
23 our documents and our belongings. We were in a large warehouse with many people,
24 who were apparently going through the same process as us. They gave everyone a
25 sandwich and a bottled water. We waited a long time at the Port of Entry before
26 boarding a bus with covered windows. From there that they took us to court.

27 13. Once in court, we were taken to a waiting room before being allowed in
28 the hearing. That's where I first met the lawyer, Luis Gonzalez. We were only able

1 to speak for a few minutes before entering the hearing. Luis explained what would
2 happen in court. There were about 40 other individuals sitting or standing nearby,
3 these included people like us awaiting their hearing, immigration officers and
4 security guards. It worried me that they could hear our conversation. There were
5 many children making noise, including my son who was hungry, sleepy and could
6 not stop biting his nails due to anxiety. I was very distracted by everything going on
7 around me.

8 14. Our hearing with the immigration judge was brief. My lawyer explained
9 my fear of returning to Mexico. When we were finished, I was sent back to the
10 waiting room. My lawyer and I were able to talk a little more this time, although we
11 still did not have any privacy.

12 15. After court we were sent back to the Port of Entry to collect our
13 belongings before being transported to the Chula Vista Border Patrol Station. We
14 were held in a small, dirty, cold cell. There was a toilet and a sink connected from
15 where we could drink water from if we got thirsty. We slept on the floor; we weren't
16 given a toothbrush nor were we allowed to shower.

17 16. On our second day detained, officers took my son and I to another place
18 within the building for interrogation. Outside, I saw two identical posters against the
19 wall, one was in English and the other in Spanish. It said I had the right to call my
20 family or my lawyer at least once a day. Two immigration officers interrogated us,
21 first myself and then my son separately. They asked me why I had left Honduras and
22 when I had reached the border. I answered their questions and then I asked about the
23 poster on the wall. I told them that I had a lawyer and I wished to speak with him.
24 An officer shouted at me: "I don't give a fuck! Who do you think you are to be able
25 to call your lawyer?" I did not answer. They took us back to our cell where I started
26 to cry. My son saw that I was upset and told me "Mom, I'll make you a deal, I'll stop
27 biting my nails if you stop crying. "
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1 17. On our third day of being detained, the officers took me to a small room
2 where I was interviewed by phone. There were two officers on the line, one asked
3 me questions in English and the other one translated. Again, I told these officers that
4 I had a lawyer and that I would like to speak with him. The officers told me that was
5 not allowed. They asked about what had happened to me in Mexico. I tried to give a
6 lot of details, but they repeatedly interrupted me. This was a very difficult
7 conversation for me. When I talk about what I lived through in Mexico, it is hard for
8 me not to get emotional and the fact that they kept interrupting me only made it worse.
9 If my lawyer had been present, he would have made sure my whole story was heard.

10 18. The day after the interview they made me sign documents I did not
11 understand. I would have liked to have spoken to my lawyer and asked him to explain
12 these to me. We were returned to Tijuana later that day. We were detained at the
13 Border Patrol Station for four days for the interview. During that time, I was never
14 allowed to contact my lawyer. My various attempts to use the phone were denied.

15 19. Our next court date is scheduled for October 17, 2019. I'm still afraid of
16 being here in Mexico.

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18 I declare under penalty of perjury of the laws of the United States of America that
19 the foregoing is true and correct.

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21 Signed this October 17, 2019 in San Diego, California.

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CERTIFICATE OF TRANSLATION

I, Haidee Castro, am competent to translate from Spanish into English, and certify that the translation of the declaration of L [REDACTED] C [REDACTED] are true and accurate to the best of my abilities.

Haidee Castro

Signature

10/14/2019

Date

Haidee Castro
Printed Name

Native Interpreting
1455 Frazee Road, Suite 500
San Diego, CA 92108
(619) 930-5734

1 Yo, L [REDACTED] C [REDACTED] declaro lo siguiente:

2 1. Tengo conocimiento personal de los hechos establecidos a continuación
3 y, si me llamaran para testificar, podría hacerlo y lo haría de manera competente.

4 2. Mi nombre es L [REDACTED] J [REDACTED] C [REDACTED]. Nací el 6 de enero de 1983 en
5 Honduras. Estoy solicitando el asilo. Actualmente estoy sujeta al programa de
6 Regreso a México (o MPP por sus siglas en ingles) y obligada a permanecer en
7 Tijuana mientras se llevan a cabo mis procedimientos de inmigración.

8 3. Alrededor del 9 de mayo de 2019, fui arrestada por oficiales de
9 inmigración en los Estados Unidos, junta con mi hijo de 10 años, hermana, primas y
10 sus hijos. Inmediatamente solicitamos protección en la forma de asilo.

11 4. Nos llevaron a una estación de la Patrulla Fronteriza donde mi hijo y yo
12 fuimos procesados por separado del resto de mi familia. El tercer día de nuestra
13 detención, dos oficiales de la Patrulla Fronteriza me hicieron muchas preguntas sobre
14 porque me había ido de Honduras y cuales eran mis intenciones al venir a los Estados
15 Unidos. Me preguntaron sobre mi familia en Honduras. Les mencione a los oficiales
16 de mis otros hijos que se habían quedado atrás. Un oficial me dijo que era una mamá
17 horrible, que había salvado a mi hijo de 10 años quien vino conmigo, pero que deje
18 a los demás a enfrentar la muerte solos.

19 5. Después de sus preguntas los oficiales me pidieron firmar varios
20 documentos. Los documentos estaban en ingles así que no sé lo que decían. Los
21 oficiales de la Patrulla Fronteriza me dijeron que tenía que firmar y eventualmente si
22 lo hice.

23 6. El día siguiente me entrevistaron de nuevo y me hicieron las mismas
24 preguntas. Intenté explicar que fui víctima de una violación y secuestro mientras que
25 estuve en Chiapas, México. Los oficiales me preguntaron una y otra vez por detalles.
26 No supe que más información darles. Pregunté, “¿quieren que explique como violan
27 a una persona?”
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1 7. Después de la entrevista me regresaron a mi celda. Nuestra celda estaba
2 llena de personas. Para usar el baño, que estaba al lado opuesto de la celda, tuve que
3 pisar sobre las colchonetas de otros. Muchos en la celda con nosotros estaban muy
4 enfermos.

5 8. Fue tan grave la situación que mi hijo contrato piojos. Estábamos tan
6 amontonados que no se pudo evitar. Durante los 7 o 8 días de nuestra detención solo
7 nos permitieron bañarnos una vez, sin cambio de ropa. Nos obligaron a usar la misma
8 ropa en que habíamos ingresado al país.

9 9. Para cada comida nos daban un burrito, galleta y jugo. Después de unos
10 días mi hijo ya no soportaba la comida y dejó de comer. Sufrió de dolor de estómago.

11 10. Nuestros séptimo u octavo día detenidos, oficiales de la Patrulla
12 Fronteriza entraron a nuestra celda y me llamaron por nombre. Nunca me explicaron
13 a donde me llevaban. Solo me dijeron que mi hijo y yo íbamos a tener una audiencia
14 con el juez de inmigración el 6 de agosto de 2019, y nos regresaron a Tijuana.

15 11. En Tijuana intenté conseguir un abogado llamando a varios proveedores
16 de servicio legal. Un día antes de mi audiencia recibí una llamada del abogado Luis
17 Gonzalez. Él me dijo que me podía representar.

18 12. El 6 de agosto del 2019, tuve mi primera audiencia al mediodía. Para
19 llegar a tiempo tuve que estar en la puerta de entrada de San Ysidro antes de las 9 de
20 la mañana. La noche antes de mi audiencia no pude dormir. Me desperté a las 6 de la
21 mañana para alistar a mi hijo y prepararme. Cuando llegamos a la puerta de entrada
22 los oficiales de inmigración revisaron nuestros documentos y nuestras pertenencias.
23 Estábamos en un almacén grande con muchas personas, que al parecer pasaban por
24 el mismo proceso que nosotros. Nos dieron un sándwich y una botella de agua a
25 todos. Esperamos en la puerta de entrada por mucho tiempo antes de subir a un
26 autobús que tenía las ventanas cubiertas. De ahí nos llevaron al tribunal.

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13. Ya en el tribunal, nos llevaron a una sala de espera antes de ser permitidos entrar a la audiencia. Ahí es donde primero conocí al abogado Luis Gonzalez. Solo pudimos hablar por unos minutos antes de entrar a la audiencia. Luis explicó que pasaría en la audiencia con la jueza. Habían aproximadamente 40 otros individuales sentados o parados cerca de nosotros, incluyendo personas como nosotros que esperaban su audiencia, oficiales de inmigración y guardias de seguridad. Me preocupó que podían oír nuestra conversación. Había muchos niños haciendo ruido, incluyendo mi hijo que tenía hambre, sueño y no paraba de comerse las uñas de ansiedad. Estaba muy distraída por todo lo que ocurría a mi alrededor.

14. Nuestra audiencia con la jueza de inmigración fue breve. Mi abogado explicó mi temor de regresar a México. Cuando terminamos fui regresada a la sala de espera. Esta vez mi abogado y yo pudimos hablar poquito más, aunque aún no teníamos privacidad.

15. Después de la audiencia con la jueza fuimos regresados a la puerta de entrada para coleccionar nuestras pertenencias antes de ser transportados a la estación de la Patrulla Fronteriza en Chula Vista. Fuimos detenidos dentro de una celda pequeña, sucia y fría. Había un inodoro y un lavabo conectado de donde tomábamos agua si teníamos sed. Dormimos en el piso, no nos dieron cepillo de diente y no nos permitieron bañarnos.

16. El segundo día de nuestra detención, oficiales nos llevaron a mi hijo y a mí a otro sitio dentro del edificio para ser interrogados. Afuera, contra la pared de la estación, vi dos carteles iguales, uno en inglés y otro en español. Decía que tenía derecho a llamar a mi familia o a mi abogado al menos una vez al día. Dos oficiales de inmigración me interrogaron. Me preguntaron por qué me había ido de Honduras y cuándo había llegado a la frontera. Respondí a sus preguntas y luego hice referencia al cartel en la pared. Les dije que tenía un abogado y que quería hablar con él. Un oficial me gritó: "¡Me vale verga! ¡¿Quién te crees para poder llamar a tu abogado?!"

1 No respondí. Nos llevaron de regreso a nuestra celda donde comencé a llorar. Mi hijo
2 vio que estaba molesta y dijo: "Mamá, te haré un trato, dejaré de morderme las uñas
3 si dejas de llorar".

4 17. Nuestro tercer día de detención, oficiales me llevaron a un pequeño
5 cuarto donde fui entrevistada por teléfono. Había dos oficiales en la llamada, uno me
6 hizo preguntas en inglés y el otro tradujo. Nuevamente, les dije a estos oficiales que
7 tenía un abogado y que me gustaría hablar con él. Los oficiales me dijeron que eso
8 no se permitía. Preguntaron sobre lo que me había pasado en México. Traté de darles
9 muchos detalles, pero repetidamente me interrumpieron. Fue una conversación muy
10 difícil para mí. Cuando hablo de lo que viví en México, es difícil no ponerme
11 emocional y el hecho de que me estaban interrumpiendo solo lo empeoró. Si mi
12 abogado estuviera allí, hubiera podido asegurar de que contara toda la historia.

13 18. El día después de mi entrevista me hicieron firmar documentos que no
14 entendí. Me hubiera gustado poder hablar con mi abogado para pedirle que me
15 explicara esos documentos. Más tarde ese día fuimos regresados a Tijuana.
16 Estuvimos detenidos durante cuatro días en la estación de la Patrulla Fronteriza para
17 la entrevista. Durante ese tiempo, nunca se me permitió contactar a mi abogado. Mis
18 varios intentos de usar el teléfono fueron negados.

19 19. Nuestra próxima cita en el tribunal de inmigración está programada para
20 el 17 de octubre de 2019. Todavía tengo temor de estar aquí en México.

21
22 Declaro bajo pena de perjuicio bajo las leyes de los Estados Unidos de America que
23 lo anterior es correcto y verdadero.

24 Firmado este 17 de octubre del 2019 en San Diego, California.

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EXHIBIT 6

1 **DECLARATION OF J [REDACTED] C [REDACTED] C [REDACTED] M [REDACTED]**

2 I, J [REDACTED] C [REDACTED] C [REDACTED] M [REDACTED], declare the following:

3 1. I have personal knowledge of the facts set forth below and if called upon
4 to testify, I could and would do so competently.

5 2. My name is J [REDACTED] C [REDACTED] C [REDACTED] M [REDACTED]. I was born on January 20, 1991
6 in Honduras. I am seeking asylum. I am currently in the Migrant Protection Protocol
7 program (MPP) and am required to stay in Tijuana while I go through my
8 immigration proceedings.

9 3. On or about March 31, 2019, I was arrested by United States
10 immigration officials near Tijuana, along with my pregnant partner and her 3-year-
11 old daughter, who I've raised and consider my own. We immediately requested
12 protection in the form of asylum.

13 4. We were detained by Border Patrol agents when we crossed. My partner
14 and our daughter were processed separately and were allowed to enter the United
15 States to request asylum. I was sent back to Tijuana to await my first hearing.

16 5. I tried to find an attorney who could take my case but did not succeed.
17 On or about May 9, 2019, I had my first court hearing which was scheduled at noon.
18 In order to arrive on time, I had to show up at the San Ysidro Port of Entry before 9
19 in the morning.

20 6. I left the church where I was staying at, around 8 in the morning, I had
21 no idea what to expect. I wasn't given much instruction when I was released from
22 Border Patrol custody. I knew I had to show up at the Port of Entry but had no idea
23 where or what to expect. The whole process was very confusing.

24 7. Once at the Port of Entry, I was registered and processed to await court.
25 I waited in a large warehouse along with about 80 other individuals. Everyone
26 seemed to be anxious, I was also anxious. At court, I did not know what to expect.
27 The hearing was brief and after court I was immediately sent back to Tijuana. My
28 next court hearing was scheduled for June 27, 2019 at noon.

1 8. While in Tijuana, I kept looking for a lawyer, but the legal providers
2 said I had to be in the United States in order for them to take my case. I was finally
3 able to contact a lawyer who could possibly represent me a week or so before my
4 June 27th court date. Due to the fact that I was in Tijuana and my lawyer was in San
5 Diego, we were unable to meet before my court date.

6 9. I arrived at the San Ysidro Port of Entry before 9 in the morning on June
7 27, 2019. In court I met and retained a lawyer, Leah Chavarria, who works for the
8 same organization as the attorney with whom I had spoken to. The lawyer asked the
9 judge for additional time to review my case and explained my fear of returning to
10 Tijuana.

11 10. Previously in Tapachula, when my family first arrived in Mexico, my
12 partner and I were pursued by Honduran gang members. While in Tijuana, those
13 same gang members started sending me threatening messages. They told me that they
14 knew I was in Tijuana and that they were going to kill me. They also told me that
15 they were aware that my partner was in the United States. Before I met Leah
16 Chavarria, I did not know how or when to express my fear of these threats.

17 11. After the June 27th hearing, I was not immediately sent back to Tijuana.
18 They returned me to the San Ysidro Port of Entry and then transported me to a nearby
19 Border Patrol station. I was detained in a cold and confined holding cell along with
20 approximately 90 others. Inside, there was a toilet and a sink that was exposed for all
21 to see. We were so cramped that I could not get to the restroom, which was on the
22 other side of the cell, without stepping on someone's mat. I tried climbing onto the
23 metal benches in order to avoid stepping on someone. It was here when I first tried
24 to call my lawyer. There was a public telephone located in the cell. I tried calling
25 once or twice that same day after court. The phone rang and rang until eventually it
26 informed me that it could not connect me to the number I had dialed.

27 12. On the following morning, June 28, 2019, I was transferred to a different
28 cell. It was also very cold, and although smaller, we were just as crowded. There

1 were about 50 others in the cell. Here there was also a public telephone on the wall.
2 Again, I tried to call the lawyers but was unsuccessful. Others were able to call collect
3 to get in touch with their loved ones. These calls were not private. You could hear
4 everyone's entire phone conversation because we were all standing so close together.
5 However, many did not even try calling their relatives due to lack of funds.

6 13. Around 11:30 in the morning or 12 in the afternoon, on June 28, 2019,
7 the agents took me to a small room within the station, where I was interviewed via
8 phone by 2 officers. One asked me questions in English and the other one translated.
9 The officers never asked if I wished to have my lawyer present. I did not know if my
10 lawyer was allowed to be present. They asked me how much time I had spent in
11 Mexico and about my fear of being in Mexico. I answered as best I could, but the
12 interview was very confusing. I do not think the officers understood me, yet they did
13 not allow me to give additional information or details.

14 14. After my interview, I was sent back to a crowded cell and again tried to
15 contact my lawyer by phone but was unsuccessful. In the early hours of June 29,
16 2019, at around 1 or 2 in the morning, Border Patrol agents entered the cell, woke me
17 up and made me sign documents related to my return to Tijuana. They did not explain
18 anything to me regarding my interview nor the reason why they were sending me
19 back. Later that day I kept trying to get in touch with my lawyer. I was so nervous
20 that I also tried calling other lawyers on the list that immigration officials had given
21 me. I had the same result. The phone rang and eventually notified me that my call
22 could not be connected. It didn't seem the phones were working. I called around 6 or
23 7 times a day, every day, until I was sent back to Mexico two days later. I was unable
24 to reach anyone.

25 15. On or about July 1, 2019, I was sent back to Tijuana. During the entire
26 time I was detained, I was unable to contact my attorney or anyone else.

27 16. My next court date was on August 13, 2019 at 12:30 p.m. I showed up
28 at the Port of Entry before 8 in the morning as I had done the previous two times. In

1 the courtroom, my lawyer asked the judge to grant me bond. The judge granted me a
2 \$1,500 bond. After my court hearing, they took me back to the Port of Entry and
3 detained me in a holding cell along with other individuals. Later that night, after the
4 bond was paid, I was released at the Port of Entry.

5 17. I am currently with my partner who is 8 months pregnant. I will be by
6 her side when she gives birth to our baby.

7
8 I declare under penalty of perjury of the laws of the United States that the foregoing
9 is true and correct.

10
11 Signed this September 30, 2019 in Norcross, Georgia.

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15 J ■ C ■ C ■ M ■
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CERTIFICATE OF TRANSLATION

I, Haidee Castro, am competent to translate from Spanish into English, and certify that the translation of the declaration of J [REDACTED] C [REDACTED] C [REDACTED] M [REDACTED] are true and accurate to the best of my abilities.

Haidee Castro

Signature

10/14/2019

Date

Haidee Castro
Printed Name

Native Interpreting
1455 Frazee Road, Suite 500
San Diego, CA 92108
(619) 930-5734

Yo, J■■■■ C■■■■ C■■■■ M■■■■, declaro lo siguiente:

1. Tengo conocimiento personal de los hechos establecidos a continuación y, si me llamaran para testificar, podría hacerlo y lo haría de manera competente.

2. Mi nombre es J■■■■ C■■■■ C■■■■ M■■■■. Nací el 20 de enero de 1991 en Honduras. Estoy buscando asilo. Actualmente estoy bajo el programa de Regreso a México (MPP por sus siglas en ingles) y me veo obligado a permanecer en Tijuana mientras continuo con mis procedimientos de inmigración.

3. Alrededor del 31 de marzo de 2019, fui arrestado por oficiales de inmigración de los Estados Unidos cerca de Tijuana, junto con mi pareja embarazada y su hija de 3 años, quien yo he criado y considero mía. Inmediatamente solicitamos protección de asilo.

4. Al cruzar, agentes de la Patrulla Fronteriza nos detuvieron. Mi pareja y nuestra hija fueron procesadas por separado y fueron permitidas ingresar a los Estados Unidos para continuar con el proceso de asilo. Yo fui regresado a Tijuana para esperar mi primera audiencia.

5. Intenté encontrar un abogado para llevar mi caso, pero no tuve éxito. El 9 de mayo de 2019, o alrededor de esa fecha, tuve mi primera audiencia en la corte. Mi audiencia estaba citada para mediodía. Para llegar a tiempo tuve que presentarme en la puerta de entrada de San Ysidro antes de las 9 a.m. Salí de la iglesia donde me estoy quedando alrededor de las 8 de la mañana sin tener idea de lo que me esperaba. Cuando fui liberado de la custodia de la Patrulla Fronteriza, no me dieron muchas instrucciones. Sabía que tenía que presentarme en la puerta de entrada, pero no tenía idea dónde o qué esperar, fue muy confuso. Una vez en la puerta de entrada me registraron y procesaron para esperar la corte. Esperé en una bodega grande con aproximadamente otras 80 personas. Todos parecían estar ansiosos, yo también lo estaba. No sabía qué esperar en la corte. La audiencia fue breve, y después de la

corte me devolvieron de inmediato a Tijuana. Mi próxima audiencia en la corte fue programada para el 27 de junio de 2019 al mediodía.

6. Seguí buscando un abogado desde Tijuana, pero los proveedores legales me dijeron que tenía que estar en los Estados Unidos para tomar mi caso. Finalmente pude contactar a un abogado que posiblemente podría representarme una semana más o menos antes de mi fecha de corte el 27 de junio. Debido al hecho de que estaba en Tijuana y mi abogado estaba en San Diego, no pudimos reunirnos antes de mi cita en la corte.

7. El 27 de junio del 2019, llegue a la puerta de entrada de San Ysidro antes de las 9am. En corte conocí y contraté a la abogada Leah Chavarria. Mi abogada le pidió al juez de inmigración mas tiempo para revisar mi caso y expresó mi temor de regresar a Tijuana. Cuando mi familia llegó por primera vez a México, en Tapachula, mi pareja y yo fuimos perseguidos por pandilleros de Honduras. Mientras en Tijuana esos mismos pandilleros empezaron a enviarme mensajes amenazantes. Me dijeron que sabían que estaba en Tijuana y que mi pareja estaba en los Estados Unidos y que me iban a matar. Antes de conocer a Leah Chavarria, no sabía cómo, ni cuándo, expresar mi temor a estas amenazas.

8. Después de la audiencia del 27 de junio, no fui inmediatamente regresado a Tijuana. Me regresaron a la puerta de entrada de San Ysidro y luego me transportaron a una estación cercana de la Patrulla Fronteriza. Fui detenido dentro de una celda confinada y fría con aproximadamente otras 90 personas. Había un inodoro y un lavabo en la celda expuestos a todos. Estábamos tan amontonados que no podía llegar al baño al otro lado de la celda sin pisar la colchoneta de alguien. Intenté subir sobre los bancos de metal para evitar pisar a alguien. Aquí fue la primera vez que intente llamar a mi abogada. Dentro de la celda había un teléfono público. Traté de llamarle una o dos veces ese mismo día después de la corte. El

teléfono sonaba y sonaba hasta que eventualmente informo que no se pudo conectar con el número que había marcado.

9. La mañana siguiente, el 28 de junio del 2019, me trasladaron a una celda diferente. También hacía mucho frío y, aunque era más pequeña, seguía igual de llena. Había aproximadamente otras 50 personas. Aquí también había un teléfono público sobre la pared. Nuevamente intenté llamar a mi abogado sin éxito. Otros pudieron llamar por cobrar para ponerse en contacto con sus seres queridos. Estas llamadas no fueron privadas. Se podía escuchar la conversación completa de todos por teléfono, estábamos tan pegados. Sin embargo, muchos no trataron de llamar a sus familiares porque no querían agobiarlos con el costo de las llamadas.

10. Alrededor de las 11:30 a.m. o las 12:00 p.m. del 28 de junio de 2019, los agentes me llevaron a una pequeña habitación en la misma estación y fui entrevistado por teléfono por 2 oficiales. Uno me hizo preguntas en inglés y el otro traducía. Los oficiales nunca me preguntaron si quería tener mi abogado presente. No sabía si a mi abogado se le permitía estar allí. Me preguntaron cuánto tiempo había pasado en México y sobre mi temor de estar en México. Respondí lo mejor que pude, pero la entrevista fue muy confusa. No creo que los oficiales me entendieron, pero no me dejaron dar más información o detalles.

11. Después de mi entrevista, me regresaron a una celda abarrotada e intenté contactar a mi abogado por teléfono nuevamente, pero no tuve éxito. En la madrugada del 29 de junio de 2019, aproximadamente a la 1 o 2 de la mañana, los agentes de la Patrulla Fronteriza entraron a la celda, me despertaron y me hicieron firmar documentos para mi regreso a Tijuana. No explicaron nada acerca de mi entrevista o por qué me estaban regresando. Más tarde ese día seguí tratando de ponerme en contacto con mi abogado. Estaba tan nervioso que incluso intenté llamar a otros abogados de la lista que habían proporcionado los oficiales de inmigración. Recibí el mismo resultado. El teléfono sonaba con la eventual notificación de que

de ponerme en contacto con mi abogado. Estaba tan nervioso que también intenté llamar a otros abogados de la lista que habían proporcionado los oficiales de inmigración. Recibí el mismo resultado. El teléfono sonó con la eventual notificación de que mi llamada no se pudo conectar. Los teléfonos no parecían estar funcionando. Llamé aproximadamente 6 o 7 veces al día, todos los días, hasta que me regresaron a México dos días después. No pude comunicarme con nadie.

15. Alrededor del 1 de julio del 2019, fui regresado a Tijuana. Durante todo el tiempo que estuve detenido, nunca pude contactar a mi abogado ni a nadie más.

16. Mi próxima cita en la corte fue el 13 de agosto de 2019 a las 12:30 de la tarde. Me presenté en la puerta de entrada como lo había hecho las dos veces anteriores antes de las 8 de la mañana. En la sala del tribunal, mi abogado le pidió al juez que me otorgara fianza. El juez me otorgó una fianza de \$1,500. Después de mi audiencia en la corte, me llevaron de nuevo a la puerta de entrada y me detuvieron en una celda con otras personas. Más tarde esa misma noche, después de que se pagó la fianza, fui liberado de la puerta de entrada.

17. Ahora estoy con mi pareja que tiene 8 meses de embarazo. Estaré con ella cuando de luz a nuestro bebe.

Declaro bajo pena de perjuicio bajo las leyes de los Estados Unidos que lo anterior es correcto y verdadero.

Firmado este 30 de septiembre del 2019 en Norcross, Georgia.


*
J  C  C  M 

EXHIBIT 7

DECLARATION OF A ■ L ■ O ■ V ■

I, A ■ L ■ O ■ V ■, declare the following:

1. I have personal knowledge of the facts set forth below and, if called to testify, I could and would do so competently.

2. My name is A ■ L ■ O ■ V ■. I was born on June 6, 1986 in Honduras. I am seeking asylum. Currently, my fourteen-year-old daughter, my husband and I are subject to the Migrant Protection Protocol (or MPP) program. We are obligated to remain in Tijuana while we go through our immigration proceedings. We do not have a lawyer representing us in our immigration proceedings.

3. We have a lot of fear to return to Mexico. My husband, my daughter and I fled Honduras after being threatened at gunpoint by MS-13 gang members. Many of the same gangs from Honduras are also present here in Tijuana. We see the letters "MS" graffitied on the walls of the streets and we have run into Honduran gang members here in the city. There was a confrontation between the Mexican Navy and MS gang members close to where we are staying here in Tijuana. When we heard bullets and people running, my daughter and I hid in the bathroom of the house and my husband hid behind some furniture. Someone banged on the door really hard and tried to enter. We do not know who knocked. We are afraid of being found by MS gang members and getting threatened by them the way they did in Honduras. We are now again forced to face the gang here in Tijuana.

4. Around May 11, my fourteen-year-old daughter, my husband Jorge and I were arrested by US immigration officers. We immediately requested protection in the form of asylum.

5. We were taken to the Chula Vista Border Patrol Station where we were detained for a total of 7 days. They separated my daughter and I from my husband. We were not allowed to speak during the entire time we were there.

6. The cell where we were at was small and cold. There were many people. We were never allowed to shower or even change our clothes. We did not have

1 toothpaste or soap. I asked to speak with family so they would know where I was. I
2 asked the officers several times for a call and they told me it was not necessary to
3 talk to my family. I was not given even one phone call.

4 7. When we arrived at the holding cell, my daughter became very ill. She
5 suffers from anxiety and nervousness. Being confined to a place so small and
6 crowded only made her condition worse. She started having a stomachache and
7 vomiting. An immigration officer asked my daughter if she had "a surprise in her
8 stomach." I understood this to mean that he was asking my fourteen-year-old girl if
9 she was pregnant.

10 8. She was taken to the hospital and was examined by a doctor. The doctor
11 prescribed medication for the pain. We were taken back to the holding cell. When we
12 returned to the holding cell my daughter asked for fluids with electrolytes and easy to
13 digest food. The officers replied by saying this wasn't a "fucking hotel, we're the
14 ones in charge here, you knew how it was going to be here, if you do not like it then
15 you should not have come."

16 9. During the seven days that we were detained, immigration officers never
17 asked me about my fear of returning to Mexico. They said that we Hondurans were
18 cockroaches coming to dirty-up the country. They accused us of coming with a *coyote*
19 or by caravan, but they never asked us about our fear of returning to Mexico.

20 10. On our fourth day detained, Border Patrol officers informed us that we
21 were going to be returned to Mexico. They forced us to sign documents. When I
22 refused to sign, one of the officers told me, "Whether you like it or not, you are going
23 to sign, even if I have to sign it for you." In the end I did sign. Without further
24 explanation they told me that my first court date would be on July 29, 2019, we were
25 then sent back to Tijuana.

26 11. In Tijuana, my husband and I tried to get a lawyer by calling several
27 legal service providers. None of them could help us. After several calls and inquiries,
28 we gave up and decided to represent ourselves. In Tijuana, we have participated in

1 several workshops that support migrants seeking asylum. We have coordinated with
2 relatives in the USA with letters of support and with English translations for court. I
3 feel that we carry our own fate in our hands. It is difficult to find our way through
4 this because we do not know the laws of the USA and we are unaware if what we are
5 doing is right, wrong or if it works against us.

6 12. I worry a lot about my daughter in Tijuana, about the violence and
7 insecurity. We lived in Mexicali for some time because we did not feel safe living in
8 Tijuana. But no one can escape the violence.

9 13. On July 29 we had our first hearing before the judge. In order to arrive
10 on time, we had to be present at the Port of Entry at 9 in the morning. We did not
11 know where to go or how to enter. Other migrants told us where to go. Without that
12 support I do not think we would have known how to get there. The first court hearing
13 was brief, and the judge asked us if we were afraid to return to Mexico. The three of
14 us said yes. We did not know we would be returned to the holding cell. No one had
15 explained that to us.

16 14. We were returned to Port of Entry to collect our belongings, before
17 being transferred to the Chula Vista Border Patrol Station, where we had been
18 detained the first time. When my daughter realized where we were going, she
19 panicked, she could not control her anxiety and I had to calm her down. She was not
20 well emotionally. I worried a lot about her, if she would be able to endure being
21 detained again. Had I known that stating our fear at court would send us back to the
22 holding cell, I could have emotionally prepared my daughter to prevent her from
23 stress.

24 15. When we arrived at the holding cell we were again separated from my
25 husband. We had been detained for a day before we had our telephone interview with
26 two asylum officers. One translated everything and the other asked us questions. The
27 3 of us were interviewed together in the same room, my husband first, then me and
28 finally my daughter. We did not know how to answer their questions, we tried to

1 explain everything that had happened to us in Mexico, but I do not know if they were
2 satisfied with our answers. This whole process has been very difficult, I would have
3 liked to have had a lawyer who could have explained the immigration process to me.
4 The next day they returned us to Mexico without any explanation.

5 16. Upon leaving the detention center, my husband told me that a Honduran
6 man had talked to him when they were in the holding cell. He asked my husband
7 what part of Honduras he was from and if he knew a gang member that went by the
8 name of "the panda." This man had several gang tattoos and identified himself as a
9 gang member to my husband. It served as another reminder that we are not safe in
10 Mexico. We fear that we will meet others from that same gang who will find out
11 why we are here in Tijuana.

12 17. We have had several court dates since then. Our last court date is on
13 October 9th. I still feel nervous. I feel that my family's entire safety and stability lies
14 in the judge's hands. I don't see a way out of this situation.

15
16 I declare under penalty of perjury of the laws of the United States of America that
17 the foregoing is true and correct.

18
19 Signed this October 9, 2019 in San Diego, California.

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22 A ■ L ■ O ■ V ■
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CERTIFICATE OF TRANSLATION

I, Haidee Castro, am competent to translate from Spanish into English, and certify that the translation of the declaration of A U O V are true and accurate to the best of my abilities.

Haidee Castro

Signature

10/14/2019

Date

Haidee Castro

Printed Name

Native Interpreting
1455 Frazee Road, Suite 500
San Diego, CA 92108
(619) 930-5734

DECLARACION DE A ■ L ■ O ■ V ■

Yo, A ■ L ■ O ■ V ■, declaro lo siguiente:

1. Tengo conocimiento personal de los hechos establecidos a continuación y, si me llamaran para testificar, podría hacerlo y lo haría de manera competente.

2. Mi nombre es A ■ L ■ O ■ V ■. Nací el 6 de junio del 1986 en Honduras. Estoy solicitando el asilo. Actualmente estoy sujeta al programa de Regreso a México (o MPP por sus siglas en inglés) junta con mi hija de catorce años y mi esposo. Estamos obligados a permanecer en Tijuana mientras se llevan a cabo nuestros procedimientos de inmigración. No tenemos abogado que nos represente en nuestros procedimientos de inmigración.

3. Tenemos bastante temor de regresar a México. Mi esposo, hija y yo huimos de Honduras después de ser amenazados a punta de pistola por pandilleros de la mara MS-13. Muchas de las mismas pandillas de Honduras están presente aquí en Tijuana. Vemos las letras "MS" pintadas sobre las paredes en las calles y nos hemos encontrado con pandilleros de Honduras aquí en la ciudad. Cerca de donde nos estamos quedando aquí en Tijuana hubo un enfrentamiento entre la Marina Mexicana y pandilleros de MS. Cuando oímos la gente corriendo y balas, mi hija y yo nos escondimos en el baño de la casa. Mi esposo se escondió detrás de un mueble. Alguien nos toco la puerta demasiado fuerte y rápidamente e intentaron entrar a la casa. No sabemos quién toco. Tememos ser encontrados por pandilleros de la MS y que nos amenacen como lo hicieron en Honduras. Hoy nos vemos obligados a enfrentar a la pandilla de nuevo aquí en Tijuana.

4. Alrededor del 11 de mayo, mi hija de catorce años, mi esposo Jorge y yo fuimos arrestados por oficiales de inmigración estadounidenses. Inmediatamente solicitamos protección en la forma de asilo.

5. Nos llevaron a la estación de Chula Vista de la Patrulla Fronteriza donde estuvimos detenidos por 7 días en total. Me separaron a mi hija y a mí de mi esposo.

1 Durante todo ese tiempo nunca nos permitieron hablar.

2 6. La celda donde estuvimos era pequeña y fría. Había bastante gente.
3 Nunca nos dejaron bañarnos ni cambiarnos de ropa. No teníamos pasta de diente ni
4 jabón. Pedí hablar con mi familia para que supieran donde estaba. Les pregunte a los
5 oficiales varias veces por una llamada y me dijeron que no era necesario hablar con
6 mi familia. No me dieron ni una llamada.

7 7. Al llegar a la hielera, mi hija se puso muy enferma. Ella sufre de
8 ansiedad y nervios. Estando confinada a un lugar pequeño y amontonada de gente
9 solo empeoro su malestar. Empezó con dolor de estómago y a vomitar. Un oficial de
10 inmigración le pregunto a mi hija si tenía “una sorpresa en su estómago”. Yo entendí
11 esto a significar que le preguntaban a mi niña de catorce años si estaba embarazada.

12 8. La llevaron al hospital donde la reviso una doctora. La doctora le recetó
13 medicina para el dolor. Fuimos regresadas a la hielera. Cuando regresamos a la
14 hielera mi hija pidió suero y comida fácilmente digerible. Los oficiales contestaron
15 que ahí no era un “pinche hotel, aquí mandamos nosotros, ya sabían a que venían si
16 no les gusta no hubieran venido.”

17 9. Durante los 7 días que estuvimos detenidos los oficiales de inmigración
18 nunca me preguntaron sobre mi temor de regresar a México. Dijeron que los
19 hondureños éramos cucarachas que veníamos a ensuciar el país. Nos acusaron de
20 venir con coyote o en caravana, pero nunca nos preguntaron sobre nuestro temor de
21 regresar a México.

22 10. Nuestro cuarto día detenidos oficiales de la Patrulla Fronteriza nos
23 dijeron que íbamos a ser regresados a México. Nos obligaron a firmar papeles.
24 Cuando yo negué a firmar, uno de los oficiales me dijo, “por las buenas o por las
25 malas vas a firmar, no importe que yo firme por usted.” Al final si firmé. Sin otra
26 explicación me dijeron que mi primera corte sería el 29 de julio del 2019, luego
27 fuimos regresados a Tijuana.
28

1 11. En Tijuana mi esposo y yo intentamos conseguir un abogado llamando
2 a varios proveedores de servicio legal. Ninguno nos pudo ayudar. Después de varias
3 llamadas y varias consultas nos rendimos y decidimos abogar por nosotros mismos.
4 Hemos participado en varios talleres en Tijuana donde apoyan a los migrantes
5 buscando asilo. Hemos coordinado con familiares en los EE.UU. con cartas de apoyo
6 y con traducciones al inglés para nuestra corte. Siento que cargamos el destino en
7 nuestras manos. Es difícil navegar porque no sabemos las leyes de los EE.UU. y no
8 sabemos si lo que hacemos está bien, mal o si funciona a nuestra contra.

9 12. En Tijuana me preocupo mucho por mi hija, por la violencia y por la
10 inseguridad. Por un tiempo vivimos en Mexicali porque no nos sentíamos seguros de
11 vivir en Tijuana. Pero uno no puede escapar de la violencia.

12 13. El 29 de julio tuvimos nuestra primera audiencia ante el juez. Para llegar
13 a tiempo tuvimos que presentar a la puerta de entrada a las 9 de la mañana. No
14 supimos donde llegar ni como entrar. Por facebook otros migrantes nos dijeron
15 dónde. Sin ese apoyo no creo que hubiéramos sabido como llegar. La primera corte
16 fue breve y el juez nos preguntó si teníamos temor de regresar a México. Los tres
17 dijimos que sí. No sabíamos que nos iban a regresar a la hielera. Nadie nos explicó
18 eso.

19 14. Nos regresaron a la puerta de entrada para recoger nuestras pertenencias,
20 antes de ser trasladados a la estación de la Patrulla Fronteriza Chula Vista, donde
21 estuvimos detenidos por primera vez. Cuando mi hija se dio cuenta donde íbamos
22 entró en pánico, no pudo controlar su ansiedad y la tuve que calmar. No estuvo bien
23 emocionalmente. Me preocupé mucho por ella y si iba aguantar estar detenida de
24 nuevo. Si hubiera sabido que al declarar nuestro temor en la corte nos iban a mandar
25 de nuevo a la hielera, quizás pudiera haber preparado a mi hija emocionalmente para
26 prevenir su estrés.
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28

1 15. De nuevo fuimos separados al llegar a la hielera, mi hija y yo juntas y
2 mi esposo aparte. Estuvimos detenidos por un día antes de tener nuestra entrevista
3 por teléfono con dos oficiales de asilo. Una tradujo todo y la otra nos hizo preguntas.
4 Los 3 fuimos entrevistados juntos en el mismo cuarto, primero mi esposo, luego yo
5 y al final mi hija. No supimos cómo responder a sus preguntas, intentamos explicar
6 todo que nos había pasado en México, pero no sé si estuvo satisfecha con nuestras
7 respuestas. Todo este proceso ha sido muy difícil, me hubiera gustado tener un
8 abogado que me podría explicar el proceso de inmigración. Al día siguiente de nuevo
9 nos regresaron a México sin explicación.

10 16. Al salir de detención mi esposo me comentó que un hombre hondureño
11 hablo con el mientras que estaban en la hielera. Le pregunto a mi esposo de que parte
12 de Honduras era y si conocía al pandillero que le llaman "el panda". Este hombre
13 tenía varios tatuajes de la pandilla y se identificó como un pandillero a mi esposo.
14 Funcionó como otro recordatorio que no estamos a salvo en México. Tememos que
15 nos encontremos con otros de la misma pandilla y que se enteren porque estamos
16 aquí en Tijuana.

17 17. Hemos tenido varias cortes desde ese entonces. Nuestra ultima corte es
18 el 9 de octubre. Aun me siento nerviosa. Siento que toda la estabilidad y seguridad
19 de mi familia esta en manos del juez. No veo la salida de esta situación.

20
21 Declaro bajo pena de perjuicio bajo las leyes de los Estados Unidos de America que
22 lo anterior es correcto y verdadero.

23 Firmado este 9 de octubre del 2019 en San Diego, California.

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A L O V

EXHIBIT 8

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DECLARATION OF A [REDACTED] V [REDACTED] D [REDACTED]

I, A [REDACTED] V [REDACTED] D [REDACTED], declare as follows:

1. I have personal knowledge of the facts set forth below and if called to testify, I could and would do so competently.

2. My name is A [REDACTED] V [REDACTED] D [REDACTED]. I was born on October 18, 1988 in Honduras. My 13-year-old son, my 8-year-old daughter, and I are seeking asylum. We are currently in the Remain in Mexico Program (MPP). We are being forced to wait in Mexico while we go through our immigration proceedings. The lawyer who is representing us in our immigration proceedings is Margaret Cargioli.

3. I left Honduras in January of 2019 because I am afraid of staying there. In Honduras, I worked as a hair stylist, I had my own beauty shop, but I was forced to close it after receiving various threats from members of the gang MS-13. I came alone with my two children.

4. In January of 2019, we arrived in Tijuana. Around the middle of January, we added ourselves to a list to wait to enter the United States. They gave us a number and every day we had to check to see if it was our turn to enter.

5. We have a lot of fear of being in Mexico. At either the end of January or the beginning of February of 2019, I went out to buy food in Tijuana. As I was walking down the street, I started to hear gunshots and saw some men running. I panicked, I did not know where to run, and could not find shelter. By some miracle, a couple opened their door and let me stay in their house. From inside the house, I saw the shooters running with their weapons in hand. I think the shooters are drug traffickers from what I have heard said by people who live near me in Tijuana. I thank God that my children were not with me on the street that day.

6. In the middle of February of 2019, my number was called. The United States immigration officers permitted me and my children entry into the San Ysidro Port of Entry. We immediately requested asylum.

1 7. Upon entry, they took down my information and finger prints. The
2 officer who took my finger prints grabbed my wrist very hard. She pulled me by the
3 wrist as she tried to take my finger prints. Inside, they separated my 13-year-old son
4 from my daughter and me. I did not know when I would see him again. We started
5 to cry. They placed my daughter and me inside a cold cell and with many other
6 people. There were so many people there that we slept one behind the other. They
7 would clean the cell every night in the early morning. But it was still dirty. There was
8 always toilet paper thrown on the ground. It was very antihygienic. They allowed us
9 to bathe every couple of days, but only in the early morning and the water was so hot
10 that it burned my skin. It was so hot that I did not allow my daughter to shower out
11 of fear that it would burn her skin.

12 8. On our first or second day of detention, they took me out of the cell to
13 ask me questions. They did not allow my daughter to come with me. An officer
14 interviewed me for a long time, asking me questions about the reason I came to the
15 United States. They wanted me to sign some documents. But I did not know what
16 they said, and I did not want to sign them. When I refused to sign them, I was returned
17 to the cell. The next day, an officer came to our cell and called me by name. She
18 asked me why I had not signed the documents. I explained that I did not know what
19 they said and that is why I did not want to sign them. She took me to a separate room
20 and interrogated me. She asked me about my level of education, and I told her I had
21 not finish high school. She told me, "why did you come to the United States if you
22 are not educated? They will never let someone as ignorant as you into the United
23 States." Then, the officer began to yell at me, telling me I had to sign the documents,
24 or I would be returned to Honduras. I began to cry. I felt like I had to sign them. I
25 wanted to call my nephew in Los Angeles. I wanted to ask him for his advice as to
26 whether I should sign or not. I asked the officer to let me make a call, and she yelled,
27 "I do not have all day to be waiting for you!" She did not allow a phone call and I
28

1 signed the documents.

2 9. The officer told me I would be returned to Tijuana, Mexico. I did not
3 know what to do. I do not know anyone in Tijuana, I panicked.

4 10. In total, we were separated and detained for three days. The immigration
5 officers never asked me about my fear of returning to Mexico. I could not sleep those
6 three days because the lights were always on. I spent my days and nights sitting,
7 waiting for news about what they were going to do with me and my family. It affected
8 me psychologically.

9 11. My two children became sick while we were detained, but it affected
10 my daughter worse. She had symptoms of fatigue, bone aches, fever, a cold and
11 cough. I also got sick during our time there. As sick as we were, they returned us to
12 Tijuana, Mexico. Our first hearing was scheduled for April 1, 2019.

13 12. Once back in Tijuana, the first thing I did was take my daughter to a
14 medical consultation at the nearest pharmacy. My daughter came out so sick from
15 the freezing cold holding cell that she could barely stand from how weak she was.
16 For five days, she suffered from a fever, vomiting, and diarrhea. She yelled from the
17 pain of the bone aches. She did not let me touch her. It became so bad that she even
18 fainted from the pain. At the consultation, they told me she had contracted a virus.
19 They gave her an injection and prescribed her medicine for the pain and fever. It hurt
20 me to see my daughter like that.

21 13. In Tijuana, I attended a know-your-rights presentation where they
22 offered screenings for migrants like me who were seeking asylum in the United
23 States. While on my way there, I was assaulted by a stranger on the street. He grabbed
24 me from the arm and stole my purse containing my immigration documents.

25 14. After what I have lived through, I do not feel safe in Mexico. I keep my
26 kids inside the house where we are staying. I do not let them leave out of fear that
27 something may happen to them.
28

1 15. I have heard about a lot of violence against Central Americans in
2 Tijuana. Every day I hear about another kidnapping where the victim is Central
3 American. I am worried for my children's safety and wellbeing. I felt hopeless,
4 scared, and wanted to protect my children.

5 16. On April 1, 2019, we went to our first hearing without an attorney. I felt
6 very nervous. I asked the judge for more time to find an lawyer. The judge gave me
7 two months to find a lawyer and scheduled my next court hearing for June 3, 2019.
8 The judge asked if I had a fear of returning to Mexico. I told him I did.

9 17. After the court hearing we were returned to the Port of Entry before
10 being transferred to another nearby cold holding cell. We were there for two or three
11 days in a cell, like the first time we presented. Again, I was separated from my son.
12 The cell where they held us had more people than the first time. There was not enough
13 room for us to lie down. I tried to sleep on a metal bench, but I was afraid that I would
14 fall on top of someone. My daughter slept practically on top of another person.

15 18. This time, the interview was over the phone. One officer asked me
16 questions in English and the other translated. They interviewed me first. I was
17 handcuffed during the entire interview. They handcuffed my wrists together in front
18 of me. They asked me about my fear of returning to Mexico. Afterward, they
19 interviewed my children in front of me. They asked them the same questions they
20 had asked me.

21 19. After two or three days, we were returned to Mexico with no
22 explanation. They never told me the outcome of my interview and did not give me
23 any documents regarding the results. I gave up. I did not know what else to do. We
24 spent the next two months locked in the house, out of the fear of being in Tijuana.

25 20. After returning to Tijuana, I was able to get in contact with attorney
26 Margaret Cargioli. A few days before my June 3 hearing, Margaret told me she would
27 represent us. She was going to be present at our next court hearing.
28

1 21. In order to arrive on time to our June 3 court hearing, we had to be at
2 the Port of Entry before 9am. I woke up early that day to get my children ready and
3 prepare them something to eat. When we arrived at the Port of Entry, they called us
4 by name and registered us. There were many other people there going through the
5 same process as us.

6 22. They checked our hair to make sure we did not have lice. Some people
7 did have lice. Those who did, the immigration officers put a liquid on their hair and
8 scalp.

9 23. They took away our belongings and put them away. We waited in a big
10 warehouse for various hours. Finally, they placed us on a bus with covered windows
11 to transfer us to the court. On our way to the court, I felt dizzy and nauseous. I believe
12 that due to the nerves, uncertainty, and desperation, I got a headache. My daughter
13 began to have a stomach ache and wanted to vomit.

14 24. When we arrived at court, they placed us in a waiting room with many
15 other people who were also waiting for their hearings. That is where I met Margaret
16 for the first time. We were not able to speak anywhere private.

17 25. Once inside the courtroom, Margaret told the judge about my fear of
18 returning to Mexico. My hearing was brief and as soon as we finished, I was sent
19 back to the waiting room. I learned that I was going back in the freezing cold holding
20 cell. I could not have a confidential conversation with Margaret about what was about
21 to happen. There were immigration officers and other people around us. Margaret
22 would try to be present for my interview in the cold holding cell over the phone.

23 26. After my court hearing, my children and I were returned to the Port of
24 Entry before being returned to a nearby freezing cold holding cell. We were detained
25 for two or three days. Again, I was separated from my 13-year-old son.

26 27. Again, I was interviewed over the phone by two officers, one who asked
27 questions in English and the other who translated. The interview was very difficult
28

1 for me. During the interview, I was handcuffed, and I felt that the officer over the
2 phone did not understand what I was saying and did not want to hear my explanations.
3 They did not allow Margaret to be present over the phone for the interview. I would
4 have liked for Margaret to be present for the interview.

5 28. Again, my daughter got sick while in custody. She had the same
6 symptoms as the first time. She suffered from a fever, a cold, and bone aches. We
7 were detained for two or three days for the interview, before being returned to
8 Mexico. Just like the last time, they did not tell me why we were being returned to
9 Tijuana.

10 29. During each interview, I always tell the truth and try to explain my fear
11 of being in Mexico, but the truth is that I do not know exactly what I need to say for
12 the officers to understand the danger my family is experiencing in Mexico. I feel like
13 Margaret would be able to really help me during the interview because I have seen
14 how she understands and can explain my case during my hearings before the judge.

15 30. My children and I still live in fear of being in Mexico. I worry about my
16 children being kidnapped or that something could happen to them. My next hearing
17 is scheduled for November 21, 2019.

18 31. I would like my identity to remain private. I worry if my name were
19 made public it could affect my immigration case and compromise my safety in
20 Tijuana.

21
22 I declare under penalty of perjury under the laws of the United States that the above
23 is true and correct.

24 Signed this 18 of October, 2019 in Tijuana, Baja California, México.
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27 A [REDACTED] V [REDACTED] D [REDACTED]
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CERTIFICATE OF TRANSLATION

I, Perla Gonzalez, certify that I am competent to translate from Spanish to English,
and certify that the translation of the Declaration of A [REDACTED] V [REDACTED] D [REDACTED] is true
and accurate to the best of my abilities.


Perla Gonzalez

10/30/19
Date

DECLARACION DE A██████ V██████ D██████

Yo, A██████ V██████ D██████, declaro lo siguiente:

1. Tengo conocimiento personal de los hechos establecidos a continuación y, si me llamaran para testificar, podría hacerlo y lo haría de manera competente.

2. Mi nombre es A██████ V██████ D██████. Nací el 18 de octubre del 1988 en Honduras. Mi hijo de 13 años, hija de 8 años y yo estamos solicitando el asilo. Actualmente estamos sujetos al Programa de Regreso a México o MPP, por sus siglas en ingles. Estamos obligados a esperar en México mientras pasamos por nuestros procedimientos de inmigración. La abogada quien nos está representando en nuestros procedimientos de inmigración es Margaret Cargioli.

3. Me fui de honduras en enero del 2019 porque tengo temor de estar ahí. En Honduras trabajé como estilista de cabello, tuve mi tienda propia, pero tuve que cerra después de varias amenazas por miembros de la pandilla MS. Me vine sola con mis dos hijos.

4. En enero del 2019 llegamos a Tijuana. Alrededor de mediados de enero del 2019 nos pusimos en una lista de espera para entrar a los Estados Unidos. Nos dieron un número y cada día tuvimos que revisar si era nuestro turno para entrar.

5. Tenemos bastante temor de quedarnos en México. A finales de enero o principios de febrero del 2019, salí a comprar comida en Tijuana. Caminando por la calle empecé a oír balazos y vi a hombres corriendo. Entré en pánico, no supe a donde correr y no encontraba refugio. Por milagro una pareja me abrió la puerta y me dejó refugiarme en su casa. Desde adentro de la casa vi que iban corriendo los tiradores con sus armas en mano. Creo que los tiradores son narcotraficantes por lo que he escuchado de la gente que vive por donde yo vivo en Tijuana. Le doy gracias a dios que me hijos no estuvieron conmigo en la calle ese día.

6. A mediados de febrero del 2019 llamaron mi número. Los oficiales de inmigración estadounidense permitieron a mis hijos y yo entrar a la puerta de entrada

1 de San Ysidro. Inmediatamente solicitamos asilo.

2 7. Al entrar me tomaron mis datos y huellas. La oficial quien tomó mis
3 huellas me agarró demasiado fuerte de la muñeca. Me jalaba la muñeca al intentar
4 sacar mis huellas. Adentro, separaron a mi hijo de trece años de conmigo y mi hija.
5 No supe si lo iba a volver a ver. Él y yo empezamos a llorar. A mi hija y a mí nos
6 pusieron dentro de una celda fría y con mucha gente. Había tanta gente que dormimos
7 una tras otra pegaditas. Limpiaban la celda cada noche durante la madrugada. Pero
8 aún se ensuciaba. Siempre había papel de baño tirado sobre el piso. Era muy
9 antihigiénico. Nos permitieron bañar cada par de días, pero solo en la madrugada y
10 el agua salía tan caliente que me ardía la piel. Estuvo tan caliente que no deje que se
11 bañara mi hija por miedo que le quemara la piel.

12 8. Nuestro primer o segundo día en detención, me sacaron de la celda para
13 hacer me unas preguntas. No permitieron que me hija fuera conmigo. Un oficial me
14 entrevistó por mucho tiempo, haciéndome preguntas sobre porque vine a los Estado
15 Unidos. Querían que yo firmara unos documentos. Pero no supe que decían y no
16 quise firmar. Cuando negué a firmar me regresaron a la celda. El siguiente día, una
17 oficial vino a nuestra celda y me llamó por nombre. Me preguntó porque no había
18 firmado los documentos. Le expliqué que no supe que decían y por eso no quise
19 firmar. Ella me llevó a un cuarto aparte y me empezó a interrogar. Me preguntó sobre
20 mi nivel de educación y le dije que no había terminado la preparatoria. La oficial me
21 dijo, “¿por qué vienes a los EEUU si no tienes educación? Nunca van a dejar que
22 alguien ignorante como tú entre a los EEUU.” Después la oficial me empezó a gritar,
23 diciendo que tenía que firmar los documentos y que si no firmaba me iban a regresar
24 a Honduras. Empecé a llorar. Sentí que tenía que firmar los documentos. Quise
25 llamarle a mi sobrino en Los Ángeles. Le quería pedir consejo si debería firmar o no.
26 Le pedí una llamada a la oficial, ella me gritó, “¡no tengo todo el día para estar aquí
27 esperándote!”. No me permitió la llamada y firmé los documentos.
28

1 9. La oficial me dijo que iba ser regresada a Tijuana, México. No supe que
2 hacer. No conozco a nadie en Tijuana, entre en pánico.

3 10. En total estuvimos separados y detenidos por tres días. Los oficiales de
4 inmigración nunca me preguntaron sobre mi temor de regresar a México. Esos tres
5 días no pude dormir porque siempre tuvieron las luces prendidas. Pasé los días y las
6 noches sentada esperando una noticia de que iban a hacer conmigo y mi familia. Me
7 afectó psicológicamente.

8 11. Mis hijos se enfermaron cuando estuvimos detenidos, pero le afectó a
9 mi hija peor. Tuvo síntomas de cansancio, dolor de hueso, calentura, gripe y toz. Yo
10 también me enfermé durante nuestro tiempo ahí. Así de enfermos nos regresaron a
11 Tijuana, México. Nuestra primera audiencia fue agendada para el 1 de abril del 2019.

12 12. De nuevo en Tijuana lo primero que hice fue llevar a mi hija a una
13 consulta en la farmacia mas cercana. Mi hija salió de la hielera tan enferma que
14 apenas se podía parar por tan débil que estaba. Por cinco días sufrió de calentura,
15 vomito y diarrea. Gritaba del dolor de hueso. No me dejaba tocarla. Hasta llegó a
16 desmayarse del dolor. En la consulta me dijeron que mi hija había contratado un
17 virus. Le pusieron una inyección y le recitaron medicamento para el dolor y calentura.
18 Me dolió tanto ver a mi hija así.

19 13. En Tijuana asistí a un taller de información sobre mis derechos donde
20 ofrecían consultas para migrantes buscando el asilo en los Estados Unidos como yo.
21 Cuando iba en camino hacia el taller, fui asaltada por un desconocido en la calle. Me
22 agarró del brazo y me robó la bolsa donde llevaba mis documentos de inmigración.

23 14. Después de lo que he vivido, no me siento segura en México. Mantengo
24 a mis hijos dentro de la casa donde nos estamos quedando. No me gusta que salgan
25 por temor que algo les pase.

26 15. He escuchado de mucha violencia contra los centroamericanos en
27 Tijuana. Cada día escucho de un nuevo caso de secuestro donde la víctima es un
28

1 centroamericano. Me preocupa la seguridad de mis hijos y nuestro bienestar. Me sentí
2 desesperada, asustada y quise proteger a mis hijos.

3 16. El 1 de abril del 2019, fuimos a nuestra primera corte sin abogado. Me
4 sentí muy nerviosa. Le pedí al juez más tiempo para encontrar un abogado. El juez
5 me dio dos meses para encontrar un abogado y me dejó mi próxima corte para el 3
6 de junio del 2019. El juez me preguntó si tenía temor de regresar a México. Le dije
7 que sí.

8 17. Después de la corte nos regresaron a la puerta de entrada antes de
9 trasladarnos a otra hielera cercana. Estuvimos ahí dos o tres días en una celda, como
10 la primera vez que habíamos presentado. De nuevo me separaron de mi hijo. La celda
11 donde nos detuvieron estuvo más llena de personas que la primera vez. No había
12 suficiente espacio para acostarnos. Intenté dormir sobre una banca de metal, pero
13 tenía temor de que me cayera sobre alguien. Mi hija durmió casi encima de otra
14 persona.

15 18. Esta vez me hicieron una entrevista por teléfono. Un oficial me hizo
16 preguntas en inglés y el otro tradujo. Me entrevistaron a mi primero. Estuve esposada
17 durante toda la entrevista. Me esposaron las muñecas juntas en frente de mí. Me
18 preguntaron sobre mi temor de regresar a México. Después entrevistaron a mis hijos
19 también, en frente de mí. Les hicieron las mismas preguntas a mis hijos que me
20 habían hecho a mí.

21 19. Después de dos o tres días fuimos regresados a México sin explicación.
22 Nunca me dijeron el resultado de mi entrevista ni me dieron documentos sobre qué
23 pasó. Me di por vencida. No supe que mas hacer. Pasamos los próximos dos meses
24 encerrados en la casa debido al temor de estar en Tijuana.

25 20. Al regresar a Tijuana pude ponerme en comunicación con la abogada
26 Margaret Cargioli. Unos días antes de mi audiencia del 3 de junio, Margaret me dijo
27 que nos iba a representar. Para nuestra próxima corte ella iba estar presente.
28

1 21. Para llegar a nuestra corte del 3 de junio a tiempo, tuvimos que estar
2 esperando en la puerta de entrada de San Ysidro antes de las 9 de la mañana. Me
3 desperté temprano ese día para alistar a mis hijos y prepararles algo de comer.
4 Cuando llegamos a la puerta de entrada nos llamaron por nombre y nos registraron.
5 Había muchas personas pasando por el mismo proceso con nosotros.

6 22. Nos revisaron el cabello para asegurar que no teníamos piojos. Algunas
7 personas si tenían piojos. A esas personas, los oficiales de inmigración les pusieron
8 un líquido en el cabello.

9 23. Nos quitaron nuestras pertenencias y las guardaron. Esperamos en una
10 bodega grande por varias horas. Por fin nos subieron a un autobús que tenía las
11 ventanas cubiertas para ser transferidos al tribunal. En camino al tribunal me sentí
12 mareada y con nausea. Creo que, debido a los nervios, incertidumbre y a la
13 desesperación, me empezó a doler la cabeza. A mi hija también le empezó a doler el
14 estómago y me dijo que tenía ganas de vomitar.

15 24. Cuando llegamos al tribunal nos pusieron en una sala de espera con
16 muchas otras personas quienes también esperaban su corte. Ahí conocí a Margaret
17 por primera vez. No pudimos hablar en un lugar privado.

18 25. Ya en el tribunal Margaret le explicó al juez mi temor de regresar a
19 México. Mi corte fue breve y en cuanto terminamos me regresaron a la sala de espera.
20 Me entere que iba ser regresada a la hielera. No pude tener una conversación
21 confidencial con Margaret sobre lo que iba pasar. Había oficiales de inmigración y
22 otras personas a nuestro alrededor. Margaret iba intentar estar presente por teléfono
23 para mi entrevista en la hielera.

24 26. Después de la corte, mis hijos y yo fuimos regresados a la puerta de
25 entrada antes de ser transferidos a una hielera cercana. Estuvimos detenidos por dos
26 o tres días. De nuevo separaron a mi hijo de 13 años de mí.

1 27. De nuevo me entrevistaron por teléfono dos oficiales, uno me hizo
2 preguntas en inglés y el otro tradujo. La entrevista es difícil para mí. Durante la
3 entrevista fui esposada y sentí que el oficial por teléfono no entendió lo que decía y
4 no quiso oír mis explicaciones. No permitieron que Margaret estuviera presente por
5 teléfono para la entrevista. Me hubiera gustado tener a Margaret presente para la
6 entrevista.

7 28. De nuevo mi hija se enfermó en la hielera. Le salieron los mismos
8 síntomas que la primera vez. Sufrió de calentura, gripe y dolor de hueso. Estuvimos
9 detenidos por dos o tres días para nuestra entrevista antes de ser regresados a México.
10 Igual que la última vez, no me dieron información sobre porque nos iban a regresar
11 a Tijuana.

12 29. En cada entrevista que he tenido siempre digo la verdad y siempre
13 intento explicar mi temor de estar en México, pero la verdad es que no sé exactamente
14 que tengo que decir para que los oficiales entiendan el peligro que corre mi familia
15 en México. Siento que Margaret me podría ayudar bastante durante la entrevista
16 porque he visto como entiende y puede explicar mi caso en el tribunal frente al juez.

17 30. Mis hijos y yo aun tememos estar en México. Me preocupo por mis
18 hijos, que me los secuestren, o que algo les pase. Mi próxima está agendada para el
19 21 de noviembre del 2019.

20 31. Me gustaría mantener mi identidad privada. Temo que si mi nombre
21 fuera revelado pudiera afectar mi caso de inmigración y comprometer mi seguridad
22 en Tijuana.
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1 Declaro bajo pena de perjuicio bajo las leyes de los Estados Unidos de América que
2 lo anterior es correcto y verdadero.

3 Firmado este 18 de octubre del 2019 en Tijuana, Baja California, México.
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7 A V D

EXHIBIT 9

DECLARATION OF J [REDACTED] Z [REDACTED] V [REDACTED] C [REDACTED]

I, J [REDACTED] Z [REDACTED] V [REDACTED] C [REDACTED], declare as follows:

1. I have personal knowledge of the facts set forth below and if called to testify, I could and would do so competently.

2. My name is J [REDACTED] Z [REDACTED] V [REDACTED] C [REDACTED]. I was born on July 14, 1966 in El Salvador. I am seeking asylum. I am currently subject to the Remain in Mexico Program (MPP). I am forced to remain in Mexico while I go through my immigration proceedings. The lawyer who is representing me in my immigration proceedings is named Margaret Cargioli.

3. On or about March of 2019, my son, my daughter-in-law, two granddaughters and I added ourselves to a list at the Port of Entry to wait to apply for asylum in the United States. We waited in Tijuana for two months before our number was called.

4. My family fled El Salvador on or about November 10th. My son was threatened by members of the 18th Street gang because he could not afford to pay their extortions. They looked for him for some time before he left to the United States, and some men came looking for him at my house after he left. I did not want to tell them where my son was, and they threatened to kill me if I did not give them that information.

5. After a short period of time, I also fled out of fear that they would kill me. I left without any of my belongings because they did not give me much time to flee. I stayed with some friends before leaving the country. I reported everything to the police before leaving.

6. My family and I arrived in Tijuana on or about March 12, 2019. A couple days after we arrived in Tijuana, and on the same day that we added our names to the list, we were in our hotel when 6-7 armed men arrived. My son, his wife, their two daughters and I were in eating in our bedroom when we received a call from our

1 neighbor who told us that several armed men had arrived in a truck. We heard them
2 pound on the doors of the neighboring rooms but luckily, they did not reach ours. My
3 greatest fear was that they would come in and take my granddaughters. It was so
4 terrifying that we could not even finish eating, I continue to live with that fear.

5 7. On or about May 12, 2019, two months after adding ourselves to the list,
6 my family's number was called. We were finally able to present at the San Ysidro
7 Port of Entry. We immediately asked for protection in the form of asylum.

8 8. As I entered the Port of Entry, I was separated from the rest of my
9 family. I was taken to a small cell where I stayed with 12 other people. We were very
10 crowded. The cell was very cold, dirty, and there were cockroaches everywhere. I
11 had to sleep on the ground. The immigration officers gave us the opportunity to take
12 a shower, but the water was excruciatingly hot. We were only given burritos to eat. I
13 felt very sick during my time in custody. The conditions were horrible, and I got a
14 cold and even coughed up blood. When the immigration officer questioned me on
15 my first day of detention, I asked if he could take me to see a doctor, but he ignored
16 me. My cough and cold worsened after my release from detention.

17 9. When the immigration officer took my declaration, they asked me
18 questions about the reason as to why I came to the United States and took down some
19 basic facts. I told them that I came with my son and family, but they did not care to
20 have us reunified. The officer never asked about my fear of being in Mexico, but I
21 mentioned it to him. I told the officer I was afraid of being in Mexico, but they did
22 not take me seriously and told me it was a very large country and that I could go
23 somewhere else if I did not want to be in Tijuana. I remained in custody another two
24 days.

25 10. After being in detention for three days, I was returned to Mexico with
26 my family. The officers gave us some documents, but they did not tell us they were
27 going to return us to Mexico and did not explain what the documents said. They put
28

1 us all in a truck and took us to the Mexico Port of Entry, and they returned us to
2 Tijuana. After reading the documents, I learned that my first court hearing would be
3 on August 7, 2019, and that I would need to present at the port of entry at 4 in the
4 morning.

5 11. Ever since we were returned to Tijuana, my family has been constantly
6 worried about the girls and about where we would be spending the night. For some
7 time, we stayed in different hotels until the incident of the armed men who arrived at
8 our hotel. After that, we stayed in different shelters, but we had to leave because they
9 criticized us for being Christian. They did not like our way of praying.

10 12. Finally, we found an apartment for rent, but we could not afford to pay
11 what the cost. We left to another apartment. Currently we are renting a room in a
12 house, and the five of us live in a small room together.

13 13. We left the first two apartments because in each of the two places, we
14 found out that someone was killed on our same street. While living in one of the
15 apartments, we had an incident where a man followed me and one of my
16 granddaughters when we went to throw out the garbage. We ran and closed the door
17 behind us before he was able to reach us, but we still have the fear that we will be
18 killed or kidnapped.

19 14. I am constantly afraid that something will happen to my son because he
20 comes back from work around 8:30pm.

21 15. My first two hearings in immigration court were short and brief. The
22 first one was on August 7, 2019 and the second on September 11, 2019. Both times
23 I went without my family, because our cases are separate, and I was returned to
24 Mexico on the same day. My third court hearing was scheduled for September 24, at
25 9 in the morning.

26 16. For several weeks we tried to find a lawyer who would represent us at
27 our first hearing by calling different organizations in San Diego. We called daily, but
28

1 we had no luck. We called many organizations, but some would not return our calls
2 and others did not speak Spanish. It was not until my third court hearing that I was
3 finally able to find a lawyer.

4 17. I found out about attorney Margaret Cargioli from some family friends,
5 who she currently represents. We spoke with Margaret on September 5th, after my
6 first court hearing, she agreed to take our case. She was not able to attend my
7 upcoming court hearing because she had prior commitments, but she was present for
8 my court hearing on the 24th of September.

9 18. The documents I had received from the Immigration officers said that in
10 order to arrive to my hearing on time, I had to be at the Port of Entry at 4 in the
11 morning. I woke up at 2 in the morning and I took a taxi to the Port of Entry with my
12 son. It took us an hour to get there and I was very tired and cold.

13 19. When I was finally allowed to enter the Port of Entry, immigration
14 officers took my belongings away and registered me as they had the last two times I
15 presented for court. There were many people there who were also going through the
16 same process as me. We waited inside a large warehouse. Afterwards, the
17 immigration officers placed us on a bus with covered windows and transported us to
18 court in San Diego.

19 20. Once at the courthouse, I sat in a waiting room outside the court room.
20 That is where I met Margaret. There were many other people with us in the waiting
21 room. It was hard to pay attention because of everything that was happening around
22 me. There were many officers and other people around us, and a lot of noise. After a
23 short amount of time, my hearing began.

24 21. I was the first person to go before the judge and my lawyer told them I
25 was afraid to return to Mexico. In that moment the judge did not ask me for more
26 details, but told me that I would be given an interview.

1 22. I spoke with Margaret only for about 15 minutes after my court hearing.
2 During that time, she explained the interview to me. We also had that conversation
3 in the waiting area and, again, there was a lot of noise and we did not have any
4 privacy. I only understood that I would be returned to the Port of Entry and that I
5 would be given the interview the judge had mentioned.

6 23. After my hearing I was returned to the Port of Entry. They placed me in
7 a cell like the first time I entered. An hour after arriving, I had the interview over the
8 phone.

9 24. During the interview, I was handcuffed to a small table. I was
10 interviewed by two people over the phone, one of them asked me questions in English
11 and the other translated. I tried to explain everything that had happened to me in
12 Mexico and talked about my fear of being in Mexico. I would have liked for Margaret
13 to have been present during my interview because I was very nervous. I could not
14 explain everything. They would interrupt me and did not always let me finish my
15 responses before moving on to the following questions.

16 25. The next day, I was returned to Mexico. I was detained for a total of two
17 days after I expressed in court that I was afraid of being returned to Mexico. Once
18 again, I was not told I would be returned to Mexico.

19 26. I believe that if my lawyer would have been present, the result of my
20 interview would have been much better.

21 27. During the time that I was in immigration custody, I was not allowed to
22 speak with my attorney before my interview. I wanted to call my son after the
23 interview and so I asked an officer if they could allow me to make a call, but they
24 told me it was forbidden to use the phone and that the rule applied to everyone. I
25 asked the same officer a second time and, again, they told me I could not use a phone.
26 I was in the cell for a total of two days and I felt sick again, like the first time I was
27 detained. I got worse once released from the Port of Entry.
28

1 28. My next hearing is scheduled for December 12, 2019 at 8:30 in the
2 morning. I am still afraid of being in Mexico.

3 29. I would like my identity to remain private. I worry that if my name was
4 made public it could affect my immigration case and compromise my safety in
5 Tijuana.

6
7 I declare under penalty of perjury under the laws of the United States that the
8 foregoing is correct and true.

9 Signed this 18 of October of 2019 in Tijuana, Baja California, México.
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CERTIFICATE OF TRANSLATION

I, Perla Gonzalez, certify that I am competent to translate from Spanish to English,
and certify that the translation of the Declaration of J [REDACTED] Z [REDACTED] V [REDACTED] C [REDACTED]
is true and accurate to the best of my abilities.



Perla Gonzalez

Date 10/30/19

DECLARACION DE J [REDACTED] Z [REDACTED] V [REDACTED] C [REDACTED]

Yo, J [REDACTED] Z [REDACTED] V [REDACTED] C [REDACTED], declaro lo siguiente:

1. Tengo conocimiento personal de los hechos establecidos a continuación y, si me llamaran para testificar, podría hacerlo y lo haría de manera competente.

2. Mi nombre es J [REDACTED] Z [REDACTED] V [REDACTED] C [REDACTED]. Nací el 14 de julio del 1966 en El Salvador. Estoy solicitando asilo. Actualmente estoy sujeta al programa de Regreso a México (o MPP por sus siglas en inglés). Estoy obligada a permanecer en México mientras se llevan a cabo mis procedimientos de inmigración. La abogada que me representa en mis procedimientos de inmigración se llama Margaret Cargioli.

3. Alrededor de marzo del 2019 mi hijo, mi nuera, mis dos nietas y yo nos apuntamos en una lista en la puerta de entrada para esperar poder solicitar el asilo en los EEUU. Esperamos en Tijuana dos meses antes de que nos llamaran por número.

4. Mi familia huyó de El Salvador alrededor del 10 de noviembre. Mi hijo fue amenazado por pandilleros del grupo 18 Revolucionario porque no les pudo pagar sus extorciones. Lo estuvieron buscando por un tiempo y después de que el salió en rumbo a los EEUU, unos hombres vinieron a buscarlo a mi casa. Yo no les quise decir donde estaba mi hijo y amenazaron con matarme si yo nos les daba esa información.

5. Al poco tiempo, yo también hui por miedo de que me mataran. Me fui sin mis pertenencias porque no me dieron mucho tiempo para huir. Me quedé con unos amigos antes de salir. Reporté todo a la policía antes de irme.

6. Mi familia y yo llegamos a Tijuana alrededor del 12 de marzo del 2019. Unos días después de llegar a Tijuana, y el día que nos anotamos en la lista, estábamos en nuestro hotel cuando llegaron alrededor de 6-7 hombres armados.

1 Estábamos mi hijo, su esposa, sus dos hijas, y yo en nuestra habitación comiendo
2 cuando nuestro vecino nos habló y nos dijo que habían llegado varios hombres
3 armados al hotel en una camioneta. Escuchamos cuando golpearon las puertas de
4 las habitaciones y con suerte no llegaron a nuestra recamara. Mi temor más grande
5 fue que los hombres armados llegaran a llevarse a mis nietas. Fue tan horrible que
6 no pudimos terminar de comer, y todavía sigo con temor.

7 7. Alrededor del 12 de mayo del 2019, a los dos meses después de que
8 nos anotamos en la lista, llamaron el número de nuestra familia. Por fin nos iba
9 tocar presentarnos en la puerta de entrada de San Ysidro. Inmediatamente
10 solicitamos protección en la forma de asilo.

11 8. Al entrar a la puerta de entrada, fui separada del resto de mi familia.
12 Me llevaron a una celda muy pequeña con otras 12 personas. Estábamos todos muy
13 amontonados. La celda estaba muy fría y sucia, y había cucarachas en todos lados.
14 Tuve que dormir en el suelo. Los oficiales de inmigración nos dieron la oportunidad
15 de tomar un baño, pero el agua estaba insoportablemente caliente. Solo nos daban
16 burritos para comer. Me sentí muy enferma durante mi tiempo en custodia. Las
17 condiciones eran horribles y me dio gripe y hasta tosía sangre. Cuando el oficial me
18 hizo preguntas el primer día de mi detención, le pedí que me llevara a ver a un
19 doctor, pero no me hizo caso. Empeoro mi toz y gripe al salir de detención.

20 9. Cuando el oficial de inmigración me hizo la declaración, me hizo
21 preguntas sobre la razón por la que vine a los EEUU y tomo mis datos básicos. Le
22 dije que vine con mi hijo y mi familia, pero no le importó reunificarnos. Ese oficial
23 nunca me preguntó sobre mi temor de estar en México, pero yo se lo mencioné. Le
24 dije que tenía temor de estar en México, pero no me tomaron en serio y me dijeron
25 que era un país muy grande y que me podía ir a otro lugar si no quería estar en
26 Tijuana. Permanecí en custodia otros dos días.

27 10. Después de estar en detención por tres días, fui regresada a México
28

1 junto con mi familia. Nos dieron unos documentos, pero no nos dijeron que nos
2 iban a regresar a México y no nos explicaron que decían los documentos. Nos
3 subieron a una camioneta, nos llevaron a la puerta de entrada de México, y nos
4 regresaron a todos a Tijuana. Después de leer los documentos, vi que tenía que
5 presentarme para mi primera audiencia de la corte el 7 de agosto a las 4 de la
6 mañana.

7 11. Desde que nos regresaron a Tijuana, mi familia ha estado
8 constantemente preocupada por las niñas y por donde pasaremos la noche. Por un
9 tiempo nos estuvimos quedando en diferentes hoteles hasta que ocurrió el incidente
10 de los hombres armados que llegaron al hotel. Después, estuvimos en diferentes
11 albergues, pero nos tuvimos que ir porque muchos nos criticaban por ser cristianos.
12 No les gustaba nuestra manera de orar.

13 12. Por fin encontramos un departamento para rentar, pero no pudimos
14 pagar lo que costaba. Nos fuimos de ese lugar a otro departamento. Ahora estamos
15 rentando una habitación en una casa. Vivimos los cinco en un cuarto muy pequeño.

16 13. Nos fuimos de los primeros departamentos porque en cada uno de los
17 dos lugares, nos dijeron que habían matado a alguien en nuestra misma calle.
18 Mientras estuvimos viviendo en uno de esos departamentos, una vez un hombre nos
19 siguió a mí y a mi nieta cuando íbamos a tirar la basura. Corrimos y cerramos la
20 puerta antes de que nos alcanzara, pero todavía seguimos con el temor de que nos
21 maten o secuestren.

22 14. Constantemente tengo miedo de que le pase algo a mi hijo porque él
23 llega del trabajo a las 8:30pm.

24 15. Mis primeras dos audiencias de la corte fueron cortas y breves. La
25 primera fue el 7 de agosto y la segunda el 11 de septiembre del 2019. Ambas veces
26 fui sin mi familia a la corte ya que nuestros casos han sido separados y fui
27
28

1 regresada el mismo día a México. Mi tercera audiencia fue agendada para el 24 de
2 septiembre a las 9 de la mañana.

3 16. Intentamos buscar un abogado que nos representara en nuestra primera
4 corte llamando a diferentes organizaciones en San Diego, y por varias semanas.
5 Llamábamos diario, pero sin éxito. Hablamos a bastantes organizaciones, pero unas
6 no nos regresaban la llamada y otras no hablaban el español. No fue hasta mi tercer
7 corte que pude conseguir una abogada.

8 17. Yo me enteré de la abogada Margaret Cargioli por medio de unos
9 conocidos de nuestra familia a quienes ella representa. Hablamos con Margaret el 5
10 de septiembre, después de mi primera corte, estuvo de acuerdo tomar nuestro caso.
11 No pudo estar presente en mi segunda corte porque tenía otros compromisos, pero
12 estuvo presente para mi tercera audiencia del 24 de septiembre.

13 18. Los documentos que me dieron los oficiales de inmigración decían
14 que, para llegar a mi audiencia a tiempo, tenía que estar en la puerta de entrada a las
15 4 de la mañana. Me desperté a las 2 de la mañana y me fui con mi hijo en un taxi a
16 la puerta de entrada. Duramos una hora en llegar y yo iba muy cansada y con
17 mucho frío.

18 19. Cuando por fin me permitieron entrar a la puerta de entrada, los
19 oficiales de inmigración me quitaron mis pertenencias y me registraron como lo
20 habían hecho las últimas dos veces que me presenté para corte. Había muchas
21 personas que también estaban pasando por el mismo proceso. Esperamos por
22 mucho tiempo en una bodega grande. Después, los oficiales de inmigración nos
23 subieron a un autobús que tenía las ventanas cubiertas y luego nos transportaron a
24 la corte en San Diego.

25 20. Ya en la corte, estuve en una sala de espera afuera del tribunal. Ahí
26 conocí a Margaret. Había muchas personas en la sala de espera con nosotros. Fue
27 difícil prestar atención por todo lo que sucedía a mi alrededor. Había muchos
28

1 oficiales y otras personas a nuestro alrededor y mucho ruido. Después de poco
2 tiempo, empezó mi audiencia.

3 21. Yo fui la primera persona que pasó ante el juez y mi abogada le dijo
4 que yo tenía temor de regresar a México. El juez no me pidió detalles en ese
5 momento, pero me dijo que me iban hacer una entrevista.

6 22. Hablé con Margaret por solo alrededor de quince minutos después de
7 mi audiencia de corte. Durante ese tiempo, me platicó acerca de la entrevista.
8 También tuvimos esa conversación en la sala de espera y otra vez había mucho
9 ruido y no teníamos privacidad. Solo entendí que me iban a regresar a la hielera y
10 que me iban a hacer la entrevista que mencionó el juez.

11 23. Después de mi audiencia fui regresada a la puerta de entrada. Me
12 pusieron en una celda como la primera vez que había entrado. A una hora de llegar
13 me hicieron la entrevista por teléfono.

14 24. Durante la entrevista estuve esposada de una mano a una mesa
15 pequeña. Me entrevistaron dos personas por teléfono, uno me hizo preguntas en
16 inglés y el otro tradujo. Intenté decirles todo lo que me había sucedido en México y
17 sobre mi temor de estar en México. Me hubiera gustado que Margaret estuviera
18 presente durante mi entrevista porque yo tenía muchos nervios. No les pude
19 explicar todo. Me interrumpían y no siempre me dejaban terminar las respuestas
20 antes de seguir con las próximas preguntas.

21 25. El próximo día fui regresada a México. En total estuve detenida por
22 dos días después de que dije en corte que tenía temor de regresar a México. Otra
23 vez, no me dijeron que me iban a regresar a México.

24 26. Yo siento que, si mi abogada hubiera estado presente, el resultado de
25 la entrevista hubiera sido mejor.

26 27. Durante el tiempo que estuve en la custodia de la patrulla fronteriza,
27 no pude hablar con mi abogada antes de mi entrevista. Quise hablarle a mi hijo
28

1 después de la entrevista y le pedí a un oficial que me dejara hacer una llamada, pero
2 me dijo que estaba prohibido usar el teléfono y que la regla les aplica a todas
3 personas. Le pregunté por segunda vez al mismo oficial y otra vez me dijo que no
4 podía usar el teléfono. Estuve en la celda dos días en total y de nuevo me sentí
5 enferma como la primera vez que estuve detenida. Empeoré cuando salí de la
6 hielera.

7 28. Mi próxima audiencia esta agendada para el 12 de diciembre a las 8:30
8 de la mañana. Aún tengo temor de estar en México.

9 29. Me gustaría mantener mi identidad privada. Temo que si mi nombre
10 fuera revelado pudiera afectar mi caso de inmigración y comprometer mi seguridad
11 en Tijuana.

1 Declaro bajo pena de perjuicio bajo las leyes de los Estados Unidos de América que
2 lo anterior es correcto y verdadero.

3 Firmado este 18 de octubre del 2019 en Tijuana, Baja California, México.
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7 J [REDACTED] Z [REDACTED] V [REDACTED] C [REDACTED]
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EXHIBIT 10

DECLARATION OF LUIS GONZALEZ, ESQ.

I, Luis Gonzalez, Esq., hereby declare as follows:

1. I have personal knowledge of the facts set forth below, and if called to testify to the same, I could and would do so competently.
2. I am a Supervising Immigration Attorney at Jewish Family Service of San Diego ("JFS"). I have worked at JFS since October 2018. I was initially hired as a Staff Attorney, and a few months later I was promoted to my current position. In my position as a Staff Attorney I had a full case load of removal defense cases, detained and non-detained. I also handled and supervised affirmative immigration cases filed with the U.S. Citizenship and Immigration Services. As a Supervising Immigration Attorney, I supervise JFS's Removal Defense Program and I handle a full load of removal defense cases and some complex affirmative cases. The Removal Defense Program is composed of attorneys and U.S. Department of Justice Accredited Representatives. We all handle cases at the Otay Mesa Detention Center (OMDC), non-detained cases in the San Diego Immigration Court, and Migrant Protection Protocols (MPP) cases.
3. I have about 6 years of experience working on immigration and human rights issues. I started representing individuals in immigration matters about 3 years ago when I received my license to practice law in California. My work on immigration and human rights issues started when I started law school back in 2013. During my time in law school, I interned at the California Western School of Law's Community Law Project, Casa Cornelia Law Center, the American Civil Liberties Union, and the International Organization for Migration, a United Nations agency. As an attorney, I worked at Casa Cornelia Law Center as the Justice AmeriCorps fellow, and Catholic Charities, Diocese of San Diego as a Removal Defense Attorney. I have

1 provided representation to individuals in front of the Executive Office of
2 Immigration Review (EOIR), the Board of Immigration Appeals (BIA), and
3 U.S. Citizenship and Immigration Services. I have provided assistance and
4 representation during the past three years to over 80 individuals in removal
5 proceedings. I have also handled guardianship cases at the San Diego
6 Superior Court. Those cases are limited to minors seeking Special Immigrant
7 Juvenile Status relief.

- 8 4. I have represented or currently represent 22 individuals who have been
9 required to go through, or are currently going through, the "Migrant
10 Protection Protocols" ("MPP") or "Remain in Mexico" program in the San
11 Diego immigration court. Of those, 12 have had a fear of return to Mexico
12 and sought a non-*refoulement* interview.
- 13 5. JFS also runs an MPP phone line (a WhatsApp number dedicated to MPP
14 cases only). In March of this year, just before the Executive Office of
15 Immigration Review ("EOIR") was to publish the free legal services provider
16 list, we were able to edit our listing to add a WhatsApp phone number. At
17 that moment, we did not have a WhatsApp line, so we used a work cell
18 phone number to create a WhatsApp account and that work cell phone has
19 since become our MPP-dedicated line. We provide, in the least, a one hour
20 consultation to anyone who contacts us via the MPP-dedicated line and
21 instruct them to watch a short video we published online before the
22 consultation to help better inform them of the MPP program so we can spend
23 the hour helping them understand their case.
- 24 6. When someone is enrolled into the MPP by the Department of Homeland
25 Security's sub agencies' Customs and Border Protection ("CBP") and Border
26 Patrol ("BP"), its officers do not inquire as to whether anyone they are about
27 to enroll in MPP has a fear of return to Mexico.
- 28

- 1 7. In my experience, the Department of Homeland Security places individuals
2 into the MPP program and forces them to return to Mexico after an initial
3 screening. I have rarely had a client tell me that, during this initial
4 processing, an officer asked about whether they have a fear of return to
5 Mexico. To the contrary, most people I provided consultations mentioned to
6 me that when they express a fear of return to Mexico at the initial processing,
7 the immigration officers ignore them or tell them that the law states that they
8 are supposed to be returned to Mexico regardless of their fear of return to
9 Mexico. That is not an accurate statement because the MPP policy
10 memorandum specifically exempts individuals who can prove that he/she has
11 a reasonable fear of return to Mexico. Immigration officer's statement shows
12 that immigration officers at the border are not properly implementing DHS's
13 MPP policy, and individuals who are afraid to return to Mexico do not obtain
14 *non-refoulement* interview regarding their return to Mexico.
- 15 8. I have also provided consultations to individuals that attempted to return to
16 the border before their court hearing to attempt to get a *non-refoulement*
17 interview because they are afraid to remain in Mexico. However,
18 immigration officers at the border refused to provide such interview even
19 though individuals affirmatively assert their fear to return to Mexico.
20 Immigration officer at the border force individuals to remain in Mexico
21 regardless of their fear to return to Mexico. We have reached a point where
22 we have to tell individuals to express their fear during their immigration
23 court hearings. Immigration judges cannot order the DHS to provide such
24 interview, but it has been my experience that immigration officers refused to
25 provide such interview unless people express such fear on the record during
26 their immigration court hearing.
- 27 9. Once placed into MPP, an officer from U.S. Customs and Border Protection
28 or Border Patrol provides documents to each individual with instructions in

1 Spanish explaining when and where to present at the border for their
2 immigration court hearing. The officers do not explain the process. They tell
3 people to read the instructions and come back on the date noted on the
4 instructions. The officers do not take into account that some of the people
5 they are placing in the program do not know how to read and write. I have
6 provided consultations to individuals that speak indigenous dialects and their
7 Spanish is limited. That makes it difficult for these individuals to understand
8 what they need to do to present for their immigration court hearing. I have
9 also provided consultations to individuals that state that they showed up to
10 their immigration court hearing, but the immigration judge told them that
11 he/she cannot start their case because the Department of Homeland Security
12 has not filed the notice to appear with the immigration court. That creates
13 several inaccuracies with the notice to appear and the document immigration
14 officers give to individuals with instructions about when and where to
15 present for their immigration court hearing.

16 10. Most of our clients initially contacted us through our WhatsApp MPP-
17 dedicated number. We have retained a few cases after providing know your
18 rights ("KYR") presentations at the San Diego Immigration Court for those
19 in MPP (a program that is not officially recognized by the EOIR or
20 Immigration and Customs Enforcement, the DHS agency tasked with
21 facilitating transportation and security to and from court) and one was a
22 direct referral from the Federal Defenders in San Diego.

23 11. Most of our cases have been retained on the day of their first court hearing or
24 a couple of days before. In most cases, we had difficulties finding a safe and
25 private location in Mexico to sign paperwork and in other instances we were
26 unsure until the day of court whether they would have a case in court at all.
27 Meaning, in some cases the Notice to Appear ("NTA") or charging document
28 was not filed with the immigration court until the day before their first court

1 hearing. Much of our funding is predicated on their being a removal case to
2 begin with, so we could not retain a case until we know the removal
3 proceedings have actually been initiated, something only DHS has the power
4 to do.

5 12.Organizationaly, we have gone to great lengths to find a secure and safe
6 location to meet with clients in Mexico. We have networked with other
7 agencies such as the United Nations High Commissioner on Refugees
8 (“UNHCR”) and the International Committee of the Red Cross (“ICRC”)
9 hoping they could help facilitate a safe meeting space, but none has been
10 found.

11 13.I couple of months ago I had a situation where a 16 year old and her one year
12 old daughter were returned to Mexico under the MPP. The mother and her
13 daughter were accompanied by the father of the one year old child. The
14 father of the one year old child is over 21 years of age. When they were
15 detained by Border Patrol, the officers told them that their “relationship was
16 illegal in the United States”, but border patrol did not inquired further for any
17 other possible issue of trafficking or the fact that mother was a minor and
18 should have been classified as unaccompanied minor with her daughter and
19 exempted from the MPP. At the time, I had made contact with UNICEF in
20 Tijuana, Baja California, Mexico. UNICEF allowed me and some of my team
21 members to use their office in Tijuana to talk to the 16 year old mother.
22 UNICEF was able to provide this type of assistance because this was a case
23 that involved an unaccompanied minor mother and her one year old daughter.
24 After that, the unaccompanied minor mother was not able to communicate
25 much with me because the cellphone was controlled by family members of
26 her daughter’s father in Tijuana, and they were not allowing her to
27 communicate with me. I was not able to speak with my client until their court
28 hearing. The time I had to speak with my client was about 30 minutes, and it

1 was difficult because all other individuals who were there for a master
2 calendar hearing that day were in the same room along with ICE officers and
3 “detention officers” who are private guards ICE contracted to assist in the
4 transportation and supervision of individuals during their court hearings.

5 14. My team has recently also met with some of our clients at Espacio Migrante,
6 a shelter in Tijuana. However, the spaces where we have met some of our
7 clients in Mexico are not always accessible to all our clients. We always need
8 to seek permission to use these spaces ahead of time to meet with our clients,
9 and it is never a guarantee. Sometimes we are hesitant to meet with our
10 clients at different shelters because the people that call us for consultations
11 have communicated that their persecutors have found them at some of the
12 shelters in Tijuana so people concentrating in one particular shelter can
13 endanger some of our clients.

14 15. In addition, I have learned that persecutors tend to search around the shelters
15 in Mexico for the people they are persecuting. Women have also
16 communicated to me during consultations that they have been sexually
17 harassed by security officers at different shelters in Tijuana, Baja California,
18 Mexico. That adds an additional layer of difficulty when it comes to finding a
19 confidential and safe place to meet with our clients. I have also had clients
20 that are too scared to leave the places where they are staying due to the fact
21 that they have been persecuted in Mexico. When we find ourselves in those
22 situations, we sometimes have to visit our clients in the places where they are
23 staying in Mexico. That also creates risks for our clients because people in
24 the neighborhood can see our team visiting them. It is obvious that our team
25 does not reside in Tijuana.

26 16. I have consulted with several people that mentioned that when they
27 surrendered to U.S. immigration to seek asylum, they had a general fear to
28 return to Mexico. Several of those individuals were then prime targets for

1 criminal organizations. I provided consultations to Families who reported
2 instances when individuals tried to kidnap children and lured families into
3 "alternative shelters," which lead to kidnappings. One asylum seeker
4 mentioned how she was about to go with a woman that offered her help
5 because she had nowhere to go with her two elementary-aged daughters. Her
6 daughters were not feeling well after having spent several days in
7 immigration detention. The asylum seeker saw this option as her only option
8 to find a safe place for her and her daughters. However, before getting into
9 the truck with this woman, the woman mentioned something that
10 contradicted her story. That was a red flag for the asylum seeker so she
11 decided to grab her daughters and started running.

12 17.Many other families discussed who they are approached by people when they
13 are sent back to Mexico by U.S. immigration. The prime targets are always
14 parents with children. Criminal groups seemed to be interested in particular
15 in children. These reports continue to raised red flags that lead me to believe
16 that the MPP may be increasing issues of human trafficking at the U.S.-
17 Mexico border.

18 18.CBP does not permit lawyers to accompany their clients as they are
19 processed at the Port of Entry for their MPP hearings. JFS makes it a priority
20 to meet some of our clients on the south side of the border when it is time for
21 them to present for court. The case of an unaccompanied minor and her child
22 is an example of when someone from our team had to provide assistance at
23 the border to make sure our clients were processed for their immigration
24 court hearing. In this case, our Senior Director of Immigration Services had
25 to meet the minors in the Mexican side of the border at 3:30 am in the
26 morning because the minor mother did not know what she needed to do to
27 present at the border for her court hearing. In other occasions, we sent staff
28 members to the places where our clients were staying because they were

1 afraid to leave on their own, they did not have the funds to pay for a taxi, or
2 did not know how to find someone to transport them to the border.

3 19.As mentioned before, it is impossible to have private consultation with
4 people in Mexico because we do not have a private space where we can meet
5 with them. The reason why we conduct most of our consultations that come
6 through our WhatsApp phone line via phone is because of a lack of private
7 space in Mexico to conduct those consultations. We are also able to conduct
8 more consultations via phone because we are always in our offices in the
9 United States.

10 20.Conducting consultations in person requires a lot of resources and time from
11 our staff, and that will make this assistance unsustainable. During our phone
12 call consultations we always ask people if they are in a place where no one
13 else can hear our conversation, and sometimes people are and other times,
14 they just try to go to a space far away from people to have the conversation.
15 We have also encountered several phone connection issues. We have the
16 same issues when we try to prepare our clients for non-*refoulement*
17 interview. Before the MPP program, I was used to conducting several
18 consultations per week and court hearing preparation in person. A portion of
19 the consultation and court hearing preparation involves reviewing the
20 documents immigration provides to people in removal proceeding, for
21 example the notice to appear (charging document). During phone
22 consultations, we are not able to do that.

23 21.It is difficult for people to send documents via text message or email. Even if
24 people are able to send photos of those documents, a lot of the times the
25 quality is not great. People do not have access to scanners to send good
26 quality copies. Preparation for a non-*refoulement* also requires the revision of
27 any evidence regarding persecution in Mexico. That is sometimes difficult to
28 obtain. Most of the time I am able to see those documents during the court

1 hearing, but I am not able to make copies of those documents. A lot of times,
2 I have to relied on photographs of those documents which sometimes are not
3 the best quality when I print them.

4 22.It is in immigration court while awaiting their hearings that I am most
5 consistently/commonly able to consult with my clients in MPP. Other
6 communications before their court hearings sometimes are by phone, but a
7 lot of the time the poor quality of the phone connection creates
8 communication problems. It is also difficult to review documents with my
9 clients over the phone because sometimes they cannot understand which
10 documents I am referring to because I am not there with them to show them
11 the documents I am discussing with them.

12 23.During immigration court hearings on the MPP docket there are a lot of
13 people in the waiting area or in the court rooms, including ICE officers and
14 "detention officer." A lot of the times there is not enough space to seat next
15 to my clients or the room is so loud that it is difficult to speak to my clients.
16 There have been occasions where ICE brought my clients to court later than
17 usual and that affects the time I have to speak with my client. Most of the
18 time I have about 45 minutes to an hour to meet with my client before court,
19 but when ICE brings people late to court, the time can reduce down to as low
20 as 15 to 30 minutes .

21 24.When I am in court with my clients, there are a lot of issues or information
22 that I cannot disclose because of the lack of confidentiality. There are also
23 several issues that my clients cannot discuss with me while we wait for a
24 court hearing. For example, I was representing a mother and son. Mother and
25 son were kidnapped in Mexico. Mother was raped by the kidnapper. My
26 client was not able to disclosed all of those details because of all of the
27 people around us and because her 11 year old son was seating next to her.
28 Her son could not go anywhere else in the room because ICE officers and

1 “detention officers” do not allow people to move around the area. After the
2 court hearing sometimes it is also difficult to speak to my clients because
3 ICE may not have enough “detention officers” to bring my clients back to the
4 lobby to allow me to speak with them. I cannot speak with them in the
5 courtroom because the judges continue hearing other cases and everything is
6 being recorded so judges require complete silence.

7 25. After a hearing at which I have assisted my client in expressing fear of return
8 to Mexico, my clients are then taken into custody from the courtroom by ICE
9 officers or “detention officer”. I have asked ICE attorneys and officers where
10 my clients are going to be held as they await their *non-refoulement* interview.
11 Most times I do not get an answer from them. Once I was told that my clients
12 were going to be transported to the port of entry. Then eventually my team
13 and I figured out that clients are transported to the port of entry and kept
14 there or sent to Border Patrol depending on who made the initial process for
15 MPP. Clients processed by Border Patrol have their *non-refoulement*
16 interviews in Border Patrol custody. Clients who were initially processed at
17 the port of entry have their *non-refoulement* interviews in custody at the port
18 of entry.

19 26. My clients are held at the port of entry or border patrol while they wait for a
20 *non-refoulement* interview. I only know this because my clients have told me
21 after completion of their *non-refoulement* interviews, when they have been
22 returned to Mexico or allowed to remain in the U.S. after passing the *non-*
23 *refoulement* interview. It has been my experience that family units are
24 released into the United States and single individuals are sent to a detention
25 center. Sometimes that means that single individuals may be detained longer
26 at the port of entry or in Border Patrol custody if there is no space at the Otay
27 Mesa Detention Center. I am aware that the practice of releasing family units
28 into the United States after passing the non-refoulment interview could

1 change at any time. I say that because DHS continues to change procedures
2 with no notice or minimal notice.

3 27. My clients report the horrible conditions while they are detained at the port
4 of entry or by Border Patrol. Most of my clients are detained for several days
5 for the non-*refoulement* interview and to obtain a decision. Clients report that
6 they do not have access to make calls. They are placed in a cold room with
7 several other people. The food they receive makes them sick. Sometimes
8 family units are separated. I have had clients tell me that they are afraid to go
9 back to Mexico but they do not want to ask for a non-*refoulement* interview
10 because the detention conditions are intolerable. I have also had a lot of
11 people make the same comments during our consultations. People have
12 mentioned that the food sometimes is not properly cooked and that when
13 released from detention they leave sick because of the food or the cold
14 rooms. In addition, while detained they are mistreated by the officers. People
15 have mentioned that officers scream and curse at them when they make
16 phone call requests or requests for basic needs.

17 28. One of my clients is a young mother with a one year old daughter. She asked
18 for a non-*refoulement* during the first hearing that we represented her. My
19 colleague Linda Feldman who was co-counsel filed her and my notice
20 entering our appearance with the ICE attorney, she also sent an email to the
21 Asylum Office and CBP/BP asking to be present during the non-*refoulement*
22 interview. We never received a response. We attempted to call CBP, but we
23 never received any information about our client. Our clients were detained
24 for about 3 days. BP returned them to Mexico and never communicated with
25 us. My clients did not received any paperwork with details about the
26 decision.

27 29. My team and I found out our clients were returned to Mexico because they
28 communicated with us once they were in Mexico. This young mother and her

1 child have refused to ask for another non-*refoulement* interview because of
2 the detention conditions. My client has a one year daughter and she told me
3 that she cannot subject herself and her daughter to the horrible detention
4 conditions. I know that my clients were in BP custody because our clients
5 communicated that information to my team. We got that information after BP
6 sent them back to Mexico.

7 30.I represented a mother and a son that were placed in MPP. Mother and son
8 where travelling with mother's sister and cousin. Sister and cousin were also
9 travelling with children. Sister had a baby that was a couple of years old.
10 They were all kidnapped in Mexico by a man. This man kept them locked up
11 in a house. During that time the man raped and physically abused mother
12 (my client). The kidnapper was verbally abusive to sister and cousin. This
13 man also inappropriately touched the baby that was a couple years old. One
14 day my clients were able to escape with the rest of the family. They made a
15 police report in Mexico. Then they were able to make it to the U.S. border
16 where they turned themselves in to U.S. immigration. U.S. immigration
17 returned them all to Mexico without providing them an non-*refoulement*
18 interview.

19 31.While they were all waiting for their immigration court hearing in Mexico
20 they received messages from the man that kidnapped them via social media.
21 The man sent them a video of him at El Chaparral which is the place in the
22 Mexican side where people placed under the MPP have to present for their
23 court hearing. One day, cousin ran into the man that kidnapped them on the
24 street. The man tried to grabbed her but other people on the street prevented
25 him from taking cousin.

26 32.Cousin and sister had their immigration court hearing without an attorney
27 before my clients. They asked for a non-*refoulement* interview to Mexico.
28

1 They were both provided an interview. They both passed the interview and
2 were released into the United States with their children.

3 33.I provided representation to mother and son during their first court hearing.
4 We retained this case during the day of their first immigration court hearing.
5 We asked for an non-*refoulement* interview. I was able to speak to my client
6 briefly before and after their immigration court hearing. That was all the time
7 we have to prepared them. My clients were then transported to the port of
8 entry, and eventually sent to border patrol. They had to remained under
9 border patrol custody to await their non-*refoulement* interview. I sent emails
10 to the Asylum Office that conducts non-*refoulement* interviews, CBP, and BP
11 with the required forms to enter my appearance as my clients attorney.

12 34.My clients were detained for about three days. My clients were returned to
13 Mexico. The asylum officer told my clients that their persecution was not
14 sufficient. My clients had with them police reports from Mexico. My client
15 also explained that her sister and cousin had already passed the same
16 interview. My clients reported that the asylum officer was very rude to her
17 and kept making inappropriate comments. My clients also asked to speak
18 with me and try to show a copy of the required forms where I entered my
19 appearance as their attorney. The officer told my clients that he did not care
20 and that my clients could not speak with me, their attorney.

21 35.I attempted to communicate with BP while my clients were detained. I never
22 got any answers about my client's location. I found out my clients were back
23 in Mexico because she immediately sent me a WhatsApp message when she
24 was returned. I happened to be in Mexico that day so I met with my clients
25 that day in the area where they exited back into Mexico. I did not have a
26 private space to speak with my client that day. I had a conversation with
27 them on the street. Then we followed up via phone.
28

1 36. During my client's second immigration court hearing, I requested a second
2 non-*refoulement* interview. My time before and after court was once again
3 limited. I prepared my client as much as possible over the phone, but I
4 encountered the same issues I stated above in regards to phone
5 communication with clients. My clients were sent back to BP custody for
6 their non-*refoulement* interview. I once again sent an email with my notices
7 entering my appearance as their attorney to CBP, BP, and the Asylum Office.
8 I received a response from CBP saying that my client was in BP custody and
9 that they could not provide any information. I asked CBP for a contact phone
10 number or email with BP, but the officer said that he did not have any contact
11 with BP. Then with the assistance of Kate Clark, Senior Director of
12 Immigration Services, we located an email for BP and other phone numbers.
13 We sent an email requesting to be present during the non-*refoulement*
14 interview and included my notices entering my appearance as the attorney.
15 We never received a response to our email.

16 37. The next day, both Kate Clark and myself called BP to get more information.
17 Kate Clark was able to get someone on the phone. The officer confirmed that
18 our clients were in custody and waiting for their non-*refoulement* interview.
19 BP did not provide any additional information and we were not allowed to
20 speak with our clients. I called back that same day to get updates about the
21 non-*refoulement* interview, but I did not receive any answers. I called about
22 three times over a couple of days. I left messages including my direct office
23 phone number, work cellphone number, and work cellphone number, but I
24 never received a called back.

25 38. About four days after my clients court hearing, Kate Clark and I were able to
26 get another update from BP. A BP officer told us that he could not released
27 any information. We insisted, and he said that he could only confirmed that a
28 non-*refoulement* interview was conducted. He refused to released the

1 outcome of the interview even though we had submitted notices of
2 appearance as attorneys. The BP officer then mentioned that they had
3 requested transportation from ICE a couple of days before, but we did not
4 know if our clients were going to be released into the U.S. or sent back to
5 Mexico. The BP officer told us to contact ICE. Kate Clark and I contacted
6 ICE. Hours later ICE confirmed that our clients had passed the non-
7 *refoulement* interview and they were going to be released into the U.S. and
8 transported to our Migrant Shelter in San Diego the next day.

9 39. Our clients were released into the U.S. about five days after their
10 immigration court hearing. I spoke to our clients at our Migrant Shelter.
11 Mother told me that she had the non-*refoulement* interview the day after their
12 court hearing. She said that the officer spoke with her and asked her 11 year
13 old son a couple of questions. My clients asked to speak with their attorneys
14 during the interview, before the interview, and after the interview, but they
15 were ignored or told that they could not speak with me. Mother told me that
16 she was confused because she was forced to sign documents without
17 knowing what they were. She did not receive copies of those documents.
18 Mother was not sure if she had passed the interview. A couple of days after
19 her interview she was taken back for another interview. The asylum officer
20 then told the BP officers that my client did not need another interview and
21 the asylum officer could not understand why my clients were still there if
22 days before they had passed the non-*refoulement* interview. My clients were
23 then taken back to the detention cell. The next day they were taken out.
24 Mother asked where they were going, and the BP officers told her that she
25 was going to go back to Mexico.

26 40. My clients were transported by ICE to the ICE office in San Diego. When
27 they arrived there, mother asked an ICE officer to explain what was
28 happening. The ICE officer asked her if the BP officer had not explained

1 anything to her. She said no. Then the ICE officer told her that she was going
2 to be released into the US.

3 41. My clients reported horrible detention conditions while in BP custody.

4 Mother told me that her 11 year old son got sick and kept throwing up. One
5 of the officers instead of providing assistance, she kept telling my 11 year old
6 client to act like a man and stop throwing up. In addition, when my clients
7 wanted to drink water, they were sent to drink water from the bathroom
8 faucet. Mother told me that BP has some water containers that are supposed
9 to have water, but they are always empty and always tell people to drink out
10 of the bathroom faucet. When my client told them that the water smelled bad
11 and made them sick, the officers replied that they also drink out of the faucet,
12 and they need to do the same.

13 42. I have also attempted to represent a family unit only in a non-*refoulement*
14 interview back in March. I submitted the required forms stating that I was
15 representing the family. I was called for that interview when I was in court
16 for another case. The person calling will not leave a message or call back
17 number or my voice message or with my assistant. Then I found out the
18 Asylum Office was calling because they were conducting the non-
19 *refoulement* interview at the time they were calling me. The Asylum Office
20 did not call before to schedule a time for me to be present. I had to send
21 email to the same group of people I emailed to enter my appearance as the
22 attorney.

23 43. I was then called back. The Asylum Officer told me that the interview had
24 concluded and they were only going to give me a summary and that was it.
25 The summary was short, I asked why I was not called to schedule a time for
26 me to be present. The Asylum Officer then told me that there is no right to
27 counsel for non-*refoulement* interviews. I told the officer that I disagreed,
28 and then asked when my clients were going to receive a decision. The officer

1 said that she was not sure, that she was going to review the interview and
2 then she was going to submit a recommendation to CBP. I then asked if I
3 could receive notice of the decision. The Asylum Officer told me that I had
4 to talk to CBP about that. I never heard anything from CBP. My clients were
5 then sent back to Mexico. I found out they were back in Mexico because a
6 friend of my clients contacted me. These clients were eventually released into
7 the United States because they had a court hearing during the time the
8 injunction for the MPP was in place.

9 44. I have never had the opportunity for private consultation with my clients
10 while they have been detained awaiting a non-*refoulement* interview.

11 45. My clients have not been given any paperwork about what happened in the
12 non-*refoulement* interviews. Some of my clients have only received one
13 piece of paper that states whether they passed the interview or not. My clients
14 do not received a copy of the notes the asylum officer took during the
15 interview. I know people that have CFIs and RFIs always received a record
16 of the interview. That is not the case for people who receive non-*refoulement*
17 interviews to Mexico. Because of that, I am only able to guess about what
18 happened or why the claims were unsuccessful.

19 46. Attorneys are permitted to both participate in and confidentially consult with
20 detained clients awaiting credible fear interviews (CFIs) and reasonable fear
21 interviews (RFIs).

22 47. In my experience, preparing clients for CFIs and RFIs is essential to ensure
23 clients understand the nature of the questions officers will ask and how to
24 make sure to include facts that are of significant legal relevance. I have not
25 been able to participate in CFIs and RFIs because most of my clients have
26 come to me after those interviews have taken place. I have talked to people in
27 the past before those interview and have been able to prepare people for such
28 interviews while they are detained. Some of those people have contacted me

1 after to tell me that they passed the CFI or RFI. The preparation for CFIs,
2 RFIs, and non-*refoulement* interviews is extremely important because those
3 records will be used during the merits hearings. Individuals need to be aware
4 that they must disclose all facts of significant legal relevance.

5
6 I declare under penalty of perjury of the laws of California and the United States of
7 America that the foregoing statements are true and correct.

8
9 Executed this 24th day of October 2019 in San Diego, California.

10
11
12 

13 _____
Luis Gonzalez, Esq.

EXHIBIT 11

DECLARATION OF LEAH L. CHAVARRIA, ESQ.

I, Leah L. Chavarria, Esq., hereby declare as follows:

1. I have personal knowledge of the facts set forth below, and if called to testify to the same, I could and would do so competently.
2. I am an attorney and the Director of Immigration Services at Jewish Family Service of San Diego ("JFSSD"). I have worked at JFSSD for one year. I began as the Senior Immigration Attorney and received a promotion to director in July 2019. In my capacity as Director of Immigration Services, I oversee the legal work of 3 programs, one of which is our removal defense program. I also carry a full caseload of removal defense and affirmative-based immigration cases before the San Diego Immigration Court, U.S. Citizenship and Immigration Services, and Board of Immigration Appeals. Since the implementation of the unprecedented "Migrant Protection Protocols" ("MPP") or "remain in Mexico" program in January of this year, our removal defense team has shifted its focus to provide direct representation to those affected by that program because, at that time, we were the only organization in San Diego positioned to do so. Since, only one other organization, Immigrant Defenders, has offered San Diego-based services to noncitizens in the MPP.
3. I have 7 years of experience in immigration law, 5 as an attorney licensed to practice law in California. I spent over 4 years working in the private sector representing asylum cases before the San Diego, Otay Mesa, and Imperial Immigration Courts and Board of Immigration Appeals as well as assisted on a number of immigration-related appeals to the Ninth Circuit Court of Appeals. I estimate in the last 5 years, I have been the primary attorney, non-primary attorney, assisted in, or advised on the representation of over 100 asylum cases.

- 1 4. I have directly represented or currently represent, *pro bono*, 8 individuals
2 who have been required to go through, or are currently going through, the
3 MPP program in the San Diego Immigration Court. In my role as director, I
4 have also advised on and reviewed all 25 MPP cases presently or formerly
5 represented by our removal defense team (this number does not include the 8
6 previously mentioned cases). Of those, all 25 have had or presently have a
7 fear of return to Mexico and all 25 sought at least one non-refoulement
8 interview, some two. Of the 8 cases I have represented or am currently
9 resenting, 2 of those cases had a non-refoulment interview before I took
10 representation of their case and after I began representation, they requested a
11 second interview. The other 6 cases I directly represented had not had a non-
12 refoulment interview before I became their *pro bono* attorney. Of the 25
13 cases I supervised, all did not have a non-refoulment interview before JFSSD
14 took on pro bono representation.
- 15 5. JFSSD also runs an MPP phone line (a WhatsApp number dedicated to MPP
16 cases only). In March of this year, just before the Executive Office of
17 Immigration Review ("EOIR") was to publish the free legal services provider
18 list, we were able to edit our listing to add a WhatsApp phone number. At
19 that moment, we did not have a WhatsApp line, so we used my work cell
20 phone number to create a WhatsApp account and my work cell phone has
21 since become our MPP-dedicated line. We provide, in the least, a one hour
22 consultation to anyone who contacts us via the MPP-dedicated line and
23 instruct them to watch a short video we published online before the
24 consultation to help better inform them of the MPP program so we can spend
25 the hour helping them understand their case.
- 26 6. When someone is enrolled into the MPP by the Department of Homeland
27 Security's sub agencies' Customs and Border Protection ("CBP") and Border
28 Patrol ("BP"), its officers do not inquire as to whether anyone they are about

1 to enroll in MPP has a fear of return to Mexico. I know this because not only
2 do the various government-published guidelines and memorandums on MPP
3 require an affirmative statement of fear of return to Mexico be stated by the
4 intended enrollee, but also every consultation I've given and every MPP
5 client I represent has told me they were not asked if they feared Mexico when
6 initially enrolled in the program. Moreover, it is a part of the record in many
7 court proceedings I have witnessed and been a part of where the DHS
8 attorney confirms that an affirmative statement must be made to initiate a
9 non-refoulment interview. Thus, when individuals and families present at a
10 port of entry or are apprehended within the United States and seek asylum,
11 U.S. immigration officers all across the U.S.-Mexico border process the
12 individuals and families, give them some paperwork, and push them back
13 into Mexico, sometimes at a different location than where they were
14 apprehended¹ quickly explaining that they should return for court in a matter
15 of days, weeks, or months and sometimes with no explanation at all but
16 rather state simply, "read the paperwork", assuming they are able to read and
17 read in English and Spanish².

- 18 7. Most of our clients initially contacted us through our WhatsApp MPP-
19 dedicated number. We have retained a few cases after providing know your
20 rights ("KYR") presentations at the San Diego Immigration Court for those
21 in MPP (a JFS program that is not officially recognized by the EOIR or
22 Immigration and Customs Enforcement ("ICE"), the DHS agency tasked
23 with facilitating transportation and security to and from court) and one was a
24 direct referral from the Federal Defenders.

25 ¹ Some of our clients and some of the noncitizens we have consulted were
26 apprehended by CBP or BP in places as far away as Texas and then were
27 transported to San Ysidro Port of Entry, processed, and then released into Tijuana,
28 Mexico

² Some documents are only in English and others are in English and Spanish, but no
other languages, such as an indigenous language.

- 1 8. Most of our clients have been retained on the day of their first court hearing.
 2 In most cases, we had difficulties finding a safe and private location in
 3 Mexico to sign paperwork and in other instances we were unsure until the
 4 day of court whether they would have a case in court at all. Meaning,
 5 sometimes the Notice to Appear (“NTA”) or charging document was not
 6 filed with the immigration court until the day before their first court hearing³.
 7 Much of our funding is predicated on their being a removal case to begin
 8 with, so we could not retain a case until we know the removal proceedings
 9 have actually initiated, something only DHS has the power to do.
- 10 9. Organizationally, we have gone to great lengths to find a secure and safe
 11 location to meet with clients in Mexico. We have networked with other
 12 agencies such as United Nations High Commission on Refugees (“UNHCR”)
 13 and the International Committee of the Red Cross (“ICRC”) hoping they
 14 could help facilitate a safe meeting space, but none has been found. On 2
 15 occasions, I have met with clients in their apartments but I have since
 16 stopped that personally because I am a white woman and I fear bringing

17 ³ This is a common malpractice in these cases. We frequently advise noncitizens to
 18 check the EOIR 1-800 number frequently because it is possible their court date is
 19 not yet scheduled even though the NTA gives a hearing date. I witnessed in one of
 20 our KYR sessions a mother of 2 children whose NTA was not filed but her
 21 children’s were. The record reflected there was an initial hearing where mother was
 22 required to speak for both her children but she did not have a case. The judge wrote
 23 “FTP” next to the mother’s name, meaning, “failure to prosecute”, on the Record of
 24 Master Calendar. The children’s cases were reset for another hearing and the
 25 mother was left confused as the entire family was then transported back to Mexico.
 26 At the subsequent hearing, the hearing I witnessed, the first judge was out so Judge
 27 Simpson hearing the cases for the first time questioned the government attorney on
 28 record how the mother could be required to be in court with her children, all
 transported together from Mexico to court, but not have a case of her own. The
 government attorney explained it was beyond his control because the arresting
 agency (BP or CBP) failed to file the NTA for mother and there was nothing he
 could do to fix that. Judge Simpson then asked if DHS counsel had the NTA and
 could give a copy to the court, which would initiate mother’s proceedings – to
 which the DHS attorney complied. This case highlights not just the DHS officers’
 inconsistent implementation of practices and procedures, but a major concern with
 regard to the non-refoulment procedure of requiring an affirmative statement. In
 my experience, U.S. officers speak only to the parents. Thus, if the mother was not
 in MPP then a question remains whether an officer would have scheduled a non-
 refoulment interview if the mother expressed a fear of return to Mexico.

1 attention to my clients in the neighborhoods they live in within Tijuana. We
2 have also met with our clients in some of the Tijuana migrant shelters. That
3 is problematic as well because the shelters are beyond capacity and do not
4 have the space to give a fully private meeting location. For example, within
5 Madre Asunta, a women and children shelter in Tijuana, they could only
6 provide one room for us to meet with 3 different families at the same time,
7 thus making it challenging to protect confidentiality and ensure we were able
8 to obtain the detailed and private information we needed to correctly asses
9 and counsel on an asylum case, let alone go into detail on their fear of being
10 in Mexico. In one case that I met with in Madre Asunta, the woman was
11 afraid to speak about her fear of Mexico because part of her fear was based
12 on something that had happened in the shelter.

13 10. CBP does not permit lawyers to accompany their clients as they are
14 processed at the Port of Entry for their MPP hearings. JFSSD makes it a
15 priority to meet our clients on the south side of the border when it is time for
16 them to present for court. In one case, the hearing was moved because of a
17 motion I filed in court. My clients forgot their copies of the hearing notice at
18 home when they presented to the port the morning of their rescheduled
19 hearing and they were not on the list for court that day and so turned around.
20 I was able to send a photo of the hearing notice to our staff member on the
21 south side of the border which I firmly believe was the only reason my
22 clients were then processed by CBP to be taken to court that day.

23 11. In the courtroom, about 1 hour or 45 minutes before the hearing takes place
24 is, sadly, the best time to meet with our clients. It is the only time we
25 confidently feel we can have paperwork signed and if time, reviewed without
26 network connections or fear of transportation issues or long border wait
27 times, though it is not confidential in the least. Those meetings before court
28 happen in the small immigration courtrooms full of other MPP-affected

1 individuals and families and contracted ICE officers. Frequently children are
2 asleep on the floors, crying, or bouncing about pew to pew. ICE contract
3 officers are standing in the doorway watching and listening to everything.
4 The pressure to get through as much content as possible while whispering
5 just loud enough to be heard over the snoring of a child in your client's arms
6 but not loud enough for an ICE officer to hear what you're saying can only
7 be described as utter chaos. Every time I enter the courtroom looking for my
8 clients or to provide know your rights information and one-on-one
9 consultations, I have a nagging fear I am breaking my ethical obligations to
10 confidentiality considering there are microphones on in every courtroom
11 sending information who knows where, not to mention the ICE officers
12 overhearing something or very presence preventing something crucial from
13 being shared by my clients out of fear. These before court "consultation"
14 times are even worse on the morning docket because our clients are required
15 to present at the port of entry for court at 4 am in the morning. I constantly
16 feel afraid that my clients are unable to focus on my counsel after having
17 received no sleep. I am also always deeply concerned my clients or those I
18 am consulting are afraid to express their full true feelings and fears and
19 experiences because of who may overhear our conversation, thereby not just
20 limiting my ability to give good and complete advice, but likely negatively
21 shaping the future of those I am trying to help.

22 12. In practice, every client and person I've consulted with was unable to secure
23 a non-refoulement interview unless they expressed their fear of Mexico on
24 record before a judge. Most judges will respond to an affirmative statement
25 of fear of Mexico on record in court by telling the noncitizen they have no
26 control over whether they go back to Mexico or are interviewed by an
27 asylum officer. Some judges will ask DHS counsel what happens after an
28 affirmative statement of fear of return to Mexico is made and then allow the

1 government attorney to explain to the noncitizen that they will be scheduled
2 for a non-refoulment interview. The very first time I conducted a KYR
3 presentation in a courtroom (before judge Bither) the Judge held group
4 hearings of about 6 cases each (some individuals, some families). I had the
5 chance to meet with the parents and individuals before court and knew
6 everyone there had a fear of return to Mexico as expressed to me before
7 court. During the first group hearing, one person raised their hand and told
8 the Judge they were afraid to return to Mexico. The Judge said "I have
9 nothing to do with sending you to Mexico" and dismissed the inquiry. No
10 one else spoke up about their fear in any of the group hearings thereafter
11 because they saw it was fruitless. Following the hearings, I approached DHS
12 counsel to inform her everyone had expressed to me they have a fear. At
13 first, she said to tell the ICE detention officers. Thus, in front of DHS
14 counsel, I turned to the DHS ICE officer and said, everyone here has told me
15 they are afraid to return to Mexico, please schedule them for a non-
16 refoulment interview. The officer then said, "I have nothing to do with that,
17 they have to tell the judge". Fortunately, the DHS counsel overheard this
18 blatantly inaccurate statement and then followed up with the officers to get
19 everyone scheduled for their interview. If I had not been there to initiate that
20 exchange, no one there in court that day would have been scheduled for a
21 non-refoulment interview. On another day, I was in court for my own MPP
22 master calendar hearing when I witnessed an unrepresented Guatemalan
23 indigenous man with two young girls (about ages 5 and 6) stumble through
24 his hearing not understanding the proceedings. When my case was done, I
25 went to find the Guatemalan man who fortunately was being held in another
26 temporary overflow courtroom (a courtroom not in use – this is rare) instead
27 of in a back area I am unable to get to. There were ICE officers outside the
28 room, but I politely asked if I could speak with the Guatemalan man and an

1 officer who sees me there often said it was okay because I was "his"
2 attorney. I did not correct him so I was let through. There were 3 other
3 families in the courtroom, attempting to listen in to my every word. In
4 speaking with the Guatemalan man, I learned he was being extorted by a
5 Mexican police officer who was renting him and his girls a "room", where
6 the girls slept on the floor with seeping water from the nearby pig pen. The
7 girls were covered in bug bites head to toe, which I saw as they lifted up their
8 shirts. I explained to the man he could express to a U.S. officer that he was
9 afraid to go back, and he replied he had already but no non-refoulment
10 interview was scheduled. I went back to the courtroom and told DHS
11 counsel what I learned when court was on recess. DHS counsel's response:
12 "he has to tell the judge". I quoted to the attorney the DHS MPP
13 implementation memos, to which he responded "well, he has to say it on
14 record and he must express it himself." Fortunately, he agreed to help call
15 the case back on record before the judge even though it is completely
16 ridiculous to waste the judge's time when the DHS counsel has the power to
17 schedule the interview (though I would recommend getting it all on record
18 too, the point is that the statement does not have to be on record and anyone
19 who is pro se should not ever be required to develop their own record on this
20 issue especially when the policy memorandums do not require it). I ran to get
21 the officers to bring the man back and he expressed his fear of Mexico on
22 record. Afterwards, I followed up with him for a short 20 minutes before he
23 was escorted away to prepare him for the interview in the same overflow
24 courtroom as before. The same 3 families who were in the overflow
25 courtroom from before could overhear my conversation with the man. The
26 man and his children were found to have a positive reasonable fear of
27 Mexico and have since reunited with family in the United States.
28

1 13. After a hearing at which I have assisted my client in expressing fear of return
2 to Mexico to the judge (again, not required but in practice the only way to
3 concretely get a non-refoulment interview scheduled), my clients are then
4 taken into custody from the courtroom by contracted ICE guards. There have
5 been times when my clients are whisked away so fast that I am still taking
6 copies of their documents with my phone and I have had to beg the
7 contracted ICE officers to allow my clients to come back to the court room so
8 I could give them the paper work they must have to be received back into
9 Mexico (if our clients do not have a subsequent court date and documentation
10 to prove it, they risk deportation in Mexico or a DHS officer mistakenly
11 believing their court is over and processing them for deportation⁴).

12 Sometimes my clients have been taken to wait in a courtroom not in session
13 or in the busy lobby where I have had the chance to meet with them briefly
14 before they are taken to some other room while they await transport back to
15 the port of entry. This has happened only a handful of times, and I have been
16 in the middle of giving very important information about their non-
17 refoulment interview when clients have been taken by the contract ICE
18 officers to a location I am unable to access. I have been told they are being
19 taken to a room where they will be served a meal and then be prepared for
20 transport. When this has happened, if my clients are in the lobby I have been
21 forced to squat awkwardly in front of my clients who are sitting in a row of
22 tightly packed filled seats of people as I try to consult with them.

23 14. To adequately prepare my clients for a non-refoulment interview, I need time
24 and a private room, much like we are afforded when counseling our non-
25 MPP detained clients at a detention center. For example, at the Otay Mesa

26 ⁴ I do not personally know of a case where deportation was initiated in this type of
27 incident. However, I have spoken with other practitioners and advocates who have
28 knowledge of this happening and it is absolutely something within the realm of possibilities.

1 Detention Center ("OMDC"), I can show up at any time between the hours of
2 about 7 am and 9:30 pm and be given a private room to sit with my detained
3 client and discuss their case. In the past, I have sat in an OMDC legal
4 visitation room for about 2 hours preparing a detained client (non-MPP case)
5 for a Credible Fear Interview ("CFI"). Most of that time is spent helping the
6 client feel comfortable enough to share the details necessary for adequate
7 consultation and preparation.

8 15. After being scheduled for a non-refoulment interview, I have come to learn
9 that my clients are usually transported first to the port of entry and then to the
10 facility at which they were first processed for MPP, whether that be in
11 Calexico or a BP holding cell in Chula Vista. They are held there while they
12 wait for a non-refoulement interview. I only know this because my clients
13 have told me after completion of their non-refoulement interviews, when
14 they have been returned to Mexico or allowed in the United States after being
15 found to have the requisite fear.

16 16. My clients have reported being unable to communicate with anyone while
17 being held in CBP and/or BP custody. After being scheduled for an
18 interview, I have been in direct communication with family while waiting for
19 the results of the interview and none have reported being able to speak with
20 their loved ones while in custody. My clients have expressed to me they
21 were not allowed to make any phone calls to call me or their family after
22 asking to make calls. In fact, they were not allowed to have access to their
23 personal belongings. In one case, my clients, a mother and teenage son, were
24 released back into Mexico post negative reasonable fear finding and when
25 their things were returned to them, their personal cell phone battery was
26 dead. They were unable to make a phone call to tell family about their release
27 before CBP pushed them back into Mexico. The cell phone is how they were
28 able to purchase an Uber ride to the port of entry for court and how they

1 intended to travel back to their small apartment in Tijuana. Fortunately, it
2 was the middle of the day⁵ and they were able to find someone who let them
3 borrow their phone to make a call to family who scheduled an Uber ride.
4 I have never had the opportunity for private consultation with my clients
5 while they have been detained awaiting a non-*refoulement* interview.

6 17. Every client has reported that the detention conditions are severe. They are
7 cold and not provided adequate food and water. In the case of families, the
8 children, especially if they are adolescent males, are separated from their
9 mothers. I have 2 MPP cases consisting of a mother and teenage son, and
10 both reported being separated from one another while detained and both have
11 long-lasting trauma from the harm in home country that has been
12 compounded by the treatment while in direct physical DHS custody. One
13 mother and son pair were determined to have the requisite fear after a second
14 interview and are now in the United States. They were processed at the San
15 Ysidro Port of Entry where they initially presented. The other mother and
16 son pair have now had 2 non-*refoulement* interviews and each time were
17 processed at a BP holding facility somewhere near Tecate, California. They
18 were separated during each detention. They each suffer from documented
19 mental health conditions as well as physical health conditions. The teenage
20 son was even hospitalized for suicidal ideations during their second detention
21 in BP custody. I was refused access to them while in custody. At their 3rd
22 and 4th court hearings, they informed me they were still afraid to be in
23 Mexico but the mother said she was terrified she could lose her son if they
24 are detained by BP ever again and so declined to have a non-*refoulment*
25 interview again. Notably, they reported their non-*refoulment* interviews were
26 each only 30 minutes long. It is incomprehensible that a non-*refoulment*
27 interview could be just 30 minutes long, especially in this case. Given the

28 ⁵ We (my team) have had clients released into Mexico at night before.

1 nature of this case, and the fact that I have worked on a Mexican asylum case
2 with similar issues that won asylum from Mexico, I am confident that had I
3 been present (as I requested to be) the interview would have lasted longer
4 and facts would have surfaced to substantiate a reasonable fear finding. In
5 my experience, asylum officer-conducted credible fear interviews (CFIs) and
6 reasonable fear interviews (RFIs) (determinations based on fear of return to
7 home country) can take up to 3 hours and RFI interviews have the same
8 standard as a non-*refoulement* interview (in short, the noncitizen must meet
9 the definition of a refugee and the burden of proof is a more likely than not
10 standard). As well, I have met with clients for upwards of 2 hours before they
11 become comfortable to disclose the most important facts of their case or I
12 finally ask a question in a way that elicits the most important facts.
13 Furthermore, for a CFI or RFI interview, it takes about 10-15 minutes to
14 confirm biographical data and get through some of the procedural
15 requirements of these types of interviews. Therefore, a 30-minute interview
16 means that only about 15 minutes is spent in questioning for relevant factual
17 information necessary to determine life or death consequences of being
18 returned to Mexico.

19 18. In each of the 8 cases where I was or am the attorney of record, I have sent
20 correspondence to the Office of Chief Counsel, CBP, BP, and/or ICE
21 attempting to (1) know my clients' location, (2) speak with my clients while
22 in custody, (3) be present (telephonically or otherwise) for their non-
23 *refoulement* interview, and (4) be notified of the decision post-interview. In
24 all accounts I have been refused access, not through any direct refusal but
25 instead by having my communications go unanswered. I have not been able
26 to participate in a single non-*refoulement* interview.

27 19. In at least 2 family cases, after I did not hear from my clients for about 4
28 days, I sent a follow-up email to the above-listed DHS sub-agencies

1 suggesting it was time I contact Mexican authorities to file a missing
2 person's report. Only then did I receive a phone call from a CBP officer
3 informing me my clients were scheduled to be released into the United
4 States. I am still waiting for the FOIA results in one case to find out what
5 occurred in the interviews as I prepare for the defense of their removal
6 proceedings. I fear DHS counsel using statements from the interviews to
7 discredit my clients' testimony, a tactic frequently used in immigration
8 proceedings.

9 20. One of JFSSD's former Department of Justice fully accredited
10 representatives, Linda Feldman (she has since left JFSSD and is now
11 studying in Israel), was able to participate in one *non-refoulement* interview
12 that after her insistence was then scheduled for a follow-up interview with a
13 USCIS supervisor. At the time, I was her direct supervisor. She was called at
14 about 7:30 in the morning and happened to be in the office early preparing
15 for an afternoon court hearing. The interview lasted about 2 hours. At the
16 conclusion of the interview, Ms. Feldman stated that the officer missed
17 questions which would be the only way to find the required nexus to
18 government harm (government persecution *on account of* one of the five
19 protected grounds: race, religion, nationality, political opinion, and/or
20 membership in a particular social group). The officer told her she wasn't
21 allowed to talk. Shortly thereafter, a supervisor called again and conducted
22 a follow up nearly 3 hour interview. Ms. Feldman was nearly late for court
23 that afternoon, but her clients, an indigenous illiterate Guatemalan single
24 mother and domestic violence and rape survivor with 3 children, were found
25 to have the requisite fear and thereafter granted release into the United States.

26 21. My clients have waited in CBP and BP custody for as short as 1 day and as
27 long as 6 days for *non-refoulement* interview or post-interview processing.
28

1 22. The only paperwork my clients have been given post-interview is a letter
2 indicating simply they were found to not have a reasonable fear of Mexico.
3 Those who have been found to have the requisite fear, receive nothing. I am
4 still waiting on results from FOIA requests to find any paperwork regarding
5 what happened in at least 6 interviews. Therefore, I am only able to guess
6 about what happened or why the claims were unsuccessful. The clients I
7 spoke of earlier consisting of a mother and teenage son who passed their
8 second interview reported the second officer to be "nicer". The facts of their
9 case had minimally changed between the interviews.

10 23. In contrast to MPP non-*refoulement* interviews, attorneys are permitted to
11 both participate in and confidentially consult with detained clients (meaning,
12 those in traditional detention facilities located within the United States and
13 not detained as a product of being forced into the MPP program) awaiting
14 CFIs and RFIs.

15 24. In my experience, preparing clients for CFIs and RFIs is essential to their
16 success in the interviews. It is a complicated analysis that USCIS asylum
17 officers use to determine if someone has a requisite fear and oftentimes even
18 the tiniest detail or fact could make or break the determination of requisite
19 fear. As well, cultural influences or communication deficits may lead to
20 important facts not being divulged by a client if a question is not asked in an
21 explicit or even culturally sensitive way. Not to mention, an asylum officer
22 may be feeling tired after having conducted a number of interviews in one
23 day and begins to miss hearing or noting information or an asylum officer
24 accidentally skips asking an important question that would elicit the
25 information to exemplify the requisite fear. These are all reasons that
26 thorough preparation is key and attorney observation and intervention is
27 crucial.
28

1 25.Success in these interviews is largely influenced by adequate preparation.

2 Culture and trauma often play a large role in someone's ability to answer
3 questions effectively. As well as effective communication. For example, I've
4 been in interviews where an officer asks, "have you been harmed in the past"
5 and the client answers no, when I know the answer is yes. I've asked the
6 officer to clarify physical or mental or emotional harm and by doing so the
7 correct information was then elicited.

8 26.In my experience, being present during CFIs and RFIs and any interview
9 conducted with a U.S. immigration officer is essential because clients
10 oftentimes feel unsure and unsafe to express their experiences when they are
11 alone with an officer. I've had clients tell me they are afraid to talk to U.S.
12 officers because of the forceful way they have been treated in the past by
13 U.S. immigration officers. In those cases, my presence during interviews
14 with U.S. officers has helped my client to feel safe enough to express their
15 experiences. I have had a client tell me they distrust the officers because
16 they have never encountered a trustworthy person in uniform in their entire
17 life. In that case, my presence helped my client feel that I was providing
18 oversight of the officer's actions and thus creating a safer environment for
19 my client to express herself. And, I've had clients during interviews shut
20 down and be unable to communicate until I talk to them to remind them I am
21 there with them (these interviews are usually by phone).

22 27.Preparation and attorney observation and participation is also crucial to
23 clients' success in their subsequent removal proceedings because every
24 statement is recorded and used against clients in their removal proceedings
25 for credibility purposes. Preparing for the interview and practicing questions
26 is a way to prevent a client miscommunication that may lead to a fact being
27 mis-recorded and affecting credibility later.

28

1 28.I have participated in a number of CFIs previously and it has always been
2 apparent that my presence has ensured fair adjudication. As well, through a
3 closing summary statement I have been able to flag issues that were not
4 raised or make legal arguments identifying viable asylum claims.

5 29.As I see it, one of the biggest reasons we need to be present during the non-
6 *refoulement* interview is to provide surety to our clients. They are detained
7 while waiting for the interview and not informed of when the interview will
8 take place. By the time they have an interview, they could have not slept for
9 20 or more hours, for example, if they had to present for court at 4 am in the
10 morning or if the cold detention conditions were not conducive to sleeping.
11 Further, parents and children are frequently separated while detained so they
12 are traumatized not only for having gone through horrific conditions
13 oftentimes in Mexico but also for in that moment being sleep deprived and
14 separated from their loved ones with no way to communicate to the outside
15 world (the officers do not let them make any phone calls while detained
16 waiting for the interview). I have had clients tell me they asked to call me but
17 were not allowed. I have had clients tell me they asked to call family but they
18 were not allowed. Of course, I view it as absolute imperative that I be
19 present during any interview between my client and a USCIS or government
20 officer because there is a host of issues I can flag to prevent an incorrect
21 result and/or record.

22 30.In my experience, I have never been allowed access to my MPP clients when
23 they are in BP custody, not by phone or otherwise, not before, during, or after
24 the interview. In at least 4 cases (consisting of families), our clients were
25 scheduled for interviews during court and then our office did not see or hear
26 from them for nearly a week. After the 4th day of being unable to
27 communicate with our clients, I or my staff sent emails to CBP and DHS
28

1 counsel (again)⁶ informing them we were going to have to contact Mexican
2 authorities to file a missing person report because DHS did not confirm
3 whether our clients were still in custody or returned to Mexico. In 3 of those
4 cases a DHS officer responded, but only after we threatened to go to
5 Mexican authorities and the response was not by email but by a phone call
6 from an unknown number. In the other case, our clients were released into
7 Mexico that same day and called us from within Mexico.

8 31. It is completely inconceivable to me that we could be at a place in history
9 where I have to write a 16-page declaration about how I cannot access my
10 clients while in DHS custody when they are in the middle of removal
11 proceedings considering it is guaranteed by the U.S. constitution that they
12 have a right to an attorney while in removal proceedings.

13
14 I declare under penalty of perjury of the laws of California and the United States of
15 America that the foregoing statements are true and correct.

16
17 Executed this 28th day of October 2019 in San Diego, California.

18
19
20
21 
22 Leah L. Chavarria, Esq.

23
24
25
26 ⁶ It is our practice to email CBP and DHS counsel immediately after court with our
27 signed form G-28 to evidence our representation of our clients and to request access
28 to our clients before, during, and after the interviews. I have never received a
response to this attempt at initial communication with DHS officers and attorneys
and to my knowledge no one on my staff has either.

EXHIBIT 12

DECLARATION OF VANESSA DOJAQUEZ-TORRES

I, Vanessa Dojaquez-Torres hereby declare as follows:

1. I have personal knowledge of the facts set forth below, and if called to testify to the same, I could and would do so competently.
2. I am a Department of Justice Accredited Representative and serve as the Immigration Litigation Coordinator for Jewish Family Service of San Diego (JFS). I have worked at JFS since October 16, 2017. In that capacity, I represent individuals seeking asylum before the Executive Office of Immigration Review. I regularly represent both detained and non-detained individuals seeking various forms of immigration relief.
3. As an organization, JFS has conducted immigration legal intakes with about 350 individuals placed in the MPP program. Each week, our removal defense team discusses each case that received an intake including particular details provided concerning the administration of the MPP program, non-refoulment interviews, and conditions in Mexico.
4. I have 8 years of experience working on immigration and human rights issues. I previously served as a Program Manager for the Immigration program at the International Rescue Committee of San Diego assisting refugees and asylees with their affirmative immigration needs. I additionally served as a law clerk with Casa Cornelia Law Center where I worked in their Asylum Program offering *pro bono* legal representation to detained and non-detained asylum seekers.
5. I currently represent an individual who was placed in the "Migrant Protection Protocols" ("MPP"), also know as the "Remain in Mexico" policy. Such cases are heard in the San Diego Immigration Court. My client had a court hearing at the San Diego Immigration Court on September 27, 2019. During

1 that hearing, my client expressed a a fear of return to Mexico. The
2 Department of Homeland Security (DHS) referred her to a non-refoulement
3 Interview. Upon her initial entrance to the United States, she was not asked
4 whether she had a fear of returning to Mexico before being placed into the
5 MPP program.

- 6 6. JFSSD also runs an MPP phone line (a WhatsApp number dedicated to MPP
7 cases only). The WhatsApp number is on the Executive Office of
8 Immigration Review's free legal services provider list. We provide, in the
9 least, a one hour consultation to anyone who contacts us via the MPP-
10 dedicated line and instruct them to watch a short video we published online
11 before the consultation to help better inform them of the MPP program so we
12 can spend the hour helping them understand their case.
- 13 7. When someone is enrolled into the MPP by the Department of Homeland
14 Security's sub agencies' Customs and Border Protection ("CBP") and Border
15 Patrol ("BP"), its officers do not inquire as to whether anyone they are about
16 to enroll in MPP has a fear of return to Mexico. The officers all across the
17 U.S.-Mexico border process the individuals and families, give them some
18 paperwork, and push them back into Mexico, sometimes at a different
19 location than where they were apprehended (some of our cases were
20 apprehended by CBP or BP in Texas and then were transported to Tijuana
21 and released there) quickly explaining that they should return for court in a
22 matter of days, weeks, or months and sometimes with no explanation at all
23 but rather a "read the paperwork" assuming they are able to read.
- 24 8. Most of our clients initially contacted us through our WhatsApp MPP-
25 dedicated number. We have retained a few cases after providing know your
26 rights ("KYR") presentations at the San Diego Immigration Court for those
27 in MPP (a program that is not officially recognized by the EOIR or
28 Immigration and Customs Enforcement, the DHS agency tasked with

1 facilitating transportation and security to and from court) and one was a
2 direct referral from the Federal Defenders.

- 3 9. Most of our cases have been retained on the day of their first court hearing.
4 In most cases, we had difficulties finding a safe and private location in
5 Mexico to sign paperwork and in other instances we were unsure until the
6 day of court whether they would have a case in court at all. Meaning, in
7 some cases the Notice to Appear (“NTA”) or charging document was not
8 filed with the immigration court until the day before their first court hearing.
9 Much of our funding is predicated on their being a removal case to begin
10 with, so we could not retain a case until we know the removal proceedings
11 have actually been initiated, something only DHS has the power to do.
- 12 10. In my experience, the DHS places individuals into the MPP program and
13 forces them to return to Mexico without doing a screening about their fear to
14 return to Mexico.
- 15 11. It is extremely difficult for individuals to receive private consultations while
16 in Mexico. Most people in the program are not equipped with the resources
17 to rent apartments or private spaces. This creates a difficulty in finding
18 meeting spaces let alone access to internet or a printer. As asylum seekers,
19 many stories include details of rape, torture, and other violence. The lack of
20 privacy makes it difficult for attorneys to communicate with their clients
21 when confidentiality cannot be guaranteed.
- 22 12. During initial consultations in Mexico, individuals are generally still
23 experiencing the stress of their journey while they are excluded from entering
24 the United States to pursue asylum. The continuing forced instability greatly
25 increases the amount of basic information that needs to be provided before
26 even addressing the individual’s claim for asylum. Furthermore, due to the
27 amount of information individuals are forced to absorb, advising on a non-
28 refolement interview would be virtually ineffective. In our experience,

1 individuals are more worried about finding a safe place to sleep, medical
2 care, and avoiding danger and violence in Mexico. It is our practice to advise
3 individuals that if they fear returning to Mexico that they tell the judge or
4 DHS officer they come into contact with. However, many individuals are
5 traumatized or too afraid to request (or insist) an interview unless they are
6 directly asked. Especially for individuals who do not have an attorney, they
7 see as the judge and government attorneys as the only ones that could help
8 them and therefore they fear upsetting anyone working for the U.S.
9 government.

10 13. Additionally, individuals frequently complain that they are never provided an
11 opportunity to express their fear because of the speed and manner in which
12 interviews at the port of entry and some court hearings are conducted.

13 Individuals are arriving predominantly from central America and are
14 unaware of what rights they may have in the United States. Often times, even
15 if we are able to advise individuals on their rights, they are too traumatized
16 and/or afraid to meaningfully absorb the information let alone push back
17 against a judge of government attorney to invoke them.

18 14. As a legal representative, I did not have access to my client until I arrive to
19 the immigration court. I only had about 30 minutes to speak with my most
20 recent client. This all happened as we were awaiting for the court hearing.

21 15. During immigration court hearings on the MPP docket, I am only able to talk
22 with my client shortly before the hearing, in the presence of ICE officers,
23 detention guards, and other detainees, etc. I am often questioned by detention
24 officers before I am allowed to approach my client.

25 16. I am currently representing one individual who was processed through the
26 MPP program. My client's initial intake was conducted at the Otay Mesa
27 Detention Center where my client was being held in the custody of the U.S.
28 Marshals. On September 17, 2019, I was informed by CBP that she was

1 being transported to the San Ysidro port of entry for further processing by
2 DHS. We were given the public CBP website for contact information to
3 follow on her location and detention status.

4 17. On September 18th, 2019 I contacted the CBP at the San Ysidro port of entry
5 to inquire about my client's whereabouts. I was told by the CBP officer to
6 send my inquiry to sysaeu@cbp.dhs.gov with a Form G-28, Entry of
7 Appearance as an Attorney of Accredited Representative. My office followed
8 these instructions and submitted a formal inquiry. After no reply, our office
9 sent a follow up inquiry on September 23, 2019.

10 18. On September 24th, 2019, I sent another inquiry email to the same email
11 address I was previously given, and included other contact addresses for the
12 port of entry with CBP, public access address for ICE, and ICE Chief
13 Counsel Jason Aguilar. Additionally, on this day I left a voicemail after
14 calling the public phone number for the San Ysidro port of entry at 10:33am
15 requesting follow up on my inquiry.

16 19. On September 25, 2019, Senior Director of Immigration Services at JFS,
17 Kate Clark sent another email to the CBP Port Director request an update on
18 the detention status from our client.

19 20. Our client was scheduled for an immigration court hearing on September 27,
20 2019 at 1:00pm and we had no information on her whereabouts. At this point
21 we did not know if our client was still in detention at the port of entry
22 (despite the length of time that meant she would have been detained there) or
23 returned to Mexico under the MPP program. Our fear was that if she was
24 returned to Mexico (due to dangers she had encountered during her time in
25 Mexico before) she was unable to communicate with our office despite
26 having the contact information for several JFS employees. Based on the
27 details she had previously provided about her time in Mexico, we were
28

1 extremely worried about her being at substantial risk of being trafficked or
2 other similar harm.

3 21. On September 25, 2019, in a desperate attempt to find our client and having
4 received absolutely no contact from DHS confirming whether or not our
5 client was dead or alive, our office reached out Mexican officials at Centro
6 de Informacion y Asistencia a Mexicanos (CIAM) to submit a missing
7 person's inquiry. Mexican officials confirmed they had "sensitive
8 information" about our client but could not provide any more details.

9 22. Finally at approximately 11:53am on September 27, Kate Clark, Senior
10 Director of Immigration Services, received a phone call from the Port
11 Director confirming our client had been in detention at the San Ysidro port of
12 entry the entire time and that she was going to be present in court at 1:00pm.

13 23. Minutes before the start of our client's court hearing on September 27, 2019,
14 we were able to talk to our client about how she was detained at the San
15 Ysidro POE for the previous 10 days. She had stated that she requested
16 several times to contact her legal representation but was never allowed to.

17 24. When Immigration and Customs Enforcement counsel arrived to the
18 courtroom, she stated my client had been waiting for bed space to become
19 available at the Otay Mesa detention center and asked if I had the same
20 understanding. I informed counsel that I had been denied all communications
21 and updates about the whereabouts of my client.

22 25. At the court hearing, I submitted evidence to Immigration Judge Bartolomei
23 documenting my efforts to get information about the whereabouts of my
24 client and immediately requested a non-refoulment interview. At this time,
25 the IJ and DHS attorney agreed that she would be referred for a non-
26 refoulment interview. I was not provided information about when or where
27 the interview would be, or whether I would be allowed to be present. All I
28 was told is that she would be transported back to the port of entry

1 26. In the days leading up to the non-refoulement interview, I had no way to
2 communicate with my client. I was given no information on where she was
3 or when she would be moved. On October 2, 2019, I reached out again to
4 CBP and to DHS counsel on the case. I received no response once again from
5 CBP about where my client was and whether she was to be placed back in
6 Mexico. On October 3, 2019 I received word from DHS counsel that my
7 client had been transferred to the Otay Mesa Detention Center. Despite
8 having submitted all proper paperwork to be the legal representative of my
9 client, I was never informed of when my client's non-refoulment interview
10 took place and was not provided the opportunity to be present or even
11 properly prepare my client for the interview.

12 27. We are still unsure of which day the interview actually happened because the
13 client was unable to recall by the time we were able to speak with her at the
14 Otay Mesa Detention Center. Up until that point, we had no means of
15 communicating with our client.

16 28. My client was never given any paperwork about what happened in the non-
17 *refoulement* interview.

18 29. Attorneys are permitted to both participate in and confidentially consult with
19 detained clients awaiting credible fear interviews (CFIs) and reasonable fear
20 interviews (RFIs).

21 30. The stakes are incredibly high for individuals facing non-refoulement
22 interviews. For many individuals, their lives are in danger in Mexico. After
23 conducting and reviewing several intakes for individuals in Mexico, it is
24 clear that the MPP program places thousands of people in extreme danger.
25 Many of the gangs people flee in central America operate freely in Mexico,
26 and individuals often recognize the same persecutors from their home
27 countries. We have heard countless stories of women being trafficked and
28 kidnapped, attempted kidnapping of children and other horrific stories. The

majority of people feel they will not receive help from Mexican law enforcement or are afraid to report to law enforcement due to discrimination and possible connections of law enforcement with criminal organizations.

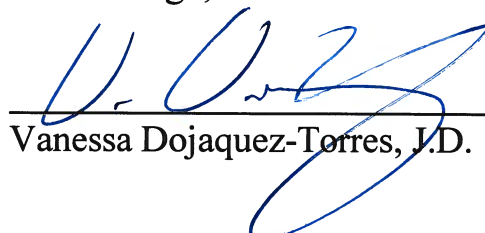
The shelters in Tijuana, Baja California, Mexico are overcrowded and we have heard complaints about security guards at the shelters abusing women.

31. It is also nearly impossible to find legal representation while in the program and the continued stress placed on these individuals while in MPP denies them any meaningful chance to request asylum in the U.S. justice system.

32. Based on my experience, the MPP program forces vulnerable men, women, and children into a situation where they are forced to choose between living in dangerous and squalid conditions (placing their health, safety, and family members at risk) and applying for asylum with no meaningful access to counsel.

I declare under penalty of perjury of the laws of California and the United States of America that the foregoing statements are true and correct.

Executed this 23 day of October 2019 in San Diego, California.



Vanessa Dojaquez-Torres, J.D.

EXHIBIT 13

DECLARATION OF MARGARET CARGIOLI

I, Margaret Cargioli, hereby declare as follows:

1. I have personal knowledge of the facts set forth below, and if called to testify to the same, I could and would do so competently.
2. I am Managing Attorney at Immigrant Defenders Law Center. I have worked at Immigrant Defenders Law Center since April 2019. In that capacity, I represent Respondents in their removal proceedings. I am representing Respondents who have been placed in the "Migrant Protection Protocols" ("MPP") or "Remain in Mexico" program with matters before the San Diego Immigration Court.
3. I have about 7 years of experience working on immigration and human rights issues. As an immigration attorney I have been part of the Legal Orientation Program, where I have conducted know-your-rights presentations to detained Respondents in removal proceedings, including providing information on asylum law. The Legal Orientation Program is managed by the Executive Office of Immigration Review at the Department of Justice.
4. I have represented or currently represent 25 individuals who have been required to go through, or are currently going through, MPP. Of those, 17 have had a fear of return to Mexico and sought a non-refoulement hearing (one of my clients has had two non-refoulement hearings). I requested to be telephonically present for 7 of my clients' interviews (two of whom are children). I was permitted to be telephonically present for only one non-refoulement hearing. Of the 17, 10 of the Respondents had requested a non-refoulement interview prior to retaining my legal services. In one of the cases I am now handling my colleague had previously represented the Respondent during the initial stage of his immigration case. At that time my colleague

1 had requested to be present at Respondent's non-refoulement hearing but had
2 not been permitted to be present.

- 3 5. In my experience, the Department of Homeland Security (DHS) places
4 individuals into the MPP program without asking about a fear of return to
5 Mexico. DHS forces them to return to Mexico after an initial short screening.
6 I have never had a client tell me that, during this initial processing, an officer
7 specifically asked about whether they had a fear of return to Mexico.
- 8 6. Once placed into MPP, an officer from U.S. Customs and Border Protection
9 or Border Patrol tells the individual to return to the border. They give the
10 individual a document stating he/she must be present at the San Ysidro port
11 of entry several weeks later for his/her first immigration court hearing. Many
12 individuals in MPP with whom I have spoken did not understand why they
13 were being sent back to Mexico.
- 14 7. Some of my clients have retained me from meeting me at an asylum clinic
15 where I had worked. Some individuals have asked me to take their case after
16 they observed me in San Diego Immigration Court representing another
17 client. Other cases have been referred to us from other legal organizations
18 who conduct MPP work. In addition, occasionally I have received calls from
19 individuals in MPP who have received my telephone number from one of my
20 clients.
- 21 8. Some of my clients were only able to retain me a few weeks prior to the
22 filing deadline for their asylum petitions.
- 23 9. In the days leading up to the non-refoulement interview and prior to being in
24 CBP custody, I am sometimes not able to speak with my clients because they
25 do not have enough money to take cell phone calls. Most of my clients
26 mainly send messages on WhatsApp but cannot always talk on their cell
27 phones.
- 28

1 10. It is difficult to find a safe space in Mexico with sufficient privacy to meet
2 with clients and prepare for hearings. Many clients are living in unsafe
3 conditions and it would not be prudent for me to meet with them where they
4 reside. Spaces which have been offered to me by other non-profit legal
5 organizations conducting MPP work are often busy with other attorneys and
6 staff trying to meet their clients as well. As of late, I have used private co-
7 working space offices in Tijuana to meet my clients who reside near Tijuana.
8 This past Friday, October 11, 2019, a client of Immigrant Defender's Law
9 Center entered the co-working space office to meet with my paralegal,
10 Andres Pena. As the client approached Andres and I, a security guard from
11 the office space came to ask us if the man was with us. We told the security
12 guard he was there to meet us. It confirmed my concern that some of our
13 clients would be harassed at co-working space offices.

14 11. Regardless of having a space where I can meet with clients in Mexico,
15 difficulties still arise regarding adequately preparing my clients for their
16 non-refoulement interviews. Often, days have passed between my last
17 in-person meeting with my client in Mexico and when I see them in
18 immigration court on the day of their hearing. As my clients could have been
19 harmed or threatened in Mexico since the last time I met with them in person,
20 I must inquire from my clients whether anything has occurred causing them
21 fear to return to Mexico. Given that my clients are constantly observed in
22 court by CBP and ICE officers, I must ask this of my clients without
23 sufficient privacy. The lack of privacy makes it uncomfortable for my clients
24 to discuss intimate details of their experience in Mexico. In addition, the
25 lack of privacy makes it difficult for me to prepare my client for the non-
26 refoulement interview. Furthermore, the presence of CBP and ICE officers
27 watching over them as they discuss their personal matters can be deemed by
28 many asylum seekers as a form of intimidation.

1 12.CBP does not permit lawyers to accompany their clients while they are being
2 processed at the Port of Entry for their MPP hearings.

3 13.MPP Respondents are permitted to request a non-refoulement interview at a
4 Port of Entry. However, it is challenging to have a client processed for a
5 non-refoulement fear interview at a Port of Entry.

6 14.On one occasion I presented two clients, a mother and daughter, to the San
7 Ysidro Port of Entry to request a non-refoulement fear interview and parole.
8 My clients were processed for the interview only after having sent an email
9 message to CBP giving prior notice and with the support of UNHCR.
10 Nonetheless, when I arrived at the Port of Entry, I had to ask to speak to a
11 supervisor in order to have my clients processed. Given the difficulty of
12 having a CBP officer agree to process an individual in MPP for a
13 non-refoulement interview, it is in immigration court that I usually consult
14 with my clients in MPP about requesting a non-refoulement interview. I feel
15 more secure requesting an interview in court because my request can be
16 recorded on the record. Whereas, at the Port of Entry when discussing a
17 matter with a border patrol agent there is no evidence of my request given
18 that there is no formal way for me to log my request except for an email
19 message. I normally do not receive a response to my email requests
20 regarding non-refoulement interview requests. The day prior to an
21 immigration court hearing, I usually send an email message to CBP advising
22 them that I will be requesting a non-refoulement interview the following day
23 in court. On the day of my client's hearing I sometimes am told by DHS
24 counsel that they know of my request.

25 15.During immigration court hearings on the MPP docket, I am only able to talk
26 with my clients shortly before the hearing, in the presence of immigration
27 judges, immigration court staff, ICE officers, CBP officers, immigration
28

1 court guards, and/or other MPP Respondents. There is no opportunity to
2 consult privately with my clients on the day of their hearings.

3 16. After a hearing at which I have assisted my clients in expressing fear of
4 return to Mexico, I can sometimes talk with my clients briefly in the presence
5 of immigration judges, immigration court staff, ICE officers, CBP officers,
6 immigration court guards, and/or other MPP Respondents. My clients are
7 then taken into custody from the courtroom by CBP. I am not told when my
8 client will be interviewed or the length of time my client will be held in an
9 extremely cold holding station.

10 17. I have come to learn that my clients are usually transported to a very cold
11 holding station for several days while they wait for a non-refoulement
12 interview. I only know this because my clients have told me after completion
13 of their non-refoulement interviews, when they have been returned to
14 Mexico.

15 18. Several individuals who are in MPP have told me they are afraid to return to
16 Mexico but do not want to request a non-refoulement interview due to their
17 children having become ill the first time they were in a CBP/BP holding
18 station. Several MPP clients of Immigrant Defenders Law Center have told
19 me they do not want to expose their children to being separated from them
20 while the interview is being conducted of the parent(s). They have also told
21 me they are very concerned about their children's health if exposed to the
22 elements of these holding stations.

23 19. It is very difficult to know exactly where my clients are when they are being
24 processed for non-refoulement interviews. My clients have told me they do
25 not have access to their cell phones. Furthermore, they are not allowed to
26 make any phone calls. I have always been informed about my clients having
27 been returned back to Mexico when my client calls me from their cell phone
28 after having been sent back to Mexico.

1 20. My clients have waited in CBP/BP custody for non-refoulement interviews
2 for about 2-4 days.

3 21. I have only been permitted to attend one non-refoulement interview. It was
4 on or about June 1, 2019. I was told I did not have a right to be present at the
5 interview and was only being allowed to be present as a courtesy. The call
6 was disconnected prior to the completion of the interview. The asylum
7 officer did not call me until after the interview was done, and my client was
8 no longer on the line.

9 22. I have made requests to be present at my clients' interviews by sending an
10 email message to ZAR-MPP@uscis.dhs.gov and ZAR-APSO.ZAR-
11 APSO@uscis.dhs.gov.

12 23. I sent my requests to these e-mail addresses because I had been directed to
13 do so by DHS. On May 29, 2019, I sent an e-mail message to the following
14 individuals at DHS: Crystal Y. Powless at Crystal.Y.Powless@uscis.dhs.gov;
15 Graham R Doeren at Graham.R.Doeren@uscis.dhs.gov; Mariza Marin at
16 MARIZA.MARIN@cbp.dhs.gov; and the San Ysidro border patrol station at
17 sysaeu@cbp.dhs.gov.

18 24. On May 30, 2019, I received a response to my e-mail message from ZAR-
19 MPP <ZAR-MPP@uscis.dhs.gov> stating: "Thank you for your email, Ms.
20 Cargioli. For the future, please be advised that the most efficient way to your
21 email to be seen timely by USCIS staff is for it to be sent to ZAR-
22 MPP@uscis.dhs.gov and ZAR-APSO.ZAR-APSO@uscis.dhs.gov. Thank
23 you, and have a good day."

24 25. During immigration court proceedings I also make requests to be permitted
25 to be present during the non-refoulement interviews.

26 26. I have never had the opportunity for private consultation with my clients
27 while they have been detained awaiting a non-refoulement interview.
28

1 27. In the only matter where I was allowed to be telephonically present during
2 the non-refoulement interview the asylum officer who conducted the
3 interview told me the matter would likely not be approved but he would send
4 an email to CBP about my parole request as I had made a non-refoulement
5 interview request and a parole request. The following day my client called
6 me after being sent back to Mexico. The same day I contacted the asylum
7 officer asking for the decision of the non-refoulement interview. The asylum
8 officer then asked me if my client had been sent back to Mexico and I told
9 him she had been sent back to Mexico. He seemed to be in disbelief she was
10 sent back without having been given a response from CBP about his inquiry
11 into my parole request.

12 28. The asylum officer told me that there are no written decisions in these cases.
13 My clients have never been given any paperwork about what happened in the
14 non-refoulement interviews. I have requested records for some of my clients
15 via a Freedom of Information Act request but I have not received a response
16 as of yet.

17 29. Attorneys are permitted to both participate in and confidentially consult with
18 detained clients awaiting credible fear interviews (CFIs) and reasonable fear
19 interviews (RFIs).

20 30. In my experience, preparing clients for CFIs and RFIs is essential to try to
21 make sure clients understand the questions the asylum officers will ask. It is
22 also vital because for CFI and RFI interviews attorneys are preparing
23 individuals from other countries who may not be familiar with our norms
24 about the nature of the immigration process and types of topics the asylum
25 officer will discuss. It is also important to explain to clients that they must
26 focus on the most relevant facts pertaining to their case.

27 31. In my experience, being present during CFIs and RFIs is also essential
28 because at times certain questions can be confusing to clients. In helping

1 clients prepare for these interviews an attorney can explain the purpose
2 behind the questions and clarify the context of certain aspects of the inquiry.

3 32. Many times asylum seekers are afraid to relay important details of
4 particularly sensitive topics. When an asylum seeker has an attorney
5 representing them before a government official, it makes the asylum seeker
6 more comfortable and less intimidated by the process.

7 33. Also, I have also found at times there may be problems understanding an
8 interpreter. An attorney who speaks the same foreign language as their client
9 is an important asset in safeguarding due process rights.

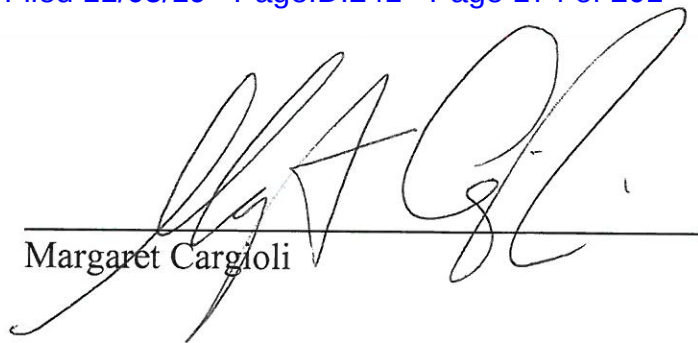
10 34. On August 30, 2019, I was able to represent a client during her (transgender
11 woman) CFI interview while detained at Otay Mesa Detention Center. There
12 was an instance where the interpreter misheard what my client had stated and
13 it changed the meaning of my client's statement. It is difficult for my client
14 to talk about the abuse she has suffered as a transgender woman. I believe
15 she was able to discuss sensitive details of her story because I was able to be
16 present with her during the interview to let her know it was not only fine to
17 share intimate details but extremely important to share very personal, and
18 often painful, experiences.

19 35. The purpose of the non-refoulement interview is to ensure asylum seekers
20 are not harmed, raped, murdered, or tortured. I believe having an attorney
21 present during the non-refoulement interview is vital to ensure asylum
22 seekers are safe.

23
24 I declare under penalty of perjury of the laws of California and the United States of
25 America that the foregoing statements are true and correct.

26
27 Executed this 22nd day of October 2019 in San Diego, California.
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Margaret Cargioli

A handwritten signature in black ink, appearing to read 'Margaret Cargioli', is written over a horizontal line. The signature is stylized with large, flowing loops.

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EXHIBIT 14

DECLARATION OF SIOBHAN MARIE WALDRON

I, Siobhan Marie Waldron, hereby declare as follows:

1. I have personal knowledge of the facts set forth below, and if called to testify to the same, I could and would do so competently.
2. I am a Managing Attorney at Immigrant Legal Defense in Oakland, California. I recently co-founded Immigrant Legal Defense with six other attorneys, and have worked there since August 26, 2019. In that capacity, I represent individuals pro bono in removal proceedings, including detained individuals and individuals in the “Migrant Protection Protocols” (“MPP”) or “Remain in Mexico” program.
3. I have over seven years of experience working on immigration and human rights issues. I specialize in detained removal defense. Since 2014, I have served as appointed counsel for detained respondents who have been found incompetent to represent themselves due to severe and persistent mental health issues. Prior to co-founding Immigrant Legal Defense, I was Managing Attorney of the detention program at Centro Legal de la Raza in Oakland, California. There, I managed and supervised monthly visits to detention centers and primarily represented and provided pro se assistance to individuals in ICE custody.
4. I currently represent 4 individuals pro bono who have been required to go through, or are currently going through, the “Migrant Protection Protocols” (“MPP”) or “Remain in Mexico” program in San Diego immigration court.
5. Of those, one has sought a non-refoulement hearing based on a fear of return to Mexico. Despite informing officers of her fear to return to Mexico during her initial screening by the Department of Homeland Security (“DHS”) on September 18-19, 2019, she was not given a non-refoulement interview, and instead was placed into MPP, forced to return to Mexico, and provided a

1 paper that informed her to return to the border and present at the San Ysidro
2 port of entry on October 3, 2019 for her first immigration court hearing.

- 3 6. On September 23, 2019, I presented with my client at the San Ysidro,
4 California port of entry and my client and I requested that she receive a non-
5 refoulement interview immediately. She was allowed into the United States
6 by DHS officials at the border. My client had my phone number and we had
7 planned for her to contact me immediately upon release from DHS custody.
- 8 7. I did not hear anything from my client after she was taken into custody on
9 September 23, 2019 and on the morning of September 24, 2019, I contacted
10 U.S. Customs and Border Protection at the San Ysidro, California port of
11 entry by calling (619) 690-8888. It was extremely difficult to obtain
12 information from Customs and Border Protection (“CBP”) officials.
13 Initially, the CBP officials at the port of entry insisted that I was calling the
14 wrong agency, and that I needed to call the officers “in green uniforms” who
15 are referred to as “Customs and Border Patrol.” I insisted that I last saw her
16 with CBP officials at the port of entry in blue uniforms and asked them to
17 please explain why I would need to speak to “Customs and Border Patrol.”
18 A coherent explanation was not provided, and my phone call was transferred
19 and the official(s) I spoke to informed me that I needed to call the port of
20 entry.
- 21 8. I called the port of entry back, and despite providing an A number and name
22 for my client, I was informed that she was not in CBP custody, and that she
23 hadn’t passed her non-refoulement interview. I insisted on being provided
24 information about when and where she was released back into Mexico, since
25 I still had not heard from her.
- 26 9. After various phone calls, I was informed that my client actually was in their
27 custody at the port of entry, had not passed the non-refoulement interview,
28 and would be returned to Mexico. I asked for information about when and

1 where she would be released back into Mexico, and I was told I would
 2 receive a call back. I never received a call back. Eventually, at 9:28 a.m. on
 3 September 25, 2019, my client contacted me and told me she was just
 4 released into Tijuana.

5 10. My client informed me she was held in the *hielera* and the interview was
 6 conducted on September 23, 2019 via telephone. She was never informed of
 7 the decision of the Asylum Office after her non-refoulement interview, nor
 8 was she given any piece of paper concerning the decision. Upon release back
 9 into Mexico on September 25, 2019, she was only provided a sheet of paper
 10 informing her to report back to the San Ysidro port of entry on October 3,
 11 2019 for her next hearing.

12 11. On October 3, 2019, my client presented herself at the San Ysidro port of
 13 entry for her master calendar hearing that afternoon. I emailed the following
 14 email addresses, with signed G-28s, requesting a non-refoulement interview
 15 on my client's behalf: jason.b.aguilar@ice.dhs.gov (Chief Counsel, Office of
 16 the Principal Legal Advisor, San Diego, Immigration and Customs
 17 Enforcement; snd.duty.attorney@ice.dhs.gov (Duty Attorney for Office of
 18 the Principal Legal Advisor, San Diego, Immigration and Customs
 19 Enforcement); sysaeu@cbp.dhs.gov (Customs and Border Protection
 20 Admissibility Enforcement Unit email address for San Ysidro port of entry),
 21 mariza.marin@cbp.dhs.gov (CBP Watch Commander at San Ysidro port of
 22 entry); zar-mpp@uscis.dhs.gov (Los Angeles Asylum Office email address
 23 for MPP-specific inquiries); Losangelesasylum@uscis.dhs.gov (Los Angeles
 24 Asylum Office email address).

25 12. Mr. Jason Aguilar responded to the email, copying the local ICE OCC San
 26 Diego Duty Attorney email address (above) stating, "Please be sure to raise
 27 this issue in front of the IJ when you appear this afternoon. That will ensure
 28 the interview takes place."

1 13. I responded and informed him that I did not have Form EOIR-28 on file and
2 would not be appearing. I explained that because my client had requested a
3 nonrefoulement interview, DHS was obligated to ensure that the interview
4 took place, and that there is no requirement to raise the issue in front of the
5 Immigration Judge.

6 14. Despite being on clear notice of my client's fear of return to Mexico, my
7 client was returned to Tijuana the same day without being given a non-
8 refoulement interview. Nobody else responded to my emails.

9 15. On October 3, 2019, I had not entered Form EOIR-28 and was unable to
10 attend her hearing.

11 16. Overall, in my experience, the Department of Homeland Security places
12 individuals into the MPP program and forces them to return to Mexico after
13 an initial screening. I have never had a client tell me that, during this initial
14 processing, an officer asked about whether they had a fear of return to
15 Mexico.

16 17. When MPP respondents report for hearings, CBP does not permit lawyers to
17 accompany their clients as they are processed at the Port of Entry for their
18 MPP hearings and then transported to the Immigration Court in San Diego by
19 ICE ERO agents.

20 18. For 1:00 p.m. hearings, MPP respondents usually arrive at the court around
21 12:00 noon. There is absolutely no ability to meet with clients in a private
22 space. I have been permitted to speak with my clients in the courtroom,
23 where there are other MPP respondents present, court staff, and ICE ERO
24 agents.

25 19. In order to have private conversations with my client, I must travel to Mexico
26 and rent housing where we can have private attorney-client meetings. I have
27 irregular phone contact with my MPP clients while they are in Mexico
28 because clients have limited financial means to be able to purchase cell

1 phones and service plans. Additionally, there is unreliable cell phone service
2 and access to Wifi.

3 20. When meeting with clients in Mexico, we must screen clients for relief,
4 prepare applications for relief, and prepare for hearings. Because time is
5 limited, I also have to advise and help prepare the client for non-refoulement
6 interviews. It is a substantial amount of information to cover, and clients
7 have great difficulty absorbing, processing, and retaining the large amount of
8 information. For these reasons, it is imperative to meet with clients multiple
9 times to prepare them for hearings and non-refoulement interviews.

10 21. Through conversations with other attorneys who represent MPP respondents
11 and with pro se MPP respondents that I do not represent, I have come to learn
12 that after expressing a fear in Immigration Court in San Diego, MPP
13 respondents are usually transported back to the port of entry and are held
14 there while they wait for a non-refoulement interview. This information is
15 not provided to MPP respondents in court or their counsel by DHS officials.
16 I have been present at various master calendar hearing dockets where MPP
17 respondents and counsel on their behalf have expressed a fear of return to
18 Mexico.

19 22. After hearings in the United States, I always travel back into Mexico to await
20 my clients' release back into Mexico. The time that MPP respondents are
21 released back into Tijuana varies drastically – by hours.

22 23. On one occasion, one of my clients had not been released back into Mexico,
23 so a colleague and I went to inquire with CBP officials at the San Ysidro,
24 California port of entry. I provided a signed Form G-28, explained that my
25 client was in the MPP program and attended his master calendar hearing
26 earlier that day, but we were unable to locate him. We asked if they could
27 provide information about his current location, as he was in their custody or
28 recently released from their custody. Shockingly, an officer repeatedly asked

1 me if my client was “crazy.” When I explained that I found his questioning
2 confusing and inappropriate, the CBP officer gave me contact information
3 for the San Diego Police Department to make a missing persons report. I
4 again explained that he was in the U.S. pursuant to the MPP program, and in
5 the custody of DHS from the moment he was taken into their custody at the
6 San Ysidro port of entry. He refused me to provide me any information
7 about my client’s whereabouts or even confirm whether or not he was in
8 CBP custody. Fortunately, we were able to locate him in Mexico later.

9 24. Attorneys are permitted to both participate in and confidentially consult with
10 detained clients awaiting credible fear interviews (CFIs) and reasonable fear
11 interviews (RFIs). I personally have attended RFIs and CFIs both via
12 telephone and in person.

13 25. In my experience, preparing clients for CFIs and RFIs is absolutely essential
14 to help clients understand the purpose of the interview and the legal standard
15 used to adjudicate their claims. Almost every single person I have prepared
16 for a CFI or RFI has solely wanted to focus on the depth and severity of the
17 harm they have experienced, and has an extremely difficult time
18 understanding that there are many more legally relevant facts they must
19 effectively communicate to the interviewer, including, for example: the
20 reason for the harm; government ability and willingness to protect; and
21 internal relocation. Even when I provide this education, many individuals
22 still struggle with presenting the legally relevant facts and want to focus on
23 the severity of the harm. For this reason, it is crucially important to prepare
24 for CFI and RFI interviews on more than one occasion, and shortly before the
25 actual interview.

26 26. In my experience, being present during CFIs and RFIs is also important
27 because clients often get extremely nervous – given the high stakes of the
28 interview – and do not mention all relevant facts. Instead, they often focus

1 on one particularly traumatizing or painful part of why they fear return to
2 their country. Without thorough, direct questioning by officers, lots of
3 important information may be missed. When I have been present at CFIs and
4 RFIs, some officers ask if there are any questions that I believe should be
5 asked, or if there are any other topics that should be covered. If the officer
6 were to not ask, I would indicate that further questioning is needed. Also,
7 many Asylum Officers allow attorneys to present oral argument as to why a
8 client has established a probability or likelihood of persecution on account of
9 a protected ground. Given the extreme complexity of asylum law – including
10 establishing a nexus between the harm and a protected ground – it is
11 important to have someone who is able to articulate how and why the facts of
12 the client's case meet the relevant legal standard.

13 27. My client in MPP who expressed a fear of return to Mexico – who I
14 described above -- was kidnapped and trafficked through Mexico based on
15 her race, nationality, and membership in a particular social group. The
16 Mexican government cannot or will not protect her. Yet she did not pass her
17 non-refoulement interview, and because the government denied my
18 participation in the interview, I will never know why. They might have
19 applied the wrong standard or failed to elicit relevant testimony. If I had been
20 present, I could have helped ensure an accurate result. Every moment of
21 every day, my client fears for her life. Horrifically, my client was once again
22 victimized and assaulted last week after her September 23, 2019 non-
23 refoulement interview and October 3, 2019 master calendar hearing and
24 while awaiting an upcoming hearing.

25 28. Even though I think my client has a strong claim for non-refoulement, I fear
26 that she will once again have difficulty explaining her story given the intense
27 trauma she has suffered in Mexico, and especially after having spent time in
28 custody under such harsh and stressful conditions and without adequate

1 preparation for the interview. I also worry that the interviewers will not elicit
2 all the necessary testimony or apply the correct legal standard.

3 29. I declare under penalty of perjury of the laws of California and the United
4 States of America that the foregoing statements are true and correct.

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6 Executed this 21st day of October 2019 in Fairfield, California
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SIOBHAN MARIE WALDRON

EXHIBIT 15

DECLARATION OF LISA KNOX

I, Lisa Knox, hereby declare as follows:

1. I have personal knowledge of the facts set forth below, and if called to testify to the same, I could and would do so competently.
2. I am an Immigrants' Rights Managing Attorney at Centro Legal de la Raza in Oakland, California. I have worked at Centro Legal de la Raza since 2016. In that capacity, I am responsible for providing direct representation, and supervision of attorneys providing direct representation, for detained asylum seekers before Immigration Courts, the Board of Immigration Appeals, and the Ninth Circuit. I also supervise our Post-Release Accompaniment Project, which provides bond representation and post-release assistance to more than 150 asylum seekers a year.
3. I have over 8 years of experience working on immigration and human rights issues. From 2016 to 2018, I served as the coordinator for the AILA Northern California Chapter's Mesa Verde Pro Bono Project. In that capacity, I provided mentorship and support to pro bono attorneys representing detained asylum seekers. Prior to my work with Centro Legal de la Raza, I served as a clinical instructor and staff attorney at the East Bay Community Law Center in Berkeley, California. There, my practice also focused on representing asylum seekers in their removal proceedings.
4. I currently represent 3 individuals who have been required to go through, or are currently going through, the "Migrant Protection Protocols" ("MPP") or "Remain in Mexico" program in San Diego immigration court. Of those, all have had a fear of return to Mexico, and two have sought a non-refoulement hearing. Both of my clients were paroled into the United States after those requests were made, and so did not receive the hearings. I have also provided

1 consultations to individuals in the MPP program at two shelters in Tijuana. I
2 estimate I have provided this assistance to approximately 12 individuals.

- 3 5. In my experience, individuals are placed into the MPP program by the
4 Department of Homeland Security after a very cursory initial screening. My
5 clients all reported that, during this initial processing, they were never asked
6 by an officer whether they had a fear of return to Mexico.
- 7 6. Once individuals are placed into MPP, an officer from U.S. Customs and
8 Border Protection or Border Patrol has given them a document instructing
9 them to return to the border and present at the San Ysidro port of entry later
10 for their immigration court hearings. Generally, these hearings are scheduled
11 several weeks in the future. I consulted with one individual whose initial
12 hearing date was over six months from his return date.
- 13 7. Two of my clients were referred to me by nonprofit organizations active in
14 Tijuana. The third client is an individual I provided a consultation to at the
15 shelter where he lives. My office has not received any calls from MPP
16 asylum seekers in Mexico seeking assistance. My clients have reported that
17 they were unable to place calls to organizations on the pro bono assistance
18 list they were given by the court, because they are not able to make
19 international calls from their Mexican cellphones.
- 20 8. It has been extremely difficult to conduct private consultations with potential
21 MPP clients in Mexico. The shelters where I have conducted consultations do
22 not have private rooms for client meetings. On one occasion, I was able to
23 use office space at a local non governmental organization, but could only
24 secure a private space for a half-hour slot. On one occasion, my colleague
25 and I had to conduct consultations in our rental apartment because there was
26 no private room available at the shelter. I have attempted to consult with my
27 clients via phone, but have also faced difficulties. One of my clients did not
28 have phone service. While two have had cell phone service, both of them has

1 at times been unable to pay their phone bill. This means that I have had been
2 unable to reach them, at times for several days. The quality of the phone
3 service is also poor, resulting in dropped calls.

4 9. Even where I have been able to conduct private consultations, there is not
5 sufficient time to properly prepare an individual for the non-refoulement
6 interview. Because CBP does not permit lawyers to accompany their clients
7 as they are processed at the port of entry for their MPP hearings, it is
8 necessary to spend significant time preparing the individual for that
9 processing.

10 10. Because of the barriers to consultation with my clients, it is at the
11 immigration court while awaiting their hearings that I am most consistently
12 able to access them. Those meetings occur in the courtroom, in the presence
13 of security officers and other individuals scheduled for hearings that day. I
14 have requested to speak privately with my clients, but that request was
15 refused.

16 11. In my experience, preparing clients for CFIs and RFIs is essential to ensure
17 that they present all relevant information regarding their claims. Initially,
18 many clients are unsure of what facts are legally relevant. Many individuals
19 wrongly believe that they cannot mention any facts that they do not have
20 evidence to support, or are ashamed to disclose certain facts. Preparation
21 ensures that the client understands the process and can disclose all legally
22 relevant facts.

23 12. In my experience, it is also crucial that this preparation occur shortly before
24 the CFI or RFI. If preparation occurs long before the interview, the
25 individual won't retain information about what is legally relevant.
26 Preparation right before an interview also means the individual can easily
27 recall the relevant facts, versus having to pull them from memory.
28

1 13. In my experience, being present during CFIs and RFIs is also essential to
2 ensure that the asylum officer obtains all relevant facts. Even with
3 preparation, recalling details of past trauma can be a difficult experience for
4 an asylum seeker. An attorney can often ask additional questions to ensure
5 that any relevant facts the individual did not mention are elicited. An attorney
6 can also clarify legal issues, particularly where the case involves an
7 uncommon or novel claim.

8 14. In several cases, I have helped individuals who had a negative CFI or RFI
9 decision while unrepresented overturn that decision before an immigration
10 judge. On one occasion, I represented a Haitian woman who focused on her
11 fear of witchcraft in her CFI. In preparation for her review hearing, I learned
12 that she had also been the victim of severe gender-based violence. At her
13 hearing, I was able to elicit testimony about that harm, and present a legal
14 argument as to how that met the CFI standard.

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16 I declare under penalty of perjury of the laws of California and the United States of
17 America that the foregoing statements are true and correct.

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19 Executed this 25th day of October 2019 in Oakland, California.

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23 _____
Lisa Knox

EXHIBIT 16

DECLARATION OF DORIEN EDIGER-SETO

I, Dorien Ediger-Seto, hereby declare as follows:

1. I have personal knowledge of the facts set forth below, and if called to testify to the same, I could and would do so competently.
2. I am a Senior Attorney at the National Immigrant Justice Center ("NIJC"). I have worked at NIJC since September 2019. In that capacity, I run NIJC's San Diego project, where I provide consultation and representation to asylum seekers and other noncitizens seeking relief from deportation who have concurrently been charged with federal criminal illegal entry and re-entry under 8 U.S.C. §§ 1325 or 1326. Because I meet potential clients while they are still in federal criminal proceedings pending transfer to DHS for expedited removal, regular removal proceedings, or reinstatement of removal, my position requires expertise in screening clients for eligibility for asylum and related forms of protection and in advising clients facing summary removal procedures of their rights and obligations during Credible Fear Interviews ("CFIs") and Reasonable Fear Interviews ("RFIs").
3. I have nine years of experience working on immigration and human rights issues. Prior to becoming an attorney, I worked under the supervision of attorneys at the Florence Immigrant & Refugee Rights Project ("Florence Project") for four years to provide legal services to the approximately 3,000 people detained for removal proceedings in Arizona on any given day. In that role, I screened hundreds of people for relief from removal and worked with a significant number of people navigating the asylum process *pro se*. Recognizing my expertise in immigration law, the Board of Immigration Appeals named me a Fully Accredited Representative, permitting me to represent people before the Executive Office of Immigration Review. *See* 8 C.F.R. § 1292.1(a)(4). I held this license from October 2012 until June 2014

1 when I left the Florence Project for law school. Since law school, I have
2 represented a number of individuals in removal proceedings—many of whom
3 were seeking asylum, withholding of removal, and protection under Article
4 III of the Convention Against Torture—as a fellow at the University of
5 Arizona Immigration Law and Policy Program and as a Staff Attorney at the
6 Florence Project.

- 7 4. In my current role, I screen clients for potential representation while they are
8 preparing to enter Department of Homeland Security custody at the
9 conclusion of their federal criminal proceedings. For cases I take on, I follow
10 my clients through the removal and CFI/RFI system, and often prepare them
11 to testify during their CFI/RFI interviews.
- 12 5. Given the unique procedural posture of the clients NIJC's San Diego practice
13 serves, I have interfaced with local Border Patrol ("BP") officers in several
14 cases where clients or potential clients have requested my assistance in
15 requesting a credible fear interview.
- 16 6. In addition, I have spent a significant amount of time attempting to locate my
17 clients once they have been taken into BP custody at the conclusion of their
18 criminal cases and before they are assigned a bed in a long-term detention
19 facility run by ICE, where they will be permitted to speak to an Asylum
20 Officer during a credible or reasonable fear interview.
- 21 7. The time that people are held in BP custody varies widely; while some
22 people are transferred to an ICE bed within hours, others spend over two
23 weeks in temporary BP holding facilities while waiting for transfer to a
24 detention bed or release from custody.
- 25 8. Since NIJC's San Diego project started, I have had clients inform me that
26 while in BP custody, they were not permitted to make phone calls, were
27 forced to sleep on the floor for the majority of their time BP in custody, and
28

1 were often verbally abused and insulted by officers when attempting to assert
2 their rights.

3 9. In one recent case, it took over a week of repeatedly contacting multiple
4 actors in ICE and BP just to confirm where my client was being held.

5 10. In that case, I sent numerous emails to ICE and BP officials and left multiple
6 unanswered voicemails with the San Diego Border Patrol Sector and the San
7 Diego ICE Field Office, receiving no information about the actual location of
8 my client. Unlike ICE, CBP does not maintain an online locator where the
9 public can check on an individual's whereabouts.

10 11. I only discovered where my client was after he sent a message to his family
11 through a fellow detainee who, upon his own removal, called my client's
12 family to assure them that my client was still alive and was located at the
13 Chula Vista Border Patrol Station, but that he had not been permitted to make
14 a phone call to counsel or to his family during his incarceration there.

15 12. On discovering that my client was being held at the Chula Vista Border
16 Patrol Station, I contacted the facility to request a legal visit with him, and
17 spoke to a supervisor at that facility.

18 13. The supervisor confirmed that my client was there, but informed me that
19 attorneys are not permitted to visit or speak with detained individuals at the
20 Chula Vista station. He stated that my client would not be permitted to speak
21 with me until the Chula Vista BP station received word from "Barracks" that
22 he was to be transferred there, and then Barracks transferred him to ICE for
23 placement in a long-term detention bed. In other words, only once my client
24 was in ICE custody would he be able to communicate with me.

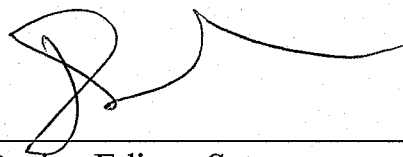
25 14. The officer also informed me that BP does not accept requests from third
26 parties—including attorney representatives—for credible and reasonable fear
27 interviews.
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- 1 15. When I asked how long it would take for my client to be transferred to ICE
2 custody, the officer stated that he did not know and that he would have to
3 “wait for his turn in line.” The officer would not share any information about
4 where my client was in the line.
- 5 16. My client’s sister also contacted the Chula Vista BP Station. She asked to
6 speak to her brother and was informed that BP would not share any
7 information with her because they could not verify that she was actually his
8 sister. When she offered to go to the station in person to provide proof of
9 their relationship, the officer told her that she could not. He further informed
10 her that they would only share information with his attorney.
- 11 17. It is critical to my clients’ defense against removal that they be permitted to
12 speak to me confidentially while in BP custody.
- 13 18. While I am usually able to conduct intakes with potential clients prior to the
14 termination of their criminal proceedings, the rapid timeline on 8 U.S.C.
15 § 1325 prosecutions requires me to conduct further fact finding while clients
16 are in BP custody, sometimes to determine whether they are properly subject
17 to expedited removal proceedings to begin with.
- 18 19. In addition, in my experience, having access to and significant time to
19 prepare clients for CFIs and RFIs is critical to ensure that they are able to
20 accurately relay the most legally significant facts of their cases. While many
21 clients have *bona fide* asylum claims, asylum law is complex and nuanced,
22 and clients—particularly those significant histories of sexual abuse or other
23 forms of trauma—are often unaware that some of the most atrocious
24 persecution they have experienced is relevant. Others are afraid or
25 embarrassed to reveal abuse that they have experienced. Still others are
26 unaware that where there are interpretation or technical difficulties, they are
27 permitted to inform Asylum Officers what is happening to ensure that they
28

1 receive a fair process and that the nuances of their claims are accurately
2 relayed to the officers making life-or-death decisions in their cases.

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4 I declare under penalty of perjury of the laws of California and the United States of
5 America that the foregoing statements are true and correct.

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7 Executed this 28th day of October 2019 in San Diego, California,

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12 Dorien Ediger-Seto
13 Senior Attorney
14 National Immigrant Justice Center
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EXHIBIT 17

DECLARATION OF STEPHANIE BLUMBERG

I, Stephanie Blumberg, hereby declare as follows:

1. I have personal knowledge of the facts set forth below, and if called to testify to the same, I could and would do so competently.
2. I am an immigration attorney at Jewish Family Services of San Diego (“JFS”). I have worked at JFS since October 2nd, 2019. In that capacity, I represent the individuals named by pseudonyms Cristian Doe and Diana Doe (collectively, “Clients”) and their family. Clients are seeking asylum and are subject to the “Remain in Mexico” or “Migrant Protection Protocols” program (“MPP”).
3. Clients and their family presented at the San Ysidro Port of Entry early this morning and had an immigration court hearing today, November 5, 2019, at 8:30 am.
4. At that hearing, I helped Clients and their family convey their fear of return to Mexico to the Immigration Judge.
5. Clients were then taken into Department of Homeland Security (“DHS”) custody for their non-*refoulement* interview or interviews.
6. I have not been permitted to have a confidential meeting with Clients since they expressed their fear of return to Mexico and were taken into DHS custody.
7. I have not even been informed of where Clients have been or will be taken.
8. Clients have my telephone number, and plan to call me as soon as they are able. They have not yet called me.
9. I have not been able to prepare Clients for their non-*refoulement* interview or interviews while they have been in DHS custody.
10. I am concerned that I may not have the opportunity to consult with Clients before and during their non-*refoulement* interview or interviews, and that I may not be able to help prepare them.

1 I declare under penalty of perjury of the laws of California and the United States of
2 America that the foregoing statements are true and correct.

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4 Executed this 5th day of November 2019 in San Diego, California.
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Stephanie Blumberg

EXHIBIT 18

DECLARATION OF RYAN W. STITT

I, Ryan W. Stitt, hereby declare as follows:

1. I have personal knowledge of the facts set forth below, and if called to testify to the same, I could and would do so competently.
2. I have been a Trial Attorney at Federal Defenders of San Diego, Inc. since 2010. In that capacity, I represent indigent clients accused of federal crimes in all stages of their criminal case. This includes pre-arraignment litigation, trial work, sentencing, and on appeal if necessary. I also work to help reduce pre-arraignment delay for clients who are arrested but have yet to come to court. I regularly appear in the District Court for the Southern District of California.
3. In my experience, United States Customs and Border Protection (“CBP”), including Border Patrol, has allowed attorneys to confidentially communicate with their clients in CBP custody when directed by the U.S. Attorney’s Office and/or the district court.
4. In two cases, the district court ordered CBP to allow me to visit clients in the agency’s custody while waiting to make their initial appearances. For instance, in case 19CR1089, the Court ordered the government to permit me to visit a client, Mr. Centeno-Peredes, at the San Ysidro Port of Entry. CBP detained him there while he was going through detox prior to the commencement of his criminal case. I visited him in March, 2019, and the CBP officers permitted me to consult confidentially with Mr. Centeno-Peredes during my visit. Officers met me at a locked entrance to the Port of Entry and escorted me to a private interview room. My client was not restrained in handcuffs during my meeting with him. We met in a locked interview room with metal stools and a metal table. The conversation was private and we were given as much time as we wanted to discuss the case.

- 1 5. In another case, I was permitted to visit my client, Heather Miller, case
2 19CR1777 at the Campo Border Patrol station in April 2019. Like Mr.
3 Centeno-Peredes at San Ysidro, she was being held at Campo while
4 experiencing detox. The Border Patrol agents permitted me to consult
5 confidentially with Ms. Miller during my visit. I was escorted into the
6 cellblock and given an office where I could privately speak to Ms. Miller.
7 Ms. Miller was not restrained during my meeting with her. The office we
8 met in had chairs on two sides of a table, and we were able to privately
9 communicate about her case and medical care. The Border Patrol Agents
10 gave me as much time as I needed to speak to Ms. Miller about her case.
- 11 6. In addition, part of my duties at Federal Defenders require me to help reduce
12 pre-arraignment delay for clients who are arrested but have yet to come to
13 court. In that capacity, I am aware of several other cases where lawyers from
14 Federal Defenders were permitted to visit clients held in CBP custody at the
15 San Ysidro Port of Entry before they were booked into jail and arraigned on
16 criminal charges. My understanding is that the client visits functioned much
17 the same as my visit with Mr. Centeno. I believe that the lawyers were given
18 a private interview room and sufficient time to speak to their clients at the
19 San Ysidro Port of Entry.

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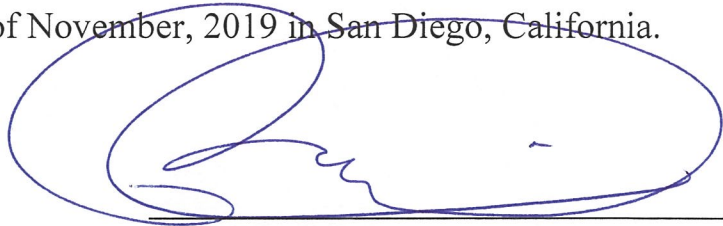
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1 I declare under penalty of perjury of the laws of California and the United
2 States America that the foregoing statements are true and correct.

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4 Executed on the fourth day of November, 2019 in San Diego, California.

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Ryan W. Stitt
Trial Attorney
Federal Defenders of San Diego, Inc.