

EXHIBIT A

1 MICHAEL D. KIBLER (Bar No. 243982)
mkibler@stblaw.com
2 DANIELLE E. HESSE (Bar No. 318321)
danielle.hesse@stblaw.com
3 SIMPSON THACHER & BARTLETT LLP
1999 Avenue of the Stars – 29th Floor
4 Los Angeles, California 90067
Telephone: (310) 407-7500
5 Facsimile: (310) 407-7502
Counsel for Amici Curiae
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7 **UNITED STATES DISTRICT COURT**
8 **SOUTHERN DISTRICT OF CALIFORNIA**
9 **SAN DIEGO DIVISION**

10 AL OTRO LADO, INC., a California
corporation, et al.,

11 Plaintiffs,

12 v.

13 KIRSTEN M. NIELSEN, Secretary,
14 United States Department of Homeland
Security, in her official capacity, et al.,

15 Defendants.
16

Case No. 3:17-cv-02366-BAS-KSC

**AMICUS CURIAE BRIEF OF
NINETEEN ORGANIZATIONS
REPRESENTING ASYLUM
SEEKERS**

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I. INTRODUCTION AND INTEREST OF AMICI CURIAE

Amici are nineteen non-profit organizations¹ dedicated to ensuring the equitable treatment of immigrants and asylum seekers. In this capacity, they have developed an interest and expertise in the unique issues facing migrants, particularly those from Central America. Amici have observed with considerable alarm the myriad ways in which Defendants have sought to limit or foreclose access to the asylum process through a variety of practices including what Plaintiffs allege amounts to a Turnback Policy,² which has forced people fleeing persecution to wait in dangerous conditions on the Mexican side of the southern border. Amici accordingly write to underscore the devastating consequences of Defendants' Turnback Policy and to call into question its purported rationales—a “surge” of immigrants at the southern border, limited capacity at ports of entry, and the inherent danger posed by immigrants. As explained below, the evidence reveals that there is no immigration crisis at the U.S.-Mexico border compared to historical norms, there is no bona fide lack of capacity at ports of entry that could justify such a policy, and asylum seekers do not pose an increased threat to American safety. Rather, the false and fundamentally misguided excuses that Defendants have offered for implementing the Turnback Policy serve only to mask the true motives for this politically driven attempt to render asylum functionally unavailable to anyone attempting to enter through the U.S.-Mexico border: blatant animus toward immigrants, particularly those from Latin America, and a desire to deter current and future migrants from seeking asylum in the United States.

If the Turnback Policy is allowed to continue, amici, all of whom work with asylum seekers and many of whom focus specifically on asylum claims, serving people who enter the United States through the U.S.-Mexico border, will be forced

¹ Amici are listed and described in the accompanying Motion for Leave to File this Amicus Brief.

² The Turnback Policy, a collection of policies and practices intended to encourage would-be asylum seekers to “turn back” to Mexico or their home countries, is described at length in Plaintiffs' First Amended Complaint, ECF No. 176.

1 to divert resources to assist people stranded at the border or forced to return to their
2 countries of origin. Through the diversion of resources, and through the outright
3 denial of entry to numerous would-be asylum seekers, amici will be hamstrung in
4 their mission to ensure that vulnerable refugees have a fair opportunity to seek
5 asylum or other forms of immigration relief. By impermissibly restricting the
6 availability of asylum for those who enter the United States through the U.S.-
7 Mexico border, the Turnback Policy needlessly places the lives of countless
8 refugees at risk.

9 **II. ARGUMENT**

10 The Immigration and Nationality Act (“INA”) unambiguously allows people
11 who arrive at the United States border to apply for asylum. 8 U.S.C. § 1225(a)(3)
12 (providing that “[a]ll aliens . . . who are applicants for admission or *otherwise*
13 *seeking admission* . . . shall be inspected by immigration officers”) (emphasis
14 added); *see also* 8 U.S.C. § 1225(b)(1)(A)(i) (providing that “[i]f an immigration
15 officer determines that an alien . . . *who is arriving in the United States* . . . is
16 inadmissible . . . the officer shall order the alien removed from the United States . . .
17 unless the alien indicates either *an intention to apply for asylum* under section 1158
18 of this title or a fear of persecution”) (emphasis added). Yet, as part of the Turnback
19 Policy, U.S. Customs and Border Protection (“CBP”) officials are intercepting, or
20 causing Mexican officials to intercept, numerous people at the border. The
21 government should not be allowed to evade its duty to evaluate asylum claims by
22 intercepting immigrants at the border.

23 Congress drafted the asylum laws with a clear understanding of the needs of
24 asylum applicants, knowing that “[t]he refugees of tomorrow, like the refugees of
25 today, [would] continue to look to the United States for safe haven and resettlement
26 opportunities – and our government [would] continue to be called upon to help.” S.
27 Rep. No. 96-256, p. 3 (1979). In other words, Congress sought to “establish a
28

1 national policy of welcome to refugees.” S. Rep. No. 96-590, at 82 (1980) (Conf.
2 Rep.) (emphasis added).

3 The Turnback Policy represents an evasion of the clear language and
4 congressional intent of the INA. Instead of welcoming immigrants—or even
5 allowing them to apply for asylum in a timely manner—asylum seekers are left
6 waiting days, weeks, and even months to gain access to the asylum process in
7 conditions rife with violence, gangs, and other risks to health and safety.³
8 Functionally, they are left in dangerous conditions in the hope that they will give up
9 and go home.

10 In support of the Turnback Policy and its related departure from the language
11 and intent of the INA, Defendants’ have cited a supposed “surge” in mass migration,
12 coupled with the notion that would-be asylum seekers present a danger to U.S.
13 security. Defendants and the Administration for which they work have also likened
14 the asylum provisions of the INA to a legal “loophole,” and have repeatedly
15 described immigrants seeking entry through the U.S.-Mexico border in
16 inflammatory and inaccurate terms, such as “stone cold criminals,” “thugs,” and
17 “rapists” who are “bringing crime.” Yet, Defendants’ assertions regarding levels of
18 migration, capacity at the border, and migrant violence have no basis in fact and are
19 disproven by Defendants’ agencies’ own statistics. In reality, those who seek
20 asylum in the United States are overwhelmingly vulnerable victims of persecution
21 and other extreme hardships who are seeking safety in the United States. The actual
22 driving force behind the Turnback Policy is blatant animus toward immigrants,
23 particularly those from Latin America, and a desire to deter current and future
24 immigrants from seeking asylum in the United States.

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26 ³ See Human Rights Watch, *US: Unaccompanied Children Turned Back at Border*,
27 Dec. 24, 2018, [https://www.hrw.org/news/2018/12/24/us-unaccompanied-children-](https://www.hrw.org/news/2018/12/24/us-unaccompanied-children-turned-back-border)
28 [turned-back-border](https://www.hrw.org/news/2018/12/24/us-unaccompanied-children-turned-back-border); Nidia Bautista, *Murder of Honduran Teens Highlight Dangers*
for Refugees at Border, Al Jazeera, Dec. 20, 2018,
[https://www.aljazeera.com/news/2018/12/murder-honduran-teens-highlight-](https://www.aljazeera.com/news/2018/12/murder-honduran-teens-highlight-dangers-refugees-border-181220212804745.html)
[dangers-refugees-border-181220212804745.html](https://www.aljazeera.com/news/2018/12/murder-honduran-teens-highlight-dangers-refugees-border-181220212804745.html).

1 **A. Reports of “metering” reveal that inspections at ports of entry**
 2 **along the U.S.-Mexico border are incredibly low.**

3 A key component of the Defendants’ Turnback Policy is what Defendants
 4 refer to as “metering,” through which Defendants cap or otherwise limit the number
 5 of asylum seekers processed at ports of entry along the U.S.-Mexico Border, in
 6 contravention of the United States’ obligations to asylum seekers under national and
 7 international law. As reported by non-governmental organizations like amici and
 8 confirmed by Defendants in recent statements, CBP officers are turning away
 9 asylum seekers at ports of entry, forcing thousands of vulnerable refugees, including
 10 unaccompanied children, to wait indefinitely at the border.⁴

11 In support of their actions, Defendants assert that facilities at ports of entry
 12 lack the capacity to hold and process the number of asylum seekers currently
 13 waiting at the border.⁵ Nonetheless, the available data demonstrates that
 14 Defendants’ stated justifications are merely pretextual. There are 328 ports of entry
 15 in total along the U.S.-Mexico border, and while CBP maintains that all ports of
 16 entry process asylum seekers, in reality, asylum processing only occurs at select
 17 locations.⁶ CBP officers at smaller ports of entry sometimes refuse to process
 18 asylum seekers and instead instruct them to travel to larger ports of entry for

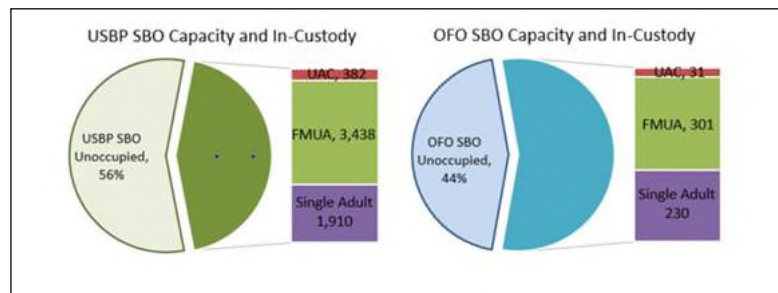
19 _____
 20 ⁴ See, e.g., Dara Lind, *The US has made migrants at the border wait months to apply*
 21 *for asylum. Now the dam is breaking.*, Vox (Nov. 28, 2018),
 22 [https://www.vox.com/2018/11/28/18089048/border-asylum-trump-metering-legally-](https://www.vox.com/2018/11/28/18089048/border-asylum-trump-metering-legally-ports)
 23 [ports](https://www.vox.com/2018/11/28/18089048/border-asylum-trump-metering-legally-ports); Jonathan Blitzer, *The Long Wait for Tijuana’s Migrants to Process Their Own*
 24 *Asylum Claims*, The New Yorker (Nov. 29, 2018),
 25 [https://www.newyorker.com/news/dispatch/the-long-wait-for-tijuanas-migrants-to-](https://www.newyorker.com/news/dispatch/the-long-wait-for-tijuanas-migrants-to-process-their-own-asylum-claims)
 26 [process-their-own-asylum-claims](https://www.newyorker.com/news/dispatch/the-long-wait-for-tijuanas-migrants-to-process-their-own-asylum-claims).

27 ⁵ See, e.g., @CBP, Twitter (Dec. 17, 2018),
 28 <https://twitter.com/CBP/status/1074856757640474624> (“With the influx of Central
 American family units arriving at US ports of entry without proper documentation
 and crossing US borders illegally, the processing system at CBP and our partner
 agencies has hit capacity.”).

⁶ See Stephanie Leutert, et al, *Asylum Processing and Waitlists at the U.S.-Mexico*
Border, Robert Strauss Center (Dec. 2018), 2,
https://www.strausscenter.org/images/MSI/AsylumReport_MSI.pdf (“Strauss
 Center Report”).

1 processing.⁷ Yet even at San Ysidro, the largest port of entry, which can hold an
 2 estimated 300 to 800 people, only between 20 to 80 people are processed each day.⁸
 3 As illustrated in the following chart, records produced by Defendants themselves
 4 highlight that nearly half of the CBP Office of Field Operations’ (“OFO”) available
 5 space for custody of asylum seekers remains unoccupied.⁹

6 CBP In-Custody as of October 31, 2018



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 13 While “metering” has been in effect at the U.S.-Mexico border since 2016,
 14 senior CBP and ICE officials at San Ysidro stated that “CBP has only actually
 15 reached its detention capacity a couple of times per year and during a ‘very short
 16 period’ in 2017.”¹⁰ Anecdotal reports from others with first-hand knowledge of
 17 capacity at ports of entry underscore the insincerity of Defendants’ stated rationale
 18 for metering. Between April and June 2018, human rights researchers visited seven
 19 ports of entry in Texas and reported that the processing rooms in those ports of entry

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 21 ⁷ See Adam Isacson, et al, “Come Back Later” Challenges for Asylum Seekers
 22 Waiting at Ports of Entry (Aug. 2, 2018), <https://www.wola.org/analysis/come-back-later-challenges-asylum-seekers-waiting-ports-entry/>.

⁸ See Strauss Center Report, *supra* note 6.

23 ⁹ See Administrative Record, 455, *East Bay Sanctuary Covenant v. Trump*, No. 18-
 24 CV-06810-JST, ECF No. 60 (citing now-declassified Immigration Weekly,
 25 Department of Homeland Security (October 31, 2018)). The acronym “USBP”
 26 refers to the United States Border Patrol; “SBO” refers to the southwest border;
 27 “UAC” refers to unaccompanied alien children; “FMUA” refers to family unit
 28 aliens.

¹⁰ Amnesty International, USA: “You Don’t Have Any Rights Here:” Illegal
 Pushbacks, Arbitrary Detention & Ill-Treatment of Asylum-Seekers in the United
 States 15 (Oct. 2018),
<https://www.amnesty.org/download/Documents/AMR5191012018ENGLISH.PDF>.

1 appeared largely empty.¹¹ Similarly, during its investigation of the Administration’s
 2 “zero-tolerance policy,” which directed U.S. Attorney’s Offices along the southern
 3 border to prosecute all cases of illegal entry and attempted illegal entry, the Office
 4 of Inspector General team “did not observe severe overcrowding at the ports of
 5 entry it visited.”¹²

6 Through their implementation of the Turnback Policy, and associated
 7 “metering,” Defendants have manufactured an unnecessary humanitarian crisis at
 8 the border. Defendants’ use of metering has resulted in lengthy delays at ports of
 9 entry ranging from several weeks to months, leaving asylum seekers stranded in
 10 Mexico without adequate shelter or basic necessities.¹³ In light of other recently
 11 enacted immigration policies, it is increasingly clear that metering, and the
 12 Turnback Policy overall, are part and parcel of Defendants’ overarching goal of
 13 deterring migrants from seeking asylum. Tellingly, President Trump himself
 14 congratulated Border Patrol for preventing migrants from entering the United States
 15 and “securing [the] Southern Border” in lieu of “A Great Wall,”¹⁴ underscoring that
 16 the Turnback Policy currently operates as a barrier to asylum seekers, instead of a
 17 necessary administrative policy. Moreover, in a recent Congressional staff briefing
 18 meeting, Jud Murdock, CBP’s Acting Assistant Commissioner, “clearly indicated,
 19 given the context, that the Department’s decision to limit processing was primarily

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 21 ¹¹ Human Rights First, *Zero Tolerance Criminal Prosecutions: Punishing Asylum*
 22 *Seekers and Separating Families* (July 18, 2018),
 23 https://www.humanrightsfirst.org/sites/default/files/Zero_Tolerance_Border_Report.pdf
 24 (noting for example that the processing room at Hidalgo-Reynosa Bridge had
 25 nearly 100 chairs, the majority of which were empty).

26 ¹² Dep’t of Homeland Security, Office of Inspector General, *Special Review – Initial*
 27 *Observations Regarding Family Separation Issues Under the Zero Tolerance Policy*
 28 (Sept. 27, 2018), <https://www.oig.dhs.gov/sites/default/files/assets/2018-10/OIG-18-84-Sep18.pdf>.

¹³ See Joel Rose, *Trump Plan Could Leave Asylum Seekers at Risk in Mexico*, NPR
 (Nov. 29, 2018), <https://www.npr.org/2018/11/29/671799985/trump-administration-to-asylum-seekers-stay-put-in-mexico-while-claims-are-proce>.

¹⁴ @realDonaldTrump, Twitter (Dec. 11, 2018),
<https://twitter.com/realDonaldTrump/status/1072462207416446976>.

1 motivated by its desire to deter migrants from seeking asylum at ports of entry.”¹⁵
 2 The Acting Assistant Commissioner emphasized that “[t]he more we process, the
 3 more will come.”¹⁶

4 **B. Despite assertions of a migration “crisis” at the border, the number**
 5 **of people crossing the border has steadily declined in recent years.**

6 Tellingly, to date, Defendants and the agencies for which they work have not
 7 issued any official justification for their current efforts to limit asylum applications
 8 within ports of entry.¹⁷ When publicly discussing the Turnback Policy, Defendants
 9 and others within the Administration have repeatedly justified the Policy by alleging
 10 a recent “invasion,” “surge,” or “rush” threatening to overwhelm the immigration
 11 system.¹⁸

12 Although Defendants cite CBP’s limited resources and processing capacity as
 13 justification for its metering policy, in previous years, CBP has processed far more
 14 people at ports of entry along the U.S.-Mexico border than it does today. For
 15 instance, between FY 2012 and FY 2016, the number of undocumented immigrants
 16 arriving at ports of entry more than tripled. In October of 2016 alone, CBP

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 20 ¹⁵ See Hamed Aleaziz, *The Trump Administration is Slowing the Asylum Process to*
 21 *Discourage Applicants, An Official Told Congress*, BuzzFeed (December 17, 2018),
<https://www.buzzfeednews.com/article/hamedaleaziz/the-trump-administration-is-slowing-the-asylum-process-to>.

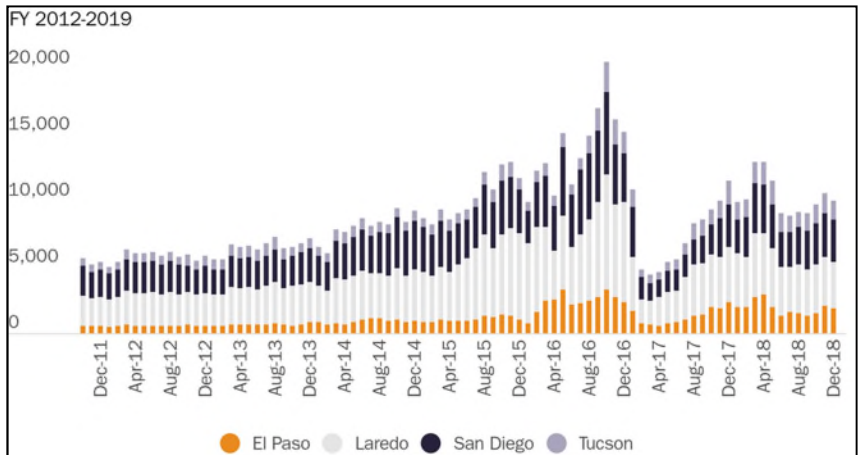
22 ¹⁶ *Id.*

23 ¹⁷ See Strauss Center Report, *supra* note 6. (“Despite being well-documented by
 24 civil society organizations, journalists, and DHS documents, CBP has not issued any
 25 public statement that explains its metering system and its legal justification and
 26 logistical processes. Upon request, CBP provides a broad press release to interested
 27 parties regarding metering but will not discuss processing capacity or specific
 28 details.”).

29 ¹⁸ See, e.g., Nick Miroff & Missy Ryan, *Army Assessment of Migrant Caravans*
 30 *Undermines Trump’s Rhetoric*, Wash. Post (Nov. 2, 2018),
https://www.washingtonpost.com/world/national-security/army-assessment-of-migrant-caravans-undermines-trumps-rhetoric/2018/11/02/78b9d82a-dec0-11e8-b3f0-62607289efee_story.html?noredirect=on&utm_term=.0006026e1675.

1 processed 20,524 individuals at ports of entry.¹⁹ By contrast, CBP processed only
 2 10,029 individuals in December 2018, which represents a 51% decline in processing
 3 volume from October 2016.²⁰ In fact, since October 2016, every field office at the
 4 U.S.-Mexico border has reported significant declines in the processing of
 5 undocumented immigrants.²¹ The following graph illustrates the substantial
 6 reduction in the number of undocumented immigrants arriving at ports of entry
 7 along the U.S.-Mexico:

8 **Undocumented Arrivals at Ports of Entry by Southwest Field Office²²**



17 Additionally, CBP’s own data demonstrates historically low numbers of
 18 apprehensions at the border in the past several years. In fact, in prior years, CBP
 19 has successfully addressed far greater rates of migration at the border than are now
 20 occurring.²³ Border patrol agents apprehended approximately 1.7 million people in
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22 ¹⁹ See David Brier, *Obama Tripled Migrant Processing at Legal Ports – Trump*
 23 *Halved It*, Cato Institute (February 8, 2019), <https://www.cato.org/blog/obama-tripled-migrant-processing-legal-ports-trump-halved-it>.
 24 ²⁰ *Id.*
 25 ²¹ *Id.* (“Since October 2016, Tucson, Arizona is down 37 percent; El Paso is down
 41 percent; San Diego is down 49 percent; and Laredo—where the most migrants
 arrived in October 2016—is down 60 percent.”).
 26 ²² *Id.*
 27 ²³ See *U.S. Border Patrol Monthly Apprehensions (FY 2000 – FY 2017)*, U.S.
 Customs and Border Protection (Dec. 12, 2017),
 28 <https://www.cbp.gov/sites/default/files/assets/documents/2017->

1 FY 2000 alone,²⁴ compared to 521,090 people apprehended in FY 2018,
 2 representing a 67.4% reduction over eighteen years.²⁵ CBP itself emphasized that
 3 FY 2017 had the “lowest level of illegal-cross border migration on record.”²⁶
 4 Moreover, CBP today has substantially more resources to address far lower rates of
 5 migration. Between FY 2003 to FY 2016, CBP’s annual budget more than doubled
 6 from \$5.9 billion to \$13.2 billion.²⁷ Neither Defendants’ assertion of a burgeoning
 7 border crisis nor CBP’s purported lack of capacity are supported by the available
 8 data.

9 **C. The true reason for the Turnback Policy is hostility toward**
 10 **immigrant groups.**

11 Defendants and the Administration for which they work have also sought to
 12 justify a broad range of anti-immigrant policies, including the Turnback Policy, by
 13 painting a portrait of asylum seekers as a violent group that threatens America’s
 14 security. This justification also lacks factual support, has been rejected by the Ninth
 15 Circuit²⁸ and the Supreme Court,²⁹ and is part and parcel of a pattern of hostility
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 18 Dec/BP%20Total%20Monthly%20Apps%20by%20Sector%20and%20Area%2C%20FY2000-FY2017.pdf.

19 ²⁴ See Jeffrey S. Passel & D’vera Cohn, *U.S. Unauthorized Immigrant Total Dips to*
 20 *Lowest Level in a Decade*, Pew Research Center (Nov. 27, 2018).

21 ²⁵ See Southwest Border Migration FY 2019, U.S. Customs and Border Protection,
 22 <https://www.cbp.gov/newsroom/stats/sw-border-migration#> (last accessed Dec. 4,
 2018).

23 ²⁶ CBP Border Security Report FY 2017, U.S. Customs and Border Protection, 1
 24 (Dec. 5, 2017), [https://www.cbp.gov/sites/default/files/assets/documents/2017-](https://www.cbp.gov/sites/default/files/assets/documents/2017-Dec/cbp-border-security-report-fy2017.pdf)
 25 [Dec/cbp-border-security-report-fy2017.pdf](https://www.cbp.gov/sites/default/files/assets/documents/2017-Dec/cbp-border-security-report-fy2017.pdf).

26 ²⁷ See *The Cost of Immigration Enforcement and Border Security*, American
 27 Immigration Council, 2 (Jan. 2017),
 28 [https://www.americanimmigrationcouncil.org/sites/default/files/research/the_cost_of](https://www.americanimmigrationcouncil.org/sites/default/files/research/the_cost_of_immigration_enforcement_and_border_security.pdf)
[immigration_enforcement_and_border_security.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/research/the_cost_of_immigration_enforcement_and_border_security.pdf).

29 ²⁸ See *E. Bay Sanctuary Covenant v. Trump*, 909 F.3d 1219, 1237, 1256 (9th Cir.
 2018) (denying stay pending appeal of the Administration’s Asylum ban where, in
 “support of the [Asylum Ban], the President cited concerns about violence”).

²⁹ See *Trump v. E. Bay Sanctuary Covenant*, No. 18A615, 2018 WL 6713079, at *1
 (U.S. Dec. 21, 2018) (denying stay pending appeal of the Administration’s Asylum
 Ban where ban was, in part, justified by threat of violence posed by immigrants).

1 directed toward immigrant groups, suggesting that the true reason for Defendants'
2 actions is cruel animosity.

3 For example, Secretary Nielsen has criticized media reports for portraying the
4 migrant caravan as a sympathetic group made up mostly of women and children,
5 instead alleging that the caravan includes “500 criminals” and “known gang
6 members.”³⁰ Commissioner Kevin K. McAleenan has likewise asserted that “[w]e
7 have information of participation of over 500 individuals with criminal records as
8 part of the caravan”³¹ and described circumstances at the border as an “extremely
9 dangerous situation” requiring the use of force.³² And President Trump—who
10 initiated the Turnback Policy by directing Secretary Nielsen to “ensure aliens . . . are
11 returned to the territory from which they came pending a formal legal proceeding”
12 because they may “seek to harm Americans through acts of terror or criminal
13 conduct”³³—has similarly stated that the Central American caravan consists of
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20 ³⁰ Richard Gonzales, *DHS Chief Visits U.S.-Mexico Border, Defends*
21 *Administration’s Asylum Rules* (Nov. 20, 2018),
22 [https://www.npr.org/2018/11/20/669826023/dhs-chief-visits-u-s-mexico-border-](https://www.npr.org/2018/11/20/669826023/dhs-chief-visits-u-s-mexico-border-defends-administrations-asylum-rules)
23 [defends-administrations-asylum-rules](https://www.npr.org/2018/11/20/669826023/dhs-chief-visits-u-s-mexico-border-defends-administrations-asylum-rules).

24 ³¹ Bart Jansen & Alan Gomez, *President Trump Calls Caravan Immigrants ‘Stone*
25 *Cold Criminals.’ Here’s What We Know*, USA Today (Nov. 26, 2018),
26 [https://www.usatoday.com/story/news/2018/11/26/president-trump-migrant-](https://www.usatoday.com/story/news/2018/11/26/president-trump-migrant-caravan-criminals/2112846002/)
27 [caravan-criminals/2112846002/](https://www.usatoday.com/story/news/2018/11/26/president-trump-migrant-caravan-criminals/2112846002/).

28 ³² *Statement from Commissioner McAleenan on Incident at San Ysidro Yesterday*
Afternoon, U.S. Customs & Border Protection (Nov. 26, 2018),
[https://www.cbp.gov/newsroom/speeches-and-statements/statement-commissioner-](https://www.cbp.gov/newsroom/speeches-and-statements/statement-commissioner-mcaleenan-incident-san-ysidro-yesterday)
[mcaleenan-incident-san-ysidro-yesterday](https://www.cbp.gov/newsroom/speeches-and-statements/statement-commissioner-mcaleenan-incident-san-ysidro-yesterday).

³³ Executive Order 13767 of January 25, 2017, Border Security and Immigration
Enforcement Improvements, [https://www.govinfo.gov/content/pkg/FR-2017-01-](https://www.govinfo.gov/content/pkg/FR-2017-01-30/pdf/2017-02095.pdf)
[30/pdf/2017-02095.pdf](https://www.govinfo.gov/content/pkg/FR-2017-01-30/pdf/2017-02095.pdf).

1 “[m]any Gang Members,”³⁴ “very tough fighters and people,”³⁵ “bad thugs and
2 gang members,”³⁶ and “stone cold criminals.”³⁷

3 As with Defendants’ allegations of a migration “surge,” this prejudicial
4 hyperbole has no basis in fact and only serves to stigmatize and foster animosity
5 toward vulnerable minority groups. As an initial matter, there is no support for the
6 idea that the Central American caravan consists of large numbers of criminals.³⁸
7 More fundamentally, there is no support for the idea that immigrants, as a whole, are
8 more inclined toward criminality. According to current data, “the criminal
9 conviction and arrest rates for immigrants [are] well below those of native-born
10 Americans” and “the conviction and arrest rates for illegal immigrants [are also]
11 lower than those for native-born Americans.”³⁹ In fact, “[i]ncreases in the
12 undocumented immigrant population within states are associated with significant
13 *decreases* in the prevalence of violence.”⁴⁰

14 Defendants’ justifications for its efforts to limit the availability of asylum
15 within ports of entry are consistent with a pattern of hostility toward immigrant
16 groups expressed by the Administration from the earliest days of the presidential
17 campaign to the present—a pattern that makes clear that the true justification for its
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20 ³⁴ @realDonaldTrump, Twitter (Oct. 29, 2018),
<https://twitter.com/realdonaldtrump/status/1056919064906469376?lang=en>

21 ³⁵ @realDonaldTrump, Twitter (Oct. 31, 2018),
<https://twitter.com/realdonaldtrump/status/1057612657665171457?s=20>.

22 ³⁶ @realDonaldTrump, Twitter (Oct. 31, 2018),
<https://twitter.com/realdonaldtrump/status/1057614564639019009?s=20>.

23 ³⁷ @realDonaldTrump, Twitter (Nov. 26, 2018),
<https://twitter.com/realdonaldtrump/status/1067015026995879937?s=20>.

24 ³⁸ Bart Jansen & Alan Gomez, *President Trump Calls Caravan Immigrants ‘Stone
25 Cold Criminals.’ Here’s What We Know*, USA Today (Nov. 26, 2018),
<https://www.usatoday.com/story/news/2018/11/26/president-trump-migrant-caravan-criminals/2112846002/>.

26 ³⁹ Alex Nowrasteh, *Immigration: Research and Policy Brief*, Cato Institute (2018).

27 ⁴⁰ Michael T. Light & Ty Miller, *Does Undocumented Immigration Increase Violent
28 Crime*, 56 *Criminology* 229, 370 (2018) (emphasis added).

1 current practices is animus toward vulnerable immigrants. Indeed, President Trump
2 began his campaign for president with a speech in which he exclaimed:

3 When Mexico sends its people, they're not sending their best. They're
4 not sending you. They're not sending you. They're sending people that
5 have lots of problems, and they're bringing those problems with us.
6 They're bringing drugs. *They're bringing crime. They're rapists.*⁴¹

7 The Administration's rhetoric has not slowed or been tempered following the
8 inauguration. Rather, officials from the Administration have repeatedly asserted
9 that, but for illegal immigration and the associated "DUIs, assaults, burglaries, drug
10 crimes, gang crimes, rapes, crimes against children and murders . . . [c]ountless
11 Americans would be alive today,"⁴² and "open borders lead[] to massive crime."⁴³
12 Defendants singled out the existing asylum system as "an easy ticket to illegal entry
13 into the United States," swamped with "vague, insubstantial, and subjective
14 claims."⁴⁴ Specifically, Defendants expressed a desire to "close[] the terrible
15 loopholes exploited by criminals and terrorists to enter our country—and [] finally
16 end[] the dangerous practice of 'catch and release.'"⁴⁵ Defendants' current attempts
17 to limit access within ports of entry are just the latest in a string of anti-immigrant
18 policies, including the contemporaneously issued policy barring asylum for anyone

19 ⁴¹ *Here's Donald Trump's Presidential Announcement Speech*, Time (June 16,
20 2015), <http://time.com/3923128/donald-trump-announcement-speech/> (emphasis
21 added).

22 ⁴² Jefferson B. Sessions III, Att'y General, *Attorney General Sessions Delivers
23 Remarks on Sanctuary Jurisdictions* (Mar. 27, 2017),
24 [https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-delivers-remarks-
sanctuary-jurisdictions](https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-delivers-remarks-sanctuary-jurisdictions).

25 ⁴³ 'Angel Families,' *Trump Aides Rally Against Illegal Immigrant Crime*, Fox News
26 (Sept. 7, 2018) [https://www.foxnews.com/politics/angel-families-trump-aides-rally-
against-illegal-immigrant-crime](https://www.foxnews.com/politics/angel-families-trump-aides-rally-against-illegal-immigrant-crime).

27 ⁴⁴ Jeffrey B. Sessions III, Att'y General, *Attorney General Jeff Sessions Delivers
28 Remarks to the Executive Office for Immigration Review* (Oct. 12, 2017),
[https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-delivers-remarks-
executive-office-immigration-review](https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-delivers-remarks-executive-office-immigration-review).

⁴⁵ *President Donald J. Trump's State of the Union Address*, White House (Jan. 30,
2018), [https://www.whitehouse.gov/briefings-statements/president-donald-j-trumps-
state-union-address/](https://www.whitehouse.gov/briefings-statements/president-donald-j-trumps-state-union-address/).

1 who crosses the U.S.-Mexico border outside a port of entry;⁴⁶ capping the refugee
 2 resettlement program at 30,000;⁴⁷ attempting to deny asylum to domestic violence
 3 victims and victims of gang violence;⁴⁸ instituting a “Travel Ban;” separating
 4 parents from their children at the border as a deterrent to migration; and revoking
 5 Temporary Protected Status for over 300,000 people.⁴⁹

6 The Administration’s rhetoric toward unaccompanied children has been
 7 particularly inflammatory. For example, in September 2017, the Administration
 8 asserted, without evidence, that MS-13 was expanding “its ranks by taking
 9 advantage of the Unaccompanied Alien Child program” and alleged that some
 10 children were “wolves in sheep[’s] clothing.”⁵⁰ In May 2018, when speaking of
 11 unaccompanied minors, President Trump stated “[t]hey look so innocent; they’re not
 12 innocent.”⁵¹ The Administration has consistently referred to important protections
 13 for unaccompanied minors as “dangerous loopholes” that have been exploited by
 14 gang members posing as vulnerable children.⁵²

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 16 ⁴⁶ Presidential Proclamation Addressing Mass Migration Through the Southern
 17 Border of the United States (Nov. 9, 2018),
 18 [https://www.whitehouse.gov/presidential-actions/presidential-proclamation-
 19 addressing-mass-migration-southern-border-united-states/](https://www.whitehouse.gov/presidential-actions/presidential-proclamation-addressing-mass-migration-southern-border-united-states/). *See also* Aliens Subject
 20 to a Bar on Entry Under Certain Presidential Proclamations; Procedures for
 21 Protection Claims, 83 Fed. Reg. 55934, 55947 (Nov. 9, 2018).

19 ⁴⁷ Presidential Memorandum for the Secretary of State (Oct. 4, 2018),
 20 [https://www.whitehouse.gov/presidential-actions/presidential-memorandum-
 21 secretary-state-13/](https://www.whitehouse.gov/presidential-actions/presidential-memorandum-secretary-state-13/).

20 ⁴⁸ *See Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018).

21 ⁴⁹ *See* Miriam Jordan, *Trump Administration Ends Protected Status for Thousands
 22 of Hondurans*, N.Y. TIMES (May 4, 2018),
 23 <https://www.nytimes.com/2018/05/04/us/honduras-temporary-protected-status.html>.

22 ⁵⁰ Jefferson B. Sessions III, Att’y General, *Attorney General Sessions Gives
 23 Remarks to Federal Law Enforcement in Boston About Transnational Criminal
 24 Organizations* (Sept. 21, 2017), [https://www.justice.gov/opa/speech/attorney-
 25 general-sessions-gives-remarks-federal-law-enforcement-boston-about](https://www.justice.gov/opa/speech/attorney-general-sessions-gives-remarks-federal-law-enforcement-boston-about).

24 ⁵¹ *Remarks by President Trump at a Roundtable Discussion on Immigration,
 25 Bethpage, NY* (May 23, 2018), [https://www.whitehouse.gov/briefings-
 26 statements/remarks-president-trump-roundtable-discussion-immigration-bethpage-
 27 ny/](https://www.whitehouse.gov/briefings-statements/remarks-president-trump-roundtable-discussion-immigration-bethpage-ny/).

26 ⁵² The White House, *Immigration Principles and Policies* (Oct. 8, 2017),
 27 [https://www.whitehouse.gov/briefings-statements/president-donald-j-trumps-letter-
 28 house-senate-leaders-immigration-principles-policies/](https://www.whitehouse.gov/briefings-statements/president-donald-j-trumps-letter-house-senate-leaders-immigration-principles-policies/); also see *President Donald J.*

1 Despite the Administration's repeated efforts to restrict immigration, its
 2 efforts have repeatedly been rejected by courts. For example, the Supreme Court
 3 upheld an injunction prohibiting the further enforcement of the Administration's
 4 policies barring asylum to applicants who cross the U.S.-Mexico border outside of a
 5 designated port of entry, despite similar allegations regarding the danger posed by
 6 supposedly violent immigrants.⁵³ Amici respectfully request that the Court do the
 7 same here and recognize the Administration's actions for what they are—a
 8 misbegotten effort to functionally eliminate the availability of asylum to vulnerable
 9 immigrants in service of an unfounded animus toward asylum seekers.

10 **D. Congress has sought to protect vulnerable asylum seekers.**

11 Contrary to Defendants' derogatory depictions, asylum seekers come to our
 12 borders simply for survival. Many are children traveling alone, without the
 13 protection of a guardian.⁵⁴ Notably, CBP's own data reflects that the number of
 14 adult migrants without families is at its second lowest point since 1970, a shift
 15 indicative of the driving causes of current migration: extreme violence and other
 16 threats in El Salvador, Guatemala, and Honduras, with no hope of protection from
 17 the governments of those countries.⁵⁵ The statutes governing asylum in the United
 18 States function to protect vulnerable populations.

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Trump's State of the Union Address, White House (Jan. 30, 2018),
 22 <https://www.whitehouse.gov/briefings-statements/president-donald-j-trumps-state-union-address/>.

23 ⁵³ See Greg Stohr, *Supreme Court Rejects Trump Bid to Curb Asylum Claims at*
 24 *Border*, Bloomberg (Dec. 21, 2018),
 25 <https://www.bloomberg.com/news/articles/2018-12-21/supreme-court-rejects-trump-bid-to-curb-asylum-claims-at-border-jpygbmcr>.

26 ⁵⁴ Peter J. Meyer et al., Cong. Research Serv., R43702, *Unaccompanied Children*
 27 *from Central America: Foreign Policy Considerations 1* (2016).

28 ⁵⁵ Adam Isacson, *The U.S. Government's 2018 Border Data Clearly Shows Why the*
Trump Administration is on the Wrong Track, Washington Office on Latin America
 (Nov. 9, 2018), <https://www.wola.org/analysis/us-government-2018-border-data-trump-immigration-asylum-policy/>.

1 The humanitarian crisis facing Central American refugees, particularly those
 2 from the Northern Triangle, is well documented. El Salvador and Honduras rank
 3 second and fourth worldwide, respectively, in terms of violent death rates per
 4 100,000 persons; only Syria surpasses El Salvador.⁵⁶ The U.S. State Department
 5 has noted the “climate of fear”⁵⁷ that pervades this region, which is characterized by
 6 frequent homicides, kidnappings, rapes, and other human rights abuses perpetrated
 7 by organized criminals as well as governmental bodies and security forces.⁵⁸ A
 8 2017 report by Doctors Without Borders “documented a pattern of violent
 9 displacement, persecution, sexual violence, and forced repatriation akin to the
 10 conditions found in the deadliest armed conflicts in the world today.”⁵⁹

11 In decades of serving refugees, amici have become intimately acquainted with
 12 the tragic circumstances that compel people to flee their homes. Asylum seekers
 13 arrive here scared, tired, and in dire need of the protections the asylum laws were so
 14 carefully crafted to provide. It is the experience of amici that, while the quantitative
 15 number of immigrants coming to the United States has declined in recent years, for
 16 those asylum seekers who continue to seek asylum access through the U.S.-Mexico
 17 border, their claims are more dire than ever. This is particularly true of the
 18 unaccompanied children who are seeking entry through the U.S.-Mexico border.
 19 Many of these children have suffered brutal violence, including rape, assault,
 20 murder of friends and family, extortion, and countless other traumatic experiences.
 21 They have a profound fear of being forced to return to their home countries, a fear

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 23 ⁵⁶ Claire McEvoy & Gergely Hideg, *Global Violent Deaths 2017* 25 (2017),
 available at <http://www.smallarmssurvey.org/fileadmin/docs/U-Reports/SAS-Report-GVD2017.pdf>.

24 ⁵⁷ U.S. Dep’t of State, *El Salvador Country Reports on Human Rights Practices* 16
 (2017).

25 ⁵⁸ *Id.* at 10; U.S. Dep’t of State, *Honduras Country Reports on Human Rights*
 Practices 1-2, 4 (2017); U.S. Dep’t of State, *Guatemala Country Reports on Human*
 Rights Practices 7, 16 (2017).

26 ⁵⁹ Doctors Without Borders, *Forced to Flee Central America’s Northern Triangle: A*
 Neglected Humanitarian Crisis 4 (2017), available at
 27 [https://www.doctorswithoutborders.ca/sites/default/files/msf_forced-to-flee-central-](https://www.doctorswithoutborders.ca/sites/default/files/msf_forced-to-flee-central-america-northern-triangle_0.pdf)
 28 [americas-northern-triangle_0.pdf](https://www.doctorswithoutborders.ca/sites/default/files/msf_forced-to-flee-central-america-northern-triangle_0.pdf).

1 so great that these children had no other option than to flee alone and travel
2 thousands of miles to the United States.

3 Congress drafted the asylum laws with a clear understanding of the needs of
4 asylum applicants, knowing that “[t]he refugees of tomorrow, like the refugees of
5 today, [would] continue to look to the United States for safe haven and resettlement
6 opportunities – and our government [would] continue to be called upon to help.” S.
7 Rep. No. 96-256, p. 3 (1979). Indeed, Congress sought to “establish a national
8 policy of *welcome* to refugees.” S. Rep. No. 96-590, at 82 (1980) (Conf. Rep.)
9 (emphasis added). This is particularly true for unaccompanied children, who have
10 special asylum protections created by Congress,⁶⁰ which Defendants blatantly
11 ignore.⁶¹

12 Courts, too, recognize that the fundamental purpose of the U.S. asylum
13 system is to “provide refuge to desperate refugees who reach our shores with
14 nowhere else to turn.” *Sall v. Gonzales*, 437 F.3d 229, 233 (2d Cir. 2006); *see also*
15 *Bolanos-Hernandez v. INS*, 767 F.2d 1277, 1280 (9th Cir. 1984) (“In passing the
16 Refugee Act, Congress was motivated by the enduring ‘historic policy of the United
17 States to respond to the urgent needs of persons subject to persecution in their
18 homelands[.]’”) (quoting the Refugee Act of 1980, § 101, Pub. L. No. 96-212, 94
19 Stat. 101, 102 (1982)). Congress explicitly sought to expand the availability of

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21 ⁶⁰ *See* William Wilberforce Trafficking Victims Protection Reauthorization Act of
22 2008 (“TVPRA”) § 235(d)(7)(B), Public Law 110-457 (not specifying any
23 restrictions on initial jurisdiction).

24 ⁶¹ *See* L. Francis Cissna, Director, USCIS, Procedural Guidance for Implementing
25 Regulatory Changes Created by Interim Final Rule, Aliens Subject to a Bar on Entry
26 under Certain Presidential Proclamations; Procedures for Protection Claims (Nov. 9,
27 2018) (“Therefore, while such [unaccompanied minors] will continue to be
28 processed in accordance with 6 U.S.C. § 279 and 8 U.S.C. § 1232, they would per
the terms of [the Rule and Proclamation] be barred from asylum eligibility”); Sara
Kinosian & Amanda Holpuch, *Fleeing Home Alone: The Migrant Children Blocked
at Mexican Border*, THE GUARDIAN, Dec. 19, 2018, available at
[https://www.theguardian.com/world/2018/dec/18/unaccompanied-children-tijuana-
us-immigration](https://www.theguardian.com/world/2018/dec/18/unaccompanied-children-tijuana-us-immigration) (“On Monday night, US border patrol blocked 15 Honduran
migrants, including eight unaccompanied children, from seeking asylum at the Otay
Mesa port of entry north of Tijuana despite two members of Congress traveling with
the group.”).

1 asylum protections in order “to bring United States refugee law into conformance
 2 with the 1967 United Nations Protocol.” *INS v. Cardoza-Fonseca*, 480 U.S. 421,
 3 436-37 (1987). It mandates, categorically and without geographic limitation, that
 4 “[n]o Contracting State shall expel or return (“refouler”) a refugee in any manner
 5 whatsoever to the frontiers of territories where [their] life or freedom would be
 6 threatened on account of [their] race, religion, nationality, membership of a
 7 particular social group or political opinion.” Convention Relating to the Status of
 8 Refugees (“1951 Convention”), Art. 33.1, July 28, 1951, 189 U.N.T.S. 150 (1951);
 9 United Nations Protocol Relating to the Status of Refugees, Art. 1.1, Jan. 31, 1967,
 10 19 U.S.T. 761, T.I.A.S. No. 6223 (1968) (adopting Articles 2 through 34 of the 1951
 11 Convention).⁶² This principle, known as *non-refoulement*, protects all asylum-
 12 seekers from being returned to persecution, even those whose refugee status has not
 13 yet been determined. Executive Comm. of the High Commissioner’s Programme,
 14 Note on International Protection ¶ 11, U.N. Doc. A/AC.96/815 (1993) (“Note on
 15 International Protection”).

16 It is Congress’s considered judgment on the importance of providing an
 17 opportunity for safe haven, which reflects humanitarian protection enshrined in
 18 domestic and international law, that must guide the Court, and not Defendants’
 19 unsound statements that do little to mask an underlying disdain for refugees.

20 **III. CONCLUSION**

21 Defendants have offered no justification for disregarding the clear text of the
 22 INA, international law, or the principles on which the aforementioned are based.
 23 Instead, it is clear that the justifications offered are a pretext for a policy animated
 24 by hostility to immigrants, particularly those from Latin America, and a desire to
 25 limit migration to the United States. Amici respectfully request that the Court deny
 26

27 ⁶² By ratifying the 1967 United Nations Protocol Relating to the Status of Refugees
 28 in 1968, the United States accepted the obligations of the 1951 Convention Relating
 to the Status of Refugees as U.S. law.

1 Defendants' motion to dismiss and declare the Defendants' Turnback Policy and
2 related practices unlawful.

3 Dated: February 21, 2019

Respectfully submitted,
4 By: /s/ Michael D. Kibler
Michael D. Kibler

5 Michael D. Kibler (Bar No. 243982)
6 SIMPSON THACHER & BARTLETT LLP
7 1999 Avenue of the Stars – 29th Floor
8 Los Angeles, California 90067
9 Telephone: (310) 407-7515
10 Facsimile: (310) 407-7502
11 mkibler@stblaw.com

Counsel for Amici Curiae

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