

# **Exhibit A**

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9 **UNITED STATES DISTRICT COURT**  
10 **NORTHERN DISTRICT OF CALIFORNIA**

11 East Bay Sanctuary Covenant; Central American  
Resource Center; Al Otro Lado; Innovation Law  
12 Lab; Tahirih Justice Center; National Center for  
Lesbian Rights; Immigrant Defenders Law Center;  
13 and American Gateways,

14 *Plaintiffs,*

15 v.

16 Joseph R. Biden, President of the United States, in  
his official capacity; Merrick Garland, Attorney  
17 General, in his official capacity; U.S. Department  
of Justice; David Neal, Director of the Executive  
18 Office for Immigration Review, in his official  
capacity; the Executive Office for Immigration  
19 Review; Alejandro Mayorkas, Secretary of  
Homeland Security, in his official capacity; U.S.  
20 Department of Homeland Security; Ur Jaddou,  
Director of the U.S. Citizenship and Immigration  
21 Services, in her official capacity; U.S. Citizenship  
and Immigration Services; Troy A. Miller, Acting  
22 Commissioner of U.S. Customs and Border  
Protection, in his official capacity; U.S. Customs  
23 and Border Protection; Tae D. Johnson, Acting  
Director of Immigration and Customs  
24 Enforcement, in his official capacity; Immigration  
and Customs Enforcement,

25 *Defendants.*  
26

Case No.: 18-cv-06810-JST

**AMENDED AND SUPPLEMENTAL  
COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

27  
28

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## INTRODUCTION

1  
2 1. The Rule challenged here attempts to resuscitate and combine the illegal features of  
3 the two previous asylum bans that this Court and the Ninth Circuit found to be unlawful. *See* 83  
4 Fed. Reg. 55,934 (the “entry ban”); 84 Fed. Reg. 33,829 (the “transit ban”). This new Rule is no less  
5 illegal or harmful. It will effectively eliminate asylum for nearly all non-Mexican asylum seekers  
6 who enter between designated ports of entry, and even for those who present at a port without first  
7 securing an appointment. *See* *Circumvention of Lawful Pathways* at 14-16 (May 16, 2023) (the  
8 “Rule”).<sup>1</sup> The Rule is set to take effect once the Title 42 policy sunsets at the end of the day on May  
9 11, 2023. *Id.* at 2.

11 2. The Rule is convoluted, but its operation is straightforward: It applies to all non-  
12 Mexican asylum seekers at the southern land border and adjacent coastal borders. *Id.* at 15-16, 326,  
13 438. It requires the automatic denial of an applicant’s asylum claim unless the person satisfies one  
14 of three conditions: presenting at a port of entry after securing one of a tightly-restricted number of  
15 appointments through a complicated mobile application called CBP One; applying for and being  
16 denied asylum in a transit country; or obtaining advance permission to travel to the United States  
17 through an approved parole program. *Id.* at 14, 25-26, 438-49. The Rule contains extremely narrow  
18 exceptions to this asylum bar for things like acute medical emergencies. *Id.* at 15, 439. Like the  
19 previous asylum bans, the Rule would bar vulnerable people from asylum for reasons wholly  
20 unrelated to the strength or urgency of their need for protection under our laws.

22 3. The Rule is unlawful in numerous ways. The Ninth Circuit has already held that the  
23 Rule’s main requirements are illegal. The government cannot force asylum seekers to enter at ports.  
24 *E. Bay Sanctuary Covenant (“EBSC”) v. Biden*, 993 F.3d 640, 658 (9th Cir. 2021) (invalidating the  
25

26  
27 \_\_\_\_\_  
28 <sup>1</sup> Citations to the Rule refer to the unpublished pdf version that Defendants released for public  
inspection on May 10, 2023, available at <https://public-inspection.federalregister.gov/2023-10146.pdf>. The Rule will not be published in the Federal Register until May 16, 2023.

1 prior entry ban). And the government cannot force asylum seekers to apply for asylum in transit  
2 countries. *EBSC v. Garland*, 994 F.3d 962, 982 (9th Cir. 2020) (invalidating the prior transit ban).  
3 The Rule revives these illegal requirements by forcing asylum seekers to choose between them, even  
4 though neither is consistent with the asylum statute.

5 4. In practice, the Rule will function just like the enjoined entry ban, because the Rule's  
6 other requirements are virtually impossible for most asylum seekers to meet. While the prior transit  
7 rule was in effect, more than 98% of asylum seekers were unable to satisfy its conditions because of  
8 danger and overwhelmed or nonexistent asylum systems in transit countries.  
9

10 5. The Rule's other conditions are vanishingly small if they exist at all. The Rule  
11 mentions that people from a handful of countries can obtain advance parole. Rule at 264. But  
12 virtually no one can overcome the Rule this way, because the Rule only applies at the southern land  
13 border, whereas these parole programs require participants to fly to U.S. airports. *Id.* at 307.

14 6. The Rule also contains a few extremely narrow exceptions, many of which mirror  
15 similar exceptions in the prior enjoined bans. *Id.* at 318.

17 7. As a result, the Rule will effectively require nearly all covered asylum seekers to  
18 enter at a port of entry. Indeed, that's exactly how the government itself has described the Rule:  
19 "[I]ndividuals who unlawfully cross the U.S. southwest border will be presumed ineligible for  
20 asylum under new regulations. . . ."

21 8. The government cannot reinstate the enjoined entry ban, even if this time it is  
22 couched in a more complex set of categories. Congress provided for an opportunity to seek asylum  
23 in this country, "whether or not at a designated port of arrival." 8 U.S.C. § 1158(a)(1). And it  
24 "mandated equity in its treatment of all refugees, however they arrived." *EBSC v. Biden*, 993 F.3d at  
25 658. The Rule goes even further than the last entry ban, because even people who present at ports  
26 will be cut off from asylum unless they can navigate the CBP One app and wait weeks or months for  
27 an appointment. Rule at 25, 267, 438.  
28

1           9.       Although the administration characterizes the Rule as creating only a “rebuttable  
2 presumption” of asylum ineligibility, it does no such thing. The Rule operates just as the Trump  
3 administration’s prior asylum bans did: Asylum seekers subject to the Rule—all non-Mexicans—are  
4 categorically barred unless they satisfy one of the enumerated and limited conditions or exceptions.  
5 That’s a simple ban with narrow exemptions, and it turns the asylum process on its head.

6           10.      Like its predecessors, this new ban is both inconsistent with Congress’s statutory  
7 directive, and arbitrary and capricious, in numerous ways. Among other reasons, it bars asylum  
8 based on manner of entry and transit through a third country, which this Court and the Ninth Circuit  
9 have already held to be irrelevant, arbitrary bases on which to bar asylum. *EBSC v. Trump*, 349 F.  
10 Supp. 3d 838, 857-59 (N.D. Cal. 2018); *EBSC v. Biden*, 993 F.3d at 671-72; *EBSC v. Barr*, 385 F.  
11 Supp. 3d 922, 945-46 (N.D. Cal. 2019); *EBSC v. Garland*, 994 F.3d at 980.

12           11.      As with the prior bans, the government has also entirely failed to grapple with  
13 evidence that contradicts the Rule’s core assumptions. Transit countries are not safe for many  
14 asylum seekers, who continue to be subject to unspeakable violence even when merely passing  
15 through them. In Northern Mexico, where the Rule would force most migrants to wait for limited  
16 CBP One appointments, thousands of asylum seekers have been kidnapped, raped, or otherwise  
17 violently attacked. And the underdeveloped asylum systems of transit countries are stretched to the  
18 breaking point, unable to handle more than a tiny percentage of the cases that reach the U.S. border  
19 each year. The government not only failed to meaningfully address these facts, but also ignored  
20 evidence of the multiple barriers asylum seekers face in trying to access CBP One appointments.  
21 Nor has the government meaningfully explored alternatives that would inflict less suffering on  
22 asylum seekers.  
23

24           12.      After campaigning on a promise to restore our asylum system, the Biden  
25 administration has instead doubled down on its predecessor’s cruel asylum restrictions. The  
26 agencies claim the Rule merely provides consequences for asylum seekers circumventing lawful  
27  
28

1 pathways. Rule at 19, 53. But seeking asylum *is* a lawful pathway protected by our laws *regardless*  
2 of how one enters the country. Although the administration’s efforts at creating new avenues  
3 through country-specific parole programs is a benefit to those who qualify, that limited option  
4 cannot substitute for ensuring the basic right to seek asylum for those who arrive at the border.

5 13. Plaintiffs now seek a declaration that the Rule violates the INA and the  
6 Administrative Procedure Act (“APA”) and an order vacating and enjoining the Rule.

### 7 **JURISDICTION AND VENUE**

8 14. This case arises under the APA, 5 U.S.C. § 701, *et seq.* and the INA, 8 U.S.C. § 1101,  
9 *et seq.* This Court has subject matter jurisdiction under 28 U.S.C. § 1331 and §§ 2201-02.

10 15. Venue is proper under 28 U.S.C. § 1391(e)(1) because the defendants are agencies of  
11 the United States and officers of the United States acting in their official capacity, at least one  
12 plaintiff resides in this district, and a substantial part of the events or omissions giving rise to the  
13 claim occurred in this district.

### 14 **PARTIES**

#### 15 **I. Plaintiffs**

16 16. Plaintiff East Bay Sanctuary Covenant (“EBSC”) is a nonprofit organization  
17 incorporated in California. EBSC’s main office is in Berkeley, California. EBSC was founded in  
18 1982 to assist refugees fleeing the civil wars and violence in El Salvador and Guatemala. EBSC’s  
19 mission is to offer sanctuary, support, community organizing assistance, advocacy, and legal  
20 services to people escaping political persecution, terror, war, intolerance, exploitation, and other  
21 violence. One of EBSC’s critical missions is to assist individuals fleeing persecution in applying for  
22 asylum and other humanitarian relief in the United States. EBSC also trains and mentors law  
23 students and attorneys to help people apply for asylum.

24 17. Plaintiff Central American Resource Center (“CARECEN”) is a nonprofit  
25 organization incorporated in California primarily serving the Los Angeles, Van Nuys, and San  
26

1 Bernardino areas. CARECEN’s mission is to empower Central Americans and all immigrants by  
2 defending human and civil rights, working for social and economic justice and promoting cultural  
3 diversity. CARECEN offers low-cost immigration legal services, including asylum representation,  
4 and community education programs, and engages in advocacy and organizing to achieve fair and  
5 more inclusive immigration, education, and labor laws and policies.

6 18. Plaintiff Al Otro Lado is a nonprofit, nonpartisan organization established in 2014  
7 and incorporated in California. Al Otro Lado is a legal services organization that serves indigent  
8 deportees, migrants, refugees, and their families, and operates primarily in Los Angeles, California,  
9 and Tijuana, Mexico. Al Otro Lado’s mission is to coordinate and provide screening, advocacy, and  
10 legal representation for individuals in asylum and other immigration proceedings; to seek redress for  
11 civil rights violations; and to provide assistance with other legal and social service needs.<sup>2</sup>

13 19. Plaintiff Innovation Law Lab is a nonprofit organization that has projects in multiple  
14 states. Innovation Law Lab seeks to advance the legal rights of immigrants and refugees in the  
15 United States, with a focus on providing representation to asylum seekers.<sup>3</sup>

17 20. Plaintiff the Tahirih Justice Center (“Tahirih”) is a nonprofit and non-partisan  
18 organization with offices in San Bruno, California; Falls Church, Virginia; Baltimore, Maryland;  
19 Atlanta, Georgia; and Houston, Texas. Tahirih was founded in 1997 and provides free legal  
20 immigration services to survivors of gender-based violence. Tahirih’s mission is to provide free  
21 holistic services to women, girls, and other survivors of gender-based violence such as rape,  
22 domestic violence, female genital mutilation/cutting, forced marriage, and human trafficking.  
23 Tahirih offers legal representation and social services for individuals who seek protection, including  
24 asylum, affirmatively and in removal proceedings. Tahirih also trains and co-counsels with private  
25

26  
27 <sup>2</sup> Al Otro Lado continues to challenge the Trump administration’s entry ban, which was the original  
28 subject of this case. It does not bring claims against the new Rule.

<sup>3</sup> Like Al Otro Lado, Innovation Law Lab continues to challenge the original entry ban but does not  
bring claims against the new Rule.



1 attorneys to provide representation to survivors of gender-based violence in seeking asylum and  
2 other protection from removal.

3 21. Plaintiff National Center for Lesbian Rights (“NCLR”) is a nonprofit organization  
4 that was founded in 1977, and is located in San Francisco, California. NCLR provides free legal  
5 services to lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) people. NCLR’s mission is to  
6 advocate for and advance the rights of LGBTQ people in the United States, including through  
7 provision of free legal services to LGBTQ asylum seekers fleeing persecution and torture on account  
8 of their sexual orientation, gender identity, or gender expression. NCLR offers direct legal  
9 representation, a help line, community education, and Know Your Rights presentations for LGBTQ  
10 individuals who seek protection, including asylum, in their immigration proceedings.  
11

12 22. Plaintiff Immigrant Defenders Law Center (“ImmDef”) is a nonprofit organization  
13 incorporated in California and based in Los Angeles, with additional offices in San Diego, Santa  
14 Ana, and Riverside. It serves immigrants and asylum seekers throughout Southern California and in  
15 Tijuana, Mexico. ImmDef’s mission is to defend immigrants against the injustices of the U.S.  
16 immigration system. To this end, they provide *pro bono* legal services through a universal  
17 representation model so that no immigrant is forced to face removal proceedings alone. ImmDef  
18 pursues its mission through several different programs and projects, including a Cross-Border  
19 Initiative that assists asylum seekers preparing to enter the United States and a Community Defense  
20 Program that provides removal defense legal representation and services to immigrants facing  
21 deportation. ImmDef also plays a core role in the California Welcoming Task Force, a bi-national  
22 coalition of organizations that provide services to individuals seeking asylum in the United States.  
23  
24

25 23. Plaintiff American Gateways is a nonprofit organization founded in 1987 that is  
26 incorporated in Texas, with offices in Austin, San Antonio, and Waco, Texas. American Gateways  
27 provides free legal services to migrants and is particularly focused on serving people who are fleeing  
28 persecution. American Gateways’ mission is to provide free, culturally sensitive, trauma-informed

1 legal representation to individuals and families seeking asylum and other kinds of immigration relief  
2 in the United States. American Gateways also works to engage and educate immigrant communities  
3 and local stakeholders about immigration laws, processes, and about an individual’s rights in the  
4 immigration process.

5 **II. Defendants<sup>4</sup>**

6 24. Defendant Joseph R. Biden is the President of the United States. He is sued in his  
7 official capacity. He is successor to the public official who issued the Proclamation challenged in  
8 this suit.

9  
10 25. Defendant Merrick Garland is the Attorney General of the United States. He is sued  
11 in his official capacity. In that capacity, he issued the Rule challenged in this suit. He directs each  
12 of the component agencies within the Department of Justice. The Attorney General is responsible  
13 for the administration of the immigration laws pursuant to 8 U.S.C. § 1103 and is empowered to  
14 grant asylum or other relief.

15 26. Defendant U.S. Department of Justice (“DOJ”) is a cabinet-level department of the  
16 United States.

17  
18 27. Defendant David Neal is the Director of the Executive Office for Immigration  
19 Review (“EOIR”). He is sued in his official capacity.

20 28. Defendant EOIR is the sub-agency of DOJ that, through its immigration judges and  
21 appellate immigration judges, conducts limited review of negative credible fear determinations in  
22 expedited removal proceedings and adjudicates regular removal proceedings and agency appeals.

23  
24 29. Defendant Alejandro Mayorkas is the Secretary of Homeland Security. He is sued in  
25 his official capacity. In that capacity, he issued the Rule challenged in this suit. He directs each of  
26 the component agencies within the Department of Homeland Security. In his official capacity,

27  
28 

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<sup>4</sup> “The officer’s successor is automatically substituted as a party” under Federal Rule of Civil Procedure 25(d).

1 Defendant Mayorkas is responsible for the administration of the immigration laws pursuant to 8  
2 U.S.C. § 1103 and is empowered to grant asylum or other relief.

3 30. Defendant U.S. Department of Homeland Security (“DHS”) is a cabinet-level  
4 department of the United States federal government. Its components include U.S. Citizenship and  
5 Immigration Services (“USCIS”), U.S. Customs and Border Protection (“CBP”), and U.S.  
6 Immigration and Customs Enforcement (“ICE”).

7 31. Defendant Ur Jaddou is the Director of USCIS. She is sued in her official capacity.  
8

9 32. Defendant USCIS is the sub-agency of DHS that, through its asylum officers,  
10 conducts interviews of individuals who apply for asylum.

11 33. Defendant Troy A. Miller is the Acting Commissioner of CBP. He is sued in his  
12 official capacity.

13 34. Defendant CBP is the sub-agency of DHS that is responsible for the apprehension,  
14 detention, and processing of individuals seeking asylum or other relief at or near the U.S. border.

15 35. Defendant Tae D. Johnson is the Acting Director of ICE. He is sued in his official  
16 capacity.  
17

18 36. Defendant ICE is the sub-agency of DHS that is responsible for carrying out removal  
19 orders and overseeing immigration detention.

## 20 **BACKGROUND**

### 21 **I. The U.S. Protection System**

22 37. The modern U.S. asylum system was established by the Refugee Act of 1980, Pub. L.  
23 96-212, 94 Stat. 102. The Act reflects “one of the oldest themes in America’s history—welcoming  
24 homeless refugees to our shores,” and “gives statutory meaning to our national commitment to  
25 human rights and humanitarian concerns.” Sen. Rep. No. 256, 96th Cong., 1st Sess. 1 (1979),  
26 *reprinted in* U.S. Code Cong. and Admin. News 141, 141. One of Congress’s “primary purposes” in  
27 enacting the statutory provisions governing asylum, codified at 8 U.S.C. § 1158, was “to bring  
28

1 United States refugee law into conformance” with international refugee treaties. *INS v. Cardoza-*  
 2 *Fonseca*, 480 U.S. 421, 436 (1987).<sup>5</sup>

3 **A. Asylum**

4 38. Asylum affords protection from removal to individuals who have a “well-founded  
 5 fear of persecution” on account of one or more of five protected grounds: race, religion, nationality,  
 6 political opinion, or membership in a particular social group, if their country is unable or unwilling  
 7 to protect them from this harm. 8 U.S.C. § 1101(a)(42)(A). A “well-founded fear of persecution” is  
 8 defined as a ten percent chance of persecution. *Cardoza-Fonseca*, 480 U.S. at 430, 440. An asylum  
 9 seeker’s past persecution gives rise to a presumption of a well-founded fear of future persecution  
 10 and, thus, of asylum eligibility.

12 39. There are three principal ways to seek asylum. First, a noncitizen who is not in  
 13 removal proceedings may file an “affirmative” application with USCIS and complete a non-  
 14 adversarial interview with an asylum officer. 8 C.F.R. §§ 208.2(a), 208.9. Second, a noncitizen in  
 15 regular removal proceedings, 8 U.S.C. § 1229a, may submit a “defensive” asylum application to the  
 16 immigration judge as a form of relief from removal, 8 C.F.R. § 208.2(b). The application is decided  
 17 in an adversarial proceeding where the noncitizen has the right to be represented by counsel,  
 18 introduce evidence, and present and cross-examine witnesses. 8 U.S.C. § 1229a(b)(4). Third, a  
 19 noncitizen who has been placed in “expedited removal”—a truncated removal process that may be  
 20 applied to certain noncitizens who arrive at a port of entry or enter without inspection, 8 U.S.C.  
 21 § 1225(b)(1)—may also seek asylum. The noncitizen may do so by expressing fear of removal and  
 22 undergoing a “credible fear” screening interview with an asylum officer. Any noncitizen who  
 23 satisfies the threshold screening standard must be referred to regular removal proceedings to apply  
 24 for asylum.  
 25  
 26

27  
 28 <sup>5</sup> Although the United States is a party only to the later protocol, through that agreement, “the United States agreed to comply with the substantive provisions of Articles 2 through 34 of the 1951 United Nations Convention Relating to the Status of Refugees.” *Cardoza Fonseca*, 480 U.S. at 429.

1           40.     The spouse and children of a person granted asylum can likewise receive asylum as  
2 derivative beneficiaries, even if they are not physically present in the United States. 8 U.S.C.  
3 § 1158(b)(3). People granted asylum can become lawful permanent residents, *id.* § 1159(b), and  
4 eventually U.S. citizens, *id.* § 1427.

5           41.     In crafting the statutory provisions governing asylum, Congress took care to ensure  
6 that noncitizens already within the United States or arriving at the border or a border port of entry  
7 would be able to apply for asylum, regardless of their manner of arrival at or entry within our  
8 borders. 8 U.S.C. § 1158(a)(1) specifically provides:  
9

10           Any [noncitizen] who is physically present in the United States or who arrives in the United  
11 States (whether or not at a designated port of arrival . . .), irrespective of such [noncitizen’s]  
status, may apply for asylum.

12           42.     Accordingly, the Board of Immigration Appeals has long held that—to the extent  
13 manner of entry is considered at all—it can be assessed only as one discretionary factor among many  
14 once asylum eligibility is determined, and never “in such a way that the practical effect is to deny  
15 [asylum] in virtually all cases.” *Matter of Pula*, 19 I&N Dec. 467, 474 (BIA 1987).  
16

17           43.     Additionally, two provisions of the asylum statute specifically address the terms  
18 under which asylum eligibility can be denied based on the ability of an asylum seeker to safely  
19 reside in a third country. Congress imposed significant constraints in these two provisions to ensure  
20 that applicants could be barred from asylum in the United States only if residing elsewhere is  
21 “genuinely safe.” *EBSC v. Garland*, 994 F.3d at 977.  
22

23           44.     The first of those, the safe third country provision, 8 U.S.C. § 1158(a)(2)(A), requires  
24 a formal international agreement with the third country; that the third country be able to provide  
25 asylum seekers “access to a full and fair procedure for determining [their] claim[s] to asylum”; and  
26 an individualized determination that the applicant will not face persecution there.

27           45.     The other, the firm resettlement provision, 8 U.S.C. § 1158(b)(2)(A)(vi), addresses  
28 asylum eligibility for applicants who were “firmly resettled in another country prior to arriving in

1 the United States.” For this bar to apply, however, the government must show “that the government  
2 of the third country issued to the [noncitizen] a formal offer of some type of official status”  
3 permitting indefinite residency, after which the applicant has the opportunity “to show that the  
4 nature of his stay and ties was too tenuous, or the conditions of his residence too restricted, for him  
5 to be firmly resettled.” *Maharaj v. Gonzales*, 450 F.3d 961, 976-77 (9th Cir. 2006) (en banc).

6 **B. Withholding of Removal and Protection Under the Convention Against Torture**

7 46. Like asylum, withholding of removal protects noncitizens from removal to any  
8 country where they would face persecution on account of a protected ground, such as race, religion,  
9 or political opinion. 8 U.S.C. § 1231(b)(3).  
10

11 47. Immigration regulations implementing the Convention Against Torture (“CAT”)  
12 likewise prohibit the removal of a noncitizen to any country where “it is more likely than not that he  
13 or she would be tortured.” 8 C.F.R. § 208.16(c)(2).  
14

15 48. The withholding of removal statute and CAT regulations implement international  
16 treaty obligations not to send noncitizens to countries where they face persecution or torture, known  
17 as *non-refoulement* obligations, and the relief is mandatory for those who meet the requirements.  
18 *INS v. Stevic*, 467 U.S. 407, 421, 426 n.20 (1984); *Maldonado v. Lynch*, 786 F.3d 1155, 1162 (9th  
19 Cir. 2015) (en banc).

20 49. These prohibitions encompass both direct *refoulement*—sending asylum seekers  
21 directly to countries where they face persecution or torture—and indirect *refoulement*—returning  
22 asylum seekers to countries where they are at risk of being sent onward to persecution or torture.  
23

24 50. A noncitizen facing removal proceedings, even one who is ineligible for asylum, may  
25 be granted withholding of removal or CAT protection by an immigration judge after an adversarial  
26 hearing. However, these forms of relief have significant drawbacks compared to asylum. First,  
27 whereas winning asylum requires showing just a ten percent chance of persecution, being granted  
28

1 withholding or CAT protection requires showing that persecution or torture is more likely than not  
2 a much higher threshold. *Stevic*, 467 U.S. at 429-30.

3 51. Second, these alternative forms of relief from removal do not provide a pathway to  
4 permanent residency or U.S. citizenship; they instead come with a removal order and simply prevent  
5 the government from executing that order as to a particular country. The decision to withhold  
6 removal can be revoked if conditions change or if a third country agrees to accept the individual.  
7 *See* 8 C.F.R. §§ 208.24(b)(1), (f) (termination of withholding of removal); 8 C.F.R. § 208.17(d)  
8 (termination of CAT deferral); 8 C.F.R. § 208.16 (removal to third country).  
9

10 52. Third, withholding of removal and CAT protection do not permit individuals to  
11 include their spouse and children as derivative applicants. Instead, those individuals must be present  
12 in the United States, apply separately, and be granted protection independently, which can result in  
13 long-term family separation.

14 53. Finally, winning withholding of removal and CAT protection is more time- and  
15 resource-intensive for applicants and their attorneys. Both types of claims have a higher more-  
16 likely-than-not standard, and CAT claims have multiple elements that are distinct from both asylum  
17 and withholding of removal. These differences increase the need for expert testimony and other  
18 detailed evidence, and require additional legal research and analysis. These differences also mean  
19 more people are denied these forms of protection on the merits, requiring them to pursue complex  
20 appeals to the Board of Immigration Appeals and then to the federal Courts of Appeals.  
21

## 22 **II. The Trump Administration's Asylum Bans and Resulting Court Challenges**

23 54. The new Rule reprises two attempts by the Trump administration to restrict asylum  
24 eligibility. The first was based on an asylum seeker's manner of entry (the "entry ban") and the  
25 second was based on their transit through third countries on their way to the southern U.S. border  
26 (the "transit ban"). This Court enjoined these earlier bans in decisions affirmed by the Ninth Circuit.  
27  
28

**A. The Entry Ban**

1  
2 55. The Trump administration issued the entry ban in November 2018 as an interim final  
3 rule barring asylum eligibility to anyone subject to a presidential proclamation concerning the  
4 southern border. 83 Fed. Reg. 55,934. That same day, former President Trump issued a  
5 proclamation suspending entry of noncitizens through the southern border, excepting only lawful  
6 permanent residents and those who presented for inspection at a port of entry. 83 Fed. Reg. 57,661,  
7 57,663. Together, the rule and proclamation barred asylum eligibility for those who crossed the  
8 southern border between designated ports of entry.  
9

10 56. Plaintiffs EBSC, CARECEN, Innovation Law Lab, and Al Otro Lado challenged the  
11 entry ban in this Court on November 9, 2018, the same day it was issued, in this case. This Court  
12 enjoined the entry ban, in part, because it “irreconcilably conflict[ed]” with 8 U.S.C. § 1158(a)(1)  
13 and was impermissibly issued without notice and comment. *EBSC v. Trump*, 349 F. Supp. 3d at 844,  
14 862-63.  
15

16 57. The Ninth Circuit denied the government’s request to stay that injunction, agreeing  
17 with this Court that the ban conflicted with § 1158(a)(1) and impermissibly conditioned “eligibility  
18 for asylum on a criterion that has nothing to do with asylum itself”; and that the government violated  
19 the APA’s requirements. *EBSC v. Trump*, 932 F.3d 742, 771-72, 775-78 (9th Cir. 2018) (corrected  
20 opinion).  
21

22 58. The Supreme Court likewise denied the government’s request to stay this Court’s  
23 order. *Trump v. EBSC*, 139 S. Ct. 782 (2018).  
24

25 59. On February 28, 2020, the Ninth Circuit affirmed this Court’s injunction on the  
26 merits, reiterating that the ban contravened § 1158(a)(1) and was arbitrary and capricious, and that  
27 the government violated the APA. *EBSC v. Biden*, 993 F.3d at 671, 675-77.  
28



1           60. Separately, on August 2, 2019, a district court in the District of Columbia vacated the  
2 asylum entry ban as in conflict with § 1158(a)(1). *O.A. v. Trump*, 404 F. Supp. 3d 109 (D.D.C.  
3 2019), *appeal pending sub nom O.A. v. Biden*, No. 19-5272 (D.C. Cir.).

#### 4 **B. The Transit Ban**

5           61. In July 2019, with the entry ban enjoined, the Trump administration promulgated the  
6 transit ban as an interim final rule. It provided that noncitizens who transited through another  
7 country prior to reaching the southern border of the United States were ineligible for asylum. 84  
8 Fed. Reg. 33,829. The asylum transit ban had three narrow exceptions for noncitizens who: (1) had  
9 applied for and were denied protection in a transit country; (2) met the definition of a “victim of a  
10 severe form of trafficking in persons”; or (3) had transited only through countries not party to the  
11 Refugee Convention or Protocol or the CAT. *Id.* at 33,835, 33,843. These exceptions exempted  
12 almost no one from the eligibility bar.  
13

14           62. The same day the transit ban issued, EBSC, CARECEN, Innovation Law Lab, and Al  
15 Otro Lado again filed suit in this Court, in a case related to this one. On July 24, 2019, the Court  
16 preliminary enjoined the ban. *EBSC v. Barr*, 385 F. Supp. 3d at 960. The Court concluded that the  
17 transit ban conflicted with the asylum statute’s safe third country and firm resettlement provisions, 8  
18 U.S.C. §§ 1158(a)(2)(A) and (b)(2)(A), because, unlike those provisions, it did “virtually nothing to  
19 ensure that a third country is a ‘safe option.’” *Id.* at 944. The Court also held the rule arbitrary and  
20 capricious because failure to seek protection in a third country has no bearing on the merits of  
21 asylum claims and is thus an invalid basis for denying asylum, *id.* at 945-47, and because the  
22 agencies impermissibly ignored extensive contrary evidence documenting the dangers to asylum  
23 seekers in Mexico, *id.* at 951-56. And the Court again determined that the government likely  
24 violated the APA’s notice-and-comment requirements. *Id.* at 948-50.  
25  
26

27           63. The Ninth Circuit subsequently stayed the operation of this Court’s injunction outside  
28 the Ninth Circuit. *EBSC v. Barr*, 934 F.3d 1026 (9th Cir. 2019). On September 9, 2019, this Court

1 issued a new nationwide injunction supported by further findings. *EBSC v. Barr*, 391 F. Supp. 3d  
2 974, 985 (N.D. Cal. 2019). On September 11, 2019, the Supreme Court entered a four-sentence  
3 order staying this Court’s preliminary injunction pending appeal. *Barr v. EBSC*, 140 S. Ct. 3 (2019).

4 64. The transit ban took effect following the Supreme Court’s stay decision and remained  
5 in place for nearly a year. For those to whom it applied, it functioned as a near-total elimination of  
6 asylum. According to government data, the agency determined that 98.3% of more than 25,000  
7 asylum seekers subjected to the transit ban during that time failed to qualify for any exception and  
8 were thus barred from asylum.  
9

10 65. Meanwhile, separate plaintiffs had also challenged the transit ban in the D.C. district  
11 court. On June 30, 2020, that court vacated the transit ban interim final rule for violating the APA’s  
12 notice-and-comment requirements. *Cap. Area Immigrants’ Rights Coal. v. Trump*, 471 F. Supp. 3d  
13 25 (D.D.C. 2020), *appeal dismissed sub nom I.A. v. Garland*, No. 20-5271, 2022 WL 696459 (D.C.  
14 Cir. Feb. 24, 2022).  
15

16 66. The Ninth Circuit affirmed this Court’s preliminary injunction against the asylum  
17 transit ban on the merits, agreeing that the ban conflicted with § 1158’s firm resettlement and safe  
18 third country provisions and was arbitrary and capricious. *EBSC v. Garland*, 994 F.3d at 977-78,  
19 980-83.  
20

21 67. In December 2020, the outgoing administration re-issued the transit ban as a final  
22 rule, which was “almost verbatim the interim final rule this Court previously enjoined.” *EBSC v.*  
23 *Barr*, 519 F. Supp. 3d 663, 665 (N.D. Cal. 2021) (internal quotation marks omitted); *see* 85 Fed.  
24 Reg. 82,260 (Dec. 17, 2020). This Court preliminarily enjoined the final rule as contrary to § 1158  
25 and arbitrary and capricious. *EBSC v. Barr*, 519 F. Supp. 3d at 666-68.  
26  
27  
28

1           68.     Because of the injunctions and vacatur, the prior asylum bans have not been in effect  
2 during the Biden administration.

### 3 **III. The Biden Administration’s Unwinding of Title 42 and Its New Asylum Ban Rule**

4           69.     President Biden signaled that his administration’s approach to asylum would be  
5 different from that of his predecessor. Shortly after his election, he indicated his intention to “restore  
6 and strengthen” the “badly damaged” U.S. asylum system, including by having Defendants Garland  
7 and Mayorkas “promptly review and decide whether to rescind” the asylum entry and transit bans.  
8 Exec. Order No. 14,010, 86 Fed. Reg. 8,267, 8,269-70 (Feb. 5, 2021).  
9

10           70.     The Biden administration at first maintained the previous administration’s Title 42  
11 policy that has resulted in systematic summary expulsion of asylum seekers under the pretext of a  
12 pandemic-related public health measure. *See* 85 Fed. Reg. 17,060 (Mar. 26, 2020). However,  
13 beginning in February 2021, President Biden ordered DHS to “begin taking steps to reinstate the safe  
14 and orderly reception and processing of arriving asylum seekers.” 86 Fed. Reg. at 8,269.  
15

16           71.     On April 1, 2022, the CDC terminated the Title 42 order, effective May 23, 2022,  
17 during which time DHS would implement appropriate COVID-19 mitigation protocols in  
18 preparation for resuming normal processing. 87 Fed. Reg. at 19,941-42.

19           72.     But Title 42 did not end on May 23, 2022, or on December 21, 2022—the date by  
20 which a D.C. district court ordered its end, *Huisha-Huisha v. Mayorkas*, \_\_\_ F. Supp. 3d \_\_\_, 2022  
21 WL 16948610 (D.D.C. Nov. 15, 2022)—due to litigation brought by Louisiana and other states, *see*  
22 *Louisiana v. CDC*, 603 F. Supp. 3d 406 (W.D. La. 2022); *Arizona v. Mayorkas*, 143 S. Ct. 478  
23 (2022).  
24

25           73.     In December 2022, DHS issued a string of press releases asserting that it was  
26 continuing to prepare for the end of Title 42 and the resumption of regular Title 8 processing. News  
27 reports that month indicated that the agencies had drafted a version of the Rule to be implemented  
28 when Title 42 lifted.

1           74.     On January 5, 2023, DHS and DOJ issued a press release confirming that they would  
2 soon issue the Rule challenged here.

3           75.     Meanwhile, on January 30, 2023, the government announced that it would allow the  
4 COVID-19 public health emergency declaration to expire at the end of the day on May 11, 2023,  
5 which would also spell the end of Title 42.

6           76.     On February 23, 2023, Defendants finally published the Notice of Proposed  
7 Rulemaking (“NPRM”) with a truncated 30-day comment period. 88 Fed. Reg. 11,704 (Feb. 23,  
8 2023). When more than 170 organizations asked them to extend the comment period, they refused  
9 to do so, solely on the ground that Title 42 was set to end on May 11, 2023.  
10

11           77.     The Rule is virtually unchanged from the NPRM and was issued without the required  
12 30-day delay in effective date—instead taking effect the very next day. The Rule expressly rescinds  
13 and supersedes the enjoined asylum entry and transit bans. Rule at 370, 380. Like those bans,  
14 however, the new Rule would dramatically curtail the availability of asylum in the United States.  
15 While the Rule purports to provide three “options” to preserve asylum eligibility, nearly all covered  
16 asylum seekers will be unable to satisfy two of these conditions, and only a limited number will be  
17 able to utilize the third: securing scarce appointments booked using CBP One. The Rule will  
18 eviscerate the asylum system that Congress created.  
19

20           **A. The New Rule’s Asylum Eligibility Bar**

21           78.     Despite its complex wording, the Rule’s basic operation is straightforward. The  
22 asylum eligibility bar applies to anyone who arrives at the southern land border after traveling  
23 through a third country en route to the United States. In other words, it applies to all non-Mexican  
24 adults and families seeking asylum at the southern U.S. border.  
25

26           79.     The Rule bars asylum unless a covered person (1) presents at a port of entry and  
27 obtains one of a small number of border port appointments through a complicated mobile application  
28 called CBP One; (2) applies for asylum or similar Bar relief in a transit country, and receives a denial

1 before coming to the United States; or (3) applies for parole through a government-approved  
2 program and receives advance permission to travel to the United States. Rule at 25-26, 443-44.  
3 People who do not fall into one of these three categories are automatically barred from obtaining  
4 asylum, no matter the strength of their claims to refugee protections.

5 80. The Rule also contains two extremely narrow exceptions. The first exception allows  
6 a person to avoid the bar in “exceptionally compelling circumstances,” including an “acute medical  
7 emergency,” an “imminent and extreme threat” to life or safety, or being a “victim of a severe form  
8 of trafficking in persons.” *Id.* at 26, 444. The Rule makes clear that these are meant to be  
9 circumscribed and only exempt a tiny number of people. For instance, the “imminent and extreme  
10 threat” exception requires an “imminent threat of rape, kidnapping, torture, or murder,” *id.* at 26,  
11 444, and does not include “generalized concerns about safety, or based on a prior threat that no  
12 longer poses an immediate threat.” *Id.* at 15 n.36.

13  
14 81. The second exception is only for individuals who present at a port of entry. They can  
15 avoid the CBP One appointment requirement if they “demonstrate [] by a preponderance of the  
16 evidence that it was not possible to access or use the CBP One app due to language barriers,  
17 illiteracy, significant technical failure, or other ongoing and serious obstacle.” *Id.* at 298, 444. This  
18 exception only “captures a narrow set of circumstances in which it was truly not possible for the  
19 noncitizen to access or use” CBP One. *Id.* at 298. Notably, there is no exception for a person’s  
20 inability to secure one of the limited CBP One appointments due to insufficient availability,  
21 regardless of how long someone has attempted to obtain one. *See id.* at 119-20, 438. Nor is there an  
22 exception for someone who lacks the requisite type of phone, access to internet service, to the ability  
23 to charge their phone, or the sophistication necessary to navigate the CBP One app.  
24

25  
26 82. Despite this structure, the Rule asserts that it creates only a “presumption” of  
27 ineligibility for asylum that can be “rebutted.” That description is inaccurate. For every person who  
28 is subject to the Rule, asylum is barred unless they meet one of the conditions or narrow exceptions

1 that, under the Rule, preserves asylum eligibility. This Rule is no different from any other  
2 prohibition with exemptions, including the enjoined prior bans.

3 83. By contrast, a presumption typically arises when one fact is inferred from other facts.  
4 A presumption is rebuttable if the party it operates against may provide evidence to disprove the  
5 inferred fact. The Rule doesn't work that way: it doesn't infer one fact from another. It simply bars  
6 a huge category of people from asylum and identifies several narrow categories of people who  
7 remain eligible.

8 84. Moreover, in practice, the Rule preserves far less asylum eligibility than it does on  
9 paper, because two of the three conditions—advance parole and denial of asylum by a transit  
10 country—are unavailable to almost all of the asylum seekers who are subject to the Rule.

11 85. Under the Rule, for instance, people who “sought asylum or other protection in a  
12 country through which the noncitizen traveled and received a final decision denying that  
13 application” are not barred. Rule at 26, 198, 444. But this purported exception is virtually  
14 meaningless. Many transit countries lack a functioning asylum system, others have systems that are  
15 stretched to the breaking point, and most are not remotely safe enough for asylum seekers to find  
16 refuge. As this Court and the Ninth Circuit previously found, it is not possible or advisable for many  
17 asylum seekers to seek protection in transit to the United States.

18 86. The Rule also purportedly exempts people who were granted permission to enter the  
19 United States after applying for parole from outside the United States. *Id.* at 14. The Rule points to  
20 a handful of nationality-specific parole processes that the government recently launched. *See id.* at  
21 10, n.19; 82, n.86; 423, n.380 (citing 87 Fed. Reg. 63507 (Oct. 19, 2022) (Venezuela); 88 Fed. Reg.  
22 1243 (Jan. 9, 2023) (Haiti); 88 Fed. Reg. 1255 (Jan. 9, 2023) (Nicaragua); 88 Fed. Reg. 1266 (Jan. 9,  
23 2023) (Cuba); 87 Fed. Reg. 25040 (Apr. 27, 2022) (Ukraine))). The parole criteria are not tied to the  
24 need for asylum or danger in any way. And nationals of these countries can only obtain parole if  
25 they have a financial sponsor in the United States, can afford a plane ticket, and are able to obtain a  
26  
27  
28

1 passport. *Id.* at 303-05. Nationals of other countries, including many significant refugee-producing  
2 countries, are not eligible for these nationality-specific parole processes. *See, e.g.*, 88 Fed. Reg.  
3 1243, 1252 (eligibility requirements for Haitian parole program); 87 Fed. Reg. 25040, 25042  
4 (eligibility requirements for Ukrainian parole program).

5 87. The Rule’s supposed exception for these parolees will encompass almost no one,  
6 because the Rule only applies to individuals who enter at the southern U.S. border, while participants  
7 in these parole programs are required to fly to U.S. airports—they *may not* enter at the border. In  
8 other words, this supposed “option” for preserving asylum eligibility generally only applies to  
9 people who are not subject to the Rule in the first place.  
10

#### 11 **B. Procedures for Applying the Bar**

12 88. The Rule applies in any proceeding where a person might raise an asylum claim: the  
13 affirmative asylum process, expedited removal, and full removal proceedings in immigration court.  
14 Rule at 26, 71, 300.

15 89. First, the Rule applies in affirmative asylum adjudications conducted by USCIS  
16 asylum officers. *Id.* at 178. Asylum officers must determine whether an applicant is barred by the  
17 Rule, and whether the applicant satisfies any of the Rule’s exceptions before adjudicating the merits  
18 of their asylum claim. *Id.* at 300. If an asylum officer finds that the applicant does not meet a  
19 condition or qualify for an exception and is therefore barred from asylum, the applicant will  
20 generally be referred to immigration court for removal proceedings. *Id.* at 35, 72-73, 357, 439-40.  
21

22 90. Second, the Rule applies in the credible fear screening process conducted in  
23 expedited removal proceedings. *Id.* at 26, 71. The statutory standard requires assessing whether the  
24 asylum seeker has a “significant possibility” of later establishing asylum eligibility in a full hearing  
25 before an immigration judge. *Id.* at 212-13. Anyone barred by the Rule will receive a negative  
26 credible fear finding and face immediate removal if they are unable to meet a higher screening  
27 standard for withholding of removal and CAT claims. *Id.* at 214-15. By design, the Rule will result  
28

1 in people being rapidly sent back to persecution because they are barred from asylum. *See, e.g., id.*  
2 at 6, 95, 152-53, 192-93, 225-26.

3 91. Third, the Rule applies in immigration court, when a person raises asylum as a  
4 defense to removal. *Id.* at 300. Immigration judges must determine whether the Rule applies and  
5 whether the applicant can meet one of its conditions or exceptions. *Id.* at 300-01, 445. Those who  
6 are referred for full proceedings after passing a credible fear screening or being denied asylum in  
7 affirmative proceedings must also establish, in immigration court, that they are eligible for asylum  
8 despite the Rule. *Id.*

#### 10 **IV. Additional Sweeping Changes to the Asylum System**

11 92. In addition to the Rule, the government recently has made other sweeping changes to  
12 the way the asylum system operates that will compound the Rule's harm. These significant changes  
13 were announced after the comment period on the Rule closed, making it impossible for commenters  
14 to assess the true impact of the Rule on border processing and on asylum seekers.

15 93. **Credible Fear Interviews in CBP Custody.** First, in April 2023, the agencies  
16 revived the Trump administration's practice of forcing asylum seekers at the border to undergo their  
17 credible fear screening interviews on extremely expedited timelines while detained in CBP custody,  
18 rather than after being transferred to ICE custody. Asylum seekers subjected to this policy under  
19 Trump had "restricted opportunities to consult with a person of their choosing during the credible  
20 fear interview process," *Las Americas Immigrant Advoc. Ctr. v. Wolf*, 507 F. Supp. 3d 1, 9 (D.D.C.  
21 2020), and were subjected to deplorable confinement conditions, both of which negatively impacted  
22 their credible fear passage rates. Now that this policy is reactivated, people barred from asylum  
23 under the Rule may be forced, not only to meet a higher screening standard, but to do so under these  
24 extremely challenging conditions. Further, on May 11, DHS announced a related policy change  
25 under which the waiting period before a credible fear interview would be reduced to 24 hours,  
26 making adequate preparation even more difficult. Most commenters did not raise these concerns  
27  
28



1 because the resumption of this program came after the close of comments on the Rule, but in  
2 response to the few commenters who did raise this issue, the agencies dismissed it as beyond the  
3 scope of the Rule. *See* Rule at 157.

4 **94. Execution of Expedited Removal Orders of Third Country Nationals to Mexico.**

5 In the Rule’s NPRM, the agencies said, “Once Title 42 is no longer in place,” DHS plans to combine  
6 implementation of the new Rule with an unprecedented practice of carrying out “Title 8 *removals* of  
7 individuals subject to expedited removal” to Mexico. 88 Fed. Reg. at 63,511 (emphasis added). In  
8 one sense, this will continue Defendants’ practice of “expelling” certain non-Mexicans to Mexico  
9 under Title 42, with even graver consequences for the people subject to removal. *See* Rule at 69  
10 (recognizing five-year bar to re-entry that applies to people removed under an expedited removal  
11 order). However, the United States has never before sought to systematically subject non-Mexicans  
12 to expedited removal to Mexico under the immigration laws.

14 95. At minimum, the government plans to subject Haitians, Nicaraguans, Cubans, and  
15 Venezuelans to such third-country expedited removals to Mexico.<sup>6</sup>

17 96. Despite the mention of this plan in the NPRM, the agencies did not confirm until May  
18 2, 2023, that the Mexican government has agreed to accept removals of third country nationals after  
19 Title 42 lifts.

20 97. The administration has stated that those barred by the new Rule “will generally be  
21 processed under Title 8 expedited removal authority in a matter of days.” Accordingly, for Haitians,  
22 Cubans, Venezuelans, and Nicaraguans—and perhaps also for others—being barred from asylum  
23 because of the new Rule may lead to rapid removal to northern Mexico, where they will once again  
24 face grave dangers.  
25  
26  
27

28 <sup>6</sup> 88 Fed. Reg. at 1,249 (Haitians); 88 Fed. Reg. at 1,260 (Nicaraguans); 88 Fed. Reg. at 1,272 (Cubans); 88 Fed. Reg. at 1,279 (Venezuelans).

1           98.     **Asylum Processing Rule.** In addition to these sweeping changes, the Biden  
2 administration halted use of an interim final rule (the “asylum processing rule”) that made several  
3 changes to asylum processing at the border, and like this Rule, was justified as a means of ensuring  
4 efficient processing of asylum claims. 87 Fed. Reg. 18,078, 18,098-107 (Mar. 29, 2022); *see* 8  
5 C.F.R. § 1240.17. The asylum processing rule’s central change was to permit asylum officers, rather  
6 than just immigration judges, to adjudicate the asylum applications of people who were subject to  
7 expedited removal and passed their credible fear screenings. 87 Fed. Reg. at 18,086; 8 C.F.R. §  
8 208.2(a)(1)(ii); *id.* § 208.9(a)(1).  
9

10           99.     The administration paused the program indefinitely on April 12, 2023, just over a  
11 year after issuing the rule, shortly before issuing this Rule but after the close of comments on the  
12 NPRM.

### 13 **V. The Rule’s Core Assumptions Are False and Contrary to Evidence.**

14           100.    The Rule assumes that the three conditions, one of which individuals must satisfy to  
15 maintain asylum eligibility, are readily available, safe options. Rule at 60. This is simply wrong,  
16 and the agencies have failed to grapple with the evidence contradicting this premise.  
17

#### 18 **A. The Parole Processes Cannot Substitute for Asylum Access.**

19           101.    The parole processes discussed above may provide a route for some number of people  
20 who otherwise would have sought asylum at the border to instead come to the United States via  
21 parole. But they do not justify the Rule’s near-elimination of access to asylum at the southern  
22 border.  
23

24           102.    The parole programs the Rule discusses encompass only five nationalities. In 2019—  
25 the last full year before Title 42 went into effect—people from more than 150 countries sought  
26 asylum in the United States, and only a fraction of asylum applications was filed by individuals from  
27 the parole countries.  
28

1           103. Even as to individuals from the five countries, these parole programs impose  
2 significant barriers to access, which means that the most vulnerable (and thus most in need of  
3 refugee protections) will be unable to avail themselves of this process. For example, to qualify for  
4 this parole program, an applicant must have a U.S.-based financial supporter, which may be  
5 unavailable for many asylum seekers. Similarly, the requirement of traveling to the United States on  
6 a commercial flight will be unaffordable for many of the most vulnerable asylum seekers.

7           104. The programs also impose a passport requirement, which excludes asylum seekers  
8 who fear applying for passports from their countries' governments (which may be involved in or  
9 complicit in their persecution), as well as those who cannot afford to do so. For others, passport  
10 application processing times will be a barrier, since many asylum seekers flee immediate dangers.

11           105. In addition, the wait required for parole application processing renders parole  
12 unavailable to those who must make an urgent decision to flee persecution.

13           106. The parole processes are also unavailable to people who entered the United States,  
14 Mexico, *or* Panama irregularly after January 9, 2023. This means that those at whom the Rule is  
15 purportedly most directed—asylum seekers waiting in Mexico to seek asylum in the United States at  
16 the end of Title 42—cannot actually qualify for parole because they likely entered Panama or  
17 Mexico without inspection after the cut-off date.

18           107. Finally, the government has capped the number of people who will be accepted into  
19 these parole programs, so even individuals who can meet all the requirements may be unable to  
20 obtain parole. And because the parole criteria are not tied to one's need for asylum or danger, some  
21 of the limited slots may be used by non-asylum seekers.

22           **B. Many Asylum Seekers Are Unable to Present at Ports of Entry with an**  
23           **Appointment.**

24           108. The Rule fails to account for the various reasons that many people seeking refuge in  
25 the United States cannot present at a port of entry after securing an appointment using CBP One. As  
26  
27  
28

1 the Ninth Circuit has recognized, “Many migrants enter between ports of entry out of necessity: they  
2 ‘cannot satisfy regular exit and entry requirements and have no choice but to cross into a safe  
3 country irregularly prior to making an asylum claim.” *EBSC v. Biden*, 993 F.3d at 673 (citation  
4 omitted).

5 109. Many asylum seekers are unaware that designated locations for entering the United  
6 States even exist. Those who do know about designated ports of entry often have no idea where they  
7 are or how to find them. Others are unable to access them due to the well-documented dangers—  
8 including rampant kidnapping and physical and sexual violence—and unstable living conditions that  
9 refugees face in Mexico’s northern border region.  
10

11 110. Even those who can access ports of entry may still be barred from asylum under the  
12 Rule. That is because nearly all non-Mexican nationals will be forced to obtain a CBP One  
13 appointment to remain eligible for asylum, and many will be unable to secure one in a timely  
14 fashion.  
15

16 111. This requirement will put asylum seekers in an impossible position. To maintain  
17 eligibility for asylum, individuals must secure an appointment using the CBP One app and appear at  
18 the designated time and place. However, there are numerous onerous hurdles to doing so.

19 112. First, asylum seekers must spend weeks or months in dangerous areas of Mexico  
20 while they wait to obtain an appointment and then appear at the designated time and place. Recent  
21 experience with asylum seekers’ use of the CBP One app to make appointments for Title 42  
22 exemptions demonstrates that securing an appointment via CBP One can take significant time. CBP  
23 One appointments have not been made immediately available, and instead have been offered two  
24 weeks in the future at the earliest. In addition, under Title 42, the number of appointments has been  
25 tightly restricted to 750 appointments per day border-wide, which does not come anywhere near to  
26 matching the demand. For example, as of late March 2023, in the Mexican border cities along the  
27 Rio Grande Valley “approximately 25 people [were] competing for every 1 appointment spot.”  
28

1 These appointments have been released at a set time each day and claimed in minutes. Reports  
2 indicate that some asylum seekers have tried to get an appointment every day for three months  
3 without success.

4 113. Appointments will not be meaningfully easier to obtain under the Rule. Demand for  
5 seeking asylum at ports of entry will continue to far outpace the availability of appointments. In  
6 March 2023, the most recent month for which data is publicly available, DHS reported an average of  
7 nearly 6,200 encounters per day at the southern border. Yet, on May 5, 2023, the agencies confirmed  
8 that they would continue to cap appointments once Title 42 lifts, at just 1,000 per day border-wide.  
9 Further, although the agencies recently eliminated the daily scramble for appointments, they have  
10 replaced it with a daily lottery system that gives people a longer window in which to request an  
11 appointment. *See* Rule at 272 (referring to a “daily appointment allocation process”). The agencies  
12 have confirmed that appointments will generally still be available only two weeks in advance.  
13

14 114. People are not free to wait in a safe location while they seek a CBP One appointment.  
15 CBP One uses “geo-fencing” technology, which requires users to be within a defined proximity to  
16 the United States border in order to use the application. Thus, people can only make appointments  
17 once they reach the geo-fenced area, currently restricted to central and northern Mexico, and cannot  
18 do so earlier to minimize their wait time in the border zone.  
19

20 115. This means that, to use CBP One to make an appointment, many asylum seekers must  
21 wait weeks or months in dangerous conditions in Mexico.  
22

23 116. But many asylum seekers cannot wait to seek protection. Many are subjected to  
24 horrific violence while waiting in Mexico to seek asylum in the United States. For example, a  
25 Venezuelan family who could not make an appointment at the nearest port of entry was kidnapped,  
26 tortured, and extorted en route to another port for a CBP One appointment. In January 2023, a  
27 teenager was murdered in Monterrey, Mexico, while waiting with his family for their scheduled CBP  
28 One appointment. Asylum seekers in Mexico, particularly Honduran, Salvadoran, Guatemalan

1 nationals, have also reported that persecutors can easily find them within Mexico, including  
2 following them from other parts of the region. Thus, asylum seekers who need to reach safety as  
3 quickly as possible often feel compelled to enter the United States along the border, outside of a port  
4 of entry, or without an appointment in order to escape their persecutors and the violence on  
5 Mexico's side of the border.

6 117. Second, the CBP One app requires individuals to have access to a smartphone that is  
7 compatible with the app and can connect to the internet. While many people fleeing harm may bring  
8 a smartphone, not all smartphones are able to use CBP One. For many others, their smartphones are  
9 stolen, lost, or broken on the journey. By some estimates, three out of every ten individuals seeking  
10 asylum have had to purchase a new cellphone in order to try to access the app. Purchasing a device  
11 in Mexico presents a financial barrier for many, especially considering that many features of CBP  
12 One reportedly operate better, and in some cases only, on newer, more expensive devices.

13 118. Third, CBP One requires reliable internet for a sustained period of time in order to  
14 navigate and input the required information to secure an appointment. But many asylum seekers at  
15 the border do not have access to reliable and consistent internet. Further, seeking out a strong  
16 internet connection can require asylum seekers in hiding in Mexico to expose themselves to danger.  
17 Asylum seekers have had to spend their entire savings buying cellphone data to try to schedule  
18 appointments and have been forced to pay cartels to charge their phones.

19 119. Fourth, CBP One poses significant language barriers. To access CBP One, a user  
20 must first create an account through a government site, Login.gov. The account-creation process is  
21 available only in English, French, and Spanish. Then, assuming a person is able to complete this  
22 step, the CBP One app is currently available only in English, Spanish, and Haitian Creole. Many in-  
23 app messages, including important notices and most error messages, appear only in English, even in  
24 the Spanish or Haitian Creole versions. Therefore, people who cannot read and write in one of these  
25 languages cannot use CBP One.  
26  
27  
28

1           120. The application thus prejudices refugees who speak Indigenous languages and those  
2 from non-English speaking portions of Africa, Asia, and the Middle East. It also disadvantages  
3 native Spanish and Haitian Creole speakers who lack robust literacy skills, because the application  
4 requires both “a high level of literacy” and familiarity with smartphone apps.

5           121. As a result of these issues, most migrants who have tried to use CBP One in the past  
6 several months needed the assistance of others. Because the app requires assistance for meaningful  
7 use, migrants face being charged hundreds or thousands of dollars by people in Mexico offering to  
8 “help” with the process, thereby exacerbating the kind of extortion of migrants that the Rule purports  
9 to mitigate. The U.N. International Organization for Migration has reported individuals posing as  
10 lawyers or other professionals charging fees to help people navigate the app.  
11

12           122. Fifth, CBP One is plagued by technical issues, with many reports of the application  
13 repeatedly crashing or freezing. For example, the app requires frequent updating, is prone to timeout  
14 in the middle of the application process, and tends to freeze on various screens without saving data.  
15 Nearly everyone interviewed about their attempts to use CBP One has reported that the app freezes  
16 or crashes unpredictably. Others have reported having to try different lighting and backgrounds, just  
17 to take a photograph of themselves that the application will accept.  
18

19           123. Sixth, CBP One uses problematic and prejudicial facial recognition software. It  
20 routinely fails to register darker skin tones, and without the ability to upload a photo, asylum seekers  
21 are unable to move past the photo confirmation page to secure an appointment.  
22

23           124. The result of these multiple, compounding barriers is that requiring CBP One  
24 appointments will leave many asylum-seekers stranded indefinitely in Mexico, unable to obtain an  
25 appointment, and faced with the impossible decision between entering elsewhere along the southern  
26 border or waiting longer in dangerous conditions.  
27  
28

**C. Transit Countries Cannot Provide Vulnerable Asylum Seekers With Protection.**

1  
2 125. The Rule asserts that asylum seekers can instead readily find refuge in Mexico,  
3 Guatemala, Belize, Costa Rica, Colombia, or Ecuador. Rule at 328. Easily accessible information,  
4 including reports from the U.S. State Department, and other documents cited by many commenters,  
5 show this to be false.

6 126. In reality, for most asylum seekers who approach the U.S.-Mexico border, applying  
7 for protection in a transit country is not an option because it is not safe to do so. Although some  
8 countries in this hemisphere have made efforts to address the needs of migrants, these efforts are  
9 limited and leave refugees unprotected. Even the Rule acknowledges that “Mexico or other  
10 countries through which certain individuals travel en route to the United States may not be a safe  
11 alternative for particular individuals.” *Id.* at 186.

12  
13 **1. Mexico**

14 127. For most asylum seekers who come to the U.S. southern border, seeking protection in  
15 Mexico is not an option. The country is extraordinarily dangerous for migrants and lacks a full and  
16 fair asylum system.

17  
18 128. According to the U.S. State Department, migrants in Mexico are frequently victimized  
19 throughout the country “by criminal groups and in some cases by police, immigration officers, and  
20 customs officials, including at land borders and airports.” Recent years have seen “numerous  
21 instances of criminal armed groups extorting, threatening, or kidnapping asylum seekers and other  
22 migrants.” In fact, there were nearly 13,500 documented violent attacks, including reports of torture,  
23 kidnapping, murder, and rape, of migrants blocked in Mexico or expelled from the United States to  
24 Mexico in 2021 and 2022. Between 2018 and 2021, Mexican authorities registered the killings of  
25 2,823 migrants in just five southern states. Over 60 percent of these homicides occurred after the  
26 kidnapping, assault, robbery, or extortion of the victims by criminal groups. DHS itself has  
27  
28



1 acknowledged that asylum seekers forced to remain in the northern states of Mexico are “subject to  
2 extreme violence and insecurity at the hands of transnational criminal organizations.”

3 129. Certain groups are uniquely vulnerable to harm in Mexico, including women and  
4 children, who face a heightened risk of sexual violence, kidnapping, and robbery. LGBTQI+ people  
5 and Indigenous people also regularly experience persecution in Mexico. Black and non-Spanish  
6 speaking asylum seekers face racism, xenophobia, and violence, and language barriers further  
7 impede their access to both the asylum system and social services.  
8

9 130. Mexican authorities fail to protect migrants from harm. In fact, immigration or law  
10 enforcement authorities are responsible for a large share of violence and crimes committed against  
11 asylum seekers. Government agents have dragged, kicked, violently pushed, raped, and killed  
12 migrants during enforcement operations.

13 131. In addition to threats from Mexican criminal groups and authorities, migrants also  
14 face risks from persecutors who follow them to Mexico. Gangs operate transnationally and have  
15 sophisticated communication networks throughout Central America and Mexico. People fleeing  
16 gangs in Guatemala have been found and threatened by the gangs’ members in Mexico, and  
17 Honduran asylum seekers detained in Mexico have reportedly been located through gang members  
18 detained in the same facility. Central American survivors of gender-based violence have been  
19 tracked down and persecuted in Mexico by their abusive ex-partners.  
20

21 132. The Rule’s acknowledgement that “Mexico has a significant asylum backlog” is an  
22 understatement. Rule at 323. Mexico’s asylum system has been “at [] risk of collapsing” and has  
23 serious deficiencies. The system would be unable to support even a modest increase in asylum  
24 applications spurred by the Rule’s condition to first seek asylum in a transit country.  
25

26 133. Mexico’s asylum agency has significant “capacity limitations,” which have caused  
27 major obstacles to securing protection in Mexico. The budget of the agency (“COMAR”) is “not  
28

1 commensurate with the growth in refugee claims in the country.” As a result, in February 2023,  
2 COMAR’s director stated that the agency is “in a situation of near-breakdown.”

3 134. Even as increased applications overwhelm Mexico’s system, they represent a tiny  
4 fraction of the asylum seekers who transit through Mexico. And they do not accurately reflect the  
5 number of asylum seekers who can actually find refuge in Mexico. For instance, many asylum  
6 seekers apply in Mexico only because it allows them to obtain documents that prevent Mexican  
7 officials from unlawfully arresting or expelling them to the countries they fled while they travel  
8 through Mexico to the United States. And recent asylum application increases occurred during the  
9 same period when access to asylum was blocked at the U.S. southern border under Title 42. They  
10 accordingly do not necessarily signal improved safety or asylum accessibility in Mexico.  
11

12 135. Those who do attempt to seek protection in Mexico face “multiple obstacles”: they  
13 must apply within 30 days of entering the country, with only very limited exceptions; they must  
14 apply in person but there are only ten COMAR offices in the country; they must remain in the state  
15 where they filed their application and must present themselves at the COMAR office regularly or  
16 their applications are considered abandoned; and “many of COMAR’s offices are situated in some of  
17 the country’s poorest states where labor opportunities are scarce.”  
18

19 136. Mexico’s screening for asylum claims is also woefully inadequate, resulting in  
20 frequent *refoulement*. Asylum seekers are often detained in migration stations, frequently without  
21 being informed of the option to seek asylum, and quickly expelled.  
22

23 137. Many asylum seekers are also detained in deplorable conditions. They experience  
24 overcrowding, unsanitary conditions, lack of services, and inadequate food and healthcare, forcing  
25 many detained individuals to forego their claims in order to be released. The recent horrific fire in a  
26 detention facility in Ciudad Juarez that killed at least 39 people—where immigration officials  
27 refused to release dozens of migrants from their cells even as they were engulfed in smoke and  
28 flames—illustrates the dangers migrants face. Detained asylum seekers have also endured sexual

1 abuse and corporal punishment, including beatings, electroshock, and choking, and reporting such  
2 abuse can lead to retaliation.

### 3 **2. Guatemala**

4 138. According to the State Department, “Guatemala remains among the most dangerous  
5 countries in the world.” The country’s “high murder rate is driven by narcotrafficking activity,  
6 gang-related violence, a heavily armed population, and a law enforcement and judicial system  
7 unable to hold criminals accountable.” Violence against women, including rape and femicide;  
8 violence against children, including sexual exploitation and gang-recruitment; and “[e]xtreme  
9 violence” against LGBTQI+ persons are all “serious problems” in Guatemala. For these reasons, in  
10 2019, 2020, and 2021, Guatemala was one of the top four countries whose nationals were granted  
11 asylum in the United States. Asylum seekers who lack social networks and stable housing are even  
12 more vulnerable to these dangers. Due to permeable borders in the region, persecutors are also able  
13 to locate individuals from other Central American countries in Guatemala.  
14

15 139. Guatemala’s asylum system barely functions. According to the State Department, the  
16 asylum process in Guatemala is cumbersome and complicated, resulting in significant delays in  
17 decision making and an increasing backlog. UNHCR data indicate that between 2000 and mid-  
18 2022—a period of more than 20 years—Guatemala granted asylum to a cumulative total of just 660  
19 people. According to an official from the Guatemalan Office of the Ombudsman, Guatemala does  
20 not “resolve [asylum] cases because the [National] Migration Authority, the institution responsible  
21 for resolving the cases, is not interested in resolving them,” as “[a]sylum is not a priority for [the]  
22 country.”  
23  
24

### 25 **3. Belize**

26 140. Although the Rule points to the fact that Belize launched an amnesty program for  
27 some asylum seekers, Rule at 313, that program is limited to those who filed their claims before  
28 March 31, 2020, and migrants who entered irregularly before 2017.

1           141. Apart from that program, Belize is not an option for asylum seekers. It “has one of  
2 the highest per capita murder rates in the world,” and violent crime such as sexual and gender-based  
3 violence remains an epidemic.

4           142. Moreover, Belize’s asylum system is inefficient and cumbersome, and receives and  
5 processes very few applications each year. In the nearly 20 years between 2003 and mid-2022,  
6 Belize granted asylum or other forms of protection in just 129 cases.

#### 7           **4. Costa Rica**

8           143. Costa Rica—a nation of just five million people—is already tightening its asylum  
9 policies “in the face of an overwhelmed system” that cannot absorb any significant increase in  
10 asylum seekers from neighboring Nicaragua or elsewhere. In recent years, Costa Rica has received  
11 eight times as many asylum requests per capita, and has accepted *ten* times as many refugees per  
12 capita, as the United States. In March 2022, UNCHR reported that ongoing migration will “strain  
13 Costa Rica’s already stretched asylum system and overwhelm support networks in the country.” As  
14 DHS acknowledged in January 2023, “increasing numbers of Nicaraguans are traveling north to the  
15 [southwest Border] due to renewed unrest in Nicaragua and the strained asylum system in Costa  
16 Rica.”  
17  
18

19           144. The number of asylum officers in Costa Rica is inadequate to deal with the increased  
20 flow of asylum applications, resulting in extreme processing delays. As of September 2022, over  
21 200,000 asylum applications were pending in Costa Rica, and over 50,000 individuals were waiting  
22 for appointments to make formal applications. From 2018 to mid-2022, Costa Rica adjudicated only  
23 22% of its total pending asylum cases, and granted asylum in only about 10% of cases. UNHCR  
24 data indicates that between 2000 and mid-2022, Costa Rica granted asylum or other protection to  
25 only around 20,000 people.  
26

27           145. In response to the backlog of asylum applications, Costa Rica’s new government has  
28 severely curtailed asylum eligibility and imposed a one-month deadline to apply for asylum. It has

1 also discouraged people from seeking asylum by restricting access to employment authorization for  
2 those with pending applications. The Rule mentions that Costa Rica has responded to the  
3 overwhelming strain on its system in part by offering Nicaraguan, Cuban, and Venezuelan asylum  
4 applicants an option to instead request temporary status. However, this program is only available to  
5 people who applied for asylum in Costa Rica by September 30, 2022.

6 146. Xenophobia and discrimination against migrants in Costa Rica have increased as the  
7 number of refugees from Nicaragua and other countries has grown. Due to xenophobia, migrants'  
8 access to public services and social welfare is limited in Costa Rica. Nicaraguans in particular face  
9 discrimination in the Costa Rican education system, leading to social exclusion, harassment, and hostile  
10 treatment by academic officials. In addition, according to the State Department, groups of  
11 Nicaraguan exiles in Costa Rica have "alleged harassment and political oppression by parapolice and  
12 [Ortega regime] sympathizers who crossed the border to target exiles, as well as by intelligence  
13 officials within the Nicaraguan embassy in Costa Rica."

##### 14 **5. Colombia**

15 147. According to the State Department, homicide, assault, armed robbery, extortion,  
16 robbery, and kidnapping are widespread in Colombia. Other significant human rights abuses include  
17 arbitrary killings, torture and arbitrary detention. Black, Indigenous, and LGBTQI+ individuals are at  
18 particular risk, and gender-based violence is also prevalent. Armed groups and narcotics traffickers  
19 routinely perpetrate violent crimes, and millions of people were affected by conflicts involving these  
20 groups in 2022. Government corruption is rampant, and perpetrators generally operate with impunity.  
21

22 148. Colombia is particularly dangerous for many asylum seekers and refugees. According  
23 to UNHCR data, Venezuelans make up about 86% of refugees in Colombia and 99% of applicants  
24 with pending asylum claims. During the first half of 2021, 1,059 assaults, 362 homicides, and 335  
25 incidents of sexual violence against Venezuelans were reported in Colombia. Over the previous  
26 five-year period, from 2015 to 2020, there were a reported 1,933 homicide cases and 2,319 incidents  
27  
28

1 of sexual violence against Venezuelans. Moreover, according to the State Department, Venezuelans  
2 in Colombia face a heightened risk of forced labor, domestic servitude, forced begging, and forced  
3 recruitment. Venezuelan women repeatedly experience brutal abuse and sexual violence, and  
4 Venezuelan transgender women are especially vulnerable. A recent study documented that  
5 displaced Venezuelan women in Colombia “are repeatedly subjected to attacks and sexual violence  
6 in public spaces, both in the host cities where they live and along the migration route.”  
7

8 149. The Rule discusses a temporary status for Venezuelans, which is only available to  
9 people who entered Colombia before January 31, 2021. Rule at 312-13. This temporary program  
10 has not alleviated this dangerous situation for migrants, either, and Venezuelans and other migrants  
11 continue to suffer throughout the country.

12 150. Colombia’s limited asylum system is inefficient, bureaucratic, and cumbersome. The  
13 two-month deadline for filing an application presents a substantial roadblock, especially given the  
14 general lack of information about the asylum process and the small number of offices that adjudicate  
15 asylum claims. The adjudication process can last for a prolonged period, sometimes years. A tiny  
16 group of government officials reviews asylum applications, conducts interviews, and makes non-  
17 binding adjudication recommendations. The Minister of Foreign Relations, a high-level cabinet  
18 member, then makes final determinations. While awaiting their decisions, asylum seekers are  
19 permitted to remain in Colombia, but cannot work legally or access basic services.  
20

21 151. UNHCR data from 2019 to mid-2022 show that only 1,257 applicants were granted  
22 asylum, out of more than 40,000 filed, while the vast majority of claims were either closed or  
23 remained pending. It is no surprise that Colombia’s asylum system is overtaxed, as the country  
24 already accommodates more foreign refugees than any country except Turkey.  
25

## 26 ***6. Ecuador***

27 152. The Rule mentions a temporary option for people who entered Ecuador prior to  
28 August 2023. But this program is limited, providing only a two-year status and providing a benefit

1 only to people who have entered the country by a few months into the Rule’s validity period. The  
2 State Department warns that murder, assault, express kidnapping, and armed robbery are common in  
3 Ecuador. From 2020 to 2021, homicides increased by 180 percent, and in 2022 Ecuador recorded its  
4 highest rate of violent deaths. The mayor of Guayaquil, the most populous city in Ecuador, stated  
5 that “criminal gangs have become a state within a state.” As a result of the violence, an increasing  
6 number of Ecuadorans have been forced to flee the country.

7  
8 153. According to the State Department, migrants and refugees, especially women,  
9 children and LGBTQ+ individuals, face sexual and gender-based violence and human trafficking in  
10 Ecuador. Venezuelan refugee women face a particular risk of physical, psychological, sexual,  
11 patriarchal, and other acts of violence in public and private spaces. The Ecuadoran state is not  
12 capable of protecting these women. The State Department has also reported an increase in forced  
13 labor, sex trafficking, and forced recruitment of migrants and refugees into criminal activity on  
14 Ecuador’s northern and southern borders, “particularly by transnational criminal organizations and  
15 criminal groups that also operated in Colombia.”  
16

17 154. Asylum seekers in Ecuador face significant barriers in accessing the asylum system.  
18 These barriers include a 90-day application deadline, as well as a general lack of information about  
19 asylum proceedings. Moreover, some applicants must travel long distances to certain large cities for  
20 their interviews. Ecuadoran migration officials reportedly discourage asylum seekers from applying  
21 for refugee status.

22 155. Ecuador has granted refugee status in only about 4% of cases, while about 68% were  
23 rejected and about 28% remain pending.  
24

### 25 **7. *Other Transit Countries***

26 156. The Rule fails to address whether asylum seekers can find refuge in other transit  
27 countries not listed. For example, the Rule makes no mention of El Salvador, Honduras, or  
28 Nicaragua—and for good reason. The evidence from the thousands of comments submitted in

1 response to the NPRM shows that these countries are exceptionally dangerous for their own citizens  
2 and migrants alike. Indeed, El Salvador's president placed that country under a state of emergency  
3 to combat overwhelming gang violence that the country faces, Nicaragua's ruling party uses a  
4 campaign of terror and violence to hold on to power, and Honduras has one of the highest murder  
5 rates in the world. Moreover, these countries have wholly inadequate asylum systems incapable of  
6 fairly processing even tiny numbers of applications.

7 **VI. The Rule Will Cause Irreparable Harm to Plaintiffs.**

8 157. Plaintiffs are nonprofit organizations that aid asylum seekers. Many of their current  
9 clients are from countries other than Mexico, entered the United States outside a port of entry, have  
10 experienced significant violence or harm in their journey to the United States, and could not have  
11 sought asylum in transit. The substantive changes in the Rule will cause each Plaintiff significant  
12 harm, and they are also harmed by the abbreviated comment period and lack of a 30-day  
13 implementation delay for the Rule's effective date.

14 **A. EBSC**

15 158. Plaintiff EBSC provides legal and social services to immigrants and refugees in  
16 California, Washington, Oregon, and part of Nevada. EBSC's affirmative asylum program is a key  
17 part of the organization's mission, and accounts for nearly half of its budget. Since 1992, EBSC has  
18 filed nearly 6,000 affirmative asylum cases. Nearly 98 percent of the decided cases have been  
19 granted.

20 159. In 2022, a significant percentage of the clients in EBSC's affirmative asylum program  
21 were non-Mexicans who entered the United States by crossing the southern border between ports of  
22 entry. It expects its client base to consist of similar individuals in the future.

23 160. The Rule frustrates EBSC's central mission of providing legal services to these  
24 affirmative asylum applicants. If such people are made ineligible for asylum, EBSC will be unable  
25 to continue much of its affirmative asylum work. The new Rule will force EBSC to expend  
26  
27  
28



1 additional time and resources to help the relatively small number of affirmative asylum clients who  
2 might qualify for a narrow exception. EBSC will be unable to assist the large majority of  
3 prospective clients with no viable argument for an exception, frustrating its mission and jeopardizing  
4 its funding.

5 161. To serve clients barred under the Rule, EBSC will have to try to represent them in  
6 removal proceedings, and attempt to satisfy the much higher standards for withholding of removal  
7 and CAT claims. Alternatively, EBSC will have to abandon much of its longstanding client base  
8 and shift to representing people placed directly in removal proceedings who remain eligible for  
9 asylum. Either of these scenarios will require EBSC to make enormous and costly shifts in its  
10 operations.  
11

12 162. Shifting from an affirmative asylum model to providing complex removal defense in  
13 an adversarial context would be extremely resource intensive, especially for people ineligible for  
14 asylum. Currently, EBSC very rarely provides representation in removal proceedings, and it does  
15 not have the funding or capacity to do so on a larger scale.  
16

17 163. The new Rule also jeopardizes EBSC's existing funding streams. Funding for  
18 EBSC's affirmative asylum program is based in part on the number of cases EBSC handles per year.  
19 If EBSC is no longer able to represent people barred by the Rule in their affirmative asylum  
20 applications, it will face a marked decrease in its budget and will have to significantly cut its  
21 program and staff, or else dramatically overhaul its program to provide types of assistance it not  
22 currently equipped or trained to provide.  
23

24 164. EBSC will also have to divert significant resources to, among other things,  
25 understanding the new policy and its impact on the communities EBSC serves, and educating and  
26 advising its staff, clients, and prospective clients accordingly.  
27  
28

**B. CARECEN**

1  
2 165. Plaintiff CARECEN provides and manages immigration legal services to clients  
3 throughout Southern California. These services include affirmative and defensive representation for  
4 asylum seekers.

5 166. Funding for CARECEN's asylum work is based in part on the number of cases it  
6 handles and expects to handle each year. The Rule will frustrate CARECEN's mission and divert  
7 organizational resources.

8  
9 167. For example, CARECEN's mission as it relates to affirmative asylum applicants will  
10 be frustrated because it will be unable to assist asylum seekers barred by the Rule. The Rule will  
11 force CARECEN to expend additional time and resources in its intake process to assess whether  
12 potential clients are subject to the Rule's bar and whether they have viable arguments for any of its  
13 narrow exceptions. CARECEN will likely be unable to assist many of those without such arguments  
14 in applying for asylum affirmatively.

15  
16 168. Representing clients with viable exception arguments will require significant  
17 additional time gathering and reviewing supporting evidence. All of this will mean that CARECEN  
18 will have to represent fewer affirmative asylum clients. The Rule will thus jeopardize CARECEN's  
19 per-case funding for affirmative asylum representation and reduce the funding that it receives as  
20 program administrator for affirmative asylum representation by another nonprofit provider.

21  
22 169. CARECEN's representation of people who seek asylum defensively in removal  
23 proceedings will also be frustrated. The vast majority of CARECEN's clients are individuals who  
24 would be subject to the new Rule. CARECEN will have to assist these removal clients in applying  
25 for withholding and CAT protection, which are more time- and resource-intensive, and this will  
26 require diverting resources from other critical areas of work. And because the standards for  
27 withholding and CAT are more demanding, the Rule will also likely lead to more losses in  
28 immigration court and a need to litigate more appeals.

1           170. Moreover, unlike in asylum cases that allow derivative beneficiaries, CARECEN will  
2 be required to submit withholding and CAT applications for every member of a family. This will  
3 result in significant additional staff time preparing and litigating each case, including preparing  
4 separate evidence and putting on witnesses in each case, which will require diverting resources from  
5 other critical areas of work.

6           171. CARECEN will also have to divert resources to training staff and educating  
7 prospective clients and community members about the effects of the new Rule.  
8

9           **C. Tahirih**

10           172. Plaintiff Tahirih provides free legal and social services to women, girls, and other  
11 survivors of gender-based violence who are seeking asylum or other protection under U.S. law.

12           173. Tahirih conducts a sizeable affirmative asylum practice, and most of its clients—  
13 regardless of nationality—enter the United States via the land border with Mexico.

14           174. The Rule will severely compromise Tahirih’s mission. Because far fewer people who  
15 enter via the U.S.-Mexico border will be eligible for asylum under the Rule, Tahirih will no longer  
16 have a substantial pool of clients eligible for affirmative asylum. Instead, almost all of Tahirih’s  
17 new clients will have to seek relief defensively in immigration court. On average, Tahirih attorneys  
18 spend twice as much time on defensive cases as affirmative cases—meaning that, even if the Rule  
19 made no other relevant changes, Tahirih would be able to take on only one defensive client under the  
20 Rule for every two affirmative clients it could have previously served.  
21

22           175. The Rule, however, makes three other changes that would independently and  
23 significantly reduce the number of clients Tahirih could serve. First, the Rule forces Tahirih  
24 attorneys to represent new clients in removal proceedings on claims for statutory withholding of  
25 removal or CAT relief. Because an applicant for such relief must meet higher standards than people  
26 seeking asylum, the preparation of withholding or CAT cases is even more time consuming than the  
27 preparation of a defensive asylum case.  
28

1           176. Second, under the Rule, Tahirih must file separate, individual CAT and withholding  
2 petitions for the spouses and children of clients, because they could no longer be included as  
3 derivatives on an asylum application. For many family members, especially children fleeing trauma,  
4 this would require not only significant additional attorney time but also time devoted to finding both  
5 counseling for trauma and psychiatric evaluations.

6           177. Third, Tahirih attorneys representing clients under the Rule will also have to assess  
7 whether they believe a client might meet one of the narrow exceptions to the Rule. If a client might  
8 do so, the attorney will have to gather evidence, and present legal argument, not only on that issue  
9 but on every element of an asylum claim as well as withholding and CAT claims.  
10

11           178. For these reasons, under the Rule, Tahirih will be able to serve only a fraction of the  
12 number of clients it currently serves.

13           179. The Rule has also required, and will continue to require, Tahirih to divert significant  
14 resources. Tahirih must expend money and staff time to understand the Rule's impact on the  
15 communities it serves, to train staff and volunteers, to update guidance materials given to  
16 professional partners and community members, and to advise prospective clients, and immigrant  
17 communities.  
18

19           180. The Rule will also affect Tahirih's funding. More than half of Tahirih's staff time is  
20 billed to grants that require clients to be physically present within designated areas within the United  
21 States. Because the Rule uses CBP One to limit the number of people who can seek asylum in the  
22 United States and imposes heightened screening standards at the credible fear stage for people who  
23 are barred from asylum, the Rule will significantly lower the number of people who are allowed to  
24 enter the United States to pursue *any* kind of relief. By preventing people from reaching the areas in  
25 which Tahirih provides service, the Rule will have a direct and substantial impact on Tahirih's  
26 budget.  
27  
28

**D. NCLR**

1  
2 181. Plaintiff NCLR provides free legal services to LGBTQ individuals who are seeking  
3 asylum or other protection under U.S. law.

4 182. The vast majority of NCLR’s asylum practice, which comprises the largest portion of  
5 its immigration project, is affirmative and nearly all of its clients entered the United States via the  
6 U.S.-Mexico border.

7 183. The Rule will severely compromise NCLR’s mission. Under the Rule, most people  
8 who enter the United States between ports of entry on the U.S.-Mexico border will be ineligible for  
9 affirmative asylum. Because of this, NCLR’s ability to identify clients for affirmative asylum  
10 representation will be severely limited. Instead, many of NCLR’s otherwise prospective clients will  
11 be in more complex defensive removal proceedings or will be removed before they can even reach  
12 those proceedings. Because of the additional time required to prepare cases in a defensive posture,  
13 NCLR will have to significantly reduce the number of clients it serves.

14 184. Aside from being in a defensive posture, other aspects of the Rule will require  
15 additional staff resources, further limiting the number of clients NCLR can serve. First, NCLR staff  
16 will have to argue for an exception to asylum ineligibility. This will require gathering significant  
17 additional information, including asking detailed questions about clients’ efforts to use CBP One and  
18 their experiences in Northern Mexico, gathering evidence, and presenting legal arguments to support  
19 an exception. Notably, because the most common transit countries for NCLR’s clients—Mexico,  
20 and the Northern Triangle—are exceptionally dangerous for LGBTQ people, the task of pursuing an  
21 exemption to the Rule’s bar will be onerous for NCLR and traumatizing for its clients as they try to  
22 demonstrate the risk of persecution in a client’s home country, as well as harms they may have  
23 experienced in transit.

24 185. Second, under the Rule, NCLR will be forced to represent clients on claims for  
25 withholding of removal and CAT relief. These forms of relief have higher evidentiary standards  
26

1 than asylum, meaning that, on top of the additional preparation detailed above, NCLR will have to  
2 devote additional resources in order to represent clients on these claims.

3 186. For these reasons, under the Rule, NCLR will be able to serve only a fraction of the  
4 number of clients it currently serves.

5 187. The Rule has also required, and will continue to require, NCLR to divert significant  
6 resources towards understanding and explaining the Rule's impact to staff and the communities it  
7 serves. NCLR must expend money and staff time to update guidance and training materials  
8 disseminated to immigrant communities and professional partners.  
9

#### 10 **E. ImmDef**

11 188. Plaintiff ImmDef represents approximately 2,500 noncitizens in their removal  
12 proceedings on a pro bono basis and provides other types of free legal services to approximately  
13 21,000 additional noncitizens annually. At present, ImmDef has approximately 2,150 open  
14 immigration cases, more than half of which involve asylum-eligible clients. The vast majority of  
15 ImmDef's clients who pursue asylum are in removal proceedings. Most of ImmDef's asylum-  
16 seeking clients are not Mexican nationals. Many of these clients are Guatemalan, Salvadoran,  
17 Honduran, Afghan, and Colombian. Most of ImmDef's clients enter the United States through the  
18 U.S.-Mexico border.  
19

20 189. In accordance with ImmDef's mission of expanding access to representation to any  
21 and all noncitizens within the immigration system, they assist and represent individuals without  
22 regard to how they entered the United States or what countries they transited through on their way to  
23 the border. The Rule will severely compromise ImmDef's mission, and it will force the organization  
24 to divert substantial resources away from its existing programs and alter its service-delivery model,  
25 both to address the urgent needs of asylum seekers at the border and to represent individuals who are  
26 barred from asylum.  
27  
28

1           190. ImmDef has already been forced to divert resources from other projects in response to  
2 the Rule and will continue to do so. Since April 2023, members of ImmDef’s San Diego team have  
3 had to reduce the time they dedicate to providing removal defense legal services in order to provide  
4 triage information for individuals in Mexico who are waiting for CBP One appointments and who  
5 need assistance in completing the registration process.

6           191. The fact that ImmDef’s San Diego office will be able to handle fewer removal cases  
7 than they would otherwise accept could impact the San Diego-based team’s funding stream, as they  
8 must maintain set caseloads to receive sufficient funding under ImmDef’s contract with the State of  
9 California. Further, as panel attorneys through a program with the Public Defenders Office in San  
10 Diego, ImmDef will not receive any of its budgeted funding from that source if they are unable to  
11 take on new matters.  
12

13           192. A significant portion of ImmDef’s future asylum-seeking client base will be ineligible  
14 for asylum under the Rule. As a result, ImmDef will have to take on more cases in a defensive  
15 posture.  
16

17           193. The Rule will also make ImmDef’s representation of such clients subject more  
18 complicated and labor intensive. In order to attempt to establish an exception to the Rule, ImmDef  
19 will have to spend more time conducting intakes, preparing arguments, and collecting evidence,  
20 thereby reducing the total number of cases that ImmDef can take on.

21           194. Because more clients will be eligible only for withholding of removal or protection  
22 under the Convention Against Torture, ImmDef will be forced to invest more resources in each case.  
23 The number of ImmDef cases requiring appeals to the Board of Immigration Appeals and petitions  
24 to the Ninth Circuit Court of Appeals will also increase.  
25

26           195. The mandatory use of CBP One will continue to frustrate ImmDef’s mission to  
27 provide all immigrants with counsel in their immigration proceedings. Given the requirement to  
28 obtain a CBP One appointment, despite its capacity limits, errors, and glitches, individuals and

1 families who would otherwise have been able to present themselves at the border to seek asylum will  
2 be unable to access the asylum system.

3 196. To provide legal advice and assistance to individuals subject to the Rule, ImmDef  
4 will be forced to engage in international, cross-border travel to Mexico. This work entails additional  
5 costs, including travel expenses to both Tijuana and Mexicali from Los Angeles, Santa Ana, and San  
6 Diego, international phone plans for staff, and international travel insurance. Since January 2023,  
7 ImmDef has spent approximately \$16,500 to support limited representation, Know Your Rights  
8 presentations, and CBP One clinics for asylum seekers at the southern border. ImmDef has largely  
9 funded this work through the reallocation of previously raised funds that had been designated for  
10 removal defense and the provision of other legal services, including representation at bond hearings  
11 and on appeals before the Board of Immigration Appeals.

12  
13 197. ImmDef will also be forced to respond to the rule by increasing the number of legal  
14 clinics, community education sessions, and Know Your Rights presentations it provides to  
15 individuals and families, and by creating new materials to explain the Rule and its limitations on the  
16 ability to obtain asylum.

17  
18 **F. American Gateways**

19 198. Plaintiff American Gateways represents people seeking asylum before the asylum  
20 office in Houston, Texas, and the immigration court in San Antonio, Texas. It also provides legal  
21 orientations and legal workshops at three immigration detention facilities in Texas.

22 199. Roughly one-third of the asylum cases that American Gateways handles are  
23 affirmative cases before USCIS and two-thirds are defensive cases in immigration court. In  
24 defensive asylum cases, American Gateways generally represents people who are, or were, detained.  
25 Many of the organization's asylum clients entered the United States via the border with Mexico, and  
26 the vast majority are non-Mexican.  
27  
28



1           200. The Rule will frustrate both the ability of American Gateways to represent people  
2 seeking asylum and its organizational mission. After the Rule takes effect, DHS has said that it may  
3 parole the few people who remain eligible for asylum through CBP One appointments. As a result,  
4 all of the clients that American Gateways serves in Texas detention centers—a population that  
5 accounts for most of its asylum clients—would be ineligible for asylum.

6           201. American Gateways will thus be forced to bring claims for statutory withholding of  
7 removal or relief under the Convention Against Torture on behalf of its detained clients. These  
8 claims involve higher standards of proof and therefore are more time consuming than asylum claims.  
9 Further, because spouses and children may not be included on claims for withholding or CAT relief,  
10 American Gateways will have to prepare individual applications for each member of every family it  
11 serves. It will also have to screen each client to determine whether they might fall within an  
12 exception to the bar and prepare evidence and arguments on that additional issue. The result is that  
13 American Gateways will be able to serve fewer detained asylum clients than it does today.  
14

15           202. The Rule will also make it more difficult for American Gateways to serve affirmative  
16 asylum clients. Far fewer people will be eligible for asylum under the Rule, including the African  
17 and Indigenous language speakers, who make up roughly 20% of American Gateways' client base  
18 but who will face serious trouble using the CBP One application. The number of affirmative asylum  
19 clients in Central Texas—the sole area that American Gateways serves—will therefore decline, and  
20 much of the affirmative asylum work that American Gateways does will therefore be shifted to  
21 representation of clients in immigration court proceedings on time-consuming withholding and CAT  
22 claims. This shift, too, will cause American Gateways to serve fewer clients and harm its mission.  
23

24           203. The Rule will require American Gateways to divert its resources. Most significantly,  
25 the Rule will require American Gateways to revamp the materials and presentations it uses for legal  
26 orientations and legal workshops at Texas detention centers. American Gateways will also have to  
27  
28

1 divert resources to understanding how the Rule operates in practice and how it affects immigrant  
2 communities in Central Texas, and to educating those communities on the Rule and its effects.

3 **VII. If It Were Reinstated, the Entry Ban Would Cause Irreparable Harm to Plaintiffs**  
4 **EBSC, CARECEN, Al Otro Lado, and Innovation Law Lab.**

5 204. The original plaintiffs continue to assert claims against the entry ban. Should it go  
6 back into effect, those plaintiffs will continue their challenge, because the entry ban would cause  
7 them the same harms they have asserted throughout this case.

8 **A. EBSC**

9 205. The entry ban would seriously frustrate EBSC's mission and cause it to divert  
10 organizational resources.

11 206. As a result of the entry ban, EBSC would have to divert significant resources to,  
12 among other things, understanding the new policy and its impact on the communities EBSC  
13 serves, and educating and advising its staff, clients, and prospective clients accordingly. To properly  
14 counsel new prospective clients who seek its affirmative asylum services going forward, EBSC will  
15 need to invest resources in training multiple intake staff not only to screen for asylum eligibility  
16 based on the new rule, but to conduct detailed screenings for alternative forms of relief to facilitate  
17 referrals or other forms of assistance as appropriate.

18 207. Under the entry ban, EBSC would no longer be able to train law students to handle  
19 affirmative asylum cases, or would have to substantially reduce its training program, which would  
20 frustrate its mission of helping to train legal professionals to assist individuals fleeing violence and  
21 persecution.

22 208. The ban would also directly frustrate EBSC's mission of providing assistance and  
23 support to individuals fleeing persecution and violence.

24 209. The ban would jeopardize EBSC's funding streams. If EBSC is no longer able to  
25 handle affirmative asylum cases for individuals who enter without inspection, it will face a marked  
26  
27  
28

1 decrease in its budget and will have to significantly cut its program and staff, or dramatically  
2 overhaul its program to provide types of assistance it is not currently equipped or trained to provide.

3 **B. CARECEN**

4 210. Plaintiff CARECEN provides immigration legal services to clients throughout  
5 Southern California. These services include affirmative and defensive representation for asylum  
6 seekers. CARECEN educates immigrants through citizenship classes, trainings to develop  
7 organizing and advocacy skills, and workshops to facilitate the integration of immigrants into their  
8 communities. CARECEN also helps to organize immigrant communities to advocate on behalf of  
9 their rights on specific policy items.  
10

11 211. Funding for CARECEN's asylum cases is based in part on the number of cases it  
12 handles per year, and the number it anticipates serving. The entry ban would seriously harm  
13 CARECEN in multiple respects, and frustrate CARECEN's mission and divert organizational  
14 resources.  
15

16 212. For example, CARECEN's mission as it relates to affirmative asylum applicants  
17 would be frustrated because the organization will be unable to assist asylum seekers who entered  
18 between ports of entry because they would no longer be eligible for asylum. CARECEN's  
19 representation of individuals who enter between ports of entry and seek asylum while in removal  
20 proceedings also would be compromised, and CARECEN would be forced to assist them in applying  
21 for withholding and CAT, which require additional resources and would divert staff time from other  
22 critical areas of work.  
23

24 213. CARECEN would also have to divert resources to training staff and educating  
25 prospective clients about the effects of the new policy.

26 **C. Al Otro Lado**

27 214. Plaintiff Al Otro Lado routinely provides representation or other assistance to asylum  
28 seekers who have entered the United States between ports of entry.

1           215. The entry ban would frustrate Al Otro Lado’s mission and force Al Otro Lado to  
2 divert significant resources away from its other programs. Because individuals who enter without  
3 inspection at the southern border are categorically ineligible for asylum under entry ban, Al Otro  
4 Lado has to revamp its representation strategy, overhaul the materials it uses to train pro bono  
5 attorneys, and evaluate the eligibility of each of its clients for other types of immigration relief. It  
6 also has to expend resources to brief eligibility issues, resulting in additional hearings and time spent  
7 on each case.  
8

9           216. The new entry ban would also jeopardize some of Al Otro Lado’s most critical  
10 funding streams.

11           217. Most of Al Otro Lado’s asylum clients are families traveling with minor children.  
12 Because they will be ineligible for asylum under the new policy, spouses and minor children can no  
13 longer be counted as derivatives in a single application. Al Otro Lado must now prepare separate  
14 cases for each family member, exponentially increasing the number of hours required to prepare a  
15 family’s case.  
16

#### 17           **D. Innovation Law Lab**

18           218. Plaintiff Innovation Law Lab, among other services, has established “Centers of  
19 Excellence,” which provide support to noncitizens and their pro bono attorneys including legal,  
20 technical, and strategic assistance in the preparation and presentation of claims. These projects are  
21 established in Georgia, Kansas, Missouri, North Carolina, and Oregon.  
22

23           219. The entry ban would require Innovation Law Lab to significantly divert its limited  
24 resources. The vast majority of people Innovation Law Lab serves are asylum seekers. The entry  
25 ban would, among other things, require Innovation Law Lab to entirely rework the advice and  
26 guidance it provides in pro se workshops, and respond to a flood of inquiries and uncertainty from  
27 the immigrant communities Innovation Law Lab serves regarding the attempt to change asylum law.  
28

1 It would also require Innovation Law Lab to evaluate eligibility for other types of relief in all of the  
2 cases that it screens and mentors.

3 220. The changes created by the entry ban would have a substantial impact on Innovation  
4 Law Lab. For example, the Law Lab would have to deploy expensive and limited engineering  
5 resources to recode its software to create new analytical modeling to account for the new rule. The  
6 Innovation Law Lab publishes materials for pro bono attorneys and asylum applicants, including  
7 printed guides, worksheets, training videos, self-help videos, and other resources that are used  
8 around the country. The entry ban would require the Innovation Law Lab to substantially revise this  
9 material and create new learning engagements and materials on the asylum rule.  
10

11 221. Thousands of individuals rely on the Innovation Law Lab's systems; the entry ban  
12 would require the organization to divert its limited resources away from other projects and priorities.  
13 For example, Innovation Law Lab would have to divert its attention away from the noncitizen  
14 population who remain eligible for asylum under the entry ban and who would remain in desperate  
15 need of Innovation Law Lab's services. Innovation Law Lab would also have to divert its limited  
16 resources away from developing additional, new technologies to support and improve the rights of  
17 immigrants.  
18

19 **FIRST CLAIM FOR RELIEF<sup>7</sup>**

20 ***Challenge to Circumvention of Lawful Pathways Rule***  
21 ***by Plaintiffs EBSC, CARECEN, Tahirih, NCLR, ImmDef and American Gateways***

22 **(Violation of Immigration and Nationality Act and Administrative Procedure Act,  
23 Contrary to Law)**

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

25 223. The Immigration and Nationality Act provides, with certain exceptions not relevant  
26 here, that "[a]ny alien who is physically present in the United States or who arrives in the United  
27

28 <sup>7</sup> Counts I, II, and III, which address the present Rule, are brought only by Plaintiffs EBSC, CARECEN, Tahirih, ImmDef, NCLR, and American Gateways.

1 States (whether or not at a designated port of arrival . . . ), irrespective of such alien’s status, may  
2 apply for asylum in accordance with this section or, where applicable, section 1225(b) of this title.”  
3 8 U.S.C. § 1158(a)(1).

4 224. The Immigration and Nationality Act further provides that a noncitizen is ineligible  
5 for asylum if he or she “was firmly resettled in another country prior to arriving in the United  
6 States.” 8 U.S.C. § 1158(b)(2)(A)(vi).

7 225. The Immigration and Nationality Act further provides that asylum is not available to  
8 a noncitizen “if the Attorney General determines that the alien may be removed, pursuant to a  
9 bilateral or multilateral agreement, to a country” where, among other things, “the alien’s life or  
10 freedom would not be threatened on account of race, religion, nationality, membership in a particular  
11 social group, or political opinion, and where the alien would have access to a full and fair procedure  
12 for determining a claim to asylum or equivalent temporary protection.” 8 U.S.C. § 1158(a)(2)(A).

13 226. Any additional condition or limitation on asylum established by regulation must be  
14 “consistent with” § 1158. *See* 8 U.S.C. § 1158(b)(2)(C); *see also id.* § 1158(d)(5)(B) (providing that  
15 any “conditions or limitations on the consideration of an application for asylum” established by  
16 regulation must be “not inconsistent with this chapter”).

17 227. The Administrative Procedure Act, 5 U.S.C. § 706, provides that a Court “shall hold  
18 unlawful and set aside agency action, findings, and conclusions found to be” “arbitrary, capricious,  
19 an abuse of discretion, or otherwise not in accordance with law”; “contrary to constitutional right,  
20 power, privilege, or immunity”; [or] “in excess of statutory jurisdiction, authority, or limitations, or  
21 short of statutory right.” 5 U.S.C. §§ 706(2)(A)-(C).

22 228. The Rule is contrary to law, including 8 U.S.C. §§ 1158(a)(1), (a)(2)(A), and  
23 (b)(2)(A)(vi).  
24  
25  
26  
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28



1 235. Defendants failed to comply with the APA’s requirement of an adequate opportunity  
2 to comment by imposing a truncated, 30-day comment period.

3 236. The abbreviated comment period deprived the public of the ability to comment on the  
4 interaction between the Rule and the other proposed (and subsequently enacted) rules, among other  
5 infringements on the right to an adequate opportunity to comment.

6 237. Defendants failed to provide a 30-day period between the Rule’s enactment and its  
7 effective date, and did not have good cause to skip this requirement.  
8

9 **FOURTH CLAIM FOR RELIEF<sup>8</sup>**

10 ***Challenge to Trump Administration’s Entry Ban by Plaintiffs EBSC, CARECEN, Al Otro Lado,  
11 and Innovation Law Lab***

12 **(Violation of the Immigration and Nationality Act and APA)**

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

14 239. The Proclamation and entry ban rule that effectuate the entry ban are contrary to law,  
15 including 8 U.S.C. § 1158.

16 240. The President’s power to suspend or restrict entry pursuant to 8 U.S.C. § 1182(f) does  
17 not encompass the ability to limit the forms of relief available to noncitizens once they have entered  
18 the country, nor does his power pursuant to 8 U.S.C. § 1158(a)(1).

19 241. The entry ban exceeds the authority delegated to the Attorney General by Congress in  
20 8 U.S.C §§ 1158(b)(2)(C) and (d)(5)(B). The Attorney General lacks the authority to issue asylum  
21 bars as broad as the President’s § 1182(f) entry suspension authority permits.  
22

23 **FIFTH CLAIM FOR RELIEF**

24 ***Challenge to Trump Administration’s Entry Ban by Plaintiffs EBSC, CARECEN, Al Otro Lado,  
25 and Innovation Law Lab***

26 **(Violation of the Administrative Procedure Act)**  
27

28 <sup>8</sup> Counts IV and V, which address the entry ban, are brought only by original Plaintiffs EBSC, CARECEN, Al Otro Lado, and Innovation Law Lab.



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

2 243. In promulgating the entry ban, DHS failed to provide notice and an opportunity to  
3 comment in a timely manner.

4 244. In promulgating the entry ban, DHS failed to publish the regulation 30 days before its  
5 effective date.

6 245. DHS has not articulated reasons sufficient to shown good cause why these  
7 requirements are inapplicable, nor is the foreign affairs exception applicable.  
8

9 **PRAYER FOR RELIEF**

10 **WHEREFORE**, Plaintiffs respectfully pray for the following relief:

- 11 a. A declaration pursuant to 28 U.S.C. § 2201 that the entry ban and the Rule are unlawful and  
12 invalid;
- 13 b. Vacatur of the entry ban and the Rule;
- 14 c. A preliminary and permanent injunction enjoining Defendants, their officials, agents,  
15 employees, assigns, and all persons acting in concert or participating with them from  
16 implementing or enforcing the entry ban or the Rule;
- 17 d. An order awarding Plaintiffs costs of suit, and reasonable attorneys' fees and expenses  
18 pursuant to any applicable law;
- 19 e. Such other and further relief as the Court deems equitable, just, and proper.  
20  
21

22 Dated: May 11, 2023

Respectfully submitted,

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17 *\*\* Application for pro hac vice admission*  
18 *forthcoming*

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