

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

AMIN NAIM SALIM ADRIANZA,
individually and as next friend to
Leimariana del Valle Petit Romero;
LEIMARIANA DEL VALLE PETIT
ROMERO; BLANCA DANIELIA FUNES
CASTELLANO, individually and as next
friend to Emma Obando Funes, A.Y.B.O.,
and J.L.B.O.; EMMA OBANDO FUNES;
TEODILA SAMBULA RAMOS, individually
and as next friend to Cinthya Vanessa
Castillo Sambula and A.E.C.S.; CINTHYA
VANESSA CASTILLO SAMBULA; and
JANE DOE¹,

Plaintiffs,

v.

DONALD J. TRUMP, President of the
United States; CHAD F. WOLF, Acting
Secretary of Homeland Security; and the
U.S. DEPARTMENT OF HOMELAND
SECURITY.

Defendants.

Civ. No. 20-cv-3919

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

INTRODUCTION

1. This case seeks to secure the safety of seven asylum-seekers—including three children under the age of eleven—currently trapped in dangerous conditions in Mexico by the Trump administration’s so-called “Migrant Protection Protocols” (“MPP”). Customs and Border Patrol took the plaintiffs into custody after finding them present in the United States. Instead of providing the plaintiffs with the process that federal law requires, Border Patrol summarily returned them to

¹ “Jane Doe” is moving to proceed under pseudonym.

Mexico, where they have experienced extreme danger and hardship. Border Patrol acted pursuant to the MPP, a Department of Homeland Security policy to return asylum-seekers to Mexico pending the outcome of their asylum claims. The policy applies whether they are arriving at the border or, like the plaintiffs, are found present in the United States.

2. Congress long ago decreed that individuals, like the plaintiffs, found present in the United States are entitled to certain protections against removal. It legislated a detailed scheme for their treatment. The defendants' new protocols directly contradict this scheme and violate the law.

3. The protocols claim to exempt vulnerable persons for return to Mexico and to offer asylum-seekers the opportunity to expeditiously process asylum claims. Neither is true in practice. Substantially all asylum-seekers are returned to Mexico without consideration for their safety or their ability to litigate asylum claims while living in danger and destitution in Mexico. Plaintiff Cinthya Castillo Sambula, for example, was six months pregnant and bleeding when the defendants detained her in the United States. After she was discharged from the hospital, the defendants returned her to Mexico, ordering her to report back for a court hearing on the same day she was expected to deliver her child. When she missed her hearing (because she was in labor), the defendants ordered her deported in her absence.

4. The defendants similarly failed to consider the danger of sending Plaintiff Jane Doe, a transgender woman, back to Mexico. Mexico is well-known to be among the deadliest countries in the world for trans women. The U.S.

Department of State acknowledges that more than half of LGBTQ persons in Mexico reportedly have suffered hate speech and physical aggression. Plainly aware of her gender identity, the defendants nonetheless returned her to Mexico, where she has faced horrific abuse and lives in daily fear for her life. She now has been on the edge of survival in Mexico for ten months, without having a single hearing in immigration court on her asylum claim.

5. Meanwhile, the plaintiffs' family members, who reside in New York and also are plaintiffs in this action, anxiously await news in an indefinitely prolonged process, fearful that the notorious dangers visited upon asylum-seekers in Mexico might befall their loved ones.

6. In reality, the dangers that asylum-seekers face in Mexico is a feature of the program, not a flaw. The MPP is just one of many actions taken by the Trump administration to bar Central Americans from the protections that they are due, and an unlawful attempt to dismantle asylum law without public oversight. This it cannot do. The Court should declare that the protocols were unlawfully applied to the plaintiffs and order them returned to the U.S. to pursue their asylum claims in relative safety.

PARTIES

7. **Plaintiff Amin Naim Salim Adrianza** is an asylum-seeker residing with his sister and brother-in-law in Brooklyn, New York. He brings suit on his own behalf and as next friend to his wife, Leimariana del Valle Petit Romero.

8. **Plaintiff Leimariana del Valle Petit Romero** is an asylum-seeker from Venezuela. She entered the United States on or about September 30, 2019 to seek asylum in the United States. She now is stranded in Mexico under the MPP. She appears personally and, alternatively, by and through her husband and next friend, Mr. Adrianza.²

9. **Plaintiff Blanca Danelia Funes Castellanos** resides in Suffolk County, New York, where she has lived for over a decade. She brings suit on her own behalf and as next friend to her sister, Emma Obando Funes, and her nephews A.Y.B.O. and J.L.B.O.

10. **Plaintiff Emma Obando Funes** is an asylum-seeker from Honduras. She entered the United States in September 2019 to seek asylum in the United States. She now is stranded with her children A.Y.B.O. and J.L.B.O. in Mexico under the MPP. She appears personally and, alternatively, by and through her sister and next friend, Blanca Danelia Funes Castellanos.

11. **Plaintiff A.Y.B.O.** is a ten-year-old asylum-seeker from Honduras. He has autism and a severe sensory disorder, causing him to suffer extreme anxiety and crying spells. He entered the United States with his mother, Emma Obando Funes, in September 2019 and now is stranded in Mexico under the MPP. He

² Due to the danger faced by each of the plaintiffs who are presently in Mexico and the uncertainty regarding their ability to maintain contact with counsel, plaintiffs Leimariana del Valle Petit Romero, Emma Obando Funes, A.Y.B.O, J.L.B.O., Cinthya Castillo Sambula, and A.E.C.S. appear here both personally and by and through a next friend.

appears by and through his aunt and next friend, Blanca Danelia Funes Castellanos.

12. **Plaintiff J.L.B.O.** is an eight-year-old asylum-seeker from Honduras. He entered the United States with his mother, Emma Obando Funes, in September 2019 and now is stranded in Mexico under the MPP. He appears by and through his aunt and next friend, Blanca Danelia Funes Castellanos.

13. **Plaintiff Toedila Sambula Ramos** resides in Brooklyn, New York, where she has lived for over a decade. She brings suit on her own behalf and as next friend to her daughter, Cinthya, and her granddaughter, A.E.C.S.

14. **Plaintiff Cinthya Vanessa Castillo Sambula** is an asylum-seeker from Honduras. She entered the United States in November 2019 to seek asylum in the United States. She now is stranded with her newborn daughter A.E.C.S. in Mexico under the MPP. She appears personally and, alternatively, by and through her mother and next friend, Teodila Sambula Ramos.

15. **Plaintiff A.E.C.S.** is a six-month-old asylum-seeker born in Nuevo Laredo, Mexico to her mother Cinthya Vanessa Castillo Sambula. She now is stranded in Mexico under the MPP. She appears by and through her grandmother and next friend, Teodila Sambula Ramos.

16. **Plaintiff Jane Doe** is a twenty-three-year-old transgender woman from Honduras. She entered the U.S. in October 2019 and now is stranded in Mexico under the MPP.

17. **Defendant Donald J. Trump** is the President of the United States and is ultimately responsible for the policies of the Department of Homeland Security, which operates under the Executive Office of the President. He is sued in his official capacity.

18. **Defendant Chad F. Wolf** holds himself out to be the Acting Secretary of Homeland Security and the Cabinet-level officer responsible for the administration of U.S. immigration law, including implementing the MPP.³ He is sued in his official capacity.

19. **Defendant U.S. Department of Homeland Security (“DHS”)** is a cabinet-level department of the federal government. Its components include U.S. Citizenship and Immigration Services (“USCIS”), U.S. Customs and Border Protection (“CBP”), and U.S. Immigration and Customs Enforcement (“ICE”). Through these three sub-agencies, DHS implements the MPP. USCIS, through its asylum officers, is responsible for the MPP fear screenings. CBP is responsible for the initial processing and detention of non-citizens who are apprehended near the U.S.-Mexico border. ICE is responsible for determining where and how asylum-seekers returned to Mexico must present for their removal proceedings, and aiding CBP, when necessary, to transport individuals back to Mexico.

JURISDICTION AND VENUE

20. This Court has jurisdiction pursuant to 28 U.S.C. §§ 2201-2202

³ On August 14, 2020, the Government Accountability Office concluded that Mr. Wolf was improperly appointed to his current position as Acting Secretary, in violation of the Federal Vacancies Reform Act.

(declaratory judgment), 28 U.S.C. § 1331 (federal question jurisdiction), and 5 U.S.C. § 701 *et seq.* (Administrative Procedure Act).

21. Venue is proper in the Eastern District of New York because the defendants are officers of the United States sued in their official capacities and Plaintiffs Mr. Adrianza, Ms. Teodila Sambula, and Ms. Funes Castellanos reside in this district. 28 U.S.C. § 1391(e).

BACKGROUND

I. The Trump administration, motivated by animus against non-white immigrants, is violating laws protecting those fleeing persecution.

22. United States law protects asylum-seekers like Ms. Castillo Sambula, A.E.C.S., Ms. Petit Romero, Ms. Obando Funes, A.Y.B.O., J.L.B.O, and Ms. Doe (collectively, “the plaintiffs in Mexico”). The law guarantees that all non-citizens, regardless of status, can apply for asylum. *See* 8 U.S.C. § 1158(a)(1). And the law expressly forbids sending people to countries where they will be persecuted or tortured and provides them with an opportunity for a hearing before a neutral adjudicator (an immigration judge) before sending them to a place where they fear persecution or torture. *See* 8 U.S.C. § 1231(b)(3); 8 C.F.R. § 208.16.

23. But the Trump administration repeatedly has criticized these laws and is especially hostile to extending asylum protections to Black, Latinx, and Indigenous Central Americans. This hostility is due in substantial part to animus the Trump administration harbors toward these immigrants.

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

desire to physically harm them. The President has suggested electrifying the border wall, fortifying it with an alligator moat, installing spikes on top to pierce human flesh, and having soldiers shoot immigrants' legs to slow them down.

25. While campaigning for President, Trump repeatedly made racist statements about immigrants of color, stating that Mexican immigrants were “rapists,” and people who “bring[] drugs . . . [and] crime,” and that others “coming from all over South and Latin America” were “not the right people.”

26. As President, Trump has asked why the United States would want more people from Haiti, El Salvador, and other nations he called “shithole countries,” rather than people from countries like Norway, which is predominantly white. Trump implored Democratic congresswomen of color to “go back and help fix the totally broken and crime-infested places from which they came.” Trump has also said that Mexican immigrants “aren’t people” but “animals.”

27. Motivated by this animus, the defendants have acted to undermine and destroy the asylum process. The President and top DHS officials repeatedly refer to laws that preserve access to the asylum process as a “loophole”; the President has also called asylum a “scam” and a “hoax” and argued that most asylum requests are a fraudulent ploy to enter the country illegally. Indeed, the President has often denounced the very existence of Immigration Courts or due process for asylum claims, suggesting that “[w]hen somebody comes in, we must immediately, with no Judges or Court Cases, bring them back from where they came from.”

28. In response to President Trump's demand that DHS keep out Central American asylum seekers by any means necessary, the defendants have worked to harm these asylum seekers to disincentivize them from availing themselves of U.S. law and destroy the asylum system through an onslaught of illegal measures. These include separating immigrant children from their parents, refusing to process asylum seekers at ports of entry, undermining the independence of asylum officers and the immigration courts, and engaging in a multi-faceted attempt to remake the law of asylum eligibility for the singular purpose of denying protection to Central Americans and other immigrants.

29. For example, DHS unlawfully attempted to establish new, more stringent standards requiring asylum seekers to demonstrate persecution by non-state actors in interviews to determine whether they have a credible fear of persecution. *See Grace v. Barr*, -- F.3d ---, No. 19-CV-5013, 2020 WL 4032652 at *9-*12 (D.C. Cir. July 17, 2020) (affirming that DHS' new standard for finding a risk of persecution by non-state actors was arbitrary and capricious). DHS and President Trump also attempted to ban asylum for individuals who illegally crossed the southern border. *See East Bay Sanctuary Covenant v. Trump*, 950 F.3d 1242, 1272-1280 (9th Cir. 2020) (affirming that asylum ban violated the Immigration and Nationality Act and Administrative Procedure Act). And DHS likewise attempted to ban asylum for individuals at the southern border who have not applied for and been denied asylum or similar protection in a country that they transited through. *See East Bay Sanctuary Covenant v. Barr*, 964 F.3d 832, 846-854 (9th Cir. 2020)

(affirming that transit-bar rule violated the Immigration and Nationality Act and Administrative Procedure Act); *Capital Area Immigrants' Coalition v. Trump*, -- F. Supp. 3d ----, No. 19-2117, 2020 WL 3542481 (D.D.C. June 30, 2020) (vacating transit-bar rule for failure to comply with the Administrative Procedure Act's notice-and-comment procedures). Each of these attempts was enjoined in federal court after a judge found the policy in question was likely unlawful.

II. The so-called “Migrant Protection Protocols” are a centerpiece of the defendants’ efforts to deny immigrants the protection of U.S. law.

30. Contrary to their name, the “Migrant Protection Protocols” are an effort by the Trump administration to harm asylum-seekers, undermine the asylum system, and prevent Central Americans and other people of color from entering the United States.

A. The MPP is designed to deny asylum-seekers the protections of U.S. law.

31. Days after taking office, President Trump issued an Executive Order which, *inter alia*, instructed the DHS Secretary to “ensure that aliens described in [8 U.S.C. 1225(b)(2)(C)] are returned to the territory from which they came pending a formal removal proceeding.”

32. To carry out this Presidential directive, DHS proposed amending 8 C.F.R. § 235.3(d)—the implementing regulation for 8 U.S.C. § 1225(b)(2)(C)—which currently limits DHS’s discretion to return immigrants to a contiguous territory to only those “who arrive[] at a land border port-of-entry.” It appeared on DHS’ regulatory agendas beginning in the spring of 2017 through the fall of 2018. Before

publishing its agenda for spring 2019, however, the agency abruptly changed course and withdrew the proposed rule change.

33. Instead of continuing through the notice and comment process required for such rule changes, DHS instead decided to proceed by press release, announcing on December 20, 2018 that individuals “arriving in or entering the United States from Mexico—illegally or without proper documentation—may be returned to Mexico for the duration of their immigration proceedings.”⁴

34. The release explained that pursuant to the new protocols, the United States would detain asylum seekers at the border, schedule their removal hearings, expel them to Mexico, and require them to present themselves at a port-of-entry on their immigration court hearing dates.

35. There is no statutory authority for the application of the MPP to non-citizens, like the plaintiffs in Mexico, who are allegedly inadmissible for having entered the U.S. without inspection or without valid documents authorizing their admission. In fact, the application of the MPP to these non-citizens violates 8 U.S.C. § 1225(b)(1), which delineates the procedures applicable to this group.

36. The defendants have not promulgated any regulations instituting or implementing the MPP. Instead they created this policy entirely through press releases and internal memoranda. On January 24, 2019, DHS published a list of answers to “Frequently Asked Questions” shortly after the announcement of the

⁴ Even if the rule change was properly enacted, it still would have unlawfully expanded the contiguous territory provision to non-citizens who already had entered the country.

protocols to explain how the opaque program would work. In that document, DHS confirmed that “vulnerable populations may be excluded [from the MPP] on a case by case basis.” Four days later, CBP published another memorandum, “Guidance on Migrant Protection Protocols,” stating “vulnerable aliens . . . will not be placed into MPP, in accordance with the Guiding Principles for Migrant Protection Protocols issued [the same day] by the Enforcement Programs Division (HQ). . . The Guiding Principles outline which aliens may be amenable to MPP.” The “Guiding Principles” lists various categories of noncitizens who are “not amenable to MPP,” including those with known physical or mental health issues.

37. On information and belief, the defendants routinely disregard this guidance and place vulnerable people, including those with disabilities, into the program.

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

39. The press release hypothesized that because the MPP would impose brutal conditions on all asylum-seekers, “false asylum claims are expected to

decline.” But, as evidenced by the program’s overbroad targeting of all asylum-seekers, in promulgating and implementing the MPP, the defendants also expected, and wanted, meritorious asylum claims to decline.

B. The MPP exposes asylum-seekers to risk of serious harm, including kidnapping, torture, and other violence.

40. By imposing the MPP, the defendants have exposed asylum seekers, including the plaintiffs, to brutal, dangerous conditions in Mexico.

41. The defendants originally implemented the MPP at the San Ysidro Port of Entry near San Diego, California, and expanded the program to seven cities on the southern border by January 2020.

42. In July 2019, the defendants began applying the MPP in Laredo and Brownsville, Texas, returning immigrants to the Mexican state of Tamaulipas.

43. Since at least 2018, the U.S. Department of State has issued a travel advisory for Tamaulipas of “Level 4: Do Not Travel”—the same level issued for active-combat zones such as Syria and Afghanistan.

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

45. U.S. government employees may travel in Tamaulipas only in limited areas between the U.S. consulates and U.S. ports of entry. They may not use

Mexican highways to travel between cities in Tamaulipas or be out between midnight and 6:00 a.m. in the cities of Nuevo Laredo and Matamoros.

46. Underscoring the gravity of the travel advisory, the State Department instructs anyone who chooses to travel to “high risk” areas such as Tamaulipas to make a will, designate a family member to negotiate with kidnappers, and establish secret questions and answers to verify that the traveler is still alive when kidnappers contact family.

47. These travel advisories are consistent with years of State Department reports documenting extreme violence in Tamaulipas and the targeting of asylum-seekers by criminal groups, police, immigration officers, and customs officials.

48. Migrants are specifically hunted by violent criminal groups in Nuevo Laredo, Matamoros, and elsewhere in Tamaulipas and Mexico. In particular, criminal groups are known to target asylum-seekers for kidnapping and extortion as they return from Laredo, Texas across the international bridge, outside shelters, and at bus stations.

49. Kidnappers operate with total impunity in Tamaulipas. A complaint filed by an international human-rights organization on June 2, 2020 identified over one-hundred asylum-seekers subject to the MPP in Tamaulipas who faced either kidnapping or attempted kidnapping over a three-month period, mostly at the hands of criminal organizations but occasionally by Mexican officials. In October 2019, Doctors Without Borders reported that 75 percent of their patients in Nuevo Laredo pursuant to the MPP were victims of recent kidnappings.

50. The Mexican government was hesitant to expand the MPP to Tamaulipas because of the extreme dangers present in the region. In July 2019, Mexico's ambassador to the United States, Martha Bárcena, acknowledged that the Mexican government was not prepared for the expansion of the MPP to Tamaulipas because of the dangerous conditions there: "We recognize there are certain areas of Mexico in which the challenges of security are higher. So, that is why we've been very careful of not opening up, for example, the returns in Tamaulipas."

51. While the dangers are most severe in Tamaulipas, they are not limited to that state. As of May 13, 2020, a human rights group had compiled a database containing at least 1,114 publicly reported cases of murder, rape, torture, kidnapping, and other violent assaults against asylum-seekers forced to return to Mexico under the MPP and other Trump administration policies, including 265 cases involving children.

52. Asylum-seekers with disabilities are especially vulnerable to these harms. They often are unable to access the mental and physical health care they require in Mexico and are separated from family and support networks in the United States. The dangerous and unsanitary conditions in shelters and encampments exacerbate these vulnerabilities. The MPP requires these disabled asylum-seekers to travel, often long distances, to and within these dangerous border regions and wait outdoors for long periods of time to access their proceedings. These unique challenges, among others, make it especially difficult for disabled asylum-seekers to access their removal proceedings and immigration relief while subjected

to the MPP.

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

54. However, the defendants view the dangers inherent in the MPP as a feature not a flaw. The MPP was designed to exclude asylum-seekers from the United States regardless of the strength of their asylum claims, and—by making the asylum process exceptionally dangerous—to reduce the number of people who seek safety on our shores. The MPP is achieving its intended harm: it is brutally punishing those who seek the protection of the United States, in the hope that all asylum claims—legitimate or not—will decline.

FACTS

I. Cinthya Vanessa Castillo Sambula and A.E.C.S.

55. Cinthya Vanessa Castillo Sambula is a 29-year-old Black Garifuna woman from Honduras. In June 2019, she fled Honduras after two men attacked her uncle with a machete and then began stalking her and threatening her life.

56. For five months, she journeyed to the United States to seek asylum. When she arrived at the U.S.-Mexico border in November 2019, she was six months pregnant and exhausted.

57. Ms. Castillo Sambula crossed the border from the Mexican state of Coahuila. CBP officers subsequently located her and took her into custody. In custody, she began to bleed due to complications with her pregnancy. She was sent in an ambulance to a hospital for treatment. After two days in the hospital, she was returned to a detention center. Without explanation or due consideration of the

vulnerabilities arising from her pregnant condition, the defendants returned her to Mexico.

58. Though the defendants were aware that Ms. Castillo Sambula was expected to deliver her baby in early February, she was nevertheless told to present at the border for her court hearing in Nuevo Laredo, in the Mexican state of Tamaulipas on February 3, 2020. CBP then brought her to the international bridge where she was made to cross to Piedras Negras, in the Mexican state of Coahuila.

59. Ms. Castillo Sambula had no contacts in Mexico or money. She waited by a telephone booth, asking for change to make a call. Eventually, a kind woman approached her and asked her where she needed to go. The woman gave her food and shelter for three days.

60. Reasonably believing that the border region was unsafe, she and her mother planned for her to travel to Guadalajara, in the state of Jalisco, where she would be safer while waiting for her hearing. She stayed in Guadalajara for three months.

61. Before her February 3 report date, Ms. Castillo Sambula— then nine months pregnant — traveled across Mexico for three days to Nuevo Laredo, Tamaulipas. The journey was physically exhausting and challenging for her. En route to her hearing, Ms. Castillo Sambula went into labor. On February 3, her report date, she gave birth to her daughter, A.E.C.S., in a Nuevo Laredo hospital.

62. On February 5, Ms. Castillo Sambula left the hospital and went directly to the port-of-entry with her newborn. They waited for hours outside in the

cold for permission to attend her hearing. Though she was still recovering from delivery and her daughter was just two days old, Ms. Castillo Sambula was terrified of having missed her report date and being returned to Honduras. Both mother and daughter became sick in the process.

63. CBP officials detained Ms. Castillo Sambula and A.E.C.S. for about two days and did not bring them to see the immigration judge. On February 6, 2020, when Ms. Castillo Sambula was physically in CBP custody, an immigration judge ordered her removed *in absentia*, apparently for failing to attend her immigration court hearing. Though she was in CBP custody at the time of the order, Ms. Castillo Sambula was not given a copy of the removal order or told that she could file a motion to reopen explaining why she was unable to attend court. On or about February 7, 2020, CBP officials returned Ms. Castillo Sambula, who was still sick and recovering from delivery, and A.E.C.S., not even one week old, to the bridge to walk back to Nuevo Laredo, Mexico.

64. After returning to Nuevo Laredo, Ms. Castillo Sambula and A.E.C.S. tried to go to a hotel to rest. She was told she would not be accepted there since, as a Black woman, she would be identified as a foreigner. Instead, she went to a shelter. At the shelter, a group of men entered and forcibly removed several people from inside the shelter. The pastor in charge of the shelter intervened before they could kidnap Ms. Castillo Sambula and her baby, convincing the men to leave.

65. Scared of the conditions in Nuevo Laredo, Ms. Castillo Sambula moved with A.E.C.S. to Monterrey, Mexico where she currently remains. In Monterrey,

A.E.C.S. became even more sick and had trouble breathing, causing Ms. Castillo Sambula to bring her to the hospital for emergency treatment.

66. Ms. Castillo Sambula searched for months to find an immigration attorney to help her with her case. In those months, Ms. Castillo Sambula had no family to help her recover from delivery or assist with her newborn child. Having been ordered removed from the U.S., she was depressed and scared about her future.

67. On July 23, 2020, a *pro bono* attorney filed a motion to reopen her immigration case explaining Ms. Castillo Sambula was giving birth on the day she was supposed to report to the border. With her motion, she filed an application for asylum, demonstrating that she was *prima facie* eligible for relief from removal.

68. The immigration court reopened Ms. Castillo Sambula's case and set a hearing for January 12, 2021 – nearly fourteen months after she initially entered the United States to seek asylum.

69. Though she became ill and was nearly kidnapped during her last report to Nuevo Laredo, Ms. Castillo Sambula will once again have to put herself and her daughter in danger, risk kidnapping, illness, and other harms to travel to Nuevo Laredo for her next hearing.

70. Teodila Sambula Ramos, Ms. Castillo Sambula's mother, lives in Brooklyn, New York and worries constantly for her daughter and newborn granddaughter. She worries whether Ms. Castillo Sambula and A.E.C.S. can get appropriate medical care and for their safety in Mexico, especially when they must

travel to Nuevo Laredo for their next hearing. She sends money to Ms. Castillo Sambula and her daughter when she can to help support them.

II. Jane Doe

71. Jane Doe is a twenty-three-year-old transgender woman from Honduras. In Honduras, she suffered years of physical and verbal assaults and discrimination because of her gender identity. Unable to continue living in Honduras, she left the country in August 2019 to seek asylum in the United States.

72. In early October 2019, she arrived near the U.S.-Mexico border in Reynosa, Mexico. In Reynosa, men dressed like Mexican police detained her and a group of other immigrants and robbed them. They picked out Ms. Doe for being transgender, insulted her, pulled her hair, and told her that it was dangerous for people like her in Mexico and that they did not want to see her there again.

73. After that, Ms. Doe crossed the Rio Grande river into the United States. CBP subsequently located her and took her into custody.

74. Though she identifies and presents as a woman, CBP initially housed Ms. Doe in a cell shared with men. The men in her cell called her names and whistled at her, causing her to feel unsafe. CBP then transferred her to an individual cell.

75. CBP officers interviewed Ms. Doe and told her that she would be returned to Mexico to await her court hearings. She begged them not to return her to Mexico because, as a trans woman, her life was in danger there. Despite her fears, CBP officers transported Ms. Doe to the border and instructed her to cross the

bridge to Matamoros, Mexico. The officers did not explain why she would be returned to Mexico despite the well-documented risks to her there. Ms. Doe was not given any papers or information about when her next court date would be. She returned to the port-of-entry several times after that until she finally received a notice for a hearing.

76. After being returned to Matamoros, Ms. Doe had nowhere to go and, because she was robbed before crossing the border, had no money either. For days, she begged for food and slept on the street, without so much as a blanket to cover her. She had no bathroom and bathed in the river. Eventually, some people gave her a tent and other necessities, like shoes and a second pair of clothes, and she began living in an encampment with other asylum-seekers.

77. Ms. Doe was not safe in the camp. Others in the camp made fun of her or insulted her. Seeking to avoid conflict, Ms. Doe stayed silent at these remarks and tried to keep to herself. She lived with daily humiliations and in constant fear for her safety.

78. The abuse continued to escalate until the spring of 2020, when several men severely assaulted Ms. Doe. Ms. Doe attempted to report the assault to Mexican officials several times, but the officials did nothing to protect her.

79. After the attack, the “leader” of a gang that controls the camp told her that she needed to start acting like a real man and “to stop bothering everyone.” Later, another man came to tell her that he did not want to see her anymore in the camp.

80. Afraid of being assaulted again or killed, Ms. Doe left the camp and began staying with a friend who was renting an apartment in Matamoros temporarily. She does not know how long she can stay there or where she will go if she has to leave the apartment.

81. Ms. Doe's first court date was scheduled for June 2020 –approximately eight months after she was first returned to Mexico. This hearing date was then postponed to July 8, and then to August 26, 2020. Ms. Doe now has been in Mexico for almost a year, without ever having a single hearing in immigration court on her asylum claim.

82. Ms. Doe suffers from post-traumatic stress disorder but is unable to obtain adequate treatment or avoid triggering events while living in Mexico. Her constant fear for her life in Mexico has worsened her condition and impacted her ability to prepare for her immigration case.

III. Emma Obando Funes, A.Y.B.O., and J.L.B.O.

83. Emma Obando Funes is a forty-three-year-old mother from Honduras. In September 2019, she made the difficult decision to flee Honduras after receiving threats to her life. She fled with her three youngest children, J.L.B.O., A.Y.B.O., and E.B.O., ages eight, ten, and sixteen, respectively.

84. She and her children journeyed to the United States because that is where her sister, Blanca Danelia Funes Castellanos, lives. She had no relatives or contacts in Mexico.

85. In Tamaulipas, a group of men kidnapped Ms. Obando Funes and her

children and held them for days without food. Ms. Obando Funes and her children witnessed the men assault and disappear several other children who were kidnapped when their families could not pay the ransom. After Ms. Obando Funes' family paid the ransom, the kidnappers released Ms. Obando Funes and her children near the Rio Grande river separating the U.S. and Mexico.

86. Ms. Obando Funes and her three sons crossed the Rio Grande river. CBP officials subsequently encountered them and took them into custody.

87. Immigration officials detained Ms. Obando Funes and her three children for approximately ten days.

88. A.Y.B.O. has autism and a severe sensory disorder. Loud noises hurt his ears, chaotic or disorganized situations distress him, and he has frequent crying spells. When the CBP officials arrested the family, they took their belongings, including A.Y.B.O.'s medication. While in custody, A.Y.B.O. became emotionally distraught and physically ill, vomiting repeatedly.

89. Ms. Obando Funes asked for medical care for A.Y.B.O.'s condition multiple times. The officer asked what condition A.Y.B.O. had, and Ms. Obando Funes said A.Y.B.O. was autistic. The officer replied that was not a medical condition and did not offer any help.

90. At the end of the ten days, U.S. officials told Ms. Obando Funes that she and her children would be returned to Matamoros to await their immigration hearings in Mexico. Ms. Obando Funes was afraid to return to Mexico because they had been kidnapped there before and did not know anyone there who

could help her. She told officials that she was afraid to return to Mexico. On information and belief, Ms. Obando Funes was not provided a non-refoulement interview or given an opportunity to explain her fears of returning to Mexico. Nor, on information and belief, was any consideration given to her son's mental disability.

91. Instead, officials brought her and her children to the Brownsville-Matamoros International Bridge and told her to walk across to Matamoros. The family crossed the bridge and received papers from Mexican migration officials.

92. Ms. Obando Funes left the migration office with her children hungry and stressed. A.Y.B.O. had not had any medication for days and was traumatized from the experience of being kidnapped and then detained in CBP custody. Since they had been kidnapped before crossing the border, they had no money and were terrified of being kidnapped again. For about one week, the family slept on the ground outside the Mexican migration office and relied on donations to eat. CBP did not return A.Y.B.O.'s medications to Ms. Obando Funes after returning the family to Mexico, causing A.Y.B.O. to go without medication for almost a week until his aunt, Ms. Funes Castellanos, was able to send them money.

93. After a week of sleeping outside, the family received a donated tent, where they slept for eight more months. Other families arrived; an encampment formed and expanded.

94. Because of his autism and sensory disorder, A.Y.B.O. became increasingly distraught in the camp. The heat, strange sounds and smells,

and chaos of the encampment made him anxious and stressed. He cried frequently and became physically ill, suffering from respiratory issues and diarrhea. Others in the camp and the town were cruel to A.Y.B.O. because of his disability.

95. Ms. Obando Funes was also repeatedly targeted for robbery and extortion while living in the camp. The first time, she had just returned from her immigration court hearing and was robbed of all of her belongings, including her immigration documents. Her oldest son, E.B.O., confronted the robber. After that, they received threats, causing E.B.O. to flee the camp and cross the U.S.-Mexico border on his own. E.B.O. is now living with his aunt, Blanca Danelia Funes Castellanos, in Long Island. In June 2020, Ms. Obando Funes was again robbed and threatened near the camp. Fearful of remaining in the camp, a friend she had made in Mexico allowed her, A.Y.B.O., and J.L.B.O. to stay with her in her apartment temporarily.

96. Ms. Obando Funes and her children do not leave the apartment because they fear being targeted for kidnapping, robbery, or extortion if they go outside.

97. U.S. immigration officials instructed Ms. Obando Funes to return to the Brownsville-Matamoros International Bridge at 4:30 a.m. on the day of her immigration court hearings. She and her children appeared at hearings in October and November 2019, when she filed an application for asylum. Each time she appeared before the immigration judge, she explained that they feared returning to Mexico, but still has not been provided a non-refoulement interview.

98. Her third hearing was set for May 1, 2020, then rescheduled to July 10, 2019. Her July 10 hearing also has been canceled and reset to October 17, 2020.

99. A.Y.B.O.'s conditions, which have decompensated in Mexico, require Ms. Obando Funes to care for him full-time. As a result, she cannot work to afford his medications or an immigration attorney to assist them in their case. Remaining in Mexico has been so difficult for her and her children, especially A.Y.B.O., that she does not know how much longer she can stay waiting for her case to proceed.

100. Ms. Obando Funes' sister, Blanca Danelia Funes Castellanos, worries for her sister and nephews' safety in Matamoros constantly. She sends what money she can to help A.Y.B.O get the medical treatment he needs and to help the family survive, but it is not enough. She also is caring for Ms. Obando Funes' son, E.B.O., until he can be reunited with his mother.

IV. Leimariana del Valle Petit Romero

101. Leimariana del Valle Petit Romero is a thirty-two-old Venezuelan woman seeking asylum based on her political opinion.

102. In Venezuela, she was an active member of the Justice First Party. She organized peaceful protests against what she believed were President Nicolás Maduro's attacks on the Constitution and laws of Venezuela. Defenders of the Maduro government identified her as an organizer of the protests, assaulted her in her home, and threatened to kill her if she continued her activities. She attempted to relocate to Argentina but was forced to flee again after the same group found her

in Argentina and threatened her again.

103. In an effort to seek safety in the United States, Ms. Petit Romero traveled to the Mexican state of Coahuila. On September 30, 2019, she crossed the U.S.-Mexico border near Del Rio, Texas. CBP officers subsequently found her and took her into custody.

104. U.S. officials detained Ms. Petit Romero for approximately five days. While in custody, a CBP official notified her that she had been “identified for processing under the Migrant Protection Protocols” and must wait in Mexico for her immigration court hearings. Ms. Petit Romero told the CBP officer that she feared for her life in Mexico, since the same vigilante groups that threatened her in Venezuela and Argentina operate in Mexico and other asylum-seekers had been kidnapped in Mexico. The CBP officer told her that the order they had was that she had to wait in Mexico. Ms. Petit Romero then spoke briefly with two asylum officers by phone about her fears.

105. After the calls, the CBP officer told Ms. Petit Romero that she had to return to Mexico. Ms. Petit Romero was not told the basis for the decision, given any record of the interviews, or told why she had to return to Mexico despite her fear of returning there. She was told to report for a hearing scheduled nearly five months later on February 24, 2020.

106. Though Ms. Petit Romero had crossed the U.S.-Mexico border from the relatively safer Mexican state of Coahuila, CBP officials transported her three-and-a-half hours south to the port-of-entry at Laredo, Texas bordering the more

dangerous Mexican state of Tamaulipas.

107. Ms. Petit Romero was then forced to walk across the international bridge to Nuevo Laredo, Mexico. CBP officials never told her where she was being taken or that she was going to be returned to Nuevo Laredo. They gave her no opportunity to plan for her shelter or safety after crossing the border. Ms. Petit Romero never before had been to Nuevo Laredo or the state of Tamaulipas. She knew no one in Tamaulipas who could help her navigate the city or state safely.

108. After crossing the bridge, Ms. Petit Romero went directly to the Mexican migration office to obtain temporary residence papers. Mexican officials told her that Nuevo Laredo was very dangerous because cartel members wait outside of the office to kidnap foreigners and she should not go out alone. The Mexican officials did not, however, offer her any assistance or information on how or where she could seek safety.

109. Terrified, Ms. Petit Romero waited in the Mexican migration office until the office closed, forcing her outside. As soon as she walked outside, a group of men identified her as a foreigner and approached her. They became aggressive, yelling in her face and insisting she tell them about any family she had in the U.S. She was able to run into a taxi and speed away to the bus station. At the bus station, another group of men accosted her and began telling her that she had to pay them money. She was able to separate herself and get on the bus to Monterrey.

110. Ms. Petit Romero then traveled to her husband's cousin's house in the Mexican state of Guanajuato. Her cousin-in-law has advised her not to go outside,

since word will get out that she is a foreigner and she could be kidnapped. She also fears that Maduro-supporting vigilante groups in Mexico could find her, as they did in Argentina. Fearful of being targeted, she does not go outside and her financial resources to support herself have dwindled.

111. Ms. Petit Romero waited in Guanajuato for almost five months until she had to report to the bridge in Nuevo Laredo at 4:30 a.m. for her hearing on February 24, 2020. She used her remaining savings to fly to Nuevo Laredo by plane and take a hotel shuttle to report to the bridge. Though she had little money left, she did this because she had heard stories of other asylum-seekers being kidnapped en route to and from the bridge in Nuevo Laredo.

112. At the court hearing, Ms. Petit Romero's attorney requested to change venue to Brownsville, Texas, based on reports of individuals being kidnapped on the way to and from hearings in Nuevo Laredo, and because in Brownsville, Ms. Petit Romero's attorney could meet with her before and after her hearings. The Immigration Judge rejected the request on the basis that the immigration court hearing the case by video was in San Antonio, Texas (though the same was true for hearings in Brownsville). Her attorney then filed Ms. Petit Romero's application for asylum and her case was reset for a merits hearing on June 5, 2020.

113. Ms. Petit Romero's June 5, 2020 hearing was then postponed to September 21, 2020 due to the Trump Administration's closure of the border during the COVID-19 pandemic.

114. After supporting herself in hiding for ten months in Mexico, Ms. Petit

Romero has no money left to safely travel to her September hearing. She fears she will have to travel by bus, where she will be at much greater risk of kidnapping or assault on the journey.

115. Ms. Petit Romero's husband, Amin Naim Salim Adrianza, is applying for asylum before U.S. Citizenship and Immigration Services in New York. He feels helpless regarding his spouse's situation and fears for her safety constantly, especially that she will be harmed on her next trip to Nuevo Laredo.

CLAIMS FOR RELIEF

CLAIM ONE

Violation of the Immigration and Nationality Act

116. The foregoing allegations are realleged and incorporated herein.

117. The defendants' actions violate the Immigration and Nationality Act and its implementing regulations, including but not limited to 8 U.S.C. §§ 1225(b)(1), 1225(b)(2)(C) and 8 C.F.R. §§ 235.3(d), 1001.1(q).

CLAIM TWO

Violation of the Administrative Procedure Act (5 U.S.C. §§ 553, 706)

118. The foregoing allegations are realleged and incorporated herein.

119. The defendants' actions violate the Administrative Procedure Act.

CLAIM THREE

Violation of Due Process (U.S. Constitution, Amend. V)

120. The foregoing allegations are realleged and incorporated herein.

121. The defendants' actions violate the Due Process Clause.

CLAIM FOUR
Violation of Equal Protection
(U.S. Constitution, Amend. V)

122. The foregoing allegations are realleged and incorporated herein.

123. The defendants' actions violate the Fifth Amendment's guarantee of equal protection of the laws.

CLAIM FIVE
Violation of the Rehabilitation Act

124. The foregoing allegations are realleged and incorporated herein.

125. The defendants' actions violate the Rehabilitation Act and its implementing regulations.

PRAYER FOR RELIEF

The plaintiffs ask that this Court grant the following relief:

1. Declare that the MPP is unlawful, and that its application to the plaintiffs is unlawful;
2. Enjoin the defendants from applying the MPP to the plaintiffs;
3. Order the plaintiffs in Mexico be permitted to enter the United States and remain during the pendency of their 8 U.S.C. § 1229a removal proceedings and any appeals;
4. Alternatively, order an independent determination of whether the plaintiffs in Mexico should be excluded from the MPP under the MPP Guiding Principles, other DHS guidance, and the Rehabilitation Act;

5. Award compensatory damages to Plaintiffs Cinthya Vanessa Castillo Sambula, A.Y.B.O., and Jane Doe to the extent permitted under the Rehabilitation Act;

6. Award attorney's fees under the Equal Access to Justice Act, 28 U.S.C. § 2412(d) and 5 U.S.C. § 504, if applicable; and,

7. Order any further relief this Court deems just and proper.

Respectfully submitted,

Dated: August 25, 2020

NEW YORK CIVIL LIBERTIES UNION
FOUNDATION

/s/ Amy Belsher
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