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1 Plaintiffs respectfully move this Court for an emergency order allowing
2 Individual Plaintiffs Jaqueline Doe, Victoria Doe, Chepo Doe, Fredy Doe, Ariana Doe,
3 and Francisco Doe to return to the United States with their immediate family members,
4 under appropriate precautionary public health measures, in order to seek reopening of
5 their cases and, if successful, pursue their claims for asylum and related relief.

6 **I. INTRODUCTION**

7 Individual Plaintiffs Jaqueline Doe, Victoria Doe, Chepo Doe, Fredy Doe, Ariana
8 Doe, and Francisco Doe are at imminent risk of grave harm because of the continuing
9 effects of the Migrant Protection Protocols (MPP Individual
10 Plaintiff arrived at the U.S.-Mexico border seeking asylum and, under the Protocols,
11 was returned to Mexico. The Protocols have forced Individual Plaintiffs to live in
12 life-threatening circumstances while attempting to prove their right to relief in
13 immigration court. All Individual Plaintiffs received final orders of removal as a direct
14 result of MPP, either because they were unable to attend their immigration hearings or
15 because they were unable to fully and fairly present their asylum claims. These same
16 Protocols have also prevented Individual Plaintiffs from meaningfully accessing
17 counsel, appealing their removal orders, or seeking to reopen their immigration
18 proceedings.

19 The Protocols violated Individual s to apply for asylum, to access
20 legal counsel, and to receive a full and fair hearing. As a result, all Individual Plaintiffs
21 remain stranded outside the United nBTA 44DFoot82/F1 A 44DFoot82/F1 A 44D3es 98.94

1 Individual Plaintiffs seek an emergency order that the government admit them
2 and their immediate family members to the United States to allow them an opportunity
3 to move to reopen their removal proceedings and to vindicate their entitlement to pursue
4 asylum with meaningful access to legal services. Admission to the United States will
5 remove Individual Plaintiffs from the risk of imminent, irreparable harm. It will also
6 allow them to meaningfully access the U.S. asylum system

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2 On the date of their scheduled immigration court hearings, individuals were
3 required to present themselves at a designated port of entry hours before their hearing
4 time often at a dangerous, pre-dawn hour so DHS could transport them to
5 immigration court. *See*

6 , ¶¶ 27, 35; Decla Victoria Doe Decl ¶ 18;
7 Chepo Doe Decl ¶ 25; Declaration of Fredy Doe
8 Fredy Doe Decl ¶ 7; Ariana Doe Decl ¶ 10;
9 Declaration of Francisco Doe (Francisco Doe Decl ¶ 12. Individuals subjected to
10 the Protocols were not provided with means to travel to the port of entry at which they
11 were required to appear, or even information about how to do so. *See* Victoria Doe Decl.
12 ¶ 12 (stating that, when she was returned to Mexico, she did not understand how or
13 when to return to court); Chepo Doe Decl. ¶ 13 (stating that he was not provided with
14 any information about how to get to his first hearing).

15 The Protocols relied on the Immigration and Nationality Act (INA) detention
16 scheme. Under the INA, individuals subjected to MPP were detained by the U.S.
17 Government. From the time individuals were initially processed under the Protocols
18 until they were returned to Mexico, they were detained by DHS and
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1 to Mexico to await their immigration proceedings, the Protocols rendered them
2 vulnerable to violence at the hands of cartels, gangs, and Mexican officials, and
3 deprived them of access to their basic needs in conditions DHS now admits are often

4 .⁴

5 Although individuals subjected to MPP remain in custody for the duration
6 of their removal proceedings, they lack even the minimal access to legal assistance that
7 would have been afforded them had they been detained within the United States.⁵
8 Indeed, the Protocols blocked legal representation entirely for all but 10% of impacted
9 individuals.⁶ By contrast, Executive Office for Immigration Review (EOIR) records
10 reflect that 80% of all asylum seekers appearing in immigration court are represented.⁷

11 DHS

12 has thus concluded that

13 the challenges associated with accessing counsel.⁸

14 For the few individuals lucky enough to find representation, in-person attorney-
15 client consultations were limited to a one-hour window before a scheduled hearing.⁹
16 But conditions at the hearing locations meant these meetings were of little use: it was
17 difficult or impossible to speak confidentially, childcare was unavailable, and other

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19 _____
20 ⁴ Explanation of the Decision to Terminate MPP, *supra* n. 2, at 7.

21 ⁵ See, e.g., Kyle Kim, *Immigrants held in remote ICE facilities struggle to find legal aid before they're*
22 *deported*. Los Angeles Times, Sept. 28, 2017.

23 ⁶ As of October 2021, only 6,837 (less than 10%) of the 71,039 individuals subjected to MPP had legal
24 representation. See TRAC Immigration, *Details on MPP (Remain in Mexico) Deportation*
25 *Proceedings by Hearing Location and Attendance*, ,

1 CBP had processed fewer than half of the individuals subjected to MPP who were
2 eligib 14

3 Defendants required individuals subjected to MPP who had received *in absentia*
4 removal orders to first have their immigration cases reopened in order to be eligible for
5 processing into the United States under the wind-down. Third Supplemental
6 Declaration of Luis Gonzalez 3d Suppl. Decl. ¶ 17; Cargioli 2d Suppl.
7 Decl. ¶¶ 7, 10, 25. DHS has complete discretion to determine whether to join a motion
8 to reopen, making the likelihood of joinder uncertain. If, and only if, a motion to reopen
9 were granted, would an individual with an *in absentia* order of removal be considered
10
11 See Gonzalez 3d Suppl. Decl. ¶ 18. Meanwhile, individuals with final removal orders
12 for reasons other than failure to appear, who had no dedicated process for seeking
13 reopening, remained in limbo outside the U.S. See, e.g., Fredy Doe Decl. ¶ 2; Ariana
14 Doe Decl. ¶ 20.

15 **C. The Termination of the Protocols and *Texas v. Biden***

16 On June 1, 2021, Defendant Mayorkas announced the termination of MPP,
17 directing DHS to rescind implementing guidance and other directives issued to carry
18 out the policy June 1 . His memo
19 high percentage of cases completed through the entry of *in absentia* removal orders . . .
20 raises questions . . . about the design and operation of the program, whether the process
21 provided enrollees an adequate opportunity to appear for proceedings to present their
22
23 including the lack of stable access to housing, income, and safety, resulted in the
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26 ¹⁴ See Press Release, U.S. Customs and Border Protection, CBP Announces June 2021 Operational
27 Update, (July 16, 2021), https://www.cbp.gov/newsroom/national-media-release/cbp-announces-june-2021-operational-update?_ga=2.91485023.455329872.1635808166-1055311343.1635808166
28 12,000
of June 30, 2021).

1 abandonment of potentially meritorious protection claims ¹⁵ The June 1 Termination

2
3 individuals who were enrolled in MPP at any stage of their proceedings before EOIR

4 16

5 On August 13, 2021, the U.S. District Court for the Northern District of Texas
6 permanently enjoined the June 1 Termination Directive and ordered the government:

7 to enforce and implement MPP *in good faith* until such a time as it has
8 been lawfully rescinded in compliance with the APA **and** until such a
9 time as the federal government has sufficient detention capacity to detain
10 all aliens subject to mandatory detention under [INA] Section 1255
without releasing any aliens *because of* a lack of detention resources.

11 *Texas v. Biden*, No. 2:21-CV-067-Z, 2021 WL 3603341, at *27 (N.D. Tex. Aug. 13,
12 2021) (emphases in original).

13 On August 19, 2021, the U.S. Court of Appeals for the Fifth Circuit denied the
14 to *Texas v. Biden*, 10 F.4th 538
15 (5th Cir. 2021). s

16 does
17 described in [INA] § 1225 *en masse* *Id.* at 558. On August 24,
18 2021, the Supreme Court denied the government
19 injunction. *Biden v. Texas*, No. 21A21, 2021 WL 3732667 (U.S. Aug. 24, 2021).

20 On October 29, 2021, Defendant Mayorkas issued a second termination memo,¹⁷
21 accompanied by a 39-page explanation that concluded there are inherent problems
22 with the program that no amount of resources can sufficiently fix. ¹⁸ The same day, the

23
24 ¹⁵ Memorandum from Secretary Alejandro N. Mayorkas to Acting Heads of CBP, ICE, and USCIS,
Termination of the Migrant Protection Protocols Program, at 4 (June 1, 2021),
25 https://www.dhs.gov/sites/default/files/publications/21_0601_termination_of_mpp_program.pdf

June 1

26 ¹⁶ *Id.* at 7.

27 ¹⁷ Memorandum from Secretary Alejandro N. Mayorkas, Termination of the Migrant Protection
Protocols (Oct. 29, 2021), [https://www.dhs.gov/sites/default/files/publications/21_1029_mpp-
28 termination-memo.pdf](https://www.dhs.gov/sites/default/files/publications/21_1029_mpp-termination-memo.pdf).

¹⁸ Explanation of the Decision to Terminate MPP, *supra* n. 2, at 38.

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All Individual Plaintiffs are in danger of immediate and irreparable harm:
Jaqueline Doe: Since being placed in MPP, Jaqueline has been robbed, verbally abused, and physically assaulted because of her gender identity. Jaqueline Doe Decl. ¶¶ 49-54. She has also struggled to meet her basic needs, including being unable to consistently afford medicine, food, water, electricity, and housing. *Id.* ¶¶ 19, 20, 22, 25, 26, 33, 46, 55, 57. Jaqueline currently lives in fear for her life in Tijuana.
2d Supp. Decl.), ¶¶ 2, 7, 10. She was recently kidnapped and beaten by several armed men; since escaping, she has continued to live in hiding. *Id.* ¶¶ 4-7.
Because she is HIV-

1 gangs and police in Matamoros, which led to numerous shootings. *Id.* ¶ 22.
2 During this confrontation, there was a shootout between police and local gangs
3 one *Id.* Francisco feared for his life, but still
4 left his apartment to get to work immediately after the shooting stopped. *Id.*
5 Because Francisco is not from Mexico, he has had difficulty finding employment.
6 *Id.* ¶¶ 18, 21. He currently works at a tortilla factory, where his employer forces
7 him to work a late shift that ends at 11:30 pm. *Id.* ¶ 18. Knowing that Matamoros
8 is not safe after dark, he fears that he will be kidnapped or killed. *Id.* ¶ 23.

9 **Chepo Doe:** During the ten months that Chepo Doe and his daughter spent in
10 Mexico subject to MPP
11 condition that produces severe chronic abdominal pain. Chepo Doe Decl. ¶¶ 35
12 44. After trying for more than six months to access medical care in Mexico,
13 Chepo felt that their only option was to return to El Salvador to seek treatment
14 for her condition. *Id.* ¶¶ 37 38 narrowly survived
15 emergency surgery, her doctors informed Chepo that she had been on the verge
16 of death. *Id.* ¶¶ 39 40. Chepo and his daughter continue to live in fear of his
17 persecutors in El Salvador, who have recently threatened to kill Chepo several
18 times. *Id.* ¶¶ 4 10.

19 In addition to these threats to their physical safety, all six Individual Plaintiffs
20 continue to be deprived of meaningful access to the U.S. asylum process, including their
21 right to legal representation. *See infra* Sec. IV.B. As this Court has noted, Individual
22
23 as long as they remain stranded outside the United States with no possibility of
24 vindicating their rights to counsel or to apply for asylum. Order, ECF No. 135 at 8.

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1 orders. Despite enduring dangerous conditions to attend their hearings, both Jaqueline
2 Doe and Chepo Doe were ultimately issued *in absentia* removal orders. After attending
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1 cost to the government, to consult with legal service providers, and to safely and
2 confidentially communicate with retained counsel. *See, e.g.*, FAC ¶¶ 32–37; *Torres v.*
3 *Dep’t of Homeland Sec.*, 411 F. Supp. 3d 1036, 1063–65 (C.D. Cal. 2019); *see also*
4 *Torres v. Dep’t of Homeland Sec.*, 2020 WL 3124216.

5 Because they were subjected to MPP, Individual Plaintiffs have been deprived of
6 meaningful access to legal representation throughout the asylum process, including
7 while completing applications for relief, preparing for hearings, appearing in removal
8 proceedings, and directly appealing denials of relief. Victoria Doe, Fredy Doe, Ariana
9 Doe, and Francisco Doe were unable to retain counsel at critical stages of their asylum
10 proceedings. *See* Victoria Doe Decl. ¶ 19; Fredy Doe Decl. ¶¶ 6, 10; Ariana Doe Decl.
11 ¶¶ 11, 18; Francisco Doe Decl. ¶ 8; *see also* Gonzalez 3d Suppl. Decl. ¶ 12 (stating that
12 many legal service providers do not represent individuals in MPP living outside of the
13 United States); Cargioli 2d Suppl. Decl. ¶¶ 18–19, 23 (describing how individuals in
14 MPP were not allowed to speak to her in immigration court).

15 Although Jaqueline Doe and Chepo Doe were able to overcome overwhelming
16 odds to secure legal representation for their relief applications,²⁶ MPP has nevertheless
17 obstructed their ability to meaningfully access legal assistance by preventing them from
18 safely meeting and confidentially communicating with those representatives, and by
19 forcing them to prioritize survival over their asylum cases. *See, e.g.*, Jaqueline Doe 2d
20 Suppl. Decl. ¶ 9 (stating that she does not always feel comfortable disclosing her story
21 to her attorney over the phone); Chepo Doe Decl. ¶ 32 (explaining difficulty of
22 discussing sensitive topics with his lawyer because they could only meet in public
23 spaces); *see also* Gonzalez 3d Suppl. Decl. ¶¶ 13–15 (discussing obstacles to
24 communication with MPP clients who generally do not have reliable cell phone
25 connections or access to confidential spaces); Cargioli 2d Suppl. Decl. ¶¶ 21–22
26 (explaining the difficulties in communication with individuals in MPP due to limited
27

28 ²⁶ *See supra*, n.6.

1 proceedings is rooted in the Due Process Clause . . . *Orantes-Hernandez*, 919 F.2d
2 at 554

3 Due process requires that noncitizens in removal
4 proceedings are given
5 *Colmenar*, 210 F.3d at 971; 8 U.S.C. § 1229(b)(4)(B); *see also Oshodi v. Holder*, 729

6
7 (citation omitted). Due
8 process also requires that noncitizens not be prevented from filing appeals from their
9 removal proceedings. *See Dearing ex rel. Volkova v. Reno*, 232 F.3d 1042, 1045 (9th
10 Cir. 2000).

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1 reopen their cases. *See* Victoria Doe Decl. ¶ 39; Fredy Doe Decl. ¶ 18, 22; Ariana Doe
2 Decl. ¶¶ 17-19; Francisco Doe ¶ 16; Jaqueline Doe 2d Suppl. Decl. ¶ 9.

3 For these reasons, Individual Plaintiffs are likely to establish that Defendants
4 implementation of MPP violated their due process right to a full and fair hearing.

5 **C. THE BALANCE OF HARDSHIPS AND PUBLIC INTEREST**
6 **FACTORS TIP SHARPLY IN FAVOR OF PLAINTIFFS.**

7 TRO is in the public
8 interest because of the grave harm Individual Plaintiffs will suffer if they continue to be
9 exposed to dangerous conditions outside the United States, which also serve to deprive
10 them of a meaningful opportunity to seek asylum. When the federal government is a
11 party, the balance of the equities and public interest factors merge. *Drakes Bay Oyster*
12 *Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014) (citing *Nken v. Holder*, 556 U.S.
13 418, 435 (2009)).

14 plainly outweigh any potential inconvenience to
15 the government. Simply stated, Defendants have no legitimate or lawful reason to force
16 Individual Plaintiffs to remain stranded outside the United States indefinitely and to
17 continue to deprive them of access to the asylum system. *See Castillo v. Barr*, 449 F.

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D. RELIEF FOR THE INDIVIDUAL PLAINTIFFS DOES NOT IMPLICATE THE *TEXAS V. BIDEN* INJUNCTION.

The relief requested does not implicate the *Texas v. Biden* injunction because the injunction does not address the ongoing effects of past implementation of MPP. The *Texas v. Biden* injunction implementing or enforcing the June 1 which terminated *future* placements into MPP. *Texas v. Biden*, 2021 WL 3603341, at *27. Because the June 1 Termination Directive did not impact the status of individuals like Individual Plaintiffs who had *already* been subjected to MPP, its injunction likewise has no bearing on Individual Plaintiffs here. *See also* Defs. Suppl. Brief, ECF No. 119 at 6 (character individuals who were placed in MPP, are currently outside the United States, and no longer have active immigration court cases

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request for emergency relief may proceed independently of evolving response to the *Texas v. Biden* injunction. On October 14, 2021, the U.S. Government informed the Northern District of Texas that it has -

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2 to be deprived of meaningful access to the U.S. asylum system.

3 Nor does the inj
4 from this Court granting the relief requested by Individual Plaintiffs. The injunction
5
6 removal action nor withhold its statutory discretion towards any individual that it would
7 *Texas v. Biden*, 2021 WL 3603341, at *28. And the Fifth Circuit
8 was clear that humanitarian parole, a status applicable to those processed into the United
9 States who were in MPP, is permissible. *See Texas v. Biden*, 10 F.4th at 558. Thus,
10 Defendants may permit Individual Plaintiffs to return to the United States.

11 **V. CONCLUSION**

12 For the foregoing reasons, Plaintiffs respectfully request that this Court issue a
13 temporary restraining order allowing the Individual Plaintiffs and their immediate
14 family members to return to the United States, under appropriate precautionary public
15 health measures, in order to seek reopening of their cases and, if successful, pursue their
16 claims for asylum and related relief.

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18 Dated: November 2, 2021
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