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*\*Pro hac vice application forthcoming*  
*\*\*Application for admission forthcoming*

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**JURISDICTION AND VENUE**

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

4           6.       Venue is proper under 28 U.S.C. § 1391(e)(1) because the defendants are agencies of  
5 the United States and officers of the United States acting in their official capacity and 1) at least one  
6 plaintiff resides in this district; and/or 2) a substantial part of the events or omissions giving rise to  
7 the claim occurred in this district.  
8

**PARTIES**

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10           7.       Plaintiff East Bay Sanctuary Covenant (“ESBC”) is a nonprofit organization  
11 incorporated in California. ESBC’s main office is in Berkeley, California.

12           8.       ESBC was founded in 1982 to assist refugees fleeing the civil wars and violence in El  
13 Salvador and Guatemala. ESBC’s mission is to offer sanctuary, support, community organizing  
14 assistance, advocacy, and legal services to people escaping political persecution, terror, war,  
15 intolerance, exploitation, and other violence. In particular, one of ESBC’s critical missions is to  
16 assist individuals fleeing persecution in applying for asylum and other humanitarian relief in the  
17 United States. EBSC also trains and mentors law students and attorneys to help clients apply for  
18 asylum.  
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20           9.       Plaintiff Al Otro Lado is a nonprofit, nonpa12  
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1           11.     Plaintiff Innovation Law Lab is a nonprofit organization that has projects in multiple  
2 states.

3           12.     Innovation Law Lab seeks to advance the legal rights of immigrants and refugees in  
4 the United States, with a focus on providing representation to asylum seekers.

5           13.     Plaintiff Central American Resource Center (“CARECEN”) is a nonprofit  
6 organization incorporated in California.

7           14.     CARECEN’s mission is to empower Cent  
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1 directs each of the component agencies within the Department of Homeland Security. In her official  
2 capacity, Defendant Nielsen is responsible for the administration of the immigration laws pursuant to  
3 8 U.S.C. § 1103, and is empowered to grant asylum or other relief.

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

8 22. Defendant Lee Francis Cissna is the Director of USCIS. He is sued in his official  
9 capacity.  
10

11 23. Defendant USCIS is the sub-agency of DHS that, through its asylum officers,  
12 conducts interviews of individuals who apply for asylum.

13 24. Defendant Kevin K. McAleenan is the Commissioner of CBP. He is sued in his  
14 official capacity.  
15

16 25. Defendant CBP is the sub-agency of DHS that is responsible for the initial processing  
17 and detention of noncitizens who are apprehended near the U.S. border.

18 26. Defendant Ronald D. Vitiello is the Acting Director of ICE. He is sued in his official  
19 capacity.  
20

21 27. Defendant ICE is the sub-agency of DHS that is responsible for carrying out removal  
22 orders and overseeing immigration detention.

## 23 **BACKGROUND**

### 24 **Obligations to Asylum Seekers Under Domestic and International Law**

25 28. Federal law provides several forms of protection for individuals fleeing persecution  
26 and torture. These forms of protection include asylum, 8 U.S.C. § 1158; withholding of removal, 8  
27 U.S.C. § 1231(b)(3); and protection under the Convention Against Torture, *see* Foreign Affairs  
28

1 Reform and Restructuring Act of 1998 (“FARRA”), Pub. L. No. 105-277, div. G, Title XXII, §  
2 2242, 112 Stat. 2681, 2681-822 (1998) (codified as Note to 8 U.S.C. § 1231); 8 C.F.R. § 208.18.

3 29. The modern asylum system was established by the Refugee Act of 1980, Pub. L. 96-  
4 212, 94 Stat. 102, which was incorporated into the INA. The Act reflects “one of the oldest themes  
5 in America’s history—welcoming homeless refugees to our shores,” and “gives statutory meaning to  
6 our national commitment to human rights and humanitarian concerns.” Sen. Rep. No. 256, 96th  
7 Cong., 1st Sess. 1 (1979), *reprinted in* U.S. Code Cong. and Admin. News 141, 141.

8 30. In crafting the statutory provisions governing asylum, Congress took care to ensure  
9 that noncitizens within our country or at the border would be able to apply for asylum, regardless of  
10 their manner of arrival at or entry within our borders. 8 U.S.C. § 1158(a)(1) specifically provides  
11 that  
12

13 “[a]ny alien who is physically present in the United States or who arrives in the United States  
14 (whether or not at a designated port of arrival and including an alien who is brought to the  
15 United States after having been interdicted in international or United States waters),  
16 irrespective of such alien’s status, may apply for asylum in accordance with this section or,  
where applicable, section 1225(b) of this title.”

17 31. Accordingly, the Board of Immigration Appeals has long held that “an alien’s manner  
18 of entry or attempted entry . . . should not be considered in such a way that the practical effect is to  
19 deny [asylum] relief in virtually all cases.” *Matter of Pula*, 19 I&N Dec. 467, 474 (BIA 1987).

20 32. The statutory provisions governing asylum, including 8 U.S.C. § 1158(a)(1),  
21 represent an effort by Congress to bring the United States into compliance with its international  
22 obligations under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees.

23 33. Asylum affords protection to individuals who have a “well-founded fear of  
24 persecution” on account of any one of five protected grounds: race, religion, nationality, political  
25 opinion, or membership in a particular social group. 8 U.S.C. § 1158(b)(1)(A); 8 U.S.C.  
26 § 1101(a)(42)(A). Withholding of removal also offers protection to individuals targeted on account  
27

1 of one of the five grounds, but it requires an applicant to show that such persecution is more likely  
2 than not—a higher standard of proof than that needed for asylum.

3 34. Asylum is also associated with certain benefits that are critical to the noncitizen's  
4 safety and ability to successfully transition to a life free from persecution. *See* 8 U.S.C. §§ 1159(b)  
5 (ability to adjust to the status of a lawful permanent resident); 1427 (ability to become a United  
6 States citizen after being lawfully admitted for permanent residence). Critically, the spouse and  
7 children of a person granted asylum are likewise eligible for asylum. 8 U.S.C. § 1158(b)(3). These  
8 benefits are not available with certain other forms of relief from removal, like withholding of  
9 removal.  
10

11 35. There are three principal ways for an individual to seek asylum:

12 36. First, where a noncitizen is not in any kind of removal proceedings, his or her  
13 application is “affirmative.” *See* 8 C.F.R. §§208.2(a), 208.9. He or she files an application with  
14 USCIS, and has an interview with an asylum officer.  
15

16 37. Second, a noncitizen in ordinary removal proceedings, *see* 8 U.S.C. § 1229a, may  
17 apply for asylum as a form of relief from removal, 8 C.F.R. § 208.2(b). These applications are  
18 referred to as “defensive” asylum applications.

19 38. Third, Congress established an alternative process, “expedited removal,” applicable to  
20 certain noncitizens who are arriving at ports of entry or apprehended after entering without  
21 inspection. *See* 8 U.S.C. § 1225(b)(1); *see also Designating Aliens for Expedited Removal*, 69 Fed.  
22 Reg. 48,877 (Aug. 11, 2004) (expedited removal applicable to those who entered without inspection  
23 and are apprehended within 14 days of entry and 100 miles of the border).  
24

25 39. As part of the expedited removal system, a noncitizen who expresses a fear of return  
26 to his or her home country is entitled to a “credible fear” screening interview. 8 U.S.C. §  
27 1225(b)(1)(B). If the screening officer finds a “significant possibility” that the individual “could  
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1           44.     Together, these actions render ineligible for asylum any noncitizen who enters the  
2 United States without inspection at the southern border. Plaintiffs are harmed by these actions,  
3 which undermine their missions and cause them to divert resources.

4 **Asylum Seekers at the Southern Border**

5           *Dire Conditions in Central America Have Prompted Many to Seek Refuge Elsewhere*

6           45.     Individuals who arrive at the southern border seeking protection in the United States  
7 through the asylum process are fleeing some of the most dangerous countries in the world.

8           46.     Although asylum seekers come to the southern border from all over the world, many  
9 come from El Salvador, Guatemala, and Honduras, countries known as the “Northern Triangle.”  
10 According to a recent report from the United Nations High Commissioner for Refugees, these  
11 countries are experiencing epidemic levels of violence. Human rights groups have compared the  
12 levels of violence in this region to those typically seen in war zones.  
13

14           47.

1           50.     Refugees in Mexico are at risk of kidnapping, disappearance, trafficking, and sexual  
2 assault, among other harms. Lesbian, gay, bisexual, and transgender persons, as well as people with  
3 indigenous heritage, regularly have been subject to persecution in Mexico.

4           51.     Many of the migrants coming to the southern border have legitimate claims to  
5 asylum.

6           52.     According to the United Nations High Commissioner for Refugees, in fiscal year  
7 2015, 82 percent of the women from El Salvador, Guatemala, Honduras, and Mexico who were  
8 subject to a credible fear screening by an asylum officer were found to have a significant possibility  
9 of establishing eligibility for asylum or protection under the Convention Against Torture.  
10

11          53.     Between fiscal years 2014 and 2016, 8,848 people from El Salvador, Guatemala, and  
12 52.

59. Plaintiff Al Otro Lado, as

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**Harms to Plaintiffs**

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2 78. Plaintiffs are nonprofit organizations that provide assistance to asylum seekers,  
3 including those who have entered between ports of entry and seek asylum affirmatively before the  
4 USCIS. The new rule and Proclamation cause each Plaintiff significant harm.

5 79. Plaintiff East Bay Sanctuary Covenant provides legal and social services to  
6 immigrants and refugees within the jurisdiction of the San Francisco Asylum Office, including  
7 applicants in California, Washington, and Oregon. It offers clients legal assistance in applying for  
8 affirmative asylum; provides social services; and helps train professionals to assist immigrant and  
9 refugee communities.  
10

11 80. EBSC's affirmative asylum program is a key part of the organization's mission, and  
12 accounts for nearly half of its organizational budget. Since 1992, ESBC has filed nearly 5,000  
13 affirmative asylum cases. Over 97 percent of those cases have been granted.

14 81. An estimated 80 percent of the clients in ESBC's affirmative asylum program entered  
15 between ports of entry. Most of those clients fled persecution in Central America and Mexico.  
16 ESBC currently has around 35 clients who entered without inspection and expect to file for  
17 affirmative asylum in the upcoming months.  
18

19 82. Funding for ESBC's affirmative asylum program is based in part on the number of  
20 cases ESBC handles per year, and the number of clients ESBC anticipates serving.

21 83. The new rule and Proclamation seriously frustrate ESBC's mission and cause it to  
22 divert organizational resources.  
23

24 84. As a result of the new policy, ESBC will have to divert significant resources to,  
25 among other things, understanding the new policy and its impact on the communities ESBC serves,  
26 and educating and advising its staff, clients, and prospective clients accordingly. To properly  
27 counsel new prospective clients who seek its affirmative asylum services going forward, ESBC will  
28 need to invest resources in training multiple intake staff not only to screen for asylum eligibility

1 based on the new rule, but to conduct detailed screenings for alternative forms of relief to facilitate  
2 referrals or other forms of assistance as appropriate.

3 85. Under the new policy, ESBC will no longer be able to train law students to handle  
4 affirmative asylum cases, or would have to substantially reduce its training program, which  
5 ~~assists its appropriate~~ helping to train legal professionals to assist individuals fleeing violence and

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longer be counted as derivatives in a single application. Al Otro

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**SECOND CLAIM FOR RELIEF**

**(Violation of Administrative Procedure Act)**

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

108. The APA requires notice and opportunity for comment prior to the promulgation of regulations. 5 U.S.C. §§ 553(b), (c). The Acting Attorney General and Secretary of Homeland Security failed to provide notice and an opportunity to comment in a timely manner.

109. The APA requires that a regulation be published “no less than 30 days before its effective date.” 5 U.S.C. § 553(d). The Acting Attorney General and Secretary of Homeland Security failed to publish the regulation 30 days before its effective date.

110. The Acting Attorney General and Secretary of Homeland Security have not articulated reasons sufficient to shown good cause why these requirements are inapplicable, nor is the foreign affairs exception applicable.

**PRAYER FOR RELIEF**

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

- a. A declaration pursuant to 28 U.S.C. § 2201 that the Proclamation and interim final rule are unlawful and invalid;
- b. A preliminary and permanent injunction enjoining Defendants, their officials, agents, employees, assigns, and all persons acting in concert or participating with them from implementing or enforcing the Proclamation or interim final rule;
- c. An order awarding Plaintiffs costs of suit, and reasonable attorneys’ fees and expenses pursuant to any applicable law;
- d. Such other and further relief as the Court deems equitable, just, and proper.

Dated: November 9, 2018

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