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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

AL OTRO LADO, INC., *et al.*,
Plaintiffs,
v.
ALEJANDRO N. MAYORKAS, *et al.*,
Defendants.

Case No.: 3:23-cv-01367-AGS-BLM

Hon. Andrew G. Schopler

**EXHIBIT 23 TO THE
DECLARATION OF STEPHEN M.
MEDLOCK IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PROVISIONAL CLASS
CERTIFICATION**

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**DECLARATION OF JENNIFER BABAIE ON BEHALF OF
LAS AMERICAS IMMIGRANT ADVOCACY CENTER**

I, Jennifer Babaie, pursuant to 28 U.S.C. § 1726, hereby declare as follows:

1. I am a U.S. citizen and a resident of El Paso, Texas. I have personal knowledge of the matters set forth herein except where I have indicated otherwise. If called as a witness, I can and will testify competently and truthfully to these matters.
2. I am an attorney licensed to practice law in California and admitted to practice in front of the Executive Office for Immigration Review (EOIR).
3. Since January 2023, I have been the Advocacy and Legal Services Director at Las Americas Immigrant Advocacy Center (hereinafter, "Las Americas"). As Director, I spend an estimated 50% of my time on administrative duties and 50% of my time on direct casework. Of my direct casework, I estimate that 50% of my time is spent on asylum and other removal cases. My administrative duties include managing paralegals, legal assistants, legal fellows and staff attorneys, overseeing intakes and reviewing potential cases, overseeing the organization's IOLTA trust account, planning and scheduling team trainings, and planning and developing outreach materials.
4. Prior to becoming the Advocacy and Legal Services Director at Las Americas, I worked in various related positions. I have been practicing law since graduating from the George Washington University School of Law and becoming licensed to practice law in 2015. Following law school, I was a litigation fellow with the Open Society Justice Initiative. I then worked as an attorney advisor at EOIR, where I drafted opinions and conducted legal research at the Tacoma, Washington Immigration Court. After I finished the attorney advisor role, in 2018, I worked as a supervising attorney and program director at the International Refugee Assistance Project, where I represented refugees, asylum seekers, and others seeking humanitarian assistance and family reunification and ran a cross-border program focused on providing direct legal services to persons in Ciudad Juarez seeking access to safety and family reunification in the United States. In late January 2023, I transitioned to my current position at Las Americas and relocated to El Paso, Texas, sometime in February 2023.
5. I am writing to address the substantive harm that asylum seekers and our organization are experiencing because of a new metering system for asylum seekers, requiring them to schedule appointments at ports of entry via a government-created mobile application known as "CBP One".

Las Americas Mission & Scope

6. Las Americas is a nonprofit legal services organization based in El Paso, Texas, dedicated to serving the legal needs of low-income asylum seekers and other low-income noncitizens in West Texas, New Mexico, and Ciudad Juarez, Mexico. We have served people in our community from over 80 countries since 1987.

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7. Our mission is to provide immigration counseling and legal services to immigrants detained by the U.S. government in and around west Texas and New Mexico, including by representing individuals through their credible fear interview (CFI) or reasonable fear interview (RFI) process. While the policy of expelling people without the opportunity to seek asylum under Title 42 was in place, we assisted our clients with accessing humanitarian parole via exceptions to the Title 42 process and access to CBP One. Now, we assist individuals pursuing entry to the United States who are impacted by a new rule issued by the Department of Justice (DOJ) and the Department of Homeland Security (DHS) entitled Circumvention of Lawful Pathways (May 16, 2023) (hereinafter, “the Rule”), by providing targeted legal information, advice, and translation and referral support, in order to help preserve eligibility for asylum for those who most need it. We also provide legal information presentations centered on clarifying the purpose and consequences of documents received upon crossing the border. Our goal in all of our work with asylum seekers is to ensure that individuals have a fair opportunity to establish their eligibility for protection and are not wrongfully removed to persecution or torture.

8. Our largest program is the Community Migrant Advocacy Program, or CMAP, which houses our general immigration services, our non-detained court representation, and our work on behalf of immigrant victims of crime. Within CMAP, we currently provide a wide range of services. We also have a Detained Program, which serves detained migrants in the El Paso Processing Center, Otero Service Center, and the Torrance and Cibola detention facilities located in New Mexico.

9. In early spring of 2019, Las Americas created the Las Americas Mexico Program (LAMX) to assist people in MPP (referred to by most advocates as the Remain in Mexico program). During the implementation of Title 42, LAMX also directly represented individuals seeking to access humanitarian parole via exceptions to the Title 42 process. Title 42 support utilized the majority of this team’s resources by 2022. By the end of 2022, we assisted nearly 3,000 individuals with accessing temporary humanitarian parole in the U.S.

10. Our work changed significantly after the introduction of CBP One. As the sole means of accessing U.S. territory from the U.S./Mexico border, we were forced to change our services, yet again, to focus on the most pressing needs of the community – accessing CBP One and understanding what the purpose of the app is. We have continued to flag highly vulnerable cases directly with CBP in an attempt to seek humanitarian protection for them outside of the app. For example, on June 23, 2023, Las Americas shared with CBP a list of 21 extremely vulnerable migrants who needed immediate processing to protect their safety. CBP did not return a response, as has been custom with prior requests for humanitarian parole. We also continue to provide legal information presentations centered on clarifying the purpose and consequences of documents received upon crossing the border and act as a referral partner whenever clients indicate a need for housing or other social and mental health support in Ciudad Juarez.

11. To make this work successful, in Juarez our team has partnered with Consejo Estatal de Población (COESPO) — a regional branch of Mexican government — to provide free legal education and technical assistance targeted at helping persons seeking

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humanitarian protection in their attempts to access the CBP One program and to provide direct assistance with particularly vulnerable individuals and families unable to navigate the application on their own. The reason our services are in such high demand is that the features of the app are riddled with technical issues, and it uses technology in a way that is inaccessible to countless individuals limited by their financial resources, literacy, physical and mental disabilities, and language. In this area of our work, we have assisted more than 700 individuals with CBP One access, and the demand for this support.

Requiring Asylum Seekers to Use CBP One Harms Las Americas' Clients

12. In the short time that the CBP One application was in use for asylum seekers seeking an exemption under Title 42, Las Americas observed that its use results in discrimination against people of color, especially Black, Brown, and Indigenous people. It is also prohibitively difficult to use for people who have older or cheaper cell phones, and for people with disabilities, and it forces longer wait times on families. The use of the app has forced Las Americas to invest significant resources in helping people use the app.

13. For example, many people who flee their home countries to seek asylum in the United States have their phones stolen en route. And those who arrive with their phones often have outdated cell phones without the capability to run an app like CBP One. Or, for individuals with cell phones that can run the app, roaming service is cost-prohibitive, and they must rely on Wi-Fi for their phones to function. To assist these individuals, Las Americas must put resources toward providing cell phones and Wi-Fi to asylum-seekers who are stranded in Mexico until they are granted an appointment through the app. Moreover, even as the app has released new functionalities that create an online "wait room" and a lottery for an appointment, individuals must continue to wait at least three weeks before they can present themselves, leaving them at risk of harm, homelessness, or illness due to lack of access to resources. Additionally, even for folks with just enough literacy to create an account, the app's requirements that individuals check in daily to confirm their interest in an appointment means that they must have access to cell phone data and wifi consistently, and if illiterate or not fluent in the languages supported by the app, they need to seek assistance from us or a friend to know how to use the app daily until their scheduled appointment.

Las Americas CBP One and Port Observations at the Paso Del Norte Port of Entry

14. Since the end of Title 42, Las Americas staff has regularly monitored the Paso Del Norte Bridge that connects Ciudad Juarez, Mexico to El Paso, Texas. Since the implementation of CBP One, our staff and I have noticed an increase in issues surrounding the accessibility of seeking asylum and the safety of asylum seekers.

CBP Officers are denying asylum seekers who have severe technical difficulties with the app access to enter and present their asylum claims.

15. On July 12, 2023, at approximately 4:00 p.m. Las Americas interviewed a family of Venezuelan asylum seekers who could not obtain a CBP One appointment. The family's mother, disabled, ill, and pregnant, informed us that she needed medical

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attention and could not wait much longer in Mexico. The Las Americas team accompanied the family to the midpoint of the Paso Del Norte bridge that connects Ciudad Juarez to El Paso. After crossing the midpoint into U.S. territory, CBP Officers Bui and Soto stopped the family and asked for documents. An attorney working with Las Americas explained to the officers that the family wanted to seek asylum but could not access the CBP One app, and the pregnant mother needed immediate medical attention. When the attorney informed the officers that medical emergencies were exempted from the CBP One process, Officer Soto responded, "It's not that simple." Officer Soto informed them they could not pass but that he would call a supervisor for further instruction; he told the family they had to wait at the bridge's midpoint. The temperature was approximately 100 degrees Fahrenheit, and the pregnant mother was visibly in agony. About forty-five minutes later, the supervisor called Officer Soto, who relayed to the Las Americas team that the port was at capacity and that no asylum seekers, including the family, could cross.

16. While Officer Soto awaited the return phone call from his supervisor, an Ecuadorian family (a mother and her three minor daughters) also crossed into U.S. territory and asked for asylum. The officers told them they could not cross without a CBP One appointment. Also, during this time, two additional male Venezuelan asylum seekers crossed into U.S. territory and asked for asylum. The officers rejected their pleas as well. One of the Venezuelan asylum seekers informed Officer Bui that he had an appointment scheduled weeks prior but missed it because he was assaulted, detained, and robbed of his telephone by Mexican federal police. He also showed the officers a printed copy of screenshots confirming his appointment. When the attorney asked the officers what this individual should do, Officer Soto threw his hands up, laughed, and said, "Who cares?"

Many asylum seekers miss their initial CBP One appointments because their proximity to the border makes them vulnerable to kidnappings.

17. Many asylum seekers staying in Mexican border towns are kidnapped and, as a result, miss their CBP One appointments. CBP refuses to consider such extenuating circumstances, disallowing these individuals from presenting evidence to explain their situation. When they do explain, CBP routinely tells individuals that their situations do not matter and that they must go through the CBP One application again.

18. For example, in June of 2023, Las Americas interviewed a man from Honduras who received a CBP One appointment but, shortly after, was kidnapped by gangs in Mexico and held in captivity for eleven days. The gang members attempted to call his family for a ransom, but his only living relative in Honduras was his grandmother, who did not have the money to send the gang members. While in captivity, he was beaten severely, and during his attempt to escape, gang members sent dogs to kill him. He eventually escaped but had to leave all of his possessions behind. When Las Americas team members interviewed him, he was in a severely traumatized state and could hardly process the information that was given to him. Without a phone, this man could not re-register for another appointment, and because CBP continued to emphasize that he needed to sign up through the app, he was not allowed to present to the officers the exigencies of his situation.

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19. On June 20, 2023, Las Americas interviewed a woman who was kidnapped along with her husband, their fourteen-year-old daughter, and their four-year-old daughter. The family was released from captivity on June 17th, missing their CBP One appointment, which was scheduled for June 14th, by three days. The parents feared for their lives and their children. The family explained to CBP officers on the Paso Del Norte Bridge that they missed their appointment because they had been kidnapped and did not feel safe staying in Ciudad Juarez. While one CBP told them that they could not be processed without a CBP One appointment, the family overheard another officer listening in to the conversation say, “well everyone is saying their kidnapped these days.” The family has re-registered for another appointment every day for the last three weeks. They are now at a shelter and cannot explain their situation to another CBP officer because it would require carrying all their belongings to the port of entry. If they were to leave the shelter with all their belongings, they would lose their beds and be left without safe housing for themselves and their two small children.

Each asylum seeker is expected to have their own phone, making it difficult for people who lack resources or whose phones have been stolen.

20. In a case previously mentioned, a man from Honduras attempted to register for CBP One with a friend but was told by COESPO, a Mexican agency in charge of assisting migrants with the application, that he could not because the right to register in a group is reserved for immediate family members only. As a result, without a phone—or resources to obtain a phone—this man was left without any option or opportunity to present at a port of entry with the CBP One application.

21. Our organization has noticed that Mexican law enforcement, as well as cartels or other gangs, often steal migrants’ phones. On one occasion, Mexican officials confiscated a Colombian asylum seeker’s phone, causing him to miss his CBP One appointment. When he tried to present at the port of entry in El Paso, CBP officers told him that “everyone is treated the same and you are not special.” When Las Americas interviewed him on July 10, 2023, he did not have a phone or another way for team members to keep in touch and check in with him beyond making a plan to meet him at the same government facility the following week.

Each asylum seeker is expected to have consistent Wi-Fi access.

22. Families rely on government or private facilities for Wi-Fi access because the CBP One app requires an internet connection both to register for an appointment and to accept the appointment within a 24-hour time frame. In June 2023, Las Americas team members encountered a man in a Mexican government facility while he attempted to download the CBP One app. He had been trying to download the app for about an hour before he approached a team member. He explained that he was having trouble and that he feared that the app was not compatible with his phone. He was able to eventually download the app on his phone after a team member shared their personal hot spot with him. The man was at the government facility specifically to ask for help with navigating the app and using the Wi-Fi; however, the number of people who were doing the same

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created inconsistencies with the Wi-Fi access and potentially could have jeopardized his ability to register with the application.

23. On July 12, 2023, Las Americas team members interviewed a man from Venezuela who was able to create a CBP One account on his phone. However, the man could not log in or get past the home screen even after multiple attempts at deleting and re-downloading the app. He was the only person with a phone in his family of six. Without a phone compatible with the application and without resources to purchase a new phone, the family was prevented from using the CBP One app as a means of entry.

24. As a result, asylum seekers have been left without documents or have had to wait weeks to receive other original copies of identification from their home countries. On June 20, 2023, Las Americas interviewed a woman and her husband, both asylum seekers. The woman told Las Americas team members that in late May 2023, she carried an original version of her ID, a copy of her birth certificate, and a copy of her marriage certificate. Upon receiving their CBP one appointment, the couple presented themselves at the port of entry. CBP officers claimed that her identification card was fake and did not let them pass through the port of entry. CBP officers also kept her original ID, which created a barrier to accessing funds sent to her by family members. The couple re-registered but had to wait weeks to receive an original copy of the woman's birth certificate before being let through the port of entry a month after their original appointment date. Many people do not have the resources to obtain new copies of original documentation. Thus, the process favors those who have more resources.

CBP has told Mexican nationals that they must use the CBP One app to present an asylum claim in the U.S.

25. On July 12, 2023, Las Americas team members interviewed a man and his nephew who attempted to present themselves at the port of entry. The individuals showed CBP officers their Mexican ID cards and were told by officers that they must register with the CBP One app and obtain an appointment in order to enter. The man and his nephew were fleeing an active threat in Juarez, and they explained to the Las Americas team that they feared for their lives having to stay there and wait for an appointment.

Dangers posed to asylum seekers forced to wait in Ciudad Juarez, Mexico

26. Cartels and other gangs prey on asylum seekers along the U.S.-Mexico border, often kidnapping and extorting them to exploit their vulnerability. . In May 2023, Las Americas interviewed a man whom cartel members had kidnapped and released a day prior. The man, from Venezuela, and a friend were at a gas station near the border when a group of five men forced them into the back of a van. This man was held in captivity for over a month. He believed he was targeted because he was by the border seeking asylum; by the time he was released, Title 42 had been lifted, and he was waiting for a CBP one appointment. He mentioned both his relief in not being in captivity but also the anxiety that followed him in not knowing how long he would have to wait for a CBP one appointment in the same city where he was kidnapped. Because appointments are given

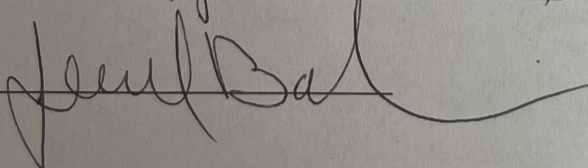
at random, people with little support or resources are worried about how to sustain themselves.

27. On July 17th, 2023, Las Americas team members checked in on the asylum-seeking family from their June 20th, 2023, interview. Interviewers learned that buses leaving other cities in Mexico—in this case Mexico City—to Ciudad Juarez were taking people directly to cartel-controlled locations. Onboard the bus on July 9th, 2023 the family discovered that the bus stopped to allow municipal police officers to board somewhere near Durango, Mexico. The officers seized the passengers' phones and began checking their identifications. The officers informed the passengers that if they didn't have a "coyote" or "pollero" (smugglers) they would not allow them to continue to their destination. The officers demanded that all of the passengers disembark, at which point they loaded the individuals into a white van, took them to a remote building, and turned them into the cartel.

28. The cartel kept the family at an unknown location for six days without phones or the ability to communicate outside of their location. During that time, they slept on the floor and were forced to share a bathroom with one hundred other individuals. After six days, the family was taken to a smaller house in a residential neighborhood and were told that they had been kidnapped before being asked for ransom. The family was forced to pay \$10,000 to secure their was release. Cartel members told the family that they would not have any problems the rest of the way to Ciudad Juarez because they have all the officers paid off. Cartel members also told the family that they knew where they were going and that they would know if the family left Juarez because the city was their territory.

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on the 3 day of August 2023, in San Jose, California.



Jennifer Babaie