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

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**DECLARATION OF NICOLE PHILLIPS ON BEHALF OF
HAITIAN BRIDGE ALLIANCE**

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

1. 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 currently the Legal Director of Haitian Bridge Alliance (“HBA” or “The BRIDGE”) and I am an Adjunct Law Professor at the University of California College of the Law (“UC Law”) in San Francisco, California. HBA is incorporated in California, and our main office is located in San Diego, California; we also have offices in Tijuana, Reynosa, and Tapachula, Mexico. I am in daily contact with HBA staff and travel to the border approximately every month to meet with staff, clients, and stakeholders.

3. I have worked on rule of law and human rights in Haiti since 2006, and lived there from 2010 to 2018. Prior to my current position, I served as a Professor of Law at the Université de la Fondation Dr. Aristide (UNIFA) in Port-au-Prince, Haiti, where I taught international human rights law. I also worked as an attorney with the Institute for Justice & Democracy in Haiti for eight years, mostly based in Port-au-Prince, and litigated high-profile human rights cases against the Haitian government and on behalf of survivors of gender-based violence. I am fluent in French and Haitian Kreyol, and have conversational proficiency in Spanish. Human rights groups, journalists, foreign government officials, including from the United States, France, Mexico, and Canada, and United Nations officials often consult with me about immigration policies and practices in the United States and the legal and human rights situation in Haiti. I have provided numerous trainings and briefings on U.S. immigration policies and the situation in Haiti to law schools and to members of the U.S. Congress and their staff, and

have testified before several international and intergovernmental human rights bodies. I have also written academic articles, book chapters, and news articles on the human rights and legal situation in Haiti. I have served as an expert witness before immigration courts in more than 40 cases to date, all involving Haitian nationals. From 2014 to 2021, I was an Analyst for Freedom House researching and writing the annual Haiti chapter of their *Freedom in the World Report* and *Freedom of Press Report*. I hold a J.D. from University of San Francisco School of Law.

4. I have served as HBA's Legal Director since January 2020. In this capacity, I (1) oversee HBA's direct legal services program for Black (mostly Haitian) immigrants, primarily in California; (2) lead HBA's programs for Black asylum seekers at the U.S.-Mexico border, which includes legal orientation and assistance with urgent cases; (3) manage HBA's impact litigation cases; (4) direct HBA's international human rights project; and (5) lead immigration policy projects to improve immigration policies to better protect Black immigrants. Lastly, I assist with strategic planning, fundraising, audits, hiring, and other high-level operations within the organization.

5. I am writing to address HBA's experience working with migrants who have been prevented from accessing the U.S. asylum process at the U.S.-Mexico border and to explain the substantive harm that HBA has already and will continue to experience as a result of the Biden administration's policy of turning back asylum seekers arriving at ports of entry due to the lack of a CBP One appointment ("CBP One Turnback Policy").

HBA's Mission & Scope

6. HBA is a grassroots nonprofit community-based organization that advocates for fair and humane immigration policies and provides migrants and immigrants with humanitarian, legal, and social services. HBA was founded in 2016 for the purpose of assisting Haitian and

other immigrants to acclimate to the United States and to ensure new immigrants' success in navigating their new lives in the United States. We focus on Black people, the Haitian community, women and girls, LGBTQIA+ individuals, and survivors of torture and other human rights abuses.

7. As of June 2023, HBA has approximately 20 paid staff members, including 5 attorneys, 2 legal assistants, and 7 members of our humanitarian team who serve community members at the U.S.-Mexico border and throughout the United States. The majority of our staff are individuals who themselves have emigrated from or were forced to flee Haiti or other Black-majority countries. Some of our staff have made the journey across the Americas from Brazil or Chile to the United States themselves, and have lived (or still live) at the border in Mexico. Funding for our programs comes from a variety of sources, including the State of California, private foundations, and individual donors. On occasion, HBA also raises money through crowdsourcing, especially when faced with urgent humanitarian crises.

8. HBA staff are either located at or regularly visit border areas in Tijuana, Mexico/San Diego, California; Ciudad Juarez, Mexico/El Paso, Texas; Reynosa, Mexico/McAllen, Texas; and Matamoros, Mexico/Brownsville, Texas. HBA works with civil society partners in those locations and near other ports of entry along the southern border to serve Haitian and other Black people who are trying to access legal protection, including asylum, in the United States. HBA also has an office in Tapachula, in Chiapas, Mexico at the border with Guatemala. HBA engages in immigration policy matters with local and national policy makers such as mayors' offices, Members of Congress and the Senate, and the White House. HBA regularly provides expertise on issues facing Black immigrants with top leadership at the Department of Homeland Security ("DHS"), as well as Immigration and Customs Enforcement

(“ICE”), Customs and Border Protection (“CBP”), and U.S. Customs and Immigration Services (“USCIS”).

9. Given our focus on supporting Haitian and Black migrants in the United States, one of our first major programs was “Welcoming the Strangers,” created to assist Haitian asylum seekers released from U.S. immigration detention. HBA would arrange to pick up asylum seekers and provide them with basic necessities like clothing, toiletries, meals, short-term housing, and sometimes transportation to their next destination. This advanced our goal of providing assistance to the Haitian community upon arrival in the United States. This program was a major part of HBA’s work when I started in January 2020.

10. In addition to our domestic work, HBA has had a presence on the U.S.-Mexico border since its founding in 2016. We regularly bring delegations of lawyers, immigration policy experts, medical service providers, interpreters, and other volunteers to the border. The delegations provide Know Your Rights trainings in mostly Haitian Kreyol to make them accessible to Haitian migrants, but we sometimes provide the trainings in French or English if African or Caribbean migrants attend. The delegations also conduct interviews with individuals and family units to identify systemic issues uniquely affecting Black migrants. These interviews provide the basis for local, national, and international advocacy for fair U.S. immigration policies. They also assist HBA staff to identify people with strong asylum claims in order to assist them when they arrive in the United States, and to assist people with vulnerabilities such as unaccompanied children, people with significant health issues, survivors of gender-based violence, LGBTQIA+ individuals, and people with security threats at the border that may need immediate assistance.

11. HBA provides humanitarian services to Haitian and other Black asylum seekers on the Mexico side of the border, though as discussed in detail below, HBA has been forced to significantly expand these services—at the expense of our U.S.-based work—due to U.S. border policies, including the CBP One Turnback Policy. At present these services include : (1) coordinating access to medical services through partner medical organizations and running mobile medical clinics; (2) providing cash cards to families; (3) financially and logistically supporting migrant shelters; (4) organizing donation drives for migrants in need of clothes, tents, diapers, and toys; (5) planning funerals for migrants; (6) providing access to plane tickets from the border to enable migrants to reunite with their families across the country; (7) providing emotional support and case management; (8) providing referrals to HBA’s legal team; (9) organizing Know Your Rights and legal orientation for migrants with HBA’s legal staff and partner legal organizations; and (10) hosting research, legal, and other humanitarian delegations from around the United States to facilitate communication and provision of services to the Haitian population at the border.

12. Starting in 2020, HBA has operated a legal department with a small staff of attorneys who provide direct representation to Haitian and other Black people in U.S. immigration matters, including people in ICE detention, those in removal proceedings before the Executive Office for Immigration Review (EOIR), and those filing applications for immigration benefits with USCIS. HBA receives funding from the State of California to provide direct representation, Know-Your-Rights sessions, and legal orientations to people in California on immigration matters. We also provide limited pro bono representation before EOIR for people in jurisdictions other than California.

13. In 2021, HBA received a seed grant to hire an attorney to start an international human rights advocacy project. The goal of this project is to use international human rights mechanisms to call on States to comply with their human rights obligations to Black people in mobility, with a focus on U.S. border policies and on violations occurring in throughout the Americas, including Panama's Darien Gap. In 2022, HBA committed to funding this work on an ongoing basis and has advocated before the United Nations Human Rights Committee, the Committee on the Elimination of Discrimination Against Women, the Committee on the Elimination of All Forms of Racial Discrimination, and the Inter-American Commission for Human Rights.

The Importance of HBA's Border Work

14. HBA's border work is critical in light of the scarcity of linguistically and culturally appropriate resources for our community along the border. I am almost always the first Haitian Kreyol-speaking attorney Haitians have encountered during their journeys to the U.S.-Mexico border. Haitian migrants have immediate trust in HBA because most of our staff are Haitian or of African descent, and based on our language capacity, knowledge of Haitian country conditions and culture, and our proven history of assisting this community at the border. When HBA first started its work until about 2022, most organizations at the border rarely provided legal and humanitarian services to Haitians, even though they make up a significant portion of the migrant population, because their staff did not speak Haitian Kreyol, were not of African descent, and did not have the cultural competency to build relationships with the community. They also did not have written materials available in Haitian Kreyol. Only recently are more organizations beginning to prioritize Haitians. HBA continues to consult with them about how to best serve the Haitian community at the border.

15. Despite some improvements in their ability to access services, Haitian and other Black migrants are routinely subjected to discrimination by humanitarian organizations and Mexican government officials at the border due to their skin color and racial and migrant identities. Black migrants are often turned away from shelters, hotels, apartments, and outdoor informal encampments in favor of other non-Black migrants, making it very difficult for them to find housing. Haitians stand out at the border because of their skin tone and racial identity, and as a result face a higher risk of being victims of crime. They are often violently targeted for robbery, sexual assault, and kidnappings for ransom by local cartels because of impunity as well as indifference or even complicity of Mexican government officials to crimes against Haitians.

The Administration's Current Turnback Policy is Built on a Foundation of Historic Discrimination Against Haitian Asylum Seekers

16. Haitians have repeatedly been denied access to protections in the United States due to longstanding racial and ethnic animus. The previous iteration of the turnback policy, under which the U.S. government refused to inspect or process asylum seekers arriving at U.S. ports of entry from 2016-2020, was yet another discriminatory measure designed to make it more difficult for Haitian immigrants, who began arriving at the border in record numbers in 2016, to seek protection in the United States. That policy was declared illegal in *Al Otro Lado v. Mayorkas*. Final Judgment, 2022 WL 3970755, No. 17-CV-02366-BAS-KSC, (S.D. Cal. Aug. 23, 2022) at *1.

17. The Title 42 policy, which replaced the turnback policy under the pretext of the pandemic, had a devastating impact on HBA clients and other Haitian asylum seekers we serve. From March 2020 when the policy went into effect until it was terminated on May 11, 2023, ICE conducted approximately 314 removal and expulsion flights to Haiti with more than 26,000

individuals, including pregnant women, infants, and other young children. The vast majority of these flights were pursuant to the Title 42 policy, which meant the individuals were not permitted to seek asylum or other protection in the United States. These removals and expulsions were carried out despite the administration's recognition of the unprecedented instability ravaging Haiti in the wake of multiple natural disasters, the assassination of the former president in July 2021, and redesignation of Temporary Protected Status for Haitian nationals in the U.S. in 2021 and 2022.

18. In September 2021, I traveled to Del Rio, Texas where thousands of Haitians had arrived to seek protection in the United States. Instead of taking steps to prepare to meet the Haitians' immediate humanitarian and protection needs, as the Biden administration had done in similar circumstances involving non-Haitians, the administration deprived Haitians of basic necessities such as food and water, shelter, and medical care. CBP officers also physically and verbally assaulted Haitian asylum seekers. HBA was inundated with thousands of calls, text messages and emails from families of Haitian asylum seekers taken from the Del Rio Encampment to U.S. detention centers, Haitian asylum seekers who fled Del Rio back to Mexico, and Haitian asylum seekers who were expelled from Del Rio back to Haiti. We created a hotline specifically to respond to these calls.

19. In 2022, HBA's legal department and humanitarian department partnered with civil society coalitions to work with migrant communities on the U.S.–Mexico border. Together we submitted requests to the U.S. government for humanitarian exemptions to Title 42 for vulnerable individuals seeking asylum. Committing our scarce resources to this work was necessary because remaining in Mexico was endangering Black migrants' lives, and we knew Title 42 exemptions could be life-saving for so many people. HBA was forced to postpone other

work to focus on exemptions. In 2022, five staff members, and some of my time and our Executive Director Guerline Jozef's time was diverted to managing and processing Title 42 exemptions. Erik Crew, the HBA staff attorney dedicated to our international advocacy program, spent nearly half of his time helping people at the border obtain exemptions from Title 42 so that they could enter the United States and seek asylum. Working with HBA humanitarian staff, Mr. Crew submitted successful requests for 1,925 people to present and enter the U.S. through the San Ysidro POE—mostly Haitians, but also Cameroonians—between May 2022 and December 2022.

20. This number represented only a small fraction of the total requests for assistance received by HBA staff working regularly with people on the border, but the time this endeavor required forced Mr. Crew and HBA to postpone other important work. HBA was aware of alarming reports that hundreds of Haitian women were being raped and sexually assaulted while making the treacherous journey through the Darien Gap, a remote and dangerous jungle region between Colombia and Panama. HBA and other groups had planned a trip to the Darien Gap to investigate and advocate on behalf of this vulnerable population. However, this trip had to be postponed twice to concentrate resources on Title 42 exemption requests. Eventually, in October 2022, HBA led a delegation of lawyers, academics, and humanitarian workers to visit Panama to investigate the human rights situation of people transiting through the Americas, but even then our staff worked around the clock to prepare exemption requests, including while we were traveling.

21. These border policies, like the new CBP One Turnback Policy, have had the effect of diverting HBA's resources and frustrating its mission of welcoming Haitian and other Black migrants into the United States and assisting them in navigating their new lives here. For

instance, by the summer of 2020, our important work in welcoming Haitians released from U.S. immigration detention—the “Welcoming the Strangers” program—ground to a halt so we could focus on the urgent humanitarian crisis of our community members at the border. In addition, Jeef Nelson, one of HBA’s case managers, had to divert most of his time away from providing case management to Haitian community members in San Diego in order to assist with the Title 42 exemption process and the increasing dire needs of Haitian migrants waiting at the border. As discussed further below, the CBP One Turnback policy continues to force us to redirect resources away from welcoming community members in the United States.

HBA’s Clients and Other Black Asylum Seekers Face Particular Challenges in Obtaining CBP One Appointments

22. Both during the Title 42 exemption process and since the Title 42 policy ended, many members of the communities HBA serves have been unable to navigate the CBP One app to pre-schedule an appointment at a U.S. port of entry. Many asylum seekers from African countries such as Guinea, Togo, Ghana, and Mauritania report not even knowing about CBP One. Without community support or the ability to speak Spanish, African asylum seekers are isolated and vulnerable to smugglers who promise to take them across the border. Moreover, numerous reports from asylum seekers at the border describe serious flaws with CBP One, including unreliable software, connectivity issues, and failure to register darker skin tones.

23. From May 10th-12th, 2023, HBA led a delegation to the Rio Grande Valley and the Mexican state of Tamaulipas to bear witness to the end of Title 42 and the use of CBP One. I attended and helped coordinate this delegation. By observing the Brownsville and Reynosa ports of entry and speaking with hundreds of asylum seekers in Matamoros and Reynosa, Mexico, and Brownsville, Texas, members of the delegation and I witnessed and gained a deeper understanding of the difficulties that asylum seekers face when attempting to secure

appointments at U.S. ports of entry via the CBP One app, the barriers some face waiting and trying to present at ports of entry without a CBP One appointment, the squalid and inhumane living conditions of migrants at the border, and the violence and anti-Black racism that people seeking asylum endure while waiting in Mexico. Since then, I have returned once to monitor the Brownsville/Matamoros and McAllen/Reynosa ports of entry. I speak regularly with our partners who work at those ports of entry to help triage legal and humanitarian problems confronting Haitian asylum seekers there. I also speak daily with our staff who live in or regularly visit the Tijuana port of entry about difficulties the Haitian community has there obtaining a CBP One appointment and problems accessing humanitarian services such as housing and medical care.

Early Flaws with the CBP One App

24. Based on my first-hand observations and reports from delegations and HBA staff, early problems with the CBP One App included freezing just before an individual could take their photo, freezing on the calendar slot page, and shutting down before individuals could add family member information. During my trips to the border, I have looked at several individuals' smartphones to try to assist them, but I am often unable to understand or remedy the problems.

25. CBP One uses facial recognition software, and the early iterations of the app had difficulty recognizing Black skin tones. Research on skin-type bias in commercial artificial intelligence systems shows that facial recognition software exhibits significant racial biases. In early 2023, individuals interviewed at the border by HBA staff and leadership consistently affirmed difficulties with photo uploads. Individuals reported this to our staff, including Guerline Jozef, HBA's Executive Director, and me during our visits to Tijuana, Reynosa, and Matamoros in 2023. During a March 2023 border delegation visit to Tijuana, almost all dark-skinned

individuals interviewed reported difficulty or even inability to move past the photo confirmation page because CBP One did not recognize their faces. Others reported that the short confirmation window for taking photos at the calendar stage made it impossible to capture entire families, especially those with small children, before all calendar spots had disappeared. While the problems relating to facial recognition and the short confirmation window have mostly been resolved, they delayed or denied many Black migrants' ability to even use the app, increasing the time those migrants had to stay in Mexico. The increased wait times for HBA's clients, in turn, required HBA to expend more resources to provide humanitarian support.

26. In addition to observing technical issues with the CBP One app, the HBA delegation witnessed people struggling to access CBP One appointments due to a lack of internet access and the limited number of appointments available. Due to geofencing requirements, asylum seekers are forced to wait indefinitely in dangerous border towns while they attempt to secure an appointment. HBA found thousands of individuals living in encampments around Matamoros and Reynosa without sufficient internet access or electricity to charge their phones. This is in part due to a lack of housing in these cities, but Haitians migrants also face discrimination in the shelters and are not able to find spots in them. They often had to leave the encampments and venture into town daily to attempt to access the CBP One app, increasing their risk of sexual assault, kidnapping, robbery, exploitation, and abuse. That same week, HBA staff also monitored the ports of entry in Tijuana and Ciudad Juarez, and found similar problems.

27. HBA has advocated with the government to fix these problems that so prejudice Haitian and Black migrants. Our leadership's scarce time must be spent advocating with the government about these issues, and not on our core program areas or other leadership activities.

28. Some of these issues might be remedied with sufficient access to broadband capacity and a newer smartphone. But the reality on the ground is that most Black migrants have very few resources to purchase newer smartphones or access a broadband internet connection because they are living in under-resourced shelters or outdoor encampments in remote areas. HBA regularly works with individuals and family units who have transited through ten or more countries in the Americas to reach the United States. Many have undertaken risky, arduous journeys, including traveling through the Darien Gap. During this journey Black migrants are often subject to robbery, rape, and physical assault, resulting not only in trauma, but in loss or destruction of personal possessions like smartphones and separation from family members with technical literacy. Those in Mexico have also reported robbery and assault while waiting in Mexico, resulting in stolen or destroyed smartphones.

HBA Has Witnessed Asylum Seekers Without CBP One Appointments Being Turned Away at POEs

29. On May 12 and 13, 2023, the HBA delegation observed that some asylum seekers who did not have CBP One appointments were turned away from ports of entry by Mexican immigration officers and the Mexican military. On May 12, the delegation witnessed Mexican officials turn away roughly 100 adults and children who had been waiting to seek asylum and send them back to Matamoros. And on May 13, a delegation member witnessed Mexican officers prevent two African asylum seekers from even approaching the CBP “limit line” on the bridge.

30. In recent internal meetings with HBA staff who work regularly with people in Tijuana, Reynosa, and Matamoros, I received reports that the CBP One appointment requirement continues to stand in the way of HBA clients reaching the United States. Since the lifting of the Title 42 policy on May 11, 2023, many Haitians have still been unable to obtain CBP One

appointments, and some of those able to secure appointments have been turned back to Tijuana and Reynosa.

31. HBA has assigned three staff members to assist clients who are particularly vulnerable, in exigent circumstances that threaten their lives, but are unable to get a CBP One appointment. For example, these staff members helped a Haitian woman stranded in Reynosa who had spent three months trying, without success, to secure an appointment through CBP One. Given how long she was stranded in Mexico, HBA helped her access food and other basic necessities in Reynosa until she was able to secure an appointment. This woman was a kidnapping and rape victim in Haiti and very traumatized by that experience. She heard of kidnapping cases by cartels in Reynosa, which triggered her trauma and left her in a state of constant fear. Even when HBA is not physically at the border, our staff are the eyes and ears of the Haitian community; we communicate with the Haitian community by phone and connect local partners with serious health situations and vulnerable cases.

Observations from June 2023 Trip to Mexico

32. In July 12-15, 2023, I traveled to Matamoros, Mexico with HBA attorney Erik Crew, and I then traveled on to Reynosa, Mexico to meet with Haitian community members. The conditions in which people are living in both those locations were deplorable and shocking. In Matamoros we went to an encampment of Haitian migrants who did not have anywhere else to live. They were living outside at an abandoned gas station. They chose it because the structure has an awning which provides some limited protection from the sun and rain. I estimate that about 120 people were there, including very young children, with no toilet facilities and no running water or drinking water. That same week, I spoke with a woman who lived at another outdoor encampment a few blocks away from the gas station. Her baby had been born a few days

earlier after a cesarean section and she sent me a video of her tent on top of mud and trash where she was recovering from surgery and raising her newborn.

33. After Matamoros, I traveled to Reynosa and visited several camps of Haitian migrants. In both Matamoros and Reynosa, CBP One is not working for Haitian migrants. While publicly available numbers indicate a few hundred people a day are able to cross the border, from what I saw the need far outpaces this number. On Friday, July 14th, 2023, I conducted a Know Your Rights training about the current state of asylum law and CBP One in front of Senda de Vida. Senda de Vida is one of the largest shelters in Reynosa, run by a Mexican pastor and church. Several hundred Haitians were in attendance, most of whom were not housed at the shelter. I took questions during the training and spoke with Haitians afterwards about what they were experiencing. Currently the temperature soars to 100 degrees Fahrenheit or higher every day. People are dehydrated, which exacerbates whatever health conditions they arrived with. In general, many Haitians stranded at the border are in poor health due to their long journey through the Darien Gap, the lack of healthcare, an inability to maintain proper hygiene due to lack of clean water and toilet facilities, an infestation of mosquitos and other insects, and a lack of access to nutritious food. People either arrive sick or get sick at the border. Either way they get sicker the longer they wait.

34. The day before I was there, a Haitian man in an encampment in Reynosa died, leaving his wife and children in Reynosa. Other Haitian migrants told me they think he died of diabetes. No one should be dying of diabetes, but also, clearly it's not only diabetes that killed this man. He died of the stress, the lack of water, and lack of access to nutritious food. There were many other people who were so ill I was worried they could die because of the lack of medical care. I was contacted to help interpret in the case of a very sick baby. By phone, the

father told me his baby's fever had spiked and that the baby had stopped eating. Through the help of another non-profit the family was able to cross into the United States. I had to call another HBA staff member late at night to monitor the case all night and the next day (a Saturday) to help this family get emergency care in the United States. Such life or death events strain our organizational resources and would not be necessary if people were not made to wait in such inhumane conditions. Given how many languish at the border indefinitely in serious health conditions, I worry any number of the Haitians I met could become gravely ill or even die.

35. In the meantime, many Haitian migrants continue to experience difficulty with CBP One. During the legal training I asked how long people had been waiting and there were people raising their hands who had been in Reynosa since January and February of this year. They keep trying to use the CBP One app every day but with no success. They do not know why they are still unable to get an appointment, and there is no one to ask. For various reasons, many people have started multiple accounts. Some migrants have told me they see people get a CBP One appointment quicker after starting a new account. Other people become completely locked out of the app after starting a new account. There is no one to help explain why this is happening.

36. My staff and I don't understand or know how to advise them, and there is no helpline for CBP One for them to call. There is no one connected to CBP One that can assist in troubleshooting or explaining the process. One of CBP One's guides has an email address listed if people have questions; I have emailed that account but received no response.

37. I am concerned that HBA is going to have to expend even more resources to hire staff with technical knowledge who can help us understand the app, develop answers to frequently asked questions for the Haitian community at the border, and constantly update the answers, as the rules frequently change with little to no notice. But this isn't what we should be

doing—CBP should be doing this work if they are going to force people to use this app as they are.

38. Even those who succeed in obtaining a CBP One appointment are not always able to cross into the United States. Multiple people have been turned back even after obtaining appointments. On or around June 13, 2023, INM turned back a family of three in San Ysidro because, although they had a screenshot of their appointment on their cellphone, they did not have a printed copy of their appointment date. Similarly, INM turned back a Haitian man on or around June 15, 2023 in Reynosa because he did not have a screenshot of a confirmation of his appointment.

39. HBA staff have also reported that a family in Reynosa who presented with a CBP One appointment was turned back because the child had a skin rash, and the family was told they needed to go to a hospital in Mexico because the child was sick.

HBA's Clients and Other Black Asylum Seekers Face Grave Dangers Waiting in Mexico

40. Anti-Black racism is a significant problem in countries throughout the Americas, where Black asylum seekers face violence and discrimination from criminal organizations and local authorities. Police violence against Black people is common in states throughout the region. HBA staff frequently hear reports from asylum seekers of African descent in Mexico that they are targeted for violence and racial discrimination after being turned back from the U.S. border. Black migrants who have fled their home countries due to persecution are subjected to similar abuses in transit countries, particularly in Mexico.

41. HBA is particularly concerned about Haitian and other Black asylum seekers who are stranded in areas where they can become targets of discrimination and violence. Attacks against Black people who are waiting to seek asylum are common in Matamoros, Reynosa, and

Tijuana, among other areas of northern Mexico. One Haitian couple I spoke with in Reynosa was kidnapped off a local bus, held for ransom and beaten repeatedly over ten days until their family paid the ransom. They witnessed the kidnappers kill other migrants who did not pay the ransom. In Tijuana, Mexican immigration officials have detained Haitian asylum seekers even after they showed proof of their temporary legal status in Mexico and CBP One appointment notices; they missed their appointments as a result and never received an explanation for their detention. And a Haitian couple and their friend were taken off a bus traveling from Veracruz to Monterrey by individuals they thought were police officers. The men held the Haitians days, during which time they beat and sexually abused them, and extorted a ransom for their release.

42. Black people waiting in Mexico to seek asylum are often deprived of equal access to basic services, including medical treatment, housing, and protection from law enforcement, which makes them especially vulnerable to abuse and violence. For example, a 30-year-old Haitian man was on the bridge in Tijuana with other Haitians when someone in a passing car shot him; he died on the spot. A 28-year-old Haitian man who worked at a casino in Tijuana was shot dead by several men at work. An 18-year-old Haitian woman had just arrived in Tijuana to join her father, who was waiting for her to seek asylum in the United States. After complaining of severe stomach pain, she spent two days in the hospital and was then released against her family's will; she died three days later. A 35-year-old Haitian man was rushed to the hospital by ambulance after he started vomiting blood. He was released soon after and died at his home. Since 2021, HBA has coordinated the funerals of seven Haitians in Tijuana who died from violence or medical neglect.

43. Mexico's overtaxed, underdeveloped asylum system also makes it infeasible for Black migrants to apply for and receive protection in Mexico. According to the Washington Office on Latin America, Mexico, the one country through which all migrants must pass *en route* to a

port of entry along the U.S.-Mexico border, now receives the world's third highest number of asylum applications. Under-resourced and overwhelmed asylum systems, mixed with a lack of language capacity and anti-Black racism, generally result in stalled or poor outcomes for Black asylum seekers, including Haitians.

44. The vast majority of the community HBA serves is also unable to benefit from the nation-specific parole programs that permit entry into the United States. Those programs require a person to have a passport, a U.S. sponsor with legal status and a stable income, and the means to purchase an airplane ticket to the United States—as well as the ability to wait in safety in the person's country of origin or a third country for months or years. The programs thus filter immigrants based on wealth, social connections, and relative comfort, not humanitarian need or urgency. The requirement that a person not have crossed into Panama or Mexico without authorization after a certain date cuts directly against those with the greatest need, given that people fleeing persecution often do not have the luxury of waiting for the governments of those countries to grant them permission to enter.

The CBP One Turnback Policy Harms HBA

45. The CBP One Turnback Policy, following on the previous iterations since 2016, has created an increased demand for HBA's services at the border and in Mexico, compromising HBA's mission and forcing us to divert resources from our core programs.

46. Redirecting HBA staff members' time away from our U.S. immigration work to focus on the border reduced our ability to register and renew Haitians' Temporary Protected Status, which in turn affects our community members' ability to secure work permits and support themselves and their families in the United States. Enabling Black immigrants to lead stable lives

in the United States is an important part of HBA's mission that we are unable to fulfill while so many Black lives are in danger at the border.

47. We have always intended to return to our core mission of supporting the Haitian community in the United States, including assisting with TPS applications and welcoming people coming out of detention. Unfortunately, the racist and xenophobic discrimination Black migrants experience on the U.S.–Mexico border threatens their very lives and requires HBA to prioritize humanitarian services at the border such as finding housing, medical assistance, and other social services for community members, as well as helping them safely and legally cross into the United States, which diverts resources from our domestic work.

48. HBA provides monetary and other support to the Casa Esperanza shelter in Tijuana, Mexico. Around eighty Haitians currently stay there. The conditions at the shelter are challenging due to limited sanitation facilities and wireless internet access, but the shelter is necessary because Haitians face significant discrimination finding housing. HBA contributes \$500 per month to the Casa Esperanza shelter, \$500 to the Embajadores shelter, \$250 to El Rubi, and \$250 to the Border Line crisis center. HBA also donates supplies including tents, clothes, diapers, tarps, and emergency supplies to shelters we partner with. As more individuals are forced to wait in Mexico for CBP One appointments, HBA will be forced to divert additional funds to convert the shelter to a more long-term facility. Since 2021, HBA case manager Jeef Nelson has been pulled away from case work in San Diego to coordinate this humanitarian relief in Tijuana.

49. Since the U.S. started metering Haitians in 2016 and continuing the present, HBA has spent considerable time and resources trying to assist community members in Mexico to access medical services for painful and urgent medical conditions such as high-risk pregnancies,

ovarian cysts, fibroids, hernias, diabetes, heart conditions, renal failure, lung disease, and bullet wounds. Sudden fever spikes and dehydration are very common in babies. Our staff has observed that hospitals and other healthcare providers in Mexico often discriminate against Black migrants and are unwilling to provide them with adequate care, which increases the amount of time we must spend trying to find other ways for our clients to obtain medical services. We partner with medical clinics to provide some medical services. Unfortunately, the needs far exceed the resources HBA has to offer.

50. Community members in Tijuana frequently have questions about the CBP One app or problems they have encountered in trying to obtain an appointment. These questions come directly to our humanitarian and legal staff in Tijuana and elsewhere. Any legal questions are forwarded to me or other members of HBA's small legal team. Responding to questions about CBP One, getting an appointment, and presenting at the border diverts resources from other legal work our team is doing on behalf of our community members.

51. Each policy change announced and implemented by the United States requires HBA to re-educate our staff and community as to its potential impacts on Haitian and Black migrants and to prevent rumors and misinformation about the policies. This is all necessary but time-consuming work and again stretches our limited resources. The time we spend on this diverts resources from our core domestic work but also from the core border work we would be doing of preparing and educating Haitian migrants about asylum before they enter the United States.

52. While HBA had always envisioned having a presence in Tijuana, we assumed that migrants would spend, at most, a few days at the border before entering the United States to seek protection. The U.S. government policies that have forced people to wait at the border for many

months or even years—first metering, then Title 42, and now the CBP One Turnback Policy—have forced us to shift our resources away from legal and resettlement services for migrants based primarily in California and policy work in Washington, DC, at the United Nations, and in other countries.

53. The pervasive problems with the CBP One app, the resulting confusion among the communities we serve, and the increasingly desperate situation of Black migrants in Mexico have forced us to redouble our efforts to assist this population. In January 2023, an HBA staff attorney, Emmanuella Camille, dedicated to direct legal services in the United States, instead traveled to Matamoros and Reynosa, Mexico to conduct Know Your Rights trainings regarding the U.S. turnback and expulsion policies and CBP One. Ms. Camille learned that CBP was telling migrants that they had to use the CBP One app in order to present at a POE.¹ Ms. Camille created a written and audio/visual guide in Kreyol to assist Haitians in using CBP One.²

54. To more effectively serve people at the border, HBA also hired a new full-time staff member in Reynosa in 2022. However, that staff member had to flee after receiving death threats and we have not been able to replace them. We secured space for a new office in Reynosa during the last week of June 2023, but are concerned about being able to find anyone to fill that position.

55. Through HBA's work in 2022 seeking humanitarian exemptions to Title 42 on behalf of vulnerable asylum seekers, we forged close relationships with Black migrant

¹ Melissa del Bosque, *Facial Recognition Bias Frustrates Black Asylum Applicants to US, Advocates Say*, THE GUARDIAN (Feb. 8, 2023), <https://www.theguardian.com/us-news/2023/feb/08/us-immigration-cbp-one-app-facial-recognition-bias> (“Camille said migrants are ‘being told by CBP that the only way they can cross the border is by using this app ... [It’s] the only source of hope for them right now.’”)

² <https://haitianbridgealliance.org/cbp-one-fact-sheet/>

communities on the border and their service providers. We continue to work with those groups to facilitate access to legal protections, troubleshoot and advocate for people having difficulty with the CBP One app, and ensure that people's basic needs are met. In March and April 2023, HBA conducted Know Your Rights trainings in Tijuana, Mexico, and interviewed over 200 individuals and family units to understand how the end of the Title 42 expulsion policy and the required use of the CBP One app would affect people's ability to seek asylum in the United States. And, as mentioned, in May 2023, HBA led a delegation to the Texas border; HBA staff and partners were also present in Tijuana on May 11-13, 2023 to monitor the end of Title 42 and meet with Haitian and other Black migrants attempting to seek asylum in the United States. While necessary given the current U.S. policy, these initiatives require HBA staff to stop or postpone work on other planned projects, myself included. For example, since 2020 we have been trying to conduct an in-depth investigation into discriminatory policies and practices within the credible fear interview process and in detention facilities. Our work plan includes conducting interviews in detention centers and distributing surveys to immigrants and attorneys, analyzing the data and preparing a report on our findings. We have not been able to move forward with our investigation as planned because of our need to focus on our border work.

56. In response to the CBP One Turnback Policy, HBA continues to divert resources to assist Haitian and other Black migrants at the border by: (1) devising new Know Your Rights programs so that people attempting to enter the United States, including those stranded in Mexico for extended periods, understand the new policy; (2) creating a monitoring program to document turnbacks of Haitian and other Black migrants attempting to present at a port of entry with or without a CBP One appointment; (3) expanding its humanitarian department to assist people in using CBP One; and (4) fundraising for additional resources for HBA's humanitarian program

and for our partners who provide life-saving services to Haitian and other Black migrants in Tijuana, Matamoros, and Reynosa. HBA also anticipates needing to expand its program providing language access and translation services to make it possible for more people in the United States to come to the border for humanitarian and legal work.

57. HBA receives funding from the State of California to provide direct representation and legal orientations to asylum seekers in the United States: \$300,000 over two years. We have struggled to meet our benchmarks. Failing to meet our deliverables, for example, because we are forced to divert our attorney time to provide urgent Know Your Rights trainings and other resources to individuals stranded in Mexico, could be seen as violation of the terms of our agreement and cause a reduction of funding in the future when our contract is up for renewal.

58. The CBP One Turnback Policy has also caused harm to HBA's staff. As asylum seekers are forced to wait in perilous conditions in Mexico with dwindling hopes of accessing protection, HBA staff have been increasingly traumatized. All staff are acutely aware of the many community members they have encountered who have been killed or needlessly died on the Mexican side of the border while waiting to enter the United States. Several staff members have been threatened with violence; two were forced to flee Mexico because of threats against them. Our staff, many of whom are Black immigrants themselves, live every moment with the painful awareness of the terrible conditions to which Haitians at the border are subjected and are conscious that the CBP One Turnback Policy is only making this situation worse.

Conclusion

59. The CBP One Turnback Policy harms Black migrants, denying them meaningful access to humanitarian protection owed under international and domestic law. For all the reasons described above, the policy requires HBA to divert resources and frustrates HBA's mission to

empower Black immigrants to vindicate their human rights under U.S. and international law, including the right to seek asylum and other protections from nonrefoulement regardless of their manner of entry.

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

A handwritten signature in blue ink, appearing to read "Nicole Phillips", is written over a light blue horizontal line.

Nicole Phillips

Executed on the 8th day of August, 2023, in San Francisco, California.