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

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## DECLARATION OF ERIKA PINHEIRO

I, Erika Pinheiro, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am an adult over the age of 18, a U.S. citizen, and a resident of San Diego, CA. I make this declaration based on my personal knowledge except where I have indicated otherwise. If called as a witness, I could and would testify competently and truthfully to these matters.

### *Background and Experience*

2. I am the Executive Director of Al Otro Lado (“AOL”), a nonprofit advocacy and legal services organization incorporated in California and based in Los Angeles, with offices in San Diego, California, and Tijuana, Mexico. From April 2017 to May 2022, I served as AOL’s Litigation and Policy Director. I am currently based in San Diego, CA and oversee programs and operations in all AOL locations.

3. I have worked in the immigration legal field since 2003. I hold a J.D. degree from Georgetown University Law Center, a Master’s of Public Policy from the Georgetown Public Policy Institute, and a Certificate in Refugee and Humanitarian Emergencies from the Georgetown University Institute for the Study of International Migration.

4. Throughout my legal career, I have specialized in high-volume legal representation and education for noncitizens detained in immigration or criminal custody, as well as those seeking asylum at the U.S.-Mexico border. In each position I have held, I have created, maintained, and analyzed extensive databases to identify the effects of policies governing the admission, detention, transfer, and release of noncitizen adults and children. Prior to joining AOL, I administered federally funded legal access programs for noncitizen adults in Immigration and Customs Enforcement (“ICE”) custody and unaccompanied children in and exiting from Office of Refugee Resettlement custody, serving thousands of individuals per year. Since 2010, I

have personally observed and tracked migration and detention trends, with a particular focus on individuals and families seeking asylum at the U.S.-Mexico border.

*AOL's Mission and Scope of Work*

5. AOL provides legal and humanitarian support to indigent refugees, deportees, and other migrants, including providing free direct legal services on both sides of the U.S.-Mexico border and beyond. Our Border Rights Project, established in 2017, provides legal education, representation, accompaniment, and human rights monitoring for 10,000 to 15,000 asylum seekers in Tijuana each year. The project also documents human rights violations committed by U.S. and Mexican government officials against refugees at the U.S.-Mexico border. We use this data to demonstrate unlawful patterns or practices in our advocacy with U.S. policy makers, international human rights monitoring bodies, and nongovernmental human rights organizations. Our data has been cited by Amnesty International, Human Rights Watch, and numerous academic institutions studying the U.S.-Mexico border. The Border Rights Project is one of the largest programs of its kind operating in northern Mexico and engages hundreds of volunteers per year to serve refugees in Tijuana and beyond. AOL also provides reintegration services for individuals deported from the United States. Since 2020, we have provided substantial humanitarian assistance to asylum seekers stuck on the Mexican side of the border, including emergency housing, medical care, food, hygiene supplies, and educational services for refugee children.

6. In the United States, AOL represents detained and non-detained noncitizens before U.S. Citizenship and Immigration Services, the immigration court, and federal courts in both individual and class action matters. Our direct services work also includes providing social services to the population we serve, in partnership with other organizations and government

agencies. Our Family Reunification Program seeks to reunify parents who were separated from their children and deported without them during the Trump administration. Our clients are located in Central America, all along the U.S.-Mexico border, and throughout the United States. AOL also is the Legal Orientation Program provider at the Imperial Regional Detention Facility in Calexico, CA.

7. As the Executive Director, I supervise attorneys and other staff who work directly with migrants on both sides of the U.S.-Mexico border. I travel frequently across the border at the San Ysidro port of entry (“POE”). I also engage with U.S. elected officials on immigration matters, educate policymakers about border issues, and provide technical assistance to Congressional committees and government agencies. From November 2020 through January 2021, I engaged with the Biden transition team and Secretary Mayorkas in numerous meetings concerning U.S. border policy. Since President Biden’s inauguration, I have met frequently with officials at the White House, Department of Homeland Security (“DHS”), Department of State (“DOS”), and other federal agencies to discuss policy regarding immigration and border security issues.

8. Between February 2021 and June 2022, I served as co-lead of the Legal Subcommittee of the California Welcoming Task Force, a coalition of several dozen nonprofit organizations on both sides of the California-Mexico border that regularly engage with the White House, DHS, and other federal agencies on a variety of border-related issues. I continue to oversee AOL’s Task Force activities. AOL leads the Task Force organizations’ efforts to provide legal and humanitarian services to refugees residing in Tijuana and other border cities in California. The Task Force coordinated with San Diego County, the state of California, and various U.S. federal agencies to effectuate the wind-down of the Migrant Protection Protocols

(“MPP”) and the humanitarian exemption process for Title 42. We currently coordinate with local, state, and federal agencies, elected officials, and nongovernmental partners in Mexico to build systems to facilitate the processing of asylum seekers and meet these individuals’ immediate humanitarian and medical needs.

9. AOL also sits on the All Welcome Task Force, a border-wide coalition of organizations on both the U.S. and Mexico sides of the border. That group meets regularly to share updates about policies, patterns, and practices relating to border enforcement that affect asylum seekers along the entire U.S.-Mexico border. In addition, we are members of the Welcome With Dignity Coalition, a separate coalition of border organizations and national policy organizations focused on the rights of asylum seekers, where we share similar information regarding developments relating to border enforcement.

10. In addition to AOL’s work at the San Ysidro POE, we serve asylum seekers remotely at eight other POEs. We also administer an online risk assessment survey that is completed by asylum seekers in cities along the entire U.S.-Mexico border, who report on their experiences with Customs and Border Protection (“CBP”), Instituto Nacional de Migración (“INM”), and other Mexican law enforcement agencies. The survey is currently offered in English, French, Haitian Kreyol, Portuguese, Spanish, Russian, and Ukrainian. It consists largely of multiple choice and checkbox-style questions with subsequent comment spaces where additional information and context can be provided to explain an answer. People typically fill out one survey entry per family group rather than one entry per family member, and the questions are designed to reflect this. The survey includes questions that allow us to identify people who are particularly vulnerable in addition to questions about the experiences of asylum seekers in Mexico. The unnecessary delays DHS imposes on migrants seeking asylum means that they are

exposed to dangerous circumstances for months or longer. As a result, one tragic but crucial use of this survey has been to connect people with resources to keep them alive and to help them meet their basic needs to the extent possible. The vulnerability screening portion includes questions on whether the person answering the survey has an untreated medical condition, a disability, and access to housing, as well as questions regarding marginalization based on race, gender, sexual orientation, and linguistic isolation. The survey also includes a checkbox question where people can indicate the types of harm they have experienced in Mexico, if any.

11. Since January 2023, when DHS began requiring that individual asylum seekers make appointments through the CBP One app to seek asylum at a POE, AOL has documented CBP's continued use of turnbacks for individuals who have been unable to access appointments through the app. We have worked with particularly vulnerable individuals who have not been able to get CBP One appointments, including many with acute medical needs; linguistically isolated migrants who do not speak a language supported by the CBP One app; and people at imminent risk of harm on applications for humanitarian parole.

12. Since the Title 42 policy ended in May 2023, we have conducted legal presentations several times per week at shelters, Tijuana parks, and in our Tijuana offices to ensure that migrants understand how they will be treated under the Biden Asylum Ban Rule ("Rule") if they attempt to enter between POEs or present themselves at a POE without an appointment. We have also created legal orientation materials in a variety of languages, including English, Spanish, Russian, Ukrainian, Haitian Kreyol, French, Mandarin Chinese, Arabic, Q'eqchi, Tzotzil, Dari, Portuguese, and Hindi to ensure that migrants who speak languages that are not supported by the CBP One app and typically not included in any U.S.



government outreach materials understand how recent changes in law and practice at the U.S.-Mexico border will affect their right to seek protection in the United States.

*The Government's Use of CBP One for Asylum Processing*

13. CBP One is simply the most recent face of a history of attempts to throttle or bottleneck access to the process for seeking asylum at a port of entry along the U.S.-Mexico border. Since at least 2016, DHS and CBP have engaged in a continuous course of conduct designed to deprive people of access to the U.S. asylum process. Through a variety of border policies, DHS and CBP have repeatedly sought to externalize asylum processing, culminating in the launch of CBP One, a smartphone mobile application, in 2021. Its large-scale use began during the Biden administration's partial wind-down of the Migrant Protection Protocols ("MPP"), when HIAS, a nonprofit organization working with the United Nations High Commissioner for Refugees ("UNHCR") was given exclusive access to the app to administer the MPP wind-down program.

14. CBP One's role grew further when DHS and CBP used CBP One to process individuals seeking humanitarian exemptions from the Title 42 expulsion process. DHS asked nonprofit organizations, including AOL, to identify vulnerable migrants in Mexico and send their information to CBP to obtain an appointment at a POE. While CBP expressed a strong preference that organizations sending exemption requests utilize CBP One, only some POEs required its use. Most U.S.-based nonprofits, including AOL, refused to utilize CBP One out of fear of institutionalizing the externalization of asylum processing. From April through August 2021, I helped supervise AOL's work representing families, individuals, and children seeking humanitarian exemptions from the Title 42 expulsion process. During this period, we obtained exemptions for 5,962 individuals.

15. On April 1, 2022, the CDC announced its intention to terminate the application of Title 42 to migrants. During conversations preparing for its end, DHS acknowledged that Title 42 border restrictions had created a backlog of asylum seekers waiting to seek admission at POEs and asked the California Welcoming Task Force and other nonprofits to identify vulnerable migrants waiting in Mexico and send their information to CBP for processing. Although CBP had processed around 1,000 Ukrainians per day at the San Ysidro POE in prior weeks, CBP claimed they did not have capacity to process more than 70 migrants per day at the San Ysidro POE.

16. On Friday, May 20, 2022, a court blocked the Biden administration from rescinding the Title 42 policy. CBP opted to continue the exemption process while the Title 42 case was being litigated. By that time, AOL's electronic risk assessment survey had over 40,000 unique responses from migrants who had been waiting along the U.S.-Mexico border, in some cases for years, to seek asylum. Other California Welcoming Task Force organizations also had long lists of vulnerable migrants who had been waiting to present themselves at U.S. POEs or who were at risk of imminent harm.

#### *Use of CBP One to Reimplement Metering*

17. The Title 42 exemption processes required nonprofits and international organizations to participate in a new metering system administered by nonprofits that caused serious security issues for migrants and service providers, including AOL. In several California Welcoming Task Force engagement meetings around August 2021, DHS indicated that nonprofits would be required to use the CBP One app to refer asylum seekers and other vulnerable migrants for Title 42 exemptions. For the reasons explained below AOL has consistently refused to use CBP One. However, other nonprofits and shelters operating in Mexico began using the app to submit exemption requests in the summer and fall of 2022.

18. Because migrants could only seek Title 42 exemptions with the assistance of a nonprofit organization, the most vulnerable were unable to access the U.S. asylum process at all. Many children, people with limited literacy or internet skills, and those with certain types of disabilities were either unaware of the requirements or unable to connect with nonprofits. Nonprofits also had extremely limited capacity to provide services in languages other than Spanish, with the result that asylum seekers who spoke Haitian Kreyol, Indigenous languages, and dozens of other languages waited longer for services, if they were able to receive them at all. We still see this same dynamic as individuals who speak languages not supported by the CBP One app, those with limited literacy or technology skills, and those lacking the resources to access technology or nonprofit assistance are unlikely to be able to access the U.S. asylum system at all.

19. Any externalized asylum processing system where migrants share sensitive information with a third party creates security concerns for that migrant and anyone close to them. AOL has already seen cause for such concerns in previous deployments of asylum-restricting policies at the border. During Title 42, many individuals with ties to criminal groups took advantage of the pervasive lack of accurate information about Title 42 exemptions and gathered sensitive information from migrants, including sponsor information, with false promises of providing access to the U.S. asylum system. Organized crime used migrants' personal information to extort, and sometimes kidnap, migrants who they knew had family in the United States. Many sponsors reported receiving extortion calls and texts from people threatening to hurt their migrant family members in Mexico unless they paid thousands of dollars.

20. Externalization of asylum processing, including through the use of CBP One, also creates opportunity for other types of fraud. For example, AOL and our partners have received

frequent reports of individuals or groups in the United States or Mexico who charge thousands of dollars to help asylum seekers use CBP One. Others claim they have special access to one of the coveted appointments and charge asylum seekers for access. We have also seen screenshots of false confirmation emails sent after an individual paid, emails from individuals impersonating DHS officials requesting money to confirm appointments, and a host of other scams. There have been multiple incidents of fraud perpetrated by individuals pretending to be representatives of UNHCR, AOL and other organizations serving migrants at the border. Usually, the fraudster calls the migrant in Mexico, tells them they have to pay a bond or other fee to be paroled into the United States, and then asks the migrant's U.S. sponsor to send money via Western Union. There are also multiple individuals and organizations in Tijuana and other border cities fraudulently charging up to thousands of dollars for access to nonprofit legal services, individuals pretending to be ICE officers requesting bond payments, and others pretending to be private U.S. licensed attorneys who charge exorbitant fees for access to the U.S. asylum process or a particular result that, despite their false promises, they cannot guarantee. As a result, many desperate migrants have paid organized criminal enterprises thousands of dollars to attempt to smuggle them into the United States, usually after those migrants unsuccessfully attempted to present themselves at POEs to seek asylum.

21. Externalization of asylum processing through the NGO-led exemption process also created serious security issues for providers, including AOL. Fraudsters have cloned our phone numbers or pretended to be working for AOL in order to extort migrants. Migrant service providers are viewed as competition for smugglers, and having the ability to refer someone for entry into the United States makes legal workers a target. For example, the Title 42 exemption process forced AOL staff to put their lives on the line to pre-screen asylum seekers in some of

the most dangerous cities in the world. On one occasion, an AOL staff member was robbed at gunpoint while accompanying 35 asylum seekers with approved exemption requests to the POE between 5:30 am and 6:00 am. They were traveling on foot through a neighborhood controlled by organized crime, which is impossible to avoid on the walk to the San Ysidro POE. That staff member was robbed, and the assailant threatened that if she did not turn over her phone and purse, the assailant would begin shooting the asylum seekers.

22. In another instance, a cartel burned public transport buses throughout the city and state, trapping our staff and asylum seekers being processed for exemptions as some of the arsons had occurred very nearby, and no alternative public transportation was available. The area where the exemption processing shelter was located is a high crime area, rife with drug and human trafficking. It was not uncommon for the street of the shelter and surrounding streets to be closed off due to shootings, murders, and dumped bodies. During the time the U.S. government relied on border nonprofits like AOL to submit Title 42 exemption requests, it did not provide any security assistance to us, despite our repeated requests. While Title 42 is no longer in effect, these security concerns continue, as smugglers and cartels remain active, and border nonprofits like AOL still assist individuals in navigating the process of seeking asylum at the U.S.-Mexico border. These security concerns are especially acute when AOL assists individuals fleeing organized crime and/or government persecutors who are actively searching for them in Tijuana; there have been several recent examples of such individuals who have been unable to get CBP One appointments and were turned back after requesting emergency processing at the POE. Being forced to assist such individuals as a result of the current iteration of the turnback policy puts our staff in grave danger.

23. We cannot rely on Mexican law enforcement to protect us. At times, Mexican officials have harassed, detained, surveilled, and extorted aid workers at the border, including AOL staff members. AOL staff have also been surveilled by Mexican officials, as recently as May 2023, when undercover law enforcement in plain clothes and unmarked vehicles parked near our office to take photos of our staff and our office building. On other occasions, attempts were made to gain access to the cellular devices of AOL staff members by individuals pretending to be asylum seekers, but who were later seen speaking with INM officers and then entering the United States through the regular pedestrian line. Our staff have had numerous contentious encounters with Mexican law enforcement officers attempting to remove us from the POE when we were accompanying asylum seekers, including unaccompanied children, who wished to present themselves to U.S. officials.

*Transition from Non-Profit-Led Exemption Process to Individual Migrant Access to CBP One*

24. On January 12, 2023, CBP began allowing individual migrants to access CBP One to make their own appointments for Title 42 exemptions. The first appointments were available on January 18, 2023, after which AOL could not request appointments on behalf of asylum seekers who qualified for Title 42 exemptions and instead was limited to making requests outside of the CBP One system for urgent medical cases only. As soon as this process started, many of the CBP One app's flaws became apparent.

25. As described above, AOL has administered an online risk assessment of asylum seekers at the U.S.-Mexico border since February 2021. In January 2023, we added questions regarding CBP One to identify challenges that asylum seekers face while trying to use the app.<sup>1</sup>

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<sup>1</sup> The findings presented here are based on a preliminary analysis of data that is only a statistically significant sample of Spanish and Haitian Kreyol-speaking migrants in Tijuana. More data from other language groups and from other geographic regions is required to constitute a statistically significant sample for those groups.

As of June 19, 2023, of the 937 asylum seekers who responded that they had tried or wanted to make an appointment with the app, almost 30% reported not having access to an internet connection or data plan that would enable them to utilize the CBP One app, which generally requires a strong, stable connection that is more robust than that required to complete an online survey or view websites. Of the survey respondents who had tried to make a CBP One appointment, about 25% reported living in a shelter, many of which are overcrowded and lack a strong Wi-Fi connection. Another 30% reported being homeless or living in an encampment and therefore similarly unable to use the app due to an inability to pay for cellular data or access a strong enough Wi-Fi connection.<sup>2</sup> While the CBP One app requires the applicant to take two photographs of themselves, about 6% of survey respondents did not have a smartphone with a camera. This data is consistent with what asylum seekers reported to our staff when we conducted “know your rights” presentations and individual consultations in Tijuana.

26. Asylum seekers also reported through the survey, and to AOL staff at “know your rights” presentations and at POEs, that the app crashed frequently, making it difficult for them to complete the registration process. In addition, they reported that the geolocation feature frequently malfunctioned, particularly during heavy rains. For example, migrants standing at the POE attempting to make appointments reported that the app had rejected them for being too far from the border.

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<sup>2</sup> About half the survey respondents who have tried to use the CBP One app reported living in Tijuana, where the local government has not allowed encampments to form since early 2022. Only around 2% of survey respondents reported being in Matamoros and about 8% in Reynosa, both locations where thousands of asylum seekers are residing in camps. The percentage of asylum seekers at the border who are homeless/residing in camps—and therefore would lack internet or data plan access—would likely be higher in those locations, or in other cities where there are relatively few migrant shelters and where authorities allow migrants to form camps.

27. Just over half of the survey respondents (55%) reported that they were unable to complete the CBP One process because there were no appointments available; the remaining respondents were unable to make it to the point in the process where they could request an appointment. Almost 40% of survey respondents could not register on the CBP One app because of error messages, many of which were in English, a language that they do not read or understand.

28. Migrants also reported difficulties with the “live photo” feature of the CBP One app. About 33% of all survey respondents could not upload their “live photo” to the app. Of survey respondents that identify as Black, over half (53%) reported that they were unable to upload a “live photo.” This data is consistent with observations by AOL staff and other partner nonprofits that individuals with darker skin had a harder time getting the live photo feature to work. Having an extremely bright light shining on the applicant’s face seemed to help, so advocates purchased large construction-style lights to help migrants with darker skin comply with the “live photo” requirement. AOL and other nonprofit organizations informed CBP that migrants with darker skin had more problems with the “live photo” feature, but CBP generally dismissed these concerns because some Black migrants were able to secure appointments.

29. Although about 89% of survey respondents spoke Spanish or English, those speaking Haitian Kreyol (8% of survey respondents) or other languages reported difficulties in completing the registration process because they did not understand the prompts or instructions. Haitian Kreyol speakers consistently reported that the Kreyol version of the app and the instructions provided by CBP were like a “bad Google translation.” Respond Crisis Translation, a partner organization that offers translation and interpretation services in Haitian Kreyol, among many other languages, noted that even the agency name “Customs and Border Protection” was



not translated correctly in the Kreyol version. As an example, the word used in the app for “customs” actually referred to cultural traditions rather than the official department that administers and collects duties on imported goods, as used in CBP’s name. Applicants also reported that the Kreyol translation often did not put spaces between words, or that the translations were simply incorrect. They noted further that many error messages or drop-down menus were always in English.

30. Other survey respondents, as well as asylum seekers encountered by AOL staff at the San Ysidro POE, reported being unable to utilize the CBP One app to make an appointment at a POE because they spoke over 20 languages not supported by the app, including French, Portuguese, Russian, Farsi, Ukrainian, Arabic, Uzbek, Azeri, Belarusian, Turkish, Amharic, Tigrinya, Dari, Tajik, Hindi, and Mandarin, as well as a variety of Indigenous languages, including Garífuna, Mixteco, Triqui, Miskito, Nahautl, Q’eqchi, Tzotzil, and Pech.

31. AOL contacted CBP on several occasions to advocate that vulnerable individuals who did not speak a language supported by the app be processed outside of the CBP One app. One of these individuals was an Amharic-speaking Ethiopian woman whose entire family had been killed in the civil war, whose village had been burned to the ground, and who had been sexually assaulted twice in Mexico on her way to the northern border. CBP told us that, despite the language barriers, these individuals would still be required to use CBP One.

32. Rather than process these linguistically isolated asylum seekers outside the CBP One app process, CBP reiterated that asylum seekers should submit appointment requests through the app, and that if they were unable to do so on their own, counsel could assist them in using the app. In some cases where we requested that CBP provide assistance to linguistically isolated asylum seekers, CBP simply did not respond. As instructed by CBP flyers, numerous

applicants speaking languages not supported by the app sent emails to the CBP One Help Desk asking for assistance, but did not receive any response. Others received an automated response, but the message was entirely in English.

33. In AOL's experience, DHS and CBP do not meaningfully consider humanitarian parole requests. Between January 12, 2023, when the CBP One app became available to individuals, and the end of the Title 42 restrictions on May 12, 2023, AOL submitted nineteen humanitarian parole applications for individuals and families who could not access the app to make an appointment or could not wait several weeks for an appointment due to a serious medical issue or risk of imminent harm. Of those applications, only nine were approved; CBP never responded to some applications despite multiple follow-up requests from AOL staff. Our experience in submitting humanitarian parole cases for individuals with very serious medical conditions and disabilities following the end of Title 42 has been the same, in that parole applications are not always considered and that processing times for those considered vary greatly, with no discernible pattern.

34. Because of the extensive medical documentation needed to support an application for a Title 42 humanitarian exemption outside of the CBP One app, some of our clients did not survive their wait for a CPP One appointment. For example, in February 2023, when individual asylum seekers were required to submit all exemption requests through CBP One, AOL was working on a humanitarian parole application for a four-month-old baby outside of the CBP One app process. The infant had contracted pneumonia while living in a damp overcrowded shelter during this time. People either had to wait for a CBP One appointment or we could try to request parole outside of the app. However, CBP has always required extensive medical documentation to approve our parole cases, which some people were not able to get. This left them with no

option but to wait on the app. The family of this infant had tried in vain to obtain a CBP One appointment. The baby had been hospitalized, and on the day that we obtained all the medical documentation necessary to finally submit the application, the baby died. Severely ill migrants will die like this as long as CBP One is used to throttle access to asylum processing at the border.

35. In locations such as Del Rio, Texas, where CBP One appointments are not currently available, CBP has completely ignored our requests for humanitarian parole on behalf of vulnerable individuals, even when we provided documentation of medically urgent circumstances.

36. Formally, nonprofit groups and others no longer have organizational access to CBP One to make appointments for migrants. In practice, however, some individuals and groups have continued to charge for the real or perceived ability to obtain appointments.

37. For example, on January 18, 2023, one of the first days that CBP processed individuals with CBP One appointments, mostly Russians presented at POEs with appointments. There were some indications that a third party had made the appointments for them, as an individual with a clipboard and vest was observed near the San Ysidro POE directing the Russians toward the processing entrance and confirming that their names were on a list. Such groups remain active.

*Since the Title 42 Policy Ended, CBP Has Turned Away Asylum Seekers Without CBP One Appointments*

38. In the weeks leading up to the end of Title 42, AOL and other border nonprofits had numerous engagements with DHS, during which DHS representatives confirmed that asylum seekers without CBP One appointments would be able to be processed as “walk-ups” at POEs. However, this has largely not occurred. Individuals without CBP One appointments have been

turned away and instructed that they must first obtain an appointment through the CBP One app in order to be processed for asylum.

39. AOL frequently engages in POE monitoring. In the days following the end of Title 42, our staff and volunteers did not observe many asylum seekers approaching the San Ysidro POE, but for the vast majority of those who did approach, CBP officers refused to process them without a CBP One appointment. Many of the asylum seekers with whom we spoke had been trying to make CBP One appointments for one to four months without success or had other compelling circumstances that they hoped to explain to CBP officers to avoid having to wait for an appointment. However, none that we observed were evaluated for any exigent circumstances.

40. AOL staff and volunteers observed CBP officers at San Ysidro Ped East and the Otay Mesa POE refuse to process walk-ups without a CBP One appointment. Moreover, asylum seekers could not even access CBP officers directly at the Ped West Entrance to the San Ysidro POE because they were intercepted by Mexican authorities or private security before reaching the limit line. On multiple occasions, Tijuana municipal police, Mexican National Guard, and Mexican immigration officers approached asylum seekers who chose to wait at the POE to remove them from the area. We have received reports and observed Mexican immigration officers detaining a number of asylum seekers near the POE whom CBP had refused to process. Some asylum seekers reported having to pay a bribe to get out of Mexican immigration custody, while others were sent to Mexico City or further south. These incidents show a pattern of coordinated action by Mexican immigration officers, responsive to CBP action at the U.S.-Mexico border.

In the weeks prior to the end of Title 42, multiple organizations documented U.S. Border Patrol's use of the space between the border walls west of the San Ysidro POE as an open-air holding area for individuals who wished to seek asylum in the United States, some of whom CBP had refused to process and directed to come back later. The practice had been documented since October or November 2022, but the population being held grew to several hundred people in the weeks immediately preceding the end of the Title 42 policy.

41. By May 13, 2023, four camps had formed on U.S. territory along the California-Mexico border. The largest camp between Tijuana and San Diego was between the border walls on the U.S. side at the east end of the International Park (across from Colonias Aleman and Colonia Castillo and near Calle Mar Adriatico on the Tijuana side). There were approximately 500 individuals, including babies as young as three months old and elderly people. I observed individuals from at least twelve countries and many children. There was another camp of mostly single adult men about a mile or so west on the U.S. side, near a housing complex called Via Isla Sicilia. It was very difficult to access, due to unnavigable terrain, although there are roads on the U.S. side that Border Patrol utilized. The men in the upper camp estimated there were several hundred people there.

42. I went with our staff to speak with the migrants in the main Tijuana/San Diego camp on several occasions in the days following the end of Title 42. Several migrant women told me that two women had been sexually assaulted at the main camp, so Border Patrol moved the single adult men to the second location. Many migrants at the camp told me that they had first tried to present themselves at a POE and had entered the camp after being turned away.

43. Migrants at both camps reported being there anywhere from three to seven days. On May 12, 2023, Border Patrol began distributing bracelets to create a processing order, but

migrants reported receiving very little information on whether and when they would be processed for asylum. Migrants told us that Border Patrol was only providing water once a day. Some migrants reported being provided “cookies,” while others reported not receiving any food at all. One woman told me that a Border Patrol agent had given her a “dog biscuit” when she asked for food. AOL staff, volunteers, and a network of organizations on the San Diego side were able to get food, diapers, formula, blankets, and some warm clothes to the migrants at the main camp, but migrants at the Via Isla Sicilia camp could not receive donations.

44. Border Patrol did not provide hygiene items, medical attention, shelter, or any other survival items aside from water and some cookies and solar blankets. It was cold at night, and while some migrants received donated blankets, clothes, tents, and other necessary supplies at the main camp, many were forced to sleep out in the open. The migrants reported that there were sick and disabled individuals in the camp. A woman with a three-month-old baby approached me and asked for cough medicine for her baby, who had become ill during the days that they had been sleeping on the ground.

45. On May 13, 2023, I was able to report the above information to individuals at CBP Headquarters and the National Security Council. They provided contact information for a local CBP officer who agreed to take sealed donations of food, water, and hygiene items from the nonprofits working on the San Diego side and deliver them to the men at the Via Isla Sicilia camp by Sunday, May 14, 2023.

46. At the same time we were providing relief to people in the main Tijuana/San Diego camp, our staff encountered several high-risk individuals at the POE who had previously been at the main camp between the walls, but who had been forced to return to Mexico because they had small children who could not survive the conditions, lack of food and water, and lack of

hygiene facilities in the camp. Others had returned to Mexico after Border Patrol informed them that the agency would not process Central Americans through that site.

47. In the following days and weeks, AOL staff observed multiple turnbacks of individuals and families from the San Ysidro POE. The asylum seekers reported that CBP officials had told them they could not be processed without an appointment. Our staff observed CBP officers saying the same thing. An inevitable consequence of CBP's refusal to process the asylum seekers was that these individuals would be approached by Mexican police, the Mexican National Guard, or Mexican immigration officers, and directed to leave the area or risk being detained and deported. As discussed further below, CBP communicates directly with Mexican immigration and law enforcement officials and regularly requests their assistance in clearing the backlog of people who do not have CBP One appointments.

48. Around May 31, 2023, a line began forming outside the San Ysidro Ped East POE because CBP was not processing asylum seekers who did not have a CBP One appointment. After about a day, approximately 350 individuals were lined up. Many slept there for days, without food, water, or shelter, except that which was brought by volunteers and nonprofits. Approximately a third of the individuals in line were Tajik or Uzbek; other nationalities represented included Russians, Colombians, and Mexicans. There were many families with very young children; our staff brought diapers, formula, wipes, and feminine hygiene products for the asylum seekers waiting in line.

49. On June 1, 2023, our staff visited the immigration detention facility in Tijuana after Mexican immigration officers removed three Tajik men from the line. While trying to consult with the men through a remote interpreter on speakerphone in the detention facility, our

staff heard Mexican immigration officers mocking the men and other non-Spanish-speaking asylum seekers.

50. AOL staff went to the port of entry each day, and we prepared materials in multiple languages to help explain to the asylum seekers that the new asylum rule (“Rule”) could make them ineligible for asylum if they did not obtain a CBP One appointment. Despite the risk of being subject to the Rule, no one wanted to leave the line. Many explained that they had been trying to get CBP One appointments for months, to no avail. Others did not speak one of the supported languages or were at imminent risk of harm in Tijuana. The migrants reported that only a handful of individuals, up to three families, were being processed by CBP every 24 hours.

51. On the afternoon of June 2, 2023, INM officers parked two vans next to the line, after which Mexican National Guard soldiers instructed the migrants that they had until 4 pm to leave the area. INM and Tijuana police officers took photos of the asylum seekers in the line, and the police officers said that they were going to make a list so that “no one would argue about their spot in the line.” In apparent coordination with CBP, at around 4 pm, the head of Tijuana’s municipal migration office arrived and began making a list. He wrote numbers on individuals’ arms with a sharpie. Individuals were then loaded onto buses to be taken to a municipal shelter. The line was cleared completely by later that same evening.

52. In the following days, I observed Mexican immigration officers posted at the entrances on both sides of the San Ysidro POE. The area where asylum seekers had been lined up was roped off. Mexican National Guard and INM officers were posted mere feet from the limit line at the Ped East entrance, no more than a meter or two from CBP officers. In our meetings with various Mexican officials, we learned that CBP was communicating with INM to bring individuals from the “list” to the POE to be processed. About a dozen individuals from the



list were being processed each day. Our staff observed that these individuals were forced to wait for many hours after being brought to the POE.

53. Around June 12 or 13, 2023, the municipal shelter, to which asylum seekers at the POE had been taken on June 2, 2023, was shut down. Some of the asylum seekers were taken to a larger shelter but told that only women and children would be able to stay for more than 24 hours. Others went to various shelters throughout the city. Staff members were in touch with multiple individuals sent to the larger shelter (Embajadores). These individuals reported receiving a call from a Mexican official instructing them to present at the POE the next day. As of June 13, 2023, people with list numbers through 80 had been called. We have also received reports from partner nonprofits that Mexican officials continue to add some vulnerable individuals to their list, although the process for accessing the list is opaque and not available to the public.

*CBP Coordination with Mexican Officials to Prevent Asylum Seekers from Reaching U.S. POEs*

54. In November 2022, the U.S. State Department and the Mexican government announced a pilot program in which Mexican police, National Guard, and immigration officers would form a “filter” to weed out travelers who were not authorized to enter the United States. Mexican officials were stationed a few hundred feet from the limit line to identify and turn back individuals without valid travel documents. The stated purpose of the pilot was to “expedite travel during the holiday season,” but the first day of the pilot saw lines stretch exponentially longer than usual. It was unclear how Mexican authorities were determining who did not have valid travel documents. The pilot program was made permanent in January of 2023, and we now routinely see multiple Mexican authorities stationed near the limit line who stop undocumented migrants attempting to approach the POE. I have consistently observed INM officers and

Mexican National Guard soldiers posted at the pedestrian lanes as well, serving a similar function in coordination with CBP.

55. Since May 13, our staff has had multiple interactions with Mexican immigration officers, Tijuana municipal police, and Mexican National Guard members while observing and accompanying asylum seekers without CBP One appointments to present themselves at the POEs. Since June 2, 2023, Mexican officials, at CBP's direction, have stopped most asylum seekers before they reach the San Ysidro POE. Those who make it to the limit line are generally turned away by CBP officers, who direct them to make CBP One appointments. If an individual or family remains at a POE after being turned away, Mexican officials approach them and order them to clear the area. Some are detained, while others are allowed to leave on their own. Our staff has observed only a handful of individuals being processed as walk-ups, and most of them were Eastern European asylum seekers.

56. The result of CBP's above-described actions, including coordination with Mexican officials to remove and detain asylum seekers awaiting processing at POEs, confirms that a CBP One appointment is a prerequisite for accessing the U.S. asylum process.

*Current Conditions for Asylum Seekers Turned Away by CBP or Unable to Access a POE*

57. Asylum seekers in Tijuana who have been turned back by CBP continue to face extreme danger and live under precarious conditions. Few have access to safe housing, medical care, or work to support themselves. Clients frequently report to us that they are unable to afford food, medicine, or other basic necessities. They face kidnapping, rape, extortion, and other violence on a regular basis. Ten of our clients have died since March 2021 because they were prevented from seeking emergency medical care in the United States while pursuing their asylum claims. Another client was paroled into the United States after being hospitalized in Mexico and

is now in a coma, most likely permanent, due to brain trauma that could have been avoided had he been paroled earlier.

58. Families with members who identify as LGBTQ+ are at particular risk of violence and discrimination. One family that we represented was forced to leave three different housing situations after the owners of each property discovered that the mother was in a same-sex relationship. Another LGBTQ+ couple that we represented were both kidnapped and raped in Mexico, and both partners subsequently contracted HIV. While in Tijuana, they were forced to leave a shelter due to persistent threats. Another client, a Haitian LGBTQ+ man who was unable to present himself to U.S. authorities to seek asylum, was living in a rented room in Tijuana when armed men broke into his dwelling, raped him, and stole all his belongings and documents. He had to go into hiding because these same people continued to threaten him.

59. Migrants without legal status in Mexico frequently struggle to access medical care and often report discrimination by medical staff. Multiple Haitian clients have told us that the hospitals in Tijuana are “where Haitians go to die.” In June 2023, a Haitian man who had been waiting for a CBP One appointment died after being discharged from a hospital despite experiencing ongoing complications from pneumonia. When hospitals in Tijuana and other border cities do provisionally accept migrants for care, the migrants are often told that they will be able to receive treatment only if they can first find all the medical supplies needed for the procedure. We have assisted asylum seekers who were asked to arrange for donations of blood and to purchase and provide their own surgical equipment.

60. AOL staff members transported a Honduran man with an epidural hematoma between hospitals in Mexico after the initial hospital refused to treat him without an upfront payment in full for the emergency neurosurgery he required. At that point, he was lying on a bed

with a nosebleed and struggling to breathe. When AOL staff members requested an ambulance because of the delicate nature of his condition, the hospital said that they could not accommodate the request because they were unable to communicate with the receiving hospital. Our staff were left with no alternative but to transport him themselves.

61. Asylum seekers also frequently face extortion and abuse at the hands of the Mexican police. In June 2023, a family reported to us that Mexican police had stopped them and threatened to use a taser on them if they did not hand over money. When the family said they did not have any money, the police tasered their child, who was less than a year old. In the same month, three men who had received legal orientation at our office in Tijuana were stopped by police as they walked back to their hotel. The police officers took their passports and said they could only get them back if they paid bribes.

62. Over the past year, we have received over 45,000 unique risk assessment survey responses from asylum seekers stranded in border towns in northern Mexico. Over 30% reported being kidnapped or escaping an attempted kidnapping, and approximately the same percentage reported being assaulted while waiting in Mexico. About 22% reported being abused by Mexican authorities, and about 25% of respondents reported being extorted in Mexico. About 10% of survey respondents in the past year reported being sexually assaulted or sex trafficked. Approximately 25% reported experiencing homelessness while they were forced to wait in Mexico. Rates of victimization are significantly higher for survey respondents identifying as LGBTQ+, with around 40% reporting that they suffered a kidnapping or kidnapping attempt; 30% reporting extortion; 30% reporting sexual assault or sex trafficking, and 32% reporting abuse by the police and/or homelessness.

63. AOL staff and I have conducted numerous “know your rights” presentations with thousands of migrants, many of whom have told us horrific stories of tragedies suffered while waiting in northern Mexican border towns to access the U.S. asylum process. Many have suffered kidnapping, extortion, rape, or trafficking at the hands of smugglers and organized crime groups. Most would prefer to enter the United States at a POE to avoid victimization at the hands of smugglers. However, due to CBP’s refusal to process individuals without CBP One appointments, those facing imminent harm in Mexico who cannot obtain a CBP One appointment are forced to risk their lives by crossing between POEs in the desperate hope of reaching safety in the United States.

*Impact of CBP One Turnback Policy on AOL’s Mission and Resources*

64. Before the first iteration of the turnback policy started in 2016, AOL held free legal clinics in Tijuana, during which we would advise asylum seekers to present themselves at POEs rather than risking dangerous crossings between POEs. Almost all asylum seekers with whom we kept in touch during that time reported being processed by CBP at POEs in accordance with the law. Since then, the effects of the turnback policy have caused untold suffering. Each day, our staff hears horrific and traumatizing stories of rape, murder, torture, sexual assault, kidnapping, and other harms that have befallen asylum seekers desperate to seek safety in the United States. Almost all asylum seekers we encounter would strongly prefer to present themselves at a POE rather than putting themselves at the mercy of criminal groups who control border crossings between POEs, but most have been unable to avail themselves of this legal right while the turnback policy has been in effect. Instead of helping our clients access asylum processing at POEs, we have instead watched them suffer in squalid shelters and camps, become ill due to precarious conditions and a lack of basic necessities, fall victim to all manner of

violence at the hands of criminal groups and Mexican officials, and even die while waiting for a chance to present themselves to seek asylum.

65. The emotional toll of watching our clients suffer and die for lack of access to the POEs is difficult to describe, especially when we are practically powerless to help them. We try to complete humanitarian parole cases for particularly vulnerable migrants, but do not have sufficient capacity to do so for every asylum seeker who cannot get a CBP One appointment. We have to reserve our limited capacity for those who would suffer irreparable harm if unable to access protection in the United States. Sometimes, our clients or their family members die despite our best efforts.

66. Some asylum seekers, in an attempt to obtain our parole services, send disturbing photos of their injuries, illnesses, threats, and tortured or deceased family members to our staff through WhatsApp messages. I personally have received so many of these photos that I had to change the settings on my phone to not automatically download the photos I receive. Mentally, I could not handle seeing another picture of a dead or mutilated body from an asylum seeker whom we did not have capacity to assist. Some of our staff receive dozens or even hundreds of these messages each day. AOL has had to obtain supplementary mental health insurance for our staff because of the traumatic effects of receiving these messages and photos, coupled with our limited capacity to provide assistance. Many AOL staff belong to the communities most impacted by CBP's border policies, which makes witnessing such abuses particularly harrowing.

67. Despite our best efforts to increase our capacity by hiring more staff, this dynamic has persisted. In October 2022, we allocated unrestricted funding to hire a new staff attorney. Since January 2023, we have hired four additional staff in our Tijuana office and raised funds to provide emergency humanitarian aid to certain migrants who have been turned back for lack of a

CBP One appointment, in an effort to keep them alive until we can get to their cases. The funds for these positions would otherwise have been allocated to advocating for immigration reform, providing direct services to people seeking asylum once processed into the United States, expanding our efforts to assist people harmed by past DHS and CBP strategies to obstruct access to asylum processing, reunifying families separated under the Trump administration, and other projects that carry out our mission to assist some of the most vulnerable people in the planet seeking protection through the asylum system. Unfortunately, we are still unable to assist the majority of asylum seekers who request our services.

68. The evolving nature of the turnback policy has required us to expend additional resources to create all new materials in multiple languages each time a change will materially affect the rights of our clients. AOL staff have also expended hundreds of hours identifying asylum seekers experiencing problems with the CBP One app; sharing information about what specific error messages mean so that asylum seekers can adjust their use of the app accordingly; referring asylum seekers to the local Mexican Office of Attention to Migrants for assistance in setting up CBP One accounts; identifying migrants who are at immediate risk of harm, linguistically isolated, and/or medically vulnerable; submitting humanitarian parole applications; creating self-help video materials about the CBP One app process in multiple languages; and accompanying and advocating for those who want to present at a POE without a CBP One appointment. We have also been required to divert resources to conduct POE monitoring to document how new iterations of the turnback policy play out in practice so that we can properly advise our clients and engage with policymakers and advocates. Notably, DHS officials explicitly stated in numerous stakeholder engagements, media appearances, and their own written policies, that individuals without CBP One appointments would be allowed to present at

POEs to seek asylum. Shortly before the end of Title 42, we brought all our U.S.-based staff to Tijuana so that we could explain imminent policy changes to as many migrants as possible. Our staff went to several migrant shelters in Tijuana and told thousands of migrants that they could present at POEs if one of the exceptions enumerated in the Biden Asylum Ban Rule applied to them. However, we quickly learned that individuals approaching POEs were instead being turned away, and that CBP was coordinating with Mexican law enforcement to ensure that asylum seekers could not wait at POEs to be processed. We then had to change all of our “know your rights” materials and go back to shelters to communicate what we had learned through POE observation.

69. In order to identify individuals and families impacted by the CBP One Turnback Policy, and inform refugees about the US asylum process, including the interaction between the CBP One and the Biden Asylum Ban Rule, each week we offer one in-person legal clinic at our Tijuana office, and one Know-Your-Rights presentation at a shelter. We provide workshops in English, Spanish, and Haitian Creole, and smaller orientation sessions in other languages as needed. These clinics also help us to identify and triage the cases of medically vulnerable refugees as well as those who are at risk of imminent harm, in order to connect them with services to support them until such time that they can cross the border. At these clinics, we also provide children’s activities and food. Many of the families coming are struggling with food insecurity and many of the children have no opportunities to play, relax, and just be kids.

70. In our engagements with DHS at the start of the Biden administration, we were told that DHS was committed to rebuilding access to the U.S. asylum system at the southern border. Despite our apprehension about working with the same agency that had effectuated family separations and metering, AOL took on a leadership role in the California Welcoming



Task Force in a good faith effort to work with CBP to restore access to asylum. We spent countless hours in stakeholder engagement meetings—hours that could have been spent assisting desperate migrants—in the hope that DHS would eventually fulfill its legal obligations to our clients when the Title 42 policy ended. AOL even expended enormous resources to identify thousands of vulnerable migrants for Title 42 exemptions and coordinate with CBP and our nonprofit partners north of the border to ensure that they were processed safely. Simply knowing the scale of the harm these policies cause and identifying the individuals who have been harmed remains an ongoing, monumental effort. Even though Title 42 went on far longer than anticipated, we hoped that, when it finally ended in May 2023, DHS would fulfill its promise of processing asylum seekers on arrival, in accordance with longstanding law. DHS’ flagrant and repeated violations of its obligation to process asylum seekers at POEs following the end of Title 42 surprised even the most cynical among us. Personally, knowing that the hours AOL staff and I spent in stakeholder meetings could have been more effectively spent helping migrants who suffered and died due to our lack of capacity to provide assistance, weighs heavily on my mind. This pointless diversion of resources resulted in loss of life that can never be restored.

Executed this 8th day of August, 2023, at Nazaré, Portugal.

A handwritten signature in black ink, appearing to read "Erika Pinheiro", written over a horizontal line.

Erika Pinheiro