

No. 23-3396

IN THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

AL OTRO LADO, INC., *et al.*,

Plaintiffs-Appellants,

v.

ALEJANDRO MAYORKAS, Secretary of Homeland Security, *et al.*,

Defendants-Appellees.

*Appeal from Judgment of the United States District Court
for the Southern District of California
No. 3:23-cv-01367*

**BRIEF *AMICUS CURIAE* OF HUMAN RIGHTS FIRST
IN SUPPORT OF PLAINTIFFS-APPELLANTS**

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CORPORATE DISCLOSURE STATEMENT

Amicus is a non-profit entity that has no parent corporation. No publicly held corporation owns 10 percent or more of any stake or stock in *amicus curiae*.

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STATEMENT OF INTEREST OF AMICUS¹

Human Rights First (“HRF”) is a non-governmental non-partisan human rights organization that works in the United States and abroad to promote respect for human rights and the rule of law. Since 1978, Human Rights First has worked to protect the rights of refugees, including the right to seek and enjoy asylum. It advocates for adherence to the 1951 Convention Relating to the Status of Refugees and the 1967 U.N. Protocol Relating to the Status of Refugees. HRF provides pro bono legal representation to refugees, working in partnership with volunteer lawyers at leading law firms to represent asylum seekers unable to afford counsel. HRF has conducted research and advocacy on U.S. regulations, policies and practices affecting persons seeking asylum at the U.S.-Mexico border, including the regulation promulgated under the title Circumvention of Lawful Pathways, 88 Fed. Reg. 31,314 (May 16, 2023) (the “asylum ban” or the “Rule”) and currently in force. Human Rights First has published multiple reports on the situation of those seeking asylum at the U.S.-Mexico border under current policies, as well as on

¹ Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(e), amicus curiae certifies that this brief was not written in whole or in part by counsel for any party, and no person or entity other than amicus curiae and its counsel has made a monetary contribution to the preparation and submission of this brief. The parties have consented to the filing of this amicus brief. See Fed. R. App. 29(a)(2).

policies and regulations promulgated under the prior administration that targeted this same population and likewise blocked many of them in Mexico for extended periods. Human Rights First submits this brief to provide context on the harms asylum seekers face in Mexico while they are unable promptly to register and obtain a fair assessment of their claims by U.S. immigration agencies, including as a result of the practices challenged by the present litigation.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

In May 2023, the Department of Homeland Security promulgated the Rule styled “Circumvention of Lawful Pathways.” The Rule rendered nearly all asylum seekers who traveled through another country on their way to the U.S. southern border or adjacent coastal areas ineligible for asylum unless they either applied for and were denied asylum in one of those countries, were able to secure one of a limited number of pre-scheduled appointments to enter at specified port of entry, using the smartphone application administered by U.S. Customs and Border Protection (“CBP”) and known as CBP One, or met an exception to the requirement to obtain a CBP One appointment. The legality of the Rule is the subject of separate litigation currently pending before this Court. *See East Bay Sanctuary Covenant v. Biden*, No. 23-16032 (9th Cir. filed July 26, 2023). As Plaintiffs-Appellants argued in seeking the preliminary injunction whose denial is seekers at issue here, the Rule did not purport to give CBP authority to turn away

asylum seekers lacking CBP One appointments. Nor could it, since there is no way for CBP to determine whether or not asylum seekers are subject to the Rule, or qualify for an exception, without processing them.

In reality, however, asylum seekers who should qualify for exceptions to the CBP One requirement, or who are not subject to it in the first place, are being prevented from approaching U.S. ports of entry, both by CBP and by Mexican immigration officers who refuse to let those without CBP One appointments pass. The limited number of CBP One appointments means that those who do obtain them are also facing long wait times. Human Rights First writes to describe the impact of this lack of access to asylum processing on those seek the protection of the United States at the southern border. People seeking asylum are forced to wait for extended periods of time in increasingly dangerous conditions in Mexico. Asylum seekers in Mexico are targets of widespread and serious abuses including kidnapping, torture, and violent assaults, at the hands of forces including cartels that control territory as well as agents of the Mexican State. As of the end of November 2023, Human Rights First has tracked over 1,300 reports of attacks against asylum seekers and migrants stranded in Mexico waiting to seek U.S. protection, including those trying to obtain CBP One appointments, since the current Rule took effect in mid-May.

The brazen and systematic targeting of asylum seekers and migrants for kidnapping and violence, including as they wait to access asylum processing at the U.S. border, has sharply escalated in recent months. This violence includes rape and other sexual violence, including against children; torture including amputation; kidnapping by non-state actors; and enforced disappearance. Black, Indigenous, and LGBTQ+ migrants are at particular risk of harm due to pervasive violence, harassment and discrimination in Mexico, including violence at the hands of Mexican state authorities. Lack of prompt access to asylum processing is also causing irreparable harm to persons with urgent medical conditions.

ARGUMENT

I. ASYLUM SEEKERS TRYING TO APPROACH PORTS OF ENTRY ARE SUFFERING GRAVE HARM AT THE GATES OF THE UNITED STATES DUE TO LACK OF TIMELY PROCESSING.

Both before and after the current Rule went into effect, Human Rights First researchers and humanitarian aid providers in northern Mexico spoke to countless asylum seekers who stated that they wanted to seek asylum in the United States through a port of entry. CBP, however, continues to limit the number of appointments available for this purpose through CBP One, while turning away, limiting, or metering asylum seekers without appointments, or leaving them stranded in Mexico. As of early October 2023, people waiting to seek U.S. asylum

at the Nogales port of entry, for example, were facing an estimated wait time of four to five months for new arrivals, as reported by monitors from the Kino Border Initiative. Human Rights First, *Inhumane and Counterproductive: Asylum Ban Inflicts Mounting Harm* 36 (October 2023) [hereinafter “*HRF Rep. Oct. 2023*”]. Most of these were Mexican nationals who were thus being blocked in the very country where they feared persecution. *Id.* at 44.

A Mexican family—not subject to the Rule by virtue of their nationality—who were fleeing imminent harm and death threats by the cartel in Sonora were blocked from accessing protection at the Nogales port of entry. The family, which included a U.S. citizen child and his pregnant mother, was informed of the months-long wait for persons without CBP One appointments. Believing they would be killed if they waited in Nogales, the family was forced to travel on through Sonora to a different port of entry. *HRF Rep. Oct. 2023* at 36.

A Mexican LGBTQ+ asylum seeker was found dead the first week of September 2023 in the apartment he was renting in Nogales. Since mid-July he had been on a waitlist of asylum seekers waiting to be processed by CBP at the Nogales port of entry, a list administered by the municipality of Nogales and which this asylum seeker had in fact been helping that municipality to administer. *Id.*

Even asylum seekers with urgent medical situations, when they have succeeded in approaching a port of entry, have faced extensive and dangerous

processing delays as CBP continues to prioritize those with CBP One appointments. At the Brownsville port of entry, for example, CBP has forced asylum seekers with urgent medical or protection needs to wait outdoors all day and all night in the heat on or near the Gateway International Bridge, without shelter, food, water, or critical medical care, for periods of days and up to a week at times. *HRF Rep. Oct. 2023* at 36. Those forced to wait under these conditions have included pregnant women, babies, seriously ill people, including those with diarrhea and vomiting, children with severe disabilities, and a person who had seizures on the bridge while waiting to be processed by CBP. *Id.*

At the Reynosa port of entry, in August 2023, a pregnant woman from Haiti lost her baby after CBP forced her to wait for two days on the Gateway International Bridge while ill. A humanitarian aid worker notified the local CBP Office of Field Operations of the woman's worsening situation, including when she began to bleed. She was instructed to use the bathroom on the Mexican side of the bridge, forcing her to cross back to wash herself. After notifying CBP, the woman was obliged to wait for an additional 12 hours before CBP finally processed her because she did not have a CBP One appointment. Upon entry to the United States, she was hospitalized and suffered a miscarriage. *Id.* at 37.

A severely ill Venezuelan man, HIV+ and not receiving HIV treatment, was forced to wait days to be processed at the Matamoros port of entry, sleeping outside without food or water. *Id.*

Mexican authorities also prevent people they identify as asylum seekers without CBP One appointments from approaching U.S. ports of entry that accept such appointments, including urgent medical cases and asylum seekers such as unaccompanied minors and nationals of Mexico to whom the ban does not apply. These Mexican authorities are serving as gatekeepers to CBP and both enforcing and often exacerbating CBP's own limitations on access to ports of entry. In Matamoros, Tamaulipas, Mexican officials have removed people who had made it onto the Gateway International Bridge without CBP One appointments and returned them to Mexico. On one occasion, a humanitarian aid worker relayed an account of Mexican immigration officers who crossed the limit line into the United States to remove an asylum seeker who did not have a CBP One appointment, forcing the asylum seeker to return to Mexico. *HRF Rep. Oct. 2023* at 37.

A pregnant Haitian unaccompanied minor was not subject to the ban or indeed authorized to use the CBP One app due to her age. She first attempted to approach the Matamoros port of entry on her own in June 2023, but Mexican immigration officers blocked her. Human Rights First, *Refugee Protection Travesty* 44 (July 2023) [hereinafter "*HRF Rep. July 2023*"]. Local humanitarian

workers then accompanied her and were able to approach U.S. CBP officers.

When they informed the officers that she was an unaccompanied minor seeking asylum, a CBP officer responded, “Sweetheart, we’re not going to take her.” It was only after the humanitarian workers advocated with other U.S. officials by telephone that the girl was finally processed. *Id.* at 45.

Restricted access to ports of entry for asylum seekers, including those in acute danger or dire humanitarian situations, is spurring them to cross the border into the United States in an irregular manner, a fact confirmed by Human Rights First interviews with migrants and asylum seekers, including some who crossed the border into Arizona and Texas in September, as well as humanitarian workers on both sides of the border.

A Venezuelan man who was HIV-positive, ill, and in need of medical treatment, for example, had struggled for two months to obtain a CBP One appointment while in Matamoros. He approached Mexican immigration authorities to plead his case for access to asylum protection through the port of entry and they told him to cross the river into the United States. Desperate to receive medical attention and reach safety, he crossed between ports of entry into Brownsville. He was held by the Border Patrol for nine days, during which he showed medical records confirming his HIV+ diagnosis and was denied any medical attention. He expressed he was ill and needed medication, but was told,

“you suffer the consequences if you come here and you’re sick” and was instructed to drink water. He expressed fear of return to Venezuela but was not given a credible fear interview or the chance to even make a phone call during his nine days of detention. He was put on a bus back to Mexico and given a paper: an expedited order of removal with a five-year ban on reentry. *HRF Rep. Oct. 2023* at 34.

II. ASYLUM SEEKERS IN MEXICO ARE SUBJECT TO EXTREME VIOLENCE AND HARM.

Many asylum seekers are waiting several months—up to six months in some cases—in Mexico for CBP One appointments in an attempt to request asylum at one of the ports of entry where such appointments are given. As the U.S. Department of State has repeatedly recognized, human rights conditions in Mexico continue to be marked by forced disappearances and arbitrary killings, including at the hands of government agents. Criminal elements and groups, including local and transnational gangs and narcotics traffickers, commit “acts of homicide, torture, kidnapping, extortion, human trafficking, bribery, intimidation and other threats, resulting in high levels of violence and exploitation.” U.S. Dep’t of State, *2022 Country Reports on Human Rights Practices: Mexico 2* (2023), https://www.state.gov/wp-content/uploads/2023/02/415610_MEXICO-2022-HUMAN-RIGHTS-REPORT.pdf [hereinafter “2022 State Dep’t Report”].

Asylum seekers and other migrants are frequent victims of these attacks, targeted “by criminal groups and in some cases by police, immigration officers, and customs officials, including at land borders and airports.” *Id.* at 19. Migrants are targets for all these state and non-state actors because of their status and vulnerability as migrants, their often very visible foreignness, their lack of protection, and the fact that they may have U.S.-based family who could be targeted for extortion. Human Rights First has documented the stories of thousands of asylum seekers and migrants who suffered horrific attacks in Mexico, including persecution on the basis of nationality, race, sexual orientation, gender identity, and other protected characteristics. These include over 13,000 reports of murders, kidnappings, rapes, and other violent attacks against migrants blocked in or expelled to Mexico under the former Title 42 expulsion policy between January 2021 and the end of that policy in May 2023. Human Rights First, *Human Rights Stain, Public Health Farce 2* (Dec. 2022), <https://humanrightsfirst.org/library/human-rights-stain-public-health-farce/>. As of the end of November, 2023, Human Rights First has tracked over 1,300 reports of attacks against asylum seekers and migrants stranded in Mexico waiting to seek U.S. protection, including those trying to obtain CBP One appointments, since the current Rule took effect in mid-May. *See* Human Rights First Tracker of Attacks

Against Migrants Under Asylum Ban in 2023,

<https://humanrightsfirst.org/library/asylum-ban-harms-tracker/>.

These attacks are frequent and violent, as the following examples show. And while the Rule provides that an “imminent and extreme threat to life or safety” is among the “exceptionally compelling” circumstances that can provide an exception to the Rule, CBP’s de-prioritization of persons without CBP One appointments means that those actually experiencing such extreme threats face extreme difficulties in presenting them to U.S. immigration authorities for consideration.

A. Killings, violent assaults, and rape

The U.S. government flatly advises against travel to six Mexican states—one of them the border state of Tamaulipas—due to the threat of criminality and violence. In states where it will contemplate travel, the U.S. government prohibits its own employees, for security reasons, from engaging in most of the activities that asylum seekers have little choice but to engage in as they seek to apply for asylum at the U.S.-Mexico border. *See* U.S. Dep’t of State, Mexico Travel Advisory (Oct. 5, 2022), <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/mexico-travel-advisory.html>. Cartels and gangs have been “implicated in numerous killings, acting with impunity and at times in collusion with corrupt federal, state,

local, and security officials.” U.S. Dep’t of State, *2022 Country Reports on Human Rights Practices: Mexico 2* (2023), https://www.state.gov/wp-content/uploads/2023/02/415610_MEXICO-2022-HUMAN-RIGHTS-REPORT.pdf. Mexico’s drug-trafficking organizations “have substantial territorial control throughout the country and co-opt institutions through bribery and intimidation;” in addition to drug-trafficking, they engage in “oil theft, human trafficking, kidnapping, and extortion, earning billions of dollars annually. Global Organized Crime Index, Mexico, <https://ocindex.net/country/mexico>. Violence against women and girls—including rape, sexual assault, and femicide—is pervasive in Mexico, with high rates of impunity. *2022 Country Reports: Mexico (2023)* at 25-19. Migrant women face a particularly high risk of sexual assault. See Women’s Refugee Commission, *Stuck in Uncertainty and Exposed to Violence: The Impact of US and Mexican Migration Policies on Women Seeking Protection in 2021* (Feb. 2, 2022), <https://www.womensrefugeecommission.org/research-resources/stuck-in-uncertainty-and-exposed-to-violence-the-impact-of-us-and-mexican-migration-policies-on-women-seeking-protection-in-2021/>.

A cartel in Reynosa, for example, kidnapped two young women and two young men from Venezuela in September 2023 while they were waiting to obtain a CBP One appointment. The kidnappers killed one of the young men, as the

survivors later described to a humanitarian aid provider in Matamoros. *HRF Rep. Oct. 2023* at 14-15.²

Also in September 2023, persons who identified themselves as members of a cartel in Reynosa kidnapped a Mexican family consisting of a mother, father, two teenage children, and five-year-old daughter, along with the father's two adult brothers. The cartel members tortured and killed the two adult brothers, sexually assaulted the five-year-old daughter, and forced her family to witness this assault, as they subsequently recounted to a humanitarian aid provider. The family was released after relatives paid the ransom their captors demanded, but they remain in danger in Mexico and in need of critical trauma-related psychiatric care. *HRF Rep. Oct. 2023* at 44.

In September 2023, while waiting to seek asylum in the U.S., a Venezuelan man was shot in the head by members of an organized criminal group after being pulled off a bus that the criminal group had stopped and boarded to kidnap passengers. The man survived the shooting but lost his eye, as confirmed by a humanitarian aid provider. *HRF Rep. Oct. 2023* at 15.

² The past months have seen increasing threats against and surveillance of migrants waiting in Mexico for CBP One appointments, which are also extending to humanitarian workers assisting these asylum seekers. For these reasons, a number of the humanitarian aid providers who spoke to Human Rights First asked not to be identified.

A woman who had fled persecution in Honduras was living alone in a makeshift tent in an encampment in Matamoros for three months trying to obtain a CBP One appointment to seek asylum when she was raped in her tent at night in late May 2023 by a man who cursed at her for being a migrant and threatened to kill her if she told anyone. She screamed for help, but no one came. Her rapist returned another night in early June 2023 and attempted to rape her again. This time she was able to defend herself and escape the camp. Terrified, she filed a police report in Mexico. She attempted to access the U.S. port of entry in Matamoros after both attacks, but on both occasions Mexican immigration officers blocked her from accessing the U.S. port of entry despite her evidence and testimony that she feared for her life. Instead, Mexican immigration officers questioned her as to whether she was in fact raped. She reports receiving death threats related to her sexual assault by telephone. “I am afraid for my life here,” she told a Human Rights First researcher. “In my country, I’m a professional. I had a career. I’m not coming to work. I came because my life was in danger. And something that had never happened to me—a rape—happened to me here.” *HRF Rep. July 2023* at 10-11.

An elderly Colombian woman travelling alone was physically attacked and verbally assaulted in the Matamoros camp by a member of the cartel who identified himself as the person in charge and whom others said was the leader.

HRF Rep. July 2023 at 16. She hid in another family's tent, pleading to be allowed to sleep there that night before escaping the camp the next day. "The terror I felt that night was the worst in my life. They [the cartel] don't respect if you're an older woman, a child, a pregnant woman. People are taken from the camp and disappeared, and no one can say anything." *Id.*

A Venezuelan young adult was kidnapped when entering Reynosa by bus in September 2023. On the fourth day, the cartel cut off his finger and sent the images to his relatives demanding immediate ransom for his abduction. His relatives in Venezuela made the ransom payment, but six days later at the time of speaking to a Human Rights First researcher, the family had still not heard if he was safe. *HRF Rep. Oct. 2023* at 14.

B. Forced disappearances, trafficking and extortion

In Mexico, "[d]isappearances remained a persistent problem throughout the country, especially in areas with high levels of cartel- or gang-related violence." *2022 State Dep't Report* at 3. Criminal groups often kidnap, threaten, and extort migrants. *Id.* at 19. The Mexican National Search Commission registered 1,800 migrants of 55 nationalities as missing between January 2023 and end of August of this year and noted that one in four missing migrants is a child. *Cientos de Migrantes Desaparecen en México: Tamaulipas, el Estado Más Peligroso* [*Hundreds of Migrants Disappear in Mexico: Tamaulipas the Most Dangerous*

State], El Financiero (Aug. 30, 2023),

<https://www.elfinanciero.com.mx/nacional/2023/08/30/cientos-de-migrantes->

[desaparecen-en-mexico-tamaulipas-el-estado-mas-peligroso/](https://www.elfinanciero.com.mx/nacional/2023/08/30/cientos-de-migrantes-desaparecen-en-mexico-tamaulipas-el-estado-mas-peligroso/). (The highest number of disappearances were registered in the northern border state of Tamaulipas where brazen, widespread kidnappings are occurring, followed by Mexico City, the southern border state of Chiapas, and northern border states of Baja California and Sonora. *Id.*)

An asylum seeker from a Latin American country waiting to seek U.S. asylum, for example, was kidnapped in Mexico where she was held captive and abused for about a month and a half, according to information received by an attorney with Lawyers for Good Government in Reynosa. She was able to escape her captors, only to be taken and held captive a second time. She said: “I was held captive at this house for about two months and I thought the only way I would leave the house was if I were dead.” Her captors trafficked her to drug dealers who raped her on several different occasions. She went into hiding upon escaping and had been requesting a CBP One appointment daily without success. She was unable to present at the port of entry to seek U.S. asylum protection due to Mexican immigration officers unlawfully blocking access to individuals without CBP One appointments. *HRF Rep. July 2023* at 11-12.

A Venezuelan woman and child were kidnapped, and the mother was raped while waiting for a CBP One appointment. *Id.* at 12. They were then denied access to the port of entry by Mexican officers. The mother, her minor son, and adult sister attempted to obtain a CBP One appointment to seek asylum in mid-May 2023 when they were kidnapped and held for 12 days in Reynosa in June 2023. Their abductors threatened to take their organs if their families did not pay a ransom. *Id.*

Four young Venezuelans, one of them a minor, traveling together arrived in Matamoros after the Rule entered into force. They had been trying to obtain a CBP One appointment to seek U.S. asylum since April. *Id.* at 12-13. Mexican immigration officers blocked them from the U.S port of entry in Matamoros so they traveled to Reynosa in June, where they heard they might be able to access the port of entry. In Reynosa, they were intercepted by a car while walking. The driver asked where they were from and then kidnapped and held them hostage for three days. During that time, they were all physically assaulted and the women were tortured for ransom. The kidnappers threatened “[i]f you don’t pay, we’ll cut off your fingers.” The family’s relatives paid the ransom and they were released. After their release they lived in constant fear, as their kidnappers took their photos. Following the kidnapping, they escaped Reynosa and returned to Matamoros. They attempted to request asylum at the Matamoros port of entry, explaining their

fear and what had happened, but were prevented from approaching the U.S. port of entry by Mexican immigration officers who wrongly turned them away because they did not have a CBP One appointment. *Id.*

These abuses are by no means limited to non-state criminal groups. Migrants and people seeking asylum are targets of violence by Mexican officials throughout the country, with the result that internal relocation is not a reliable option for those facing threats in the northern border areas while waiting to seek asylum in the United States. Human Rights First researchers spoke with scores of people seeking asylum who experienced abuse by Mexican authorities during their transit through and wait in southern, central, and northern Mexico. The officials involved included national immigration officers, municipal, state and federal police, and members of the national guard. The abuses they inflicted on migrants included discriminatory and arbitrary detention, intimidation, robbery, extortion, sexual assault, and enforced disappearance through collusion with organized criminal groups by turning migrants and people seeking asylum over to them for kidnapping and ransom. *HRF Rep. July 2023* at 50.

In Ciudad Juárez, a Venezuelan family with a two-year old child had been sleeping outside the port of entry without shelter for 15 days, waiting to be processed to seek asylum, when a Human Rights First researcher met with them in June 2023. They recounted that while they were transiting through Mexico by bus,

Mexican immigration police ordered them off the bus and handed them over to a cartel that held them captive for 15 days and demanded a \$1,500 USD ransom per person to release them. “We wanted to file a police report, but you never know if the police are good or are one of them,” a member of the family explained. *HRF Rep. July 2023* at 51.

The threat or actual experience of such harm, and the long waits and difficulty of obtaining CBP One appointments, drive asylum seekers to cross the U.S. border without inspection. In September 2023, a Human Rights First researcher spoke with a Mexican woman who had spent eight months in Reynosa sleeping in a tent inside a migrant shelter with her adolescent daughter while struggling to obtain a CBP One appointment. “Many kidnappings occurred outside the shelter in broad daylight because migrants were only allowed out during certain hours,” she said. “Trucks would arrive and take people. Many witnessed it. The kidnappings got worse in the last three months and people barely left the shelter. . . Because of this, everyone crossed [into the United States].” *HRF Rep. Oct. 2023* at 17.

C. Harms to children

As the examples described above illustrate, those affected by the lack of access to asylum processing at the U.S. border include many families with children ranging in age from adolescents to newborns. These children are exposed in

Mexico to what would be traumatic conditions and experiences even for an adult, and to living conditions so unhealthy as to be life-threatening to young children.

Parents blocked in Mexico live in fear that their children will be kidnapped; several have told Human Rights First researchers that they tie their children to themselves with cable wires at night to prevent them from being taken. *HRF Rep. July 2023* at 16, 17. Parents watch powerlessly as their children’s mental health deteriorates. One mother, from Ecuador, living in an unsafe camp in Matamoros for two months unsuccessfully trying to obtain a CBP One appointment, was at her wits’ end and contemplating crossing the border without authorization as her teenage daughter’s mental health was worsening. “She cuts herself. She feels very unsafe here. There is no privacy. How can we cross?” *HRF Rep. July 2023* at 17.

An entire family from Venezuela, consisting of a mother, father, and their adolescent and pre-school-aged children, who had been trying to obtain a CBP One appointment were kidnapped by a cartel in Reynosa in early June and held for ten days. *Id.* at 13. During this time, the mother was sexually abused by cartel members on two occasions. The family also described witnessing intense beatings of migrant men and hearing their screams, including one man who was severely assaulted and begged his family by telephone to send the money their captors required or he would be killed. “It was horrible,” the mother said. “You don’t know if you’ll get out alive. My kids cried and cried. They wanted to leave,

wanted to cross [to the United States]; they didn't want to be here.” The cartel kept the smartphone the family had used to register for CBP One, so upon their release they had to register again, while continuing to receive threatening calls from their kidnappers demanding payment of more money on the phone they had managed to retain. *Id.*

A mother from Venezuela, her minor son, and adult sister had been attempting to obtain a CBP One appointment to seek asylum since mid-May 2023 when they were kidnapped and held for 12 days in Reynosa in June 2023. *HRF Rep. July 2023* at 12. Their abductors threatened to take their organs if their families didn't pay a ransom. The women described being placed in a room with 50 people from China, Cuba, Ecuador, Honduras, Mexico, and Russia, including children as young as two years old. Their kidnappers threatened and beat people, including the children. “We witnessed them [the cartel] taser men with electricity who screamed in pain right in front of us and severely beat men if the transfer payment hadn't come through. My son cried a lot, begging to leave. They'd also give drugs to the teenage children.” That first night, a cartel member raped the Venezuelan mother. “He threatened to kill my son and sister and threatened me to stay quiet. We were terrified each time the door opened and our abusers entered. We prayed and prayed. We feel completely unsafe here in Mexico. We're terrified to go outside; afraid we'll be taken again.” *Id.*

Many children, like their parents, are living in unsafe and unsanitary conditions, both outside the ports of entry and in open-air encampments along the edge of the Rio Grande. Human Rights First researchers have witnessed abysmal conditions in both Matamoros and Reynosa, Tamaulipas, where thousands of women, men, and children are living in makeshift tents made of blankets and garbage bags, lacking minimum humanitarian standards of shelter, water, sanitation and hygiene, nutrition, and health services. *HRF Rep. July 2023* at 47. There are piles of garbage, burn pits to deal with waste, limited porta-potties, and a dangerous lack of sanitation and clean water which can present a risk of cholera. Respiratory and gastrointestinal illnesses and skin infections are prevalent. *Id.* Living in these conditions gives parents justifiable fears for the survival of their little children. A Haitian mother in June 2023 worried about her one-month-old, who was running a fever and having trouble breathing; the two were living in the extreme summer heat in a Haitian encampment in Matamoros. *Id.* at 49. A two-month-old Honduran baby who had had diarrhea for a week was sleeping in a tent in an encampment in Reynosa. His mother, who was still breastfeeding, told of how she and their entire family had gastrointestinal symptoms and diarrhea, with limited potable water to drink to stay hydrated. *Id.*

D. Pervasive violence and discrimination against Black, Indigenous, and LGBTQI+ migrants

In Mexico, Black asylum seekers and migrants face pervasive anti-Black violence, harassment, and discrimination, including widespread abuse by Mexican authorities. See Black Alliance for Just Immigration, *“There Is A Target On Us” – The Impact of Anti-Black Racism on African Migrants at Mexico’s Southern Border* (2021), <https://baji.org/wp-content/uploads/2021/01/The-Impact-of-Anti-Black-Racism-on-African-Migrants-at-Mexico.pdf>. Haitian Bridge Alliance organized at least a dozen funerals since December 2021 for Haitian migrants who died or were killed in Mexico while stranded due to the recently ended Title 42 expulsion policy, including for a 34-year-old Haitian asylum seeker who was murdered last year. *HRF Rep. July 2023* at 61. The kidnapping in March 2023 of four Black U.S. residents—and murder of two of them—in Matamoros has underscored the violence and targeted attacks that Black people have long faced by cartels in Mexico. Maham Javaid & Paulina Villegas, *What We Know About Matamoros and the Kidnapped Americans*, Wash. Post (Mar. 7, 2023), <https://www.washingtonpost.com/world/2023/03/06/americans-medicine-kidnapped-mexico/>.

A Haitian mother traveling with her husband and young child who was trying to obtain a CBP One appointment described how while she and her family were aboard a bus transiting to the border, a female Mexican immigration officer targeted only them, the only Black passengers aboard the bus, for a search of their

belongings, and inappropriately groped her breasts and searched inside her pants. *HRF Rep. July 2023* at 39. A Venezuelan woman staying in a shelter in Tijuana with her family in July 2023 described how a week earlier, her husband had witnessed Mexican police officers beating up Haitians across the street from the shelter. When he intervened to defend them, she said, Mexican police pulled a gun on him. *Id.*

Indigenous people, LGBTQI+ individuals, women, children, and people with disabilities also face a high risk of violence in Mexico. The U.S. State Department noted frequent violence and discrimination against Indigenous women, who are among the most vulnerable groups in society according to the National Human Rights Commission. LGBTQI+ persons face widespread violence and mistreatment, including by Mexican police. Transgender women in particular face an enormous risk of harm; in 2021, 55 transgender women were killed in Mexico. *HRF Rep. July 2023* at 62 (citing *2022 State Dep't Report*).

In Nogales, a Colombian LGBTQI+ asylum seeking woman fleeing sexual violence and persecution by Colombian authorities on account of her sexual orientation, as well as displacement by armed groups, was sexually assaulted by a female Mexican state police officer while transiting on a bus enroute to northern Mexico. *HRF Rep. July 2023* at 41. The Mexican officer solely targeted for search Colombian nationals on the bus and ordered the Colombian LGBTQI+ woman into

the bus bathroom where the officer stripped off her clothing and digitally penetrated her vaginally without use of a glove, alleging the asylum seeker was transporting cocaine, and then robbed her of her money. *Id.*

“I’m gay,” a young Venezuelan man living in the Matamoros camp waiting to seek asylum explained to Human Rights First. “And over there [in Venezuela], you’re not free to be who you are. Being in the camp here is like being over there. You live the same experiences: lack of respect and verbal violence. There was a group of migrant men in the camp who harassed gay and lesbian people to violate them.” *Id.* at 42.

CONCLUSION

For these reasons and for those stated in Plaintiff-Appellants’ Opening Brief, *amicus* urges the Court to reverse the judgment of the District Court and, in light of the harm described above, direct the District Court to issue the preliminary injunction Plaintiffs seek.

Dated: December 12, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 12, 2023, I electronically filed the foregoing with the Clerk for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. All participants in this case are registered CM/ECF users and will be served by the appellate CM/ECF system.

/s/ Warren Craig
Warren Craig

Dated: December 12, 2023

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