

No. 25-2581

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

IMMIGRANT DEFENDERS LAW CENTER,
Plaintiff-Appellee,

v.

KRISTI NOEM, et al.,
Defendants-Appellants.

APPEAL FROM THE
UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
NO. 2:20-CV-09893 (HON. JESUS G. BERNAL)

**BRIEF OF *AMICUS CURIAE*
THE NATIONAL IMMIGRANT JUSTICE CENTER
IN SUPPORT OF PLAINTIFF-APPELLEE**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, Amicus states that Amicus have no parent corporation nor is it publicly held. The National Immigrant Justice Center NFP (NIJC) is not-for-profit corporation. NIJC has no parent corporation and no publicly-held corporation owns 10% or more of its stock.

DATED: August 11, 2025

/s Charles Roth
Charles Roth

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INTEREST OF *AMICUS CURIAE*¹

Amicus Curiae the National Immigrant Justice Center (“NIJC”) is a Chicago-based not-for-profit organization that provides legal representation and consultation to low-income immigrants, refugees, and asylum seekers. Each year, NIJC represents hundreds of individuals before the immigration courts, the Board of Immigration Appeals, and the federal appellate courts. NIJC is committed to expanding access to justice for asylum seekers in removal proceedings.

NIJC represented or assisted immigrants placed into the so-called Migrant Protection Protocols (“MPP”) proceedings after entering in or around Laredo, Texas. *Amicus* witnessed the degradation of access to justice for asylum seekers who are placed in MPP. In describing how MPP thwarts access to justice at every step, this brief also addresses violence in Mexico and the forced cooperation between the U.S. and Mexican officials under the MPP.

NIJC frequently consults with, on or co-counsels, cases with law firm partners, including a law firm that provides pro bono representation in matters arising in the Laredo, Texas area. NIJC has supported border matters involving

¹ No counsel for any party authored this brief in any part, and no person or entity other than *Amicus*, its members, or its counsel made a monetary contribution to fund its preparation or submission. Both parties have consented to this filing.

immigrant children, women in Immigration and Customs Enforcement custody at the Laredo Detention Center and, soon thereafter, to mothers with children and other family members, most of whom had fled gender-based violence and other persecution in their home countries. NIJC supports pro bono attorneys who visit immigrants at the detention centers in and around Laredo, has provided Know Your Rights presentations to immigrants detained in those jails, prepared detained immigrants for “credible fear” interviews with asylum officers, and represented clients in removal proceedings.

Amicus’ Work During the Original MPP

In 2019, the Trump administration initiated MPP (“MPP” or “MPP 1.0”), a policy under which newly-arrived immigrants seeking asylum at the southwest border were barred from entering the United States and were instead sent back to Mexico to await their U.S. immigration proceedings there. When MPP 1.0 was launched in Laredo, NIJC supported pro bono attorneys responding to the legal and logistical challenges of providing services to asylum seekers sent back to Nuevo Laredo, the town across the border from Laredo, Texas. This work focused on providing pro bono representation and pro se counseling to asylum seekers subject to MPP who had claims pending in the Laredo Immigration Hearing Facility (“LIHF”). The LIHF was a “tent court”—a facility constructed of tents and

shipping containers, where immigrants presented their claims over video-conference to the immigration judges of the San Antonio Immigration Court (and, occasionally, the Fort Worth Immigration Adjudication Center).

During MPP 1.0, NIJC's pro bono partners represented approximately 140 immigrants in MPP proceedings in Laredo. Those clients prevailed in 45 out of 47 asylum trials in MPP Laredo proceedings. Pro bono counsel also provided legal consultations to over 1,000 immigrants in MPP proceedings in Laredo, and conducted daily Know Your Rights presentations in the Laredo hearing facility in the weeks leading up to the pandemic-imposed court closures. NIJC co-counseled on some of these cases and independently handled other matters heard at the LIHF. LIHF immigration judges provided protection-based relief to all of NIJC's clients.

As some of the very few lawyers practicing at the LIHF, *Amicus* observed first-hand the ways in which MPP 1.0 at Laredo deprived individuals seeking refuge in the United States of access to justice. When the Biden Administration decided to terminate MPP 1.0, its memorandum discussed "several barriers in accessing counsel both in the United States and in Mexico," citing a brief filed by *Amicus* and a pro bono partner. See Dep't of Homeland Sec., *Explanation of the Decision to Terminate the Migrant Protection Protocols*, 17 & n.70 (October 29, 2021) <https://tinyurl.com/2bpxp9xr> (citing Brief of the Laredo Project et al. as

Amici Curiae Supporting Respondents at 20-21), *Innovation Law Lab*, 141 S. Ct. 2842 (No. 19-1212)).

The stories recounted herein are from pro bono counsel working with *Amicus* unless otherwise specified. Despite the inherent challenges and risks, *Amicus* is dedicated to bolstering access to justice for immigrants who are detained or are otherwise in immigration proceedings in Laredo. Consequently, *Amicus* has a strong interest in this matter—and a strong interest in safeguarding access to justice from the deleterious effects of MPP.

SUMMARY OF ARGUMENT OF AMICUS

Access to justice “is the right conservative of all other rights, and lies at the foundation of orderly government.” *Chambers v. Balt. & Ohio R.R. Co.*, 207 U.S. 142, 148 (1907). Access to justice includes (1) a meaningful opportunity to be heard and (2) the ability to obtain the assistance of counsel. *See Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (“The fundamental requirement of due process is the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’”); *Batanic v. INS*, 12 F.3d 662, 667 (7th Cir. 1993) (an alien’s right to representation by counsel of the alien’s choice is “an integral part of the procedural due process to which the alien is entitled”) (quotation marks omitted); *Leslie v. Att’y Gen.*, 611 F.3d 171, 181 (3d Cir. 2010) (same); *Frech v. U.S. Att’y Gen.*, 491

F.3d 1277, 1281 (11th Cir. 2007) (same); *Baltazar-Alcazar v. INS*, 386 F.3d 940, 944 (9th Cir. 2004) (same); *Saakian v. INS*, 252 F.3d 21, 24 (1st Cir. 2001) (same); *Iavorski v. INS*, 232 F.3d 124, 128 (2d Cir. 2000) (same). MPP corrodes these twin pillars of access to justice.

Under MPP 1.0 in Laredo, Texas, *Amicus* witnessed first-hand how swiftly a policy can all-but-eliminate the access to justice protections afforded to those seeking asylum in the United States. Under MPP, asylum seekers located in Mexico often struggled to locate attorneys who could represent them across the border in United States immigration court. And even when asylum seekers managed to find representation for proceedings at LIHF, their lawyers faced serious obstacles providing representation: immigrants generally could not meet with their attorneys in person, had limited (or no) ability to receive or review documents, and had insufficient access to privacy and working phones. At times, clients represented by *Amicus* were under surveillance by Mexican cartels while conducting trial preparation by phone with their lawyers. Tragically, many were also kidnapped and became disconnected from their lawyers as a result, at times missing hearings because they were being held hostage by a cartel. Fear of kidnapping drove asylum seekers away from Nuevo Laredo, often rendering them

transient and without the ability to communicate with counsel. These very issues led DHS to terminate MPP in June 2021 and again in October 2021.

A Texas district court and the Fifth Circuit required DHS to continue MPP, effectively blocking meaningful access to justice. With its hands tied, DHS claimed a commitment to “reimplementing MPP in a way that enhances protection for individuals enrolled in the program” by coordinating with the Government of Mexico to provide access to shelters and transportation to and from hearings, as well as by handing out legal resource packets. Memo. from Dep’t of Homeland Sec., *Guidance Regarding the Court-Ordered Reimplementation of the Migrant Protection Protocols* (Dec. 2, 2021), <https://tinyurl.com/mtsx56t8> (“MPP Reimplementation Memo”). But these marginal steps did not solve the access to justice obstacles inherent in MPP.

Legal representation is the single most important factor affecting the outcome of an asylum claim. Yet, access to counsel is thwarted at every stage under any version of MPP. *First*, obtaining counsel was extremely difficult under MPP. Counsel was largely unavailable to immigrants in Mexico pursuing asylum claims across the border. Immigrants were usually in the United States for less than a day before being returned to Mexico and remained in government custody the entire time. During this time, only a few lawyers had very limited access to

immigrants for the sole purpose of providing an overview of MPP. The attorneys present at the LIHF could not possibly evaluate claims and take on representation of the hundreds of immigrants enrolled in MPP. All immigrants received was a near-empty list of legal service providers who were largely unavailable to help them. Violence in Mexico is endemic and cartels prey on immigrants. As a result, immigrants in MPP had to find ways to contact these legal service providers by phone because they were unable to meet with most attorneys across the border. This set-up almost assured asylum relief would be impossible for the vast majority of asylum seekers subject to MPP.

Second, even if an immigrant under MPP retained counsel, attorneys faced numerous challenges preparing the immigrant's claim. *Amicus*, for instance, could not travel to Nuevo Laredo due to the extreme danger such trips posed to attorneys and clients. Accordingly, attorneys typically could not meet their clients in person before appearing in court. Mailing documents was impossible because immigrants in MPP were transient and often lived in temporary shelters or public spaces without reliable mailing service, and phone communication was often limited. Yet, attorneys were tasked with establishing trust with their extremely traumatized clients, building a case, and preparing a filing that often spanned hundreds of pages

of a variety of documents and reports. The obstacles were daunting and often insurmountable.

Third, many attorneys met their clients in person for the first time about an hour before the hearing on the client's one-and-only asylum hearing was to take place. This left many attorneys scrambling to establish a rapport with their clients, reviewing with clients for the first time the massive filing that the attorney prepared, and to answer any questions—all in less than the one hour usually permitted by authorities at the LIHF.

DHS's promise to provide transportation to and from hearings did nothing to ensure better access to counsel. It also did not address the limitations at the hearings themselves, such as the fact that the tent court's microphones pick up every sound making confidential communication between clients and attorneys almost impossible. Moreover, even this limited transportation benefit required cooperation with the Mexican government, which often was unwilling or unable to protect immigrants. Mexican government agents often turned a blind eye to, or actively participated in, violence against MPP enrollees. This can hardly be considered access to justice.

MPP is plagued by unfixable structural problems and its defects erode the very nature of our justice system. The District Court order should be upheld.

ARGUMENT

I. Access to Justice Is Critical In Asylum Cases.

Consistent with the most basic access to justice principles, a noncitizen placed in removal proceedings has a statutory right to “counsel of the [noncitizen’s] choosing” and a “reasonable opportunity ... to present evidence on the [noncitizen’s] own behalf.” 8 U.S.C. § 1229a(b)(4). “The availability or absence of legal assistance often determines whether or not a person can access the relevant proceedings or participate in them in a meaningful way.” U.N. Human Rts. Comm., *General Comment No. 32: Article 14, Right to Equality Before Courts and Tribunals and to a Fair Trial*, ¶¶ 9-10, U.N. Doc. CCPR/C/GC/32 (Aug. 23, 2007). This is no different in asylum proceedings.

Indeed, having counsel is the “single most important factor affecting the outcome of an asylum case.” Sabrineh Ardalan, *Access to Justice for Asylum Seekers: Developing an Effective Model of Holistic Asylum Representation*, 48 U. Mich. J.L. Reform 1001, 1015 n.51 (2015) (quoting Am. Bar Ass’n Comm’n on Immigr., *Reforming the Immigration System: Proposals to Promote Independence, Fairness, Efficiency and Professionalism in the Adjudication of Removal Cases: Executive Summary ES-7* (2010)). That is not surprising because presenting any asylum claim is daunting. Asylum seekers must prepare the Application for

Asylum and for Withholding of Removal (Form I-589), which comprises over one hundred questions. This form must be completed and submitted in English, yet most asylum seekers have little or no English proficiency. *See* U.S. Dep’t of Just., EOIR, *Statistics Yearbook: Fiscal Year 2018*, at 18, <https://tinyurl.com/t3v39le> (last updated Aug. 30, 2019) (reporting that 89% of immigration court cases required translation services).

Furthermore, successful asylum applicants generally must support their claims with evidence such as police reports, medical records, identification documents, and photographs—but asylum seekers frequently flee with little more than the clothes on their backs. And even those who bring documentation may have it stolen. If kidnapped, as many are, asylum seekers often are stripped of their possessions, including documents and photos (in hard copy or stored electronically on their cell phones). And asylum seekers frequently have reason to fear that friends and family back home will face persecution if they help the asylum seekers to gather documentation. Lawyers are the best, and often the only, feasible way for an asylum seeker to collect official documentation without the involvement of the applicant’s vulnerable friends or family. Other essential parts of the presentation include coordinating fact affidavits from witnesses in the applicant’s home country; retaining an expert to prepare a report regarding the

state of human rights and other conditions in the applicant's country of origin; and coordinating certified English translations of any non-English language materials relevant to the applicant's fear of return to their country.

Without lawyers, asylum applicants' challenges are further compounded by their reactions to trauma. Having fled extreme violence in search of safety, many asylum seekers experience post-traumatic stress disorder ("PTSD") and other mental health challenges. Stephen Paskey, *Telling Refugee Stories: Trauma, Credibility, and the Adversarial Adjudication of Claims for Asylum*, 56 Santa Clara L. Rev. 457, 461 (2016). "Avoiding painful topics is common among trauma survivors, and when asylum seekers do open up, their memories can flood together." Ardalan, *supra*, at 1020. Asylum applicants who experience trauma are less likely to recall the details of their persecution consistently over time, and are more likely to recall memories in overgeneralized terms or to minimize the importance and intensity of their trauma. Carol M. Suzuki, *Unpacking Pandora's Box: Innovative Techniques for Effectively Counseling Asylum Applicants Suffering from Post-Traumatic Stress Disorder*, 4 Hastings Race & Poverty L.J. 235, 257 (2007); Pub. Interest Pro Bono Ass'n, *Working with Survivors of Abuse: A Trauma Informed Approach 2* (Oct. 7, 2020), <https://tinyurl.com/y8also7m>. "None of these things [is] a reliable measure of whether a survivor is truthful, and

yet they are the very things an immigration judge will typically point to as evidence that an asylum seeker is not credible.” Paskey, *supra*, at 461-62.

Lawyers are seldom therapists, but they can help a traumatized asylum applicant to clarify and corroborate their experiences and to obtain documentation and supporting materials to establish credibility.

It is for these reasons that an asylum applicant with representation is multiple times more likely than a pro se applicant to obtain relief. *See* TRAC Immigr., *Asylum Representation Rates Have Fallen Amid Rising Denial Rates* (Nov. 28, 2017), <https://tinyurl.com/y8fn2pzt>; Ardalan, *supra*, at 1003 & n.6; Samantha Balaban et al., *Without A Lawyer, Asylum-Seekers Struggle With Confusing Legal Processes*, NPR (Feb. 25, 2018), <https://tinyurl.com/yayysqgp>. In a survey of asylum decisions issued in FY 2018, 40% of represented asylum applicants obtained some form of immigration relief, compared to only 11.4% of applicants who were unrepresented. *See* TRAC Immigr., *Asylum Decisions*, <https://tinyurl.com/muvhrtzp> (last visited March 16, 2022) (filtered for FY 2018). In FY 2017, those numbers were 48.1% for asylum seekers with counsel and only 11.5% for asylum seekers without counsel. *See id.* (filtered for FY 2017). And in

FY 2016, those numbers were 55.6% for asylum seekers with counsel and only 11.2% for asylum seekers without counsel. *See id.* (filtered for FY 2016).²

In MPP 1.0, the differences were even more stark. During the first implementation of MPP, only 0.65% of unrepresented individuals were granted some form of relief, compared to 26.4% of individuals who were represented by an attorney. TRAC Immigr., *MPP (Remain in Mexico) Deportation Proceedings—All Cases*, <https://tinyurl.com/2p8ctwtx> (last visited Mar. 16, 2022).

² The data for FY 2019 and FY 2020 are not entirely reliable because thousands of asylum cases have been omitted. *See* TRAC Immigr., *Asylum Decisions*, <https://tinyurl.com/muvhrtzp> (last visited Mar. 16, 2021) (“13,160 Asylum Applications Disappeared From EOIR Data during FY 2019-2022”); TRAC Immigr., *After EOIR Fixes Most Egregious Data Errors, TRAC Releases New Asylum Data—But with a Warning* (Sept. 16, 2020), <https://tinyurl.com/y3q4rzou> (discussing missing data). Nonetheless, the data that are available indicate that in FY 2019 and FY 2020, an asylum seeker with representation was approximately twice as likely to obtain relief as an asylum seeker without representation. *See* TRAC Immigr., *Asylum Decisions*, *supra* (filtered for FY 2019, showing that 34% of represented immigrants obtained some form of relief, compared with 16.5% of unrepresented immigrants; and filtered for FY 2020, showing that 32.1% of represented immigrants obtained some form of relief, compared with 19.2% of unrepresented immigrants). These statistics were generated by the Transactional Records Access Clearinghouse using EOIR data; EOIR-generated statistics do not straightforwardly address the issue. *See* Jeffrey S. Chase, *EOIR’s New Math* (Dec. 12, 2020), <https://tinyurl.com/ycbjxl14>.

II. MPP, In Any Form, Thwarts Access to Justice.

The purpose of MPP is to prevent asylum-seekers who arrive at the southern border from entering the United States. These asylum seekers are returned to Mexico with little but a notice to appear in U.S. immigration court at a later date. In MPP 1.0 at Laredo, it was almost impossible for asylum seekers to find attorneys to represent them. Immigrants enrolled in MPP 1.0 at other ports along the southern border also struggled to retain counsel. Only 7% of immigrants under MPP 1.0 were represented. TRAC Immigr., *MPP (Remain in Mexico) Deportation Proceedings, supra*.³

A. Immigrants In MPP Face Extraordinary Difficulties Retaining Counsel.

MPP made it extraordinarily difficult for immigrants to find an attorney to represent them. Asylum seekers in removal proceedings in the United States are generally able to relocate to areas where they have familial and other support

³ The government attempted to “enhance[] protection for individuals enrolled in the program.” MPP Reimplementation Memo, *supra*. There was little evidence that the government achieved that goal; conditions in Mexico were not improved and U.S.-based attorneys were still unable to maintain a physical presence in Mexico. Immigrants in MPP at all times have had extremely limited ability to retain counsel, and counsel was severely constrained in preparing and presenting their clients’ asylum claims.

networks, and their cases may be moved to courts near where they reside. Human Rts. Watch, “*We Can’t Help You Here*”: *US Returns of Asylum Seekers to Mexico* 34 (2019), <https://tinyurl.com/mrywk3vr>. Once in the United States, asylum seekers have access to attorneys and non-profit legal service providers, who can offer in-person consultations through which they take on individual cases for representation. By contrast, under MPP, no such network of legal service providers was available.

DHS at one point began to distribute “legal resource packets” to immigrants enrolled in MPP, containing contact information for legal service providers in the United States and guidance “about where they can locate places in Mexico to engage in telephonic or video communications with counsel.” MPP Reimplementation Memo, *supra*, at 6. But that document was of limited value. The packet distributed at the Laredo IFH contained the contact information for only one service provider. See U.S. Dep’t of Just., *List of Pro Bono Legal Service Providers*, <https://tinyurl.com/2p83w45b> (last updated Jan. 2022). For Brownsville, no dedicated MPP list was provided. The dearth of names illustrated the reality that many groups who typically provide legal assistance to asylum seekers are unable to do so in MPP.

During MPP, immigrants faced “predatory violence” in Mexico. Indeed, violence is endemic in Mexico. The U.S. State Department currently assesses six states in Mexico as posing the highest possible safety risk (Level 4)—the same level as conflict-ridden countries such as Libya and Afghanistan. U.S. State Dep’t, Bureau of Consular Affairs, *Mexico Travel Advisory* (Sept. 6, 2024), <https://tinyurl.com/5dnev7cj>. “Organized crime activity—including gun battles, murder, armed robbery, carjacking, kidnapping, forced disappearances, extortion, and sexual assault—is common” in Tamaulipas, where “[h]eavily armed members of criminal groups ... operate with impunity.” *Id.* The State Department advises United States citizens not to travel to Tamaulipas at all. *Id.* Additionally, the State Department has issued travel advisories for many Mexican states due to “crime and kidnapping.” *Id.*

During MPP 1.0, *Amicus*’s pro bono partners considered providing assistance to MPP enrollees by travelling across the border to Nuevo Laredo, but determined that it was far too dangerous to do so, both for its own attorneys and for those immigrants it would be serving. When these attorneys took an exploratory trip across the border, the local pastor with whom they were scheduled to meet (who ran a shelter for immigrants) was missing; he had been kidnapped a few days earlier by cartel members, reportedly because he attempted to stop them from

kidnapping asylum seekers. *See* Premier Christian News, *Still no sign of pastor one year after kidnapping* (Aug. 3, 2020), <https://tinyurl.com/yaefrzaq>; Premier Christian News, *Mexico: Commission calls for update three months after Pastor kidnapping* (Nov. 4, 2019), <https://tinyurl.com/yxl45swa>. Twenty-six percent of *Amicus*' pro bono partner's clients under MPP 1.0 at Laredo were kidnapped at least once after being forced to return to Mexico.

Amicus and its pro bono partners have continued to monitor conditions in Nuevo Laredo and have no plans to send attorneys there if MPP resumes. Even if immigrants relocate to areas in Mexico that are relatively safer than Nuevo Laredo, that would only replace one logistical hurdle with another. It is not feasible to send attorneys all over Mexico to meet with clients; doing so would create substantial logistical difficulties in the representation of clients and would consume resources and further restrict the number of cases attorneys could take on.

Immigrants enrolled in any iteration of MPP also struggle to reach attorneys by phone from Mexico even if the U.S. government were to tell them where they could find a phone. Accessing a phone is only part of the problem. During MPP 1.0, immigrants were often worried that their pro bono counsel's phone number really belonged to a government official (who could deny relief), or to a cartel member (who could inflict harm). And immigrants feared others could be listening

to their conversations. Many clients stayed at shelters in Nuevo Laredo where, as a security measure, shelter staff only allowed residents access to their phones during limited hours of the day. Even then, calls happened in a communal space where clients had no privacy and feared the intimate details of their asylum claims would be heard by adverse parties, or by their children, who would be traumatized by such information. One client called her counsel from a broom closet in a shelter because she was concerned that the pastor who ran the shelter was working with a cartel and might use against her the information she shared over the phone. Shelters continued to restrict access to phones and immigrants reported feeling unsafe.

Once cartels discover the places where the U.S. government encourages immigrants to make telephone or video calls, the ability for these communication hubs to provide any form of access to counsel vanishes. Given these conditions, many attorneys are hesitant to advertise their services or provide services at all because it places them at the potential receiving end of a cartel's demand for ransom. Cartels frequently target "asylum seekers outside shelters, [immigration] offices, at bus stations, and in transit between those locations." Strauss Ctr. for Int'l Sec. & Law, *Migrant Protection Protocols: Implementation and Consequences for Asylum Seekers in Mexico* 34 (May 2020),

<https://tinyurl.com/y9c968qz>. The cartel targets immigrants “on the assumption that most asylum seekers in the MPP program have US relatives who can be extorted.” Human Rts. Watch, *US: Investigate ‘Remain in Mexico’ Program* (June 2, 2020), <https://tinyurl.com/y38b19jt>. “After being physically apprehended, asylum seekers are typically taken to warehouses or other locations where they are held until people pay their ransom, which is usually thousands of dollars.” Strauss Ctr., *supra*, at 34.

Other U.S.-based attorneys reported being threatened during MPP. *See* Human Rts. First, *Remain in Mexico Restart Threatens Safety of Attorney and Humanitarian Workers* (Nov. 2021), <https://tinyurl.com/unewk2xn>. *Amicus’s* pro bono partners even switched to non-traceable “burner” phones for client and potential client communications, to minimize the risk of individual attorneys being targeted for extortion. But communication under these circumstances is extraordinarily labor intensive. To obtain a consultation with *Amicus’s* pro bono partners under MPP 1.0, an immigrant would need to call an attorney hotline and leave a callback number that staff—using a burner phone—would call-back to conduct an initial screening and to schedule a meeting with project attorneys. At the scheduled meeting time, attorneys would call the migrant using yet another burner phone or, in certain cases where the immigrant’s internet connection was

sufficiently robust, using a business conferencing system. The same methods were also used to coordinate meetings with clients. Clients were assigned code numbers to use when they called to confirm their identity. Many other service providers cannot offer the same resources and labor-intensive service. Providing a “legal resource packet” changes none of this.

The Supreme Court has recognized that the “right to be heard [is], in many cases, of little avail if it d[oes] not comprehend the right to be heard by counsel.” *Goldberg v. Kelly*, 397 U.S. 254, 270 (1970) (quoting *Powell v. Alabama*, 287 U.S. 45, 68-69 (1932)). But for the vast majority of asylum applicants subject to MPP, retaining counsel will remain, as a practical matter, impossible. The very structure of MPP prevents it.

B. MPP Impedes Counsel’s Preparation of Asylum Claims.

Even when an immigrant subject to MPP was able to retain counsel, providing legal representation was a significant challenge. Many immigration practitioners in the United States are unable—logistically or otherwise—to provide services to immigrants across the border in Mexico. Human Rts. Watch, *We Can’t Help You Here*, *supra*, at 34. Mexican attorneys cannot substitute for counsel in the United States because attorneys in Mexico are typically neither licensed nor otherwise able to provide representation in United States courts. At the same time,

because of MPP, clients were not allowed to visit law offices in the United States.

As a result, attorneys had no choice but to put together a case without meeting their clients in person, except very briefly before or after a preliminary MPP hearing.

This is extraordinarily difficult because there is no replacement for in-person contact to establish trust with a client.

Yet, under the MPP, almost all communication between an attorney and a migrant occurs virtually. Frequent power outages disrupt cell and internet service. Many clients had sporadic or nonexistent internet service, which limited their ability to communicate over WhatsApp (an instant messaging app). Immigrants often had insufficient funds to purchase cellular data or minutes. Phone theft was common. And, to limit potential communication with cartels, many shelters had policies preventing immigrants from accessing their phones except during specific two-hour time periods, forcing immigrants to squeeze all communication (legal and otherwise) into that period. Worse, during that period, they frequently lacked privacy.

Although DHS stated that “[m]igrant shelters in Mexico [would] provide computers/tablets that can be used for ... communication,” there was no evidence of that happening in the Monterrey shelters where MPP Laredo enrollees were taken. Dep’t of Homeland Sec., *Information and Reminders for Individuals in*

MPP, <https://tinyurl.com/374dxcr4> (last updated Feb. 8, 2022). Power outages and service disruptions affected computers and tablets. Amicus expects that shelters will likely continue to limit the time any single immigrant can spend on the computer during any resumption of *MPP*.

For instance, one *MPP* client gave an account of a family-based persecution claim during an initial interview (based on the murder of his uncle by gang members and the gang's subsequent threats and extortion of his entire family). He did not disclose until three days before his final hearing that he had also been the victim of a brutal sexual assault by five men who made clear that they attacked him because he was gay. The client, who is HIV positive, believed that he contracted HIV during the assault. He was reluctant to disclose this information over the phone because he had no privacy; he feared what his roommates would do if they found out about his sexuality or his HIV status.

But *even if* immigrants had access to computers and tablets, and *even if* they could use that technology in a private location, it would still be extraordinarily difficult for an immigrant to relate their most painful memories to an attorney whom they have never met face-to-face. When clients suffer from PTSD, in-person meetings are particularly important in enabling attorneys to establish trust, to understand their clients' experiences, and to prepare clients for cross-

examination by the government's lawyer and questioning from the immigration judge. One client was kidnapped and raped in front of her children after being returned to Mexico under MPP. Her attorneys did not learn about the sexual assault until their fourth or fifth phone conversation because the events were so painful to recall. Attorneys were not able to get the details of her story until they took the exceptional step of flying to Monterrey, Mexico, paying for hotel space, coordinating with a local charity to reserve meeting space, and arranging childcare so the attorneys could speak with their client in private. Such resources are unavailable in most cases, and practices such as these are unsustainable for legal service providers. But without them, the attorneys might never have learned the full extent of their client's abuse.

In sum, telling immigrants that they might be able to use a phone or computer in Mexico to engage in telephonic or video communications with counsel does nothing to solve the fundamental obstacles counsel encounter in trying to prepare a client's asylum case virtually.

C. MPP Limits Immigrants' Opportunity to be Heard.

An immigrant's hearing is the one opportunity, guaranteed by statute, to present evidence and testimony showing why she is deserving of asylum relief. *See* 8 U.S.C. § 1229a (procedures governing removal proceedings). But MPP

always hindered attorneys and immigrants from presenting asylum claims in any meaningful way.

Under MPP, Attorneys were forced to prepare for the hearing with little contact from their clients. *See* Part II(B). And there was virtually no way to mail documents to clients in Mexico. Many immigrants subject to MPP have no mailing address because homeless shelters in Mexico typically do not accept mail for immigrants. Even shelters that accept mail do not generally provide a stable address, since a immigrant usually loses her spot (and her address) when she leaves the shelter. Human Rts. Watch, *We Can't Help You Here, supra*, at 37.

Attorneys in MPP 1.0 were typically allotted a total of one hour to meet with their clients before a hearing—but, because some of this time was taken up with security and movement within the LIHF, as a practical matter attorneys frequently were only able to speak with their clients for about half an hour. This meant that in the very brief time before a hearing started, attorneys reviewed with their clients (and obtained signatures on) the I-589 Application for Asylum, a detailed document with over one hundred questions. Often, this is the first time immigrants were able to discuss their cases in private and safe locations, which meant clients often offer new important information that attorneys rushed to incorporate into written and oral submissions to the immigration judge moments before the hearing.

During this brief time, attorneys also quickly worked to ensure that clients understood the legal and factual issues in the case and to discuss other submissions, including country condition reports and expert reports, some of which the client may be seeing in person for the first time. In MPP 1.0, there was little to no time to actually prepare the client for the types of questions they would be asked on the witness stand or to explain how the proceeding would be conducted.

After the meeting, lawyers and clients were separated and were not allowed to sit next to each other. This prevented lawyers from exchanging last-minute preparatory information with their clients. Further, when a client's case was called, there was no opportunity to confer with the client quietly and privately during the hearing. The proceedings at LIHF were held in shipping containers, where the microphones pick up every sound and convey any conversations or whispers to the immigration judge and government attorney in the immigration court.

D. The Mexican Government Is Unable or Unwilling to Control Bad Actors.

Attempts to improve MPP necessarily relied on the cooperation of a government that has proven unwilling or unable to protect immigrants from harms that are omnipresent in Mexico. Mexico is dangerous, *see* Part II(A), and

kidnapping of asylum seekers, in particular, has “become big business.” Ed Vulliamy, *Kidnappers prey with ‘total impunity’ on migrants waiting for hearings in Mexico*, THE GUARDIAN (Feb. 18, 2020), <https://tinyurl.com/tuqzbm6>. At one MPP hearing, the government’s counsel told the court that kidnapping “is potentially a reality for every respondent.” The Lead, *Lawyer Defending Trump Policy Makes Stunning Admission*, CNN POLITICS (Mar. 11, 2020), <https://tinyurl.com/vdxxajl>. Kidnappings have not abated. In just five months, Human Rights First “tracked 3,250 kidnappings and other attacks, including rape, human trafficking, and violent armed assaults, against asylum seekers and immigrants expelled to or blocked at the U.S.-Mexico border” under MPP. Human Rts. First, *Update: Grave Dangers Continue for Asylum Seekers Blocked In, Expelled to Mexico by Biden Administration* (June 22, 2021), <https://tinyurl.com/38jyvadm>.

To date, the Mexican government has not taken meaningful or effective action to prevent the widespread victimization of immigrants. Worse, some Mexican police and government officials participated in the violence committed against immigrants who, under MPP, were required to remain in Mexico. *See, e.g., Luis Chaparro, Policies Trump started and Biden has continued are allowing corrupt officials and cartels to cash in on migrants*, BUSINESS INSIDER (Jan. 14,

2022), <https://tinyurl.com/4zkn6tsr>. Approximately seventy percent of immigrants who consulted with *Amicus*'s pro bono partner during intake at the El Paso CPC reported having been harmed by Mexican police or government officials while transiting to the U.S. border. Attorneys heard immigrants reporting abuses ranging from deliberately ignoring reports of crimes by cartels to extortion and kidnapping.

One immigrant from Nicaragua was kidnapped by the Zetas cartel, and had a gang member hold a gun to his head and threaten to shoot him in the head. He reported that he observed uniformed Mexican police officers drinking and “partying” with Zetas. Another Nicaraguan migrant was extorted on two different occasions by Mexican officials and was delivered to a cartel by a taxi driver. Once in cartel custody, the immigrant was held, bound on the floor, for six days. He was kicked in the ribs repeatedly and denied adequate food. He was only released after his mother paid a ransom to the cartel.

Reports of Mexican officials demanding bribes of immigrants, often under threat of violence, increased with alarming frequency during MPP. See Human Rts. Watch, *Mexico: Abuses Against Asylum Seekers at US Border* (Mar. 5, 2021), <https://tinyurl.com/ypretv28>; Associated Press, *105 Mexican immigration agents linked to corruption*, ABC NEWS (Jan. 13, 2022), <https://tinyurl.com/yck6t6ynh>. A migrant from Venezuela was told by a Mexican police officer at a highway

checkpoint that he would “disappear” if he failed to pay the police officer \$400.

Similarly, a Nicaraguan migrant who identified as a member of the Miskito indigenous community reported that, during one encounter with Mexican police, an officer demanded payment of a bribe while pointing a gun at his head.

Refusing to pay often results in immigrants being turned over to a cartel. *Amicus*’s pro bono partners counseled a migrant from Nicaragua who was taken off of a bus by Mexican immigration officials after crossing Mexico’s southern border and told to pay a bribe before he could continue his journey to the northern border. After the migrant refused, these officials directed him to walk to a truck loaded with armed men, who then drove him to a house filled with other immigrants being held for ransom. After his captors confirmed his nationality, they pointed a gun at his head and told him that if he did not secure a payment of \$5,000—which they specified was the amount demanded of Nicaraguan nationals—he would be killed.

* * *

“If we are to keep our democracy, there must be one commandment: Thou shalt not ration justice.” *Hardy v. United States*, 375 U.S. 277, 293-94 (1964) (Goldberg, J., concurring) (quoting Learned Hand, J.). MPP limits immigrants to only the stingiest ration of “justice.” They are unlikely to find an attorney, making

relief almost impossible to obtain. And even if they are able to find an attorney, MPP severely impedes the preparation and presentation of an asylum claim. Attorneys do not have a meaningful opportunity to elicit information from their clients, and clients must present testimonies to the court while overwhelmed and exhausted. Immigrants in Mexico live in fear of being kidnapped by cartels or extorted by corrupt officials associated with the Mexican government. This is the essential nature of MPP—and this is not meaningful access to justice.

CONCLUSION

For the foregoing reasons, the Court should uphold the District Court's decision.

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CERTIFICATE OF COMPLIANCE

This brief complies with Federal Rule of Appellate Procedure 32(a)(7)(B) as it contains 6183 words, excluding those parts exempted by Federal Rule of Appellate Procedure 32(a)(7)(B)(iii). Additionally, this brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this brief has been prepared in a proportionally spaced typeface in Microsoft Word, using Times New Roman in 14 point font.

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CERTIFICATE OF SERVICE

I hereby certify that on August 11, 2025, I electronically filed the foregoing BRIEF OF AMICUS CURIAE THE NATIONAL IMMIGRANT JUSTICE CENTER IN SUPPORT OF PLAINTIFF-APPELLEE with the Clerk of the Court for the U.S. Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. I certify that counsel of record for Appellant and Respondent in this case are registered CM/ECF users and will therefore be served by the appellate CM/ECF system.

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