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INTRODUCTION

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2 1. The United States has a longstanding commitment under domestic and international
3 law to protecting people fleeing persecution from further harm.

4 2. The Immigration and Nationality Act reflects Congress’s carefully considered
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1 6. Indeed, Congress made clear that noncitizens may apply for asylum regardless of
2 where they enter the United States, “whether or not at a designated port of arrival.” 8 U.S.C.
3 § 1158(a)(1). All asylum seekers coming from a country other than a country contiguous to the
4 United States who enter between ports of arrival necessarily transited through another country before
5 reaching the southern border. Congress therefore guaranteed that they, too, should be able to seek
6 asylum free of any categorical restriction based on their route to the United States.

7 7. Together, these provisions illustrate the careful balance Congress struck between
8 protecting vulnerable individuals from harm and sharing the burdens of asylum processing with
9 other countries in which safety and fair processing can be assured and are appropriate, and its
10 decision that only in specific narrow circumstances could a noncitizen’s transit or even residence in
11 a third country justify a denial of protection in the United States.

12 8. Despite Congress’s clear commands, on July 16, 2019, the Attorney General and
13 Acting Secretary of Homeland Security promulgated an interim final rule (“Rule”) providing that
14 noncitizens who transit through another country prior to reaching the southern border of the United
15 States are ineligible for asylum here. The Rule, which takes effect on July 16, has only three narrow
16 exceptions, for those who applied for protection in a transit country and were denied it in a final
17 judgment; who meet the definition of a “victim of severe form of trafficking in persons”; or who
18 transited only through countries that are not parties to the 1951 Convention on the Status of
19 Refugees, the 1967 Protocol Relating to the Status of Refugees, or the Convention Against Torture.
20 Mexico, the only country adjoining the southern border of the United States, is a party to the 1951
21 Refugee Convention, the 1967 Refugee Protocol, and the Convention Against Torture.

22 9. The Rule thus bars virtually every noncitizen fleeing persecution from obtaining
23 asylum in the United States if they passed through another country on their way here, no matter the
24 conditions or purpose of their journey through that country or their prospect of protection, rights, or
25 permanent legal status in that country. Accordingly, anyone fleeing persecution from the ongoing
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1 humanitarian crisis in the countries that constitute the Northern Triangle who reasonably does not
2 apply for protection while en route will be categorically denied the opportunity to seek asylum in the
3 United States and likely forced to return to countries that are rife with danger and violence. The
4 Rule is a part of an unlawful effort to significantly undermine, if not virtually repeal, the U.S.
5 asylum system at the southern border, and cruelly closes our doors to refugees fleeing persecution,
6 forcing them to return to harm.

7
8 10. The Rule directly violates Congress’s clear requirement that for a noncitizen to be
9 denied asylum because of his or her relationship with a third country, the noncitizen had to be firmly
10 resettled in that third country or subject to a safe third country agreement, as well as Congress’s
11 requirement that asylum cannot be categorically denied based on an asylum seeker’s route to the
12 United States. It is also arbitrary and capricious.

13 11. In addition, the Attorney General and Acting Secretary of Homeland Security issued
14 the Rule immediately, without abiding by the required procedural steps of the Administrative
15 Procedure Act (“APA”).
16

17 12. Plaintiffs seek a declaration that these actions violate the INA and the APA, and an
18 order enjoining the Rule.

19 **JUPA**

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21 PUBLIC RELEASE UNDER E.O. 14176
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1 30. Defendant USCIS is the sub-agency of DHS that, through its asylum officers,
2 conducts interviews of individuals who apply for asylum.

3 31. Defendant John P. Sanders is the Acting Commissioner of CBP. He is sued in his
4 official capacity.

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1 Reform and Restructuring Act of 1998 (“FARRA”), Pub. L. No. 105-277, div. G, Title XXII, §
2 2242, 112 Stat. 2681, 2681-822 (1998) (codified as Note to 8 U.S.C. § 1231); 8 C.F.R. § 208.18.

3 43. The modern asylum system was established by the Refugee Act of 1980, Pub. L. 96-
4 212, 94 Stat. 102, which was incorporated into the INA. The Act reflects “one of the oldest themes
5 in America’s history—welcoming homeless refugees to our shores,” and “gives statutory meaning to
6 our national commitment to human rights and humanitarian concerns.” Sen. Rep. No. 256, 96th
7 Cong., 1st Sess. 1 (1979), *reprinted in* U.S. Code Cong. and Admin. News 141, 141.

8 44. The statutory provisions governing asylum represent an effort by Congress to bring
9 the United States into compliance with its international obligations under the 1951 Refugee
10 Convention and the 1967 Protocol.

11 45. It is obvious and well understood that asylum seekers often pass through third
12 countries on their way to seeking refuge in the United States. Accordingly, in crafting the statutory
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1 country before reaching the United States. In guaranteeing that entering the United States at or
2 between ports of arrival could not be a basis for categorically denying asylum, Congress also
3 guaranteed that merely transiting through another country to reach the United States could not be a
4 categorical barrier either.

5 47. Congress also spoke directly to the circumstances when a noncitizen may be deemed
6 ineligible for asylum based on his or her relationship with a third country. 8 U.S.C. § 1158(b)(2)(A)
7 specifically provides that a noncitizen shall be ineligible for asylum if he or she “was firmly resettled
8 in another country prior to arriving in the United States.” The plain text of the statute, agency
9 regulations, and case law have long made clear that firm resettlement requires far more than merely
10 transiting through another country.
11

12 48. Under international law, firm resettlement requires more than transiting through a
13 third country. For example, the 1951 United Nations Convention Relating to the Status of Refugees
14 provides that it shall not apply to a person who “acquired a new nationality, and enjoys the
15 protection of the country of his new nationality” or “is recognized by the competent authorities of
16 the country in which he has taken residence as having the rights and obligations which are attached
17 to the possession of the nationality of that country.” Art. 1, §§ C(3), E, adopted July 28, 1951, 189
18 U.N.T.S. 150.
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20 49. In 1980, the former Immigration and Naturalization Service (“INS”) issued interim
21 regulations providing that a noncitizen would be considered firmly resettled “if he was offered
22 resident status, citizenship, or some other type of permanent resettlement by another nation and
23 traveled to and entered that nation as a consequence of his flight from persecution.” 8 C.F.R.
24 § 208.14 (1981). The regulations further provided for an exception if the asylum applicant
25 established “that the conditions of his residence in that nation were so substantially and consciously
26 restricted by the authority of the country of asylum/refuge that he was not in fact resettled.” *Id.*
27 Officers were to consider “the type of housing, whether permanent or temporary, made available to
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1 the refugee, the types and extent of employment available to the refugee, and the extent to which the
2 refugee received permission to hold property and to enjoy other rights and privileges (such as travel
3 documentation, education, public relief, or naturalization) available to others resident in the
4 country.” *Id.*

5 50. The Attorney General amended the firm resettlement regulations in 1991. The
6 definition of firm resettlement provided in those regulations is substantially the same as the current
7 firm resettlement regulations set out at 8 C.F.R. §§ 208.15, 1208.15. The 1991 regulation provided
8 that a noncitizen would be “considered to be firmly resettled if, prior to arrival in the United States,
9 he entered into another nation with, or while in that nation received, an offer of permanent resident
10 status, citizenship, or some other type of permanent resettlement unless” he could establish that “his
11 entry into that nation was a necessary consequence of his flight from persecution, that he remained
12 in that nation only as long as was necessary to arrange onward travel, and that he did not establish
13 significant ties in that nation” or that “the conditions of his residence in that nation were so
14 substantially and consciously restricted by the authority of the country of refuge that he was not in
15 fact resettled.” 8 C.F.R. § 208.15 (revised Jan. 1, 1991). The regulation directed that the asylum
16 officer and/or immigration judge undertake an individualized inquiry and consider the following
17 factors: “the conditions under which other residents of the country live, the type of housing made
18 available to the refugee, whether permanent or temporary, the types and extent of employment
19 available to the refugee, and the extent to which the refugee received permission to hold property
20 and to enjoy other rights and privileges, such as travel documentation including a right of entry
21 and/or reentry, education, public relief, or naturalization, ordinarily available to others resident in the
22 country.” *Id.*

23 51. Congress then adopted the current firm resettlement bar, 8 U.S.C.
24 § 1158(b)(2)(A)(vi),
25

1 Immigrant Responsibility Act. In so doing, it codified the regulatory definition of “firm
2 resettlement.”

3 52. The implementing regulation on firm resettlement was finalized in 2000, and is
4 substantively identical to the 1991 version. It provides: “An alien is considered to be firmly resettled
5 if, prior to arrival in the United States, he or she entered into another country with, or while in that
6 country received, an offer of permanent resident status, citizenship, or some other type of permanent
7 resettlement unless he or she establishes: (a) That his or her entry into that country was a necessary
8 consequence of his or her flight from persecution, that he or she remained in that country only as
9 long as was necessary to arrange onward travel, and that he or she did not establish significant ties in
10 that country; or (b) That the conditions of his or her residence in that country were so substantially
11 and consciously restricted by the authority of the country of refuge that he or she was not in fact
12 resettled. In making his or her determination, the asylum officer or immigration judge shall consider
13 the conditions under which other residents of the country live; the type of housing, whether
14 permanent or temporary, made available to the refugee; the types and extent of employment
15 available to the refugee; and the extent to which the refugee received permission to hold property
16 and to enjoy other rights and privileges, such as travel documentation that includes a right of entry or
17 reentry, education, public relief, or naturalization, ordinarily available to others resident in the
18 country.”

19 53. Furthermore, Congress also spoke directly to the circumstances when noncitizens
20 may be returned to a third country to have their asylum claims processed there. 8 U.S.C.
21 § 1158(a)(2)(A) provides that the Attorney General may do so only when he or she “determines that
22 the alien may be removed, pursuant to a bilateral or multilateral agreement, to a country (other than
23 the country of the alien’s nationality or, in the case of an alien having no nationality, the country of
24 the alien’s last habitual residence) in which the alien’s life or freedom would not be threatened on
25 account of race, religion, nationality, membership in a particular social group, or political opinion,
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1 provide protection rests with the State where asylum is sought.” Asylum should not be refused
2 “solely on the ground that it could be sought from another State,” and an asylum-seeker should not
3 be required “to seek asylum in a country with which he has not established any relevant links.”

4 UNHCR’s analysis provides significant guidance for courts on issues of refugee law.

5 60. UNHCR has also explained that the mere fact that a country is a party to the 1951
6 Convention and/or its 1967 Protocol does not allow one to be required to seek asylum in that
7 country.
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9 61. Consistent with this long ()Tj 0.004 Tc -0 13g ()Tj 0.004 Tc -0 (e)-6 0.012 Tw -1,- 1

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1 lawful habitual residence en route to the United States,” shall be found ineligible for asylum unless
2 one of three conditions is met: (1) “The alien demonstrates that he or she applied for protection from
3 persecution or torture in at least one country outside the alien’s country of citizenship, nationality, or
4 last lawful habitual residence through which the alien transited en route to the United States, and the
5 alien received a final judgment denying the alien protection in such country;” (2) “The alien
6 demonstrates that he or she satisfies the definition of ‘victim of a severe form of trafficking in
7 persons’ provided in 8 C.F.R. 214.11;” or (3) “The only countries through which the alien transited
8 en route to the United States were, at the time of the transit, not parties to the 1951 United Nations
9 Convention relating to the Status of Refugees, the 1967 Protocol Relating to the Status of Refugees,
10 or the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading
11 Treatment or Punishment.”

12
13 65. Noncitizens subject to expedited removal who seek protection will be screened by an
14 asylum officer. The asylum officer will determine whether the noncitizen is subject to the bar set out
15 in the Rule. If the asylum officer determines that the noncitizen is subject to the bar, the asylum
16 officer will deny asylum and then apply the reasonable-fear standard, rather than the credible-fear
17 asylum standard, to assess the noncitizen’s claims for statutory withholding of removal and
18 Convention Against Torture protection. A noncitizen who passes the reasonable-fear screening will
19 be placed in removal proceedings where they will be permitted to apply for withholding and/or
20 Convention Against Torture protection. A noncitizen may seek review of the asylum officer’s
21 determination that he or she is subject to the eligibility bar before an immigration judge. If the
22 immigration judge affirms the determination that the bar applies, and that the noncitizen has failed to
23 pass the reasonable fear standard, the applicant will be subject to removal without any opportunity
24 for judicial review.
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27 66. The Rule does not require any individualized assessment of the asylum system in the
28 country or countries a noncitizen transited through en route to the United States, or any assessment

1 comprehensive legal regime for providing protection to refugees.” Similarly, Angola is a signatory
2 to the Convention, but according to the State Department, “[t]he law provides for the granting of
3 asylum or refugee status, but the law did not function during the year.”

4 69. The Rule contains no exception for unaccompanied children as defined in 6 U.S.C.
5 § 279(g). They, too, must apply for protection in a country through which they transit or will be
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1 armed groups has escalated dramatically in Central America, and those governments have been
2 unable or unwilling to provide effective protection.

3 83. Asylum seekers fleeing their home countries in Central America face an arduous
4 journey to the United States, involving a high risk of violence, including sexual assault, along the
5 way.

6 84. Many asylum seekers from Central American have no choice but to travel by land to
7 the United States due to documentation requirements that would be necessary to board a plane, as
8 well as financial constraints.

9 85. The vast majority of asylum seekers from Central America thus arrive at the southern
10 border after traveling by land across one or more countries. Those coming from Guatemala
11 necessarily transit through Mexico, and those coming from El Salvador and Honduras transit through
12 Guatemala and Mexico.

13 86. Many of the migrants coming to the southern border have legitimate claims to
14 asylum.

15 87. According to UNHCR, in fiscal year 2015, 82 percent of claims from 2010 to 2015 were granted.

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Mexico Is Not Safe for Asylum Seekers and Lacks a Fair, Functioning Asylum System

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2 97. For most asylum seekers, remaining in Mexico and seeking protection there is not an
3 option. The country lacks a full and fair asylum processing system, and is often extremely
4 dangerous for migrants.

5 98. According to the U.S. State Department's 2017 Mexico Country Report, "violence
6 against migrants by government officers and organized criminal groups" is one of "[t]he most
7 significant human rights issues" in Mexico. The State Department also reported in 2018 that the
8 dangers that forced many Central American migrants to flee their homes are likewise present in
9 Mexico, as the presence of Central American gangs has "spread farther into the country and
10 threatened migrants who had fled the same gangs in their home countries," that there were reports of
11 migrants being victimized "by criminal groups and in some cases by police, immigration officers,
12 and customs officials," that "[t]here were media reports that criminal groups kidnapped
13 undocumented migrants to extort money from migrants' relatives or force them into committing
14 criminal acts on their behalf," that "[t]here were numerous instances of armed groups limiting the
15 movements of migrants, including by kidnapping and homicides," and that there were "5,824
16 reported crimes against migrants" and "99 percent of the crimes were unresolved" at the federal
17 level.
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20 99. Migrants in Mexico are at risk of kidnapping, disappearance, trafficking, and sexual
21 assault, among other harms. Lesbian, gay, bisexual, and transgender persons, as well as people with
22 indigenous heritage, regularly have been subject to persecution in Mexico. Children in particular are
23 at risk of robbery, sexual violence, kidnapping, femicide, extortion, and threats.
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25 100. Mexico experienced its highest number of murders recorded in 2018, up 33% from
26 2017, which previously was the highest number recorded.
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101. President Trump has himself acknowledged that Mexico is not a safe place, tweeting

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1 frustrates its mission of helping to train legal professionals to assist individuals fleeing violence and
2 persecution.

3 119. The new policy jeopardizes EBSC's funding streams. If EBSC is no longer able to
4 handle affirmative asylum cases for individuals who enter after transiting through another country, it
5 will face a pipeline crisis and will be unable to provide legal services to individuals who are fleeing persecution.

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123. Most of Al Otro Lado's asylum clients are families traveling with minor children.

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