

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
BOARD OF IMMIGRATION APPEALS**

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**REQUEST TO APPEAR AS *AMICI CURIAE*
AND
BRIEF OF BORDER LEGAL AND HUMANITARIAN SERVICE PROVIDERS AS
AMICI CURIAE IN SUPPORT OF RESPONDENTS**

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REQUEST TO APPEAR AS AMICI CURIAE

In accordance with the Board of Immigration Appeals' request for *amicus curiae*, the following twelve direct legal service providers and humanitarian organizations who represent and assist individuals subjected to the Migrant Protection Protocols (MPP), collectively, "Border Legal and Humanitarian Service Providers," hereby respectfully request permission from the Board to appear as *Amici* in the above-captioned matter. The Board makes the determination to grant such permission on a case-by-case basis when *Amici's* participation will serve the public interest. 8 C.F.R. § 1292.1(d). With the implementation of MPP sharply curtailing access to counsel,¹ *Amici* is composed of on-the-ground legal service providers and nonprofit advocates who work to fill the dearth of services for asylum seekers who request protection at the United States southern border. These organizations and individuals offer representation, pro se assistance, humanitarian support, and advocacy for asylum seekers who are forced to await their asylum proceedings in Mexico pursuant to MPP, and include:

1. Al Otro Lado (AOL), a nonprofit, binational legal services organization that serves immigrants returned to Tijuana who await removal proceedings before the San Diego Immigration Court;
2. ALDEA – The People's Justice Center, a non-profit organization that provides universal *pro bono* representation to all families who are detained in the Berks County Residential Center. This work includes the representation of families who have been subjected to MPP across the U.S.-Mexico border before the BIA and various Circuit Courts of Appeal. Border;

¹ See *MPP Cases Highest Since Start of Pandemic*, TRAC Immigration, Oct. 20, 2020, available at <https://trac.syr.edu/immigration/reports/628/> (noting less than eight percent of migrants in MPP have representation).

3. The Asylum Defense Project (ADP), which provides free legal services to individuals who seek asylum in the United States through two *pro bono* initiatives—Proyecto Dilley² and Proyecto de Asilo para Solicitantes de Asilo (PASA). Proyecto Dilley provides services to asylum-seeking families who are detained at the South Texas Family Residential Center pending removal subsequent to initial placement in MPP along various parts of the border, while PASA provides legal services to individuals subjected to MPP along the Texas-Mexico border, with a focus on providing services to individuals who are returned to Nuevo Laredo, Mexico and scheduled to appear in Laredo, Texas before the San Antonio Immigration Court;
4. Border Kindness, which provides asylum seekers in Mexicali, Mexico with comprehensive services including shelter, clothing, medical care and legal services. Its Remain in Mexico Response provides transportation to migrants and refugees placed in MPP in Mexicali to ensure they are present at their scheduled hearings;
5. Catholic Legal Immigration Network, Inc. (CLINIC), an immigration non-profit rooted in the Catholic faith that provides legal representation, training, and support to immigrants and their counsel. Since 2019 CLINIC has operated the Estamos Unidos project in Ciudad Juarez, Mexico, providing legal information and assistance to asylum seekers in MPP;
6. Florence Immigrant & Refugee Rights Project (Florence Project), an organization that works in direct partnership with the Kino Border Initiative (KBI), to provide legal services to individuals returned to Nogales who are scheduled to appear before the El Paso Immigration Court;

² Formerly known as the Dilley Pro Bono Project or CARA Pro Bono Project.

7. Immigrant Defenders Law Center (ImmDef), a nonprofit organization that provides legal services, including direct legal representation, Know Your Rights presentations and asylum clinics, to individuals returned to Tijuana who are subjected to removal proceedings before the San Diego Immigration Court;
8. The Immigrants' Rights and Human Trafficking Program at the Boston University School of Law, which provides in person Know Your Rights ("KYR") trainings and asylum workshops for noncitizens subject to MPP in Tijuana, Mexico, in collaboration with Al Otro Lado, and has represented noncitizens previously in MPP after their arrival in New England;
9. Jewish Family Service of San Diego (JFS), a large social service provider in the San Diego border region whose humanitarian work includes legal representation and other humanitarian support for asylum seekers who are returned to Tijuana, Mexico and scheduled to appear before the San Diego Immigration Court;
10. Mabel Center for Immigrant Justice, a nonprofit legal services organization that provides free legal representation, services and advice to families who are subjected to removal proceedings under MPP along various parts of the U.S.-Mexico border;
11. Project Corazon Matamoros, Lawyers for Good Government (L4GG), a pro bono initiative that provides legal services to asylum seekers who have been returned to Mexico under MPP and scheduled for hearings at the Brownsville, Texas Tent Court; and
12. Taylor Levy, a licensed U.S. attorney specializing in immigration law and nationally recognized expert on MPP, who provides free legal services to individuals who are returned to Ciudad Juarez, Mexico and scheduled to appear before the El Paso Immigration Court.

Cumulatively, the Border Legal and Humanitarian Service Providers have worked with thousands of Respondents in MPP across the border, ranging from California to Texas. As providers of direct representation, advocacy, and/or humanitarian and resettlement assistance to asylum seekers placed in MPP, *Amici* are substantially invested in ensuring that Respondents who seek protection from persecution or torture receive adequate notice of their hearings. Indeed, *Amici* bear a heavy burden to compensate for the deficiencies in the government's would-be notice procedures in order to help Respondents discover where, when, and how to attend their hearings. Because many of the *Amici* operate at the border or in Mexico, the Border Legal and Humanitarian Service Providers have witnessed firsthand the effects of the MPP program on asylum seekers and the challenges they face in knowing where and when to present themselves so that they may appear at their scheduled immigration court hearings. With its wide range of cross-border services and experience, the Border Legal and Humanitarian Service Providers hope to assist the Board in considering the on-the-ground realities that prevent Respondents from appearing in court and the import of proper notice for Respondents subjected to MPP. To that end, the Border Legal and Humanitarian Service Providers respectfully request leave to appear as *amici curiae* and file the following brief.

TABLE OF CONTENTS

I. ISSUE PRESENTED 1

II. INTRODUCTION..... 1

III. FACTUAL BACKGROUND..... 3

 A. The Notice to Appear issued to Respondents in MPP does not contain the actual place or time where Respondents must present themselves to actually effectuate attendance at their removal hearing. 5

 B. The tear sheets DHS provides to Respondents in MPP also do not contain sufficiently specific information for Respondents to actually effectuate attendance at their hearings in the United States. 7

 C. Many Respondents in MPP are never served tear sheets at all or are never provided with written or oral notice of the contents of the tear sheet in a language they can understand. 11

 D. In numerous other instances, DHS’s own errors have prevented Respondents in MPP from attending their hearings, leading them to be ordered removed *in absentia* through no fault of their own. 15

 E. Despite the fact that NTAs do not provide Respondents in MPP with the information they need to attend their removal hearings, DHS frequently fails to provide the Immigration Court with proof that a tear sheet has been served on the Respondent or an attestation that the Respondent received specific advisals to facilitate their appearance in court. 16

IV. SUMMARY OF ARGUMENT 18

V. ARGUMENT 20

 A. Respondents must be provided with actual notice of the date, time and place they must appear to enter the United States for their hearing. 21

 B. DHS must prove service was proper prior to the issuance of an *in absentia* removal order for all Respondents, including Respondents placed in MPP. 23

 C. Respondents must receive advance written notice prior to every hearing. 28

VI. CONCLUSION..... 30

TABLE OF AUTHORITIES

CASES

<i>Bridges v. Wixon</i> , 326 U.S. 135 (1945)	1
<i>Fogel v. Zell</i> , 221 F.3d 955 (7th Cir. 2000)	27
<i>Gomez-Palacios v. Holder</i> , 560 F.3d 354 (5th Cir. 2009)	29
<i>Grannis v. Ordean</i> , 234 U.S. 385 (1914)	20
<i>In Re Enrique Cordero-Guerra</i> , 2008 WL 2517594 (BIA 2008)	29
<i>In Re G-Y-R-</i> , 23 I&N Dec. 181 (BIA 2001)	20
<i>Kaoru Yamataya v. Fisher</i> , 189 U.S. 86 (1903)	1
<i>Landon v. Plasencia</i> , 459 U.S. 21 (1982)	1
<i>Matter of Bermudez-Cota</i> , 27 I&N Dec. 441 (BIA 2018)	22, 29
<i>Matter of Jean Robert Evra</i> , 25 I&N Dec. 79 (BIA 2009)	23
<i>Matter of Lopez-Barrrios</i> , 20 I&N Dec. 203 (BIA 1990)	29
<i>Matter of Mendoza-Hernandez</i> , 27 I&N Dec. 520 (BIA 2019) (en banc)	22, 28
<i>Matter of Sanchez-Herbert</i> , 26 I&N Dec. 43 (BIA 2012)	25
<i>Matter of S-O-G- and F-D-B-</i> , 27 I&N Dec. 462 (A.G. 2018)	28
<i>Mullane v. Central Hanover Bank & Trust Co.</i> , 339 U.S. 306 (1950)	1, 20
<i>Orozco-Velasquez v. Att’y Gen.</i> , 817 F.3d 78 (3d Cir. 2016)	1, 21, 27
<i>Pereira v. Sessions</i> , 138 S. Ct. 2105 (2018)	1, 21, 22, 23
<i>Reno v. Flores</i> , 507 U.S. 292 (1993)	20
<i>Walters v. Reno</i> , 145 F.3d 1032, 1042 (9th Cir. 1998)	27

FEDERAL STATUTES

8 U.S.C. § 1225	20
8 U.S.C. § 1229	21, 28, 29
8 U.S.C. § 1229a	18, 20, 23, 24, 27
INA § 239	28
INA § 240	22, 23, 25

FEDERAL REGULATIONS

8 C.F.R. § 1003.14	23, 28
8 C.F.R. § 1003.26	24, 25, 27
8 C.F.R. § 1003.32	23, 24

OTHER AUTHORITIES

Details on MPP (Remain in Mexico) Deportation Proceedings by Hearing Location and Attendance, Representation, Nationality, Month and Year of NTA, Outcome, and Current Status, TRAC Immigration, Sept. 2020, available at <https://trac.syr.edu/phptools/immigration/mpp/>17

Immigr. Ct. Prac. Manual (Jul. 2, 2020).24

Memorandum from Dep't of Homeland Sec., Secretary Kirstjen M. Nielsen, on Announcing Historic Action to Confront Illegal Immigration (Dec. 20, 2018)3

Memorandum from U.S. Dep't of Homeland Sec. to Enforcement Program Div. on Guiding Principles for Migrant Protection Protocols (Jan. 28, 2019)4, 20

**BRIEF OF BORDER LEGAL AND HUMANITARIAN SERVICE PROVIDERS AS
AMICI CURIAE IN SUPPORT OF RESPONDENTS**

I. ISSUE PRESENTED

Where the Migrant Protection Protocol (MPP) notice and advisal sheets are not signed nor otherwise acknowledged by the Respondent on the record, and the record contains no specific attestation of any kind, from either party, that the Respondents received specific advisals adequate to allow them to appear at the scheduled hearing from their location in contiguous territory, is notice of the hearing adequate to satisfy due process?

II. INTRODUCTION

“[W]hen notice is a person’s due, process which is a mere gesture is not due process.” *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 315 (1950) (citations removed). Respondents in removal proceedings are entitled to their statutorily protected due process protections, including an opportunity to be heard and sufficient notice of their hearing to exercise that right. *Landon v. Plasencia*, 459 U.S. 21, 32–33 (1982); *Bridges v. Wixon*, 326 U.S. 135, 154 (1945); *Kaoru Yamataya v. Fisher*, 189 U.S. 86, 101 (1903). Notice should not be enigmatic; rather, the entire purpose of notice is to “facilitate appearance at those proceedings.” *Pereira v. Sessions*, 138 S. Ct. 2105, 2115 (2018); *see also Orozco-Velasquez v. Att’y Gen.*, 817 F.3d 78, 84 (3d Cir. 2016).

But for Respondents who are subject to the Department of Homeland Security’s (DHS’s) Migrant Protection Protocols (MPP) and forced to wait in Mexico for the pendency of their removal proceedings, the notice they receive is a poor facsimile of the due process to which they are entitled. These Respondents are issued a Notice to Appear (NTA) with the time and place of their hearing, but in reality, the government requires Respondents to arrive several hours before the time set on the NTA at a location the NTA does not state as a prerequisite to entry into the

United States. If a Respondent fails to arrive at the time and place that is designated by U.S. Customs and Border Protection (CBP) and not specified on the NTA, the government regularly denies a Respondent entry into the United States for their hearing, placing them at risk of removal *in absentia*.

Sometimes, but not always, the government provides the Respondent with a “tear sheet” (referred to by the Board as a “notice and advisal sheet”) that includes supplemental instructions regarding when and where the Respondent must arrive to be permitted entry into the United States. The instructions in the tear sheet conflict with the information in the NTA. Tear sheets are regularly incomplete, illegible, or inaccurate, or instruct Respondents to appear at the wrong port of entry or at the wrong time. Despite the absolute necessity of receiving a clear and accurate tear sheet to facilitate a Respondent’s entry into the United States, the Respondent’s signature is regularly not collected by immigration officials to verify proof of service, and attorneys representing DHS are regularly unable to proffer any proof that the Respondent was provided with necessary advisals to facilitate their appearance in court.

MPP already penalizes Respondents attempting to exercise their legal right to request asylum by creating extended wait times in Mexico, where many Respondents struggle to meet their basic needs and are vulnerable to victimization at the hands of cartels. DHS now seeks to strip Respondents of the right to be heard by moving for removal *in absentia* based on an evidentiary record devoid of any indication that Respondents received actual notice enabling their appearance at their removal proceeding. This attempt contravenes the statute, regulations, and principles of due process.

III. FACTUAL BACKGROUND

On December 20, 2018, then-Secretary of Homeland Security Kirstjen M. Nielson announced that the Department of Homeland Security (DHS) would be instituting the Migrant Protection Protocols (MPP), or “Remain in Mexico” Policy. Memorandum from Dep’t of Homeland Sec., Secretary Kirstjen M. Nielsen, on Announcing Historic Action to Confront Illegal Immigration (Dec. 20, 2018). Under the MPP program, as promulgated entirely by a series of policy memoranda, Respondents seeking to enter the United States to apply for asylum would be returned to Mexico for the duration of their immigration proceedings. *Id.* Secretary Nielsen claimed that DHS would “undertake these steps consistent with all domestic and international legal obligations, including our humanitarian commitments” and that Respondents “will have access . . . to the U.S. for their court hearings.” *Id.*

For Respondents subjected to MPP, the prolonged wait times in Mexico erect unique and frequently insurmountable barriers to exercising their legally protected right to request asylum, including the logistical challenge of attending their hearings in the first place. After first attempting to present at or cross the border to seek asylum in the United States, Respondents placed in MPP are put in section 240 removal proceedings and issued NTA.¹ The NTA most commonly states the time that a Respondent’s initial master calendar hearing will begin and the location of the Immigration Court with administrative control over the Respondent’s removal proceeding.² *See*

¹ Although, as discussed below, an NTA that lacks the information enabling Respondents to appear at their hearings is not a true NTA under the INA, for the sake of coherency, *Amici* use the term “NTA” here to differentiate this document from the tear sheet, despite the document’s legal insufficiency to provide adequate notice to appear.

² For some Respondents, however, even this location information is incorrect. For example, the San Antonio Immigration Court docket is so overwhelmed by MPP that some cases are reassigned to Immigration Judges at the Fort Worth Adjudication Center. Respondents appearing before the Fort Worth Immigration Judges, then, are incorrectly advised as to where their Judge will be located.

Memorandum from U.S. Dep't of Homeland Sec. to Enforcement Program Div. on Guiding Principles for Migrant Protection Protocols (Jan. 28, 2019) at 1. But because Respondents in MPP may not freely cross the border to present themselves at a scheduled immigration court hearing in the United States, DHS has developed additional procedures beyond the information contained in the NTA. This process involves a complicated interplay among its sub-agencies: CBP officials operating at the ports of entry (POEs) coordinate with Immigration and Customs Enforcement (ICE) to screen and transport Respondents from Mexico into the United States for their removal proceedings. *See id.* at 2. To facilitate these procedures, DHS requires that Respondents report to a specific POE at a specific time many hours prior to their stated court time, *not* to the location stated on the NTA nor at the time stated on the NTA.

Indeed, DHS itself has recognized that, because of the unique nature of the MPP program, providing Respondents with only the hearing start time and location of the U.S. Immigration Court with administrative control over their removal proceeding is insufficient to enable the Respondent to appear in court. In its MPP Guiding Principles, DHS stated that Respondents “at the POE who are processed for MPP will receive a specific immigration court hearing date and time. . . . POEs will provide aliens subject to MPP a tear sheet containing information about the process, as well as a list of free or low-cost legal service providers.” *Id.* (emphasis added). This tear sheet advises Respondents of the time and place they must appear in order to be processed and transported to their hearing.

Because Respondents are completely dependent on the government’s permission to enter the United States in order to appear at their immigration court hearings, Respondents must report to the time and place listed on their tear sheet in order to attend their hearings, even though those instructions conflict with the location and time information provided in the NTA. *Amici* report that

MPP Respondents whom a CBP official deems to have reported to a POE even a few minutes past the time allegedly listed on their tear sheet are denied entry into the United States. Likewise, Respondents who report to a different POE than the one to which CBP officials believe they are required to report are denied entry.

As *Amici* explain below, the procedures implemented by DHS are wholly inadequate to ensure that Respondents in MPP are provided with sufficient notice of their hearings. First, the NTA does not contain the place and time at which MPP Respondents must *actually* present themselves in order to effectuate attendance at their hearings. Second, the tear sheets provided to Respondents by DHS often do not contain sufficiently specific information about where and to whom Respondents must present themselves in Mexico in order to attend their hearings in the United States. Third, many Respondents are not provided tear sheets at all, while others are issued tear sheets in a language they cannot understand. *Amici* have also witnessed numerous other incidents in which DHS's faulty procedures created insurmountable obstacles to Respondents' ability to attend their hearings, causing them to be ordered removed *in absentia* through no fault of their own.

A. The Notice to Appear issued to Respondents in MPP does not contain the actual place or time where Respondents must present themselves to actually effectuate attendance at their removal hearing.

A Respondent in MPP cannot, by means of the information contained in their NTA, appear at their removal hearing in Immigration Court. Respondents in Mexico because they cannot arrange their own transport to the location specified in their NTA at the place and time specified in their NTA. Rather, they must surrender themselves into DHS custody at a specific location and time that is not listed anywhere on their NTA.

In some cases, the location listed on the NTA does not even correspond to the physical location at which Respondents are expected to sit for their hearing, and may be very far from the POE where they are expected to present themselves for processing and transport. For example, MPP Respondents scheduled for court in San Antonio are required to report to Nuevo Laredo and are physically transported to a tent facility in Laredo, while Respondents scheduled for court in Harlingen are required to report in Matamoros and are physically transported to a tent facility in Brownsville. The POE corresponding to the court that has jurisdiction over a Respondent's case is also frequently not the POE where the Respondent first presented themselves to seek asylum, and may be a considerable distance from the location in Mexico where CBP officials initially returned a Respondent following their placement in MPP. For instance, Respondents who enter near Eagle Pass, Texas are commonly required to report to the Laredo POE—more than two hours away. According to the Asylum Defense Project (ADP), Respondents in this position are sometimes transported to Laredo and returned to Mexico in Nuevo Laredo, while others are returned to Piedras Negras, Mexico. Exh. B at ¶ 4. Similarly, Respondents who enter near Calexico, California, are returned to Mexicali, Mexico, with court over 100 miles away in San Diego; while individuals who enter near Nogales, Arizona are returned to the state of Sonora, Mexico, with court over five hours away in El Paso, Texas. Exh. C at ¶ 2; Exh. E at ¶ 7. Respondents who present at the wrong POE are denied entry and are therefore unable to appear at their proceeding, even though this information is wholly absent from their NTA. For example, ADP provided legal services to a Respondent who was scheduled before the San Antonio Immigration Judge. He attempted to report for court at the POE in Ciudad Juarez, Mexico, instead of Nuevo Laredo, Mexico. He was refused entry, and, as a result, was ordered removed *in absentia*. Exh. B at ¶ 7.

Not only must Respondents present at a particular POE to effectuate attendance at their hearing, they must also present themselves at a particular time. This time is not the time that is listed on their NTA and is usually multiple hours prior to the start of a scheduled hearing. Respondents who present themselves at the POE at the time listed *on their NTA* are denied entry and are therefore unable to attend their hearing. Even those who arrive a few minutes past the specific time DHS has scheduled for transport are denied entry. According to Charlene D’Cruz, a Lawyers for Good Governance (L4GG) attorney in Matamoros, she was “not aware of anyone being processed into court if they arrived even slightly late to the POE.” Exh. G at ¶ 16. Similarly, in Al Otro Lado’s (AOL) experience “if migrants arrive even a few minutes late, CBP prevents them from being processed and attending their hearing.” In their experience in Tijuana, “CBP does not show flexibility for people arriving late” despite attorneys and volunteers from the organization trying to advocate for migrants who arrive late. Exh. A at ¶ 16.

Thus, an individual in MPP who relied solely on the information contained in their NTA in attempting to attend their hearing would be unable to appear and would then likely be ordered removed *in absentia*.

B. The tear sheets DHS provides to Respondents in MPP also do not contain sufficiently specific information for Respondents to actually effectuate attendance at their hearings in the United States.

Respondents who rely on the information from their NTA alone are manifestly unable to effectuate their appearance at their hearings. However, even when the NTA is supplemented by a tear sheet containing additional information, this information is often insufficiently detailed or specific for Respondents to present themselves at the time and place required by the government. Identifying the correct POE is not always possible based on the information in the tear sheet. Border cities frequently have multiple POEs from Mexico into the United States; Tijuana, for

example, has three separate POEs: the Otay POE, the San Ysidro PedEast POE, and the San Ysidro PedWest POE, also known as “El Chaparral.” According to AOL, “if a migrant arrives at the wrong port of entry, even though it is within the same city as the correct port of entry, CBP will not permit them to attend their MPP proceedings, resulting in a removal order *in absentia* or a termination order.” Exh. A at ¶ 13.

Tear sheets also routinely provide the address of the relevant POE on the *U.S. side of the border*, rather than on the Mexican side where Respondents are actually located, creating additional hurdles to locating the correct POE. For example, for Respondents with hearings before the El Paso Immigration Court, “the tear sheets typically list ‘1000 S El Paso Street, ELP, TX’ as the address of the “Paso del Norte Port of Entry.” However, this is the U.S. address for the bridge, *not* the Mexican address for the bridge. Exh. H at ¶ 7. Furthermore, residents of Ciudad Juarez typically refer to this bridge as “*Puente Juarez*” (“Juarez Bridge”) because it is on “*Calle Juarez*” (“Juarez Street”) on the Mexican side, *not* “El Paso” street. *Id.* According to Taylor Levy, it is common to meet Respondents who are scheduled for court in El Paso who “struggled with finding the bridge because they provided the address printed on the tear sheet to their Uber driver who then took them to the wrong location.” *Id.*

Even if Respondents are ultimately able identify and locate the POE listed on their tear sheet, their tear sheet still lacks critical information about how Respondents must actually present themselves for their hearing upon arrival at the POE. *Amici* are aware of numerous examples of Respondents who were bewildered by the logistics of presenting for court before CBP. As stated by Alexandra Miller of the Florence Project,

I have reviewed NTAs belonging to approximately 100 migrants subjected to MPP in Nogales. These NTAs indicate the time and location of the first Master Calendar Hearings themselves, but they do not instruct Respondents as to where, when, or how to present for their hearings at the Port of Entry in Ciudad Juarez, Chihuahua, Mexico. The

NTA may be accompanied by a “tear sheet,” which CBP describes as “containing information about the process.” Though this information often may include the time and location that the Respondent should present for their hearing on the Mexico side of the border, the charging document itself does not offer Respondents any explanation of the process for arriving at their hearings nor does it set expectations for their arrival at the Port.” Exh. E at ¶ 8.

Given the high level of activity at POEs, Respondents who are not provided with instructions about how to present themselves to CBP for transportation to their court hearings understandably struggle to intuit where exactly they should go or how they should alert CBP to their presence. In Matamoros, for example, “the bridge is a daily scene of chaos and confusion.” Exh. G at ¶ 13. According to L4GG, the CBP officials would make a general verbal call for individuals with court only two times: once at 4:00 a.m. and once at 8:00 a.m. *Id.* at ¶ 15. If a Respondent was not near the front of the pedestrian line—which regularly extends past the turnstile entrance and into the plaza—they would not hear this call, and the call would not be repeated. *Id.* Ms. D’Cruz recalls that she “regularly spoke with individuals who were waiting in the line at the time on their tear sheet but did not push their way to the front or hear the call for court” and therefore missed their hearings, despite being present at the designated time and place. *Id.* at 16.

In Ciudad Juarez, there are no signs on the Mexican side of the bridge explaining what Respondents should do to present themselves to CBP officials for their court hearings, and it is “unclear if respondents arriving for court are expected to wait in the ‘normal’ pedestrian bridge line for people seeking admission to the U.S., or if they are permitted to skip the line and walk directly to the middle of the bridge.” Exh. H at ¶ 8. The situation in Tijuana is very similar. Luis Guerra with CLINIC recalls assisting a Respondent who had mistakenly waited in a different pedestrian line prior to his MPP hearing. Exh. D at ¶ 18. This Respondent had arrived at the bridge area approximately two hours prior to the time on his tear sheet; however, by the time he realized he was in the wrong line, he was told by CBP officials it was too late to enter the U.S. for court,

despite it still “being hours before his scheduled court hearing.” *Id.* Mr. Guerra contacted the San Diego Immigration Court on the Respondent’s behalf to explain the situation and the Respondent’s best efforts to appear before the court, and was told by the clerk that unless an attorney or representative could personally appear before the judge to explain the situation, there was nothing to be done. This Respondent was ordered deported *in absentia*. *Id.* CBP’s unwillingness to transport Respondents to court who arrive even slightly late to the POE is exponentially more troubling when considering that neither the NTA nor the tear sheet contain the information needed to physically and logistically access the POE.³

Although some Respondents do manage to attend their hearings, *Amici* contend that this is largely because legal service organizations work to rectify the huge information gaps in the notice provided by the government. In the collective experience of *Amici*, Respondents in MPP are confused by the content of the tear sheet and how its conflicting information from the NTA affects when and where they must appear. A substantial percentage of direct service provider time, from California to Texas, is spent explaining the contents of the tear sheet and the critical nature of arriving at the exact place and time provided on the tear sheet, and not at the place and time listed on the NTA. For example, much of the early work of CLINIC in Tijuana focused on education on the contents of the tear sheet. According to Luis Guerra, “Individuals subject to MPP are often very confused about the tear sheets they receive from Customs and Border Protection (CBP), and ask us many questions about them. Because the tear sheets lack critical information about how and where asylum seekers must present themselves to attend court, much of my work has been to explain basics about immigration court processes, border practices, and even Mexican

³ The opacity surrounding what occurs between the hours a Respondent is meant to arrive at the POE and the time of court leads to additional confusion and lack of clarity. For example, in Tijuana, Respondents could walk from the POE to the Immigration Court in less time than the processing window provided by CBP.

transportation, so that those subject to MPP can make it to their hearings in the United States.” Exh. D at ¶ 5.

Similarly, Charlene D’Cruz with L4GG in Matamoros would spend the first several minutes of every conversation with asylum seekers subjected to MPP explaining the tear sheet. She states, “At first, almost nobody understood the two separate court notices they were given. To have two notices for one event, without any explanation why, is utterly confusing; especially considering that no information about what was happening the approximately four hours between when people were scheduled to arrive at the port of entry (POE) and when they were scheduled for court.” Exh. G at ¶ 5. For the six months that L4GG was on the ground in Matamoros, Ms. D’Cruz “encountered daily individuals who were confused and not certain when they had to present at the bridge for processing.” *Id.* at ¶ 10. The same was true in other locations across Texas and New Mexico.

C. Many Respondents in MPP are never served tear sheets at all, or are never provided with written or oral notice of the contents of the tear sheet in a language they can understand.

Although the information contained in the tear sheet is not sufficient to adequately notify Respondents of the correct procedure for attending their removal hearings, Respondents in MPP nevertheless cannot have *any* hope of attempting to attend their hearings without the information contained in this document. Nevertheless, *Amici* have documented high volumes of Respondents who were never served with any tear sheet at all. Luis Guerra attests that through his work in Tijuana and Ciudad Juarez, he “frequently encountered individuals who were never provided a tear sheet.” Exh. D at ¶ 11. Taylor Levy also spoke with many Respondents in Ciudad Juarez with no tear sheet. Exh. H at ¶ 6.

The failure to provide Respondents with a tear sheet not only renders their legal “notice” unambiguously and fatally defective, it also deprives Respondents of all practical ability to attempt to attend their hearings because the information about when and where to report for processing is not publicly available in any other place.⁴ While the EOIR automated case portal and hotline usually provides the date and time of an individual’s scheduled court hearing, it does not inform Respondents in MPP when and where they should present to actually attend their hearing. The only option for most Respondents is to visit the POE and request a new tear sheet from CBP. However, in many places, Respondents are physically prevented from even approaching CBP officers on the bridge if they do not already have a tear sheet in their possession.⁵ Attempts to access the information in the tear sheet by other means have also proven completely unsuccessful. The Florence Project worked with a Respondent who had her tear sheet confiscated during her transfer from U.S. immigration custody to Mexican immigration custody. Exh. E at ¶ 15. She attempted to retrieve her case information via a CBP FOIA request, in order to obtain a copy of her tear sheet. *Id.* at ¶ 16. Six weeks after her request was submitted, CBP responded by sending her a copy of her I-213, which “contained no information regarding her upcoming hearing.” *Id.*

⁴ The lack of online resources with the appropriate instructions is also challenging even for the Respondents who *do* receive a tear sheet. The tear sheet is not laminated or resistant to damage, but Respondents stranded in Mexico often lack consistent shelter or a secure place to store important documents. Exh. F at ¶ 8. As a result, many Respondents keep their court papers on their person. Exh. E at ¶ 13. However, Respondents in Mexico, targeted for their status as migrants by cartels and other criminal organizations, are frequently the victims of assault, kidnapping, and robbery in Mexico, and report that their court papers were stolen during these encounters. *Id.* at ¶ 11; Exh. F at ¶ 13; Exh. H at ¶ 6. Other Respondents have told *Amici* that their paperwork was taken by U.S. or Mexican authorities and never returned to them. Exh. E at ¶ 11; Exh. H at ¶ 6.

⁵ For example, in Tijuana, the “tear sheet is the ticket to get through Mexican security and onto the bridge.” Exh. D at ¶ 13. In cases where Respondents did not have a tear sheet, CLINIC “sought to empower [Respondents] to return to the POE to request a new tear sheet” by arriving around the same time as other MPP Respondents in hopes of accessing a CBP officer. *Id.* at ¶ 12. In one particular instance, a Respondent managed to approach CBP four days in a row to request a tear sheet. He was told day after day to “come back tomorrow” before finally receiving a new tear sheet. *Id.*

Where tear sheets *are* physically provided, they are not consistently provided in a language the Respondent can understand. Meaningful notice of the information contained in a tear sheet requires that the tear sheet be provided—in writing or through oral interpretation—so that it is accessible to the Respondent. Based upon *Amici*'s observations, tear sheets are issued only in English, Spanish and on occasion, Portuguese. *See, e.g.*, Exh. E at ¶ 18; Exh. H at ¶ 6; Exh. F at ¶ 10. However, not all Respondents in MPP are English, Spanish, or Portuguese-speakers; *Amici* have encountered Respondents who speak numerous other languages, such as Mam, Q'anjob'al, Achi, Jakalteko, Mayamam, K'iche', Q'eqchi', and Kaqchikel. Exh. G at ¶ 12; Exh. H at ¶ 8; Exh. D at ¶ 14; Exh. A at ¶ 14. These Respondents receive a tear sheet in English or Spanish and not in their native language, depriving them of actual notice of where and when to appear to be granted entry into the United States for their hearing. For example, ImmDef reports working with a Mam speaker who was issued a tear sheet in Spanish and, if not for the Center's assistance at a free legal clinic, would not have understood when and where to appear, because the CBP official who issued her the document did not give her any oral advisals in her language through an interpreter. Exh. F at ¶ 11-12. Similarly, CLINIC was required to connect numerous indigenous language speakers in Tijuana with volunteer interpreters who "could explain the MPP process to the rare language speaker, and also explain how to present themselves at the border to be taken to court and at what time," because CBP had not provided them with written or oral advisals in their language. Exh. D at ¶ 9. Furthermore, AOL and ADP have both represented indigenous language speakers who were not provided tear sheets in their native languages, and as a result did not understand the MPP process, with motions to reopen following the issuance of removal orders *in absentia*. Exh. A at ¶ 12; Exh. B at ¶ 8.

Relatedly, Respondents may not be able to understand the tear sheet because the tear sheets are often illegible, either because they are completed by CBP officers by hand or due to faulty technology. Charlene D’Cruz with L4GG describes how she often struggled to decipher the information provided in the tear sheet because the time and place were “chicken scratched” to the point of being actually illegible. Exh. G at ¶ 7. As she states, “whether or not someone is able to seek asylum in the United States or is deported *in absentia* should not come down to another person’s penmanship.” *Id.* Similarly, Taylor Levy recalls encountering many respondents whose tear sheet was “partially-illegible because the printer was apparently low on ink.” Exh. H at ¶ 6.

D. In numerous other instances, DHS’s own errors have prevented Respondents in MPP from attending their hearings, leading them to be ordered removed *in absentia* through no fault of their own.

The language contained on the tear sheet is not sufficient to provide notice to MPP Respondents as to how to attend their hearings, and many times, the government entirely fails to issue these tear sheets altogether, or interpret their contents in Respondents in their language. As a result, many Respondents are unable to attend their hearings and are ordered removed *in absentia* through no fault of their own. This is part of a larger pattern observed by *Amici* in which Respondents in the MPP program are frequently prevented from attending their hearings by the government’s own actions, and are then forced to bear the consequences of a removal order because of the government’s error.

For example, Respondents who lack a physical copy of their tear sheet have been denied access to their hearings, even when they report at the correct place and time. In both Tijuana and Ciudad Juarez, Mexican officials have been known to stop Respondents from entering the pedestrian bridge without a tear sheet. Exh. D at ¶ 7; Exh. H at ¶ 8. Margaret Cargioli of ImmDef describes her representation of a client whose tear sheet was lost in a robbery. Her office emailed CBP at the San Ysidro Port of Entry with her client’s ID and court hearing notice, advising them

that he did not have possession of his tear sheet or other court documents. Exh. F at ¶ 17. Her client was given a “difficult time” by CBP when he presented at the POE to attend his Master Calendar Hearing; he called Ms. Cargioli’s paralegal, Andrea Pena, who then had to directly contact CBP on the day of his hearing to remind them of the information provided via email. *Id.* at ¶¶ 15-16. According to Ms. Cargioli, “if my client were unrepresented at the time, I believe he would likely not have been processed at the San Ysidro port of entry and an Immigration Judge would have entered an order of removal *in absentia*.” *Id.* at ¶ 16.

In addition, *Amici* report at least one instance of a Respondent being turned away by CBP who falsely accused them of possessing a fraudulent tear sheet. CLINIC aided a Respondent in MPP who was turned away at the POE, despite being on time, because the CBP officer alleged that her tear sheet was fake, even though the information provided on her NTA matched the information in the EOIR automated system and stated that she had court that day in San Diego Immigration Court. Exh. D at ¶ 19. Mr. Guerra met this Respondent at his office after she was refused entry, and he contacted the San Diego Immigration Court on her behalf. According to Mr. Guerra, “the court clerk told me that there was nothing they could do” and this Respondent received an *in absentia* order of removal. *Id.*⁶

The government has also issued tear sheets to Respondents that are missing critical information or contain information that is actually incorrect. Many tear sheets lack the time or specific location needed to present, incorrectly list the time at which a Respondent is expected to appear at the POE, or fail to indicate if the time is a.m. or p.m. *Amici* providing services in

⁶ The critical need for the information on the tear sheet led Al Otro Lado to implement a document safety tool which assists MPP asylum seekers in digitizing their case documents, such as the tear sheet, and uploading them to a secure cloud server in order to ensure that they never lose access to their records. Exh. A at ¶ 17. However, as Luis Teixeira points out, they “cannot reach everyone.” *Id.*

Matamoros, El Paso, and Tijuana all attest to common errors in tear sheets, including variance in the time of arrival listed in the tear sheets of individual members of the same family unit whose NTAs indicate their hearings were to be held at the same time and place. For example, Mr. Guerra of CLINIC recalls “multiple occasions when family members were placed in consolidated removal proceedings, with the same date and time of court reflected in their NTAs, but their tear sheets told them different times to report to the POE for court.” Exh. D at ¶ 14. Ms. D’Cruz similarly recounts speaking with a family who had court at the same time, but where some family members’ tear sheets indicated they were to report to the POE at 4:00 a.m. and other family members to report at 8:00 a.m. Exh. G at ¶ 9.

Ms. D’Cruz recalls another instance where the CBP officer in charge of tear sheets that day provided a large number of MPP respondents with tear sheets that had the same date and time as their NTA—providing information that, if followed, would result in these individuals being denied entry into the U.S. and most likely ordered deported *in absentia*. *Id.* at ¶ 10. In another example from Matamoros, Ms. D’Cruz witnessed a Respondent in MPP approach CBP officials at 11:00 p.m. with a tear sheet that indicated he needed to arrive at 11:00 p.m. to the POE, despite the time on his NTA having been for earlier that day in Harlingen. *Id.* at ¶ 11. Because he was following the instructions on the tear sheet, he missed his court hearing, and was told that there was nothing that could be done. *Id.*

E. Despite the fact that NTAs do not provide Respondents in MPP with the information they need to attend their removal hearings, DHS frequently fails to provide the Immigration Court with proof that a tear sheet has been served on the Respondent or an attestation that the Respondent received specific advisals to facilitate their appearance in court.

Amici have witnessed firsthand the serious consequences of failing to provide Respondents with appropriate tear sheets. Respondents who do not receive a tear sheet or cannot understand its contents rely on guesswork and rumor to attend court. If a Respondent instead acts in accordance

with the information in the NTA, they may find themselves denied entry into the U.S. by the government and without recourse to attend their hearing. Perhaps unsurprisingly, over half of the cases in MPP culminate in an *in absentia* removal order.⁷ However, although the tear sheet is the only source of those critical instructions on how Respondents can access their hearings, the tear sheets typically contain no proof of service on Respondents and no proof of translation.

This case is no exception. Here, Respondents failed to appear at their initial master calendar hearing. I.J. at 1. DHS moved for a continuance to gather and present evidence for a motion to proceed *in absentia*, and the Immigration Judge scheduled a subsequent hearing. *Id.* There is no evidence that the Immigration Court mailed the Respondents a written notice of their second hearing. At the hearing, DHS moved to remove Respondents *in absentia* and submitted into the record an NTA and a tear sheet. *Id.* at 2. The NTA contained a completed certificate of service; the tear sheet did not. *Id.* at 9. DHS asserted that each Respondent was also personally provided with a tear sheet. *Id.* at 3. But the generic tear sheet included in Respondents' files were all "devoid of any indication that they were served on the respective respondents, such as a signature, or fingerprint, or certification from an officer attesting that the instructions were served on the respective respondents." *Id.* at 3–4. The Immigration Judge found that "[t]he notice of the time and place of the hearing is meaningless without notice of how to gain access to their hearing location in the United States from Mexico." *Id.* at 4–5. In the MPP context, the Immigration Judge explained that DHS must provide not only the hearing information on the NTA "but also notice of when, where, and how to report for transportation to their hearing[.]" *Id.* at 4. As detailed *supra*, the Immigration Judge's conclusion that a tear sheet is a necessary component of meaningful

⁷ *Details on MPP (Remain in Mexico) Deportation Proceedings by Hearing Location and Attendance, Representation, Nationality, Month and Year of NTA, Outcome, and Current Status*, TRAC Immigration, Sept. 2020, available at <https://trac.syr.edu/phptools/immigration/mpp/>.

notice is very much in accordance with the on-the-ground realities of the MPP program, as observed firsthand by *Amici* across the U.S.-Mexico border. Further, the government's failure to provide proof of service and an attestation that specific advisals regarding where and when to present to attend court to the Respondent in this case reflects a common practice across the border that prejudices all Respondents who are placed in MPP.

IV. SUMMARY OF ARGUMENT

A fundamental and indispensable tenet of due process is the opportunity to be heard, but that right is meaningless without notice of how to exercise it. For Respondents seeking asylum and facing removal to a country where they may be persecuted or killed, exercising the right to be heard is a matter of life and death. To protect these Respondents' due process rights, Congress requires that Respondents in removal proceedings receive the information that enables them to appear at their hearing. If the government does not provide Respondents with clear and accurate notice facilitating their appearance at their hearing, Respondents cannot be punished for their failure to attend; in order for the Immigration Court to remove a Respondent *in absentia*, Congress placed the burden on the government to prove by clear, unequivocal, and convincing evidence that such notice was provided. 8 U.S.C. § 1229a(b)(5)(A).

There is no statutory carve-out excusing the government from providing notice to those it subjects to MPP. The statute itself dictates that the due process protections it enshrines and limitations on *in absentia* removal apply to all Respondents in removal proceedings, including those forced to remain in a contiguous territory while their claim is adjudicated. 8 U.S.C. § 1229a(b)(5)(E). Therefore, Respondents in MPP are entitled to notice that fulfills the statutory requirements.

Instead, these Respondents receive a Notice to Appear with the time and place of their hearing that does not adequately inform them how to attend that hearing. Consequently, the NTA alone is insufficient notice. The Respondent may be issued a tear sheet with supplemental information, but that information contradicts the time and place instructions on the NTA and may be inaccurate. And, typically lacking any proof of service, there is no guarantee that such a tear sheet was provided at all.

Notice that is contradictory or unclear is the equivalent of no notice at all. Thus, even for the Respondents who receive both an NTA and a tear sheet, where the tear sheet fails to provide clear information sufficient to allow the Respondent to appear, notice is insufficient to support the issuance of an order of removal *in absentia*. Accordingly, proof of the specific tear sheet served upon the Respondent is necessary to allow the Immigration Judge to assess whether proper notice has been provided.

Because in the MPP context the tear sheet, not the NTA, provides notice of how to appear before the court, to satisfy the statutory due process requirements, the Department must establish that a tear sheet was properly served as required by the statute. The tear sheet must provide actual notice of the date, time, and place a Respondent should appear to enter the United States for their hearing. It must also contain a certificate of service documenting what specific notice was provided and be accompanied by an attestation by an immigration official that specific advisals were provided to the Respondent in their language. Without a tear sheet satisfying these criteria, the government cannot meet its burden of establishing by clear, unequivocal, and convincing evidence that that Respondent received proper service.

V. ARGUMENT

Due process dictates that Respondents in MPP receive notice that fulfills the statutory requirements and proof that such notice was provided through issuance of a tear sheet. At its core, “[t]he fundamental requisite of due process of law is the opportunity to be heard.” *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (quoting *Grannis v. Ordean*, 234 U.S. 385, 394 (1914)). Although the specific procedures facilitating the opportunity to be heard vary across legal contexts, this basic right is indispensable for citizens and noncitizens alike. *See In Re G-Y-R-*, 23 I&N Dec. 181, 186 (BIA 2001); *see also Reno v. Flores*, 507 U.S. 292, 306 (1993) (“It is well established that the Fifth Amendment entitles aliens to due process of law in deportation proceedings.”). But “[t]his right to be heard has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest.” *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). Consequently, to meaningfully exercise the opportunity to be heard, due process dictates that a respondent in removal proceedings must “be provided with notice of proceedings” *In Re G-Y-R-*, 23 I&N Dec. at 186.

Noncitizens in section 240 removal proceedings—including those in MPP⁸—are, at the very least, entitled to the notice and due process protections prescribed by Congress, which has

⁸ Both the relevant statutory scheme and DHS’s own policy memoranda confirm that Respondents in MPP are entitled to the notice due to noncitizens in 240 removal proceedings. First, in discussing the consequences of failure to appear at a hearing, the statute declares that “[t]he preceding provisions of this paragraph shall apply to all aliens placed in proceeding under this section, including any alien who remains in a contiguous foreign territory pursuant to section 1225(b)(2)(C) [DHS’s statutory justification for MPP] of this title.” 8 U.S.C. § 1229a(b)(5)(E). Those “preceding provisions” include the restriction that, before a respondent may be ordered removed *in absentia*, DHS must “establish[] by clear, unequivocal, and convincing evidence” that the “written notice required under paragraph (1) or (2) of section 1229(a)” was provided. 8 U.S.C. § 1229a(b)(5)(A). Second, DHS’s MPP Guiding Principles policy memorandum, issued at the outset of the program, states that respondents placed in MPP “will be issued an [sic] Notice to Appear (NTA) and placed into Section 240 removal proceedings.” Memorandum from U.S. Dep’t of Homeland Sec. to Enforcement Program Div. on Guiding Principles for Migrant Protection Protocols (Jan. 28, 2019) at 1. To dispel any doubts about MPP’s divergence from section 240 removal proceedings, the memo emphasizes

required that noncitizens are provided with specific information. The requirements for proper notice are enumerated in the INA and the implementing regulations. Respondents in MPP are entitled to notice that conforms to all of these provisions, including meaningful notice of the date, time, and place they must present themselves to attend their hearing. The government bears the burden to prove that it provided legally sufficient notice, regardless of whether a Respondent is or is not placed in MPP. In addition, due process requires Respondents to be served with a written notice of hearing issued by the Immigration Court in advance of any future hearing. As detailed below, when the government is unable to prove that Respondents received proper notice of their hearing, the Respondents cannot be removed *in absentia*.

A. Respondents must be provided with actual notice of the date, time and place they must appear to enter the United States for their hearing.

Respondents are entitled to a Notice to Appear (“NTA”) that provides “written notice . . . given in person . . . specifying . . . [t]he time and place at which the proceedings will be held.” 8 U.S.C. § 1229(a)(1)(G)(i). The NTA operates partly as a charging document but also “serves another integral function: telling a noncitizen when and where to appear.” *Pereira v. Sessions*, 138 S. Ct. 2105, 2115 n.7 (2018); *see also Orozco-Velasquez v. Att’y Gen.*, 817 F.3d 78, 84 (3d Cir. 2016) (noting NTA’s “purpose [is to] provide an alien with notice—of the charges against him and the basic contours of the proceedings to come.”).

But notice of the hearing time and place alone is insufficient where CBP plays the function of gatekeeper, determining who can and cannot cross the border to appear at their hearing. Because the NTA is intended to “facilitate appearance at those proceedings[,]” as the Supreme Court

that “[n]othing in this guidance changes existing policies and procedures for processing an alien under procedures other than MPP, except as specifically provided.” *Id.* at 1. Subsequent policy guidance does not purport to detract from the notice Respondents in removal proceedings are owed.

recently articulated in *Pereira v. Sessions*, “the Government has to provide noncitizens ‘notice’ of the information, i.e., the ‘time’ and ‘place,’ that would *enable them ‘to appear’ at the removal hearing in the first place.*” 138 S. Ct. 2105, 2115 (2018) (emphasis added). The Supreme Court explained that it is this information, not the “Notice to Appear” title itself, that ensures a document fulfills the statutory notice requirements. *See id.* at 2115–16, 2118. The Board of Immigration Appeals has agreed with the Supreme Court that informing a Respondent “when and where to appear for removal hearings” was an “essential function” of an NTA, *Matter of Bermudez-Cota*, 27 I&N Dec. 441, 442–43 (BIA 2018) (quoting *Pereira v. Sessions*, 138 S. Ct. 2105, 2110 (2018)), and echoed *Pereira* that the service of a document entitled “Notice to Appear” does not conclusively establish sufficient notice, *Matter of Mendoza-Hernandez*, 27 I&N Dec. 520, 532 (BIA 2019) (en banc). Rather, “the focus is on the contents of the notice and facilitating the alien’s appearance” *Id.* (citation removed). As declared by the Supreme Court and repeated by the Board, Respondents must be provided with the time and place information that *enables Respondents to appear* at their removal hearings to exercise their opportunity to be heard.

Accordingly, in MPP, it is the tear sheet, not the NTA, that contains the time and place information necessary to enable Respondents to appear at their removal hearings. Respondents who rely upon the NTA and not the tear sheet—assuming that a tear sheet was actually provided, contained accurate information, and was issued in or accompanied by necessary oral advisals in the Respondent’s language—are denied entry to the United States for their hearing.⁹ *Amici* have

⁹ *Amici* remind the Board that even where notice is sufficient, a Respondent’s failure to appear undermines the Court’s authority to proceed *in absentia* when that failure is “through no fault of the alien”. INA § 240(b)(5)(C)(ii). An order of removal issued *in absentia* pursuant to INA 240(b)(5)(A) may be rescinded at any time under section 240(b)(5)(C)(ii) of the Act when the Respondent demonstrates that the failure to appear occurred because he “was in Federal or State custody”. Respondents who are unable to appear at their court hearing because they are denied entry to the United States by CBP likewise cannot be held accountable for their failure to appear. The regulations clarify that Respondents placed in MPP during removal proceedings are in the Department’s custody and “considered detained”. 8 C.F.R. § 1235.3(d). The Board has noted that “custody” under section

witnessed how Respondents who believe they can present at the time and place listed on their NTA are then ordered removed by Immigration Courts. Here, Respondents did receive a document titled “Notice to Appear,” but an NTA is defined by the information it provides, not the document’s heading. Without a proper tear sheet, Respondents in MPP cannot get to their court date at all. Under *Pereira*, then, the tear sheet is essential to provide sufficient notice to appear. And as the Immigration Judge in this case explained, the NTA is “meaningless” without the information in the tear sheet. I.J. at 4.

Because the tear sheets contain the time and place information necessary to enable Respondents to appear at their hearings, receipt of the tear sheet is indispensable to satisfy due process. Indeed, any deviation from the procedures outlined in the tear sheet may result in CBP refusing to allow a Respondent to enter the U.S. and an order of removal *in absentia*.

B. DHS must prove service was proper prior to the issuance of an *in absentia* removal order for all Respondents, including Respondents placed in MPP.

Due process, as codified, requires proof of service that such notice was provided, and a Respondent cannot be ordered removed *in absentia* without this proof. The regulations articulate the proof of service requirement for the NTA specifically, stating “[t]he charging document must include a certificate of service pursuant to § 1003.32 . . .” 8 C.F.R. § 1003.14(a). The regulation states that:

[a] certificate of showing service on the opposing party or parties on a date certain shall accompany *any filing* with the Immigration Judge unless service is made on the record during the hearing. *Any documents or applications not containing such certification shall not be considered* by the Immigration Judge unless service is made on the record during a hearing.

240(b)(5)(C)(ii) is not confined to the criminal context, but applies to situations of civil commitment. *See Matter of Jean Robert Evra*, 25 I&N Dec. 79 (BIA 2009). For this reason, section 240(b)(5)(C)(i) supports a finding that Respondents who present themselves to CBP on the day of their hearing but miss court because they are denied entry should not be subjected to removal *in absentia*. *See* 8 U.S.C. § 1229a(b)(5)(C).

8 C.F.R. § 1003.32(a) (emphasis added). At the very least, the regulations necessitate that proof of service contains an indication of the party upon whom it was served and the date upon which service was rendered. *Id.*

The Immigration Court has elaborated upon the criteria for proper proof of service. According to the Immigration Court Practice Manual, the proof of service (or certificate of service) “must state: the name or title of the party served,” “the precise and complete address of the party served,” “the date of service,” the means of service,” the document or documents being served,” and “the name and signature of the person serving the document.” *Immigr. Ct. Prac. Manual* (Jul. 2, 2020) at 3.2(e)(i). The Manual reiterates that all filings must contain a proof of service with these contents, and a filing with improper proof of service will be rejected by the Immigration Court. *Id.* at 3.1(d)(1), 3.2(a), 3.2(e). Additionally, there must be proof that notice was provided in a language a Respondent understands. Removal orders carry lasting consequences, and the INA mandates noncitizens receive “oral notice” of the consequences for failing to appear in their “native language or another language they understand” before these consequences are applied. 8 U.S.C. § 1229a(b)(7).

Highlighting the importance of proof of service, proper service of notice and commensurate proof serves as a threshold requirement for *in absentia* removal. Under the statute and regulations, a Respondent who receives proper written notice of the hearing but fails to attend “shall be ordered removed in absentia if the Service establishes by clear, unequivocal, and convincing evidence that the written notice was so provided and that the alien is removable . . .” 8 U.S.C. 1229a(b)(5)(A); 8 C.F. R. § 1003.26(c)(2). In fact, the entire “purpose of in absentia proceedings is to determine whether the DHS can meet its burden to establish that the alien, who did not appear, received

proper notice and is removable as charged.” *Matter of Sanchez-Herbert*, 26 I&N Dec. 43, 44 (BIA 2012) (citing section 240(b)(5) of the Act; 8 C.F.R. § 1003.26 (2012)).

In sum, the document providing the legally required information enabling Respondents’ appearance at their hearing must contain proof of service. A document purporting to provide evidence of notice but lacking this certification cannot be considered by the Immigration Judge and thus does not constitute sufficient evidence to order Respondents removed *in absentia*. And without this evidence that notice was served, the Immigration Judge may not issue an *in absentia* removal order.

Practically, the NTA contains a “Certificate of Service” box to capture all required information to confirm proper service. This box, pasted below for the Board’s convenience, requires that an NTA, upon filing with the court, document service was proper by documenting: (1) the signature of the Respondent when personally served, (2) the date of service, (3) whether service was effectuated in person or by mail, (4) which language was used to provide the Respondent with “oral notice...of the time or place of his or her hearing”, and (5) the signature and title of the Officer who effectuated service.

Certificate of Service	
This Notice To Appear was served on the respondent by me on _____, in the following manner and in compliance with section 239(a)(1)(F) of the Act:	
<input type="checkbox"/> in person	<input type="checkbox"/> by certified mail, return receipt requested
<input type="checkbox"/> Attached is a credible fear worksheet.	<input type="checkbox"/> by regular mail
<input type="checkbox"/> Attached is a list of organizations and attorneys which provide free legal services.	
The alien was provided oral notice in the _____ language of the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act.	
_____ (Signature of Respondent if Personally Served)	_____ (Signature and Title of Officer)

Amici argue that in the MPP context, an exact replica of the Certificate of Service box included in the NTA must be included on the tear sheet to establish proper service and proceed *in absentia*. As discussed above, for Respondents in MPP, it is the tear sheet, not the NTA, that

provides the necessary information enabling Respondents' appearance at their hearing. Consequently, the tear sheet must meet the statutory and regulatory requirements that apply to the NTA, including a certificate of service with the date and party served. Moreover, the tear sheet was a document filed with the Immigration Court in its own right, and as such, requires a separate proof of service on Respondent before it can be considered by the Immigration Judge. And as a filing before Immigration Court, the tear sheet's proof of service must include the name of the party being served, the party's address, the date of service, the means of service, and the name and signature of the server. Lacking this information, under its own rules, the Court must reject the filing. The NTA Respondents received here contained a certificate of service with that information. I.J. at 7. The tear sheet did not. *Id.* at 8–9.

There is no evidence that Respondents received any such advisals. The NTA contains confirmation that Respondents were orally notified of the time and place of their hearing and consequences for failing to appear; the tear sheet contains no such assurance. I.J. at 7–9. This evidence raises questions regarding *which* information the Respondents were provided regarding where and when they were required to present themselves for court. If the Respondents' experiences mirror the experience of thousands of asylum seekers served by *Amici*, DHS failed to provide the Respondents with oral notice regarding the consequences for failing to appear at the time and place indicated on the tear sheet—assuming a tear sheet was indeed provided to the Respondents as asserted by DHS. Absent a certificate of service confirming that the tear sheet was provided to the Respondents in their language or that the Respondents received clarification orally regarding whether to follow the information on the NTA or the tear sheet to appear, the statute and

principles of due process compel the conclusion that notice was insufficient; notice that cannot be understood is the equivalent of no notice at all.¹⁰

But not only do the tear sheets lack a certificate of service, they lack any indication of service at all, much less the “clear, unequivocal, and convincing evidence” required to proceed with removal *in absentia*. See 8 U.S.C. § 1229a(b)(5)(A)(1); 8 C.F.R. § 1003.26(c)(2). In this case, the Immigration Judge enumerated the tear sheet’s many deficiencies: there is no information connecting a specific tear sheet to a specific Respondent or A-number, signature, or fingerprint. I.J. at 3–4. Although DHS alleged that the tear sheet was issued, there is no supporting evidence in the record, and the claim that Respondents were personally served with tear sheets was not made by the specific officer who allegedly served these tear sheets upon the respective Respondents. *Id.* at 4. A generic tear sheet that does not specify its recipient and lacks certification of service does not meet the statutory or regulatory evidentiary requirements for removal *in absentia*.

Nor should it. As discussed above, *Amici* have encountered many Respondents who did not receive a tear sheet with their NTA. Lacking the necessary information to appear at their hearing, these Respondents would have had no means to learn of the instructions for attending their hearings but for the assistance of *Amici*. Even if these Respondents made it to the proper POE at the designated time, they may have been denied access entirely if they did not have a tear sheet

¹⁰*Amici* maintain that the contradictions between the information on the NTA and the tear sheet undermine the provision of notice. “A Notice to Appear is not meant to be enigmatic,” *Orozco-Velasquez v. Att’y Gen.*, 817 F.3d 78, 84 (3d Cir. 2016), and courts have held that, for notice to be adequate, regardless of the type of hearing, it must be clear. See *Fogel v. Zell*, 221 F.3d 955, 962–63 (7th Cir. 2000). In the immigration context specifically, courts have ruled that forms providing conflicting procedural guidance are “misleading” and do not “satisfy the notice component of due process.” *Walters v. Reno*, 145 F.3d 1032, 1042–43 (9th Cir. 1998). Dueling notices with conflicting instructions is the practical equivalent of no notice at all. Consequently, Respondents in MPP—including those issued both an NTA and a tear sheet—did not receive sufficient notice of their hearing, and thus any *in absentia* removal orders are invalid. But assuming *arguendo* that the Board believes that the tear sheet provides adequate notice and cures the defects of the NTA, it is even more critical that the government prove Respondents receive a tear sheet with the necessary information.

in their possession. The very problem that proof of service is meant to prevent already pervades the MPP program. Consequently, adhering to the statutory requirements is especially necessary in this context to ensure Respondents receive sufficient notice and prevent the government from inadvertently violating their due process rights.

Therefore, because DHS has failed to demonstrate it served Respondents with notice that satisfies requirements of due process, “the Court cannot conclude that they were accorded a reasonable opportunity to appear for the hearing[,]” and DHS cannot meet its burden to provide sufficient evidence to justify removal *in absentia*.

C. Respondents must receive advance written notice prior to every hearing.

Finally, Respondents are entitled to receive a notice of hearing prior to any hearing scheduled before the court. Removal proceedings are initiated when the Department issues, serves, and files a Notice to Appear. *Matter of S-O-G- and F-D-B-*, 27 I&N Dec. 462, 465 (A.G. 2018) (citing INA § 239(a), 8 U.S.C. § 1229(a); 8 C.F.R. § 1003.14(a)). Subsequent to its receipt of the NTA, the Immigration Court issues a notice of hearing directly to the Respondent. This notice of hearing is distinct from the NTA, and the burden is on the Immigration Court, not the Department, to provide this notice to Respondents. *Matter of Mendoza-Hernandez*, 27 I&N Dec. 520, 525 n.8 (“A notice of hearing is not part of the notice to appear, which is not “served” by the Immigration Courts. Instead, the notice of hearing is a separate notice, served in conjunction with the notice to appear, that satisfies the requirements of section 239(a)(1)(G) of the Act by providing the essential information regarding the time and place of the hearing.”). But like the NTA, the notice of hearing is required to satisfy due process, and the Immigration Court must issue written notice to Respondents for all hearings.

Failure to do so can excuse a Respondent's absence and preclude *in absentia* removal: "Lack of notice may constitute reasonable cause for missing a hearing." *In re Enrique Cordero-Guerra*, 2008 WL 2517594 at *1 (BIA 2008) (citing *Matter of Lopez-Barrios*, 20 I&N Dec. 203 (BIA 1990)). The notice of hearing is especially important when the initial NTA fails to specify the important time and place information. *See Matter of Bermudez-Cota*, 27 I&N Dec. 441, 443 (BIA 2018); *see also Gomez-Palacios v. Holder*, 560 F.3d 354, 356 (5th Cir. 2009). Providing notice of a hearing is not a one-off responsibility of the Immigration Court; a subsequent or rescheduled hearing entails the issuance of another notice of hearing. *See* 8 U.S.C. §1229(a)(2)(A).

The record in this case contains no indication that the Immigration Court issued any such notice of hearing when evaluating whether to remove Respondents *in absentia* during the Respondents' second immigration court hearing. Regardless of whether the notice of hearing would have cured a defective NTA, receipt of such notice is an independent right owed to Respondents in removal proceedings. Here, the Respondents failed to appear at a hearing that they received no notice for. Accordingly, the IJ did not err in terminating the Respondents' proceedings; indeed, because the Court failed to serve Respondents with a hearing notice by mail in advance of their second hearing, the Court lacked authority to order the Respondents removed *in absentia*. Respondents in this case were doubly denied effective notice: first, by DHS, which offered no convincing proof that it ever served a tear sheet upon the Respondents, and second, by the Immigration Court, which failed to provide a hearing notice of the Respondents' final hearing at which the Department argued they should be ordered removed *in absentia*. These failures deprived the Respondents of notice to exercise their opportunity to be heard.

VI. CONCLUSION

In accordance with the statute, regulations, and principles of due process, *Amici* respectfully urge the Board to affirm the Immigration Judge’s holding that, by failing to provide proof the Respondents received the legally indispensable notice, the Department failed to meet its evidentiary burden to proceed with removal *in absentia*.

Dated: October 26, 2020

Respectfully submitted,



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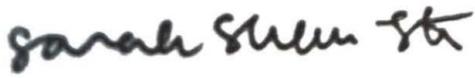


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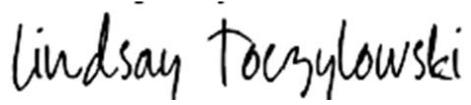


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INDEX OF EXHIBITS

Ex.	Document	Page
A	Declaration of Diego Javier Aranda Teixeira, Border Rights Project Director, Al Otro Lado (Oct. 24, 2020)	2
B	Declaration of Cindy Woods, Managing Attorney, Proyecto de Ayuda para Solicitantes de Asilo (PASA), a <i>pro bono</i> initiative of the Asylum Defense Project (ADP)(Oct. 26, 2020)	10
C	Declaration of Karla Hernandez Alba, volunteer with the Remain in Mexico (MPP) Response program of Border Kindness (Oct. 22, 2020) (with certified translation)	15
D	Declaration of Luis Guerra, Strategic Capacity Officer for the Catholic Legal Immigration Network, Inc. (CLINIC) (Oct. 22, 2020)	21
E	Declaration of Alexandra Miller, Border Action Team Managing Attorney of the Florence Immigrant & Refugee Rights Project (Florence Project) (Oct. 13, 2020)	28
F	Declaration of Margaret Cargioli, Managing Attorney at Immigrant Defenders Law Center (ImmDef) (Oct. 19, 2020)	38
G	Declaration of Charlene D’Cruz, Director of Project Corazon Matamoros, a project of the Lawyers for Good Government (L4GG) (Oct. 22, 2020)	47
H	Declaration of Taylor Levy, Esq. a nationally recognized expert on MPP and founder of Taylor Levy Law (Oct. 23, 2020)	53

EXHIBIT A

DECLARATION OF DIEGO JAVIER ARANDA TEIXEIRA, BORDER RIGHTS PROJECT DIRECTOR, AL OTRO LADO

I, Diego Javier Aranda Teixeira, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I make this declaration based on my personal knowledge except where I have indicated otherwise. If called as a witness, I would testify competently and truthfully to these matters.

2. I am an attorney licensed in the state of New York, practicing in the area of immigration law and human rights. I am over the age of 18. I am a Supervising Attorney for Litigation at Al Otro Lado. In that capacity, I work with asylum seekers in Tijuana, México, and immigrants detained in ICE and CBP custody.

3. Al Otro Lado is a non-profit, binational legal services organization incorporated in California. Al Otro Lado serves deportees, migrants, refugees, and their families, principally in Los Angeles, California, San Diego, California, and Tijuana, Mexico. Al Otro Lado's mission is to provide screening, advocacy, and legal representation for individuals in asylum and other immigration proceedings, to seek redress for civil rights violations, and to assist deportees, refugees, and other immigrants with legal and social service needs. We have a staff of 11 people in our Tijuana office.

5. Through its Border Rights Project, Al Otro Lado hosts legal orientation and consultation sessions for migrants in Tijuana, Mexico. Our focus is on providing information about the U.S. asylum system and immigration detention system to migrants who wish to seek asylum in the United States. We work with many populations affected by U.S. asylum policies, including individuals returned to Mexico pending the resolution of their immigration proceedings pursuant to the Migrant Protection Protocols, with individuals detained or formerly

detained in the United States, and with individuals who are waiting in Mexico for the opportunity to apply for asylum in the United States but have been delayed in doing so because of the U.S. policy of metering migrants at ports of entry. As part of this work, our staff accompany some asylum seekers who wish to present themselves to Customs and Border Protection (CBP) officers at the San Ysidro Port of Entry, and represent them at their credible/reasonable fear interviews before asylum officers with U.S. Citizenship and Immigration Services (USCIS), and assist them with their pro se I-589 asylum applications, with pro-se motions to reopen for people who have missed court, with pro bono attorney referrals, and other aspects of their cases, whether partial assistance or in, limited cases, full representation. Al Otro Lado and our volunteer attorneys assist migrants in reopening their cases, frequently because they were unable to cross into the United States for their court hearings.

6. To expand our capacity, Al Otro Lado frequently recruits and trains volunteers and pro bono attorneys to assist with legal orientation workshops and pro se assistance in Tijuana at our premises in person and remotely, having adapted our on-the-ground work substantially in view of the ongoing COVID-19 pandemic. Since November 2018, we have trained and deployed approximately 3,500 volunteers.

7. We also work with asylum seekers and other community advocates to document human rights violations by both U.S. and Mexican immigration authorities against asylum seekers at the US-México border. Every day, normally, Al Otro Lado observers conduct human rights monitoring at the U.S. port of entry in Tijuana to track the progress of the asylum waitlist. This waitlist is part of the metering policy, whereby U.S. Customs and Border Protection

("CBP") limits the number of people permitted to seek asylum at U.S. ports of entry along the U.S.-Mexico border each day. However, right now we are in a global pandemic, and Al Otro Lado cannot send observers as usual, due to the health risks this would expose them to. The waitlist, furthermore, is closed for the moment due to the pandemic. In normal times, aside from monitoring the waitlist, our observers also monitor the behavior of CBP officers and whether they comply with other obligations, such as permitting people subjected to MPP to cross for their hearings, and what happens when they do not allow people subjected to MPP to cross.

8. Our human rights monitoring data is used by international advocacy organizations such as Amnesty International and Human Rights Watch, and has been presented on multiple occasions to human rights monitoring bodies such as the Inter-American Commission on Human Rights and the Office of the High Commissioner for Human Rights.

9. Al Otro Lado's Tijuana office staff includes a Mexican attorney and a Mexican psychologist. These staff members focus on liaising with Mexican governmental agencies and with non-governmental agencies with a presence in Mexico to assist our clients to seek healthcare, mental health, and other resources. During the Covid-19 pandemic we have also contracted a part-time social worker to help address clients' health and safety needs. We also partner with Refugee Health Alliance and Prevencasa, two nonprofit organizations that operate community healthcare clinics that serve migrants, deported persons, and low-income Mexican citizens.

Hearing Notices Require Detailed Advisals to Provide Adequate Notice

10. In any immigration proceedings before the Executive Office for Immigration

Review, the court must provide notice of the date, time, and location of the hearing. However, under MPP, migrants must also receive instructions as to where and when they must present themselves to US immigration authorities in order to be processed and paroled into the United States for the purpose of attending their proceedings.

11. These advisals are called “tear sheets.” Tear sheets are meant to contain instructions regarding the location and time that migrants must present themselves at a port of entry in order to be processed to attend their MPP hearings. DHS states that the agency provides these advisals in English, Spanish, or Portuguese, as appropriate,¹

12. In practice, however, this system of “advisals” is deficient. Not all migrants receive tear sheets. Of those migrants that do receive the tear sheets, there are migrants who are not literate, or speak an Indigenous language, and are unable to read Spanish or English. In one case which is emblematic of the problem, I filed a motion to reopen for a person whose best language was an Indigenous language, but who received a tear sheet in Spanish, which affected his ability to know when and where to present himself. Migrants in that situation receive no instructions in a language that they can understand, thus making it more likely that they will miss their hearing.

13. It is not uncommon for there to be multiple ports of entry in large border cities, such as Tijuana, Matamoros, and Juarez. However, the documents received by migrants do not specify which port of entry at which the migrant must present themselves in order to be processed. Border cities frequently have multiple ports of entry from Mexico to the United States. For instance, Tijuana has three: the Otay point of entry, the San Ysidro PedEast point of entry, and

¹ Department of Homeland Security, Migrant Protection Protocols, available at <https://www.dhs.gov/migrant-protection-protocols> (last accessed Oct. 24, 2020).

the San Ysidro PedWest point of entry, also known as “El Chaparral.” Not all MPP asylum seekers are savvy about border cities, and come from more rural territories, and thus even arriving at the port of entry can be daunting, and confusing in cities with multiple ports of entry, and lead to the asylum seeker not presenting themselves at the correct time and place. If a migrant arrives at the wrong port of entry, even though it is within the same city as the correct port of entry, CBP will not permit them to attend their MPP proceedings, resulting in a removal order in absentia or a termination order.

14. The advisals also fail to make clear the time and place in México, *outside* the port of entry, where migrants should present themselves in order to be processed by US immigration authorities to attend their hearings. For example, migrants scheduled for a morning court appearance in San Diego must be on-site at the port of entry between 3:30am and 4am. This arrival time required for processing of migrants to attend hearing is not intuitive, nor explained sufficiently to migrants, particularly those with limited literacy or who speak an Indigenous language. This means that, in Tijuana, for example, people with hearings in the morning must line up in the middle of the night in a square adjacent to the red light district where human trafficking is high, and adjacent to another square controlled by organized crime. If migrants arrive even a few minutes late, CBP prevents them from being processed and attending their hearing.

15. Public transportation in Mexico is unavailable in the middle of the night from the areas where migrants tend to live, and these migrants tend to be indigent, so it is prohibitively expensive for them to take a private taxi. A private taxi can cost as much as half of what an asylum seeker could make in a week, if they even have work. In effect, this means

that they must take the last bus that runs from their neighborhood, which can leave them stranded outside the square at their port of entry from 11pm or midnight. As a result, they can be forced to wait all night for their hearing in the morning, in very dangerous circumstances that put both them and their ability to attend their hearings at risk.

16. Official guidance does not say that CBP may not let people in who are late for their hearings.² However in our experience, CBP does not show flexibility for people arriving late. On multiple occasions attorneys and volunteers from our organization have tried to advocate for migrants who arrive late without success.

17. Many people in M.P.P. have their documents stolen or destroyed because of the conditions they face in border cities, such as unstable or unsanitary housing, and high criminality. Al Otro Lado has a document safety tool which assists MPP asylum seekers digitize their case documents and upload them to a secure cloud server in order to ensure that they never lose access to their records - however, we cannot reach everyone. While individuals can call a hotline (a US number with no Mexican number for people in Mexico to call) for information on their hearings, that hotline does not provide the tearsheet information on where and when to go to be taken to MPP hearings.

18. If notice and advisal sheets are not signed or acknowledged on the record, using an interpreter whenever necessary, we cannot know if the migrant or migrants in question received them. Even if they received the sheets, if notice and advisal sheets are not signed or acknowledged on the record, we cannot know whether they understood them, nor will we have

² *Id*; U.S. Customs and Border Patrol, MPP Guiding Principles, *available at* <https://www.cbp.gov/sites/default/files/assets/documents/2019-Jan/MPP%20Guiding%20Principles%201-28-19.pdf> (last access Oct. 24, 2020).

a record that they were provided in the first place.

19. I hereby declare under the penalty of perjury pursuant to the laws of the United States that the above is true and correct to the best of my knowledge.



Diego J. Aranda Teixeira
EXECUTED this 24th day of October 2020

EXHIBIT B

DECLARATION OF CINDY WOODS

I, Cindy Woods, pursuant to 28 U.S.C. 1746, declare under penalty of perjury that the following is true and correct to the best of my knowledge and recollection.

1. My name is Cindy Sue Woods. I am a licensed attorney and member in good standing in the State Bar of New York (No. 5394226). I currently serve as the Managing Attorney of the Proyecto de Ayuda para Solicitantes de Asilo (PASA), an initiative of the Asylum Defense Project, which I formally launched in February 2020. Prior to launching PASA, I spearheaded an initiative assisting asylum seekers placed in MPP in non-refoulement interviews before the United States Citizenship and Immigration Services (USCIS). I have personal knowledge of the events and facts described below.
2. PASA provides full representation and limited scope pro bono legal services to asylum-seekers placed in MPP. While I have provided direct legal services to asylum seekers returned to Mexico across the Texas-Mexico border since May 2019, PASA currently focuses its work on representing individuals who are scheduled for immigration court in Laredo, Texas. PASA's legal services regularly include, but are not limited to, representation in conjunction with non-refoulement interviews before the USCIS Asylum Office, removal proceedings and custody redetermination proceedings before the Executive Office of Immigration Review, appeals to the Board of Immigration Appeals, and requests for humanitarian parole before Customs and Border Patrol (CBP).
3. I previously worked as a staff attorney with the Proyecto Dilley (formerly the "Dilley Pro Bono Project"), another initiative of the Asylum Defense Project, where I represented asylum seeking families who were detained at the South Texas Family Residential Center. In my current role, I regularly monitor, supervise, and/or provide direct

representation to families who are detained at the South Texas Family Residential Center who were subjected to the Migrant Protection Protocols (MPP) and returned to Mexico.

4. Individuals in MPP who are scheduled before the San Antonio Immigration Court are required to appear via video-teleconference (VTC) from the Laredo, Texas tent court. In my experience, both individuals who cross at or near Laredo, Texas or Eagle Pass, Texas are placed in MPP proceedings before the San Antonio Immigration Court via VTC from Laredo. Individuals who crossed at or near Eagle Pass, approximately two hours from Laredo, are either returned to Mexico at Piedras Negras, or driven through the United States and returned to Nuevo Laredo. Whether an individual is returned back to Piedras Negras or brought to Nuevo Laredo, they are still required to appear at the Laredo POE in order to be processed into their court hearing. It is unclear what policy dictates CBP's decision to return an individual to Piedras Negras or Nuevo Laredo.
5. Respondents with court at the Laredo tent facilities are typically provided with two documents: a Notice to Appear indicating they are ordered to appear before an immigration judge at "800 Dolorosa Street-Suite 300, San Antonio, TX 78207" and a 'tear sheet' that purports to indicate the time, date and location they must appear at the port of entry to be processed in for court. These tear sheets usually state that individuals must appear at the Laredo, Texas port of entry. No additional address or specific instructions are provided on exactly where an individual must go. This can be particularly challenging for respondents in MPP who have never travelled to Nuevo Laredo, Mexico and are unfamiliar with the location of the pedestrian port of entry.
6. PASA has advised numerous Respondents on the importance of presenting at the Laredo POE at the date and time listed on the tear sheet. A majority of our clients do not reside in

Nuevo Laredo, Mexico due to the overwhelming safety issues in that city. On at least three occasions, respondents have inquired about the ability to present at a different POE than the Nuevo Laredo POE due to concerns for their safety. I have advised these clients that if they do not appear at the Laredo POE at the date and time listed on their tear sheet, they will miss their scheduled court hearing, and most likely be ordered deported *in absentia*. Absent my advisals, which are based upon my observations of CBP's pattern and practice, these Respondents would have no idea that they were only permitted to appear at one POE in order to attend their court hearing.

7. PASA helped prepare one Respondent from El Salvador for his non-refoulement interview in November 2018, in advance of his initial master calendar hearing which was set for December 13, 2019 before the San Antonio Immigration Court. After being returned to Mexico under MPP to Nuevo Laredo, Respondent relocated to Ciudad Juarez, Mexico out of fear of Nuevo Laredo. On the day of his court hearing, he presented at the POE in El Paso, Texas, which was the closest POE to his current location. He reported being denied entry and being told by border officials he had to go to the POE in Laredo. As a result of not appearing at the time and place indicated in the accompanying tear sheet, Respondent missed his master calendar hearing, and was ordered deported *in absentia* by the Immigration Judge in San Antonio.
8. PASA has also represented individuals who missed their court hearings in Laredo, Texas and were ordered deported *in absentia*. In one such case, we assisted an Ecuadorian Quiche speaker and her daughter with a motion to reopen who were never given any information or instructions in their native language. In fact, because no immigration officials spoke to this family in their language at all, the family did not understand that

they were in removal proceedings or required to attend court until they spoke with lawyers on our team with the assistance of a Quiche interpreter.

I declare upon penalty of perjury that the foregoing statements made in this declaration are true and correct to the best of my knowledge and belief.

Executed this 26 day of October 2020 in San Antonio, Texas.



Cindy Woods

EXHIBIT C

DECLARATION OF KARLA HERNANDEZ ALBA

I, Karla Hernandez Alba, pursuant to 28 U.S.C. 1746, declare under penalty of perjury that the following is true and correct to the best of my knowledge and recollection.

1. I have volunteered at Border Kindness's Remain in Mexico (MPP) Response since August 2019. Border Kindness provides asylum seekers, migrants, and the displaced in Mexicali, Mexico with comprehensive services including shelter, clothing, medical care and legal services. Our Remain in Mexico Response provides transportation and funds to migrants and refugees placed in MPP in Mexicali to ensure they are present at their scheduled hearings.
2. The majority of individuals who are placed in MPP at the Calexico Port of Entry are scheduled to have court in San Diego, California, over 100 miles away, and have no means of getting to Tijuana. Border Kindness helps to organize transportation on private buses to Tijuana. We partnered with Al Otro Lado, who greets these asylum seekers in Tijuana, and later transports them to the POE to attend court.
3. I have personally encountered three families in Mexicali who were scheduled for court in El Paso, Texas, more than 600 miles away. These families had no idea that their court was in Texas, and it was only when we met them and looked at their paperwork, that someone explained to them they would have to travel to Texas to attend court. Border Kindness was able to organize transportation for these families.
4. When Border Kindness first started to serve individuals in MPP, we would provide brief workshops outside of the various shelters in Mexicali. Once we acquired office space in Mexicali, immigrants in MPP would come directly to our office to get more information and schedule transportation for court.

5. Border Kindness has helped approximately 850 asylum seekers in MPP with transportation to Tijuana to attend court. During my time volunteering with the Remain in Mexico (MPP) Response, it was very rare to meet an individual in MPP who understood that they had to arrive earlier to the POE than the time they had court.
6. Attorneys who we work with in Tijuana informed me early on in the project that it was the practice for individuals to arrive four hours prior to their court hearing time to be processed into the United States. For example, if someone had court at 8 AM, they would need to be at the port at 4 AM.
7. Border Kindness was often the first entity to explain to individuals in MPP that they needed to arrive at the POE early. We would explain why we were scheduling transportation so early, almost always a day in advance of their hearing.
8. I believe that if we were not in Mexicali, providing an explanation as to where and when individuals needed to arrive at the POE in Tijuana, a majority of these individuals would have missed their court hearing.

I declare upon penalty of perjury that the foregoing statements made in this declaration are true and correct to the best of my knowledge and belief. Executed this 22 day of October 2020 in Mexicali, Mexico.

/s/

Karla Hernandez Alba

CERTIFICATE OF TRANSLATION

I, Cindy Woods, certify under penalty of perjury that I am fluent in the English and Spanish languages and have translated the attached declaration of Ms. Karla Hernandez Alba to the best of my ability.



Cindy Woods

10/22/2020

Date

DECLARACION DE KARLA HERNANDEZ ALBA

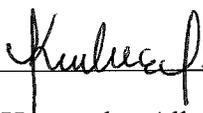
Yo, Karla Hernández Alba, en virtud del 28 U.S.C. 1746, declaro bajo pena de perjurio que lo siguiente es verdadero y correcto a mi leal saber y entender.

1. Me he ofrecido en la Repuesta a Quédate en México (MPP) del Bondad Frontera en México desde agosto de 2019. Bondad Frontera proporciona a los solicitantes de asilo, migrantes y desplazados en Mexicali, México, servicios integrales que incluyen refugio, ropa, atención médica y servicios legales. Nuestra Repuesta a Quédate en México proporciona transporte y fondos a migrantes y refugiados colocados en MPP en Mexicali para asegurarse de que están presentes en sus audiencias programadas.
2. La mayoría de las personas que son colocadas en MPP en el Puerto de Entrada (POE) de Calexico están programadas para tener corte en San Diego, California, a más de 100 millas de distancia, y no tienen medios para llegar a Tijuana. Bondad Frontera ayuda a organizar el transporte en autobuses privados a Tijuana. Nos asociamos con Al Otro Lado, quien saluda a estos solicitantes de asilo en Tijuana, y más tarde los transporta al POE para asistir a la corte.
3. Personalmente me he encontrado con tres familias en Mexicali que estaban programadas para la corte en El Paso, Texas, a más de 600 millas de distancia. Estas familias no tenían idea de que su corte estaba en Texas, y fue sólo cuando los conocimos y miramos su documentación, que alguien les explicó que tendrían que viajar a Texas para asistir a la corte. Bondad Frontera fue capaz de organizar el transporte para estas familias.
4. Cuando Bondad Frontera comenzó a servir a las personas en MPP, ofrecemos talleres breves fuera de los diversos refugios en Mexicali. Una vez que adquirimos el espacio de

oficina en Mexicali, los inmigrantes en MPP vendrían directamente a nuestra oficina para obtener más información y programar el transporte para la corte.

5. Bondad Frontera ha ayudado a aproximadamente 850 solicitantes de asilo en MPP con transporte a Tijuana para asistir a la corte. Durante mi tiempo como voluntario con la Repuesta a Quédate en México (MPP), era muy raro conocer a un individuo en MPP que entiende que tenían que llegar antes al POE que el momento en que tenían la corte.
6. Los abogados con los que trabajamos en Tijuana me informaron desde el principio en el proyecto que era la práctica para que las personas llegaran cuatro horas antes de que su hora de audiencia judicial fuera procesada a los Estados Unidos. Por ejemplo, si alguien tuviera tribunal a las 8 AM, tendría que estar en el puerto a las 4 AM.
7. Bondad Frontera fue a menudo la primera entidad en explicar a las personas en MPP que necesitaban llegar al POE temprano. Explicamos por qué estábamos programando el transporte tan temprano, casi siempre un día antes de su audiencia.
8. Creo que, si no estuviéramos en Mexicali, proporcionando una explicación sobre dónde y cuándo las personas necesitaban llegar al POE en Tijuana, la mayoría de estas personas habrían perdido su audiencia judicial.

Declaro, bajo pena de perjurio, que las declaraciones anteriores hechas en esta declaración son verdaderas y correctas a mi mejor conocimiento y creencia. Ejecutado este 22 día del 2020 de octubre en Mexicali, México.



Karla Hernandez Alba

EXHIBIT D

DECLARATION OF LUIS GUERRA

1. I, Luis Guerra, submit this declaration in support of the Border Legal Service Providers *Amici Curae* request. I am over the age of 18, have personal knowledge of the facts set forth herein, and if called as a witness, I could and would testify competently as set forth below.
2. I currently serve as Strategic Capacity Officer for the Catholic Legal Immigration Network, Inc (CLINIC), a position I have held since April 2018. I work remotely from my home in El Cajon, CA, near San Diego. In addition to my day-to-day work for CLINIC, beginning in November 2018, I have regularly volunteered with Al Otro Lado and their legal team.
3. Al Otro Lado mobilized volunteers to provide orientation and basic information about the U.S. immigration and asylum system to asylum seekers who were stranded in Tijuana due to border metering and then the Migrant Protection Protocols (MPP).
4. CLINIC's collaboration on the Border Rights Project positioned its staff to launch a similar project in Ciudad Juárez, albeit on a smaller scale. The El Paso sector, which required those placed in MPP to await their court dates in Ciudad Juárez, had seen the fastest implementation of MPP and metering. CLINIC launched the *Estamos Unidos* Asylum Project in August 2019. Based out of key locations throughout Ciudad Juárez, the team of CLINIC staff—Project Attorney Tania Guerrero, Strategic Capacity Officer Luis Guerra and more recently, Volunteer Coordinator Victor Andrés Flores—have focused our efforts on meeting with asylum seekers at shelters housing people who were subject to MPP. The goal of *Estamos Unidos* is to provide Know Your Rights information to as many asylum seekers and migrants as possible and to provide legal assistance to those who are pursuing asylum in the United States.

5. In my work both with the Border Rights Project and with *Estamos Unidos*, I have met with thousands of people subject to MPP in Tijuana and Ciudad Juarez. Individuals subject to MPP are often very confused about the tear sheets they receive from Customs and Border Protection (CBP), and ask us many questions about them. Because the tear sheets lack critical information about how and where asylum seekers must present themselves to attend court, much of my work has been to explain basics about immigration court processes, border practices, and even Mexican transportation, so that those subject to MPP can make it to their hearing in the United States.
6. I would typically review asylum seekers' tear sheets line by line, adding relevant information and guidance to facilitate understanding of its content and the process of arriving to court. For example, in Tijuana, the pedestrian bridge is not obviously a bridge, and can be tricky for individuals to find, especially those unfamiliar with the area. This basic information—finding the way to the port of entry—is especially critical because individuals who were initially placed in MPP in Calexico, more than two hours away, were also told to report to Tijuana to appear for their MPP hearing and they were not familiar with the geography of Tijuana.
7. In Tijuana, there are Mexican military and paid security guards who patrol the bridges and often prevent pedestrians from approaching or entering the bridge they must cross to get to the U.S. point of entry. Thus, much of our work has been to explain basics such as the exact location of the port of entry, how to locate the bridge, how to assert one's rights with the Mexican authorities to access the bridge, and clarifying which line those subject to MPP should join. We would role-play what it meant to access the bridge and how important it was to do so at the time listed in the tear sheet.

8. During these meetings, we also explained the discrepancy between the time on the tear sheet which was generally at least four hours before the time of the court hearing and the time listed on the Notice to Appear (“NTA”). This time discrepancy was a common source of confusion for many individuals in MPP. We would outline the critical importance of arriving to the Port of Entry (POE) before or by the time listed in the tear sheet, and not on their NTA.
9. Furthermore, I met with numerous individuals who spoke indigenous languages and were given tear sheets in Spanish that they did not understand at all. In these instances, I would try to identify a volunteer interpreter who, either in person or on the phone, could explain the MPP process to the rare language speaker, and also explain how to present themselves at the border to be taken to court and at what time.
10. Although non-Spanish speakers were not supposed to be placed in MPP, they often have been. When we identified indigenous language speakers, we would attempt to document as best as possible and with the help of an interpreter the rare language need. The Al Otro Lado team would draft short statements that could be used by respondents to identify the language to be able to relay that message to an immigration official or the judge at the next hearing.
11. Beyond a general lack of understanding of the contents of the tear sheet and how to physically appear at the date, time, and place indicated, I frequently encountered individuals who were never provided a tear sheet or whose tear sheet was incorrect.
12. For individuals who did not receive tear sheets, our project sought to empower them to return to the POE to request a new tear sheet. I advised clients to approach the POE around the same time that others were arriving to be processed into the United States for court and ask a CBP officer for a new tear sheet. In one case in which I assisted, the

individual went to the POE four days in a row to request a new tear sheet. Each day, he was told to “come back tomorrow.” Even getting to the CBP officers without a tear sheet was a feat in itself.

13. Physically possessing a copy of the tear sheet was critical for individuals in MPP with court in San Diego. The tear sheet is the ticket to get through Mexican security and onto the bridge, because otherwise the person subject to MPP was assumed to be a new asylum seeker and was turned around by Mexican authorities. Many of the people subject to MPP were living on the street, homeless and without the ability to safeguard themselves, much less their personal property. If a person in MPP lost their tear sheet because they were robbed or because their housing was insecure, they could not even approach a CBP officer to ask for a new one.
14. Furthermore, at least on a weekly basis, I met with individuals or family units whose tear sheets were completely blank, incomplete, or inconsistent with their NTA and/or other family members’ tear sheets. There were multiple occasions when family members were placed in consolidated removal proceedings, with the same date and time of court reflected in their NTAs, but their tear sheets told them different times to report to the POE for court. In these cases, project volunteers would call the court or EOIR hotline to confirm the court date. We would then provide the individual with our best guess as to when they should arrive to the POE, based on pattern and practice. We prepared these individuals on how to advocate for themselves, and the critical importance of expressing to the CBP officers that even though their tear sheet was incomplete or incorrect, they should let the CPB officers know they were supposed to be there.

15. Despite our best efforts, individuals subject to MPP were frequently denied access to the United States to attend court because of misinformation and confusion. The fact that someone makes it to court in San Diego from MPP is a miracle in itself.
16. Weekly, we spoke with individuals who missed their court date because they went to the wrong port of entry, got lost trying to access the correct location, or had the wrong information on their tear sheet. Many of these individuals did not know that missing their entry time would likely result in a removal order being entered against them, and the end of their asylum case. Individuals would often come to our office a week or more after missing their court date, looking to confirm their new court date—clearly not understanding that if they missed the entry time on the tear sheet, they would be ordered removed in absentia by the immigration court.
17. We also heard from individuals who arrived even a few minutes later than the time listed on their tear sheet who were denied entry and access to attending court, resulting in *in absentia* removal orders.
18. In one case in particular, I helped advocate for an asylum seeker who waited in the wrong line on the Mexican side of the border and was late to the POE. This individual had arrived at the bridge area approximately two hours prior to the time on his tear sheet and was erroneously instructed by a Mexican official to enter the metering line. Once he realized he was in the wrong line, he tried to go to the POE but was told he was too late to enter the United States for court. I met this individual at the Al Otro Lado office, during which time I personally called the San Diego Immigration Court to advise them of this situation. It was still hours before his scheduled court hearing. I explained to the court clerk that this individual had been confused and waiting in the wrong line, had been denied entry by CBP, and that we wanted to inform the court of his efforts to attend, in

hopes that the judge would reset his case. The clerk said that they were unable to relay the message to the Immigration Judge, and that a lawyer or family member needed to appear in court to let the Immigration Judge know of the situation. When I explained that this was not possible, the clerk told me that there was nothing else that could be done.

19. Whether or not an individual is able to appear for their court hearing is completely dependent on whether CBP chooses to process them into the United States—regardless of whether or not they appear on time. In one instance, I helped an individual who was denied entry into court, despite being at the POE on time, because the CBP officer told her that her tear sheet was fake, even though the information on her NTA matched the EOIR automated case information system. After she was denied entry, I helped her contact the Immigration Court to inform them that she was denied entry and would be unable to attend her hearing. The court clerk told me that there was nothing they could do. This individual received an *in absentia* removal order—despite following the instructions on the tear sheet.

20. These are just a few examples of the constant issues and dire consequences I have seen in relation to missing, incomplete, or incorrect tear sheets.

I declare under penalty of perjury of the laws of California and the United States of America that the foregoing statements are true and correct.

Executed this 22 day of October 2020 in El Cajon, California



Luis Guerra

EXHIBIT E

DECLARATION OF ALEXANDRA MILLER

1. I, Alexandra Miller, submit this declaration in support of the Border Legal Service Providers *Amici Curae* request. I am over the age of 18, have personal knowledge of the facts set forth herein, and, if called as a witness, I could and would testify competently as set forth below.
2. I am a licensed attorney and a member in good standing in the State Bar of New York (No. 5326988). I am currently employed as the Border Action Team Managing Attorney of the Florence Immigrant & Refugee Rights Project (“Florence Project”).
3. Though primarily serving detained immigrants in removal proceedings in Arizona, the Florence Project expanded its services to Nogales, Sonora, Mexico in 2017, in partnership with the Kino Border Initiative (“KBI”). Through this partnership, the Florence Project has created a Border Action Team specifically tasked with supporting and informing migrants in Nogales, Sonora, Mexico of their rights and options under U.S. immigration law and representing migrants who have received humanitarian services through KBI both in seeking asylum at the port of entry and if they are subsequently placed in removal proceedings. Through this work, the Border Action Team also actively engages in addressing issues that impact migrants in the borderlands.
4. Since January 2019, I have practiced as an immigration attorney with the Florence Project, working directly with the migrant population that is stranded in Nogales, Sonora, Mexico. I served first as the KBI Legal Fellow before moving into my current position on April 6, 2020.
5. In November of 2019, the Department of Homeland Security (“DHS”) began subjecting migrants who presented for asylum at Ports of Entry in Nogales or who were apprehended by Customs & Border Protection (“CBP”) in the Tucson sector to the Migrant Protection Protocols (“MPP”).

6. Initially, migrants subjected to MPP after presenting for asylum in Nogales were transported by DHS to El Paso, Texas. There, they were given Notice To Appear (“NTA”) documents with hearing dates and locations in El Paso, Texas.

7. In January, 2020, DHS began returning migrants who presented for asylum at Nogales Ports of Entry back to Nogales, Sonora, Mexico with hearings scheduled in El Paso Immigration Court.

8. I have reviewed NTAs belonging to approximately 100 migrants subjected to MPP in Nogales. These NTAs indicate the time and location of the first Master Calendar Hearings themselves, but they do not instruct Respondents as to where, when, or how to present for their hearings at the Port of Entry in Ciudad Juarez, Chihuahua, Mexico. The NTA may be accompanied by a “tear sheet,” which CBP describes as “containing information about the process.”¹ Though this information often may include the time and location that the Respondent should present for their hearing on the Mexico side of the border, the charging document itself does not offer Respondents any explanation of the process for arriving to their hearings nor does it set expectations for their arrival at the Port. As a result, some migrants find the information included in their tear sheets contradictory to the information in their NTAs.

9. Between January 3, 2020 and March 13, 2020, my team met with at least 90 individuals who had been returned to Nogales, Sonora, Mexico under MPP with hearings scheduled in El Paso, Texas. Many of these individuals had never been to Ciudad Juarez. Repeatedly, my team answered the questions that their MPP paperwork did not address. These migrants wanted to know how they were expected to get from Nogales to Ciudad Juarez, whether the U.S. government

¹ “MPP Guiding Principles.” Customs and Border Protection, Enforcement Programs Division. January 28, 2019. Available at <https://www.cbp.gov/sites/default/files/assets/documents/2019-Jan/MPP%20Guiding%20Principles%201-28-19.pdf>

would transport them there, when they should go, and where they could find shelter. Furthermore, many were nervous that, upon arriving in Ciudad Juarez, they would not know where the Port of Entry was. Those who had been to Ciudad Juarez before often asked at “which bridge” they were expected to present.

10. Though the NTA may be accompanied by a tear sheet indicating the time when and Port of Entry where the migrant should present to be transported to their hearing, this information is not reflected in the Executive Office for Immigration Review’s (EOIR) automated case information application (“the portal”) nor via the automated case information hotline (“the hotline”).

11. The Florence Project has worked with dozens of individuals in Nogales who have lost important documents through no fault of their own as the result of robbery, confiscation, or kidnapping. On multiple occasions, migrants have reported to my team that their MPP documents, including their NTAs and tear sheets, were lost or stolen often due to circumstances beyond the individuals’ control.

12. It is well known among border advocacy groups that migrants in Mexico are extremely vulnerable to abuse. Kidnapping and robbery are common in Mexico, and we routinely meet people who have been victims of attempted kidnappings or threats to their safety. All migrants can be targeted for kidnapping, as married couples, women, and children have all reported being victims of attempted kidnappings to the Border Action Team staff or volunteers.

13. Many migrants carry their most important documents with them on their person, and in the course of abductions, assaults, or robberies, many migrants have reported that they have lost all of their belongings. In one example, after being returned to Mexico under MPP, a married couple was kidnapped, locked up, denied food, and all of their belongings were taken from them.

14. On occasion, the Florence Project meets with individuals in Nogales whose MPP documents were confiscated by Mexican or U.S. authorities.

15. In one example, Mexican officials took an asylum seeker's NTA from her in the course of her transfer from U.S. immigration custody to Mexican immigration custody. They did not return all of her documents to her.

16. This same individual attempted to retrieve her case information via a CBP FOIA request. After six weeks, CBP responded to the FOIA by sending the asylum seeker a copy of her I-213, which contained no information regarding her upcoming hearing. Even in response to a formal FOIA request, CBP did not provide a copy of her NTA or the tear sheet with the necessary information for her to appear for her hearing.

17. In another example, Mexican authorities refused to accept a father and daughter back into the country upon their attempted return from an MPP hearing in San Diego, CA. Over the next two weeks, CBP continued to attempt to return the pair to Mexico, first to Tijuana and then to Mexicali. The pair was then taken to a detention center in Arizona, where DHS separated the family. The father was detained in Arizona while the nineteen-year-old daughter was returned to Nogales, Sonora, alone. All immigration documents of both the father and daughter, including the NTA and the tear sheet, remained in ICE custody at the father's location.

18. After having their documents taken in any of the manners described above, these individuals are forced to rely on the EOIR portal or the hotline in order to receive information about their hearings. As previously mentioned, these information sources lack vital instructions regarding how to access court in the United States from the Mexico side of the border. Without this critical information, it is exceedingly difficult for asylum seekers to ensure they are able to present at the border in order to attend their hearings. Without proper notice and access to critical

documents, like the tear sheet, the migrants we work with face serious, negative immigration repercussions, including the risk of being ordered removed in absentia.

19. On March 23, 2020, DHS issued a joint statement (“the joint statement”) with EOIR postponing all MPP hearings due to the COVID-19 pandemic. The joint statement instructed individuals with MPP hearings scheduled between that date and April 22, 2020 to present themselves at the Port of Entry designated on their NTA to receive a new tear sheet and notice of hearing indicating the time and date of their rescheduled hearing.

20. The government is required to provide migrants with adequate notice regarding their immigration proceedings, both to permit them to prepare and to ensure their attendance. DHS’s instructions in the joint statement, requiring migrants to present at the border to receive service of documents, were an unprecedented shift – placing the government’s burden to provide notice on the shoulders of migrants. Normally, migrants could rely on service via mail or in immigration court. Instead, perhaps because it is logistically impossible to ensure proper service of notice to migrants, many of whom are rendered homeless in Mexico pursuant to MPP, DHS required many of our clients to travel across the border to receive service of documents or potentially risk negative immigration consequences.

21. Throughout the following months, DHS and EOIR continued to issue statements prolonging the postponement of MPP hearings. Following this initial announcement, the Florence Project and KBI spoke with many individuals who were forced to choose between their physical safety from a deadly virus and their attempts to gain asylum protections from persecution in their countries of origin. For individuals subjected to MPP in Nogales with hearing dates during this time, the joint statement necessitated prolonged exposure during travel from Nogales to Ciudad Juarez followed by a lack of housing, as migrant shelters there refused to accept new guests for

fear of coronavirus transmission.

22. Furthermore, the joint statement required that migrants violate the state of Sonora, Mexico's shelter-in-place order, which went into place on April 13, 2020. This order restricted movement to six essential tasks: purchasing food, seeking medical attention, traveling to work for those who are deemed "essential workers", returning to one's place of habitual residence, caring for disabled or elderly individuals, and going to banks. Notably, these restrictions did not permit travel to and from legal proceedings. As a result, the joint statement both put migrants at risk of sanction by Mexican authorities and undermined the state of Sonora's efforts to prevent the virus' spread.

23. Despite these barriers, the Florence Project and KBI spoke with a number of individuals who chose to travel to the Port of Entry in Ciudad Juarez in order to receive notices of hearing following the onset of the COVID-19 pandemic. Our partners at KBI reported that CBP intimidated individuals who arrived late for their scheduled hearings to pick up new notices of hearing or tried to report to a Port of Entry that was not listed on their NTA, telling them that they would be or had already been deported in absentia.

24. On May 10, 2020, EOIR issued a statement instructing individuals to present at the Port of Entry designated on their NTAs one month after the date of their original hearing. This statement caused significant confusion and concern among the migrants whom my team has served.

25. On May 20, 2020, my legal assistant spoke with a migrant family that had been subjected to MPP. This family consisted of a husband and wife who was six months into a high-risk pregnancy. Their original MPP hearing was scheduled for May 11, 2020. On May 10, 2020, the couple began the journey from Nogales to Ciudad Juarez. During their journey, EOIR issued the

previously mentioned statement. Upon arrival at the Port of Entry, the pregnant woman was so ill that she was transferred to a hospital in Texas. Meanwhile, her husband was forced to wait on the Mexican side of the Port of Entry. When he requested their new hearing dates, a CBP officer refused, telling him that they would have to return one month later to receive them.

26. On June 16, 2020, the DOJ published another joint statement with DHS prolonging the postponement of MPP dockets and halting in-person document service. The statement instructed that “When conditions are deemed safe, the Departments will provide notice fifteen (15) days prior to resumption with additional, location-specific information. Individuals should continue to check on case status in English and Spanish by calling the Automated Case Information Hotline at 1-800-898-7180 or visiting the EOIR Automated Case Information portal.”²²

27. As of the date of the drafting of this declaration, MPP dockets continue to be halted. The Florence Project speaks weekly with individuals subjected to MPP whose hearings have been postponed. These individuals inform us that their only way to access information about their new hearing dates is via the portal or the hotline, which do not explain any of the critical information about when, where, or how to present at the POE to participate in their hearings. In effect, all individuals currently subjected to MPP are left without any meaningful notice regarding critical information necessary to present for their rescheduled hearings.

28. The Florence Project spoke with one mother who had traveled with her young son from Nogales to Ciudad Juarez in April to receive new NTAs and tear sheets indicating that their hearing had been rescheduled for June 24, 2020, in El Paso. Unfortunately, their hearings were again postponed. On the occasion of their second hearing’s postponement, the mother and son

²² “Department of Justice and Department of Homeland Security Announce Plan to Restart MPP Hearings.” Department of Justice, Office of Public Affairs. July 17, 2020. Available at <https://www.justice.gov/opa/pr/departments-justice-and-department-homeland-security-announce-plan-restart-mpp-hearings>

followed DOJ/DHS guidance to obtain case information from the online portal. Their case has since been postponed a third time, and, again, their only source of information is the online portal. In her own words, this mother reported that “[w]e did not learn anything from our paperwork. We did not learn anything from them [the U.S. government]. We [migrants] help each other and share information... We learned from WhatsApp where to go to present [and later] that we shouldn’t go to the border.” This mother’s experience aligns with what many migrants report regarding the lack of information and meaningful notice for people in MPP hearings.

29. If DHS had any intention of serving new notices of hearing or tear sheets on individuals via mail once MPP hearings resume, these new documents would never reach the migrants whom I assist. Every NTA I have seen belonging to a migrant in Nogales subjected to MPP has listed the Respondent’s address as “Casa del Migrante.” This is a migrant shelter in Ciudad Juarez that few individuals who I have worked with have ever visited, much less occupied. Mail sent to this location would not reach the individuals I serve in Nogales through no fault of their own.

30. Furthermore, for most migrants, living in flux between Nogales and the Juarez port of entry, filing an E-33 notice of change of address would neither be possible, nor an effective means of ensuring adequate notice regarding immigration proceedings. The vast majority of migrants we work with have no fixed or permanent address in Mexico to which the U.S. government could be directed, including some individuals who have been rendered homeless. Moreover, the vast majority of migrants we work with in Nogales will be forced to relocate to Juarez, even if only temporarily, making it incredibly unlikely that proper document service would be possible even if an E-33, or multiple E-33s, were to be filed – not to mention the challenges primarily indigent migrants face when trying to file immigration paperwork from Mexico.

31. The NTA provides insufficient information to migrants subjected to MPP regarding where

and how to appear for their immigration court proceedings. The tear sheets that sometimes accompany the NTA are rendered useless when hearings are postponed, and the information contained within them appears to be irretrievable when the tear sheets are lost, stolen, or confiscated.

A handwritten signature in black ink, appearing to read 'Alexandra Miller', is written over a horizontal line. The signature is stylized and cursive.

Alexandra Miller, Esq.

Executed this 13th day of October, 2020

EXHIBIT F

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DECLARATION OF MARGARET CARGIOLI

I, Margaret Cargioli, hereby declare as follows:

1. I am the Managing Attorney at Immigrant Defenders Law Center (“ImmDef”) where I have been employed since April 2019. As Managing Attorney, I manage ImmDef’s Cross Border Initiative (CBI) program where we provide legal advice and full representation to Respondents in the Migrant Protection Protocols (“MPP”) program. I have personal knowledge of the events and facts described below and would testify to the same if called as a live witness.
2. ImmDef is a non-profit organization with several offices in Southern California including San Diego where the CBI program is located.
3. The CBI program provides direct representation to persons in removal proceedings, as well as Know Your Rights presentations and asylum clinics to MPP Respondents who reside in Tijuana, Mexico and Mexicali, Mexico. The San Diego Immigration Court has jurisdiction over matters for MPP Respondents who reside in Tijuana and Mexicali.
4. The CBI team has provided legal assistance to about 83 individuals who have been required to go through, or are currently going through, the MPP program.
5. During the pandemic the CBI team has continued to provide assistance to MPP Respondents through virtual presentations and clinics for persons in Tijuana, Mexico and Mexicali, Mexico.

- 1 6. MPP Respondents contact the CBI team through social media, outreach, and
2 an email address that ImmDef created to enable MPP Respondents to contact
3 us: ayuda@immdef.org. Our information is also listed in the Executive
4 Office of Immigration Review’s List of Pro Bono Legal Service Provider’s
5 for San Diego Immigration Court.
- 6 7. The Department of Homeland Security (DHS) places Respondents into the
7 MPP program and should provide a “tear sheet” to Respondents. Tear sheets
8 are notices provided to MPP Respondents and contain basic information
9 about the program and immigration court hearings. See Exhibit A. The MPP
10 tear sheet is a vital document for MPP Respondents. Without a tear sheet
11 MPP Respondents would not know where to present to be admitted into the
12 United States to attend their immigration court hearings. They would not
13 know when to present at the U.S. ports of entry which differs from the time
14 indicated on immigration court notices given to Respondents by Immigration
15 Judges.
- 16 8. Tear sheets are physical documents that are provided to MPP Respondents,
17 and MPP Respondents do not have a way to easily obtain copies of the tear
18 sheets once they are damaged, lost, or stolen. They are not laminated or
19 otherwise resistant to damage, but they are handed to MPP Respondents who
20 frequently lack adequate shelter or other means to keep belongings safe. In
21 case of a damaged, lost or stolen tear sheet unrepresented MPP Respondents
22 would need to travel to one of the designated U.S. ports of entry and request
23 a new tear sheet from border patrol. In some instances, individuals without
24 tear sheets are unable to access their court hearing.
- 25 9. In one case, at the Master Calendar Hearing, Immigration Judge Scott
26 Simpson inquired the reason my client was not present in court. I was co-
27 counsel on the case with the Executive Director of ImmDef, Lindsay
28 Toczyłowski. Attorney Toczyłowski informed the Immigration Judge that

1 our client was not allowed to enter the United States for his hearing because
2 he did not have a copy of his tear sheet. Immigration Judge Simpson
3 postponed our client's Master Calendar Hearing. I believe that the
4 Immigration Judge would likely have entered an in absentia order against
5 him had this Honduran MPP Respondent not been represented by counsel on
6 said date.

7 10. MPP tear sheets should be provided to MPP Respondents in their native
8 language. In not providing the tear sheet to individuals in their native
9 language, these persons do not understand where they have to present and
10 when to appear at the U.S. ports of entry for their court hearings. I have seen
11 the tear sheet in Spanish and Portuguese. However, I have not seen the tear
12 sheet in any other languages despite meeting several MPP Respondents in
13 Tijuana and Mexicali who are indigenous Guatemalans and speakers of
14 native languages such as Mam.

15 11. On October 23, 2020, our team held an asylum clinic at Border Kindness in
16 Mexicali, Mexico. Border Kindness is a not-for-profit organization that
17 provides service to asylum seekers, refugees, and displaced persons in
18 Mexicali. At the clinic, I met two families who are indigenous speakers that
19 did not speak Spanish well enough for me to engage in a coherent
20 conversation about their case. To the best of my knowledge, these families
21 had not been provided a tear sheet in their indigenous language. Without the
22 help from Border Kindness, I believe it would have been extremely difficult
23 for these families to understand the notification and directions on the MPP
24 tear sheet. And without this understanding, they would have missed their
25 court hearing whereby an immigration judge would have ordered them
26 removed.

27 12. On September 15, 2020, our office did an intake of a woman who is in the
28 MPP and is a native Mam speaker. The woman sent our office a copy of the

1 tear sheet and other documents provided to her by DHS. The tear sheet is in
2 Spanish. Our office was only able to communicate fully with this MPP
3 Respondent with the assistance of a Mam interpreter.

4 13. MPP Respondents have been the victims of violent persecution in Mexico
5 either due to their nationality, race, or for being a member for particular
6 social group. I have heard many first-hand accounts of kidnapping, assault
7 and/or robbery of MPP Respondents. At times, MPP Respondents are
8 robbed of their personal belongings including their court documents.

9 14. One of my MPP clients was the victim of an assault and robbery due to his
10 nationality and race several days prior to his Master Calendar Hearing. My
11 client who is a citizen of Cuban had his backpack stolen with all of his court
12 documents. Upon informing me of this incident, our office sent an electronic
13 mail message to the border patrol station at San Ysidro Port of Entry
14 informing them that my client had been robbed of all of his court documents.
15 We provided a copy of my client's identification and a court hearing notice
16 that we had on file. The electronic mail message was sent on February 4,
17 2020 to sysaeu@cbp.dhs.gov.

18 15. Regardless of sending an electronic mail message to the border patrol station
19 with a copy of my Cuban client's identification and hearing notice my client
20 was almost not allowed to attend his court hearing. On February 5, 2020, the
21 day of my client's Master Calendar Hearing, border patrol officers gave my
22 client a difficult time when he presented at the San Ysidro Port of Entry to be
23 processed for his Master Calendar Hearing.

24 16. On said date my client called my paralegal, Andres Pena, to inform us that
25 border patrol officers told him that he could not enter the U.S. for his
26 hearing. My paralegal had to call the port of entry and remind them that
27 we had sent them an electronic mail message giving them prior notice that
28 my client does not have his original court documents due to an assault and

1 robbery. If my client were unrepresented at the time, I believe he would
2 likely not have been processed at the San Ysidro port of entry and an
3 Immigration Judge would have entered an order of removal in absentia.

4 17. As part of our Know Your Rights presentations to MPP Respondents we
5 remind MPP Respondents that they must be present at the time indicated on
6 their tear sheet. I have been asked several times why they need to appear
7 several hours prior to the start of their court hearings. Many MPP
8 Respondents are afraid to present at Port of Entry at 4:00 a.m. for their 8:30
9 court hearings.

10 18. MPP Respondents who reside in Mexicali are required to travel to Tijuana,
11 Mexico and present at the San Ysidro Port of Entry for their San Diego
12 Immigration Court hearings. Tijuana, Mexico is approximately a two-hour
13 car ride from Mexicali, Mexico.

14 19. Through my collaborative work with Border Kindness, I understand that
15 many MPP Respondents do not have the financial means to travel to Tijuana
16 to be processed for their immigration court hearings. Border Kindness helps
17 to transport these men, women and children to Tijuana to attend their
18 hearings. I believe that MPP Respondents in Mexicali who are not assisted
19 by Border Kindness may have an extremely difficult time understanding why
20 they must appear at a U.S. Port of Entry two hours from where they reside as
21 opposed to presenting at the U.S. Port of Entry closest to Mexicali which is
22 the Calexico Port of Entry. The Calexico Port of Entry is directly adjacent to
23 Mexicali, Mexico.

24 20. The MPP tear sheet does not properly advise MPP Respondents of the MPP
25 program. The notice does not make clear that failure to take the notice to
26 U.S. ports of entry will result in a refusal to be allowed to enter the United
27 States for their court hearings. Moreover, it does not give MPP Respondents
28 any options on how to replace a stolen or lost tear sheet.

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21.DHS must provide proof of service of the MPP tear sheet because without a tear sheet Respondents do not have the information to enable them to appear in court for the immigration court hearings.

I declare under penalty of perjury of the laws of California and the United States of America that the foregoing statements are true and correct.

Executed this 19th day of October 2020 in San Diego, California .



Margaret Cargioli

**Protocolos de Protección del Migrante
Información de Procesamiento Inicial**

- Usted ha sido identificado para procesamiento bajo los Protocolos de Protección del Migrante y se le ha expedido un Formulario I-862, Citatorio (NTA, por sus siglas en inglés), para procedimientos ante una corte de inmigración, donde podrá solicitar todas las formas de alivio de inmigración disponibles bajo la Ley de Inmigración y Nacionalidad. Cumpliendo con las leyes de los Estados Unidos, incluso la sección 240 de la Ley de Inmigración y Nacionalidad y la implementación de regulaciones, un juez de inmigración determinará si usted es sujeto a remoción de los Estados Unidos, y en caso de serlo, si es elegible o no a alivio o protección de remoción. Aunque usted podrá buscar ese alivio o protección bajo los mismos términos y condiciones de cualquier extranjero, en los procedimientos de la sección 240, de acuerdo a las leyes de los Estados Unidos, usted será devuelto a México y no podrá intentar entrar a los Estados Unidos hasta que regrese al puerto de entrada apropiado en la fecha de su audiencia ante un juez de inmigración.
- La NTA, proporciona la fecha y hora de su primera audiencia ante un juez de inmigración en los Estados Unidos en la corte identificada en su NTA. En la fecha de su audiencia, usted debe presentarse al puerto de entrada El Chaparral, localizado en 405 Virginia Ave. San Ysidro, CA 92173, en la fecha y hora listada más abajo. Si su caso no puede completarse en una sola audiencia, la corte de inmigración le proveerá una Notificación de Audiencia en Procedimientos de Remoción, que indica la fecha y hora de cualquier audiencia subsecuente.
 - Usted puede llamar a la corte de inmigración al teléfono 1-800-898-7180 para obtener información de su caso las 24 horas al día, los 7 días de la semana. Si está llamando desde fuera de Estados Unidos, usted debe marcar 001-880-898-7180.
 - Usted debe llegar al puerto de entrada listado arriba a las 09:00 a.m. el 06 Marzo 2020, para asegurarse de tener tiempo para ser procesado, transportado a su audiencia y para que pueda reunirse con su abogado o representante acreditado (si usted hace arreglos para ser representado durante sus procedimientos de remoción). El Gobierno de los Estados Unidos le proporcionará transportación desde el puerto de entrada designado hasta la corte el día de su audiencia. Si usted falla en llegar en la fecha y hora apropiadas, podría ordenarse su remoción en ausencia.
 - Al llegar al puerto de entrada designado para su audiencia, debe traer consigo la NTA o Notificación de Audiencia en Procesos de Remoción, así como cualquier identificación emitida por el gobierno y/o documentos de viaje.
 - Al llegar al puerto de entrada designado para su audiencia, debe traer cualquier menor o otro familiar que haya entrado a los Estados Unidos con usted y que recibieron una NTA para la misma fecha y hora.
 - Usted tiene el privilegio legal de ser representado por un abogado o representante acreditado de su elección, que esté acreditado para ejercer la práctica de inmigración ante una corte de inmigración de los Estados Unidos, sin cargo al gobierno estadounidense.
 - A usted se le proporcionó anteriormente un Listado de Proveedores de Servicios Legales, la cual contiene información acerca de servicios de bajo costo o gratuitos de parte de los proveedores legales que practican cerca de la corte de inmigración donde su audiencia(s) tendrá lugar.
 - Un listado de los proveedores de servicios legales también está disponible en el sitio web de la Oficina Ejecutiva para la Revisión de Inmigración en <https://www.justice.gov/eoir/list-pro-bono-legal-service-providers>
 - Si usted elige ser representado, puede consultar con un consejero sin cargo al Gobierno de los Estados Unidos por medio de cualquier mecanismo que incluyen los siguientes, si aplica:
 - Usted puede consultar con su consejero por teléfono, correo electrónico, videoconferencia o cualquier otro método de comunicación remota de su elección.
 - Usted puede hacer arreglos para consultar con su consejero en persona en una localidad de su elección en México.
 - El día de su audiencia de inmigración, usted puede hacer los arreglos para una reunión en persona con su consejero en los Estados Unidos en la localidad de su corte asignada, previo a su audiencia.

EXHIBITA

25 de Enero del 2019

Migrant Protection Protocols**Initial Processing Information**

- You have been identified for processing under the Migrant Protection Protocols and have been issued a Form I-862 Notice to Appear (NTA) for proceedings before an immigration court where you may apply for all forms of relief available under the Immigration and Nationality Act. Pursuant to U.S. law, including section 240 of the Immigration and Nationality Act and implementing regulations, an immigration judge will determine whether you are removable from the United States, and if you are, whether you are eligible for relief or protection from removal. While you will be able to pursue such relief or protection under the same terms and conditions as any alien in section 240 proceedings, pursuant to U.S. law, you will be returned to Mexico and may not attempt to enter the United States until you return to the appropriate port of entry on the date of your hearing before an immigration judge.
- The NTA provides the date and time of your first hearing before an immigration judge in the United States at the court identified on your NTA. On the date of your hearing, you must report to the El Chaparral port of entry, located at 405 Virginia Ave, San Ysidro, CA 92173, at the date and time listed below. If your case cannot be completed in one hearing, the immigration court will provide you with a Notice of Hearing in Removal Proceedings, indicating the date and time for any subsequent hearings.
 - You may call the immigration court at 1-800-898-7180 to obtain case status information 24 hours a day, 7 days a week. If you are calling from outside of the United States, you should dial 001-880-898-7180.
- You should arrive at the port of entry listed above at 09:00 a.m. on March 06, 2020 to ensure that you have time to be processed, transported to your hearing and meet with attorney or accredited representative (if you arrange to be represented during your removal proceedings). The U.S. Government will provide transportation for you from the designated port of entry to the court on the day of your hearing. If you fail to arrive at the appropriate date and time, you may be ordered removed in absentia.
 - When you arrive at the designated port of entry for your hearing, you should bring your NTA or Notice of Hearing in Removal Proceedings and any available government-issued identification and/or travel documents.
 - When you arrive at the designated port of entry for your hearing, you should bring any minor children or other family members who arrived with you to the United States and received an NTA for the same date and time.
- You have the statutory privilege of being represented by an attorney or accredited representative of your choosing who is authorized to practice before the immigration courts of the United States, at no expense to the U.S. Government.
 - You have been provided with a List of Legal Service Providers, which has information on low cost or free legal service providers practicing near the immigration court where your hearing(s) will take place.
 - A list of legal service providers is also available on the Executive Office for Immigration Review website at <https://www.justice.gov/eoir/list-pro-bono-legal-service-providers>.
- If you choose to be represented, you may consult with counsel at no expense to the U.S. Government through any available mechanism, including the following, as applicable:
 - You may consult with your counsel by telephone, email, video conference, or any other remote communication method of your choosing.
 - You may arrange to consult with your counsel in person at a location in Mexico of your choosing.
 - On the day of your immigration hearing, you may arrange to meet with your counsel in-person, in the United States, at your assigned court facility, prior to that hearing.

January 25, 2019

EXHIBIT G

DECLARATION OF CHARLENE D'CRUZ

I, Charlene D'Cruz, pursuant to 28 U.S.C. 1746, declare under penalty of perjury that the following is true and correct to the best of my knowledge and recollection.

1. I am the Director of Project Corazon, Matamoros, a project of the Lawyers for Good Government (L4GG). L4GG is a non-profit organization which seeks to protect and strengthen democratic institutions, resist abuse of power and corruption, and defend the rights of those who suffer in the absence of good government. Since September 2019, I have been stationed in Brownsville/Matamoros to provide legal assistance to asylum-seekers whom the U.S. government had sent to Matamoros, Mexico pursuant to the Migrant Protection Protocols. In this capacity, I have overseen the review and screening of hundreds of migrants in the Migrant Protection Protocols for potential immigration relief.
2. As a lawyer, I have practice immigration law for over 18 years, as a solo practitioner and as an associate attorney with the Law Offices of Steven Thal, a boutique immigration law firm in Minnesota.
3. In my current position, I work in Brownsville, Texas and Matamoros, Mexico to assist asylum-seekers in Matamoros awaiting their immigration hearings in the U.S. I supervise staff and volunteers who intake and screen asylum seekers. I created a remote program that matches volunteer pro bono lawyers from the US with asylum seekers in Mexico, to interview and complete asylum applications. I work closely with attorneys in the US and connect them to asylum seekers in Mexico for representation where possible, and conduct Know Your Rights presentations. The far majority of people who we interact with do not have attorneys representing them.

4. From October 2019 to March 2020, Monday through Friday, and sometimes on weekends, I was on the ground in Matamoros speaking directly with individuals in MPP. On average, I was meeting with up to 100 individuals in MPP a day. During this time, approximately 125 individuals were being placed in MPP a day. Being just one person, it was impossible for me to speak with each individual to explain the MPP process, and the tear sheet in particular. I tried to work with the National Institute of Migration (INM) of Mexico to create a space in their facility to provide group information to individuals returning from the U.S. under MPP, but they were unwilling to work with me.
5. I would try to limit my conversations with each individual to around 8-15 minutes; and the first few minutes of each conversation was spent explaining the tear sheet. At first, almost nobody understood the two separate court notices they were given. To have two notices for one event, without any explanation why, is utterly confusing; especially considering that no information about what was happening the approximately four hours between when people were scheduled to arrive at the port of entry (POE) and when they were scheduled for court.
6. As a starting point, even for an attorney, the format and structure of the tear sheet is difficult to read and poorly worded. Even for Spanish speaking respondents, actually understanding the content of the tear sheet is difficult. I recall once being asked to read the tear sheet aloud to a well-educated Cuban asylum seeker, who despite having read the tear sheet himself, did not understand what it was saying. This could be easily remedied.
7. In almost all the MPP notices, relevant and important information regarding the date and time of the next hearing were handwritten by CBP officers. Often these were "chicken scratched" at best and were illegible. On many occasions, I was unable to decipher the

poor handwriting of some NTAs. Whether or not someone is able to seek asylum in the United States or is deported in absentia should not come down to another person's penmanship.

8. For tear sheets that were legible, it was not rare to see tear sheets with erroneous information, such as the wrong time or date needed to arrive. Some agents would mistakenly put the time that an individual had court on their tear sheet, not the time that they needed to show up at the bridge.
9. For individuals with court in the morning, the check in time at the POE was usually 4 am. For individuals with court in the afternoon, the check in time at the POE was usually around 8 AM. It was not uncommon for tear sheets to erroneously state that an individual needed to present at 8 PM, for example. Another time, a family I spoke with who had the same court time and date had conflicting tear sheets, telling some family members to report to the POE at 4 AM and other family members to report at 8 AM.
10. For the six months that I was on the ground in Matamoros, I encountered daily individuals who were confused and not certain when they had to present at the bridge for processing. I remember one day in particular, where the CBP officer in charge of tear sheets that day provided a large number of MPP respondents with tear sheets that had the same date and time as their NTA. That day, a stream of people came to me to seek clarification.
11. In another instance, I was waiting on the pedestrian bridge with a parole application around 11 PM one night, when an individual in MPP came up to the CBP officials with a tear sheet that indicated he needed to arrive at 11 PM to the POE. This individual's court hearing had been scheduled for earlier that date. Because he was following the

instructions on the tear sheet, he missed his court hearing. He was told that there was nothing that could be done.

12. Furthermore, it was not uncommon to encounter individuals in MPP who were not literate in Spanish, and many CBP officers did not speak Spanish. Without explanation, the tear sheet was meaningless for these individuals. Additionally, I encountered many individuals whose native language was not Spanish—specifically native speakers of Q'anjob'al, Achi, Jakalteko, Mayamam, K'iche', Q'eqchi', and Kaqchikel. They also had no understanding of the contents of the tear sheet.
13. Even for individuals who had the correct information in their tear sheets and understood the requirements were in no way guaranteed to make it to court. In Matamoros, the pedestrian bridge is very narrow, meaning it is not uncommon for the line to be very backed and chaotic. On the right side of the bridge, there is a line for non-citizens. On the left side of the bridge is where individuals presenting for the first time and attorneys wait to speak with CBP. In the middle, individuals returning from the United States pass through. There are also children running amok, and multiple lines of cars right off the pedestrian bridge with loud motors and music. The bridge is a daily scene of chaos and confusion.
14. It is incredibly easy, if you are approaching the bridge for the first time, and are scared and confused, to wait in the wrong line and miss your court date. Or to wait in the pedestrian line for your turn to approach the POE, only to find out you missed your entry time. To even access the bridge, you need to insert approximately 30 Mexican cents to pass the turnstile. It was not uncommon for lines to extend beyond the turnstile and into the plaza.

15. In my experience, only once, at 4 and again at 8, would CBP call for individuals who had court. An officer would come to the front of the line and yell out “Who is here for court?” Often times, you could barely hear him, given the sounds of the crowd on the bridge and the cars directly next to the pedestrian bridge. If you were not near the front of the line, there is no way you could hear this single call for individuals with court; especially if you were in the pedestrian line backed up all the way to the turnstile or beyond.
16. I regularly spoke with individuals who were waiting in the line at the time on their tear sheet but did not push their way to the front or hear the call for court. I would advise them to rush back to the CBP officers and explain the situation. I am not aware of anyone being processed into court if they arrived even slightly late to the POE.
17. Some families would risk their lives to sleep on the bridge the night before in order to make sure that they were able to attend court. However, this also was not a guarantee.

I declare upon penalty of perjury that the foregoing statements made in this declaration are true and correct to the best of my knowledge and belief. Executed this 22 day of October 2020 in Brownsville, Texas.



Charlene D’Cruz

EXHIBIT H

DECLARATION OF TAYLOR LEVY

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States that the following is true and correct:

1. This declaration is based upon my personal knowledge, except as to those matters based on information and belief, which I believe to be true. If called to testify in this case, I would testify competently about these facts.
2. I am an attorney licensed to practice law in Texas. I became licensed in 2019. I am in good standing with the State Bar of Texas (State Bar No. 24113588). I specialize in immigration law, and I practice in El Paso, Texas. I run a private law firm called Taylor Levy Law through which I provide primarily pro bono legal services to individuals in the El Paso area.
3. Since 2009, I have worked as an attorney and advocate in various capacities for noncitizens at or near the border. Among other roles, I have worked as Legal Coordinator for Annunciation House in El Paso, Texas, where I coordinated volunteers who represent and advocate for immigrants in the El Paso area. Before I became licensed as an attorney, I worked for five years as a Department of Justice Accredited Representative representing individuals in immigration court in the El Paso, Texas area.
4. The Migrant Protection Protocols (“MPP”) were first implemented in the El Paso area in March 2019. Since that time, I have interacted with literally thousands of asylum-seeking respondents subjected to MPP. I am a nationally recognized legal expert on MPP and am frequently asked to give educational trainings on this topic. My work with respondents subjected to MPP has included the following:
 - a. Serving as the attorney of record directly representing MPP respondents before

- the Executive Office of Immigration Review (“EOIR”), including providing “special appearances” for out-of-state attorneys;
- b. Serving as the attorney of record directly representing MPP respondents before Customs and Border Protection (“CBP”), for the purposes of requesting respondents be removed from MPP;
 - c. Serving as the attorney of record directly representing MPP respondents before the United States Citizenship and Immigration Services (“USCIS”), for the purposes of a nonrefoulement interview conducted by the Asylum Office (“AO”);
 - d. Providing “Know Your Rights” presentations to MPP respondents prior to their EOIR court hearings and serving as a pro bono “friend of the court” for unrepresented respondents in these proceedings;
 - e. Providing pro bono legal presentations, legal consultations, and pro se assistance to MPP respondents in Ciudad Juarez, Mexico, at the base of the Paso del Norte Port of Entry, at the Chihuahuan State “Centro Integral de Atencion al Migrante,” at the Mexican Federal “Centro Integrador Para El Migrante Leona Vicario,” and at several private migrant shelters and migrant aid organizations;
 - f. Providing legal presentations and pro bono legal consultations to MPP respondents via social media, including Facebook, Twitter, and WhatsApp;
 - g. Providing pro bono training and mentoring to other attorneys across the country representing respondents currently or previously subjected to MPP.
5. When an asylum-seeker is subjected to MPP, they are supposed to be served by CBP officials with two documents: a Notice to Appear (“NTA”) and another document with information about the MPP program that is commonly referred to as a “tear sheet.”

6. In my time working with respondents subjected to MPP, I personally interacted with dozens of respondents in the following situations
 - a. Respondents who showed me their documents and attested that they are certain they had not lost any papers, however:
 - i. Their NTA was missing, incomplete, and/or had inaccurate biographical data;
 - ii. Their tear sheet was missing, incomplete, and/or had inaccurate biographical data;
 - iii. Their NTA and/or tear sheet was unsigned and/or not fingerprinted;
 - iv. Their tear sheet was only in English, and they did not speak English;
 - v. Their tear sheet was in English and Spanish, but they did not speak either language;
 - vi. Their tear sheet was partially illegible because the printer was apparently low on ink;
 - b. Respondents who showed me their documents and the date of their hearing listed on their NTA was different than the date of their hearing listed on their tear sheet;
 - c. Respondents who showed me their documents and the time of their hearing listed on their NTA was the *same time* listed on their tear sheet, rather than the standard four to five hours *prior* to their scheduled hearing to allow for CBP processing;
 - d. Respondents whose documents were missing or incomplete because officers with the Mexican National Immigration Institute (“INM”) kept some or all of their paperwork during processing upon return to Mexico;
 - e. Respondents whose documents were missing or incomplete because they were lost

or stolen, including during violent events such as armed robberies and kidnappings.

7. Additionally, I have personally interacted with numerous respondents subjected to MPP who did not know the exact *location* where they were supposed to present themselves to CBP officials for their court hearings. The tear sheets typically list “1000 S El Paso Street, ELP, TX” as the address of the “Paso del Norte Port of Entry.” However, this is the U.S. address for the bridge, *not* the Mexican address for the bridge; respondents actually present themselves to CBP officials stationed at the middle of the bridge while still standing on Mexican soil. Furthermore, residents of Ciudad Juarez typically refer to this bridge as “*Puente Juarez*” (“Juarez Bridge”) because it is on “*Calle Juarez*” (“Juarez Street”) on the Mexican side, *not* “El Paso” street. Confusion about the proper location to present for court hearings was most common among:
 - a. Respondents who did not know the location of the Paso del Norte Port of Entry, because their original entry was without inspection and they were returned to Ciudad Juarez at the Stanton Street Port of Entry;
 - b. Respondents who did not know the location of the Paso del Norte Port of Entry, because they were returned to Mexico in Nogales, Sonora, approximately five hours away;
 - c. Respondents who told me they struggled with finding the bridge because they provided the address printed on the tear sheet to their Uber driver who then took them to the wrong location.
8. Furthermore, I have personally interacted with dozens of respondents subjected to MPP who did not know the exact *logistics* of how to present themselves to CBP officials for

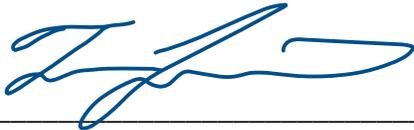
their court hearings. The tear sheet is presumed to provide the time and location where a respondent must appear to be processed into the United States for court, but it does not provide details as to how to do so. There are no signs on the Mexican side of the bridge explaining what respondents should do to present themselves to CBP officials for their court hearings. It is also unclear if respondents arriving for court are expected to wait in the “normal” pedestrian bridge line for people seeking admission to the U.S., or if they are permitted to skip the line and walk directly to the middle of the bridge.¹ In my time working with respondents subjected to MPP, I personally interacted with respondents in the following situations:

- a. Respondents who showed up at the Paso del Norte Port of Entry for their court hearing without the toll required to enter the bridge and present themselves to CBP (the toll is not mentioned on the tear sheet);
- b. Respondents who only speak Portuguese or an indigenous language and are unable to communicate with the Mexican security contractors guarding the bridge;
- c. Respondents who believed that they would not be allowed to attend their court hearing if their paperwork had been lost, stolen, or damaged;
- d. One Respondent who told me that he was denied entry to the Port of Entry by Mexican security contractors guarding the bridge because he had lost his NTA and tear sheet (he was subsequently removed in absentia);
- e. Respondents who arrive at the Port of Entry at the time of their hearing, not at the time listed on their tear sheet.

¹ The pedestrian line can sometimes exceed two hours. I have personally escorted one family of asylum seekers who were subjected to MPP through the pedestrian line at the Paso del Norte Bridge and the other pedestrians yelled at us. Even as an attorney, it was an intimidating experience.

9. Respondents who have their paperwork lost, damaged, or stolen are in a very difficult situation because they are often unable to ascertain the date and time of their next hearing. Respondents who do not have photos or photocopies of their documents and are therefore unable to access the EOIR hotline or portal because they do not have their A number. I have spoken to several such respondents who were refused assistance in obtaining copies of their missing documents from CBP agents stationed at the Paso del Norte Port of Entry. In these instances, the CBP agents also refused to look up the respondents' next hearing notice when requested.

Pursuant to 28 U.S.C. § 1746, I declare, certify, verify, and state, on this the 23 day of October 2020, under penalty of perjury, that the foregoing is true and correct. Executed in El Paso, Texas.



TAYLOR LEVY