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11 **UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

12 East Bay Sanctuary Covenant; Al Otro Lado;  
13 Innovation Law Lab; and Central American  
Resource Center in Los Angeles,

14 *Plaintiffs,*

15 v.

16 Donald J. Trump, President of the United States, in  
 17 his official capacity; Matthew G. Whitaker, Acting  
 Attorney General, in his official capacity; U.S.  
 18 Department of Justice; James McHenry, Director  
 of the Executive Office for Immigration Review,  
 19 in his official capacity; the Executive Office for  
 Immigration Review; Kirstjen M. Nielsen,  
 20 Secretary of Homeland Security, in her official  
 capacity; U.S. Department of Homeland Security;  
 21 Lee Francis Cissna, Director of the U.S.  
 Citizenship and Immigration Services, in his  
 22 official capacity; U.S. Citizenship and  
 Immigration Services; Kevin K. McAleenan,  
 23 Commissioner of U.S. Customs and Border  
 Protection, in his official capacity; U.S. Customs  
 24 and Border Protection; Ronald D. Vitiello, Acting  
 Director of Immigration and Customs  
 25 Enforcement, in his official capacity; Immigration  
 and Customs Enforcement,  
 26

27 *Defendants.*

Case No.:

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

**IMMIGRATION ACTION**

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## INTRODUCTION

1  
2 1. As part of our nation’s commitment to the protection of people fleeing persecution,  
3 federal law specifically guarantees that “[a]ny alien who is physically present in the United States or  
4 who arrives in the United States,” at a designated port of entry or not, is entitled to apply for asylum.  
5 8 U.S.C. § 1158(a)(1). Consistent with its international obligations, Congress was specific and clear:  
6 Entering without inspection is not a basis to categorically deny asylum to refugees.

7  
8 2. Despite this clear congressional command, on November 8, 2018, the Acting  
9 Attorney General and Secretary of Homeland Security promulgated an interim final rule (“rule”)  
10 providing that all persons subject to a presidential proclamation concerning the southern border  
11 issued pursuant to Immigration and Nationality Act (“INA”) § 212(f), 8 U.S.C. § 1182(f), or INA  
12 § 215(a)(1), 8 U.S.C. § 1185(a)(1), are ineligible for asylum. The next day, the President signed a  
13 Proclamation entitled “Presidential Proclamation Addressing Mass Migration Through the Southern  
14 Border of the United States” that suspends the entry of all persons entering without inspection at the  
15 southern border.

16  
17 3. Together, the rule and Proclamation bar people from obtaining asylum if they enter  
18 the United States somewhere along the southern border other than a designated port of arrival—in  
19 direct violation of Congress’s clear command that manner of entry cannot constitute a categorical  
20 asylum bar. In addition, the Acting Attorney General and Secretary of Homeland Security  
21 promulgated the rule without the required procedural steps and without good cause for immediately  
22 putting the rule into effect.

23  
24 4. Plaintiffs seek a declaration that these actions violate the INA and the Administrative  
25 Procedure Act (“APA”), and an order enjoining the Proclamation and the rule.

**JURISDICTION AND VENUE**

1  
2 5. This case arises under the APA, 5 U.S.C. § 701, *et seq.* and the INA, 8 U.S.C. § 1101,  
3 *et seq.* This Court has subject matter jurisdiction under 28 U.S.C. § 1331.

4 6. Venue is proper under 28 U.S.C. § 1391(e)(1) because the defendants are agencies of  
5 the United States and officers of the United States acting in their official capacity and 1) at least one  
6 plaintiff resides in this district; and/or 2) a substantial part of the events or omissions giving rise to  
7 the claim occurred in this district.  
8

9 **PARTIES**

10 7. Plaintiff East Bay Sanctuary Covenant (“ESBC”) is a nonprofit organization  
11 incorporated in California. ESBC’s main office is in Berkeley, California.

12 8. ESBC was founded in 1982 to assist refugees fleeing the civil wars and violence in El  
13 Salvador and Guatemala. ESBC’s mission is to offer sanctuary, support, community organizing  
14 assistance, advocacy, and legal services to people escaping political persecution, terror, war,  
15 intolerance, exploitation, and other violence. In particular, one of ESBC’s critical missions is to  
16 assist individuals fleeing persecution in applying for asylum and other humanitarian relief in the  
17 United States. EBSC also trains and mentors law students and attorneys to help clients apply for  
18 asylum.  
19

20 9. Plaintiff Al Otro Lado is a nonprofit, nonpartisan organization established in 2014  
21 and incorporated in California.

22 10. Al Otro Lado is a legal services organization that serves indigent deportees, migrants,  
23 refugees, and their families, and operates primarily in Los Angeles, California, and Tijuana, Mexico.  
24 Al Otro Lado’s mission is to coordinate and provide screening, advocacy, and legal representation  
25 for individuals in asylum and other immigration proceedings; to seek redress for civil rights  
26 violations; and to provide assistance with other legal and social service needs.  
27  
28

1           11.     Plaintiff Innovation Law Lab is a nonprofit organization that has projects in multiple  
2 states.

3           12.     Innovation Law Lab seeks to advance the legal rights of immigrants and refugees in  
4 the United States, with a focus on providing representation to asylum seekers.

5           13.     Plaintiff Central American Resource Center (“CARECEN”) is a nonprofit  
6 organization incorporated in California.

7           14.     CARECEN’s mission is to empower Central Americans and all immigrants by  
8 defending human and civil rights, working for social and economic justice and promoting cultural  
9 diversity. CARECEN offers low-cost immigration legal services, community education programs,  
10 and advocacy and organizing to achieve fair and more inclusive immigration, education, and labor  
11 laws and policies in Los Angeles.

12           15.     Defendant Donald Trump is the President of the United States. He is sued in his  
13 official capacity. In that capacity, he issued the Proclamation challenged in this suit.  
14

15           16.     Defendant Matthew G. Whitaker is the Acting Attorney General of the United States.  
16 He is sued in his official capacity. In that capacity, he issued the interim final rule challenged in this  
17 suit. The Attorney General is responsible for the administration of the immigration laws pursuant to  
18 8 U.S.C. § 1103 and is empowered to grant asylum or other relief.  
19

20           17.     Defendant U.S. Department of Justice (“DOJ”) is a cabinet-level department of the  
21 United States federal government.

22           18.     Defendant James McHenry is the Director of the Executive Office for Immigration  
23 Review (“EOIR”). He is sued in his official capacity.  
24

25           19.     Defendant EOIR is the sub-agency of DOJ that, through its immigration judges,  
26 conducts limited review of negative credible fear determinations.

27           20.     Defendant Kirstjen M. Nielsen is the Secretary of Homeland Security. She is sued in  
28 her official capacity. In that capacity, she issued the interim final rule challenged in this suit. She

1 directs each of the component agencies within the Department of Homeland Security. In her official  
2 capacity, Defendant Nielsen is responsible for the administration of the immigration laws pursuant to  
3 8 U.S.C. § 1103, and is empowered to grant asylum or other relief.

4 21. Defendant U.S. Department of Homeland Security (“DHS”) is a cabinet-level  
5 department of the United States federal government. Its components include U.S. Citizenship and  
6 Immigration Services (“USCIS”), Customs and Border Protection (“CBP”), and Immigration and  
7 Customs Enforcement (“ICE”).

8 22. Defendant Lee Francis Cissna is the Director of USCIS. He is sued in his official  
9 capacity.  
10

11 23. Defendant USCIS is the sub-agency of DHS that, through its asylum officers,  
12 conducts interviews of individuals who apply for asylum.

13 24. Defendant Kevin K. McAleenan is the Commissioner of CBP. He is sued in his  
14 official capacity.  
15

16 25. Defendant CBP is the sub-agency of DHS that is responsible for the initial processing  
17 and detention of noncitizens who are apprehended near the U.S. border.

18 26. Defendant Ronald D. Vitiello is the Acting Director of ICE. He is sued in his official  
19 capacity.  
20

21 27. Defendant ICE is the sub-agency of DHS that is responsible for carrying out removal  
22 orders and overseeing immigration detention.

## 23 **BACKGROUND**

### 24 **Obligations to Asylum Seekers Under Domestic and International Law**

25 28. Federal law provides several forms of protection for individuals fleeing persecution  
26 and torture. These forms of protection include asylum, 8 U.S.C. § 1158; withholding of removal, 8  
27 U.S.C. § 1231(b)(3); and protection under the Convention Against Torture, *see* Foreign Affairs  
28

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

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

8 30. In crafting the statutory provisions governing asylum, Congress took care to ensure  
9 that noncitizens within our country or at the border would be able to apply for asylum, regardless of  
10 their manner of arrival at or entry within our borders. 8 U.S.C. § 1158(a)(1) specifically provides  
11 that  
12

13 “[a]ny alien who is physically present in the United States or who arrives in the United States  
14 (whether or not at a designated port of arrival and including an alien who is brought to the  
15 United States after having been interdicted in international or United States waters),  
16 irrespective of such alien’s status, may apply for asylum in accordance with this section or,  
17 where applicable, section 1225(b) of this title.”

18 31. Accordingly, the Board of Immigration Appeals has long held that “an alien’s manner  
19 of entry or attempted entry . . . should not be considered in such a way that the practical effect is to  
20 deny [asylum] relief in virtually all cases.” *Matter of Pula*, 19 I&N Dec. 467, 474 (BIA 1987).

21 32. The statutory provisions governing asylum, including 8 U.S.C. § 1158(a)(1),  
22 represent an effort by Congress to bring the United States into compliance with its international  
23 obligations under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees.

24 33. Asylum affords protection to individuals who have a “well-founded fear of  
25 persecution” on account of any one of five protected grounds: race, religion, nationality, political  
26 opinion, or membership in a particular social group. 8 U.S.C. § 1158(b)(1)(A); 8 U.S.C.  
27 § 1101(a)(42)(A). Withholding of removal also offers protection to individuals targeted on account  
28

1 of one of the five grounds, but it requires an applicant to show that such persecution is more likely  
2 than not—a higher standard of proof than that needed for asylum.

3 34. Asylum is also associated with certain benefits that are critical to the noncitizen's  
4 safety and ability to successfully transition to a life free from persecution. *See* 8 U.S.C. §§ 1159(b)  
5 (ability to adjust to the status of a lawful permanent resident); 1427 (ability to become a United  
6 States citizen after being lawfully admitted for permanent residence). Critically, the spouse and  
7 children of a person granted asylum are likewise eligible for asylum. 8 U.S.C. § 1158(b)(3). These  
8 benefits are not available with certain other forms of relief from removal, like withholding of  
9 removal.  
10

11 35. There are three principal ways for an individual to seek asylum:

12 36. First, where a noncitizen is not in any kind of removal proceedings, his or her  
13 application is “affirmative.” *See* 8 C.F.R. §§208.2(a), 208.9. He or she files an application with  
14 USCIS, and has an interview with an asylum officer.  
15

16 37. Second, a noncitizen in ordinary removal proceedings, *see* 8 U.S.C. § 1229a, may  
17 apply for asylum as a form of relief from removal, 8 C.F.R. § 208.2(b). These applications are  
18 referred to as “defensive” asylum applications.

19 38. Third, Congress established an alternative process, “expedited removal,” applicable to  
20 certain noncitizens who are arriving at ports of entry or apprehended after entering without  
21 inspection. *See* 8 U.S.C. § 1225(b)(1); *see also Designating Aliens for Expedited Removal*, 69 Fed.  
22 Reg. 48,877 (Aug. 11, 2004) (expedited removal applicable to those who entered without inspection  
23 and are apprehended within 14 days of entry and 100 miles of the border).  
24

25 39. As part of the expedited removal system, a noncitizen who expresses a fear of return  
26 to his or her home country is entitled to a “credible fear” screening interview. 8 U.S.C. §  
27 1225(b)(1)(B). If the screening officer finds a “significant possibility” that the individual “could  
28

1 establish eligibility for asylum,” he or she is placed in regular removal proceedings and given an  
2 opportunity to apply for asylum. *Id.*

### 3 **The New Proclamation and Interim Final Rule**

4 40. On November 8, 2018, Defendant Whitaker, in his role as Acting Attorney General,  
5 and Defendant Nielsen, in her role as Secretary of Homeland Security, promulgated an interim final  
6 rule pursuant to 8 U.S.C. § 1158(b)(2)(C), a provision of the INA that gives the Attorney General the  
7 power to “by regulation establish additional limitations and conditions, consistent with [§ 1158],  
8 under which an alien shall be ineligible for asylum,” and 8 U.S.C. § 1158(d)(5)(B), a provision of  
9 the INA that gives the Attorney General the power to “provide by regulation for any other conditions  
10 or limitations on the consideration of an application for asylum not inconsistent with this chapter.”  
11

12 41. The rule renders ineligible for asylum noncitizens whose entry is prohibited by a  
13 proclamation or order of the President issued pursuant to INA § 212(f), 8 U.S.C. § 1182(f), or INA  
14 § 215(a)(1), 8 U.S.C. § 1185(a)(1), that concerns the southern border.

15 42. The APA generally requires a period of public notice and comment on proposed  
16 regulations, to ensure that agency actions are transparent, lawful, and appropriately vetted.  
17 Nevertheless, the Defendants claimed “good cause” to bypass the notice-and-comment procedures  
18 normally required for a rulemaking pursuant to 5 U.S.C. § 553(b)(B), and the 30-day waiting period  
19 that is required even where notice and comment are not, 5 U.S.C. § 553(d). They also invoked the  
20 “foreign affairs” exception to those procedures. 5 U.S.C. § 553(a)(1).  
21

22 43. The next day, November 9, 2018, President Trump issued a Proclamation entitled  
23 “Presidential Proclamation Addressing Mass Migration Through the Southern Border of the United  
24 States.” The Proclamation was issued pursuant to 8 U.S.C. §§ 1182(f) and 1185(a), and suspends  
25 the entry of persons entering without inspection along the southern border.  
26  
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1           44.     Together, these actions render ineligible for asylum any noncitizen who enters the  
2 United States without inspection at the southern border. Plaintiffs are harmed by these actions,  
3 which undermine their missions and cause them to divert resources.

4 **Asylum Seekers at the Southern Border**

5 *Dire Conditions in Central America Have Prompted Many to Seek Refuge Elsewhere*

6           45.     Individuals who arrive at the southern border seeking protection in the United States  
7 through the asylum process are fleeing some of the most dangerous countries in the world.

8           46.     Although asylum seekers come to the southern border from all over the world, many  
9 come from El Salvador, Guatemala, and Honduras, countries known as the “Northern Triangle.”  
10 According to a recent report from the United Nations High Commissioner for Refugees, these  
11 countries are experiencing epidemic levels of violence. Human rights groups have compared the  
12 levels of violence in this region to those typically seen in war zones.

13           47.     Those who leave often are running from life-or-death situations, leaving everything  
14 behind to make a dangerous journey. In particular, violence against women by criminal armed  
15 groups has escalated dramatically in Central America, and those governments have been unable or  
16 unwilling to provide effective protection.

17           48.     Asylum seekers fleeing their home countries in Central America face an arduous  
18 journey to the United States, involving a high risk of violence, including sexual assault, along the  
19 way.

20           49.     Although those traveling by land cross through Mexico before reaching the United  
21 States, for many, remaining in Mexico is not an option. Rates of violence in Mexico have been  
22 increasing as of late; 2017 was the deadliest year on record, with more than 23,000 murder  
23 investigations opened.  
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1           50. Refugees in Mexico are at risk of kidnapping, disappearance, trafficking, and sexual  
2 assault, among other harms. Lesbian, gay, bisexual, and transgender persons, as well as people with  
3 indigenous heritage, regularly have been subject to persecution in Mexico.

4           51. Many of the migrants coming to the southern border have legitimate claims to  
5 asylum.

6           52. According to the United Nations High Commissioner for Refugees, in fiscal year  
7 2015, 82 percent of the women from El Salvador, Guatemala, Honduras, and Mexico who were  
8 subject to a credible fear screening by an asylum officer were found to have a significant possibility  
9 of establishing eligibility for asylum or protection under the Convention Against Torture.  
10

11           53. Between fiscal years 2014 and 2016, 8,848 people from El Salvador, Guatemala, and  
12 Honduras were granted asylum affirmatively, and 3,502 people from those countries were granted  
13 asylum defensively.

14           *Seeking Refuge at a Port of Entry is Difficult to Impossible for Many People*

15           54. Many people seeking refuge in the United States cannot reasonably present at a port  
16 of entry and instead must enter elsewhere along the southern border. This is so for a variety of  
17 reasons.  
18

19           55. Many refugees lack significant formal education, and are unaware that there are  
20 designated locations for crossing into the United States.

21           56. Even those refugees who know that designated ports of arrival exist often have no  
22 idea where they are or how to find them.  
23

24           57. Ports of entry are also difficult to access even for those who know how to find them.

25           58. Even when noncitizens seeking access to the U.S. asylum process present themselves  
26 at official ports of entry along the southern border, U.S. government officials often deny them access  
27 to U.S. ports of entry and turn them away, thus forcing asylum seekers to attempt unauthorized  
28 crossings at the border.

1           59. Plaintiff Al Otro Lado, as well as other nongovernmental organizations and news  
2 outlets, has documented numerous cases in which CBP officials have arbitrarily denied and/or  
3 unreasonably delayed access to the asylum process to individuals seeking asylum by presenting  
4 themselves at ports of entry along the U.S.-Mexico border.

5           60. Asylum seekers presenting at ports of entry are turned back by CBP through a  
6 number of tactics, including threats, intimidation, and coercion; physical force; physical obstruction;  
7 and deliberate misinformation.

8           61. Noncitizens seeking asylum who present at a port of entry also may have to wait  
9 several days or even weeks to present their claims to an immigration officer.

10           62. Asylum seekers who wish to present at the San Ysidro Port of Entry are currently  
11 waiting an average of four to six weeks in Tijuana due to an alleged lack of CBP capacity to process  
12 asylum seekers.

13           63. Asylum processing has dramatically slowed down at ports of entry in recent months.

14           64. For instance, earlier this summer, only six asylum seekers were processed each day at  
15 the port of entry in Nogales, despite a backlog of more than 100 people waiting in Mexico to apply,  
16 and even though the port is capable of holding 47 people at a time.

17           65. Similarly, at the port of entry in Brownsville, Texas, there were reports that officials  
18 were processing between zero and three people per day.

19           66. These delays in processing asylum seekers can be life-threatening, as individuals are  
20 often vulnerable to violence and exploitation while they wait to be processed.

21           67. The region of Mexico near the border with the United States is a particularly violent  
22 area with limited law enforcement capacity.

23           68. Asylum seekers turned back from a port of entry have been raped, beaten, and  
24 kidnapped and held for ransom by cartel members waiting outside.

1           69.     Even shelters outside ports of entry are not always safe, as cartels often infiltrate  
2 them.

3           70.     Asylum seekers who need to reach safety as quickly as possible thus often feel  
4 compelled to enter the United States along the border, outside of a port of entry, in order to escape  
5 their persecutors and the violence on Mexico's side of the border.

6           *Overall Migration at the Southern Border is Down*

7           71.     In general, migration at the southern border is far lower than it was in recent years.

8           72.     The number of migrants apprehended by Border Patrol officials at the U.S.-Mexico  
9 border in 2017 is the lowest annual number since 1972.

10          73.     In fiscal year 2018, CBP processed 1.25 million fewer people arriving at the southern  
11 border than in fiscal year 2000.

12          74.     Despite the drop in processing, CBP's budget is twice what it was in 2000. Whereas  
13 the Border Patrol's budget in 2000 was \$1.055 billion, its budget in 2016 was \$3.801 billion.

14          75.     CBP's staffing has also increased. The number of Border Patrol agents at the  
15 southwest border is almost double the number in 2000, from 8,580 agents in fiscal year 2000, when  
16 the number of apprehensions was four times higher than it is now, to 16,605 agents in fiscal year  
17 2017.

18          76.     Each officer is thus apprehending and processing far fewer individuals than in years  
19 past. In 2017, the average U.S. Border Patrol agent apprehended only 18 migrants along the U.S.-  
20 Mexico border all year, or one every 20 days.

21          77.     Those asylum seekers who are apprehended upon their arrival and then released into  
22 the United States after passing their credible fear interviews overwhelmingly show up for their  
23 immigration court hearings. According to data from the Department of Justice, in fiscal year 2017,  
24 89% of asylum seekers appeared for their hearings.

**Harms to Plaintiffs**

1  
2 78. Plaintiffs are nonprofit organizations that provide assistance to asylum seekers,  
3 including those who have entered between ports of entry and seek asylum affirmatively before the  
4 USCIS. The new rule and Proclamation cause each Plaintiff significant harm.

5 79. Plaintiff East Bay Sanctuary Covenant provides legal and social services to  
6 immigrants and refugees within the jurisdiction of the San Francisco Asylum Office, including  
7 applicants in California, Washington, and Oregon. It offers clients legal assistance in applying for  
8 affirmative asylum; provides social services; and helps train professionals to assist immigrant and  
9 refugee communities.  
10

11 80. EBSC's affirmative asylum program is a key part of the organization's mission, and  
12 accounts for nearly half of its organizational budget. Since 1992, ESBC has filed nearly 5,000  
13 affirmative asylum cases. Over 97 percent of those cases have been granted.

14 81. An estimated 80 percent of the clients in ESBC's affirmative asylum program entered  
15 between ports of entry. Most of those clients fled persecution in Central America and Mexico.  
16 ESBC currently has around 35 clients who entered without inspection and expect to file for  
17 affirmative asylum in the upcoming months.  
18

19 82. Funding for ESBC's affirmative asylum program is based in part on the number of  
20 cases ESBC handles per year, and the number of clients ESBC anticipates serving.

21 83. The new rule and Proclamation seriously frustrate ESBC's mission and cause it to  
22 divert organizational resources.  
23

24 84. As a result of the new policy, ESBC will have to divert significant resources to,  
25 among other things, understanding the new policy and its impact on the communities ESBC serves,  
26 and educating and advising its staff, clients, and prospective clients accordingly. To properly  
27 counsel new prospective clients who seek its affirmative asylum services going forward, ESBC will  
28 need to invest resources in training multiple intake staff not only to screen for asylum eligibility

1 based on the new rule, but to conduct detailed screenings for alternative forms of relief to facilitate  
2 referrals or other forms of assistance as appropriate.

3 85. Under the new policy, ESBC will no longer be able to train law students to handle  
4 affirmative asylum cases, or would have to substantially reduce its training program, which  
5 frustrates its mission of helping to train legal professionals to assist individuals fleeing violence and  
6 persecution.

7 86. The new policy also directly frustrates EBSC's mission of providing assistance and  
8 support to individuals fleeing persecution and violence.

9 87. The new policy jeopardizes ESBC's funding streams. If ESBC is no longer able to  
10 handle affirmative asylum cases for individuals who enter without inspection, it will face a marked  
11 decrease in its budget and will have to significantly cut its program and staff, or dramatically  
12 overhaul its program to provide types of assistance is it not currently equipped or trained to provide.

13 88. Plaintiff Al Otro Lado routinely provides representation or other assistance to asylum  
14 seekers who have entered the United States between ports of entry.

15 89. With the new policy, Defendants have frustrated Al Otro Lado's mission and have  
16 forced Al Otro Lado to divert significant resources away from its other programs. Because  
17 individuals who enter without inspection at the southern border are now categorically ineligible for  
18 asylum under the rule and Proclamation, Al Otro Lado has to revamp its representation strategy,  
19 overhaul the materials it uses to train pro bono attorneys, and evaluate the eligibility of each of its  
20 clients for other types of immigration relief. It also has to expend resources to brief eligibility  
21 issues, resulting in additional hearings and time spent on each case.

22 90. The new policy also jeopardizes some of Al Otro Lado's most critical funding  
23 streams.

24 91. Most of Al Otro Lado's asylum clients are families traveling with minor children.  
25 Because they will be ineligible for asylum under the new policy, spouses and minor children can no  
26  
27  
28

1 longer be counted as derivatives in a single application. Al Otro Lado must now prepare separate  
2 cases for each family member, exponentially increasing the number of hours required to prepare a  
3 family's case.

4 92. Plaintiff Innovation Law Lab, among other services, has established "Centers of  
5 Excellence," which provide support to noncitizens and their pro bono attorneys including legal,  
6 technical, and strategic assistance in the preparation and presentation of claims. These projects are  
7 established in Georgia, Kansas, Missouri, North Carolina, and Oregon.

8  
9 93. The new policy will require Innovation Law Lab to significantly divert its limited  
10 resources. The vast majority of people Innovation Law Lab serves are asylum seekers. The new  
11 policy will, among other things, require Innovation Law Lab to entirely rework the advice and  
12 guidance it provides in pro se workshops, and respond to a flood of inquiries and uncertainty from  
13 the immigrant communities Innovation Law Lab serves regarding the attempt to change asylum law.  
14 It will also require Innovation Law Lab to evaluate eligibility for other types of relief in all of the  
15 cases that it screens and mentors.

16  
17 94. The changes created by the new asylum rule will have a substantial impact on the  
18 Innovation Law Lab. For example, the Law Lab will have to deploy expensive and limited  
19 engineering resources to recode its software to create new analytical modeling to account for the  
20 new rule. The Innovation Law Lab publishes materials for pro bono attorneys and asylum  
21 applicants, including printed guides, worksheets, training videos, self-help videos, and other  
22 resources that are used around the country. The new asylum rule will require the Innovation Law  
23 Lab to substantially revise this material and create new learning engagements and materials on the  
24 asylum rule.

25  
26 95. Thousands of individuals rely on the Innovation Law Lab's systems; the new asylum  
27 rule will require the organization to divert its limited resources away from other projects and  
28 priorities. For example, Innovation Law Lab will have to divert its attention away from the

1 noncitizen population who remain eligible for asylum under the new policy and who will remain in  
2 desperate need of Innovation Law Lab's services. Innovation Law Lab will also have to divert its  
3 limited resources away from developing additional, new technologies to support and improve the  
4 rights of immigrants.

5 96. Plaintiff CARECEN provides immigration legal services to clients throughout  
6 Southern California. These services include affirmative and defensive representation for asylum  
7 seekers. CARECEN also educates immigrants through citizenship classes, trainings to develop  
8 organizing and advocacy skills, and workshops to facilitate the integration of immigrants into their  
9 communities. CARECEN also helps to organize immigrant communities to advocate on behalf of  
10 their rights on specific policy items.  
11

12 97. Funding for CARECEN's asylum cases is based in part on the number of cases it  
13 handles per year, and the number it anticipates serving. The rule and Proclamation will seriously  
14 harm CARECEN in multiple respects, and frustrate CARECEN's mission and divert organizational  
15 resources.  
16

17 98. For example, CARECEN's mission as it relates to affirmative asylum applicants will  
18 be frustrated because the organization will be unable to assist asylum seekers who entered between  
19 ports of entry because they will no longer be eligible for asylum. CARECEN's representation of  
20 individuals who enter between ports of entry and seek asylum while in removal proceedings also  
21 will be compromised, and CARECEN will be forced to assist them in applying for withholding and  
22 CAT. The additional staff time required to handle such cases because of the more stringent standards  
23 for withholding and CAT will require diverting resources from other critical areas of work.  
24

25 99. CARECEN will also have to divert resources to training staff and educating  
26 prospective clients about the effects of the new policy.

27 100. Plaintiffs have also been harmed because they were denied the opportunity to  
28 comment. If Defendants had provided an opportunity for notice and comment before the rule,

1 Plaintiffs could have informed Defendants of their serious objections to the rule, and they may have  
2 convinced Defendants to adopt a different approach.

3 **FIRST CLAIM FOR RELIEF**

4 **(Violation of Immigration and Nationality Act and Administrative Procedure Act)**

5 101. All of the foregoing allegations are repeated and realleged as if fully set forth herein.

6 102. The Immigration and Nationality Act provides, with certain exceptions not relevant  
7 here, that “[a]ny alien who is physically present in the United States or who arrives in the United  
8 States (whether or not at a designated port of arrival and including an alien who is brought to the  
9 United States after having been interdicted in international or United States waters), irrespective of  
10 such alien’s status, may apply for asylum in accordance with this section or, where applicable,  
11 section 1225(b) of this title.” 8 U.S.C. § 1158(a)(1).  
12

13 103. The Administrative Procedure Act, 5 U.S.C. § 706, provides that a Court “shall hold  
14 unlawful and set aside agency action, findings, and conclusions found to be – (A) arbitrary,  
15 capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to  
16 constitutional right, power, privilege, or immunity; [or] (C) in excess of statutory jurisdiction,  
17 authority, or limitations, or short of statutory right.”  
18

19 104. The Proclamation and the rule are contrary to law, including 8 U.S.C. § 1158(a)(1).

20 105. The President’s power to suspend or restrict entry pursuant to INA § 212(f) does not  
21 encompass the ability to limit the forms of relief available to noncitizens once they have entered the  
22 country, nor does his power pursuant to INA § 215(a)(1).

23 106. The rule exceeds the authority delegated to the Attorney General by Congress in  
24 8 U.S.C §§ 1158(b)(2)(C) and (d)(5)(B). The Attorney General lacks the authority to issue asylum  
25 bars as broad as the President’s § 212(f) entry suspension authority permits.  
26  
27  
28

**SECOND CLAIM FOR RELIEF**

**(Violation of Administrative Procedure Act)**

107. All of the foregoing allegations are repeated and realleged as if fully set forth herein.

108. The APA requires notice and opportunity for comment prior to the promulgation of regulations. 5 U.S.C. §§ 553(b), (c). The Acting Attorney General and Secretary of Homeland Security failed to provide notice and an opportunity to comment in a timely manner.

109. The APA requires that a regulation be published “no less than 30 days before its effective date.” 5 U.S.C. § 553(d). The Acting Attorney General and Secretary of Homeland Security failed to publish the regulation 30 days before its effective date.

110. The Acting Attorney General and Secretary of Homeland Security have not articulated reasons sufficient to shown good cause why these requirements are inapplicable, nor is the foreign affairs exception applicable.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs respectfully pray for the following relief:

- a. A declaration pursuant to 28 U.S.C. § 2201 that the Proclamation and interim final rule are unlawful and invalid;
- b. A preliminary and permanent injunction enjoining Defendants, their officials, agents, employees, assigns, and all persons acting in concert or participating with them from implementing or enforcing the Proclamation or interim final rule;
- c. An order awarding Plaintiffs costs of suit, and reasonable attorneys’ fees and expenses pursuant to any applicable law;
- d. Such other and further relief as the Court deems equitable, just, and proper.

1 Dated: November 9, 2018

Respectfully submitted,

2 Lee Gelernt\*  
3 Judy Rabinovitz\*  
4 Omar Jadwat\*  
5 Anand Balakrishnan\*  
6 Celso Perez\*\* (SBN 304924)  
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19 *Attorneys for Plaintiffs*

20 *\*Pro hac vice application forthcoming*  
21 *\*\*Application for admission forthcoming*  
22  
23  
24  
25  
26  
27  
28

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

East Bay Sanctuary Covenant, et al.

(b) County of Residence of First Listed Plaintiff Alameda County (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Jennifer Chang Newell American Civil Liberties Union Foundation, Immigrants' Rights Project 39 Drumm Street, San Francisco, CA, 94111 (415) 343-0770

DEFENDANTS

Donald Trump, et al.

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party) X 2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- X 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation-Transfer 8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Administrative Procedure Act, 5 U.S.C. § 701 et seq.; Immigration and Nationality Act, 8 U.S.C. § 1101 et seq.

Brief description of cause:

Challenge to asylum ban for individuals who enter without inspection

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: Yes X No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE

DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only)

X SAN FRANCISCO/OAKLAND

SAN JOSE

EUREKA-MCKINLEYVILLE

DATE 11/09/2018

SIGNATURE OF ATTORNEY OF RECORD

/s/Jennifer Chang Newell

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

**Authority For Civil Cover Sheet.** The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
- c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
  - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
  - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
  - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
  - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
  - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
  - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
  - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
  - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
  - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.