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The Honorable Jon S. Tigar

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

14 East Bay Sanctuary Covenant; Al Otro
15 Lado; Innovation Law Lab; and Central
16 American Resource Center in Los
17 Angeles,

18 *Plaintiffs,*

19 v.

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

Case No. 3:18-cv-06810

AGREED MOTION OF THE
STATES OF WASHINGTON,
MASSACHUSETTS, NEW YORK,
AND CALIFORNIA FOR LEAVE
TO FILE AN AMICUS CURIAE
BRIEF ON SHORTENED TIME

Hearing Date: November 19, 2018,
9:30AM

1 U.S. Customs and Border Protection, in
2 his official capacity; U.S. Customs and
3 Border Protection; Ronald D. Vitiello,
4 Acting Director of Immigration and
5 Customs Enforcement, in his official
6 capacity; Immigration and Customs
7 Enforcement,
8 *Defendants.*

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10
11 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

12 PLEASE TAKE NOTICE THAT the States of Washington, Massachusetts, New York,
13 and California (the States), pursuant to Local Rule 7-1, respectfully request expedited leave to
14 file a brief as amici curiae in the above captioned case in support of Plaintiffs' request for a TRO.
15 A copy of the proposed amicus brief, which addresses limited issues, is attached as **Exhibit A**
16 to this motion. Counsel for the parties have consented to this filing.

17 The States understand that the Government's response to the Motion for TRO is due
18 Thursday, November 15, 2018 and Plaintiffs' Reply is to be filed on November 16, 2018, with
19 the hearing to follow on Monday, November 19, 2018. To give the Court and the parties time
20 before the hearing to consider the States' position, the States respectfully request that this Court
21 allow the States to file this proposed amicus brief on November 14, 2018.

22 Counsel for the defendants has confirmed that defendants have no objection to the
23 Court's consideration of this motion on shortened time and to the submission of an amicus brief,
24 provided that is fewer than ten pages and filed by 6:00 p.m. on November 14, 2018.

25 I. LEGAL STANDARD

26 District courts have wide discretion in granting leave to participate as amici curiae.
Hoptowit v. Ray, 682 F.2d 1237, 1260 (9th Cir. 1982), *abrogated on other grounds by Sandin*
v. Conner, 515 U.S. 472 (1995). While there is no specific rule on when such leave is proper,

1 this discretion is liberally applied when the legal issues in a case “have potential ramifications
2 beyond the parties directly involved.” *NGV Gaming, Ltd. v. Upstream Point Molate, LLC*, 355
3 F. Supp. 2d 1061, 1067 (N.D. Cal. 2005). Indeed, the “classic role” of amicus curiae is filled in
4 cases that involve the general public interest, including the interpretation and status of the law.
5 *Funbus Systems, Inc. v. State of Cal. Pub. Utils. Comm’n*, 801 F.2d 1120, 1125 (9th Cir. 1986)
6 (referencing *Miller-Wohl Co. v. Comm’r of Labor & Indus.*, 694 F.2d 203, 204 (9th Cir.
7 1982)).

8
9 An amicus curiae brief should “normally be allowed” where “the amicus has unique
10 information or perspective that can help the court beyond the help that the lawyers for the
11 parties are able to provide.” *Cnty. Ass’n for Restoration of the Env’t (CARE) v. DeRuyter Bros.*
12 *Dairy*, 54 F. Supp. 2d 974, 975 (E.D. Wash. 1999). Amici curiae fulfill the role by submitting
13 briefing designed to assist in cases of general public interest, supplement the efforts of counsel,
14 and draw the court’s attention to law that might otherwise escape consideration. *Id.*

15
16 In addition, expedited consideration of this motion is appropriate because the
17 November 19 hearing date was only set yesterday. The States promptly reached out to the
18 parties and obtained their consent to file this motion for leave to file their amicus brief.
19 Expedited consideration will not affect the hearing date as the States propose to file their
20 amicus brief regarding the TRO today. *See generally* L.R. 6-3.

21 22 **II. STATEMENT OF IDENTITY AND INTEREST OF AMICI CURIAE**

23 The current case involves allegations that the Acting Attorney General and Secretary of
24 Homeland Security improperly issued an Interim Final Rule that will radically reduce the number
25 of migrants eligible to apply for asylum, in violation of the APA and both domestic and
26

1 international immigration law. *See* “Aliens Subject to a Bar on Entry under Certain Presidential
2 Proclamations; Procedures for Protection Claims,” *available at*
3 https://www.regulations.gov/document?D=EOIR_FRDOC_0001-0039. The ramifications of
4 this action go well beyond the parties to the case and are matters of general public interest. As a
5 result, the States are well-positioned to file a brief as amici curiae.
6

7 The States have particular insights to share because they will suffer concrete harms if the
8 Interim Rule is allowed to go into effect. The States invest their own resources every year to
9 provide education, health care, and other services to immigrant families, including asylum
10 seekers, like all families that reside within our borders. The States also deliver specific services
11 to immigrant families that settle in our jurisdictions. For example, the Office of Refugee and
12 Immigrant Assistance (ORIA) is part of the State of Washington’s Department of Social and
13 Health Services (DSHS). ORIA coordinates services for asylum grantees, refugees, and other
14 immigrants through contracts with more than 60 different organizations across the state to offer 11
15 distinct programs and services.
16

17 Where migrants experience additional trauma and uncertainty in the processing of their
18 asylum claims, the States – through their child welfare services, social and health services, courts,
19 and public schools – will have a significant role in assisting immigrants and their relatives in the
20 United States who will suffer the harms inflicted by the reversal of asylum policy and attendant
21 delay.
22

23 In addition, each State has a strong interest in ensuring that federal agencies comply with
24 the APA and refrain from engaging in arbitrary and capricious decision-making. The States and
25 their residents depend on a stable and predictable federal regulatory environment. The States’
26

1 public policies in favor of open government, transparency, and the Rule of Law are all impacted
2 when federal agencies fail to comply with procedures intended to allow public input on important
3 government regulation.

4 **III. AMICI CURIAE’S EXPERTISE WILL BENEFIT THE COURT**

5 The amici States have “unique information” and a “perspective that can help the [C]ourt”
6 by demonstrating the broad implications flowing from promulgation of the Rule. *Sonoma Falls*
7 *Developers, LLC v. Nev. Gold & Casinos, Inc.*, 272 F. Supp. 2d 919, 925 (N.D. Cal. 2003). The
8 ramifications of this case directly affect the States, which are negatively impacted when federal
9 agencies engage in questionable rulemaking practices that purport to enact sweeping policy
10 changes without providing the public with the opportunity to review and comment. The
11 temporary restraining order sought by plaintiffs in this case allows for appropriate scrutiny of
12 these regulatory actions.

13 It is especially important for the Court to consider the States’ view that the regulatory
14 instability and administrative whim embodied by the Interim Rule imperils future immigrants
15 with legitimate asylum claims who will settle within the States. Illegal removal of these families
16 and children under the Rule would not only harm them, but the Amicus States in which they
17 reside.

18 Accordingly, Washington, Massachusetts, New York, and California respectfully submit
19 that the amicus brief will assist the Court in providing this additional perspective and request
20 that the Court grant the motion for leave to file an amicus brief.

IV. CONCLUSION

For the foregoing reasons, the amici States respectfully request this Court’s leave to file the attached proposed amicus curiae brief on November 14, 2018.

Respectfully submitted this 14th day of November, 2018.

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EXHIBIT A

The Honorable Jon S. Tigar

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

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

Plaintiffs,

v.

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

Defendants.

Case No. 3:18-cv-06810

**BRIEF OF AMICUS CURIAE
FOR THE STATE OF
WASHINGTON,
COMMONWEALTH OF
MASSACHUSETTS, STATE OF
NEW YORK, AND STATE OF
CALIFORNIA**

1 **I. INTRODUCTION AND INTEREST OF AMICI CURIAE**

2 The States of Washington, Massachusetts, New York, and California (the States)
3 respectfully submit this brief as amici curiae to address the need for emergency relief suspending
4 the Acting Attorney General and Secretary of Homeland Security’s Interim Final Rule: “Aliens
5 Subject to a Bar on Entry under Certain Presidential Proclamations; Procedures for Protection
6 Claims” (the Rule).¹

7
8 This is not the sort of rare circumstance that can excuse the Government’s failure to
9 follow the APA’s foundational procedural requirements. If the States had been afforded an
10 opportunity to comment on the effects of barring asylum claims for those who enter at the
11 country’s southern border, they would have advised of the significant and deleterious impact of
12 the Rule. Under an appropriate rulemaking process, the agencies would have been required to
13 consider how the Rule would further incentivize Customs and Border Protection (CBP) to turn
14 asylum seekers away at points of entry (a practice known as “metering”), exacerbate unnecessary
15 human suffering at our country’s doorstep, and cause asylum seekers with meritorious claims
16 prolonged harm resulting from being needlessly forced to wait at the border while their claims
17 are processed. The agencies’ failure to utilize the standard APA process denied the States the
18 right to submit their comments before the Rule – which enacts sweeping policy changes on an
19 issue of national significance – went into effect.
20
21

22 The States have a strong interest in ensuring that federal agencies comply with the APA
23 and refrain from engaging in arbitrary and capricious decision-making, and that their public
24 policies in favor of open government, transparency, and the Rule of Law are vindicated. Further,
25

26

¹ Available at https://www.regulations.gov/document?D=EOIR_FRDOC_0001-0039.

1 the States invest their own resources to provide education, health care, and other services to
2 immigrant families – like all families that reside in our States – and will have a significant role
3 in assisting immigrants and their relatives in the United States who will suffer the trauma and
4 uncertainty that the Rule imposes. The States support the issuance of temporary relief to preserve
5 the status quo and prevent widespread harm while the validity of the agency action is adjudicated,
6 and such relief would clearly serve the public interest.

8 II. ARGUMENT

9 A. The Agencies Evaded Notice and Comment and Waiting Period Requirements, 10 Denying States the Opportunity to Provide Input.

11 The agencies' failure to engage in notice and comment rulemaking as required by the
12 APA deprived the States of their right to participate in the rulemaking process. "The notice and
13 comment requirements are designed to ensure public participation in rulemaking." *Paulsen v.*
14 *Daniels*, 413 F.3d 999, 1004 (9th Cir. 2005) (ellipses and brackets removed). Public participation
15 ensures that "agency regulations are tested via exposure to diverse public comment"; that the
16 process is "fair[] to affected parties"; and that affected parties have "an opportunity to develop
17 evidence in the record to support their objections to the rule and thereby enhance the quality of
18 judicial review." *Int'l Union, United Mine Workers of Am. v. Mine Safety & Health Admin.*, 407
19 F.3d 1250, 1259 (D.C. Cir. 2005). "It is antithetical to the structure and purpose of the APA for
20 an agency to implement a rule first, then seek comment later." *United States v. Valverde*, 628
21 F.3d 1159, 1164 (9th Cir. 2010) (quoting *Paulsen*, 413 F.3d at 1004). These procedural
22 requirements are so fundamental that if an agency improperly fails to follow them, its regulation
23 must be invalidated. 5 U.S.C. § 706(2)(D) (courts "shall . . . hold unlawful and set aside" agency
24 action taken "without observance of procedure required by law").
25
26

1 The agencies insist that this unilateral action is supported by “good cause,” and that
2 giving the States and the public an opportunity to comment on drastic changes to federal
3 immigration policy would be “impracticable” and “contrary to the public interest.” *See* Interim
4 Final Rule at 65 (citing 5 U.S.C. § 553(b)(B)). They also purport to make the rule effective
5 immediately, dispensing with the 30-day waiting period required by 5 U.S.C. 553(d), arguing
6 that “immediate implementation of this rule is essential to avoid creating an incentive for aliens
7 to seek to cross the border.” 83 Fed. Reg. 55950. The Rule was issued without notice, in the
8 absence of any emergency such as an imminent threat of a terrorist attack, an accident or natural
9 disaster that imperils human life, or even a fiscal emergency. *See* Motion for TRO at 7–8. Thus,
10 the government fails to overcome the “high bar” to invoke the good cause exception. *Valverde*,
11 628 F.3d at 1164.

12
13
14 “The good cause exception is essentially an emergency procedure.” *Id.* at 1165 (quoting
15 *Buschmann v. Schweiker*, 676 F.2d 352, 357 (9th Cir. 1982)). Failing to follow notice and
16 comment procedures may be excused “only in those narrow circumstances” in which taking the
17 time to comply with the APA’s procedural requirements “would do real harm.” *Id.* at 1164–65.
18 “[T]he good cause exception ... authorizes departure from the APA’s requirements only when
19 compliance would interfere with the agency’s ability to carry out its mission.” *Cal-Almond, Inc.*
20 *v. U.S. Dep’t of Agric.*, 14 F.3d 429, 441 (9th Cir. 1993). It is to be “sparingly used in order to
21 promote public input into agency rulemaking,” *Serv. Emps. Int’l Union, Local 102 v. County of*
22 *San Diego*, 60 F.3d 1346, 1353 (9th Cir. 1994), lest it “carve the heart out of the statute.” *Action*
23 *on Smoking and Health v. CAB*, 713 F.2d 795, 800 (D.C. Cir 1983).
24
25
26

1 The government also invokes the “foreign affairs” exception to the APA’s procedural
2 requirements, 5 U.S.C. § 553(a)(1). 83 Fed. Reg. 55950. However, the Ninth Circuit rejected
3 this exception’s application to the kind of regulation at issue here, holding that: “The foreign
4 affairs exception would become distended if applied to [DHS] actions generally, even though
5 immigration matters typically implicate foreign affairs. For the exception to apply, the public
6 rulemaking provisions should provoke definitely undesirable international consequences.”
7 *Yassini v. Crosland*, 618 F.2d 1356, 1363 n.4 (9th Cir. 1980) (internal citations omitted).
8 Although foreign relations are briefly discussed in the Rule, *see* 83 Fed. Reg. 55950, the
9 government’s focus is on the United States’ internal interests, not international relations.
10

11 The States’ interests in governmental transparency are furthered by the opportunity to
12 comment on proposed federal rulemaking. Moreover, as sovereigns responsible for the health,
13 safety, and welfare of millions of people within their respective borders, the States have unique
14 interests and perspectives to contribute on issues of national importance and widespread impact,
15 particularly when such policies will cause prospective residents of our States unnecessary,
16 substantial, and enduring harm. If the States had been provided with an opportunity to comment
17 on the Rule before it was promulgated, they would have raised these issues before the Rule took
18 effect.² The agencies would have been required to consider those comments in crafting the final
19 regulation, *see* 5 U.S.C. § 553(c), and may have made changes to the proposed rule in response,
20 as agencies often do. The record developed through the notice and comment process in turn
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22
23

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25 ² For example, since March 2016, Washington State has offered more than 45 comment letters on
26 anticipated or proposed actions by the Administration to delay, repeal or adopt federal regulations. Massachusetts
has submitted dozens of comment letters on proposed regulatory changes, New York offered 45 comment letters,
and California has submitted 59 comment letters since February 2017.

1 would have aided the Court in its review of the action. *United Mine Workers*, 407 F.3d at 1259.
2 That is the way the process is supposed to work.

3 **B. The Interim Final Rule Will Exacerbate Inhumane Border Conditions.**

4 Granting the temporary restraining order could prevent needless harm. On the other side
5 of the ledger, the federal government can assert little to no legally cognizable harm from entry
6 of the injunction. “[T]he government[] . . . cannot suffer harm from an injunction that merely
7 ends an unlawful practice or reads a statute as required to avoid constitutional concerns.”³ The
8 balance of equities tips in favor of a TRO here.

9
10 In addition to obvious legal infirmities detailed in the Motion, the Rule raises several key
11 practical and humanitarian concerns. Because the Rule requires people fleeing violence to
12 present requests for asylum only at official U.S. ports of entry, it will increase pressure on border
13 officers to turn away people who try to present themselves—a process known as “metering.”
14 Increasing metering will only exacerbate the inhumane border conditions migrants experience.

15
16 Even if metering does not occur, the Rule will increase asylum seekers’ wait times at the
17 border while their claims are being processed. During these long waits, children will not be
18 educated and families will not receive the basic health services that they would receive if they
19 were to be released to live in the States.

20 **1. Increasing Pressure on Ports of Entry Will Increase Metering.**

21
22 Along the southern border, CBP regularly prevents asylum seekers from requesting
23 protection at official U.S. ports of entry by turning away individuals before they can reach the

24
25 ³ *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013) (citing *Zepeda v. I.N.S.*, 753 F.2d 719, 727
26 (9th Cir. 1983)). *See also NAACP v. Trump*, 2018 U.S. Dist. LEXIS 139663, at *15 (D.D.C. Aug. 17, 2018)
(finding lack of injury to federal government from order “simply correct[ing] the improper exercise of [DHS]
authority” in case relating to rescission of Deferred Action for Childhood Arrivals [“DACA”]).

1 entry point. This is not an isolated practice, but a widespread policy intended to deter asylum
2 seekers from accessing ports of entry at the U.S.–Mexico border, a policy that the federal
3 government has repeatedly acknowledged over the past year.

4 In June 2018, the DHS Office of Inspector General (OIG) conducted unannounced site
5 visits to CBP and ICE facilities along the southern border.⁴ OIG’s report, issued in late
6 September, confirmed that “CBP was regulating the flow of asylum-seekers at ports of entry
7 through ‘metering[.]’” *Id.* at 5. OIG described the process: “When metering, CBP officers stand
8 at the international line out in the middle of the footbridges” and turn asylum-seekers away
9 before they can cross onto U.S. soil, claiming that there is no space available. *Id.* at 6. CBP
10 instructs officers to “inform individuals that the port is currently at capacity and that they will be
11 permitted to enter once there is sufficient space and resources to process them.” *Id.* at 6.

12 In recent years, CBP has increasingly utilized metering tactics. In April and May 2018,
13 officials at the San Ysidro port of entry near San Diego, California denied entry to a large group
14 of asylum seekers and forced them to wait outside the U.S. gate for days, enduring cold, rain,
15 ants, and lice.⁵ CBP justified the denial of entry based on a lack of processing capacity, despite
16 the fact that the agency had been anticipating the arrival of these 240 asylum seekers for weeks
17 and regularly manages the daily crossing of 20,000 people at this port of entry. *Id.* Individuals
18 seeking to cross were told by CBP that the US did not accept asylum claims at the border, or that
19 they needed to obtain appointments from Mexican officials before they could proceed. *Id.*

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24 ⁴ OFFICE OF INSPECTOR GENERAL, SPECIAL REVIEW – INITIAL OBSERVATIONS REGARDING FAMILY
SEPARATION ISSUES UNDER THE ZERO TOLERANCE POLICY (Sept. 27, 2018) at 1, available at
25 <https://www.oig.dhs.gov/sites/default/files/assets/2018-10/OIG-18-84-Sep18.pdf>.

26 ⁵ JASON BOYD AND GREG CHEN, AMERICAN IMMIGRATION LAWYERS ASSOCIATION POLICY BRIEF: NEW
BARRIERS AT THE BORDER IMPEDED DUE PROCESS AND ACCESS TO ASYLUM (June 1, 2018) at 3. Available at
<https://www.aiala.org/File/DownloadEmbeddedFile/76208>.

1 Legal representatives who accompanied immigrants wishing to present themselves to
2 CBP officers at ports of entry from 2017 to present have witnessed dozens of people—mostly
3 asylum seekers—being turned away repeatedly. Human Rights First documented over a hundred
4 instances where CBP refused to grant individuals and families access at numerous ports of entry.
5
6 BOYD AND CHEN, AMERICAN IMMIGRATION LAWYERS ASSOCIATION POLICY BRIEF at 3. Most of
7 these were families fleeing violence in their home country. *Id.*

8 There is no doubt that metering has and continues to be a policy at ports of entry on the
9 southern border. The OIG noted that CBP “has utilized [metering] at least as far back as 2016 to
10 regulate the flow of individuals at ports of entry.” OIG, INITIAL OBSERVATIONS REGARDING
11 FAMILY SEPARATION at 5-6. In May 2018, DHS Secretary Kirstjen Nielsen publicly admitted
12 that it was DHS policy to meter migrants at the U.S.-Mexico border: “We are ‘metering’, which
13 means that if we don’t have the resources to let them [asylum-seekers] in on a particular day,
14 they are going to have to come back.” AMNESTY INTERNATIONAL REPORT, USA: ‘YOU DON’T
15 HAVE ANY RIGHTS HERE’ (2018) at 11.⁶ Commissioner Kevin McAleenan confirmed a few
16 weeks ago that CBP is preparing to “expand” metering, stating
17

18 that if the Border Patrol sees a significant increase in asylum seekers, it will
19 expand metering to other border crossings — effectively blocking immigrants
20 from entering. He said the agency already faced a “significant backlog” of asylum
21 seekers in Tijuana and delays at three to four other crossings daily.⁷

22 Unsurprisingly, metering puts enormous pressure on migrants to enter illegally, as
23 persons fleeing violence are faced with indefinite waits at ports of entry. As OIG found, “DHS
24 regulated the number of asylum-seekers entering the country through ports of entry at the same
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26 ⁶ Available at <https://www.amnesty.org/download/Documents/AMR5191012018ENGLISH.PDF>.

⁷ <http://www.latimes.com/nation/la-na-border-patrol-commissioner-20181026-story.html>

1 time it encouraged asylum-seekers to come to ports.” OIG, INITIAL OBSERVATIONS REGARDING
2 FAMILY SEPARATION at 1. OIG suggested that “limiting the volume of asylum-seekers entering
3 at ports of entry leads some aliens who would otherwise seek legal entry into the United States
4 to cross the border illegally.” *Id.* at 7. Indeed, interviews with a Border Patrol supervisor and
5 migrants confirmed that there is “an increase in illegal entries when aliens are metered at ports
6 of entry.” *Id.* at 7.

8 **2. Metering Exacerbates Inhumane Border Conditions.**

9 Media reports show how families, some with small children, have been forced to sleep
10 on the ground outside ports of entry for weeks as they waited for CBP to allow them to present
11 themselves:

12 Families from El Salvador, Guatemala and Honduras huddle together on the
13 ground near packages of donated diapers and cans of baby formula. Some have
14 endured this limbo for nearly two weeks, sleeping on the ground at night and
15 trying to stay cool during the day as temperatures in this outpost in the Sonoran
Desert surpass 100 degrees.⁸

16 Other reports describe the unofficial bureaucracy that grew out of CBP border refusals at the San
17 Ysidro Port of Entry, where “metered” migrants live for weeks as they wait for CBP to allow
18 them to seek asylum.⁹ Asylum seekers are left to camp out near the U.S.–Mexico border for “up
19 to a month in more than two dozen temporary shelters in Tijuana.”

20 Metering increases the wait at ports of entry for asylum seekers, many of whom are
21 women with children. Faced with days of additional delay at the border, and fearful of losing
22 their place in line, asylum seekers will be exposed to harsh weather conditions, lack of stable
23

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25 ⁸ <https://www.nytimes.com/2018/06/12/us/asylum-seekers-mexico-border.html>

26 ⁹ <http://www.latimes.com/local/california/la-me-asylum-seekers-notebook-holds-key-to-entry-20180705-story.html>

1 shelter, and inadequate facilities.¹⁰ Just this week, freezing temperatures forced hundreds of
2 waiting migrants outside an El Paso port of entry to seek other shelter.¹¹ Vulnerable adults and
3 children are exposed to greatly increased risks of crime, exploitation, and unsanitary conditions
4 as they languish at the border.¹²

5
6 During these periods, children do not go to school and families do not receive basic health
7 and social services that the States would otherwise provide. For these people, whatever trauma
8 caused them to flee their home country will only be compounded. Ultimately, the States will
9 bear the costs of the Rule, as asylum seekers who are accepted will settle in our jurisdictions
10 having unnecessarily experienced more trauma due to the Rule. For example, in FY 2017, almost
11 15,000 accompanied children (those arriving with their families) received positive credible fear
12 determinations and were released from federal custody, many in the amicus States. *See* 83 Fed.
13 Reg. 45486, 45519 (Sept. 7, 2018). The prospective application of this illegal Rule will certainly
14 affect future State residents.

15 16 III. CONCLUSION

17 The States support the issuance of temporary relief to preserve the status quo and prevent
18 widespread harm while the validity of the agency action is being adjudicated, and they urge the
19 Court to grant Plaintiffs' Motion.
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24 ¹⁰ *See* <https://www.nytimes.com/2018/06/12/us/asylum-seekers-mexico-border.html> (describing father
25 and toddler forced to sleep “on cardboard pizza boxes in a squalid entryway to a bathroom at the border crossing”
as they wait for CBP to accept their asylum claim).

¹¹ *See* https://www.upi.com/Top_News/World-News/2018/11/13/Cold-weather-drives-migrants-camped-at-border-bridge-into-shelter/2751542145667/

26 ¹² *See* <http://cmsny.org/publications/heyman-slack-asylum-poe/>

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DATED this _____ day of November, 2018.

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