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18
 19 **UNITED STATES DISTRICT COURT**
 20 **CENTRAL DISTRICT OF CALIFORNIA**

21 Al Otro Lado, Inc., *et al.*,
 22
 23 Plaintiffs,
 24 v.
 25 Elaine C. Duke, *et al.*,
 26 Defendants.

Case No.: 2:17-cv-5111 JFW (JPRx)
 Hon. John F. Walter (Courtroom 7A)

**DECLARATION OF KATHRYN
 SHEPHERD IN SUPPORT OF
 PLAINTIFFS' MOTION FOR CLASS
 CERTIFICATION**

Hearing Date: December 11, 2017
 Hearing Time: 1:30 p.m.
 Pre-Trial Conf.: July 20, 2018
 Trial: July 31, 2018

1 I, Kathryn Shepherd, declare as follows:

2 1. I am National Advocacy Counsel at the American Immigration
3 Council and admitted to practice *pro hac vice* before this Court. I am counsel of
4 record for Plaintiffs Al Otro Lado, Inc., Abigail Doe, Beatrice Doe, Carolina Doe,
5 Dinora Doe, Ingrid Doe and Jose Doe (collectively, “Plaintiffs”). This declaration
6 is based on my own personal knowledge, and if called as a witness, I could and
7 would testify competently to the information set forth herein.

8 2. On January 13, 2017, the American Immigration Council (Council),
9 American Immigration Lawyers Association (AILA), Women’s Refugee
10 Commission (WRC), Texas Rio Grande Legal Aid, Inc. (TRLA), Latin America
11 Working Group (LAWG), Kino Border Initiative (Kino), Public Counsel and
12 American Civil Liberties Union Immigrants’ Rights Project (ACLU IRP) jointly
13 filed a complaint with the U.S. Department of Homeland Security’s Office for
14 Civil Rights and Civil Liberties and Office of the Inspector General. The
15 complaint was filed on behalf of individuals who were denied entry to the United
16 States at ports of entry along the U.S.-Mexico border despite having asserted a fear
17 of returning to their home countries or an intention to seek asylum under U.S. law.

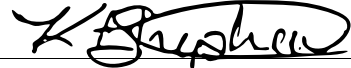
18 3. A true and correct copy of the complaint, titled “RE: U.S. Customs
19 and Border Protection’s Systemic Denial of Entry to Asylum Seekers at Ports of
20 Entry on U.S.-Mexico Border,” which was downloaded from, and is available on,
21 the American Immigration Council’s website at
22 [https://www.americanimmigrationcouncil.org/sites/default/files/general_litigation/
23 cbp_systemic_denial_of_entry_to_asylum_seekers_advocacy_document.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/general_litigation/cbp_systemic_denial_of_entry_to_asylum_seekers_advocacy_document.pdf), is
24 attached hereto as Exhibit A.

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1 I declare under penalty of perjury under the laws of the United States that
2 the foregoing is true and correct.

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Executed this 9th day of November 2017 at Washington, DC.



Kathryn Shepherd

Exhibit A



January 13, 2017

VIA FEDEX AND EMAIL

Megan H. Mack
Officer for Civil Rights and Civil Liberties
Department of Homeland Security
245 Murray Lane, SW
Washington, DC 20528

John Roth
Inspector General
Department of Homeland Security
245 Murray Lane, SW
Washington, DC 20528

RE: U.S. Customs and Border Protection’s Systemic Denial of Entry to Asylum Seekers at Ports of Entry on U.S.-Mexico Border

Dear Ms. Mack and Mr. Roth:

The undersigned organizations, American Immigration Council (Council), American Immigration Lawyers Association (AILA), Women’s Refugee Commission (WRC), Texas Rio Grande Legal Aid, Inc. (TRLA), Latin America Working Group (LAWG), Kino Border Initiative (Kino), Public Counsel and American Civil Liberties Union Immigrants’ Rights Project (ACLU IRP), jointly file this complaint on behalf of numerous adult men and women, families and unaccompanied children who, over the past several months, were denied entry to the United States at ports of entry along the U.S.-Mexico border despite having asserted a fear of returning to their home countries or an intention to seek asylum under U.S. law. We urge you to conduct a prompt and thorough investigation into these allegations, and to take swift action consistent with your respective agency missions to fully address this alarming new trend, highlighted by the illustrative case summaries below.

I. Background

Children and adults fleeing violence and persecution are seeking protection in the United States in higher numbers than ever before. In FY2017, from October 1 to November 30, 2016 alone, U.S. Customs and Border Protection (CBP) reported 93,405 apprehensions along the U.S.-Mexico border, compared to a total of 408,870 in FY 2016 and 331,333 in FY15.¹ The vast majority of these individuals came from Guatemala, Honduras, and El Salvador, often termed Central America’s “Northern Triangle.”

Beginning in the summer of 2016, the undersigned organizations began receiving reports that noncitizens attempting to present themselves at ports of entry – including San Ysidro, Nogales, El Paso, Reynosa, and others – have been turned away by CBP officers who gave them various forms of misinformation. Despite the U.S. government’s legal obligations not to turn away those seeking protection asylum seekers report having been told by CBP officials that they could not

¹ Southwest Border Migration, U.S. Customs and Border Protection, available at: <https://www.cbp.gov/newsroom/stats/sw-border-migration>.

apply for asylum, that they required visas in order to enter the United States, or that they must request asylum from Mexican immigration officials before doing so at U.S. ports of entry. As a result, many such individuals, including those fleeing harm in Mexico, have been turned away with the misimpression that the United States is no longer receiving asylum seekers, while others, including young children, have been exposed to continued persecution and threats (as well as other security concerns) while waiting in Mexico, sometimes for extended periods, for an opportunity to apply for asylum in the United States.

The individual complaints described below substantiate conduct by CBP officers that violates the law. The U.S. government is obligated by U.S. and international law to allow noncitizens presenting themselves at U.S. borders and ports of entry to apply for asylum or other forms of humanitarian protection. The Immigration and Nationality Act provides that “[a]ny alien who is physically present in the United States or who arrives in the United States. . . irrespective of such alien’s status, may apply for asylum in accordance with this section or, where applicable, section 235(b).” 8 U.S.C. § 1158(a)(1); *see also* 8 U.S.C. § 1225(b)(1)(A)(ii). The accounts below describe numerous occasions in which agents of the U.S. government not only failed to allow noncitizens to present their claims for asylum, but in some instances, physically abused the noncitizens. In every single one of these examples, the immigration officers informed the noncitizens, all of whom expressed a desire to seek humanitarian relief, that they would not be permitted to request such relief, or that they required a visa to enter the United States.

Consistent with the legal protections cited above, asylum seekers arriving at U.S. ports of entry may not be turned back without an opportunity to apply for asylum or other forms of humanitarian protection. Instead, individuals seeking asylum should be promptly received and processed by U.S. authorities. Further, immigration officers should not coerce asylum seekers into giving up their claims, provide them with misinformation regarding asylum, or otherwise dissuade them from pursuing their legal rights.

II. Individual Complaints

To document the troubling conduct described above, the Council, AILA and the ACLU IRP have compiled reports from asylum seekers, immigration attorneys who represent such individuals, and the undersigned organizations. The following examples illustrate the disturbing trend of CBP officers turning away asylum-seeking Mexican and Central American adults, families and unaccompanied minors at ports of entry along the U.S.-Mexico border, from San Ysidro to Reynosa. In each case, the affected individuals informed CBP officers that they intended to seek asylum in the United States, but were nonetheless turned away without any opportunity to have their claims heard. Pseudonyms have been used in each of the following cases to protect the identities of the individuals involved; detailed sworn declarations are available upon request. These accounts represent only a few of the many stories being shared.

1. *K.B.A. and her 3-year old son A.S.B.’s attempt to enter at the Reynosa port of entry (POE), November 24, 2016*

K.B.A. is a young Salvadoran woman who sought protection in the United States for herself and her 3-year-old son to escape death threats based on her membership and participation in the Nationalist Republican Alliance (NRA), a major political party in El Salvador. Due to K.B.A.’s

affiliation with the NRA, a transnational criminal organization in El Salvador brutally attacked K.B.A.'s brother and then threatened to kill K.B.A. and her son if they did not leave the country. K.B.A. fled El Salvador with her son and arrived at the Reynosa Bridge, which leads to Hidalgo, Texas, around 9:30 am on November 24, 2016. K.B.A. and three-year-old A.S.B. crossed the bridge and entered an immigration office, where K.B.A. told a CBP officer that she was afraid to return to El Salvador. The CBP officer laughed at K.B.A. and threatened that if she and her son did not leave his office, he would call the Mexican immigration authorities. Upon leaving the office, K.B.A. and her son encountered another CBP officer who immediately escorted them out of the building. K.B.A. pled with the officer, explaining that she could not return to El Salvador, but the officer interrupted her and threatened to call the Mexican immigration authorities if she refused to leave. As a result, K.B.A. and her son were unable to seek protection at the Reynosa port of entry and were forced to return to Mexico.

The next day, K.B.A. and her son again attempted to seek protection in the United States. They crossed the Reynosa Bridge around 12:30 pm and again entered the immigration office. Here, they encountered two officials in grey uniforms. K.B.A. told them that she and her son had fled El Salvador after receiving death threats. These officials called over a CBP officer, who turned out to be the same one who had sent K.B.A. and her son away the previous day. Despite K.B.A.'s pleas for protection and her repeated assertions that she was scared to return to El Salvador, the CBP officer escorted K.B.A. and her son out of the immigration office to the port and threatened to call Mexican immigration authorities if they returned a third time. K.B.A. described her second attempt to enter the United States at the Reynosa port of entry as follows:

I told [the officer] that I came from El Salvador and I'm undocumented and I can't return because I have death threats against me and my son. He told me to stop right there. I thought that I was going to get through this time and that they would take all of my information. He spoke with the other official, who was also Latino, fat, short, had a beard, wore a hat, and was about 35 years old. They spoke amongst themselves and one of them went somewhere else and returned with the woman official who kicked us out the day before. She yelled at us, asking us what she told us the day before. I told her that I cannot return to my country and that I'm from El Salvador. She just looked at me and told me that she told us yesterday to not come back. I pleaded with her and started to explain that I came yesterday, they didn't help us, and that my son and I faced death threats but she interrupted me and told me that she understands but to come with her. She escorted us outside and she and another woman official, who was African American, tall, skinny, in a blue uniform, and was around 30 years old, took us to the exit again. When we reached the exit, she told us to leave and threatened to call Mexican immigration if we returned a third time.

K.B.A. and her son returned to Mexico and waited until the evening to cross the Rio Grande River to seek protection in the United States. They were quickly apprehended by immigration officials and taken to a CBP holding facility. There, CBP officials asked K.B.A. if she and her son feared returning to El Salvador, and K.B.A. responded that they did. K.B.A. and her son were subsequently transferred to the South Texas Family Residential Center, where she underwent a credible fear interview with an asylum officer. On December 10, 2016, K.B.A. received a positive credible fear determination.

2. *L.R.G.'s attempt to enter at the San Ysidro and Otay Mesa POEs, July 11-14, 2016*²

L.R.G., a Mexican adult male and former community police officer, attempted to seek asylum at San Ysidro after being brutally attacked by a cartel and hospitalized in Mexico. In July 2016, CBP officers denied him entry to the United States at the San Ysidro and Otay Mesa ports of entry on multiple occasions. He remained temporarily in hiding in Mexico because he was not able to enter the United States to present his asylum claim.

On July 11, 2016, L.R.G.'s daughter, M.R., took him to the San Ysidro port of entry and waited in line. Because of the injuries he suffered from the attack and the resulting surgery he underwent, L.R.G. was in a wheelchair and unable to walk. According to M.R., when they got to the front of the line to speak to a CBP officer:

I showed the officer the hospital papers I had with me. I told the officer that we were requesting political asylum for my father. The officer answered, "No." I was confused, and asked him to clarify what I could do to help my dad apply for asylum. The officer said, "We're not accepting any more people." I asked when they stopped accepting people. He said, "You haven't heard the news. You should be watching the news. We stopped taking people days ago. We aren't accepting." I asked if I could speak to a supervisor. He replied, "No, we're not accepting people." I told him that my dad could not go back, and that he would rather be arrested by CBP than go back to an unsafe place. The officer said, "If you want to go to a Mexican immigration center, there are 3,000 people on the waiting list." I told him that my dad was Mexican, so he did not need to go to an immigration center for non-Mexican citizens. The officer then said, "Go back, if you don't go back we're going to have to escort you out." My father then said, in Spanish, "They're going to kill or torture me, I can't go back." My father took off his cap and showed the officer his head injuries. The officer replied, "I'm sorry sir, we're not accepting any political asylum applicants anymore."

Later in the day on July 11, M.R. took her father to Otay Mesa:

After this interaction, my father and I decided to go to the Otay Mesa Port of Entry. It was about 8:00 p.m., and we got to the Otay Mesa Port of Entry about fifteen minutes later. We had a similar interaction with the CBP officers at Otay Mesa: We talked to some officers at the border, but they said they were not taking applications for asylum, and told us to "go back." I asked them what I should do, but they replied rudely, and just repeated that I had to go back and that they were not accepting more people.

M.R. reported that two days later, on Wednesday, July 13, 2016, she and her father went back to the San Ysidro port of entry to try again. According to M.R., "Although we spoke to different officials, their response was the same: they told us that they were not accepting anyone for

² Attorneys with the ACLU filed an informal parole request on L.R.G.'s behalf on September 28, 2016 which was treated as a complaint and forwarded to the OCRCL; the request raised concerns about L.R.G.'s inability to seek humanitarian relief at the San Ysidro port of entry.

political asylum. I asked if there was a new law that had been implemented. They said, ‘We don’t know, it’s the rule that we were informed of, and we can’t let anyone in, and that’s it.’”

The following day, on Thursday, July 14, 2016, M.R. and her father went back to the Otay Mesa port of entry: “Once again, we met with different CBP officials. However, the situation was the same: We were told that CBP was ‘just not letting anyone in,’ not taking anyone for political asylum at any point, and that this was a command the officials had been given.”

Thus, although L.R.G. was seeking protection from the cartel members who had targeted him in Mexico after taking a stand against the cartel—and although he communicated his plight to a number of CBP officers—they sent him back to Mexico without giving him an opportunity to apply for asylum. L.R.G. and his daughter were repeatedly misinformed by CBP officials at both the San Ysidro and Otay Mesa ports, who indicated that they were not processing anybody for asylum.

3. *M.H., L.G., A.S. and J.C.M.’s attempt to enter at the San Ysidro and Otay Mesa POE’s, July 19-August 4, 2016*

L.G., A.S. and J.C.M., three teenage boys between sixteen and seventeen years old, and M.H., a 21-year-old male, are all asylum seekers from Guatemala. They attempted to seek asylum at the San Ysidro and Otay Mesa ports of entry on the afternoons of both July 19 and 20, 2016.

The young men first approached the Otay Mesa port of entry and waited in line. Upon reaching the CBP officers at the gate, they explained that they wanted to seek asylum from Guatemala. The CBP officer asked each of them whether they had a passport or visa. When they replied that they did not, the CBP officer told them that they could not apply for asylum there, and advised them to go to the San Ysidro port of entry.

However, at the San Ysidro port, CBP officers advised M.H., L.G., A.S. and J.C.M. to go to the Otay Mesa port. The CBP officers also indicated that because they did not have passports or visas, they could not enter the United States and thus needed to go to the Mexican Consulate to apply for asylum. Because they were once again turned away from the port, they made their way to a shelter, where they made contact with Nicole Ramos, an immigration attorney.

On the morning of August 4, 2016, Ms. Ramos accompanied M.H., L.G., A.S. and J.C.M. as they again tried to seek asylum in the United States. At the San Ysidro POE, Ms. Ramos spoke to a CBP officer, who indicated that they could not be processed there, and directed them to go to another gate, Ped-West, where the Mexican officials would give them numbers or tickets for their processing interviews. Although Ms. Ramos explained that unaccompanied minors seeking entry into the United States are supposed to be admitted and transferred to ORR within 72 hours, the CBP officer insisted that they had to go to Ped-West.

The young men, accompanied by Ms. Ramos, walked over to Ped-West. There, another CBP Officer indicated to Ms. Ramos that her four clients had to be processed by Mexican immigration before they could apply for asylum. Ms. Ramos repeated that some of her clients were minors and that they did not need to be processed by Mexican immigration. After Ms. Ramos demanded to speak to a supervisor, another CBP officer came over and indicated to the first officer that he

was mistaken, and that CBP was in fact still accepting minors. CBP ultimately agreed to process all four asylum seekers.

While M.H., L.G., A.S. and J.C.M. were being processed, Ms. Ramos and her paralegal, Jorge Hernandez, could still see them and could hear the CBP officers speaking very harshly to the young men. When another officer saw that Ms. Ramos and Mr. Hernandez were watching, he told the other officers to “keep it down” because “there are attorneys watching.”

CBP repeatedly misinformed M.H., L.G., A.S. and J.C.M., including by telling them they could not apply for asylum in the United States because they did not have passports or visas. The three minors were repeatedly turned away at ports of entry, in violation of the law.

4. *G.R.G. and her fourteen-year-old daughter A.R.G.’s attempt to enter at El Paso POE, November 20 – November 23, 2016*

G.R.G., a Guatemalan woman, sought protection in the United States for herself and her fourteen-year-old daughter, A.R.G., after receiving death threats in Guatemala to her and her family if she failed to pay 50,000 *quetzales* (over \$6,600).

After fleeing Guatemala, G.R.G. and her daughter attempted to enter the United States at the El Paso port of entry at around 10:00 am on November 20, 2016. After crossing the El Paso Bridge, they were met by two officers in blue uniforms. G.R.G. repeatedly told both officials that she needed help. She reported:

The Latino official angrily yelled at me, asking me what I needed and I responded that I needed help. I thought that he would take me somewhere and give me the opportunity to discuss the problem that I had in my country and what kind of help I needed. I started taking our documents out from where I kept them in my bible [sic] as the Asian official got right in front of me. I repeated to him that I need help and tried to show him our documents but he demanded that I get out of here and go to Juarez. He asked me where I was from and I told him that I’m from Guatemala. He told me, Guatemala, no! I insisted that I was from there and tried to show him my documents again. He told me to leave but I didn’t want to leave because of the threats that I faced in Guatemala and because of the danger of my daughter being kidnapped and raped in Mexico.

One of the officers pushed G.R.G. with both hands and pointed an automatic weapon at her. When fourteen-year-old A.R.G. began to cry, they left the bridge. G.R.G. and her daughter then took a taxi to a hotel where they stayed for two days. They subsequently entered the United States on November 23, 2016, by crossing the Rio Grande River. G.R.G. and her daughter spent a total of seven days in Border Patrol custody in two different “hieleras” (literally, “iceboxes,” a name often used to refer to Border Patrol short-term detention facilities) before being transferred to the South Texas Family Residential Center in Dilley. Both mother and daughter received positive fear determinations following their interviews with the Asylum Office.

5. *E.B.L.C. and her four-year-old daughter Z. L.’s attempt to enter at the Laredo Juarez-Lincoln Port of Entry, November 30, 2016*

Twenty-four-year-old E.B.L.C., a young mother, fled Honduras with her four-year old daughter, Z.L., after members of the Mara Salvatrucha, a transnational criminal organization, threatened to kill E.B.L.C. if she refused to act as a drug trafficker on their behalf. On November 30, 2016, at around 2:00 pm, E.B.L.C. and Z.L. attempted to enter the United States at the Laredo Juarez-Lincoln port of entry to seek protection.

Three CBP officers met them at the bridge; one of the officers asked where they were from, and E.B.L.C. responded that they were from Honduras. The CBP officer told her that “they weren’t receiving people from Honduras.” Although E.B.L.C. explained that she needed to talk to immigration officials because the Mara Salvatrucha had made death threats against her daughter, the officers ignored her. After talking amongst themselves, the CBP officer informed E.B.L.C. that she could only enter the United States with a visa. E.B.L.C. described her interaction with the CBP officers as follows:

After they spoke for a while, he told me that they’re not letting people pass and that I had to arrive with a visa. I asked him if immigration couldn’t take me and the woman official told me that they were immigration. She then told me that I should go talk with federal, Mexican authorities in a close by office about a visa. I took that as a threat that they would call Mexican immigration and they would return me to Honduras so I told them okay and left because I feared that they really would call.

Following this interaction, E.B.L.C. and her daughter left the port of entry. Based on what the CBP officers had told her, she believed that she could not seek asylum in the United States because she did not have a visa.

Despite fearing that she would not succeed in crossing the Rio Grande River with four-year-old Z.L. in her arms, E.B.L.C. and her daughter hid for several hours before finally reaching the United States later that night by crossing the river and entering the U.S.

III. Conclusion

We urge your offices to promptly investigate the allegations of misconduct in this complaint, and to take appropriate steps to ensure that the United States is meeting its legal obligations to asylum seekers.

Thank you in advance for your time and consideration.

Sincerely,

American Immigration Council (Council)

American Civil Liberties Union (ACLU)
Immigrants’ Rights Project

American Immigration Lawyers Association
(AILA)

Women’s Refugee Commission (WRC)

Kino Border Initiative

Texas Rio Grande Legal Aid, Inc. (TRLA)

Latin America Working Group (LAWG)

Public Counsel