IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CENTRO PRESENTE, INC., a non-profit membership organization, 12 Bennington Street, Suite 202/203, East Boston, MA 02128;

PIONEER VALLEY WORKERS CENTER, INC., 1380 Main Street, 2nd Floor, Suite 203, Springfield, MA 01101;

M. Doe, on behalf of herself and minor children M.M. Doe, M.J. Doe, C. Doe, and D. Doe; F. Roe; C. Loe and J.P. Loe, on behalf of themselves and minor children J. Loe and S. Loe; I. Moe, on behalf of herself and minor children M. Moe and J. Moe; M. Poe, on behalf of herself and minor child J. Poe; and R. Koe, on behalf of himself and minor child D. Koe,

Plaintiffs,

v.

KEVIN MCALEENAN, Acting Secretary of the Department of Homeland Security, in his official capacity, 1300 Pennsylvania Avenue NW, Washington, DC 20528;

MATTHEW T. ALBENCE, Acting Director of United States Immigration and Customs Enforcement, in his official capacity, 500 12th St., SW, Washington, D.C. 20536;

KENNETH T. CUCCINELLI, Acting Director of United States Citizenship and Immigration Services, in his official capacity, 111 Massachusetts Ave., NW, Washington, DC 20001;

MARK MORGAN, Acting Commissioner of U.S. Customs and Border Protection, in his official capacity, 1300 Pennsylvania Avenue, NW, Washington, DC 20229; and

WILLIAM BARR, Attorney General of the United States, in his official capacity, 950 Pennsylvania Avenue, NW, Washington, DC 20530,

Defendants

No. _____

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

(Violation of Fifth Amendment Due Process, Fifth Amendment Equal Protection, Administrative Procedure Act, the Suspension Clause, and the Appointments Clause)

INTRODUCTION

1. This case concerns the Trump Administration's recent attempt to issue a new administrative rule, without any public notice or comment, which dramatically and unlawfully expands the reach of a process known as "expedited removal."

2. Under the Administration's newly attempted expansion of the expedited removal process, a low-level Department of Homeland Security ("DHS") immigration officer is given the authority to summarily deport an individual who has been present in the United States for less than two years without any hearing, any meaningful opportunity to gather or present evidence, any substantive judicial review, or even any opportunity to consult with counsel or other trusted individuals to understand their rights. The decision to remove is based only on the officer's own conclusions that the person has not been admitted or paroled, has not adequately shown the requisite continual physical presence in the United States (without the opportunity for the individual to gather evidence on their behalf), and is inadmissible on one of two specified grounds.

3. Even if the person subject to expedited removal expresses a desire to apply for asylum or a fear of persecution if returned to their home country, that person is provided only a truncated credible fear evaluation process—without the procedural safeguards that generally attend asylum claims, without the opportunity for meaningful assistance, and without the chance to appeal to a federal court should the immigration officer find no credible fear.

4. Traditionally, individuals within the United States who are ordered removed are provided with notice, access to counsel, an opportunity to prepare their case, and a contested

hearing before an immigration judge, with an opportunity to appeal any adverse decision to the Board of Immigration Appeals and, if necessary, a federal court of appeals.

5. The expedited removal process was not introduced into the Immigration and Nationality Act ("INA") until 1997, and since then it has been applied almost exclusively to individuals who are either (i) arriving at ports of entry, or (ii) apprehended within 100 miles of a land border, and who have been physically present in the United States for less than two weeks.

6. Until now, with only limited exceptions,[1] immigration authorities never sought to apply expedited removal to individuals apprehended in the interior of the country, far from any land border, or individuals anywhere in the United States (including near a land border) who had been residing in the country for more than fourteen days.

7. This was with good reason: it is well established that all persons within the United States, including noncitizens, are entitled to due process rights, which the expedited removal process unquestionably fails to provide. Indeed, at least one prior administration decided against expanding expedited removal beyond individuals at or near a land border and within a short time of entry, given concerns that it would deny those individuals the due process rights that the Constitution requires.[2]

8. But on July 23, 2019, without providing notice or an opportunity for public comment, the Trump Administration attempted to issue a new rule, styled as a "Notice," that dramatically expands the reach of expedited removal to individuals (i) located anywhere in the

[1] Undocumented immigrants who arrive by sea and who have been present in the United States for less than two years have been subject to expedited removal since 2002. None of the Plaintiffs in this case arrived by sea.

[2] *See* Alan Gomez, *Trump's Quick Deportation Plan May Be Illegal, Past Immigration Chiefs Say*, USA Today (Feb. 26, 2017 1:00 P.M. ET), https://www.usatoday.com/story/news/nation/2017/02/24/president-trumps-expedited-removal-plan-may-be-illegal/98276078/.

United States, (ii) who cannot prove to an immigration officer's satisfaction that they have been continuously present in the United States for more than two years, and (iii) who the immigration officer believes is inadmissible based on lack of valid entry documents, or fraud or misrepresentation in connection with their entry. *See* Notice Designating Aliens for Expedited Removal, 84 Fed. Reg. 35409 (July 23, 2019) ("July 23 Notice" or the "Notice").

9. The July 23 Notice was issued under the alleged authority of Defendant Acting Secretary of Homeland Security Kevin K. McAleenan, who has not been confirmed to the position of Secretary of Homeland Security with the advice and consent of the United States Senate.[3]

10. The Notice purports to be effective immediately upon publication.

11. The Trump Administration's unprecedented attempted expansion of expedited removal follows years of public statements by President Trump and members of his Administration that have made clear the Administration's animus toward immigrants from Mexico, Central America, and South America on the basis of their race, ethnicity, and national origin. The July 23 Notice was designed to target members of racial and ethnic groups disfavored by the Administration.

12. The July 23 Notice also flies in the face of twenty years of evidence showing that the expedited removal process, even at the border, is rife with errors and results in widespread violations of individuals' legal rights. The government has erroneously deported numerous individuals through expedited removal, including individuals with bona fide fears of persecution

[3] Following the resignation of former Secretary of Homeland Security Kirstjen Nielsen on April 7, 2019, President Trump announced his intention to appoint Kevin McAleenan as Acting Secretary for the Department of Homeland Security. The Secretary of Homeland Security reports directly to the President.

in their home countries. Numerous reports, including a comprehensive study commissioned by Congress, have extensively documented the serious flaws in the expedited removal process.

13. The July 23 Notice will cause countless individuals who have been living and working in the United States to be unlawfully and expeditiously torn from their lives, jobs, and families, because they bear the burden of proof to show that they are not subject to expedited removal and because the expedited removal procedure fails to provide them with time or a meaningful opportunity to gather evidence, consult with counsel or even family or friends, or obtain any judicial review of an erroneous decision. Nor do any other DHS regulations or statutory provisions fill this crucial procedural gap.

14. Low-level DHS officers, operating without administrative or judicial oversight, can now immediately subject potentially hundreds of thousands of individuals to expedited removal, without any consideration of their legitimate defenses to removal.

15. These officers likewise can, and will, order people removed through the expedited removal process even though those individuals would have valid claims for asylum if they were permitted to proceed through the proper asylum process.

16. The July 23 Notice subjects the Individual Plaintiffs in this matter to all of the above risks. The Organizational Plaintiffs will be harmed because their members are subject to the aforementioned risks and they will need to divert the time and resources of their staff that would otherwise be dedicated to other efforts.

17. As further detailed below, the Plaintiffs here include individuals who have colorable claims for asylum, but who now face a likelihood of being deprived of a meaningful opportunity to vindicate those claims. Others are teenagers who are statutorily entitled to full removal proceedings, yet face a serious risk of being misidentified as adults or coerced into making

false statements about their age. Yet others, despite being present in the United States for less than two years, have established ties to their communities here, and are entitled by due process to an opportunity to develop all available defenses to removal in an adversarial hearing before a neutral arbiter. All of the individual Plaintiffs belong to racial or ethnic groups that are the target of racial and ethnic animus by the Trump Administration.

18. The Plaintiffs in this matter also include organizations whose members face similar deprivations of their rights as a result of the July 23 Notice.

19. Individuals who have been living in this country for more than fourteen days are entitled to procedural due process under the Fifth Amendment to the United States Constitution to protect their liberty interest in being free from detention or removal that is arbitrary, discriminatory, and/or unauthorized by law. The July 23 Notice unconstitutionally deprives them of that process.

20. The July 23 Notice also violates the Constitution's Equal Protection Clause. Contemporary statements by President Trump, Defendant McAleenan, Defendant Cuccinnelli, and other Administration officials demonstrate that the Notice was motivated by animus against immigrants from Mexico, Central America, and South America on the basis of their race or ethnicity.

21. The Administration also unlawfully bypassed the notice-and-comment and grace periods required by the Administrative Procedure Act ("APA") for regulatory changes of this nature, without good cause, thereby depriving the public of an opportunity to comment prior to this radical change in the expedited removal regime.

22. The expanded use of expedited removal also violates the APA because its gravely deficient processes are not in accordance with law, are in excess of statutory authority or short of statutory right, and fail to observe procedure required by law.

23. The July 23 Notice also violates INA and APA provisions requiring that individuals appearing before an immigration officer or immigration judge be permitted to be represented by counsel.

24. There is no judicial review available, by habeas corpus or otherwise, of individual expedited removal orders beyond three very limited factual questions. As applied to individuals described in the July 23 Notice, the statute therefore violates the Constitution's Suspension Clause, as it effects an unauthorized suspension of the writ.

25. Finally, the July 23 Notice should be declared to have no force or effect because Defendant McAleenan was not properly appointed as Secretary of Homeland Security at the time the Notice was published by him in the Federal Register, and for that reason he lacked authority to promulgate the Notice.

26. The July 23 Notice is patently illegal. Without relief from this Court, hundreds of thousands of individuals living anywhere in this country are at risk of being separated from their families and expelled from the country without any meaningful process, in violation of the U.S. Constitution and federal law.

JURISDICTION AND VENUE

27. This case arises under the United States Constitution; the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 *et seq.* and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et seq.* and its implementing regulations.

28. The Court has jurisdiction under 8 U.S.C. § 1252(e)(3). Section 1252(e)(3) is a provision of the INA that provides jurisdiction in the United States District Court for the District of Columbia over "[c]hallenges [to the] validity of the system" of expedited removal, including regulations and written policies regarding expedited removal. The Court also has jurisdiction under 28 U.S.C. § 1331.

29. Venue is proper in this District because 8 U.S.C. § 1252(e)(3)(A) requires that all Section 1252(e)(3) actions be brought in the United States District Court for the District of Columbia. In addition, venue is proper under 28 U.S.C. § 1391(e)(1) because a substantial part of the events or omissions giving rise to this action occurred in this District and Defendants are officers of the United States being sued in their official capacity and reside in the District.

THE PARTIES

I. ORGANIZATIONAL PLAINTIFFS

30. Plaintiffs Centro Presente and Pioneer Valley Workers Center (collectively, "Organizational Plaintiffs") bring this complaint on behalf of their organizations and the membership of their organizations.

31. Established in 1981, Centro Presente is a state-wide Latin American immigrant membership organization located at 12 Bennington Street, Suite 202/203, East Boston, MA 02128.

32. Centro Presente is dedicated to the self-determination and self-sufficiency of the Latin American immigrant community of Massachusetts. The non-profit organization was founded by Sister Rose Marie Cummings in direct response to the rapidly growing community of refugees fleeing violence during the civil war conflicts in Central America in the 1980s. Operated and led primarily by Central American immigrants, Centro Presente struggles for immigrant rights and for economic and social justice. Through the integration of community organizing, leadership

development, and basic services, Centro Presente strives to give members a voice and to build community power.

33. Centro Presente has a staff of seven and provides English as a Second Language (ESL) classes, legal services, immigration clinics, advocacy, and leadership development to over three thousand families, youth, and children each year. Through its programming, community outreach, and educational activities, Centro Presente serves hundreds of immigrants subject to the July 23 Notice—including their families and children.

34. Today, Centro Presente has over 1,500 members. Most members are from El Salvador and Honduras. Centro Presente's membership also includes U.S. citizens and non-citizens. Many of Centro Presente's individual members have been in the United States for less than two years and are subject to the July 23 Notice. Other individual members have resided in the United States for longer than two years but would be incapable of providing sufficient proof of such if erroneously placed in expedited removal proceedings. All Individual Plaintiffs are members of Centro Presente.

35. Pioneer Valley Workers Center (PVWC) is a membership organization with locations at 20 Hampton Avenue, Suite 200, Northampton, MA 01060; and 1380 Main Street, 2nd Floor, Suite 203, Springfield, MA 01101.

36. PVWC has over 3,000 active members across the western part of Massachusetts.

37. PVWC builds the collective power of workers and immigrants in Western Massachusetts and beyond to win real change in the lives of working people.

38. PVWC's 3,000 worker and immigrant members lead campaigns to improve wages and standards, and achieve long-term systemic change. Nearly all are frontline food industry workers in restaurants and farms.

39. PVWC seeks to transform systems and institutions that exploit workers and threaten immigrants, locally to nationally. Its member-run Worker Committees are democratic decision-making bodies that build leadership through popular education and power analysis. With low-wage worker participants, the Committees lead strategic, creative campaigns to win real change for workers and immigrants. In both Springfield and Northampton, the Committees have won legislative protections from immigration deportations and from wage theft, and fight for similar protections statewide and nationally. The Committees set PVWC's organizing priorities and campaigns.

40. PVWC's members will be put in extreme jeopardy by the July 23 Notice's changes in the expedited removal program. Members can now be removed without due process, and the organization is expending, and will continue to expend, additional resources to address this problem.

II. INDIVIDUAL PLAINTIFFS

41. The individuals listed below (collectively, "Individual Plaintiffs") bring this complaint on behalf of themselves and on behalf of their minor children.

42. **M. Doe** currently resides in eastern Massachusetts, in a location more than 100 miles from a U.S. international land border.

43. She fled El Salvador on or around April 25, 2019, with four minor children: her son, two of her nieces, and one nephew. M. Doe intended to seek asylum for herself and all four children.

44. M. Doe and the four children arrived together in the United States on or around May 4, 2019.

45. After crossing the southern border, they immediately presented themselves to immigration officials.

46. The border patrol agent asked if they spoke English. When it was determined that they did not, they were placed in a small patrol vehicle, and then transferred to another vehicle.

47. They were then dragged out of the patrol car, thrown on the ground, and handcuffed and placed into a second vehicle for transport to a detention facility.

48. They were taken to a detention facility where they were inspected, strip searched, and interrogated. Officials onsite told them that even though they were traveling together as a family, that they would be separated in the detention facility.

49. M. Doe was allowed to stay in the same cell with her 9-year-old son, M.M. Doe, but was separated from her nieces and nephew.

50. The cells were extremely cold, and both M. Doe and her son went hungry from lack of food. The cells were also overcrowded with dozens of other migrants in the small confined space.

51. M. Doe and M.M. Doe were later transferred to a second detention facility which was less crowded.

52. There, M. Doe was presented with immigration documents that were in English only. No Spanish version was presented to her.

53. M. Doe was asked if she wanted to sign a document for their voluntary departure. She refused.

54. When asked why they left El Salvador, M. Doe responded that she was seeking asylum. M. Doe was referred to, and passed, a credible fear interview ("CFI"), but she was not provided with documentation to show that she was found to have a credible fear of return.

55. M. Doe and M.M. Doe remained in this second detention facility for approximately three days, until they were placed on a bus to El Paso. M. Doe and M.M. Doe were then released

from detention. M. Doe was not issued a Notice to Appear ("NTA") in immigration court at the time of her release.

56. From there, she came to eastern Massachusetts. She arrived in the Boston area on or about May 12, 2019.

57. M. Doe is concerned that expedited removal will deprive her of an opportunity to appear in immigration court, and to apply for asylum or other immigration protection and relief. She is concerned that, without readily accessible documentation of her having passed her CFI, immigration officers will not believe that she is entitled to apply for asylum. She is also concerned that she will again be pressured to sign forms in a language she does not understand.

58. **M.M. Doe** is the 9-year-old minor son of M. Doe. He resides with his mother in eastern Massachusetts, in a location more than 100 miles from a U.S. international land border.

59. **M.J. Doe** is the minor niece of M. Doe. She is 16 years old. She resides in eastern Massachusetts, in a location more than 100 miles from a U.S. international land border.

60. **C. Doe** is the minor niece of M. Doe. She is 15 years old. She resides in eastern Massachusetts, in a location more than 100 miles from a U.S. international land border.

61. At the initial immigration detention facility, M.J. Doe and C were both placed in a cell with other young girls. They would remain in this cell for approximately nine days without the ability to contact M. Doe. They were eventually relocated to a different detention center, where they remained for 18 days until they were released.

62. M.J. Doe and C. Doe are concerned that expedited removal will deprive them of an opportunity to appear in immigration court, and to apply for asylum or other immigration protection and relief.

63. **D. Doe** is the minor nephew of M. Doe. He is 16 years old. He resides in eastern Massachusetts, in a location more than 100 miles from a U.S. international land border.

64. In September 2018, D. Doe was on a school bus when it was intercepted by gang members. The gang members demanded that one of D. Doe's classmates join their gang, and when he refused, the gang violently beat and murdered him. D. Doe was told that if he didn't join the gang, he would be next. Several bystanders contacted law enforcement, but nobody was held accountable.

65. Afraid for his life, D. Doe fled abroad with his aunt, M. Doe.

66. At the initial immigration detention facility, D. Doe was placed in a cell with other young boys. He would remain confined in cells for approximately five days without the ability to contact M. Doe. During this time, he was interrogated without an adult present, and explained that he was afraid for his life and could not return to El Salvador.

67. During his five-day stay, D. Doe was humiliated and assaulted.

68. Immigration officers repeatedly insulted him, calling him "piojo"—the Spanish term for "lice."

69. While D. Doe was walking, an immigration officer punched him in the back of the head. The impact knocked him to the ground. Officers who were nearby responded with laughter. They humiliated and laughed at D. Doe.

70. D. Doe was eventually relocated to a detention center where he remained for 48 days. At this center, he again explained that he was afraid to return to El Salvador.

71. Although D. Doe repeatedly expressed a fear of return to his home country, he was never referred for a CFI.

72. D. Doe was released from detention on Father's Day, June 17, 2019. He was not issued a NTA.

73. D. Doe has been in extreme emotional distress since his release from detention. He is afraid of being detained by immigration officials again on a daily basis, and is afraid to leave his house except to go to school and come home. When he does leave the house, he carries paperwork identifying his father as his sponsor with him at all times, in the hope that this might offer some protection if he is apprehended.

74. D. Doe is concerned that expedited removal will deprive him of an opportunity to appear in immigration court and to apply for asylum or other immigration protection and relief. Based on his previous experience of not being referred for a CFI, he is concerned that immigration officers once again will not even allow him the opportunity to establish his fear of return before an asylum officer. He also worries that expedited removal will deprive him of an opportunity to file a grievance to hold the immigration officer who physically assaulted him accountable.

75. **F. Roe** lives in eastern Massachusetts, in a location more than 100 miles from a U.S. international land border. She fled El Salvador and arrived in San Ysidro, California, on or about January 16, 2019.

76. She fled to the United States with her four children (ages 10, 12, 13, and 15), because her children's father was kidnapped by a gang and disappeared on October 16, 2013.

77. F. Roe's son and his father had been working in a field when they saw members of a gang behead someone. Members of the gang later tried to recruit her son, but his father pleaded with them to leave his family alone and take him instead. The gang members allowed her son to go home, and his father disappeared.

78. F. Roe suspects that he was killed, but his remains have never been found.

79. She repeatedly sought police protection and filed a report with law enforcement authorities in El Salvador. But the police failed to investigate or to take any action – instead, they mocked her as "crazy." The police also denied her request for protection.

80. Gang members consistently threatened F. Roe after she filed the police reports. On several occasions, they even tried to lure her to various locations to kill and silence her, but other community members warned her each time.

81. F. Roe wanted to leave El Salvador as soon as possible, but she had to wait for five years after their father disappeared to leave the country because if she had left within 5 years, she would have been legally determined to have kidnapped her children away from their father.

82. Since she exhausted all local and domestic options to find her husband – and keep herself and her children safe – she fled. F. Roe traveled with her youngest daughter, age 10, and her three older children followed shortly after them.

83. After crossing the border, F. Roe and her youngest daughter surrendered to immigration officials. She was transported to a detention facility where she stayed with her 10-year-old daughter for one night. The following day, she was transferred to another center where she remained for approximately two days.

84. F. Roe immediately requested asylum because she fears returning to El Salvador. F. Roe was referred for a CFI, after which she was fitted with an ankle monitor and released from detention with her daughter. They arrived in the Boston area on or about January 21, 2019. Her other three children were initially detained in Texas but subsequently released, and they then joined her in eastern Massachusetts.

85. F. Roe's children are now all in school in Massachusetts and are developing ties to their local community. The family is trying to live a quiet life and not bring attention to themselves.

86. F. Roe is concerned that expedited removal will deprive her and her children of an opportunity to appear in immigration court and to apply for asylum or other immigration protection and relief.

87. **C. Loe** resides in eastern Massachusetts, in a location more than 100 miles from a U.S. international land border. She arrived in Rio Grande City, Texas on or about May 11, 2019, with her 2-year-old son, **J. Loe**.

88. Her husband, Plaintiff **J.P. Loe,** arrived in Hidalgo, Texas on or about April 18, 2019, with their 8 year-old daughter, **S. Loe.**

89. C. Loe owned a small shop where she sold food and fruit in El Salvador. The family lived in a violent, gang-controlled neighborhood.

90. One evening, while walking home after dark, C. Loe was attacked and raped by multiple gang members. The gang members took turns raping her while they covered her mouth. They threatened to kill her if she reported the crime.

91. On or about September 2018, C. Loe was coerced by gang members – under threat of violence – to pay $300 in September, $300 in October, $300 in November, and $600 in December.

92. The extortion increase was difficult for her to pay. But she borrowed money to make the payment, and continued paying. In March 2019, C. Loe was unable to pay the extortion, and she asked for additional time.

93. The gang members responded aggressively and violently. In lieu of payment, the gang members threatened to rape her 8-year-old daughter, just like they raped her.

94. Terrified, and in fear and under threat of rape, the family started making arrangements to leave.

95. To protect their daughter, J.P. Loe fled first with S. Loe. They arrived in Hidalgo, Texas on or about April 18, 2019. They entered without detection and eventually arrived in eastern Massachusetts.

96. C. Loe followed with J. Loe, and they arrived in Rio Grande City, Texas on or about May 11, 2019. They immediately surrendered themselves to immigration officials.

97. They were placed on a vehicle and transported to an immigration detention facility that was over capacity.

98. That night, since the facility was over-crowded, C. Loe and her two-year-old son slept on the ground outside – literally, on dirt and rocks.

99. They were brought into the facility the following day.

100. C. Loe was asked why she left El Salvador, and she explained that they were fleeing rape, extortion, and violence. C. Loe stated that she was seeking asylum, but was not referred for a CFI. She and her son were later released from detention. The family is concerned that expedited removal will deprive them of an opportunity to appear in immigration court and to apply for asylum or other immigration protection and relief. Based on C. Loe's previous experience of not being referred for a CFI, she is concerned that immigration officers once again will not even allow her the opportunity to establish her fear of return before an asylum officer.

101. **I. Moe** is a Guatemalan immigrant who has been in the United States for approximately five months. She currently resides in eastern Massachusetts, in a location more than 100 miles from a U.S. international land border, where she is involved in a local church.

102. I. Moe has two children. Her daughter **M. Moe** is 1 year old. Her son **J. Moe** is 8 years old.

103. I. Moe fled to the United States after drug traffickers in Guatemala murdered her husband.

104. Drug traffickers arrived in their remote village in Guatemala and told the villagers to leave. But I. Moe's husband refused. While holding their one-year-old daughter in his arms, her husband said their home had been in the family for generations, and that they would not leave their crops.

105. The drug traffickers shot her husband while he held the baby in his arms.

106. The drug traffickers threatened to kill her and the children.

107. I. Moe fled the village with her children but continued to receive threats.

108. I. Moe sought police protection, but law enforcement refused to help.

109. In fear for her safety, I. Moe fled with her children to the United States, eventually crossing the border without detection.

110. I. Moe is concerned that expedited removal will deprive her of an opportunity to appear in immigration court and to apply for asylum or other immigration protection and relief.

111. **M. Poe** is a Honduran immigrant who has been in the United States for two months. She currently resides in eastern Massachusetts, in a location more than 100 miles form a U.S. international land border, where she is involved with a local church.

112. M. Poe has one daughter, **J. Poe**, who is 5 years old.

113. M. Poe and J. Poe were detained at the U.S. border. They were later released from immigration custody, at which time M. Poe was given a NTA. However, the court listed was in Texas when M. Poe specifically informed immigration agents that she was going to the eastern Massachusetts area. While in immigration custody, M. Poe did not express an intent to seek asylum or fear of return to Honduras.

114. M. Poe is concerned that expedited removal will deprive her and her daughter of an opportunity to appear in immigration court and to apply for asylum or other immigration protection and relief.

115. **R. Koe** is a Honduran immigrant who has been in the United States for two months.

116. R. Koe is currently residing in eastern Massachusetts, in a location more than 100 miles from a U.S. international land border, where he is involved with a local church

117. R. Koe has a son, **D. Koe**, who is 11 years old.

118. R. Koe fled with his son to the United States after being kidnapped and tortured by the National Police of Honduras.

119. R. Koe was pulled over by the Honduran police while driving his motorcycle. The police said that they were looking for someone, who wasn't R. Koe, and he showed the police his identification to prove it. But instead of letting him go, the police put a bag over his head, forced him into the police car, and beat him with hard objects and burned him. Later that day, with no explanation, they let him go.

120. Living in fear, R. Koe stopped leaving his home alone. As soon as he was able to secure money to leave, he fled with his son.

121. R. Koe and D. Koe were detained at the U.S. border. R. Koe told immigration agents that he was seeking asylum, but he was not referred for a CFI; the only questions he was asked were about who helped him get to the border.

122. R. Koe and D. Koe were released from immigration custody a few days later. R. Koe was given a NTA, but it did not include any information like a court date – it only provided a phone number to call. When he called the phone number, he was told that his case is not yet in the system.

123. D. Koe is now doing well in his school in Massachusetts.

124. R. Koe is concerned that expedited removal will deprive him of an opportunity to appear in immigration court and apply for asylum because he is not safe in Honduras. Based on his previous experience of not being referred for a CFI, he is concerned that immigration officers once again will not even allow him the opportunity to establish his fear of return before an asylum officer. He is also concerned that because his case is reportedly not in the immigration court "system" yet, he will not be allowed to pursue relief there.

III. DEFENDANTS

125. Defendant Kevin McAleenan is sued in his allegedly official capacity as the Acting Secretary of DHS. In this capacity, he directs each of the component agencies within DHS, including United States Immigration and Customs Enforcement ("ICE"), United States Citizenship and Immigration Services ("USCIS"), and United States Customs and Border Protection ("CBP"). The Secretary of Homeland Security is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103. Specifically, as relevant here, the Secretary is empowered to designate categories of noncitizens subject to expedited removal. *See* 8 U.S.C. § 1225(b)(1)(A)(iii)(I).

126. Defendant Matthew T. Albence is sued in his allegedly official capacity as Acting Director of ICE, which is the agency responsible for the enforcement of the immigration laws, including the apprehension and detention of noncitizens, in the interior of the United States.

127. Defendant Mark Morgan is sued in his allegedly official capacity as the Acting Commissioner of CBP, the agency responsible for the initial processing and detention of noncitizens who are apprehended at or near the border and placed in expedited removal proceedings.

128. Defendant Kenneth T. Cuccinelli is sued in his allegedly official capacity as the Acting Director of USCIS, which is the agency that, through its asylum officers, conducts interviews of certain individuals placed in the expedited removal process to determine whether they have a credible fear of persecution and therefore are entitled to have a hearing before an immigration judge in which they can apply for relief and protection from removal.

129. Defendant William Barr is sued in his official capacity as the Attorney General of the United States. In this capacity, he is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103, oversees the Executive Office for Immigration Review (the administrative immigration court system), and is empowered to grant asylum or other relief.

FACTS

I. THE EXPEDITED REMOVAL PROCESS

130. Before the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") in 1996, noncitizens were granted full immigration court hearings before they could be removed, even if they had entered the country without inspection or were seeking entry at a border. These individuals were also entitled to administrative appellate review of any order for their removal before the Board of Immigration Appeals ("BIA") and judicial review in federal court.

131. Under IIRIRA, most immigrants retained the procedural right to an adversarial hearing before an Immigration Judge ("IJ"), commonly referred to as a "Section 240" proceeding. During this proceeding, immigrants have the right to counsel, are provided an opportunity to put on affirmative evidence and challenge the allegations and evidence against them, and may apply for asylum or any other relief from removal. *See* 8 U.S.C. § 1229a(b)(4) (right to counsel, presenting evidence, challenge allegations); 8 U.S.C. § 1158 (asylum). Immigrants in a Section 240 hearing are also entitled to an administrative appeal to the BIA if the IJ orders them removed, which triggers an automatic stay of deportation while the appeal is pending. *See* 8 U.S.C. 1535(c)(1). Immigrants may also seek judicial review of a BIA decision against them in the applicable federal court of appeals. *See* 8 U.S.C. § 1252.

132. At the same time, however, in stark opposition to the immigration court procedures in Section 240 proceedings, IIRIRA introduced expedited removal. *See generally* 8 U.S.C. § 1225(b)(1). Expedited removal is a highly truncated removal process that eliminates almost all procedural protections for certain classes of immigrants.

133. The expedited removal process begins—and often ends—with an inspection by an immigration officer. Instead of having the opportunity to present their case before an IJ, individuals placed into expedited removal can be ordered removed by an immigration officer "without further hearing or review." 8 U.S.C. § 1225(b)(1)(A)(i).

134. The immigration officer can summarily order an immigrant removed upon unilaterally making all of the following three findings:

a. The individual is either in the process of arriving in the United States or is among a particular class of immigrants designated by the Secretary of DHS[4];

[4] As to the latter, this subsection requires the immigration officer to determine whether the individual "is described in clause (iii)," referring to 8 U.S.C. § 1225(b)(1)(A)(iii). As explained

b. The individual is inadmissible because they engaged in fraud or misrepresentation to procure admission or other immigration benefits, 8 U.S.C. § 1182(a)(6)(C), or lacked the requisite documents for admission at all, *id.* § 1182(a)(7); and

c. The individual does not indicate either an intention to apply for asylum or a fear of persecution if returned to their home country.

8 U.S.C. § 1225(b)(1)(A)(i).

135. Immigrants may only obtain further review by expressing the intent to apply for asylum or communicating a fear of persecution if returned to their home country. *See* 8 U.S.C. § 1225(b)(1)(A)(ii). If a person subject to the expedited removal process does express a desire to apply for asylum or fear of persecution, then the immigration officer "shall refer the alien for an interview by an asylum officer." *Id.*

136. This referral to a CFI is the first point in the expedited removal process when the individual is permitted to "consult with a person or person of the[ir] . . . choosing," including counsel. 8 U.S.C. § 1225(b)(1)(B)(iv); *see Am. Immigration Lawyers Ass'n v. Reno*, 18 F. Supp. 2d 38, 55-56 (D.D.C. 1998), *aff'd*, 199 F.3d 1352 (D.C. Cir. 2000).

137. To prevail at the CFI, the individual must show "a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien's claim and such other facts as are known to the officer, that the alien could establish eligibility for asylum." 8 U.S.C. § 1225(b)(1)(B)(v).

138. If the asylum officer determines that the individual meets the credible fear standard, then the individual will be "detained for further consideration of the application for asylum" in

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further below, *infra* ¶ 144, "clause (iii)" provides the Secretary of DHS with authority to designate certain classes of people as subject to expedited removal.

accordance with full Section 240 removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(B); 8 C.F.R. § 208.30(f).

139. However, if the asylum officer determines in the CFI that the individual does *not* meet the applicable standard, then "the officer shall order the alien removed from the United States without further hearing or review." 8 U.S.C. § 1225(b)(1)(B)(iii).

140. There is only a very limited right to review of a negative CFI determination in expedited removal proceedings. The individual may request review of the determination by an IJ, but that review is truncated: the review may be "either in person or by telephonic or video connection," and "shall be concluded . . . to the maximum extent practicable within 24 hours, but in no case later than 7 days after" the initial negative CFI finding. 8 U.S.C. § 1225(b)(1)(B)(iii)(III). IJs are not even required to provide any reasons for their decisions: they can simply check a box on a form indicating that the CFI determination is "affirmed." *See Thuraissigiam v. U.S. Dep't of Homeland Security*, 917 F.3d 1097, 1118 (9th Cir. 2019).

141. This process falls far short of the process afforded to individuals seeking asylum through regular Section 240 immigration proceedings, including a live hearing before an IJ where they can present and cross-examine evidence, preserve objections, and appeal any adverse decision to the BIA and federal appellate courts. *See* 8 C.F.R. § 208.30(f).

142. During the inspection and credible fear stages of expedited removal, DHS generally detains the individual. *See* 8 C.F.R. § 235.3(b)(2)(iii), (b)(4)(ii).

143. At any time during the expedited removal process, the immigration officer may permit the immigrant to withdraw their application for admission and allow them to depart "immediately" without issuing an expedited removal order. 8 U.S.C § 1225(a)(4). However, this

option is entirely in the "discretion" of DHS, *id.*; officers are not required to advise individuals of this option.[5]

144. Although Congress initially authorized expedited removal only for individuals who were applying for admission at a port of entry, *see* 8 U.S.C. § 1225(b)(1)(A)(i), IIRIRA allowed the Secretary of DHS[6] to apply expedited removal to other individuals who had already entered the country without being officially admitted. *See id.* § 1225(b)(1)(A)(iii)(I).

145. However, IIRIRA provided that, before the Secretary could apply expedited removal to individuals other than those presenting at a border, the Secretary would have to affirmatively designate which classes of people would be included in the expedited removal process. *See* 8 U.S.C. § 1225(b)(1)(A)(iii)(I).

146. Under Section 1225(b)(1)(A)(iii)(I)-(II), the Secretary may designate as subject to expedited removal any or all noncitizens in the country who have not been admitted or paroled into the United States and who are unable to "affirmatively show[], to the satisfaction of an

[5] This is significant because an expedited removal order carries draconian consequences beyond removal itself. Individuals who are issued expedited removal orders are subject to a five-year bar on admission to the United States unless they qualify for a discretionary waiver. *See* 8 U.S.C. § 1182(a)(9)(A)(i); 8 C.F.R. § 212.2. Individuals issued expedited removal orders after having been found inadmissible based on misrepresentation are subject to a lifetime bar on admission unless they are granted a discretionary exception or waiver. *See* 8 U.S.C. § 1182(a)(6)(C).

[6] IIRIRA originally delegated this authority to the Attorney General. However, under the Homeland Security Act of 2002, the Immigration and Naturalization Service ("INS"), under the direction of the Attorney General, ceased to exist, and its functions were transferred to DHS, effective March 1, 2003. *See* Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (Nov. 25, 2002). As a result, statutory references to the INS or its officers are deemed to have been replaced by reference to DHS or the applicable DHS official. *See* 6 U.S.C. § 557; *see also* 8 U.S.C. § 1103(c) (assigning to the former Commissioner of the INS "any and all responsibilities and authority in the administration of the [INS] and of this chapter which are conferred upon the Attorney General as may be delegated to him by the Attorney General or which may be prescribed by the Attorney General").

immigration officer," that they have been continuously physically present in the United States for two years. 8 U.S.C. § 1225(b)(1)(A)(iii)(II); *see* 8 C.F.R. § 235.3(b)(6).

147. As with individuals who present at a border, Congress specified that individuals identified in a "designation" by the Secretary could be subject to expedited removal only if they were inadmissible for having committed certain forms of immigration fraud or lacking the required documents. *See* 8 U.S.C. § 1225(b)(1)(A)(i), (A)(iii)(I).

148. Until 2002, the government did not exercise this "designation" power. From 1997 to 2002, expedited removal was only applied to immigrants who arrived at a port of entry. *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures; Final Rule, 62 Fed. Reg. 10312 (Mar. 6, 1997).

149. In 2002, the government began expanding its use of expedited removal. Expedited removal started being used to remove individuals within the country who had arrived by sea without admission and who, at the time of their inspection by an immigration officer, had been continuously present in the country for less than two years. *See* Notice Designating Aliens Subject to Expedited Removal Under Section 235(b)(1)(A)(iii) of the Immigration and Nationality Act, 67 Fed. Reg. 68924 (Nov. 13, 2002).

150. In 2004, expedited removal was authorized for immigrants who (i) had entered the country other than by sea, (ii) could not prove that they had been continuously physically present in the country for more than 14 days, and (iii) were apprehended within 100 miles of a land border. *See* Designating Aliens for Expedited Removal, 69 Fed. Reg. 48877, 48879 (Aug. 11, 2004).

151. This 2004 designation remained in effect until DHS attempted to issue the July 23 Notice.

152. Thus, between 1997 and 2019, with the limited exception of certain individuals who arrived by sea, immigration authorities never sought to apply expedited removal to individuals apprehended far from a land border, or individuals anywhere in the United States (including near a land border) who had been residing in the country for more than fourteen days.

II. WIDESPREAD AND WELL-KNOWN DEFICIENCIES ALREADY EXIST IN THE EXPEDITED REMOVAL PROCESS, WHICH THE JULY 23 NOTICE WILL EXACERBATE.

153. The expedited removal process already suffers from numerous serious deficiencies that are well documented and known to the Defendants, and which result in widespread violations of constitutional and statutory rights.

154. Defendants are well aware of these flaws. Nevertheless, Defendants have attempted to expand a systematically deficient process to an extremely broad new category of individuals, without any safeguards to address these problems.

155. Indeed, the Individual Plaintiffs and others like them may face even greater risks from these deficient procedures than those who were previously subject to expedited removal (*i.e.*, those presenting at a port of entry or who were detained close in time and location to their land border crossing), as explained further below.

A. Lack of Judicial Review

156. In the expedited removal process, an individual's removability is determined by a low-level immigration enforcement officer who acts as both prosecutor and judge, rather than by a neutral adjudicator, as required in Section 240 removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(i).

157. A removal order "entered in accordance with" the expedited removal process—either under Section 1225(b)(1)(A)(i) for a person who did not claim a fear of persecution, or under

Section 1225(b)(1)(B)(iii)(I) for a person who received a negative CFI determination—"is not subject to administrative appeal." 8 U.S.C. § 1225(b)(1)(C).

158. There are only two exceptions to this bar on administrative appeals: the limited CFI review explained above, and certain procedures applicable if the person "claims under oath, or as permitted under penalty of perjury . . . to have been lawfully admitted for permanent residence, to have been admitted as a refugee . . . , or to have been granted asylum." 8 U.S.C. § 1225(b)(1)(C); *see* 8 C.F.R. § 235.3(b)(5).

159. Federal court habeas corpus review of an order of expedited removal is "limited to determinations of—(A) whether the petitioner is an alien, (B) whether the petitioner was ordered removed under [the expedited removal section], and (C) whether the petitioner can prove by a preponderance of the evidence that the petitioner is an alien lawfully admitted for permanent residence, has been admitted as a refugee . . . , or has been granted asylum." 8 U.S.C. § 1252(e)(2). Otherwise, federal courts are stripped of jurisdiction to conduct any habeas review of an expedited removal order. 8 U.S.C. § 1252(a)(2)(A).

160. Individuals subject to expedited removal have only an extremely narrow avenue to directly challenge the constitutionality or lawfulness of any aspect of the expedited removal process. 8 U.S.C. § 1252(e)(3), titled "Challenges on validity of the system," provides: "Judicial review of determinations under section 1225(b) of this title and its implementation is available in an action instituted in the United States District Court for the District of Columbia, but shall be limited to determinations of—(i) whether such section, or any regulation issued to implement such section, is constitutional; or (ii) whether such a regulation, or a written policy directive, written policy guideline, or written procedure issued by or under the authority of the Attorney General to

implement such section, is not consistent with applicable provisions of this subchapter or is otherwise in violation of law."

161. Any challenge under Section 1252(e)(3) must be filed "no later than 60 days after the date the challenged section, regulation, directive, guideline, or procedure . . . is first implemented." 8 U.S.C. § 1252(e)(3)(B).

162. Other than in a properly filed action under Section 1252(e)(3), a court is not permitted to "enter declaratory, injunctive, or other equitable relief in any action pertaining to" an individual order of expedited removal (except as it relates to the three extremely limited factual predicates for which habeas review is available). 8 U.S.C. § 1252(e)(1). This means that, if someone is detained for expedited removal or actually removed via that process any time after the 60-day period following the promulgation of a new rule, they have no avenue to challenge their removal order itself or the "validity of the system" that produced it.

163. Further, the INA provides that "no court shall have jurisdiction to review" any of the following, including in habeas:

a. "any individual determination or to entertain any other cause or claim arising from or relating to the implementation or operation of an order of [expedited] removal";

b. "a decision by the Attorney General to invoke the provisions" of expedited removal;

c. "the application of [expedited removal] to individual aliens"; or

d. "procedures and policies adopted by the Attorney General to implement the provisions of" the expedited removal section.

8 U.S.C. § 1252(a)(2)(A).

164. Finally, the INA provides that "no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to

commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter." 8 U.S.C. § 1252(g).

165. The effect of this combination of provisions is that, once an immigration officer makes the initial determination that a person is inadmissible for a qualifying reason and is subject to expedited removal, that person loses all their right to judicial review of the process that put them there, except in two very limited situations (truncated review of a negative CFI determination, or a sworn claim to be a lawfully admitted permanent resident, refugee, asylee, or U.S. citizen). *See* 8 U.S.C. §§ 1225(b)(1)(A)(i), 1225(b)(1)(C), 1252(a)(2)(A). The expedited removal process fails to provide an opportunity for individuals to raise claims that their detention by ICE or removal violated a statutory or constitutional requirement.

166. Moreover, DHS regulations do not provide for a right of access to counsel in expedited removal except during the specific time period between an initial claim of asylum and a CFI, so a person detained pursuant to the expedited removal process would not have an opportunity to consult with counsel to learn about their rights before the immigration officer makes the determination of inadmissibility. A person who does not claim asylum will get no opportunity to consult with counsel at all. *See* 8 U.S.C. § 1225(b)(1)(B)(iv); *Am. Immigration Lawyers Ass'n*, 18 F. Supp. 2d at 55-56.

167. Even for those who assert a fear of persecution, there is no requirement that they be afforded a reasonable opportunity to secure counsel. This is especially significant for asylum seekers because, as a study commissions by Congress found, asylum seekers without access to counsel have a much lower chance of being granted asylum (2 percent) than those who have an attorney (25 percent). U.S. Comm'n on Int'l Religious Freedom, *Report on Asylum Seekers in Expedited Removal: Volume I: Findings & Recommendations* 4 (2005), *available at*

https://www.uscirf.gov/sites/default/files/resources/stories/pdf/asylum_seekers/Volume_I.pdf ("2005 USCIRF Study").[7]

B. Deficient Procedures for Establishing That an Individual Is Subject to Expedited Removal

168. The expedited removal process deprives individuals of a meaningful opportunity to show that they are not subject to expedited removal, or to removal at all. The Defendants are well aware of the widespread inadequacies in these processes, and yet have now chosen to expand the expedited removal system rather than addressing any of the problems that lead to erroneous results and deprivation of rights.

169. Although immigrants are generally detained during the inspection and expedited removal process, *see* 8 C.F.R. § 235.3(b)(2)(iii), (b)(4)(ii), they are not even afforded the ability to make a telephone call to someone who could help, let alone access to counsel. *See Am. Immigration Lawyers Ass'n*, 18 F. Supp. 2d at 53-56.

170. DHS regulations do not mandate interpretive services for people whose first language is not English, but rather state that an interpreter should be used "if necessary to communicate" with the individual. 8 C.F.R. § 235.3(b)(2)(i). Immigration officers often do not use professional interpreters to communicate with non-English-speaking individuals, but rather use other officers, who sometimes step into the role of a second interviewer instead of merely interpreting. *See* U.S. Comm'n on Int'l Religious Freedom, *Barriers to Protection: The Treatment of Asylum Seekers in Expedited Removal* 27 (2016), *available at* https://www.uscirf.gov/sites/default/files/Barriers%20To%20Protection.pdf ("2016 USCIRF Study"). In other cases, officers do their own translation from Spanish, even where they may not

[7] *See also id.* at 3 (describing congressional mandate).

understand an individual's local dialect. *Id.* A purported shortage of telephonic interpreters for Central American indigenous languages means that officers sometimes recruit other detainees to interpret. *Id.* at 27-28. If no interpreter is easily available, an officer might not offer interpretive services at all. *Id.* at 28.

171. The inspecting officer is not required to make any independent effort to corroborate or verify any information about the individual, unless the individual makes a claim to U.S. citizenship; to lawful permanent resident, refugee, or asylee status; or to having been previously admitted or paroled. 8 C.F.R. § 235.3(b)(5)(i), (b)(6).

172. If an individual claims to have citizenship or lawful status, the immigration officer must check "all available Service data systems and any other means available to the officer" for confirmation of the individual's claim. 8 C.F.R. § 235.3(b)(5)(i). Neither the statute nor the implementing regulations provide for an opportunity for the individual to gather evidence in support of their claim of citizenship or lawful status.

173. If the individual's claim of lawful status cannot be verified at this first step, the officer "shall" issue an expedited removal order, and then refer that order to an immigration judge for review. *Id.* If the IJ determines that the individual does not have citizenship or permanent resident, refugee, or asylee status, then the removal order will be affirmed, and there is no appeal from the IJ's decision. *Id.* § 235.3(b)(5)(iv). If the IJ determines that the individual does have lawful status, the expedited removal order is vacated—but the agency may still refer the individual for full removal proceedings (except in the case of U.S. citizens, who cannot be removed). *Id.* § 235.3(b)(5)(iv).

174. Even if an individual's claim to lawful permanent resident, refugee, or asylee status is verified at the "database check" stage, the immigration officer has discretion to deny the

individual an opportunity to apply for the proper documents (or waiver of documentation, as applicable), and to place the individual into full removal proceedings. *Id.* § 235.3(b)(5)(ii)-(iii).

175. When an individual placed into expedited removal claims to have received prior admission or parole, DHS regulations state that the individual should "be given a reasonable opportunity to establish to the satisfaction of the examining immigration officer that he or she was admitted or paroled into the United States following inspection at a port-of-entry," including via "documentation in the possession of the alien, the Service, or a third party." 8 C.F.R. § 235.3(b)(6). The immigration officer is also instructed to "attempt to verify the [individual's] status through a check of all available Service data systems." *Id.* However, no procedures or applicable time periods are provided for the individual's putative opportunity to gather evidence, and ultimately "[t]he burden rests with the [individual] to satisfy the examining immigration officer of the claim of lawful admission or parole." *Id.*

176. An individual who seeks to contest the other critical factual predicates for expedited removal—inadmissibility and continuous physical presence—has no meaningful opportunity to do so. Rather than the government bearing the burden to show that an individual meets these standards to qualify for expedited removal, the individual bears the burden of proving that they are *not* subject to expedited removal. *See* 8 U.S.C. § 1225(b)(1)(A)(iii)(II) (individual must show continuous presence to "satisfaction of" immigration officer); 8 C.F.R §§ 253.3(b)(1)(ii) (burden on individual to show continuous presence). Yet the individual is not provided with any time to prepare; any means by which to gather evidence; any right to counsel recognized by the government; or any ability to make their arguments before a neutral decisionmaker—all in sharp contrast to Section 240 proceedings, where individuals are entitled to such safeguards.

177. In addition, the expedited removal process fails to require that the immigration officer assess individuals to ensure that they are mentally competent or otherwise have the capacity to participate in the inspection process. *See, e.g.*, *Lyttle v. United States*, 867 F. Supp. 2d 1256, 1269-73 (M.D. Ga. 2012) (describing expedited removal of U.S. citizen with mental disabilities after immigration officers coerced him to sign documents he did not understand and ignored obvious evidence of his disabilities). Unsurprisingly, then, there are also no additional safeguards should an individual be found to have competency or capacity issues.

178. Immigration officers are also not required to consider an immigrant's serious medical conditions. Indeed, the Trump Administration recently, without notice, ended deferred deportation for immigrants with serious medical conditions (previously administered through USCIS), and a spokesperson for ICE stated that "ICE does not exercise discretion on a categorical basis to exempt entire groups from immigration laws." *See* Shannon Dooling, *Trump Administration Ends Protection for Migrants' Medical Care*, NPR (Aug. 27, 2019, 7:39 AM), https://www.npr.org/2019/08/27/754634022/trump-administration-ends-protection-for-migrants-medical-care; Shannon Dooling, *ICE Confirms the End of Medical Deferrals; Mass. Delegation Urges Trump to Reconsider*, WBUR (Aug. 30, 2019, 6:17 PM), https://www.wbur.org/news/2019/08/30/medical-deferred-action-ice-response-warren-markey-pressley. A person thus may be summarily removed even if they are present in the United States to receive life-saving medical care.

179. Immigration officers also are not required to consider an immigrant's substantial connections to the United States when applying expedited removal; rather, it is left to an individual officer's discretion.

180. Although immigration officers are required to take sworn statements from individuals that relate to the factual predicates for expedited removal, the statements recorded are "often inaccurate and nearly always unverifiable." 2005 USCIRF Study at 74; *see also id.* at 53 (in seven out of 12 observed cases in which immigration officers refused to make a CFI referral after an individual expressed fear of persecution, the officers falsely recorded on the sworn statement that the individual did *not* express any fear); *id.* at 55 ("paper files created by the inspector are not always reliable indicators of" what actually happened in the interview); 2016 USCIRF Study at 20 (documenting instance of officer falsely recording that individual had no questions when she did ask a question).

181. Asylum officers have reported that the forms filled out by immigration officers commonly contain egregious errors. *See, e.g.*, 2016 USCIRF Study at 21 (asylum officers reported it was "common" for forms to contain errors regarding individuals' reports of fear of persecution); Borderland Immigration Council, *Discretion to Deny: Family Separation, Prolonged Detention, and Deterrence of Asylum Seekers at the Hands of Immigration Authorities Along the U.S.-Mexico Border* 13 (2017) ("Borderland Report"), *available at* https://media.wix.com/ugd/e07ba9_72743e60ea6d4c3aa796becc71c3b0fe.pdf (describing evidence "that CBP affidavits are often inconsistent with asylum-seekers' own accounts").

182. Asylum officers have also reported seeing "many forms with identical answers, and others with clearly erroneous ones"—such as forms indicating that a male individual was asked and answered whether he was pregnant. 2016 USCIRF Study at 21.

183. Studies have likewise observed immigration officers failing to give interviewees an opportunity to review and respond to the statements in the expedited removal forms. *See, e.g.*, 2016 USCIRF Study at 20; American Civil Liberties Union, *American Exile: Rapid Deportations*

that Bypass the Courtroom 43 (2014) ("American Exile"), *available at* https://www.aclu.org/files/assets/120214-expeditedremoval_0.pdf (in 72% of observed cases, individuals signed sworn statement without being given an opportunity to review). As a result, individuals routinely are deprived of any opportunity to correct errors in their statements.

184. Immigration officers also routinely employ coercive tactics to force non-English-speaking individuals to sign expedited removal forms in English, without any translation. For example, when one Spanish-speaking individual refused to sign expedited removal forms written in English and asked to speak to a judge, the immigration officer told him: "Here, I'm the judge, the attorney, and the one who is going to deport you." American Exile at 35-36; *see also, e.g.*, *id.* at 34 ("Most of the individuals interviewed . . . stated that they were given forms to sign in English, which most did not speak or read, and often were not interviewed by an immigration officer who fluently spoke their language or through an interpreter."); *id.* at 34-36 (describing examples of individuals who were required to sign forms in languages they do not understand); Borderland Report at 13 ("[I]ndividuals are forced to sign legal documents in English without translation."); 2016 USCIRF Study at 28 (describing the case of a detained Ethiopian asylum seeker who was denied an interpreter).

185. CBP has declined to implement video recordings of expedited removal interviews or to use undercover "testers" to ensure that immigration officers are complying with the law—both suggestions made as far back as 2005. *See* 2016 USCIRF Study at 23.

186. Immigration officers have also used expedited removal against unaccompanied minors, particularly teenagers, even though the INA requires these minors to be placed in full Section 240 removal proceedings (with one exception, not relevant here, applicable to children who are citizens of contiguous countries). *See* 8 U.S.C. § 1232(a)(5)(D). Immigration officers

have in some cases assumed a minor's age based on their appearance, and in other cases have pressured or coerced minors to falsely state that they are adults or that they do not fear persecution in their home countries. *See* American Exile at 71-72.

187. The lack of any meaningful administrative review also contributes to errors. Although DHS regulations require a supervisor to review the issuance of an expedited removal order, *see* 8 C.F.R. § 235.3(b)(7), that requirement is limited to review of the paperwork and does not provide any independent review of the facts. A mere "review of the sworn statement and any answers and statements made by the alien regarding a fear of removal or return," *id.*, is not meaningful when these records are, as described above, frequently inaccurate or downright falsified. And as noted, administrative appeals are barred. 8 U.S.C. § 1225(b)(1)(C).

188. The widespread and chronic persistence of key factual errors in DHS's determinations of eligibility for expedited removal are the natural consequence of a system bereft of necessary procedural protections.

C. Deficient Procedures for Asylum Seekers

189. Although individuals who express a desire to apply for asylum or fear of persecution in their home countries may receive greater review of their cases than those who do not, the procedures for asylum seekers in expedited removal are still woefully deficient, particularly given the stakes—individuals face serious harm or even death if they are wrongfully deported.

190. A 2005 study commissioned by Congress documented numerous "serious problems" in the expedited removal process, "which put some asylum seekers at risk of improper return." 2005 USCIRF Study at 10.

191. A 2016 follow-up study "revealed continuing and new concerns," including "certain CBP officers' outright skepticism, if not hostility, toward asylum claims; and inadequate quality assurance procedures." 2016 USCIRF Study at 2.

192. The 2005 USCIRF study found that in 15% of observed cases, when an individual expressed a fear of persecution to an immigration officer, the officer failed to refer the individual to an asylum officer for a CFI, as required by statute. 2005 USCIRF Study at 53-54. .

193. Numerous other reports have made the same observations. *See, e.g.*, Borderland Report at 12 ("In 12% of the cases documented for this report, individuals expressing fear of violence upon return to their country of origin were not processed for credible fear screenings and instead, were placed into removal proceedings."); American Exile at 4, 32-33 (interviewees indicated that "they told the agent they were afraid of returning to their country but were nevertheless not referred to an asylum officer before being summarily deported"); Human Rights Watch, *You Don't Have Rights Here* 8 (2014) ("Human Rights Watch"), *available at* https://www.hrw.org/sites/default/files/reports/us1014_web_0.pdf ("[S]ome said that US border officials ignored their expressions of fear and removed them with no opportunity to have their claims examined; others said border officials acknowledged hearing their expressions of fear but pressured them to abandon their claims."); *cf. Hearing before the H. Judiciary Subcomm. on Immigration & Border Sec.* at 5 (Feb. 11, 2015) (statement of Eleanor Acer, Dir., Refugee Protection, Human Rights First), *available at* http://www.humanrightsfirst.org/sites/default/files/Statement-of-Eleanor-Acer-Feb-11.pdf ("In some cases, interviews are sometimes rushed, essential information is not identified due to lack of follow up questions, and/or other mistakes are made that block genuine asylum seekers from even

applying for asylum and having a real chance to submit evidence and have their case fully considered.").

194. Immigration officers have also used intimidation and coercion to pressure asylum seekers not to express a fear of persecution in their home countries. Studies have documented officers falsely telling asylum seekers that they have no right to seek asylum or that they do not have a valid basis for asylum (*see, e.g.*, American Exile at 36-37; Borderland Report at 13-14; 2016 USCIRF Study at 22); telling asylum seekers that they will be jailed and eventually deported anyway if they try to pursue an asylum claim (*see* American Exile at 36; Borderland Report at 14); and outright ignoring claims of fear (*see* American Exile at 38; Human Rights Watch at 26-27). For instance, in one documented example, CBP officers told an asylum seeker that persecution on the basis of sexual orientation cannot be grounds for asylum—a clear falsehood. Borderland Report at 13.

195. Individuals placed into expedited removal are often "subjected to hours-long 'interviews' during CBP screening, which more closely resemble interrogations, with intending asylum seekers being badgered by authorities until they provide the answers DHS officials seek—that an individual has come to the United States to work or reunite with family, not seeking safety." Borderland Report at 13.

196. Even where asylum applicants are referred for a CFI, there are serious flaws in the procedures, particularly given the complexity of asylum law and the fact that asylum applicants are likely to be traumatized.

197. Although DHS regulations recognize that there is a right before and during the CFI to consult with a third party, 8 C.F.R. § 208.30(d)(4), these regulations do not recognize a right to representation by counsel (or even a right to be given time and opportunity to locate counsel). Nor

do the regulations recognize a right to counsel prior to or during any IJ review of a negative credible fear determination, despite the fact that the INA generally provides that "[i]n any removal proceedings before an immigration judge," the individual "shall have the privilege of being represented." 8 U.S.C. § 1362. As a result, few individuals in the credible fear process have access to counsel.

198. Even the few who do have counsel often cannot be effectively represented due to restrictions on attorney contact with clients. *See* Human Rights Watch at 32 (citing finding that "ICE fails to provide or facilitate access to counsel when questioning represented individuals, restricts attorney-client communications in detention facilities, and has also discouraged noncitizens from seeking legal counsel").

199. For the vast majority of individuals who are forced to proceed *pro se*, there is no obligation for the asylum officer or IJ to fully develop the record or advise the individual about what they must prove to prevail.

200. The asylum officer is not required to create a transcript or audio recording of the CFI. Instead, the asylum officer need only record a written summary of the "material facts," 8 C.F.R. § 208.30(d)(6), *see also* 8 USC § 1225(b)(1)(B)(iii)(II), and a written record of "the officer's analysis of why, in light of [the] facts, the alien has not established a credible fear of persecution." 8 U.S.C. § 1225(b)(1)(B)(iii)(II).

201. Although the credible fear standard allows the asylum officer to consider "such other facts as are known to the officer," 8 U.S.C. § 1225(b)(1)(B)(v), the expedited removal procedures do not require the asylum officer give the individual an opportunity to respond to any facts provided to the officer by the government.

202. In some cases, women and their children have been interviewed together for the mother's CFI, which has caused the mothers to hold back key details of their persecution in order to protect their children. *See* Human Rights Watch at 34; Letter from Am. Immigration Lawyers Ass'n, et al. to Leon Rodriguez, Dir., U.S. Citizenship & Immigration Servs., and Sarah Saldana, Dir., U.S. Immigration & Customs Enforcement, at 2 (Dec. 24, 2015), *available at* https://www.aila.org/advo-media/aila-correspondence/2015/letter-uscis-ice-due-process.

203. There are also systemic inadequacies in interpretation services during the CFI process, as there are in the initial interview with the immigration officer. *See, e.g.*, *Report of the DHS Advisory Committee on Family Residential Centers* 96-99 (2016), *available at* https://www.ice.gov/sites/default/files/documents/Report/2016/ACFRC-sc-16093.pdf (discussing ineffective or nonexistent interpretation services for Spanish and indigenous language speakers during CFIs and IJ reviews of negative credible fear determinations); Acer Statement at 6 (describing case of an indigenous language speaker being deported under expedited removal after her CFI was conducted in Spanish).

204. Further, although an IJ reviewing a negative credible fear finding "may receive into evidence any oral or written statement which is material and relevant to any issue in the review," 8 C.F.R. § 1003.42(c), at no point is the individual provided an adequate opportunity to *gather* evidence. The fact that the individual is most likely in detention during this process likewise impedes the ability to marshal evidence in one's defense. *See* Human Rights Watch at 31 (quoting Second Circuit judge Robert A. Katzmann's observation that "[t]he two most important variables affecting the ability to secure a successful outcome in a[n immigration] case . . . are having representation and being free from detention"). In regular Section 240 proceedings, the individual would have time and opportunity to gather evidence, including potential expert testimony.

D. Examples of Illegal Expedited Removals

205. One result of the widespread flaws in the expedited removal process is that many individuals have been erroneously removed from the United States—including U.S. citizens. *See, e.g.*, *Lyttle*, 867 F. Supp. 2d 1256; Petition for Writ of Habeas Corpus, *de la Paz v. Johnson*, No. 1:14-CV-016 (S.D. Tex. Jan. 24, 2014) (U.S. citizen erroneously subjected to expedited removal because CBP officer did not believe that a U.S. citizen would speak only Spanish); Ian James, *Wrongly Deported, American Citizen Sues INS for $8 Million*, L.A. Times (Sept. 3, 2000), https://www.latimes.com/archives/la-xpm-2000-sep-03-mn-14714-story.html (recounting expedited removal of mentally handicapped U.S. citizen after agents refused to believe her passport was valid).

206. DHS also has erroneously removed an unknown, but apparently significant, number of asylum seekers pursuant to expedited removal orders. As detailed above, immigration officers routinely ignore or actively discourage claims of fear of persecution. *See supra* ¶¶ 192-93. The result, predictably, has been serious physical harm to people who were entirely correct to fear returning to their home countries. *See, e.g.*, American Exile at 37-39 (describing incidents of rape, kidnapping, extortion, shooting, and domestic abuse following expedited removal of individuals who feared persecution). DHS has even deported people who have already been granted asylum in the United States. *See* American Exile at 37 (asylee deported under expedited removal was subsequently raped and kidnapped in her home country).

207. DHS has also been known to issue expedited removal orders that exceed the scope of its authority. For example, in 2014, a Mexican citizen who had been living in the United States continuously for 14 years was removed pursuant to an expedited removal order even though, at the time of his detention, expedited removal could not legally be applied to individuals who had been in the country for more than 14 days. *See* American Exile at 63; *see also, e.g.*, Borderland

Report at 17 (individual married to a U.S. citizen and with a U.S. citizen child denied stay of removal and summarily deported without notice to his family or attorney, despite having lived in the United States for two decades).

III. THE TRUMP ADMINISTRATION REPEATEDLY EXPRESSES DISCRIMINATORY INTENT AND RACIAL ANIMUS TOWARD MEXICAN, CENTRAL AMERICAN, AND SOUTH AMERICAN IMMIGRANTS

208. President Trump has repeatedly and consistently stated that his goal is to deport millions of immigrants,[8] and he has denigrated immigrants from the inception of his presidential campaign.[9]

209. Historically, expedited removal has been used almost exclusively to deport individuals from Mexico, Guatemala, Honduras, and El Salvador. In fiscal year 2013, individuals from these countries made up 98 percent of the people deported through expedited removal. Immigrants from the same four countries represented 97 percent of the removals in 2012, 96 percent in 2011, and 94 percent in 2010.[10]

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[8] *See, e.g.,* Amy B. Wang, *Donald Trump Plans to Immediately Deport 2 million to 3 million Undocumented Immigrants,* Wash. Post (Nov. 14, 2016), https://www.washingtonpost.com/news/the-fix/wp/2016/11/13/donald-trump-plans-to-immediately-deport-2-to-3-million-undocumented-immigrants/; Franco Ordoñez, *Trump Threatens to Deport 'Millions,' As He Kicks Off Campaign For Reelection*, NPR (June 18, 2019), https://www.npr.org/2019/06/18/733661860/trump-threatens-to-deport-millions-as-he-kicks-off-campaign-for-reelection.

[9] *See infra* ¶ 212.

[10] Office of Immigration Statistics, U.S. Dep't of Homeland Sec., *Immigration Enforcement Actions: 2013* at 6 (Sept. 2014), https://tinyurl.com/ImmEnf2013; Office of Immigration Statistics, U.S. Dep't of Homeland Sec., *Immigration Enforcement Actions: 2012* at 5 (Dec. 2013), https://tinyurl.com/ImmEnf2012; Office of Immigration Statistics, U.S. Dep't of Homeland Sec., *Immigration Enforcement Actions: 2011* at 5 (Sept. 2012), https://tinyurl.com/ImmEnf2011; Office of Immigration Statistics, U.S. Dep't of Homeland Sec., *Immigration Enforcement Actions: 2010* at 4 (June 2011), https://tinyurl.com/ImmEnf2010.

210. Moreover, individuals from these four countries are historically referred for CFIs at very low rates: 0.1% of all migrants from Mexico, 1.9% from Honduras, 0.8% from Guatemala, and 5.5% from El Salvador. *See* Human Rights Watch at 22 (citing data from 2010 through 2012). By comparison, migrants from other countries were referred for CFIs at an average rate of 21% (although wide variations do exist between countries). *Id.* at 21, 23. Indeed, during the period studied in the Human Rights Watch report, Mexican migrants were referred for CFIs at the *second-lowest* rate of any country—following only Canada. *Id.* at 23. Guatemalans were referred at the fourth-lowest rate, *id.*, despite the well-documented existence of systemic human right abuses in Guatemala.[11]

211. The July 23 Notice is part of the Trump Administration's agenda to target immigrants from Mexico and Central and South America on the basis of race and ethnicity.

212. From 2015 until the present, President Trump and his Administration have made it clear that their goal is to deter non-white immigrants from entering the United States by targeting non-white immigrants within the United States for unequal treatment, including through removal proceedings. The administrations' discriminatory comments and policies include:

a. Then-candidate Trump beginning his presidential bid claiming that Mexican and South American immigrants crossing the border were criminals and rapists. Time Staff, *Here's Donald Trump's Presidential Announcement Speech*, Time (June 16, 2015), https://time.com/3923128/donald-trump-announcement-speech/.

b. In 2016, then-candidate Trump stated a federal judge was "giving us unfair rulings" because he was building a wall between the U.S. and Mexico and the judge is "of Mexican heritage and he's very proud of it." Z. Byron Wolf, *Trump's attacks on Judge Curiel are Still Jarring to Read*, CNN (Feb. 27, 2018), https://www.cnn.com/2018/02/27/politics/judge-curiel-trump-border-wall/index.html.

[11] *See, e.g.*, U.S. Dep't of State, Guatemala 2015 Human Rights Report, *available at* https://2009-2017.state.gov/documents/organization/253229.pdf.

c. In June 2017, President Trump reportedly stated that all Haitians "have AIDS" in reaction to learning that 15,000 Haitians received visas to enter the United States in 2017. Michael D. Shear and Julie Hirschfeld Davis, *Stoking Fears, Trump Defied Bureaucracy to Advance Immigration Agenda*, The New York Times (Dec. 23, 2017), https://www.nytimes.com/2017/12/23/us/politics/trump-immigration.html.

d. On August 25, 2017, President Trump pardoned former Maricopa County Sheriff Joe Arpaio, who was involved in flagrant racial profiling of Latinos in violation of a federal court order. Kevin Liptak, Daniella Diaz, and Sophie Tatum, *Trump Pardons Former Sheriff Joe Arpaio* (Aug. 27, 2017), https://www.cnn.com/2017/08/25/politics/sheriff-joe-arpaio-donald-trump-pardon/index.html.

e. On January 11, 2018, President Trump described immigrants from Haiti under the Temporary Protected Status programs as "people from shithole countries" who were less favorable than immigrants from Norway. Julie Hirschfeld Davis, Sheryl Gay Stolberg, and Thomas Kaplan, *Trump Alarms Lawmakers with Disparaging Words for Haiti and Africa*, The New York Times (Jan. 11, 2018), https://www.nytimes.com/2018/01/11/us/politics/trump-shithole-countries.html.

f. In May 2018, President Trump, through then–Homeland Security Secretary Kirstjen Nielsen, enacted a so-called "zero-tolerance policy" that led to increased family separations for immigrants. The new practice was to federally prosecute any immigrant caught crossing the southern border illegally, including those with valid asylum claims. Then–Attorney General Jeff Sessions explained, "if you cross the border unlawfully… we're going to prosecute you" and any immigrant bringing a child will have that child separated from them. Tal Kopan, *New DHS Policy Could Separate Families Caught Crossing the Border Illegally*, CNN (May 7, 2018), https://www.cnn.com/2018/05/07/politics/illegal-immigration-border-prosecutions-families-separated/index.html.

g. In September 2018, the Trump Administration decreased the refugee cap from 45,000 refugees to 30,000. This represents a massive decrease in refugees allowed into the country from the 110,000 refugee cap when President Trump took office. Ted Hesson and Nahal Toosi, *Trump Administration to Slash Refugee Cap*, Politico (Sept. 17, 2018) https://www.politico.com/story/2018/09/17/trump-refugees-limits-ceiling-826302.

h. President Trump has repeatedly referred to immigration from Central and South America as "an invasion of our Country…" On October 29, 2018, he stated that the military will be waiting for immigrants in the Central

American "caravan." https://twitter.com/realDonaldTrump/status/1056919064906469376

i. On August 14, 2019, Defendant Acting Director of USCIS Cuccinelli told the press in an interview that the sonnet inscribed in the base of the Statue of Liberty welcoming the poor referred to "people coming from Europe." Jacey Fortin, *'Huddled Masses' in Statue of Liberty Poem are European, Trump Official Says* (Aug. 14, 2019), https://www.nytimes.com/2019/08/14/us/cuccinelli-statue-liberty-poem.html.

j. Before becoming Acting USCIS Director, Defendant Cuccinelli likewise compared immigration to an "invasion" and suggested that states could use "war powers" to turn immigrants back: "[B]ecause [the states are] acting under war powers, there's no due process. They can literally just line their National Guard up — presumably with riot gear like they would if they had a civil disturbance — and turn people back at the border. Literally, you don't have to keep them, no catch-and-release, no nothing. You just point them back across the river and let them swim for it." John Binder, *Exclusive—Ken Cuccinelli: 'States Can Stop Migrant Caravan 'Invasion' with Constitutional 'War Powers,"* Breitbart (Oct. 23, 2018), https://www.breitbart.com/politics/2018/10/23/exclusive-ken-cuccinelli-states-can-stop-migrant-caravan-invasion-with-constitutional-war-powers/.

k. Defendant Cuccinelli also previously proposed legislation in Virginia to end birthright citizenship and to allow the firing of employees and denial of unemployment benefits for anyone speaking a language other than English at work. Maggie Haberman & Zolan Kanno-Youngs, *Trump Expected to Pick Ken Cuccinelli for Immigration Policy Role,* The New York Times (May 21, 2019), https://www.nytimes.com/2019/05/21/us/politics/trump-ken-cuccinelli-immigration.html.

l. Defendant Cuccinelli also previously compared immigrants to rats, raccoons, and other pests, arguing that a D.C. ordinance restricting pest control was "worse than our immigration policy" because under that ordinance, "[y]ou can't break up rat families." Nick Wing, *Ken Cuccinelli Once Compared Immigration Policy To Pest Control, Exterminating Rats*, HuffPost (July 26, 2013), https://www.huffpost.com/entry/ken-cuccinelli-immigration-rats_n_3658064.

m. On July 14, 2019, President Trump asked why prominent Democratic Congresswomen of color "don't … go back and help fix the totally broken and crime infested places from which they came…." Bianca Quilantan and David Cohen, *Trump Tells Dem Congresswomen: Go Back Where You Came From*, Politico (July 14, 2019),

https://www.politico.com/story/2019/07/14/trump-congress-go-back-where-they-came-from-1415692.

n. On August 21, 2019, Defendant Kevin McAleenan, the Acting Homeland Security Secretary, announced a new policy on behalf of President Trump's Administration allowing for the indefinite detention of primarily Latino migrant families with children who cross the border, despite a decades-old court settlement preventing such a practice. Brian Naylor, *New Trump Policy Would Permit Indefinite Detention of Migrant Families, Children*, NPR (Aug. 21, 2019, 11:17 AM), https://www.npr.org/2019/08/21/753062975/new-trump-policy-would-permit-indefinite-detention-of-migrant-families-children.

o. On July 1, 2019, a private Facebook group for current and former Border Patrol agents was exposed by news site ProPublica. The group, which included Border Patrol Chief Carla Provost, contained numerous racist and misogynistic posts targeting immigrants or members of Congress of Latin heritage. Posts included:

i. Doctored, sexually graphic photographs of Latina Congresswoman Alexandria Ocasio-Cortez.

ii. Comments insinuating that a photograph of the corpses of a migrant father and his 23-month-old daughter who had drowned trying to cross the border were faked because the bodies were "clean." ("I HAVE NEVER SEEN FLOATERS LIKE THIS")

iii. Members discussing the death of a 16-year-old migrant from Guatemala and posting GIFs of Elmo with the quote "Oh well." *See* A.C. Thompson, *Inside the Secret Border Patrol Facebook Group Where Agents Joke About Migrant Death sand Post Sexist Memes*, ProPublica (July 1, 2019, 10:55 AM), https://www.propublica.org/article/secret-border-patrol-facebook-group-agents-joke-about-migrant-deaths-post-sexist-memes; Alex Horton, *A Border Patrol Chief in a Racist Facebook Group Says She Didn't Realize it Was Racist*, The Washington Post (July 25, 2019), https://www.washingtonpost.com/nation/2019/07/25/border-patrol-chief-was-member-racist-facebook-group-says-she-didnt-notice/.

p. On August 26, 2019, the Trump Administration, without notice, ended deferred deportation for immigrants with serious medical conditions. Previously, immigrants could remain in the United States for up to two years if they could prove extreme medical need to U.S. Citizenship and Immigration Services ("UCIS"). However, on August 26, 2019, UCIS sent letters stating they would no longer be considering deferrals. A spokesperson for the agency explained that ICE would oversee medical

deferrals. In response to request for comment, ICE spokesperson Shawn Neudauer stated "ICE does not exercise discretion on a categorical basis to exempt entire groups of immigration laws" effectively terminating the program without providing a reason. *See* Shannon Dooling, *Trump Administration Ends Protection for Migrants' Medical Care*, NPR (Aug. 27, 2019, 7:39 AM), https://www.npr.org/2019/08/27/754634022/trump-administration-ends-protection-for-migrants-medical-care; Shannon Dooling, *ICE Confirms the End of Medical Deferrals; Mass. Delegation Urges Trump to Reconsider*, WBUR (Aug. 30, 2019, 6:17 PM), https://www.wbur.org/news/2019/08/30/medical-deferred-action-ice-response-warren-markey-pressley.

213. The Trump Administration's attempted expansion of expedited removal under the July 23 Notice is intended to target the class of non-white immigrants already present in the United States for unequal treatment through removal without sufficient protections or process.

214. Courts have previously found that similar comments and policies made by the Administration are indicative of unlawful racial animus. *See, e.g., Regents of the Univ. of Cal. v. U.S. Dep't of Homeland Security*, 908 F.3d 476, 518-20 (9th Cir. 2018) (affirming denial of government's motion to dismiss equal protection claim challenging rescission of Deferred Action for Childhood Arrivals); *Int'l Refugee Assistance Project v. Trump*, 373 F. Supp. 3d 650, 678 (D. Md. 2019) (denying government's motion to dismiss equal protection claim challenging the "Muslim travel ban" policy); *Saget v. Trump*, 375 F. Supp. 3d 280, 368-74 (E.D.N.Y. 2019) (granting preliminary injunction against termination of Temporary Protected Status for Haitians, and finding plaintiffs had at the least raised "serious questions going to the merits" of their equal protection claim, *id.* at 374); *Centro Presente v. U.S. Dep't of Homeland Security*, 332 F. Supp. 3d 393, 400-02, 414-15 (D. Mass. 2018) (denying government's motion to dismiss equal protection claim challenging termination of Temporary Protected Status for immigrants from Haiti, El Salvador, and Honduras).

IV. THE JULY 23 NOTICE DRASTICALLY EXPANDS EXPEDITED REMOVAL

215. The expansion of expedited removal under the July 23 Notice will result in more erroneous removals and violations of immigrants' rights. Any individual may be apprehended by immigration authorities in any location and summarily removed without a meaningful process to test whether that individual is properly subject to detention, to expedited removal, or even to removal at all.

A. Background and Promulgation of the July 23 Notice

216. On January 25, 2017, within days of his inauguration, President Trump signaled his intention to fulfill his campaign promise to deport more immigrants by requesting a significant expansion of the expedited removal procedure. He signed an Executive Order titled "Border Security and Immigration Enforcement Improvements," which states in relevant part that "[i]t is the policy of the executive branch to . . . expedite determinations of apprehended individuals' claims of eligibility to remain in the United States." *See* Border Security and Immigration Enforcement Improvements, 82 FR 8793 §§ 1, 2(c).

217. Section 11(c) of the Executive Order directs the Secretary of DHS to take action to apply expedited removal to certain individuals arrested anywhere within the United States who have been continuously present for less than two years. *Id.* § 11(c).

218. In response, then–Secretary John Kelly issued a memorandum on February 20, 2017, stating: "To ensure the prompt removal of aliens apprehended soon after crossing the border illegally, the Department will publish in the *Federal Register* a new Notice Designating Aliens Subject to Expedited Removal Under Section 235(b)(l)(a)(iii) of the Immigration and Nationality Act, which may, to the extent I determine is appropriate, depart from the limitations set forth in the designation currently in force." John Kelly, Dep't of Homeland Sec., Memorandum

Implementing the President's Border Security and Immigration Enforcement Improvements Policies 5-7 (2017).

219. While no official action took place until July 2019, the President continued to publicly fume about immigrants from Mexico, Central America, and South America. For instance, on June 24, 2018, President Trump tweeted: "We cannot allow all of these people to invade our Country. When somebody comes in, we must immediately, with no judges or court cases, bring them back where they came from." Donald Trump (@realdonaldtrump), Twitter (June 24, 2018, 8:02 AM), www.twitter.com/realdonaldtrump/status/1010900865602019329.

220. Similarly, on June 19, 2018, President Trump tweeted: "Democrats are the problem. They don't care about crime and want illegal immigrants, no matter how bad they may be, to pour into and infest our Country, like MS-13. . . ." Donald Trump (@realdonaldtrump), Twitter (June 19, 2018, 6:42 AM), www.twitter.com/realdonaldtrump/status/1009071403918864385. President Trump has also tweeted that "When we have an 'infestation' of MS-13 GANGS in certain parts of our country, who do we send to get them out? ICE! . . ." Donald Trump (@realdonaldtrump), Twitter (July 3, 2018, 3:49 AM), www.twitter.com/realdonaldtrump/status/1014098721460686849.

221. On October 29, 2018, President Trump tweeted: "Many Gang Members and some very bad people are mixed into the Caravan heading to our Southern Border. Please go back, you will not be admitted into the United States unless you go through the legal process. This is an invasion of our Country and our Military is waiting for you!" Donald Trump (@realdonaldtrump), Twitter (October 29, 2018, 7:41 AM), www.twitter.com/realdonaldtrump/status/1056919064906490646 9376. A few weeks later, he tweeted: "[T]he U.S. is ill-prepared for this invasion, and will not stand for it. They are causing crime and big problems in Mexico. Go

home!" Donald Trump (@realdonaldtrump), Twitter (November 18 2018, 10:42 AM), www.twitter.com/realdonaldtrump/status/1064227483187318784.

222. On November 1, 2018, President Trump stated the he believes asylum seekers are generally lying about their fears of persecution: "An alien simply crosses the border illegally, finds a Border Patrol agent, and using well-coached language – by lawyers and others that stand there trying to get fees or whatever they can get – they're given a phrase to read. They never heard of the phrase before. They don't believe in the phrase. But they're given a little legal statement to read, and they read it. And now, all of a sudden, they're supposed to qualify." Remarks by President Trump on the Illegal Immigration Crisis and Border Security, White House (Nov. 1, 2018), https://www.whitehouse.gov/briefings-statements/remarks-president-trump-illegal-immigration-crisis-border-security/.

223. On April 5, 2019, President Trump stated during a visit to the border that asylum is a "scam" and a "hoax"; that the country's "system is full" and cannot take any more "asylum people"; and that when "I look at some of these asylum people, they're gang members . . . They're not afraid of anything. They have lawyers greeting them. They read what lawyers tell them to read." *Trump Says Some Asylum Seekers Are Gang Members*, CBS News (Apr. 5, 2019), https://www.cbsnews.com/news/trump-says-some-asylum-seekers-are-gang-members-border-calexico-2019-04-05-today/.

224. President Trump reiterated this view the next day, describing migrants from Central America as "[s]ome of the roughest people you have ever seen" and mocking their claims of fear of persecution: "Asylum – oh give him asylum! He's afraid, he's afraid . . . We don't love the fact that he's carrying the flag of Honduras or Guatemala or El Salvador only to say he's petrified to be in his country." Michelle Mark, *Trump Mocks Asylum-Seekers at the Border, Says They 'Look*

Like They Should Be Fighting for the UFC,' Business Insider (Apr. 6, 2019), https://www.businessinsider.com/trump-mocks-asylum-seekers-calls-system-scam-2019-4.

225. Defendant Cuccinelli has likewise echoed these sentiments, stating in June 2019 that "[p]lenty of [asylum seekers] are lying and saying they want asylum and trying to make up cases for asylum." *Sunday Morning Features Transcript*, Fox News (June 30, 2019), https://www.foxnews.com/transcript/rep-tim-ryan-calls-trumps-historic-visit-to-the-dmz-an-appeasesent-tour.

226. On July 23, 2019, with no notice and comment period or warning of any kind, Acting DHS Secretary Kevin McAleenan published the July 23 Notice in the Federal Register, purporting to authorize the expansion of expedited removal by "designating" anyone anywhere in the country who cannot prove "to the satisfaction of an immigration officer" that they have been in the United States continuously for longer than two years. *See* July 23 Notice, 84 Fed. Reg. at 35409.

227. Specifically, the July 23 Notice provides that the following categories of immigrants are now subject to expedited removal: "(1) Aliens who did not arrive by sea, who are encountered anywhere in the United States more than 100 air miles from a U.S. international land border, and who have been continuously present in the United States for less than two years; and (2) aliens who did not arrive by sea, who are encountered within 100 air miles from a U.S. international land border, and who have been continuously present in the United States for at least 14 days but less than two years." July 23 Notice, 84 Fed. Reg. at 35409.

228. The new policy purports to be effective immediately upon publication. July 23 Notice, 84 Fed. Reg. at 35410.

229. There are no special circumstances that would justify DHS's failure to provide advance notice of its decision, or to allow for and respond to public comment prior to the effective date of the expansion. The July 23 Notice cites only a generalized "concern[] that delayed implementation could lead to a surge in migration across the southern border during a notice- and-comment period." 84 Fed. Reg. at 35413. However, the Notice cites no evidence that increasing the use of expedited removal could prevent a hypothetical "surge" in migration. Even more significantly, the government's prior expedited removal policy already allowed the government to use expedited removal for any immigrant who presents at a port of entry or who is apprehended within 100 miles of the southern border and within 14 days of entry—categories that are plainly more than sufficient to deal with any supposed "surge" of immigrants.

230. The Notice provides no logical rationale for why it was necessary and why it needed to subvert notice and comment, and did not provide an explanation for how it would accomplish its supposed purpose. However, the President and his Administration have consistently stated that their goal is to deport undocumented immigrants without judges or due process.[12] The decision to expand expedited removal was made in furtherance of that goal.

B. Effects of the July 23 Notice

231. The July 23 Notice instantly and unlawfully put Plaintiffs in this action and thousands of other similarly situated immigrants at imminent risk of deportation without a hearing

[12] *See, e.g.*, Amy B. Wang, *Donald Trump Plans to Immediately Deport 2 million to 3 million Undocumented Immigrants*, Wash. Post (Nov. 14, 2016), https://www.washingtonpost.com/news/the-fix/wp/2016/11/13/donald-trump-plans-to-immediately-deport-2-to-3-million-undocumented-immigrants/; Franco Ordoñez, *Trump Threatens to Deport 'Millions,' As He Kicks Off Campaign For Reelection*, NPR (June 18, 2019), https://www.npr.org/2019/06/18/733661860/trump-threatens-to-deport-millions-as-he-kicks-off-campaign-for-reelection; Donald Trump (@realdonaldtrump), Twitter (June 24, 2018, 8:02 AM), www.twitter.com/realdonaldtrump/status/1010900865602019329.

before an IJ, without the ability to appeal, and without even the most basic opportunity to collect and present evidence on their own behalf.

232. For individuals who have been residing in the country for an extended period or who are apprehended far from a land border, the risk of error in the expedited removal process is particularly high.

233. For example, by putting the burden on the individual to show two years of continuous presence, the July 23 Notice (in combination with existing statutory and regulatory policies) effectively imposes a default presumption that, in the absence of affirmative evidence presented by the detained person, ***any*** individual detained by ICE ***anywhere*** in the country is a noncitizen who has not been continuously present for two years or more.

234. That presumption makes no sense when applied to individuals apprehended in the interior of the United States. On information and belief, only a very small minority of the undocumented immigrants residing in this country arrived less than two years ago without having been admitted or paroled. That means that the vast majority of the undocumented immigrants that DHS might apprehend cannot properly be placed in expedited removal proceedings. Yet all of these people now face the risk of being erroneously placed into expedited removal under the July 23 Notice if they cannot show, without any notice or opportunity to prepare—likely after being unexpectedly detained in the course of going about their everyday lives—that they have been in the United States *continuously* for more than two years.

235. The July 23 Notice thus poses an imminent and substantial risk of wrongful removal to individuals who have been present in the country for greater than two years—or who may be U.S. citizens or lawfully admitted permanent residents, refugees, or asylees—but who are unable

to prove their length of residence or legal status to the satisfaction of an immigration officer when denied time to prepare or the assistance of counsel, family, or friends.

236. Those who have been continuously present for more than 14 days but less than two years also face substantial risk of wrongful detention or removal under the July 23 Notice. The application of expedited removal to the interior of the country—far from any land border—increases the likelihood that individuals who are eligible for relief from removal will be swept up in raids or other enforcement actions and mistakenly or arbitrarily subjected to expedited removal. These individuals—including the Individual Plaintiffs here—will frequently have cognizable defenses to removal, which could potentially include (but are not limited to) asylum claims, eligibility for Special Immigrant Juvenile Status, a pending application for permanent residence based on marriage to a U.S. citizen,[13] grounds for a humanitarian stay of removal, and more. Yet because of the procedural defects of the expedited removal process, they will be unable to assert (or have a very hard time asserting, in the case of asylum) these defenses if they are placed into expedited removal instead of having the opportunity to appear before an IJ, as they would have been able to do before the July 23 Notice. Applying expedited removal to such a broad group of individuals who have significant ties to the United States will exacerbate the existing widespread, systemic violations of constitutional, statutory, and regulatory rights in the expedited removal process.

[13] Indeed, another federal court has certified a class of immigrants who were detained by ICE for deportation when they arrived at USCIS for interviews to approve their legal residency based on their marriage to a citizen. *See Calderon Jimenez v. Cronen*, Case No. 1:18-cv-10225 MLW, ECF No. 253 (D. Mass. May 17, 2019). An individual placed into expedited removal would not have the opportunity to prove that ICE violated its duty, recognized in the *Calderon Jiminez* case, to consider their application for legal status before making a removal decision. *See Calderon Jimenez v. Cronen*, Case No. 1:18-cv-10225 MLW, ECF No. 340 (D. Mass. Aug. 7, 2019).

V. HARM TO INDIVIDUAL PLAINTIFFS

237. The government's use of expedited removal as described in the July 23 Notice would cause the Individual Plaintiffs to suffer immediate and irreparable injuries to their rights under the United States Constitution and federal law, as well as their property and dignitary interests.

238. People who are present in the United States, whether or not their presence is authorized by the INA, have constitutional due process rights to life, liberty, and property, and to procedural protections to safeguard those rights.

239. The expedited removal process lacks basic procedural protections to safeguard the constitutional and statutory rights of individuals who have developed ties to this country.

240. The constitutional right to liberty encompasses the right to be free from detention or removal that is arbitrary, discriminatory, and/or unauthorized by law.

241. The attempted expansion of expedited removal threatens to deprive the Individual Plaintiffs of the opportunity to appear in immigration court and to apply for immigration protection and relief to which they may be entitled under federal law. For example, almost all of the Individual Plaintiffs fear that the new policy would deprive them of the chance to apply for asylum and/or appear in immigration court to seek relief from removal because they are afraid to return to their home countries.

242. Indeed, five of the Individual Plaintiffs specifically informed immigration officers of their desire to apply for asylum or their fear of persecution in their home countries when they were detained, but three of them (60%) were not actually referred for a CFI. Given that the failure to consistently refer individuals who have expressed a fear of return to a CFI is a known pitfall in the expedited removal process, these Individual Plaintiffs reasonably fear that their expressions of intent to apply for asylum will again be ignored. The pervasive shortcomings in the expedited

removal process for individuals claiming fear of persecution thus threatens to deprive D. Doe, C. Loe, and R. Koe (and potentially other Individual Plaintiffs) of a meaningful opportunity to vindicate their asylum claims.

243. The attempted expansion of expedited removal may also cause the Individual Plaintiffs to experience significant physical harm—and even death—if returned to their home countries without the opportunity to present their case to an immigration court. Many of the Individual Plaintiffs were pursued by gangs in their home countries, even after they tried to seek police protection or tried to get away within their countries.

244. Many of the Individual Plaintiffs have been in the United States for a significant period of time, and have developed extensive connections to the community. For example, many of the Individual Plaintiffs are involved in local churches, and the children are attending school in Massachusetts.

245. D. Doe, C. Doe, and M.J. Doe are teenagers. Although they are statutorily exempt from expedited removal, the July 23 Notice threatens to deprive them of their right to full Section 240 proceedings, because the lack of due process in the expedited removal system poses a serious risk that they will be misclassified as adults.

246. Additionally, if D. Doe were removed, he would be deprived of the opportunity to file a grievance regarding the immigration officer who physically assaulted him while he was detained.

247. Removing a person who has a colorable defense to removal without providing a fair opportunity to prove their defense violates that person's rights.

248. The government's use of expedited removal will also force the Individual Plaintiffs to prepare for imminent removal, where otherwise they would have had the protections of a full

removal process, including notice and an opportunity to be heard. Individual Plaintiffs will incur costs to ensure that their property rights, family relationships, and other obligations are protected. These financial burdens will decrease the overall resources available to Individual Plaintiffs, their families, and other similarly situated individuals throughout the country.

249. The Individual Plaintiffs are already feeling the effects of this change in policy on their daily lives. The Individual Plaintiffs are fearful to go about the activities of their daily lives because of the possibility of being detained and then summarily removed—and potentially separated from their parents/children[14]—without any meaningful chance to defend themselves or even provide notice to their loved ones. ICE is known to detain people at hospitals,[15] courthouses,[16] and even when parents are dropping children off at school.[17] The Individual Plaintiffs now experience increased stress while doing even routine activities such as these because of the prospect that they could be placed in expedited removal at any moment. For example, D. Doe is afraid to leave his house except to go to school.

250. Further, because the Trump Administration's attempted expansion of expedited removal was infected by discrimination, this new policy stigmatizes the Individual Plaintiffs and other immigrants of color, particularly Latinos, as well as their children and families, and imposes

[14] *See, e.g.*, Diane Gallagher, *After Mississippi ICE Raids, Some Affected Children Still Are Without a Parent*, CNN (Aug. 16, 2019), https://www.cnn.com/2019/08/16/us/mississippi-ice-raids-children-separated/index.html.

[15] *See, e.g.*, Shannon Dooling, *American Medical Association Takes Stance Against ICE Patrolling Inside Hospitals*, WBUR (Nov. 15, 2017), https://www.wbur.org/news/2017/11/15/ama-stand-ice-in-hospitals.

[16] *See, e.g.*, Scott Bixby, *ICE Courthouse Arrests Up 1700% Since Trump's Inauguration: Report*, The Daily Beast (Jan. 28, 2019), https://www.thedailybeast.com/report-ice-arrests-at-courthouses-up-1700-since-trumps-inauguration.

[17] *See, e.g.*, Andreas Castillo, *Immigrant Arrested by ICE After Dropping Daughter Off at School, Sending Shockwaves Through Neighborhood*, L.A. Times (Mar. 3, 2017), https://www.latimes.com/local/lanow/la-me-immigration-school-20170303-story.html.

a dignitary harm by denying them the dignity and respect they deserve under the United States Constitution and federal law. The expansion of expedited removal triggers and fuels social stigma, harassment, discrimination, and even violence against immigrants of color. The Individual Plaintiffs live in fear that they or their children will be harassed or even attacked by people who have been led to believe, by the Administration's policy and related statements, that the Individual Plaintiffs are part of an "infestation"[18] that needs to be purged from this country.

VI. HARM TO ORGANIZATIONAL PLAINTIFFS AND THEIR MEMBERS

251. Plaintiff Centro Presente is a nonprofit membership-based organization based in East Boston, Massachusetts.

252. Centro Presente has over 1,500 members residing throughout Massachusetts. Most of its members are from El Salvador and Honduras.

253. Plaintiff PVWC is a nonprofit member-ship based organization based in Northampton, Massachusetts.

254. PVWC has over 3,000 active members across western Massachusetts.

255. The Organizational Plaintiffs' members include noncitizens who have not been admitted or paroled into the United States and who have been continuously present for between two weeks and two years, and are subject to the July 23 Notice expanding expedited removal.

256. The Organizational Plaintiffs also have numerous members who have lived in the country for longer than two years, but would have difficulty affirmatively demonstrating two years of physical presence if erroneously placed in expedited removal proceedings. These members fear erroneous placement in expedited removal proceedings because of the July 23 Notice's

[18] *See supra* ¶ 220.

requirement that they affirmatively prove two years of continuous presence to the satisfaction of an immigration officer.

257. Organizational Plaintiff Centro Presente has noncitizen members who have been subject to enforcement activities by DHS in the metropolitan Boston area. Those enforcement actions occur in various ways, including surveillance and arrests at courthouses, buses, trains, as well as raids on workplaces and homes. These enforcement actions also result in the detention of family members who may be present at the time of an arrest or raid.

258. Each of the Individual Plaintiffs is a member of Centro Presente and, as discussed above, each is subject to the July 23 Notice.

259. Plaintiff PVWC has noncitizen members who have been subject to enforcement activities by DHS in the western Massachusetts area. Those enforcement actions occur in various ways, including surveillance and arrests at courthouses, buses, trains, as well as raids on workplaces and homes. These enforcement actions result in the detention of family members who may be present at the time of an arrest or raid.

260. Centro Presente's and PVWC's members face an imminent threat of being placed in expedited removal because the July 23 Notice, by its own terms, applies immediately and broadly, and Defendants have represented that implementation of the July 23 Notice will begin on September 27, 2019. *See Make the Road New York, et al. v. Kevin McAleenan, et al.*, No. 19-cv-02369, ECF No. 31 at 1 (D.D.C. September 10, 2019).

261. The effect of the July 23 Notice on Centro Presente's and PVWC's members who are newly subject to expedited removal, as well as to those who are not properly subject to expedited removal but fear erroneous placement, will be to chill their freedom of movement, and freedom to access public spaces and government offices where immigration officers may be

present. These individuals now face a heightened fear that any encounter with an immigration officer could result in their immediate deportation, without any access to basic procedural mechanisms designed to protect them against error.

262. Before the July 23 Notice, almost all of Centro Presente's and PVWC's members would have been provided much more time and extensive procedures before being deported.

263. Under the July 23 Notice, any encounter with an immigration officer could end with Centro Presente's and PVWC's members being deported, without ever speaking to an attorney or family member, or having a meaningful opportunity to challenge removal or apply for relief. Centro Presente's and PVWC's members could also face mandatory detention, with no ability to go before an immigration judge and request release. *See* 8 U.S.C. § 1225(b)(1)(B)(iii)(IV); 8 C.F.R. § 235.3(b)(2)(iii).

264. The interests this lawsuit seeks to protect are germane to Centro Presente's and PVWC's purposes. As discussed above, Centro Presente advocates for immigrant rights and for economic and social justice. Similarly, PVWC leads campaigns to improve wages and standards and achieve long-term systemic change for immigrants. PVWC further seeks to transform systems and institutions that exploit workers and threaten immigrants, locally to nationally.

265. The expansion of expedited removal requires the Organizational Plaintiffs to divert the time and resources of their staff that would otherwise be dedicated to assisting noncitizens in applying for forms of relief and in supporting Centro Presente's and PVWC's core missions of building the power of immigrant communities. For example, the Organizational Plaintiffs would need to divert resources away from their legislative efforts, ESL classes, legal services, immigration clinics, advocacy, and leadership development.

266. The Organizational Plaintiffs are also harmed because it is their mission to empower immigrant communities to understand and assert their fundamental rights, including the right to remain silent. The Organizational Plaintiffs' public-facing materials and trainings on immigrant rights often counsel that immigrants may invoke the right to remain silent. The expansion of expedited removal necessitates a wholesale revisiting of these training materials—and the legal trainings that members, organizers and others receive—because individuals who exercise their right to remain silent now face the possibility of wrongful placement into expedited removal, whether due to failure to assert a fear; failure to explain their manner of entry; or failure to affirmatively establish two years of presence.

267. The Organizational Plaintiffs have assisted many families in Massachusetts who have had a loved one detained by ICE. In addition, under the present administration, ICE regularly detains so-called "collateral" individuals when conducting home raids. These detentions demonstrate the high risk of ICE detention faced by the Organizational Plaintiffs' members and all undocumented immigrants.

268. If DHS had properly engaged in notice-and-comment rulemaking prior to issuing the July 23 Notice, the Organizational Plaintiffs would have submitted comments to bring to the agency's attention many of the problems with expanding the expedited removal process discussed herein.

FIRST CLAIM FOR RELIEF

(Violation of the Fifth Amendment Due Process Clause)

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

270. The Due Process Clause of the Fifth Amendment to the U.S. Constitution provides that "[n]o person shall . . . be deprived of life, liberty, or property, without due process of law."

271. Individual Plaintiffs have a constitutionally protected liberty interest in being free from detention and/or removal that is arbitrary, discriminatory, and/or unauthorized by law.

272. The July 23 Notice deprives Individual Plaintiffs of the process they are constitutionally due to protect this interest. Expedited removal proceedings fail to provide the necessary procedures to allow Individual Plaintiffs the opportunity to prove that their detention or removal is arbitrary, discriminatory, and/or unauthorized by law.

273. The July 23 Notice further subjects Individual Plaintiffs to a fatally biased decisionmaking process, in violation of their constitutional right to due process, because the sole decisionmaker in expedited removal proceedings, namely a DHS immigration officer, is engaged in both executive and adjudicative functions.

274. Organizational Plaintiffs' members who are at risk of being subjected to expedited removal are likewise entitled under the Due Process Clause to meaningful process to protect their liberty interest in being free from executive detention and/or removal that is arbitrary, discriminatory, and/or unauthorized by law.

275. The July 23 Notice violates the Due Process Clause.

276. To the extent that the INA, 8 U.S.C. § 1225(b)(1)(A)(iii)(I)-(II), purports to authorize the Secretary to promulgate the July 23 Notice, that provision of the statute likewise violates the Due Process Clause.

277. In the alternative, the canon of constitutional avoidance requires 8 U.S.C. § 1225(b)(1)(A)(iii)(II) to be construed in a manner that does not raise serious constitutional questions under the Due Process Clause. If the statute is construed to comport with the Due Process Clause, then the statute does not authorize the Secretary to promulgate the July 23 Notice

or any other substantially equivalent notice or rule, because the Notice violates the Due Process Clause. *See infra* ¶¶ 294-96.

SECOND CLAIM FOR RELIEF

(Violation of Fifth Amendment Equal Protection)

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

279. The Due Process Clause of the Fifth Amendment incorporates the equal protection principles of the Fourteenth Amendment. *Sessions v. Morales-Santana*, 137 S. Ct. 1678, 1686 n.1 (2017); *see also United States v. Windsor*, 133 S. Ct. 2675, 2693 (2013) (citing *Bolling v. Sharpe*, 347 U.S. 497 (1954)).

280. Defendants' decision to expand expedited removal against undocumented immigrants living in the United States for greater than fourteen days but less than two years violates the Fifth Amendment because it constitutes intentional discrimination against Mexican, Central American, and South American immigrants on the basis of race, ethnicity, and/or national origin.

281. The inference of race, ethnicity, and/or national origin discrimination is supported by the Trump Administration's departure from the normal decision-making process; the fact that the decisions bear more heavily on disparaged minority races than others; the sequence of events leading to the decisions; the contemporaneous statements of decisionmakers; and the historical background of the decisions. The Supreme Court has recognized these factors as probative of intentional discrimination. *See Village of Arlington Heights v. Metro. Hous. Development Corp.*, 429 U.S. 252, 266-68 (1977).

282. The inference of race, ethnicity, and/or national origin discrimination is supported by the departure from the standard rulemaking procedure. The Defendants deviated from the standard procedure by promulgating a policy that claims to be immediately effective upon publication, without an opportunity for public notice and comment.

283. The inference of race, ethnicity, and/or national origin discrimination is also supported by President Trump's, Acting Director McAleenan's, and Acting Director Cuccinelli's comments as detailed in paragraphs 212 & 219-25, *supra*.

284. The inference of race, ethnicity, and/or national origin discrimination is also supported by the disparate impact the expansion of expedited removal has on immigrants from Mexico, Central America, and South America. The application of expedited removal has historically targeted immigrants from Mexico, Central America, and South America. Any increase in expedited removal will disparately impact immigrants from these countries.

285. As a direct and proximate result of the expansion of expedited removal by the Defendants, Plaintiffs have been deprived of their equal protection rights under the Fifth Amendment to the U.S. Constitution.

THIRD CLAIM FOR RELIEF

(Violation of the Administrative Procedure Act, 5 U.S.C. § 553)

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

287. The Administrative Procedure Act, 5 U.S.C. § 553, requires that agencies provide public notice of, and opportunity to comment on, legislative rules before their promulgation. *See* 5 U.S.C. §§ 553(b), (c). The APA also requires that any substantive rule must be published at least 30 days prior to its effective date. *See* 5 U.S.C. § 553(d).

288. Although styled as a "Notice," the July 23 Notice is a legislative rule within the meaning of the APA.

289. DHS did not comply with the APA's procedural requirements when it made the July 23 Notice immediately effective upon publication.

290. DHS did not have good cause for its failure to follow the APA's procedural requirements, as following those requirements would not have been "impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. § 553(b)(3)(B); *see also* 5 U.S.C. § 553(d).

291. Defendants' failure to provide for notice and comment violates 5 U.S.C. § 553(b) and (c).

292. Defendants' failure to publish the July 23 Notice at least thirty days before its effective date violates 5 U.S.C. § 553(d).

FOURTH CLAIM FOR RELIEF

(Violation of the Immigration and Nationality Act, 8 U.S.C. § 1225(a), (b)(1); Administrative Procedure Act, 5 U.S.C. § 706(2))

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

294. The expansion of expedited removal denies people a meaningful process before they are removed from the United States. A meaningful process includes, *inter alia*, an opportunity to gather evidence necessary to establish they are not inadmissible and have been continuously present in the United States for more than two years, and an opportunity to consult or rely on the aid of others, including counsel, to otherwise challenge the application of expedited removal.

295. If the expedited removal provisions of the INA, 8 U.S.C. § 1225(a), (b)(1), are not interpreted to provide a meaningful process, they would raise serious constitutional questions.

296. The July 23 Notice therefore violates those sections of the INA, when properly construed, because it deprives persons faced with expedited removal of minimal procedures necessary to ensure that the statute is administered fairly and consistent with constitutional due process.

297. The July 23 Notice therefore also violates the APA because it is "not in accordance with law," "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right," and "without observance of procedure required by law." 5 U.S.C. § 706(2)(A), (C), (D).

FIFTH CLAIM FOR RELIEF

(Violation of the Immigration and Nationality Act, 8 U.S.C. § 1362; Administrative Procedure Act, 5 U.S.C. §§ 555(b), 706(1), (2))

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

299. The expedited removal process denies people a meaningful opportunity to consult with counsel in connection with any step in the process other than preparation for a CFI. Individuals subject to expedited removal are not afforded an opportunity to consult with counsel regarding the immigration officer's determination of the person's inadmissibility or removability.

300. The INA generally provides that "[i]n any removal proceedings before an immigration judge," the individual "shall have the privilege of being represented." 8 U.S.C. § 1362. Section 1362 does not, by its terms, exempt expedited removal proceedings. Therefore, at least where an asylum seeker requests review of a negative CFI determination before an IJ, the INA should be interpreted to confer on them the right to representation by counsel of their own choosing.

301. The APA, 5 U.S.C. § 555(b), provides that "[a] person compelled to appear in person before an agency or representative thereof is entitled to be accompanied, represented, and

advised by counsel or, if permitted by the agency, by other qualified representative. A party is entitled to appear in person or by or with counsel or other duly qualified representative in an agency proceeding." Individuals subjected to expedited removal procedures are compelled to appear in person before agency representatives. Congress has not exempted expedited removal proceedings from this requirement.

302. If the July 23 Notice and 8 U.S.C. § 1225(b)(1)(A)(iii)(II) are not interpreted to provide a meaningful opportunity to consult with counsel pursuant to 8 U.S.C. § 1362 and 5 U.S.C. § 555(b), it would raise serious constitutional questions.

303. In addition, the July 23 Notice violates the APA because the denial of a meaningful opportunity to consult with counsel constitutes agency action "unlawfully withheld," "not in accordance with law," "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right," and "without observance of procedure required by law . . . ." 5 U.S.C. § 706(1), (2)(A), (2)(C), (2)(D).

SIXTH CLAIM FOR RELIEF

(Violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A))

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

305. The APA provides that courts "shall . . . hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

306. Among other reasons, the July 23 Notice is arbitrary and capricious because, in adopting it, Defendants have failed to articulate a reasoned explanation for their decision, which represents a change in the agency's longstanding policy; entirely failed to consider important

aspects of the problem; and offered explanations for their decision that run counter to the evidence before the agency.

SEVENTH CLAIM FOR RELIEF

(Violation of the Suspension Clause)

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

308. The Suspension Clause of the U.S. Constitution provides that the "Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it." U.S. Const. Art. 1, § 9, cl. 2.

309. The July 23 Notice subjects the Individual Plaintiffs and members of the Organizational Plaintiffs to expedited removal without the availability of federal court habeas corpus review of an expedited removal order, other than with respect to the three specific factual determinations listed in 8 U.S.C. § 1252(e)(2) pertaining to alienage, the existence of an order, and whether the individual was lawfully admitted for permanent residence, admitted as a refugee, or granted asylum.

310. The INA does not otherwise provide an adequate and effective alternative to federal court habeas corpus review of an order of expedited removal.

311. At a constitutional minimum, individuals subject to executive detention—including via expedited removal proceedings—must be able to challenge whether they were detained and/or removed pursuant to an erroneous interpretation or application of relevant law. *See Boumediene v. Bush*, 553 U.S. 723, 779 (2008).

312. Depriving individuals of the right to seek judicial habeas corpus review of an expedited removal order, other than regarding those three limited factual questions, therefore effects a suspension of the writ, which violates the Suspension Clause.

EIGHTH CLAIM FOR RELIEF

(Violation of the Appointments Clause and 6 U.S.C. § 112)

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

314. The Appointments clause of the U.S. Constitution provides, in relevant part, that the President "shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law: but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments." U.S. Const. Art. 2, § 2, cl. 2.

315. Pursuant to 6 U.S.C. § 112, "[t]here is a Secretary of Homeland Security, appointed by the President, by and with the advice and consent of the Senate."

316. Pursuant to the Federal Vacancies Reform Act ("FVRA"), 5 U.S.C. § 3348(d), "[a]ny Action taken by any person who is not acting under section 3345, 3346, or 3347, or as provided by subsection (b), in the performance of any function or duty of a vacant office to which this section and sections 3346, 3347, 3349, 3349a, 3349b, and 3349c apply shall have no force or effect."

317. The Secretary of the Department of Homeland Security is not an inferior officer, because such officer reports directly to the President.

318. President Trump did not seek or obtain the advice and consent of the Senate before appointing Kevin McAleenan as Acting Secretary of the Department of Homeland Security, thereby violating both the Appointments Clause and 6 U.S.C. § 112.

319. On information and belief, President Trump intends for Defendant McAleenan to perform the functions and duties of Secretary of DHS indefinitely.

320. On information and belief, President Trump appointed Defendant McAleenan as Acting Secretary of DHS for the unlawful purpose of circumventing the Senate's mandatory role in the appointment of the USCIS Director. President Trump has explicitly stated that he prefers to appoint acting officials because it is more expedient than Senate confirmation. *See, e.g.*, Felicia Sonmez, *Trump Says He's 'in No Hurry' to Replace Acting Cabinet Members*, Wash. Post (Jan. 6, 2019), https://www.washingtonpost.com/politics/trump-says-hes-in-no-hurry-to-replace-acting-cabinet-members/2019/0l/06/afac5fea-11e4-l le9-b6ad-9cfd62dbb0a8_story.html ("Well, I'm in no hurry. I have 'acting.' . . . I sort of like 'acting.' It gives me more flexibility"); Randall Lane, *Inside Trump's Head: An Exclusive Interview with the President, and the Single Theory That Explains Everything*, Forbes (Oct. 10, 2017), https://www.forbes.com/donald-trump/exclusive-interview/#501570b4bdec ("I'm generally not going to make a lot of appointments that would normally be [confirmed by the Senate]—because you don't need them.").

321. Over the past two and a half years, President Trump has named 28 acting cabinet secretaries, of whom 25 have served for more than 10 days—both more than any of the past five presidents did in their four to eight years in office. These acting officials have served an average of 50 days, which is also longer than the average for any of those five presidents. *See* Anne Joseph O'Connell, *Acting Leaders: Recent Practices, Consequences, and Reforms*, Brookings Institution (July 22, 2019), https://www.brookings.edu/research/acting-leaders/.

322. The President has particularly placed immigration and national security policy in the hands of acting officials. As of July 2019, only 41% of Senate-confirmed positions were filled at the Department of Homeland Security. *See* Editorial Board, *An Administration of Temps*,

Bloomberg Opinion (July 25, 2019), https://www.bloomberg.com/opinion/articles/2019-07-25/trump-s-washington-has-an-acting-officials-problem. Notably, all of the Defendants in this action are acting officials, except for Attorney General Barr.

323. These actions undermine accountable governance by purposefully bypassing the scrutiny of the Senate.

324. Defendant McAleenan's purported exercise of the authority of the Secretary of DHS is unconstitutional because it is in derogation of the Senate's constitutional authority and responsibility to provide its advice and consent in the appointment of officers of the United States.

325. To the extent that the FVRA permits the President to appoint a principal officer without the advice and consent of the Senate, it violates the Appointments Clause.

326. Because Acting Secretary McAleenan was not properly appointed as Secretary of Homeland Security, the July 23 Notice has no force or effect.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray this Court to:

a. Declare the Federal Register Notice dated July 23, 2019 contrary to law;

b. Declare that portion of 8 U.S.C. § 1225(b)(1)(A)(iii)(II) that purports to authorize the July 23 Notice unconstitutional; or, in the alternative, declare that 8 U.S.C. § 1225(b)(1)(A)(iii)(II), when properly construed in accordance with the Constitution, does not authorize the July 23 Notice;

c. Enter an order vacating the Federal Register Notice dated July 23, 2019, and enjoining the Secretary of DHS from promulgating any other notice, rule, or agency policy purporting to implement 8 U.S.C. § 1225(b)(1)(A)(iii)(II) to the extent described in the July 23 Notice;

d. Declare contrary to law the expedited removal of noncitizens who did not enter by sea and who have been present in this country for longer than 14 days or who have been apprehended farther than 100 miles from a U.S. international land border;

e. Enter an order enjoining and staying Defendants from continuing to apply expedited removal to noncitizens who did not enter by sea and who have been present in this

country for longer than 14 days, or who have been apprehended farther than 100 miles from a U.S. international land border;

f. Issue an order directing that, should Defendants seek to remove any noncitizen who did not enter by sea and who has resided in the United States for longer than 14 days or who has been apprehended more than 100 miles from a U.S. international land border, Defendants shall place the individual in regular immigration court removal proceedings under 8 U.S.C. § 1229a;

g. Award Plaintiffs' counsel reasonable attorneys' fees under the Equal Access to Justice Act, and any other applicable statute or regulation; and

h. Grant such further relief as the Court deems just, equitable, and appropriate.

Dated: September 20, 2019

Respectfully submitted,

/s/ Chong S. Park

Chong S. Park (D.C. Bar No. 463050)
Ropes & Gray LLP
2099 Pennsylvania Avenue, NW
Washington, DC 20006-6807
Tel: (202) 508-4600
Fax: (202) 508-4650
chong.park@ropesgray.com

Kirsten V. Mayer (*pro hac vice forthcoming*)
Deborah Kantar Gardner (*pro hac vice forthcoming*)
Ropes & Gray LLP
Prudential Tower
800 Boylston Street
Boston, MA 02199-3600
Tel: (617) 951-7000
Fax: (617) 951-7050

Andrew N. Thomases (*pro hac vice forthcoming*)
Ropes & Gray LLP
1900 University Ave 6th Floor
East Palo Alto, CA 94303-2284
Tel: (650) 617-4000
Fax: (650) 617-4090

Oren Nimni (*pro hac vice forthcoming*)
Oren Sellstrom (*pro hac vice forthcoming*)
Lawyers for Civil Rights
61 Batterymarch Street 5th Floor
Boston, MA 02110
Tel: (617) 482-1145
Fax: (617) 482-4392
onimni@lawyersforcivilrights.org
osellstrom@lawyersforcivilrights.org

CIVIL COVER SHEET

JS-44 (Rev. 6/17 DC)

I. (a) PLAINTIFFS

CENTRO PRESENTE, ET AL.

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Suffolk, MA
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

KEVIN MCALEENAN, 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

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Ropes & Gray LLP, 2099 Pennsylvania Avenue, NW
Washington, DC 2006-6807, Tel: (202) 508-4600
Lawyers for Civil Rights, 61 Batterymarch Street, 5th Floor
Boston, Massachusetts, 02110, Tel: (617) 482-1145

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)
- ◉ 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) **FOR DIVERSITY CASES ONLY!**

	PTF	DFT		PTF	DFT
Citizen of this State	○ 1	○ 1	Incorporated or Principal Place of Business in This State	○ 4	○ 4
Citizen of Another State	○ 2	○ 2	Incorporated and Principal Place of Business in Another State	○ 5	◉ 5
Citizen or Subject of a Foreign Country	○ 3	○ 3	Foreign Nation	○ 6	○ 6

IV. CASE ASSIGNMENT AND NATURE OF SUIT

(Place an X in one category, A-N, that best represents your Cause of Action and one in a corresponding Nature of Suit)

○ **A. *Antitrust***

- ☐ 410 Antitrust

○ **B. *Personal Injury/ Malpractice***

- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Medical Malpractice
- ☐ 365 Product Liability
- ☐ 367 Health Care/Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Product Liability

○ **C. *Administrative Agency Review***

- ☐ 151 Medicare Act

Social Security
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

Other Statutes
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 890 Other Statutory Actions (If Administrative Agency is Involved)

○ **D. *Temporary Restraining Order/Preliminary Injunction***

Any nature of suit from any category may be selected for this category of case assignment.

(If Antitrust, then A governs)

◉ **E. *General Civil (Other)*** OR ○ **F. *Pro Se General Civil***

Real Property
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent, Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

Personal Property
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

Bankruptcy
- ☐ 422 Appeal 27 USC 158
- ☐ 423 Withdrawal 28 USC 157

Prisoner Petitions
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Conditions
- ☐ 560 Civil Detainee – Conditions of Confinement

Property Rights
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 835 Patent – Abbreviated New Drug Application
- ☐ 840 Trademark

Federal Tax Suits
- ☐ 870 Taxes (US plaintiff or defendant)
- ☐ 871 IRS-Third Party 26 USC 7609

Forfeiture/Penalty
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

Other Statutes
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☐ 430 Banks & Banking
- ☐ 450 Commerce/ICC Rates/etc.
- ☐ 460 Deportation
- ☐ 462 Naturalization Application
- ☒ 465 Other Immigration Actions
- ☐ 470 Racketeer Influenced & Corrupt Organization
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Satellite TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes
- ☐ 890 Other Statutory Actions (if not administrative agency review or Privacy Act)

G. *Habeas Corpus/ 2255*	H. *Employment Discrimination*	I. *FOIA/Privacy Act*	J. *Student Loan*
☐ 530 Habeas Corpus – General ☐ 510 Motion/Vacate Sentence ☐ 463 Habeas Corpus – Alien Detainee	☐ 442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation) *(If pro se, select this deck)*	☐ 895 Freedom of Information Act ☐ 890 Other Statutory Actions (if Privacy Act) *(If pro se, select this deck)*	☐ 152 Recovery of Defaulted Student Loan (excluding veterans)

K. *Labor/ERISA (non-employment)*	L. *Other Civil Rights (non-employment)*	M. *Contract*	N. *Three-Judge Court*
☐ 710 Fair Labor Standards Act ☐ 720 Labor/Mgmt. Relations ☐ 740 Labor Railway Act ☐ 751 Family and Medical Leave Act ☐ 790 Other Labor Litigation ☐ 791 Empl. Ret. Inc. Security Act	☐ 441 Voting (if not Voting Rights Act) ☐ 443 Housing/Accommodations ☐ 440 Other Civil Rights ☐ 445 Americans w/Disabilities – Employment ☐ 446 Americans w/Disabilities – Other ☐ 448 Education	☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholder's Suits ☐ 190 Other Contracts ☐ 195 Contract Product Liability ☐ 196 Franchise	☐ 441 Civil Rights – Voting (if Voting Rights Act)

V. ORIGIN

◉ 1 Original Proceeding ○ 2 Removed from State Court ○ 3 Remanded from Appellate Court ○ 4 Reinstated or Reopened ○ 5 Transferred from another district (specify) ○ 6 Multi-district Litigation ○ 7 Appeal to District Judge from Mag. Judge ○ 8 Multi-district Litigation – Direct File

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)

Agency action violates Constitution, Admin. Procedure Act, 5 U.S.C. 701, and INA, 8 U.S.C. s 1101 et seq.

VII. REQUESTED IN COMPLAINT CHECK IF THIS IS A **CLASS ACTION** UNDER F.R.C.P. 23 **DEMAND $** **JURY DEMAND:** Check YES only if demanded in complaint YES ☐ NO ☒

VIII. RELATED CASE(S) IF ANY (See instruction) YES ☒ NO ☐ If yes, please complete related case form

DATE: 9/20/2019 **SIGNATURE OF ATTORNEY OF RECORD** /s/ Chong Park

INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44
Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the cover sheet.

I. COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.

III. CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.

IV. CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.

VI. CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.

VIII. RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk's Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

CLERK=S OFFICE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CO-932
Rev. 4/96

NOTICE OF DESIGNATION OF RELATED CIVIL CASES PENDING
IN THIS OR ANY OTHER UNITED STATES COURT

Civil Action No. _____
(To be supplied by the Clerk)

NOTICE TO PARTIES:

Pursuant to Rule 40.5(b)(2), you are required to prepare and submit this form at the time of filing any civil action which is related to any pending cases or which involves the same parties and relates to the same subject matter of any dismissed related cases. This form must be prepared in sufficient quantity to provide one copy for the Clerk=s records, one copy for the Judge to whom the cases is assigned and one copy for each defendant, so that you must prepare 3 copies for a one defendant case, 4 copies for a two defendant case, etc.

NOTICE TO DEFENDANT:

Rule 40.5(b)(2) of this Court requires that you serve upon the plaintiff and file with your first responsive pleading or motion any objection you have to the related case designation.

NOTICE TO ALL COUNSEL

Rule 40.5(b)(3) of this Court requires that as soon as an attorney for a party becomes aware of the existence of a related case or cases, such attorney shall immediately notify, in writing, the Judges on whose calendars the cases appear and shall serve such notice on counsel for all other parties.

The plaintiff , defendant or counsel must complete the following:

I. RELATIONSHIP OF NEW CASE TO PENDING RELATED CASE(S).

A new case is deemed related to a case pending in this or another U.S. Court if the new case: [Check appropriate box(e=s) below.]

- [ ] (a) relates to common property
- [x] (b) involves common issues of fact
- [x] (c) grows out of the same event or transaction
- [ ] (d) involves the validity or infringement of the same patent
- [ ] (e) is filed by the same pro se litigant

2. RELATIONSHIP OF NEW CASE TO DISMISSED RELATED CASE(ES)

A new case is deemed related to a case dismissed, with or without prejudice, in this or any other U.S. Court, if the new case involves the same parties and same subject matter.

Check box if new case is related to a dismissed case: [ ]

3. NAME THE UNITED STATES COURT IN WHICH THE RELATED CASE IS FILED (IF OTHER THAN THIS COURT):

4. CAPTION AND CASE NUMBER OF RELATED CASE(E=S). IF MORE ROOM IS NEED PLEASE USE OTHER SIDE.

Make the Road New York et al. v. **Kevin McAleenan et al.** CA2019-cv-02369-KBJ

9/20/2019
DATE

Signature of Plaintiff /Defendant (or counsel)

AO 440 (Rev. 06/12; DC 3/15) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Columbia

CENTRO PRESENTE INC., PIONEER VALLEY WORKERS CENTER INC., M. Doe, on behalf of herself and minor children M.M. Doe, M.J. Doe, C. Doe, and D. Doe; F. Roe; C. Loe and J.P. Loe, on behalf of themselves and minor children J. Loe and S. Loe; I. Moe, on behalf of herself and minor children M. Moe and J. Moe; M. Poe, on behalf of herself and minor child J. Poe; and R. Koe, on behalf of himself and minor child D. Koe,

Plaintiff(s)

v.

KEVIN MCALEENAN, MATTHEW T. ALBENCE, KENNETH T. CUCCINELLI, MARK MORGAN, and WILLIAM BARR,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* KEVIN MCALEENAN, U.S. Dept. of Homeland Security, 1300 Pennsylvania Avenue NW, Washington, D.C. 20528; MATTHEW T. ALBENCE, U.S. Immigration and Customs Enforcement, 500 12th St., SW, Washington, D.C. 20536; KENNETH T. CUCCINELLI, U.S. Citizenship & Immigration Services, 111 Massachusetts Ave., NW, Washington, D.C. 20001; MARK MORGAN, U.S. Customs & Border Protection, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229; WILLIAM BARR, U.S. Dept. of Justice, 950 Pennsylvania Avenue, NW, Washington, D.C. 20530.

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Chong Park, Ropes & Gray LLP, 2099 Pennsylvania Avenue, NW Washington, DC 20006-6807.

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

_____

Signature of Clerk or Deputy Clerk

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____ was received by me on *(date)* _____ .

❒ I personally served the summons on the individual at *(place)* _____ on *(date)* _____ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____ , a person of suitable age and discretion who resides there, on *(date)* _____ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is designated by law to accept service of process on behalf of *(name of organization)* _____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify):*

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc: