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10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 AL OTRO LADO, Inc., *et al.*,
13 *Plaintiffs,*
14 v.
15 KIRSTJEN M. NIELSEN, *et al.*,
16 *Defendants.*

Case No. 3:17-cv-02366-BAS-KSC
Hon. Cynthia A. Bashant

**BRIEF OF AMICI CURIAE KIDS
IN NEED OF DEFENSE, ET AL. IN
SUPPORT OF PLAINTIFFS’
OPPOSITION TO MOTION TO
DISMISS**

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1 **INTEREST OF THE AMICI CURIAE**

2 Kids in Need of Defense (“KIND”) is a national nonprofit organization dedicated
3 to providing free legal representation to immigrant children who arrive in the United
4 States unaccompanied by a parent or legal guardian and face removal proceedings in
5 immigration court. Since January 2009, KIND has received referrals for over 17,700
6 children from 72 countries and has trained and mentored pro bono attorneys at 585 law
7 firms, corporations, law schools and bar associations. KIND promotes protection of
8 children in countries of origin and transit countries, works to address the root causes of
9 child migration from Central America and advocates for laws, policies and practices to
10 improve the protection of unaccompanied children in the United States. KIND has ten
11 field offices nationwide. KIND and its pro bono partners have served many children who
12 have been granted asylum or other forms of humanitarian protection.

13 The Unaccompanied Minors Program of Catholic Charities Community Services,
14 Archdiocese of New York, protects the rights of young immigrants to make informed
15 decisions about their lives. It provides legal advice, representation and social services to
16 thousands of unaccompanied minors who have fled domestic and community violence in
17 their home countries and are or have been detained in federal custody prior to
18 reunification with an adult caretaker.

19 Legal Services for Children (“LSC”) provides free representation to children and
20 youth who require legal assistance to stabilize their lives and realize their full potential.
21 Through a holistic team approach utilizing legal advocacy and social work services, its
22 goal is to empower clients and actively involve them in the critical decisions that impact
23 their lives. LSC uses this model for its clients to achieve safety and stability at home,
24 educational success and freedom from detention and deportation.

25 Public Counsel, based in Los Angeles, California, is the nation’s largest not-for-
26 profit law firm specializing in delivering pro bono legal services. Public Counsel’s
27 Immigrants’ Rights Project provides pro bono legal representation to individuals seeking
28 asylum, withholding of removal and relief under the Convention Against Torture. It has

1 over a decade of experience representing unaccompanied minors who enter the United
2 States at or through the Mexican border, and currently represents over 170
3 unaccompanied minors from Central America who are in removal proceedings before the
4 Los Angeles Immigration Court.

5 The Young Center for Immigrant Children’s Rights at the University of Chicago
6 Law School (“Young Center”) advocates on behalf of the best interests – safety,
7 permanency and well-being – of unaccompanied and separated immigrant children. The
8 Young Center has been appointed as the independent Child Advocate (best interests
9 guardian *ad litem*) for thousands of unaccompanied children pursuant to the 2008
10 Trafficking Victims Protection Reauthorization Act. Most of those children – from more
11 than 50 countries around the world – reach the United States after crossing the Mexican
12 border, and many subsequently file claims for protections based on a fear of persecution
13 in their home countries. Young Center staff and volunteers appointed to these children
14 meet with them in government custody, learn their stories and advocate with government
15 officials to consider each child’s best interests in every decision – from services within
16 and release from detention, to whether the child can repatriate safely. The Young Center
17 conducts this work through eight field offices around the country. The Young Center
18 also engages in policy initiatives to develop and promote standards for protecting the best
19 interests of immigrant children while they are subject to decision-making by government
20 officials.

21 Each of the amici has a strong interest in ensuring that the asylum process is
22 accessible to those seeking protection from harm and that no child is turned away without
23 a meaningful opportunity to seek protection. All parties have consented to the
24 submission of this amici curiae brief in this case.¹

25
26 _____
27 ¹ No counsel for a party authored this brief in whole or in part. No party, no counsel for a
28 party and no person other than amici, their members, and their counsel made a monetary
contribution intended to fund the preparation or submission of this brief.

1 **I. INTRODUCTION AND SUMMARY OF ARGUMENT**

2 The impact of Defendants’ policy of blocking asylum-seekers at ports of entry
3 along the U.S.-Mexico border (the “Turnback Policy”) is particularly acute for
4 unaccompanied children. Unaccompanied children seeking humanitarian protection are
5 among the most vulnerable of migrants: they are fleeing harm and often traumatized; as
6 children they lack an adult’s capacity to navigate hazardous situations or to assert their
7 rights; and they are on their own without legal guardians or parents. Recognizing this
8 vulnerability, Congress and other U.S. policymakers have established certain essential
9 protections for unaccompanied children. Defendants violate those safeguards when they
10 turn away children who approach ports of entry to seek protection.

11 This brief offers amici’s perspective on how the Turnback Policy obstructs
12 children’s access to the asylum process, compromises their well-being by prolonging
13 their exposure to harmful conditions at the border and defies Congress’s intent to protect
14 unaccompanied children. First – drawing on observations made by KIND staff and a
15 member of the American Academy of Pediatrics (“AAP”) during a December 2018 visit
16 to the border between Tijuana, Mexico and San Ysidro, California – it describes how the
17 Turnback Policy obstructs unaccompanied children’s access to protection in the U.S., and
18 how that impacts their well-being. Second, it describes the context in which children flee
19 in search of safety, highlighting their needs for protection both as asylum-seekers and as
20 children. Third, the brief explains that Defendants’ policies and practices at the ports of
21 entry, which are particularly harmful for unaccompanied children, are directly contrary to
22 Congress’s intent to provide greater protections to unaccompanied children in light of
23 their unique vulnerability. We hope that the perspective of amici, informed by their work
24 with unaccompanied children and by firsthand observations of conditions at the border,
25 will aid the Court’s consideration of the questions before it.

1 **II. ARGUMENT**

2 **A. Defendants Have Turned Back Children from the San Ysidro Port of**
3 **Entry, Obstructing Their Protection Claims and Exposing Them to**
4 **Harm**

5 In December 2018, KIND personnel and a member of the AAP visited Tijuana to
6 learn more about the experiences of migrant children there. The delegation spoke with
7 children sheltering in the border area, staff of nongovernmental organizations assisting
8 the children and U.S. and Mexican officials.² Those firsthand accounts and observations
9 by the delegation revealed that unaccompanied children in the area of Tijuana were
10 systematically excluded from “metering” waitlists at the port of entry, and were
11 physically prevented from approaching the border elsewhere to request protection.
12 Further, U.S. Customs and Border Protection (“CBP”) officers falsely told
13 unaccompanied children that they were not allowed to request asylum in the United
14 States and turned away children even after they had expressed a fear of return to Mexico.³
15 These practices denied unaccompanied children the right to request asylum and
16 prolonged their exposure to unsafe and unhealthy conditions in the area of the border.

17
18 **1. “Metering” practices used to control access to the asylum process**
19 **exclude unaccompanied children**

20 Defendants’ “metering” practices, which limit the number of asylum-seekers
21 processed each day,⁴ can operate as an outright bar to asylum requests by unaccompanied
22 children. KIND observed this firsthand near the crossing between San Ysidro and

23 _____
24 ² Jennifer Podkul, KIND, *The Protection Gauntlet: How the United States is Blocking*
25 *Access to Asylum Seekers and Endangering the Lives of Children at the U.S. Border 1*,
(Dec. 21, 2018), [https://supportkind.org/wp-content/uploads/2018/12/Protection-](https://supportkind.org/wp-content/uploads/2018/12/Protection-Gauntlet_12-21-18-FINAL.pdf)
26 [Gauntlet_12-21-18-FINAL.pdf](https://supportkind.org/wp-content/uploads/2018/12/Protection-Gauntlet_12-21-18-FINAL.pdf) [hereinafter “*Protection Gauntlet*”].

27 ³ *Id.* at 2–3.

28 ⁴ See 2d. Am. Compl., Dkt. No. 189, ¶¶ 52–57, 65; Br. in Supp. of Mot. to Dismiss, Dkt.
No. 192-1, at 3–4, 11–14.

1 Tijuana.⁵ There, U.S. officials liaised daily with Mexican immigration officials regarding
2 the number of asylum-seekers U.S. officials would permit to be processed in the U.S. that
3 day, a number that Mexican officials conveyed to the migrant managers of an unofficial
4 list of persons waiting to request asylum.⁶ KIND observed in Tijuana that only adults or
5 children within family units received numbers on the metering waitlists; unaccompanied
6 children were systematically excluded.⁷ Both CBP and Mexican officials have told
7 unaccompanied children that they are not eligible for inclusion on the waitlist.⁸ This
8 practice creates a high barrier to protection requests by unaccompanied children in the
9 San Ysidro-Tijuana vicinity.⁹

10 The harm of blocking unaccompanied children from accessing ports of entry is
11 magnified by the fact that they cannot access protection at points between. Some
12

13 ⁵ *Protection Gauntlet*, at 2–3. KIND observed Mexican immigration officials at the San
14 Ysidro port of entry telling an adult Honduran asylum-seeker that the United States was
15 “full” and that his only option was a waitlist. *Id.* at 2; *see also* Jonathan Blitzer, *The*
16 *Long Wait for Tijuana’s Migrants to Process Their Own Asylum Claims*, NEW YORKER
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17 [migrants-to-process-their-own-asylum-claims](https://www.newyorker.com/news/dispatch/the-long-wait-for-tijuanas-migrants-to-process-their-own-asylum-claims).

18 ⁶ *Protection Gauntlet*, at 2. Defendants acknowledge limiting numbers of applicants and
19 coordination with Mexican officials in the use of metering lists. Br. in Supp. of Mot. to
20 Dismiss, Dkt. No. 192-1, at 3–4, 11–14.

21 ⁷ *Protection Gauntlet*, at 2–3.

22 ⁸ *Id.*

23 ⁹ *See, e.g.,* Lolita Brayman, *Crossing the Line: On-the-Ground Report on the*
24 *Humanitarian Crisis in Tijuana*, CATHOLIC LEGAL IMMIGRATION NETWORK, INC. (Jan.
25 28, 2019), [https://cliniclegal.org/resources/crossing-line-ground-report-humanitarian-](https://cliniclegal.org/resources/crossing-line-ground-report-humanitarian-crisis-tijuana)
26 [crisis-tijuana](https://cliniclegal.org/resources/crossing-line-ground-report-humanitarian-crisis-tijuana) (reporting on conditions in Tijuana and at the San Ysidro port of entry).
27 Further, at the San Ysidro port of entry, KIND observed Mexican security guards and
28 Mexican immigration officials stopping unaccompanied children directly in front of the
gate designated by CBP for the processing of asylum claims. Mexican immigration
officials confirmed to KIND that when they detect unaccompanied children attempting to
enter the port of entry, they stop the children and instead refer them to Mexican child
welfare officials. U.S. officials at a minimum have notice of this practice. *See*
Protection Gauntlet, at 2–3.

1 children told KIND that they had attempted to present themselves to border agents
2 between ports of entry, but the U.S. agents from whom they sought protection shot at
3 them with rubber bullets or turned them around.¹⁰

4
5 **2. U.S. officials have falsely told unaccompanied children that they**
6 **may not request asylum, or have deflected their requests for**
7 **protection**

8 KIND spoke with several children who surmounted the “metering” and other
9 obstacles to reach U.S. territory and request protection, only to be told by U.S. officials
10 that they were not allowed to ask for protection in the United States.¹¹ Telling
11 unaccompanied children they cannot request protection in the United States contravenes
12 U.S. law, which guarantees the right to request asylum to unaccompanied children and
13 other migrants who fear return to a country of persecution.¹² Most unaccompanied
14 children are statutorily entitled to removal proceedings under 8 U.S.C. § 1229a, in which
15 an immigration judge must consider the child’s claims for protection.¹³ Further,
16 unaccompanied children are to be afforded the opportunity to present their asylum

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18 ¹⁰ *Protection Gauntlet*, at 4. Turning away asylum-seekers between ports of entry is the
19 subject of a November 2018 Interim Final Rule that requires asylum-seekers to present
20 themselves exclusively at ports of entry and not at points in between. Interim Final Rule,
21 *Aliens Subject to a Bar on Entry Under Certain Presidential Proclamations*, 83 Fed. Reg.
22 55,934 (Nov. 9, 2018). Implementation of the Interim Final Rule has been enjoined. *See*
23 *E. Bay Sanctuary Covenant v. Trump*, 349 F. Supp. 3d 838, 868 (N.D. Cal. 2018), *stay*
24 *denied*, 909 F.3d 1219 (9th Cir. 2018), *stay denied*, ___ S. Ct. ___, 2018 WL 6713079
25 (Mem.) (U.S. Dec. 21, 2018). Denying migrants the opportunity to request asylum
26 violates the Immigration and Nationality Act (“INA”), which expressly provides the right
27 to apply for asylum to anyone present or arriving in the United States, “whether or not at
28 a designated port of arrival.” 8 U.S.C. § 1158(a)(1).

¹¹ *Protection Gauntlet*, at 2–3.

¹² 8 U.S.C. § 1158(a).

¹³ 8 U.S.C. § 1232(a)(5)(D) (requiring application of § 1229a to unaccompanied children).

1 applications to the United States Citizenship and Immigration Services asylum office, a
2 non-adversarial tribunal.¹⁴ These safeguards guarantee additional protection of the
3 asylum rights of unaccompanied children. Moreover, an official misrepresentation that
4 asylum is not available is contrary to the terms of the 1951 Convention Relating to the
5 Status of Refugees, the substance of which is binding on the United States through its
6 ratification of the 1967 Protocol Relating to the Status of Refugees.¹⁵

7 In other instances, CBP has turned away asylum-seekers, including children, even
8 after they expressed fear of return.¹⁶ Under mandatory procedures for unaccompanied
9 children, an unaccompanied child from Mexico with a credible fear of persecution,
10 instead of being subject to immediate return, must be transferred to the custody of the
11 Office of Refugee Resettlement of the Department of Health and Human Services

12
13 ¹⁴ 8 U.S.C. § 1158(b)(3)(C).

14 ¹⁵ See U.N. HIGH COMM’R FOR REFUGEES [UNHCR], *Guidelines on International*
15 *Protection No. 8: Child Asylum Claims under Articles 1(A)(2) and 1(F) of the 1951*
16 *Convention and/or 1967 Protocol Relating to the Status of Refugees* (Dec. 22, 2009),
17 <https://www.refworld.org/docid/4b2f4f6d2.html>; UNHCR, *State Parties to the 1951*
18 *Convention relating to the Status of Refugees and the 1967 Protocol* (updated Apr. 17,
19 2015), [https://www.unhcr.org/protection/basic/3b73b0d63/states-parties-1951-](https://www.unhcr.org/protection/basic/3b73b0d63/states-parties-1951-convention-its-1967-protocol.html)
20 [convention-its-1967-protocol.html](https://www.unhcr.org/protection/basic/3b73b0d63/states-parties-1951-convention-its-1967-protocol.html); see also Protocol Relating to the Status of Refugees,
21 Nov. 1, 1968, T.I.A.S. No. 6577 (accession of 1967 Protocol).

22 ¹⁶ See B. Shaw Drake, Eleanor Acer & Olga Byrne, HUMAN RIGHTS FIRST, *Crossing the*
23 *Line: U.S. Border Agents Illegally Reject Asylum Seekers* 4 (May 2017),
24 <https://www.humanrightsfirst.org/sites/default/files/hrf-crossing-the-line-report.pdf>; Press
25 Release, AM. IMMIGRATION COUNCIL, *CBP Practice of Turning Away Asylum Seekers at*
26 *U.S. Southern Border Is Systematic, Documented in New Legal Filing* (Nov. 14, 2017),
27 [https://www.americanimmigrationcouncil.org/news/cbp-practice-turning-away-asylum-](https://www.americanimmigrationcouncil.org/news/cbp-practice-turning-away-asylum-seekers-us-southern-border-systematic-documented-new-legal)
28 [seekers-us-southern-border-systematic-documented-new-legal](https://www.americanimmigrationcouncil.org/news/cbp-practice-turning-away-asylum-seekers-us-southern-border-systematic-documented-new-legal). Children were turned
back without regard for whether they expressed fear of returning to a contiguous or non-
contiguous country. Press Release, AM. IMMIGRATION COUNCIL, *CBP Practice of*
Turning Away Asylum Seekers at U.S. Southern Border Is Systematic, Documented in
New Legal Filing (Nov. 14, 2017),
[https://www.americanimmigrationcouncil.org/news/cbp-practice-turning-away-asylum-](https://www.americanimmigrationcouncil.org/news/cbp-practice-turning-away-asylum-seekers-us-southern-border-systematic-documented-new-legal)
[seekers-us-southern-border-systematic-documented-new-legal](https://www.americanimmigrationcouncil.org/news/cbp-practice-turning-away-asylum-seekers-us-southern-border-systematic-documented-new-legal).

1 (“HHS”).¹⁷ Yet KIND spoke with two Mexican children who reported having told U.S.
2 officials they feared returning to Mexico. Instead of transferring them to HHS, the
3 officials directed the children to sign forms stating that they did not fear return,¹⁸ and
4 returned them to Mexico, where KIND encountered them in December living in unsafe
5 circumstances in a shelter near the border.¹⁹

7 **3. Denying access to ports of entry prolongs children’s exposure to** 8 **harmful conditions at the border**

9 Denying or delaying unaccompanied children’s access to a port of entry not only
10 violates their legal rights by impeding their requests for protection, but also prolongs their
11 exposure to unsafe and unhealthy conditions in the area of the border. In Tijuana in
12 December, KIND interviewed children staying in a formal refugee camp established by
13 the Mexican government and informal or makeshift shelters and encampments also on the
14 Mexican side of the border.²⁰ Access in the camps to basic necessities like food and
15 toilets is inadequate.²¹ KIND observed children living in unsanitary conditions, without
16 adequate shelter from the weather, without running water, without sufficient food and in
17 need of medical attention.²² KIND encountered one toddler who suffered a seizure

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19
20 ¹⁷ 8 U.S.C. § 1232(a)(3)–(4).

21 ¹⁸ *Protection Gauntlet*, at 3–4.

22 ¹⁹ *Id.* at 4. Mexico is not a viable alternative for unaccompanied children from Central
23 America seeking asylum. It is currently unable to process all of the asylum claims it has
24 received this year, and is still developing appropriate protocols for assessing
unaccompanied children’s cases. *Id.*

25 ²⁰ *Id.* at 1.

26 ²¹ Wendy Fry, *Health Conditions Worsen at Tijuana Migrant Shelter as Mayor Calls for*
27 *Help*, SAN DIEGO UNION-TRIB. (Nov. 23, 2018, 2:47 p.m.),
28 <https://www.sandiegouniontribune.com/news/migrant-caravan/sd-me-border-health-11232018-story.html>.

1 without access to adequate medical care; lacking for food and water, she was also eating
 2 formula directly from a package.²³ KIND also learned of a girl engaged in prostitution to
 3 obtain food for her 13-year-old sibling²⁴; and a boy, age 11, who attached himself to
 4 unrelated adults so that officials would not perceive him as unaccompanied and subject to
 5 deportation from Mexico.²⁵

6 Moreover, medical research indicates that exposure to these conditions can cause
 7 long-term psychological trauma for children – particularly unaccompanied children.²⁶
 8 “Higher rates of anxiety, depression, conduct problems and post-traumatic stress disorder
 9 (PTSD) have been found among [unaccompanied children] when compared to their
 10 accompanied immigrant counterparts.”²⁷ “Prolonged exposure to highly stressful
 11 situations – known as toxic stress – can disrupt a child’s brain architecture and affect his
 12 or her short- and long-term health.”²⁸

13
 14 ²² *Protection Gauntlet*, at 1; see also Meredith Hoffman, *Inside the Trauma-Filled Camp*
 15 *of Migrants Waiting at the U.S. Border*, VICE.COM (Dec. 28, 2018),
 16 https://www.vice.com/en_us/article/439ebg/inside-the-trauma-filled-camp-of-migrants-waiting-at-the-us-border.

17 ²³ *Protection Gauntlet*, at 1; Scott Bixby, *Immigration Advocates Vow to Take Trump’s*
 18 *‘Remain in Mexico’ Policy to Court*, DAILY BEAST (Dec. 22, 2018, 3:51 p.m.),
 19 <https://www.thedailybeast.com/immigration-advocates-vow-to-take-trumps-remain-in-mexico-policy-to-court>.

20 ²⁴ *Protection Gauntlet*, at 2.

21 ²⁵ *Id.* at 3.

22 ²⁶ See Kiara Alvarez & Margarita Alegría, *Understanding and Addressing the Needs of*
 23 *Unaccompanied Immigrant Minors*, AM. PSYCHOL. ASS’N (June 2016),
 24 <https://www.apa.org/pi/families/resources/newsletter/2016/06/immigrant-minors>.

25 ²⁷ *Id.* (citations omitted).

26 ²⁸ *Examining the Failures of the Trump Administration’s Inhumane Family Separation*
 27 *Policy. Hearing Before the Subcomm. on Oversight & Investigations of the H. Comm. on*
 28 *Energy and Commerce*, 116th Cong. 3 (2019) (statement of Julie M. Linton, MD, Fellow,
 American Academy of Pediatrics),
<https://docs.house.gov/meetings/IF/IF02/20190207/108846/HHRG-116-IF02-Wstate-LintonJ-20190207-U1.pdf>.

1 Further, unaccompanied children denied the ability to immediately seek protection
 2 in the U.S. have been observed to be at risk of crime and exploitation. KIND learned of
 3 children who were exploited and abused after unrelated adults lured them with offers of
 4 shelter.²⁹ In December, two unaccompanied teenagers from Honduras were tortured and
 5 killed, their bodies discovered in a Tijuana alleyway; other children reported to a
 6 journalist that someone lured the teens out of the camp by pretending to offer legal help.³⁰
 7 Understandably, many children expressed fear of seeking assistance because they did not
 8 know whom they could trust.³¹

9
 10 **B. Unaccompanied Children Are Entitled to Seek Legal Relief on the Basis**
 11 **of Harm or Fear, But Are Impeded by the Turnback Policy**

12 Examining the root causes of their migration shows why it is imperative to permit
 13 unaccompanied children to request asylum or other forms of humanitarian protection
 14 under U.S. law. The vast majority of unaccompanied children are fleeing violence or a
 15 fear of violence in Honduras, Guatemala and El Salvador.³² This includes intrafamilial
 16
 17

18 _____
 19 ²⁹ *Protection Gauntlet*, at 2.

20 ³⁰ Hoffman, *supra* note 22.

21 ³¹ *Protection Gauntlet*, at 2. Many specifically avoided workers from Desarrollo Integral
 22 de la Familia (“DIF”), the Mexican child welfare agency, for fear of being detained,
 23 deported or denied the opportunity to ask for protection in the United States. *Id.* at 2–3.

24 ³² See Michael Clemens, *The Root Causes of Child Migration from Central America: Safety vs. Opportunity*, CTR. FOR GLOBAL DEV. (Aug. 1, 2017),
 25 [https://www.cgdev.org/blog/root-causes-child-migration-central-america-safety-vs-](https://www.cgdev.org/blog/root-causes-child-migration-central-america-safety-vs-opportunity)
 26 [opportunity](https://www.cgdev.org/blog/root-causes-child-migration-central-america-safety-vs-opportunity). Motivation to join family members already in the U.S. and economic
 27 reasons are also identified, but generally in combination with safety reasons. *Id.*; see also
 28 UNHCR, *Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection* 9–10 (2014),
[https://www.unhcr.org/en-us/about-us/background/56fc266f4/childrenon-the-run-full-](https://www.unhcr.org/en-us/about-us/background/56fc266f4/childrenon-the-run-full-report.html)
[report.html](https://www.unhcr.org/en-us/about-us/background/56fc266f4/childrenon-the-run-full-report.html).

1 violence, violence perpetrated by criminal gangs, gender-based violence³³ and violence
 2 perpetrated by police and other state authorities.³⁴ Children may be subjected to harm in
 3 their countries of origin based on their sexual orientation, gender identity or indigenous
 4 ethnicity.³⁵ Other children are fleeing labor trafficking or sex trafficking.³⁶ The same
 5 factors that prompt flight will in many cases establish a child's entitlement to
 6 humanitarian protection under United States law.³⁷

7 Many children experience further harm during a strenuous journey to the U.S.,
 8 often marked by insufficient food, water and medical care,³⁸ and a high risk of assault,
 9 kidnapping, trafficking, robbery or even death.³⁹ As a result of these factors, many

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 11 ³³ KIND, *Sexual and Gender Based Violence (SGBV) & Migration Fact Sheet* (Dec.
 12 2018), [https://supportkind.org/wp-content/uploads/2019/02/SGBV-Fact-Sheet.-](https://supportkind.org/wp-content/uploads/2019/02/SGBV-Fact-Sheet.-December-2018.pdf)
 13 [December-2018.pdf](https://supportkind.org/wp-content/uploads/2019/02/SGBV-Fact-Sheet.-December-2018.pdf).

14 ³⁴ *Children on the Run*, *supra* note 32, at 6.

15 ³⁵ *Id.* at 9–10 (indigenous identity); INTER-AM. COMM'N ON HUMAN RIGHTS, ORG. OF AM.
 16 STATES [OAS], *Violence Against Lesbian, Gay, Bisexual, Trans and Intersex Persons in*
 17 *the Americas* (Nov. 12, 2015),
 18 <http://www.oas.org/en/iachr/reports/pdfs/violence-lgbtipersons.pdf> (sexual orientation and
 19 gender identity).

20 ³⁶ *See* U.N. OFFICE ON DRUGS & CRIME, *Trafficking of Women and Girls Within Central*
 21 *America* (2012),
 22 [http://www.unodc.org/documents/toc/Reports/TOCTASouthAmerica/English/TOCTA_C](http://www.unodc.org/documents/toc/Reports/TOCTASouthAmerica/English/TOCTA_CACaribb_trafficking_womengirls_within_CAmerica.pdf)
 23 [ACaribb_trafficking_womengirls_within_CAmerica.pdf](http://www.unodc.org/documents/toc/Reports/TOCTASouthAmerica/English/TOCTA_CACaribb_trafficking_womengirls_within_CAmerica.pdf).

24 ³⁷ *See generally* 8 U.S.C. § 1101(a)(27)(J) (defining criteria of “special immigrant” status
 25 for juveniles); 22 U.S.C. § 7102(a) (defining “severe forms of trafficking in persons”); 8
 26 U.S.C. § 1101(a)(42) (defining “refugee”).

27 ³⁸ DOCTORS WITHOUT BORDERS, *Migrants' Journey Through Mexico to the U.S.* (June 11,
 28 2014), [https://www.doctorswithoutborders.org/what-we-do/news-stories/story/migrants-](https://www.doctorswithoutborders.org/what-we-do/news-stories/story/migrants-journey-through-mexico-us)
[journey-through-mexico-us](https://www.doctorswithoutborders.org/what-we-do/news-stories/story/migrants-journey-through-mexico-us).

³⁹ *See id.*; Muzaffar Chishti & Faye Hipsman, *Dramatic Surge in the Arrival of*
Unaccompanied Children Has Deep Roots and No Simple Solutions, MIGRATION POLICY
 INST. (June 13, 2014), [https://www.migrationpolicy.org/article/dramatic-surge-arrival-](https://www.migrationpolicy.org/article/dramatic-surge-arrival-unaccompanied-children-has-deep-roots-and-no-simple-solutions)
[unaccompanied-children-has-deep-roots-and-no-simple-solutions](https://www.migrationpolicy.org/article/dramatic-surge-arrival-unaccompanied-children-has-deep-roots-and-no-simple-solutions). As many as 6 in 10
 migrant women and girls are raped or sexually assaulted during their journey to the
 United States. *See* Salil Shetty, AMNESTY INT'L, *Most Dangerous Journey: What*

1 unaccompanied children reach the border traumatized and fearful. Their trauma may be
 2 compounded by their treatment at the border and in Tijuana as a consequence of
 3 Defendants’ Turnback Policy. Unaccompanied children who reach the U.S. border are
 4 entitled by law to the opportunity promptly to request asylum. Leaving them in limbo in
 5 underserved camps undermines their physical safety, a core purpose of U.S. humanitarian
 6 law.

7
 8 **C. The Adverse Impact of the Turnback Policy on Unaccompanied**
 9 **Children Is Illogical and Contrary to Congress’s Intent**

10 Defendants’ Turnback Policy particularly adversely impacts unaccompanied
 11 children, in disregard of their heightened vulnerability.⁴⁰ This incongruity highlights the
 12 policy’s unlawfulness.

13 Indeed, in recognition of the particular vulnerability of unaccompanied children,
 14 Congress has fashioned certain fundamental safeguards for their well-being and legal
 15 rights.⁴¹ As the Ninth Circuit has stated, these laws “reflected Congress’s conviction that

16 *Central American Migrants Face When They Try to Cross the Border*,
 17 [https://www.amnestyusa.org/most-dangerous-journey-what-central-american-migrants-](https://www.amnestyusa.org/most-dangerous-journey-what-central-american-migrants-face-when-they-try-to-cross-the-border/)
 18 [face-when-they-try-to-cross-the-border/](https://www.amnestyusa.org/most-dangerous-journey-what-central-american-migrants-face-when-they-try-to-cross-the-border/). In the last four years, almost 4,000 migrants
 19 have died or gone missing moving through Mexico. NBCNEWS.COM, *At Least 4,000*
 20 *Migrants on Way to U.S. Have Died or Gone Missing in Last Four Years* (Dec. 5, 2018),
 21 [https://www.nbcnews.com/news/latino/least-4-000-migrants-way-u-s-have-died-or-](https://www.nbcnews.com/news/latino/least-4-000-migrants-way-u-s-have-died-or-n944046)
 22 [n944046](https://www.nbcnews.com/news/latino/least-4-000-migrants-way-u-s-have-died-or-n944046).

21 ⁴⁰ See Alvarez & Alegría, *supra* note 26.

22 ⁴¹ In the Homeland Security Act of 2002 (“HSA”), recognizing the need for heightened
 23 protection of unaccompanied children apprehended by federal officials, Congress
 24 assigned responsibility for their care and custody to the Office of Refugee Resettlement.
 25 6 U.S.C. § 279(b). Building on the HSA, Congress unanimously enacted the Trafficking
 26 Victims Protection Reauthorization Act of 2008 (“TVPRA”), which specified essential
 27 safeguards for unaccompanied children. See William Wilberforce Trafficking Victims
 28 Protection Reauthorization Act, Pub. L. No. 110-457, §235, 122 Stat. 5044 (2008). The
 TVPRA mandates, for example, that, with a specified exception, unaccompanied alien
 children “who are apprehended at the border of the United States or at a United States
 port of entry” must be transferred to HHS, which will ensure safe and secure placement

1 ‘[u]naccompanied minors deserve special treatment under our immigration laws and
2 policies.’⁴²

3 Far from considering and addressing these special needs and legal obligations
4 toward unaccompanied children, the Turnback Policy – as discussed above – creates
5 additional burdens on unaccompanied children even beyond the unlawful barriers it
6 creates for adults. Adopting a policy that particularly harms children most in need of
7 protection is illogical and contrary to Congress’s commitment to providing additional
8 protections for the rights and welfare of unaccompanied children, highlighting the
9 unlawful nature of the Turnback Policy.

11 **III. CONCLUSION**

12 By law, unaccompanied children are entitled to request protection in the United
13 States and to basic safeguards to protect their rights and well-being when doing so.
14 Defendants’ Turnback Policy violates those legal obligations and exposes particularly
15 vulnerable children, who lack the capacity to meet their own needs and to advocate for
16 their own rights, to imminent harm. Accordingly, unaccompanied children are
17 particularly vulnerable to the consequences of Defendants’ Turnback Policy. That policy
18 and related practices, which exacerbate rather than compensate for unaccompanied
19 children’s special vulnerability, are both illegal and unconscionable. Amici urge the

25 for each child. 8 U.S.C. § 1232(a)(3). The TVPRA contains a number of other
26 safeguards that provide additional legal protections for unaccompanied children.

27 ⁴² *Flores v. Sessions*, 862 F.3d 863, 880–81 (9th Cir. 2017) (alteration in original)
28 (quoting 145 Cong. Rec. S8180 (daily ed. Sept. 4, 2002)) (rejecting defendants’ argument
that the HSA and TVPRA retracted the right to a bond hearing or other FSA protections).

1 Court to declare Defendants’ Turnback Policy and related practices unlawful and deny
2 Defendants’ motion to dismiss.

3
4 Dated: February 21, 2019
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CERTIFICATE OF COMPLIANCE

I certify that the foregoing amici curiae brief is under 20 pages long with no more than 28 lines per page, except for identification of counsel, title of case, footnotes and quotations. The text is no less than 14-point type and is proportionally spaced.

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