

Case No. 22-30303

In the
United States Court of Appeals
for the Fifth Circuit

STATE OF LOUISIANA, *et al.*,

Plaintiffs-Appellees,

v.

CENTERS FOR DISEASE CONTROL AND PREVENTION, *et al.*,

Defendants-Appellants.

v.

INNOVATION LAW LAB,

Proposed Intervenor-Appellant

On Appeal from the United States
Western District Court of Louisiana

**BRIEF OF PHYSICIANS FOR HUMAN RIGHTS, INC. AS AMICUS
CURIAE IN SUPPORT OF DEFENDANTS-APPELLANTS**

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CERTIFICATE OF INTERESTED PERSONS

Pursuant to Fifth Circuit Rule 29.2, the undersigned counsel of record certifies that the following entity as described in the fourth sentence of Fifth Circuit Rule 28.2.1 has a non-monetary interest in the outcome of this case. These representations are made in the order that the judges of this court may evaluate possible disqualification or recusal.

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, Amicus states that it does not have a parent corporation. There is no publicly held corporation that owns 10 percent or more of its stock.

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STATEMENT OF INTEREST OF *AMICUS CURIAE*¹

Physicians for Human Rights, Inc. (“PHR”), a 1997 Nobel Peace Prize co-laureate,² is a non-profit corporation based in New York, New York, whose global network of physicians, scientists, and other professionals investigate and document the medical consequences of human rights violations and advocate for reform.

In 1999, PHR initiated and co-authored what have now become the international standards for the effective medical documentation of torture and ill-treatment (“Istanbul Protocol”).³ Since then, PHR has played a leading role in facilitating Istanbul Protocol-based medico-legal affidavits in asylum cases in which torture and ill-treatment have been alleged. An extensive network of PHR-affiliated, Istanbul Protocol-trained clinicians have provided medico-legal affidavits for over 3,300 asylum cases since 2016. Since 2018,

¹ The parties have consented to Amicus’s filing this brief. No party or party’s counsel authored this brief, in whole or in part, or contributed money intended to fund preparing or submitting this brief. No person other than Amicus and its counsel contributed money intended to fund preparing or submitting this brief.

² In 1997, PHR shared the Nobel Peace Prize as part of the Steering Committee of the International Campaign to Ban Land Mines.

³ Office of the UN High Commissioner for Human Rights, Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Professional Training Series No.8/Rev.2 (2022), <http://physiciansforhumanrights.org/issues/torture/international-torture.html> (“Istanbul Protocol”).

PHR has conducted numerous rigorous investigations on physical and psychological sequelae of US asylum policies and practices affecting individuals and families seeking asylum.⁴

⁴ See, e.g., Physicians for Human Rights, *“Part of My Heart Was Torn Away”*: What the U.S. Government Owes the Tortured Survivors of Family Separation (Apr. 19, 2022), <https://phr.org/our-work/resources/part-of-my-heart-was-torn-away/> [hereinafter, “PHR, Tortured Survivors of Family Separation Rep.”]; Physicians for Human Rights, *Neither Safety Nor Health: How Title 42 Expulsions Harm Health and Violate Rights* (July 28, 2021), <https://phr.org/our-work/resources/neither-safety-nor-health/> [hereinafter “PHR, Title 42 Rep.”]; Physicians for Human Rights, *Profiles in Resilience: Why Survivors of Domestic Violence and Gang Violence Qualify for International Protection* (June 9, 2021), <https://phr.org/our-work/resources/profiles-in-resilience-why-survivors-of-domestic-violence-and-gang-violence-qualify-for-international-protection/>; Physicians for Human Rights, *Praying for Hand Soaps and Masks: Health and Human Rights Violations in U.S. Immigration Detention during the COVID-19 Pandemic* (Jan. 12, 2021), <https://phr.org/our-work/resources/praying-for-hand-soap-and-masks/>; Physicians for Human Rights, *“You Will Never See Your Child Again”*: The Persistent Psychological Effects of Family Separation (Feb. 25, 2020), <https://phr.org/our-work/resources/you-will-never-see-your-child-again-the-persistent-psychological-effects-of-family-separation/> [hereinafter; “PHR, Psychological Effects of Family Separation Rep.”]; Physicians for Human Rights, *“If I Went Back, I Would Not Survive”*: Asylum Seekers Fleeing Violence in Mexico and Central America” (Oct. 9, 2019), <https://phr.org/our-work/resources/asylum-seekers-fleeing-violence-in-mexico-and-central-america/>.

ARGUMENT

I. INTRODUCTION AND SUMMARY OF ARGUMENT

While the ultimate decision before this court is primarily one of procedure, amicus curiae Physicians for Human Rights, Inc. (“PHR”) believes that the court should be fully cognizant of the potentially tragic harm to individuals from the district court’s injunction. Generally ignored in both the briefing and the district court’s decision are the serious consequences facing asylum-seekers as a result of the manner of Title 42’s implementation, along with the paucity of support for Title 42 as a necessary or even meaningful public health measure.

It is all too easy to forget that asylum-seekers have left their home countries in the face of persecution and serious human rights violations, fleeing to the United States and seeking safety via the asylum process in accordance with both international treaties to which the United States is a party and the INA’s own statutory scheme.⁵ Tracing its roots from the Holocaust, Article 14 of the Universal Declaration of Human Rights (UDHR) of 1948 states that such a form of migration is protected as “the

⁵ See, e.g., UNHCR, “Asylum and Migration,” <https://www.unhcr.org/en-us/asylum-and-migration.html>; U.S. Citizenship and Immigration Services, “Refugee and Asylum,” <https://www.uscis.gov/humanitarian/refugees-asylum>.

right to seek and to enjoy in other countries asylum from persecution.”⁶ In addition to endorsing the UDHR, the United States in 1994 ratified the Convention Against Torture, whose Article 3 explicitly prohibits the return or extradition of a person where there are “substantial grounds for believing that [they] would be in danger of being subjected to torture,”⁷ and is also a party to the 1967 Protocol to the Refugee Convention.⁸

Despite this acknowledged universal human right and well-established international laws guaranteeing the right to asylum, the district court did not address *anywhere* in its decision the harms which Title 42 expulsions have inflicted upon asylum-seekers. These harms should not be ignored in the governing calculus of this court’s decision-making that, as will be discussed below, often prolongs and exacerbates the suffering of already traumatized people whose safety in their home countries have been severely compromised. Indeed, continued expulsions under Title 42 offer no public health protections nor superiority to Title 8 but perversely threaten the safety

⁶ Universal Declaration of Human Rights (1948), <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

⁷ Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, adopted by the UN General Assembly Dec 19. 1984 S. Treaty Doc. No. 100-20 (1988), 1465 U.N.T.S. 8.

⁸ Protocol Relating to the Status of Refugees, Jan. 31, 1967, 606 U.N.T.S. 267; United Nations Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 150. The United States ratified the Protocol in 1968, thereby taking on the Convention’s obligations.

of asylum-seekers and the public health.⁹ As stated by the Supreme Court in *Nken v. Holder*, 556 U.S. 418, 436, 129 S.Ct. 1749, 173 L.Ed.2d 550 (2009): “Of course, there is a public interest in preventing aliens from being wrongfully removed, particularly to countries where they are likely to face substantial harm.”

PHR and other organizations have documented that, as it has been implemented, expulsions under Title 42 have repeatedly violated the internationally recognized right of non-refoulement by returning asylum-seekers to dangerous conditions in Mexican border regions where they have been subjected to kidnappings, violence, extortion, and other crimes.¹⁰ These unsafe conditions have resulted in many of those expelled under Title 42 experiencing severe psychological sequelae.¹¹

II. **EVEN THOUGH TITLE 42 IS ONLY AUTHORIZED UNDER FEDERAL LAW AS A PUBLIC HEALTH MEASURE, NO UNDERLYING PUBLIC HEALTH EVIDENCE HAS DEVELOPED TO SUPPORT ITS RATIONALE, MUCH LESS TO UNDERGIRD ITS CONTINUED IMPLEMENTATION**

⁹ PHR, Title 42 Rep.; Human Rights First *et al.*, *Failure to Protect: Biden Administration Continues Illegal Trump Policy to Block and Expel Asylum Seekers to Danger* 4 (Apr. 2021), <https://www.humanrightsfirst.org/sites/default/files/FailuretoProtect.4.20.21.pdf> [hereinafter “HRF, Failure to Protect Rep.”].¹⁰ PHR, Title 42 Rep. at 33-37; HRD, *Failure to Protect Rep.* at 4, 33.

¹⁰ PHR, Title 42 Rep. at 33-37; HRD, *Failure to Protect Rep.* at 4, 33.

¹¹ PHR, Title 42 Rep. at 4, 37.

On March 20, 2020, the Department of Health and Human Services (HHS) issued an emergency regulation to implement a specific aspect of existing U.S. health law. Section 265 of U.S. Code Title 42 authorizes the Director of the CDC to “prohibit ... the introduction” into the United States of individuals when the director believes that “there is serious danger of the introduction of [a communicable] disease into the United States.” Once authorized, the law, first enacted during World War II in 1944 and subsequently revised, allows customs officers, including CBP agents, to implement any such order issued by the CDC.

Almost immediately, CDC Director Robert R. Redfield then relied on this to issue an order suspending the “introduction” into the United States of certain individuals who have been in “Coronavirus Impacted Areas.”¹² His public health order was issued for the purpose of protecting the US population from individuals who entered the United States from Canada or Mexico and “who would be introduced into a congregate setting” at a port of entry or in a Border Patrol station. These settings were deemed to be

¹² US Department of Health and Human Services Centers for Disease Control and Prevention, 42 U.S.C. §§ 265, 268, *Order Suspending Introduction of Certain Persons from Countries Where a Communicable Disease Exists*, https://www.cdc.gov/quarantine/pdf/CDC-Order-Prohibiting-Introduction-of-Persons_Final_3-20-20_3-p.pdf.

dangerous for virus-transmission, and, as such, the order was directed to benefit the public health of the mainland. Those covered by the order included asylum-seekers and unaccompanied minors. Citing the new CDC order, that same day the CBP began expelling individuals who arrived at the U.S.-Mexico border without giving them the opportunity to engage in the asylum process established by Congress

As the pandemic proceeded, no evidence has been developed to support the theory that persons arriving in the U.S. to seek asylum are any more likely to transmit COVID-19 than any other groups allowed to cross the land border and enter the United States,¹³ nor, in fact, have they been more likely to enhance transmission of the virus than any local population. Indeed, viral spread has been reported across the entire country with the emergence of each new variant.

Perversely, however, the conditions of Title 42 expulsions, while not serving public health benefits, have caused heightened public health,

¹³ See, e.g., Anne G. Beckett, *et al.*, *Misusing Public Health as a Pretext to End Asylum – Title 42*, 386 *New Eng. J. Med.* (Apr. 21, 2022) [hereinafter Beckett, *Misusing Public Health as a Pretext to End Asylum*]; see also, e.g., “Dr. Fauci refutes Republican misconceptions on Covid-19 spread,” CNN (Oct. 3, 2021), <https://www.cnn.com/videos/politics/2021/10/03/dr-fauci-coronavirus-spread-immigrants-and-tourists-sot-sotu-vpx.cnn>; Michele Heisler *et al.*, *Public Health Law Must Never Again Be Misused to Expel Asylum Seekers: Title 42*, *Nat. Med.* (Apr. 22, 2022); Michael R. Ulrich & Sondra S. Crosby, *Title 42, Asylum, and Politicising Public Health*, 7 *The Lancet* 100124 (Nov. 17, 2021).

medical, and safety risks to those seeking asylum. It is because of Title 42 that they often find themselves in dangerous congregate settings during or immediately following expulsions, thereby increasing the risk of COVID-19 transmission, among other communicable diseases.¹⁴

By contrast, under previous processing pursuant to U.S. Code Title 8,¹⁵ which was passed by Congress, the CBP was given the discretion and legal authority to parole individuals seeking asylum and/or afford them other legal protection. This discretion actually served to minimize COVID-19 transmission by reducing the number of asylum-seekers being held in congregate settings. For instance, a 2019 study found that of several hundred asylum-seekers at the Mexico-U.S. border under the Migrant Protection Protocols, 91.9 percent had “family or close friends” they could stay with in the United States instead of in a congregate setting.¹⁶ As such, many asylum-seekers do not necessarily need to be held in overcrowded congregate settings either in the U.S. or especially across the border where mitigation measures, such as COVID-19 testing, masking, vaccination,

¹⁴ See generally Elizabeth K. Singer *et al.*, *The Impact of Immigration Detention on the Health of Asylum Seekers During the COVID-19 Pandemic*, 2 SSM – Qualitative Research in Health (2022).

¹⁵ 8 CFR § 212.5 - Parole of aliens into the United States, <https://www.law.cornell.edu/uscode/text/8>.

¹⁶ U.S. Immigration Policy Center, UC San Diego, “Seeking Asylum: Part 2” (Oct. 29, 2019), <https://usipc.ucsd.edu/publications/usipc-seeking-asylum-part-2-final.pdf>.

social distancing, and quarantining, are often not available to facilitate their safe processing.¹⁷ This fact was apparent in the CDC’s Title 42 termination order, which expressly contemplates the use of various mitigation measures, but was ignored by the court below.¹⁸

III. WHILE NOT SERVING THE PURPOSE OF PROTECTING PUBLIC HEALTH, TITLE 42 EXPULSIONS HAVE PERVERSELY RESULTED IN HARM TO THE HEALTH, SAFETY, AND WELL-BEING OF ASYLUM-SEEKERS

In 2019, prior to the implementation of the Title 42 restrictions on entry, approximately 46,000 individuals were granted asylum.¹⁹ A study conducted by researchers from Harvard University in 2021 found that 34% of asylum-seekers reported being victims of intra-family violence, 25% were fleeing violence due to their political activities, and 23% reported being

¹⁷ See e.g., Columbia Mailman School of Public Health, *et al.*, *Public Health Recommendations for Processing Families, Children and Adults Seeking Asylum or Other Protection at the Border* (Dec. 2020), https://www.publichealth.columbia.edu/sites/default/files/public_health_recommendations_for_processing_families_children_and_adults_seeking_asylum_or_other_protection_at_the_border_dec2020_0.pdf; *Letter from Epidemiologists and Public Health Experts to CDC Director and HHS Secretary* (Columbia Mailman School of Public Health, Sept. 1, 2021), <https://www.publichealth.columbia.edu/node/76271>; *January 2022 Letter on Vaccination at the Southern Border* (Columbia Mailman School of Public Health, Jan. 28, 2022), <https://www.publichealth.columbia.edu/research/program-forced-migration-and-health/january-2022-letter-vaccination-southern-border>.

¹⁸ CDC Public Health Determination and Termination of Title 42 Order (Apr. 1, 2022); <https://www.cdc.gov/media/releases/2022/s0401-title-42.html>

¹⁹ U.S. Department of Homeland Security (2019), “Refugees and Asylees: 2019”, https://www.dhs.gov/sites/default/files/publications/immigration-statistics/yearbook/2019/refugee_and_asylee_2019.pdf.

victims of gang violence.²⁰ Despite these known egregious conditions deserving of asylum, Title 42 has since reduced warranted grants of asylum to a trickle.²¹

Moreover, as a result of the implementation of the Title 42 policy, multiple studies have made clear that Title 42 has placed many asylum-seekers at increased risk of harm, violence and trauma. Often neither native to Mexico nor having ways to provide for their own safe shelter, food or healthcare, many asylum-seekers are forced to wait in remote, unsafe locations until they can receive a hearing in the U.S. Indeed, considerable data indicates that asylum-seekers have even been expelled to remote locations that are *not* official U.S.-Mexico repatriation points, and which, therefore, lack the resources (e.g., shelter and humanitarian assistance) necessary to ensure their safety.²²

In a study by amicus PHR, many asylum-seekers described how U.S. officials expelled them under extremely dangerous conditions. In particular,

²⁰ N. Sreshta, N.A. Patel, R.P. Marlin, and J.W. Boyd, *Who Seeks Asylum in the United States and Why? Some Preliminary Answers from a Boston-Based Study* (2021), <https://bioethics.hms.harvard.edu/journal/displacement-crisis#:~:text=Two%2Dthirds%20of%20individuals%20had,feared%20intrafamily%20or%20gang%20violence>,

²¹ Kira Monin, Jeanne Batalova, and Tianjian Lai, *Refugees and Asylees in the United States*, Migration Policy Institute (May 13, 2021), <https://www.migrationpolicy.org/article/refugees-and-asylees-united-states-2021>.

²² HRF, Failure to Protect Rep. at 9.

several asylum-seekers reported being expelled to border towns in Mexico late at night when they would be much less likely to be able to reach a shelter and were at increased risk of targeting by cartels. These late-night expulsions occurred even with children.²³ Other reports indicate that women and newborn infants have been forced to sleep under trees or in the streets in areas dominated by criminal organizations.²⁴

The fact that asylum-seekers have been subjected to devastating violence and trauma after being expelled from the U.S. into unsafe conditions in Mexico is well-documented. To date, immigrant rights groups have described *thousands* of attacks on asylum-seekers after Title 42 expulsion orders.²⁵ Among other attacks, asylum-seekers have reported experiencing physical violence, sexual exploitation and attacks, and

²³ PHR, Title 42 Rep. at 22. One asylum seeker interviewed by PHR described his exchange with a U.S. border official while being expelled to Ciudad Juárez at night: “At 1 a.m. they left us at the bridge in Juárez. I asked them why they would throw us to the streets at night with children, and an agent said, ‘That’s your problem, that is not my problem.’ There was no reason to treat us this way. We are humans too.”

²⁴ *Id.*

²⁵ See PHR, Title 42 Rep. at 7-8; HRF, Failure to Protect Rep. at 2, 7-10; Human Rights First *et al.*, *Extending Title 42 Would Escalate Dangers, Exacerbate Disorder, and Magnify Discrimination* (Apr. 27, 2022), available at <https://www.humanrightsfirst.org/resource/extending-title-42-would-escalate-dangers-exacerbate-disorder-and-magnify-discrimination> [hereinafter “HRF, Extending Title 42 Rep.”]; Human Rights First, *Tracker of Reported Attacks During the Biden Administration Against Asylum Seekers and Migrants Who Are Stranded in and/or Expelled to Mexico* (Sept. 17, 2021), <https://www.humanrightsfirst.org/sites/default/files/AttacksonAsylumSeekersStrandedinMexicoDuringBidenAdministration.10.21.2021.pdf>; see also Beckett, *Misusing Public Health as a Pretext to End Asylum*.

kidnapping.²⁶ Extortion also has been frequently reported, as criminal elements have sought to exploit the vulnerability of asylum-seekers expelled back into Mexico.²⁷ In some instances, these attacks followed immediately after expulsion from the U.S., as is the case of one 10-year-old boy and his mother who were reportedly kidnapped in Mexico just hours after being expelled from the U.S.²⁸

In a survey conducted from mid-February through early April 2021 in Baja, California, 81 percent of LGBTQ asylum-seekers reported having been

²⁶ See, e.g., PHR, Title 42 Rep. at 8; *Id.* At 12 (In semi-structured interviews conducted by a PHR research team in Tijuana and Ciudad Juárez, Mexico with 28 asylum-seekers expelled under the Title 42 Orders, with five of the 28 reporting being kidnapped after being expelled. For example, one mother “described being kidnapped by ‘the Mafia,’ who locked her and her children in a room and threatened to keep them captive until they paid a ransom; when it was clear that she had no money to pay them, they forced her to work for them, not allowing her or her children any food. She said she was kidnapped with a group of other migrants who were also mistreated. “There was a girl there that they raped. My daughter has breasts already so I was very afraid that they would do something to her. Every time I left to work, I asked God to watch over my children. I was afraid that they would turn us into slaves. Whenever I saw my son talking to them, I was afraid that the coyotes would recruit my son as a drug smuggler.”)

²⁷ *Id.* at 12-13 (For example, “[s]ix asylum seekers described being extorted and threatened after they were expelled to Mexico, even if they moved or were expelled to different cities in Mexico. One father stated, ‘In Juárez, I received a message from an unknown male demanding that I pay \$2,000 or he would kill me and my child. I paid all the money due to fear, and now I do not have any money. Now the person is sending me WhatsApp messages demanding money once again; he says that he knows I am in Tijuana, and if I do not pay, he says that he will kill me and my child.’”).

²⁸ Kevin Sieff and Ismael López Ocampo, “Migrant Boy Found Wandering Alone in Texas Had Been Deported and Kidnapped.” *The Washington Post* (Apr. 9, 2021), <https://www.washingtonpost.com/world/2021/04/09/migrant-boy-found-wandering-alone-texas-had-been-deported-kidnapped/>.

the victim of an attack or attempted attack in Mexico.²⁹ They and other asylum-seekers expelled to Mexico have stated that Mexican authorities are unable to provide them access to adequate protection.³⁰ In fact, some asylum-seekers have reported that Mexican federal authorities themselves extorted families expelled from the U.S.³¹ Finally, in a clear violation of international law, some individuals who have sought asylum in the U.S. have even been returned to the very countries from which they fled persecution in the first place.³²

Health care workers have not only corroborated the high levels of violence against migrants in northern Mexico,³³ they have reported that asylum-seekers expelled from the U.S. have been forced to live in increasingly unsafe and unsanitary conditions.³⁴ This includes observing “increasing dehydration, malnutrition and infectious diseases associated with overcrowding.”³⁵ For example, at one encampment in Tijuana, residence to approximately 2,000 asylum-seekers, “there are no formal sanitation

²⁹ HRF, Failure to Protect Rep. at 2.

³⁰ *Id.* at 13.

³¹ *Id.*

³² See HRF, Failure to Protect Rep. at 6-7.

³³ PHR, Title 42 Rep. at 14.

³⁴ Psyche Calderon, *et. al.*, *Op-Ed: A Trump-era pandemic policy is undermining public health at the border. Biden must end it*, L.A. Times (May 27, 2021), <https://www.latimes.com/opinion/story/2021-05-27/title-42-border-immigration>.

³⁵ *Id.*

facilities” and “gastrointestinal illnesses are causing severe illness in newborns and young children.”³⁶

Health care workers have also corroborated the profoundly negative effects which Title 42 expulsions have had on the mental health of asylum seekers.³⁷ Close to 80% of migrants receiving medical treatment from Doctors without Borders/Medecins Sans Frontieres at border locations in Nuevo Laredo, Mexico, reported being victims of violence, with many experiencing depression, severe anxiety, and post-traumatic stress.³⁸

Finally, asylum-seekers expelled under the Title 42 Orders have reported being forcibly separated from family members by border officials.³⁹ Title 42 expulsions have also separated non-parent caregivers from young family members with whom they were traveling to the U.S.⁴⁰ These family separations have had devastating effects on children and families, including

³⁶ *Id.*

³⁷ *Id.* at 31-32.

³⁸ Medecins Sans Frontieres/Doctors Without Borders, *No Way Out: The Humanitarian Crisis for Migrants and Asylum Seekers Trapped Between the United States, Mexico and the Northern Triangle of Central America* (Feb. 2020), 6, 17, https://www.doctorswithoutborders.org/sites/default/files/documents/Doctors%20Without%20Borders_No%20Way%20Out%20Report.pdf.

³⁹ *Id.* at 22-26; *see also* HRF, Failure to Protect Rep. at 4.

⁴⁰ *See* PHR, Title 42 Rep. at 22-26. (For example, one 32-year-old man from El Salvador reported, “I begged them over and over not to separate me from my family. I thought they would not separate us because Biden said he would not separate families, but they separated me from my partner and child.”)

profound trauma, which has manifested, *inter alia*, as excessive crying, disturbed sleep, loss of developmental milestones (e.g., resumed bed wetting), and weight loss.⁴¹ Indeed, the persistent psychological effects of the trauma inflicted through family separation have been well-documented by multiple studies.⁴²

IV. THE DISTRICT COURT’S PURPORTED CITATION TO “SAFETY VALVES” IN TITLE 42 ARE WOEFULLY INADEQUATE TO REDRESS THE ADVERSE PUBLIC HEALTH CONSEQUENCES FOR ASYLUM-SEEKERS

Prior to Title 42, asylum-seekers encountered at the border were processed and screened pursuant to Title 8 of the U.S. Code addressing “Aliens and Nationality.” Under Title 8, if an asylum-seeker was determined to have a credible fear of persecution or other threats in their home country, the asylum-seeker could either be held in custody or released into the U.S. until their case would be heard in immigration court.

The district court acknowledged that its injunction would “indisputably impact the operation of the immigration system under Title 8,” however, the court summarily and in the view of *amicus curiae* incorrectly

⁴¹ *Id.* at 30-31.

⁴² *See, e.g.*, PHR, Tortured Survivors of Family Separation Rep.; PHR, Psychological Effects of Family Separation Rep.; *see also* Kathryn Hampton *et al.*, *The Psychological Effects of Forced Family Separation on Asylum-Seeking Children and Parents at the US-Mexico Border: A Qualitative Analysis of Medico-Legal Documents*, PLOS One (Nov. 24, 2021), <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0259576>.

concluded that this would be “ameliorated by certain exceptions and ‘safety valves’” in the Title 42 Orders, which “grant DHS discretion to accept non-citizens from the impact of the orders on a case-by-case basis.” These exceptions, according to the court, would be triggered by “consideration of significant law enforcement, officer and public safety, humanitarian and public health interests.” Dkt. 90 at 45.

In reaching this conclusion, the district court ignored substantial evidence establishing that these purported “safety valves” are woefully and tragically inadequate. In fact, it is unequivocally clear that asylum-seekers continue to be subjected to substantial harm as a result of Title 42 expulsions despite the represented “safety valves.” The reason for this is simple – for the most part, in practice these “safety valves” are ignored.

For example, in one study, “[n]one of the more than 150 asylum seekers . . . interviewed . . . was referred to apply for asylum or given a protection screening by U.S. immigration officers before being expelled under [the Title 42 Orders].”⁴³ As a result of the failure to screen for humanitarian exemptions, individuals facing “imminent threats and medical

⁴³ HRF, Failure to Protect Rep. at 3.

emergencies” are being expelled and deprived of life-saving refuge and care.⁴⁴

There are also numerous examples of necessary medical care being denied by CBP despite well-founded humanitarian exemption requests. One particularly egregious example was when “[i]n March 2022, CBP turned away a Nigerian asylum seeker with urgent medical needs. The man had been shot multiple times in Mexico, required a colostomy ... and urgently needed medical treatment unavailable in Tijuana.”⁴⁵ As another example, “[i]n March 2022, CBP officers turned away a Mexican asylum seeker and her children who fled Guerrero after the woman’s husband and teenage son were murdered. The woman brought photos of the chopped-up bodies of her loved ones as evidence of the danger the family had fled. ‘I’m not here because I want to be here. I’m here to save the lives of my children,’ she told the San Diego Union Tribune.”⁴⁶ Moreover, “[s]ince early April 2022, CBP officers have cited Title 42 to turn away all 15 of the primarily Central American and Mexican asylum-seekers, including those facing imminent threats in Tijuana, who were accompanied by Al Otro Lado to seek asylum. On several occasions, CBP officers threatened to call Mexican police to

⁴⁴ HRF, Extending Title 42 Rep. at 2.

⁴⁵ *Id.* at 4.

⁴⁶ *Id.*

remove the asylum-seekers from the international border line area where CBP officers block asylum seekers from reaching the U.S. port of entry to request asylum.”⁴⁷

As the above demonstrates, asylum-seekers have been subjected to substantial harm through both the Title 42 process of expulsion and, as a result, the unsafe, inhumane conditions into which they have been expelled. The obvious solution is not to ignore this humanitarian disaster by pointing to the purported “safety valves,” as the district court does. Rather, the solution is to remedy the gross human rights violations attendant to the implementation of the Title 42 Order. This can only be accomplished by the termination of the Title 42 Order, which has been inflicting – and continues to inflict – irreparable harm.

⁴⁷ *Id.* at 4-5.

CONCLUSION

For the foregoing reasons, the court should vacate the district court's preliminary injunction.

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Respectfully submitted,

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I HEREBY CERTIFY that on August 1, 2022, the foregoing document was served on all parties or their counsel of record through CM/ECF system.

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