

# **Exhibit A**

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IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

East Bay Sanctuary Covenant, *et al.*,

*Plaintiffs,*

v.

William P. Barr, *et al.*,

*Defendants.*

CASE NO.: 3:19-CV-04073-JST

**BRIEF OF AMICI CURIAE NON-PROFIT  
ORGANIZATIONS AND LAW SCHOOL  
CLINICS IN SUPPORT OF PLAINTIFFS'  
MOTION TO CONSIDER  
SUPPLEMENTAL EVIDENCE AND  
RESTORE THE NATIONWIDE SCOPE  
OF THE INJUNCTION**

**IMMIGRATION ACTION**

## INTRODUCTION AND INTEREST OF AMICI CURIAE

This brief explains why this Court was correct to enjoin the third country asylum rule and why anything other than a nationwide injunction will cause substantial harm to the Plaintiffs and to thousands of migrants in desperate need of protection.

The current Administration has displayed a singular focus over the last two years—to dismantle the U.S. asylum system by executive fiat in circumvention of the law and constitutionally mandated separation of powers. Its previous attempts to thwart the will of Congress and slam the United States’ doors on the persecuted have rightly been blocked by the courts, including this one. *See, e.g., E. Bay Sanctuary Covenant v. Trump*, 349 F. Supp. 3d 838 (N.D. Cal. 2018) (enjoining rule banning asylum for individuals who cross the border outside a port of entry); *O.A. v. Trump*, No. 18-2838, 2019 WL 3536334 (D.D.C. Aug. 2, 2019) (same); *J.O.P. v. U.S. Dep’t of Homeland Sec.*, No. GJH-19-1944, 2019 WL 3536786 (D. Md. Aug. 2, 2019) (enjoining policy stripping unaccompanied children from having their claims first heard in a non-adversarial setting); *Grace v. Whitaker*, 344 F. Supp. 3d 96 (D.D.C. 2018) (enjoining policy categorically foreclosing protection to certain groups of asylum seekers in expedited removal), *appeal docketed*, No. 19-5013 (D.C. Cir. Jan. 30, 2019). Its latest attempt to render ineligible for asylum individuals who transited through a third country before seeking protection at the southern border fared no better before this Court, which correctly enjoined the rule as inconsistent with existing asylum laws that only authorize sending asylum seekers to third countries in limited circumstances—where a Safe Third Country Agreement exists or the applicant is firmly resettled—to ensure “we do not deliver aliens into the hands of their persecutors.” *E. Bay Sanctuary Covenant v. Barr*, 385 F. Supp. 3d 922, 958 (N.D. Cal. 2019).

If permitted to take effect, the rule will have severe consequences across the country, eliminating a critical form of protection with life or death consequences for people long recognized as meriting asylum and violating the United States’ treaty obligations to administer protection without discrimination and to avoid “in any manner whatsoever” returning individuals

1 to danger. Convention Relating to the Status of Refugees, art. 33, ¶ 1, 198 U.N.T.S. 150, 176  
 2 (July 28, 1951) (Refugee Convention).

3 Amici curiae<sup>1</sup> are twenty-four non-profit organizations and law school clinics that  
 4 represent asylum seekers across the country. Of the thousands of asylum seekers they represent, a  
 5 substantial portion of them sought safe haven at the U.S.-Mexico border and would be barred  
 6 from protection from having transited through a third country under the Administration's latest  
 7 unlawful attempt to eviscerate the U.S. asylum system as we have known it for the last four  
 8 decades. Amici thus have a strong interest in the scope of this Court's rightful injunction of this  
 9 unlawful policy; and in the proper application of federal laws to ensure they are applied uniformly  
 10 and afford the right to asylum protection as widely as Congress intended and the United States'  
 11 international obligations require.<sup>2</sup>

12 Amici respectfully urge this Court to issue a new nationwide injunction based on the  
 13 Plaintiffs' supplemented record to ensure uniform administration of our immigration statutes and  
 14 to stop this cruel and unlawful policy that strikes at the core of the United States' fundamental  
 15 values and longstanding laws.

## 16 ARGUMENT

### 17 **I. The Third Country Asylum Rule Would Eliminate Asylum for the Very People U.S.** 18 **Laws Have Long Protected and Result in Refoulement of Bona Fide Refugees.**

19 Because this Court has already correctly concluded that the new rule is likely unlawful,  
 20 amici provide only a brief overview of the merits.<sup>3</sup>

21 Individuals seeking asylum at the United States' southern border are fleeing gender-based  
 22 violence, violence perpetrated by gangs, and politically, racially and religiously motivated

23 <sup>1</sup> Amici are listed and described in the accompanying Motion for Leave to File this Amicus Brief.

24 <sup>2</sup> The parties consent to this filing. Defendants' consent is contingent upon this brief being filed  
 25 today, August 19, 2019, and Defendants further reserve the right to raise challenges to the brief's  
 26 claims. No person or entity other than amici authored or contributed funds intended for its  
 preparation or submission.

27 <sup>3</sup> Amici agree with Plaintiffs' clear and cogent arguments, not repeated in this brief, regarding the  
 28 inconsistency between the rule and the Safe Third Country and firm resettlement statutory  
 provisions.

1 persecution, among other heinous acts. *See, e.g.*, Administrative Record (AR) 293-95. There are  
 2 many reasons asylum seekers fleeing this sort of violence are often unable to take a direct route to  
 3 the United States, including the exigent circumstances of their flight and the lack of visas that  
 4 would permit them to board a plane to the U.S. to seek asylum. The immigration agency and the  
 5 courts have recognized this reality—that asylum seekers may pass through multiple countries  
 6 while searching for refuge but continue on to the United States because they cannot find safety in  
 7 the transited countries, or because they wish to reunify with family in the United States. *See, e.g.*,  
 8 *Gulla v. Gonzales*, 498 F.3d 911, 917 (9th Cir. 2007); *Matter of Pula*, 19 I&N Dec. 467, 474  
 9 (B.I.A. 1987).

10 Since passage of the Refugee Act in 1980, these individuals have been eligible for asylum  
 11 so long as they satisfy the stringent burden of establishing they meet the definition of a refugee.  
 12 *See* 8 U.S.C. §§ 1101(a)(42), 1158. The Administration aims to uproot Congress’ long held and  
 13 unambiguous intent regarding the scope of the United States’ asylum laws. Under the new rule,  
 14 asylum seekers who fail to apply for protection from persecution or torture in at least one country  
 15 before coming to the United States “shall be found ineligible for asylum,” subject to only limited  
 16 exceptions. 8 C.F.R. § 208.13(c)(4). This complete ban would eviscerate the U.S. asylum system,  
 17 stripping this life saving protection for all non-Mexican asylum seekers entering at the southern  
 18 border, who necessarily will have transited through a third country.

19 The practical effect of this rule would be to force asylum seekers to seek protection in  
 20 Mexico or Guatemala, which will undoubtedly result in U.S. violations of the duty of non-  
 21 refoulement wherever it is permitted to take effect. Refugee Convention, Article 33.1. News  
 22 outlets, human rights organizations, the U.N. High Commissioner for Refugees (UNHCR), and  
 23 the U.S. government have all documented the extreme dangers for migrants and shortcomings of  
 24 the asylum processes in both countries. *See, e.g.*, AR 636-37 (Wall Street Journal article); 700  
 25 (Reuters article), 703 (Human Rights First Factsheet), 721-24 (Amnesty International report).  
 26 Moreover, the rule violates the principle of non-discrimination found in Article 3 of the Refugee  
 27 Convention and the U.S. refugee protection system by precluding from asylum protection any  
 28

1 non-Mexican fleeing persecution who is unable to enter by air, or sea, and therefore arrives at a  
 2 land port of entry. *See Bringas-Rodriguez v. Sessions*, 850 F.3d 1051, 1059-60 (9th Cir. 2017) (en  
 3 banc) (examining history of the Refugee Act leading to the “nondiscriminatory definition of  
 4 refugee”). In doing so, it clearly places cruel and manifestly unsafe obstacles in front of asylum  
 5 seekers traveling by land from non-contiguous countries. Like its previous policies intent on  
 6 eliminating the United States’ asylum system by decree, the Administration’s new rule is patently  
 7 unlawful in flagrant violation of the United States’ bedrock domestic and international obligations  
 8 to protect the persecuted.

## 9 **II. A Nationwide Injunction is Necessary to Avert the Grave Consequences of** 10 **Permitting Third Country Asylum Rule to Take Effect.**

11 The third country asylum rule will cause harm to asylum seekers and their representatives  
 12 across the country. To start, applying a different rule within the Ninth Circuit is not administrable  
 13 given that asylum seekers, in amici’s vast experience, often do not appear in the same jurisdiction  
 14 throughout the life of their case. Even though an asylum seeker may seek protection at a border  
 15 point within the Ninth Circuit, for example, she may be transferred to a detention center in New  
 16 Jersey and then, if able to secure release, end up before an immigration judge in Florida (and even  
 17 later move and change venue to California). Moreover, ensuring that asylum seekers moving  
 18 across jurisdictions have accurate information as to their eligibility for protection will be  
 19 extremely difficult, made exponentially more so for those without an attorney. As many courts  
 20 have recognized, asylum law, including its accompanying procedures, is one of the most complex  
 21 areas of U.S. law and availability of this protection should not be left to chance. Moreover,  
 22 offering asylum in one jurisdiction but denying that same life-saving protection in the rest of the  
 23 country violates the important principle of uniformity, as well as the United States’ domestic and  
 24 international obligations.

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## CONCLUSION

Amici support the issuance of a nationwide injunction, and they respectfully request that the Court grant Plaintiffs' request.

Dated: August 19, 2019

Respectfully submitted,

/s/ Blaine Bookey

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New York, New York

Center for Gender & Refugee Studies  
San Francisco, California

Centro Legal de La Raza  
Oakland, California

Community Justice Alliance  
Sacramento, California

Community Legal Services in East Palo Alto  
East Palo Alto, California

Dolores Street Community Services  
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HIAS  
Silver Spring, Maryland

Human Rights Initiative of North Texas  
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Immigrant Legal Defense  
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Immigrant Legal Resource Center  
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Immigration and Human Rights Clinic, University of the District of Columbia Law School  
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International Refugee Assistance Project, Inc.  
New York, New York

International Rescue Committee (IRC)  
New York, New York

Loyola Immigrant Justice Clinic  
Los Angeles, California

National Justice For Our Neighbors  
Annandale, Virginia

1 National Survivor Network  
2 Los Angeles, California

3 Pangea Legal Services  
4 San Francisco, California

5 Program for Torture Victims (PTV)  
6 Los Angeles, California

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8 Los Angeles, California

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13 UC Davis Immigration Law Clinic  
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