

1 MAYER BROWN LLP
 2 Matthew H. Marmolejo (CA Bar No. 242964)
 3 *mmarmolejo@mayerbrown.com*
 350 S. Grand Avenue
 25th Floor
 Los Angeles, CA 90071-1503
 4 Ori Lev (DC Bar No. 452565)
 5 *olev@mayerbrown.com*
 Stephen M. Medlock (VA Bar No. 78819)
 6 *smedlock@mayerbrown.com*
 1999 K Street, N.W.
 Washington, D.C. 20006
 7 Telephone: +1.202.263.3000
 Facsimile: +1.202.263.3300

8
 9 SOUTHERN POVERTY LAW CENTER
 Melissa Crow (DC Bar No. 453487)
 10 *(pro hac vice)*
 11 *melissa.crow@splcenter.org*
 1101 17th Street, N.W., Suite 705
 Washington, D.C. 20036
 Telephone: +1.202.355.4471
 12 Facsimile: +1.404.221.5857

13 *Additional counsel listed on next page*
 14 Attorneys for Plaintiffs

15 **UNITED STATES DISTRICT COURT**
 16 **SOUTHERN DISTRICT OF CALIFORNIA**

17 Al Otro Lado, Inc., *et al.*,

18 Plaintiffs,

19 v.

20 Chad F. Wolf,¹ *et al.*,

21 Defendants.

Case No.: 17-cv-02366-BAS-KSC

**MEMORANDUM IN SUPPORT OF
 PLAINTIFFS' *EX PARTE*
 EMERGENCY MOTION TO
 ENFORCE PRELIMINARY
 INJUNCTION AND
 TEMPORARILY ENJOIN
 REMOVAL OF PRELIMINARY
 INJUNCTION CLASS MEMBER**

PORTIONS FILED UNDER SEAL

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 27 _____
 28 ¹ Acting Secretary Wolf is automatically substituted for former Acting Secretary
 McAleenan pursuant to Fed. R. Civ. P. 25(d).

1 CENTER FOR CONSTITUTIONAL RIGHTS

2 Baher Azmy (NY Bar No. 2860740) (*pro hac vice*)

3 *bazmy@ccrjustice.org*

4 Ghita Schwarz (NY Bar No. 3030087) (*pro hac vice*)

5 *gschwarz@ccrjustice.org*

6 Angelo Guisado (NY Bar No. 5182688) (*pro hac vice*)

7 *aguisado@ccrjustice.org*

8 666 Broadway, 7th Floor

9 New York, NY 10012

10 Telephone: +1.212.614.6464

11 Facsimile: +1.212.614.6499

12 SOUTHERN POVERTY LAW CENTER

13 Sarah Rich (GA Bar No. 281985) (*pro hac vice*)

14 *sarah.rich@splcenter.org*

15 Rebecca Cassler (MN Bar No. 0398309) (*pro hac vice*)

16 *rebecca.cassler@splcenter.org*

17 150 E. Ponce de Leon Ave., Suite 340

18 Decatur, GA 30030

19 Telephone: +1.404.521.6700

20 Facsimile: +1.404.221.5857

21 AMERICAN IMMIGRATION COUNCIL

22 Karolina Walters (DC Bar No. 1049113) (*pro hac vice*)

23 *kwalters@immcouncil.org*

24 1331 G St. NW, Suite 200

25 Washington, D.C. 20005

26 Telephone: +1.202.507.7523

27 Facsimile: +1.202.742.5619

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INTRODUCTION

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2 [REDACTED] (“Applicant”), an Al
3 Otro Lado (AOL) class member, is scheduled to be deported to Cameroon as soon
4 as midnight Central Time tonight in plain violation of this Court’s November 19,
5 2019 preliminary injunction (“AOL PI”). Plaintiffs respectfully request
6 immediate and emergency Court intervention to stay her removal until this Court
7 and Plaintiffs receive proof that she has received a credible fear determination
8 based on the merits of her asylum claim (i.e., without application of the Asylum
9 Transit Ban).²

10 On November 19, 2019, this Court issued a preliminary injunction that
11 prohibits Defendants from applying the Asylum Transit Ban, 84 Fed. Reg. 33,829
12 (July 16, 2019), codified at 8 C.F.R. §§ 208.13(c)(4), 1208.13(c)(4), to “all non-
13 Mexican asylum seekers who were unable to make a direct asylum claim” at a
14 port of entry before July 16, 2019 “because of the U.S. Government’s metering
15 policy, and who continue to seek access to the U.S. asylum process.” Dkt. 330 at
16 36.³ Because Applicant was unable to seek asylum prior to July 16, 2019 because
17 of the U.S. Government’s metering policy, placed her name on the waiting list on
18 June 5, 2019, and was not inspected and processed at the San Ysidro port of entry
19 until July 29, 2019, she is entitled to the protections of the preliminary injunction.
20 Nevertheless, Plaintiffs understand that the Government intends to remove her as

21
22 ² Because Plaintiffs are seeking emergency *ex parte* relief, Plaintiffs understand
23 that this motion does not require a conference of counsel under this Court’s
24 Standing Order for Civil Cases § 4.A. Plaintiffs have nevertheless contacted
25 Defendants’ counsel to seek the possibility of relief without court intervention. To
26 the extent a conference is required, Plaintiffs respectfully request that the Court
27 waive the requirement that the conference take place seven days prior to the filing
28 of the motion.

25 ³ On March 5, 2020, the Ninth Circuit denied Defendants’ motion to stay the
26 preliminary injunction pending appeal and dissolved its prior administrative stay of
27 the injunction. The government’s appeal of the preliminary injunction remains
28 pending before the Ninth Circuit, and the preliminary injunction remains in effect.
Separately, the United States District Court for the District of Columbia has
vacated the Asylum Transit Ban. *See CAIR v. Trump*, 2020 WL 3542481 (D.D.C.
June 30, 2020).

1 soon as tonight without ever having made a credible fear determination based on
2 the merits of her claim. Ex 1, Declaration of Rebecca Cassler ¶ 4 (Cassler Decl.).

3 **FACTS**

4 Applicant, a Cameroonian national currently detained at the Prairieland
5 detention facility in Alvarado, TX, meets the facial requirements for class
6 membership and accordingly merits relief under the injunction. Applicant added
7 her name to the waiting list in Tijuana on June 5, 2019, and was issued #3295 on
8 the waitlist. *See* Cassler Decl. ¶ 3; Ex. 2, Declaration of Nicole Ramos ¶¶ 11, 17.
9 She was subsequently inspected and processed on or around July 29, 2019.
10 Cassler Decl., ¶ 3. Applicant was deemed to be ineligible for asylum based on 8
11 CFR 208.13(c)(4) (i.e., the Asylum Transit Ban) and thus received a negative
12 credible fear determination on October 23, 2019. *Id.* That determination was
13 affirmed by an immigration judge on November 14, 2019. *Id.*

14 On October 12, 2020, counsel for the government informed Plaintiffs’
15 counsel that Applicant “received a screening interview from USCIS” to
16 determine whether she was an AOL PI class member on March 25, 2020. Ex. 3,
17 Declaration of Melissa Crow ¶ 7 (Crow Decl.). Counsel for the government also
18 indicated that Applicant “did not establish during her screening interview that
19 she was subject to metering.” *Id.*, ¶ 9. Accordingly, the Government’s position
20 is that Applicant is not entitled to the protections of the preliminary injunction.

21 Applicant has indicated that the only additional “interview” she had with
22 the Government occurred in March and did not include any questions regarding
23 metering. *See* Cassler Decl., ¶ 3.

24 **DEFENDANTS SHOULD BE ENJOINED FROM REMOVING**
25 **APPLICANT TO CAMEROON**

26 In light of the above, it is clear that Applicant was subject to the
27 Government’s metering policy prior to July 16, 2019 and is entitled to the
28 protections of the preliminary injunction. It is also clear that—at least in this

1 instance—the Government’s screening process to identify AOL PI class members
2 failed. Plaintiffs’ counsel has provided the Government with evidence of
3 Applicant’s having been on the Tijuana waitlist prior to July 16, 2019, Crow Decl.
4 ¶ 4 , but the Government has not indicated that it would halt Applicant’s removal.

5 Accordingly, in order to prevent a violation of this court’s prior order,
6 Plaintiffs request an emergency order temporarily enjoining Applicant’s removal
7 until Defendants provide proof that Applicant has received a credible fear
8 determination on the merits of her case. *See Armstrong v. Brown*, 857 F. Supp.
9 2d 919, 950-51 (N.D. Cal. 2012) (granting motion to enforce injunction where
10 plaintiffs “submitted additional evidence of ongoing harm to class members” that
11 constituted “prima facie evidence that class members continued to suffer harm as
12 Defendants delay their compliance with the Court’s order”).

13 **CONCLUSION**

14 For the reasons set forth above, Plaintiffs request that the Court grant the
15 instant motion.

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17 Dated: October 12, 2020

MAYER BROWN LLP
Matthew H. Marmolejo
Ori Lev
Stephen M. Medlock

20 SOUTHERN POVERTY LAW
21 CENTER
22 Melissa Crow
23 Sarah Rich
24 Rebecca Cassler

25 CENTER FOR CONSTITUTIONAL
26 RIGHTS
27 Baher Azmy
28 Ghita Schwarz
Angelo Guisado

AMERICAN IMMIGRATION

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COUNCIL
Karolina Walters

By: /s/ Ori Lev
Ori Lev

Attorneys for Plaintiffs

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 12, 2020 a copy of the foregoing joint status conference statement was served on all counsel of record via CM/ECF.

s/Ori Lev
Ori Lev