

No. 22-30303

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

STATE OF LOUISIANA, *et al.*,

Plaintiffs–Appellees,

versus

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

Defendants–Appellants,

INNOVATION LAW LAB,

Movant–Appellant.

On Appeal from the U.S. District Court for the Western District of Louisiana,
Lafayette Division, No. 6:22-CV-885

**BRIEF OF *AMICI CURIAE* LEGAL SERVICE AND ADVOCACY
ORGANIZATIONS IN SUPPORT OF REVERSAL**

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SUPPLEMENTAL CERTIFICATE OF INTERESTED PERSONS

Pursuant to Fifth Circuit Rule 29.2, the undersigned counsel of record certifies that—in addition to the persons and entities listed in the Appellants’ Certificates of Interested Persons—the following listed persons and entities as described in the fourth sentence of Fifth Circuit Rule 28.2.1 have an 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.

Amici Curiae

ADL (Anti-Defamation League)
Aldea – The People’s Justice Center
American Immigration Council
Asylum Seeker Advocacy Project (ASAP)
AsylumWorks
Center for Victims of Torture
Central American Resource Center – CARECEN SF
Communities United for Status & Protection (CUSP)
Comunidad Mayan Pixan Ixim
Doctors for Camp Closure
Fellowship Southwest
Florence Immigrant & Refugee Rights Project
Franciscan Action Network
Haitian Bridge Alliance
Human Rights First
Immigrant Defenders Law Center
Immigrant Law Center of Minnesota
Immigration Equality
Interfaith Welcome Coalition of San Antonio
International Refugee Assistance Project
Justice Action Center
Just Neighbors Ministry
Justice for Our Neighbors El Paso

Justice For Our Neighbors of the Delaware Valley
Justice in Motion
Kino Border Institute
Latin American Working Group (LAWG)
Migrant Center for Human Rights
Oasis Legal Services
Oxfam America
Quixote Center
RAICES
Save the Children
Sisters of Mercy of the Americas Justice Team
Southern Poverty Law Center
Tahirih Justice Center
Unitarian Universalists for Social Justice
We Are All America
Witness at the Border
Women's Refugee Commission
Young Center for Immigrant Children's Rights

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, *Amici* state that they do not have parent corporations. No publicly held corporation owns 10 percent or more of the stock of any of the *Amici*.

Respectfully submitted,

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IDENTITY AND INTERESTS OF *AMICI CURIAE*

Amici Curiae are 41 legal service and advocacy organizations who serve immigrant communities throughout the country, including in Louisiana, Mississippi, and Texas, and along the border in Arizona and California. Collectively, through providing direct services and legal services, *Amici* serve tens of thousands of immigrants annually, including clients who have been subject to the summary expulsions under Title 42. *Amici* have a strong interest in the swift end of Title 42 expulsions, which sharply limit the ability of migrants fleeing violence and persecution to access a legal process afforded to them by federal law. In light of their experience working with individuals subject to the Title 42 Order, *Amici* can offer the Court a unique perspective as to the public interest and why it overwhelmingly disfavors injunction of Defendants' decision to stop summarily expelling migrants on purported public health grounds, particularly at this point in the pandemic. Although *Amici* agree with Appellants that the Plaintiff States failed to establish the other requisites for injunctive relief, this brief is limited to explaining how the district court erred in concluding that the public interest supports the preliminary injunction.

A complete list of *Amici Curiae* appears below:

ADL (Anti-Defamation League)
Aldea – The People's Justice Center
American Immigration Council
Asylum Seeker Advocacy Project (ASAP)
AsylumWorks
Center for Victims of Torture

Central American Resource Center – CARECEN SF
Communities United for Status & Protection (CUSP)
Comunidad Mayan Pixan Ixim
Doctors for Camp Closure
Fellowship Southwest
Florence Immigrant & Refugee Rights Project
Franciscan Action Network
Haitian Bridge Alliance
Human Rights First
Immigrant Defenders Law Center
Immigrant Law Center of Minnesota
Immigration Equality
Interfaith Welcome Coalition of San Antonio
International Refugee Assistance Project
Justice Action Center
Just Neighbors Ministry
Justice for Our Neighbors El Paso
Justice For Our Neighbors of the Delaware Valley
Justice in Motion
Kino Border Institute
Latin American Working Group (LAWG)
Migrant Center for Human Rights
Oasis Legal Services
Oxfam America
Quixote Center
RAICES
Save the Children
Sisters of Mercy of the Americas Justice Team
Southern Poverty Law Center
Tahirih Justice Center
Unitarian Universalists for Social Justice
We Are All America
Witness at the Border
Women’s Refugee Commission
Young Center for Immigrant Children’s Rights

All parties have consented to the filing of this amicus brief. *See* Fed. R. App.

P. 29(a)(2) (permitting amicus filing where all parties consent).

Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), counsel for *Amici Curiae* hereby certifies that no counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No one other than *Amici Curiae* and their counsel made a monetary contribution to fund this brief's preparation or submission.

SUMMARY OF ARGUMENT

The district court erred in concluding that the public interest would be served by a preliminary injunction of the CDC’s April 1, 2022 Public Health Determination and Order (the “Termination Order”) winding down the federal government’s pandemic-based policy of summarily expelling from the United States migrants seeking to exercise their statutory and human right to seek refuge here from persecution and violence in their home countries. That error alone is sufficient to warrant reversing the district court and vacating its injunction, regardless of the presence or absence of the other preliminary injunction factors. *See Sepulvado v. Jindal*, 729 F.3d 413, 420 (5th Cir. 2013) (reversal on one preliminary injunction factor can warrant vacating injunction without need to address the other factors).

Both the Supreme Court and the Fifth Circuit have long emphasized that when “employing the extraordinary remedy of injunction,” courts must consider the consequences to the public generally, and not just to the litigants, when deciding whether an injunction would disserve the public interest. *Winter v. Natural Res. Def. Council*, 555 U.S. 7, 24 (2008) (quoting *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982)); accord *Miss. Power & Light Co. v. United Gas Pipe Line Co.*, 760 F.2d 618, 625–26 (5th Cir. 1985). And as with the other injunction factors, plaintiffs seeking an injunction must “clearly carr[y] the burden of persuasion” on the public

interest factor. *Def. Distributed v. Dep't of State*, 838 F.3d 451, 457 (5th Cir. 2016) (citation omitted).

When the district court here assessed the public interest factor, it did not exhibit any consideration of the wide-ranging and profound impact an injunction would have on nonparty individuals and entities: no consideration of the impact on the vulnerable migrants subjected to the now-compelled expulsions; no consideration of the effect on U.S. citizens and noncitizens in the United States whose family members are being expelled back to dangerous circumstances; no consideration of the impact on civil society organizations on both sides of the Southern border; no consideration of the public interest in ensuring that the United States government is not returning migrants to harm, *see Nken v. Holder*, 556 U.S. 418, 436 (2009); and no consideration even of the public health consequences of the challenged public health order. All of these considerations were brought to the district court's attention. *See, e.g.*, Br. as Amici Curiae of 58 Legal Service and Advocacy Organizations Opposing Prelim. Inj., *Arizona v. CDC*, No. 6:22cv885 (W.D. La. filed May 6, 2022), ECF No. 50; Br. as Amici Curiae of Center for Human Rights & Constitutional Law et al. Opposing Prelim. Inj., *Arizona v. CDC*, No. 6:22cv885 (W.D. La. filed May 12, 2022), ECF No. 72.

Within a nearly 50-page opinion, the district court devoted a quarter page to the public interest factor, and just one sentence explaining its conclusion that the

Plaintiff States had carried their burden. ROA 3850. The district court held that the public interest factor was met because (1) an injunction would save the Plaintiff States some healthcare and education costs because fewer migrants would be able to reside in the states, since more would be expelled instead of being subjected to the normal immigration process that was created by statute and in effect for decades prior to the pandemic; and (2) the Plaintiff States are likely to succeed in showing a notice-and-comment violation. *Id.* (“Given the impact of the Termination Order on the Plaintiff States and their showing that the CDC did not comply with the APA, the Court concludes that the public interest would be served by a preliminary injunction preventing the termination of the CDC’s Title 42 Orders.”). In other words, to find the public interest factor met, the district court simply repeated its conclusions about the first two preliminary injunction factors.

The district court’s failure to consider the impact the injunction would have on nonparties was erroneous as a matter of law. *See Winter*, 555 U.S. at 24 (requiring “particular regard for the public consequences” of injunctions); *cf. Sepulvado*, 729 F.3d at 420 (reversing an injunction “grounded in erroneous legal principles”) (citation omitted). It was also an abuse of discretion. *See, e.g., McKinney ex rel. N.L.R.B. v. Creative Vision Res., LLC*, 783 F.3d 293, 298 (5th Cir. 2015) (“[a] district court abuses its discretion when i[t]. . . ignores or misunderstands the relevant evidence”) (citation omitted, first alteration in original). The district court must

therefore be reversed for confining its inquiry to just a subset of the relevant considerations, and for ignoring (or misunderstanding the relevance of) the substantial evidence of the adverse humanitarian impact of the two-year old policy of expelling migrants without process.

In fact, Title 42 expulsions have inflicted—and continue to inflict—an enormous human cost on both sides of the border. The district court’s injunction requires the Executive to subject migrants—including migrant families and migrants with family already in the United States—to dangerous and traumatic conditions in Mexico and/or in their home countries. Once the incalculable human cost exacted by the Title 42 expulsions—detailed below—are taken into consideration, there is no sound legal, moral, or humane argument that forcing the federal government to continue the policy and practice is in the public interest.

ARGUMENT

I. THE DISTRICT COURT ERRED IN CONCLUDING THAT THE PUBLIC INTEREST FAVORS AN INJUNCTION COMPELLING CONTINUED TITLE 42 EXPULSIONS

The district court’s analysis of the public interest was fatally flawed because it failed to account for the enormous human cost the policy inflicts. Just since President Biden was inaugurated, there have been more than 10,000 documented cases of violence against asylum seekers stuck in Mexico because of the Title 42

policy, including kidnapping, rape, torture, and other violent attacks.¹ Others are expelled to home countries subject to horrific violence, with disproportionate numbers of expulsions to Haiti notwithstanding international recognition of worsening conditions there.² The Title 42 policy's effective elimination of the statutory right to apply for asylum and the closure of U.S. ports of entry have also forced migrants desperately seeking safety to take more dangerous border crossing routes and to cross multiple times for the chance to request asylum; last year, at least 650 migrants died trying to enter the United States from Mexico—a record high.³ In late June, moreover, local authorities found dozens of dead and dying people in and around a tractor-trailer abandoned in the sweltering Texas heat on the outskirts of

¹ *Extending Title 42 Would Escalate Dangers, Exacerbate Disorder, and Magnify Discrimination*, Human Rights First (April 27, 2022), available at <https://www.humanrightsfirst.org/resource/extending-title-42-would-escalate-dangers-exacerbate-disorder-and-magnify-discrimination>.

² *The Nightmare Continues: Title 42 Court Order Prolongs Human Rights Abuses, Extends Disorder at U.S. Borders*, Human Rights First (June 2022) (documenting 10,318 reports of murder, kidnapping, and other violent attacks in Mexico against expelled migrants as well as disproportionate expulsions of Haitians at a time of “unimaginable and intolerable levels” of armed violence there), available at <https://www.humanrightsfirst.org/sites/default/files/NightmareContinues.pdf>.

³ See Priscilla Alvarez, *At Least 650 Migrants Died Crossing the US-Mexico Border, the Most Since 2014, International Agency Says*, CNN (Dec. 9, 2021) (reporting on data from the International Organization for Migration, which began documenting such deaths in 2014), available at <https://cnn.it/3PTjsfu>.

San Antonio.⁴ In total, 53 people died, including four children, and including individuals from Mexico, Guatemala, El Salvador, and Honduras—all countries whose nationals are subject to expulsion under the Title 42 policy.⁵ Record-breaking heat waves have punished Texas this summer,⁶ and the tragedy of these deaths speaks to not only the life-threatening conditions that expelled migrants face, but also the risks they are willing to take to seek safety when the ordinary asylum process is not available. Because so many asylum seekers already have family here, moreover, the consequences of their fate and treatment deeply affect individuals and communities throughout the United States as well. Given these enormous human costs, the public interest weighs heavily in favor of ending Title 42 expulsions.

When evaluating whether an injunction against the federal government will disserve the public interest, the impact that the requested relief will have on the

⁴ Rosa Flores, Nicole Chavez, & Priscilla Alvarez, “*There Was a Crime Against Humanity*”: Police Chief Describes Scene Where 53 People Died in San Antonio, CNN (June 30, 2022), available at <https://cnn.it/3JAOff3>; Amanda Holpuch, *2 Are Indicted in Human Smuggling Case That Left 53 Dead in Texas*, N.Y. Times (July 21, 2022), available at <https://nyti.ms/3ORh6N4>.

⁵ Jason Buch, Julio-cesar Chavez, & Ted Hesson, *Suspected Truck Driver in Texas Migrant Deaths Was on Meth, Lawmaker Says*, Reuters (July 1, 2022), available at <https://reut.rs/3vweL33>; Nicole Acevedo & Julia Ainsley, *Authorities ID 47 of the Migrants Found Dead Inside an Abandoned Truck in San Antonio*, NBC News (July 6, 2022), available at <https://nbcnews.to/3PSRG2L>.

⁶ Mary Wasson, *June Was the Hottest on Record for Parts of Texas*, Spectrum News 1 (July 8, 2022), available at <https://spectrumlocalnews.com/tx/south-texas-el-paso/weather/2022/07/07/june-was-the-hottest-on-record-for-parts-of-texas>.

general public is central to the Court’s analysis. *Chambless Enter., LLC v. Redfield*, 508 F. Supp. 3d 101, 123 (W.D. La. 2020). Both the Supreme Court and the Fifth Circuit have emphasized the importance of considering the broader consequences of an injunction on nonparties when weighing the public interest. *See Winter*, 555 U.S. at 24 (“[C]ourts of equity should pay particular regard for the public consequences in employing the extraordinary remedy of injunction.”) (citing *Weinberger*, 456 U.S. at 312 (1982)); *Miss. Power & Light Co.*, 760 F.2d at 625–26 (noting “judicial concern about the impact of legal decisions on society as a whole” and looking “beyond the immediate interests of the named litigants” when considering the public interest).

Here, however, the district court failed to consider the impact on the public interest if the Appellees could require the federal government to continue enforcing the Title 42 policy and to categorically expel asylum seekers indefinitely without giving them the opportunity to seek asylum or other forms of protection. It is beyond dispute that the injunction granted by the district court has resulted and will continue to result in the expulsion of thousands of individuals to countries where they are likely to face substantial harm, thus condemning them to physical harm, suffering, sexual assault, and possibly death. The public’s interest, including that of the thousands of vulnerable migrants whom *Amici* represent and for whom they advocate, weighs decidedly against the district court’s injunction.

A. The District Court Erred in Failing to Consider that Title 42 Expulsions Subject Asylum Seekers to Kidnapping, Rape, Extortion, Torture, and Family Separation.

As noted above, the Supreme Court has recognized a strong public interest in ensuring that migrants are not deported to “countries where they are likely to face substantial harm.” *Nken*, 556 U.S. at 436.

The public interest in providing humanitarian protection to migrants fleeing persecution and in ensuring the United States’ compliance with its international law obligation of *non-refoulement* applies with particular force in this case, but the district court failed even to acknowledge this interest. As the following stories demonstrate, the Title 42 policy consigns vulnerable migrants either to abuse in their home countries or to Mexican border cities where cartels and gangs—sometimes abetted by Mexican authorities—intentionally target migrants for kidnapping, rape, extortion, and torture, in direct contravention of the public interest. Title 42 expulsions have also served as an engine of government-sanctioned family separation, inflicting widespread harm as families have been separated by gang violence, deprivation and hardship, and the federal government itself. Given the trauma and dangers that migrants suffer upon their expulsion, reversing the injunction granted by the district court is overwhelmingly in the public interest.

1. The Public Interest Is Furthered by Not Sending Migrants to Places Where They Risk Substantial Harm.

Organized gangs in Mexico commonly abuse migrants expelled under Title 42, especially those who are most vulnerable. Not only are individuals expelled from the United States easily identifiable, but many lack the resources to protect themselves, such as access to even the most basic shelter. Denied the opportunity to seek refuge under U.S. law, they are faced with the Hobson's choice of remaining in Mexico—vulnerable to exploitation, violence, and death—or returning to their home countries, which often presents an even graver threat to their safety.

Gabriel,⁷ for example, fled his home country of Honduras with his wife and three young children after gangs killed three of his wife's siblings, tried to kill his brother, burglarized Gabriel's home, severely beat him after he reported the burglary to the police, and threatened to kill him and his family. Although Gabriel received asylum for himself and his family in Mexico, he was forced to flee yet again when the gangs from Honduras tracked him to Mexico to take revenge. U.S. immigration officials expelled Gabriel, his wife and children, and his brother to Mexico under Title 42 in February 2021. Because they feared for their lives in Honduras, Gabriel's family remained in Mexico, hoping that it would be less dangerous, even though

⁷ *Amici* have used pseudonyms for all individuals whose stories are shared in this brief. Supporting documentation for each story is held by the individual's attorney of record.

they often went hungry and were repeatedly threatened by gangs. In July 2021, gang members kidnapped Gabriel and his brother for ransom, subjecting both men to physical abuse until they were able to escape.

The story of Gabriel's family is unfortunately typical of many families who have sought protection from persecution in the United States, only to be expelled to hardship and trauma in Mexico. The abuse these families experience harms the entire family, with lasting repercussions. **Sebastian**, for instance, is a seven-year-old Black Honduran boy who witnessed the violent rape of his mother by a gang after they were expelled to Mexico under Title 42. When Sebastian's mother later turned to the Mexican police for help, the police taunted Sebastian's mother, asking how much she would charge to give them a turn. As advocates have documented, Mexican authorities are known to discriminate against migrants, especially Black migrants.⁸ Sebastian's post-traumatic stress and depression endure, and he has repeatedly told his mother that he wants to die.

⁸ Nisha Venhat, *Black Immigrants Are Facing Rampant Racism in Mexico While Waiting for US Asylum: "We Have No Choice,"* BuzzFeed News (March 27, 2021), available at <https://www.buzzfeednews.com/article/nishavenkat/black-immigrants-racism-mexico-asylum>; see also *Mexico: Abuses Against Asylum Seekers at US Border*, Human Rights Watch (Mar. 5, 2021) ("Nearly half of those interviewed said Mexican police, immigration agents, or criminal groups targeted them for extortion."), available at <https://www.hrw.org/news/2021/03/05/mexico-abuses-against-asylum-seekers-us-border>.

In another instance, Honduran mother **Graciela** was expelled to Mexico under Title 42 with her eight-year-old daughter and six-year-old son. She and her children were then kidnapped after their expulsion, but she considers herself “lucky” because the kidnappers gang-raped her in a separate room so that her children did not have to watch.

The experiences of **Luz**, a sixteen-year-old girl from Honduras, are similarly agonizing. Luz and her mother fled to the United States because the head of a local gang was trying to force Luz to have a sexual relationship with him. After nearly two months of perilous travel to seek safety in the United States, U.S. border authorities expelled Luz and her mother to Mexico under Title 42 in July 2021. Because they feared what would happen to them if they returned to Honduras, the family remained in Mexico, surviving on little to eat and finding places to sleep on the street and in abandoned homes. While in Mexico, they were assaulted and robbed by Mexican officials attempting to prevent immigrants from approaching the river. In a separate incident, a group of men also attacked them, raping Luz and attempting to rape her mother. The Mexican police refused to provide any assistance. Luz still suffers emotionally and psychologically from her rape, and both she and her mother need therapy to cope with the trauma they experienced in Mexico because of their expulsion.

As these stories illustrate, Title 42 expulsions send families into a nightmare that no one would wish on another human. The public interest weighs in favor of preventing such harm from being imposed upon migrants who merely seek refuge—particularly when COVID-related public health measures have long been relaxed as to every other category of traveler to the United States.

2. The Public Interest Is Furthered by Policies that Support Family Unity.

The public interest also weighs heavily in favor of ending Title 42 expulsions because they have too often resulted in the traumatic separation of minor children from their only caregivers.⁹ These separations have many proximate causes, including violence in Mexico, the desperation to survive after being expelled, and the actions of U.S. immigration officials. But regardless of their most direct causes, these family separations—and the concomitant trauma inflicted on all family members, especially minor children—could be avoided by ending the Title 42 policy. Family separation “is a highly destabilizing, traumatic experience that has long term consequences on child well-being, safety, and development.” *Ms. L. v.*

⁹ A research team conducted interviews of migrants expelled under Title 42 and found that 88 percent of those interviewed screened positive for Post-Traumatic Stress Disorder related to the events leading to family separation, with 96 percent screening positive for depression and 92 percent screening positive for anxiety. Kathryn Hampton, Michele Heisler, Cynthia Pompa, & Alana Slavin, *Neither Safety Nor Health: How Title 42 Expulsions Harm Health and Violate Rights* (July 28, 2021), available at <https://phr.org/our-work/resources/neither-safety-nor-health/>.

Immigration & Customs Enforcement, 310 F. Supp. 3d 1133, 1147 (S.D. Cal. 2018). The public interest favors not only preventing such traumatic harm to families, *see Nken*, 556 U.S. at 436, but also “upholding and protecting” migrants’ constitutionally protected right to “family integrity and association while their immigration proceedings are underway.” *Ms. L.*, 310 F. Supp. 3d at 1148; *see also Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017) (holding that “preventable human suffering” outweighs “financial concerns” with “little difficulty”); *Chambless Enter.*, 508 F. Supp. 3d at 123 (“any economic harm pales in comparison to the significant loss of lives”) (citation omitted). The fact that terminating Title 42 expulsions will prevent countless family separations is an additional reason why doing so is in the public interest.

Indeed, the Title 42 policy all too often results in the expulsion of vulnerable families into the waiting hands of gangs and cartels, which means that gang violence often causes traumatic family separation that harms both parents and children. **Isabel**, for example, was captured along with her husband by the Zetas cartel and separated from her two young daughters, ages four and nine, just hours after she and her family were expelled from the United States. While nearly nine months pregnant, this wife and mother initially fled Honduras with her family after a gang killed two of her brothers—including one who was only fourteen years old—and violently

attacked her husband because she told the gang that she could not pay them “protection” money. She felt she had no choice but to leave to save her family.

When Isabel and her family attempted to seek safety in the United States in February 2021, they were expelled by U.S. border officials under Title 42. Immediately following their expulsion, Isabel’s family walked along the riverbank for four hours in search of a safe place to cross, desperate to reach safety. When they finally attempted to cross, they found that the river was quite deep—reaching up to Isabel’s husband’s chest—so, like any father, he carried their children across the river first. But while her husband was bringing their girls across, a black pick-up truck approached Isabel. Men jumped out of the truck, grabbed Isabel by the hair, and threw her to the ground. When Isabel’s husband tried to come to her aid, the gang attacked and subdued him, capturing them both. They were held for ransom in Mexico for over two weeks, while Isabel was nine months pregnant—and with no idea what had happened to their daughters.

The cartel, which threatened constantly to kill Isabel’s husband, eventually released Isabel after she begged for the life of her unborn child. She eventually gave birth to her baby girl in a Mexican hospital three weeks after her family had been expelled under Title 42. Isabel’s third daughter, however, weighed only three pounds at birth and required intensive medical care because the cartel had starved Isabel for weeks before her daughter’s delivery. When Isabel’s husband finally escaped the

Zetas and found her and their new baby at the hospital, he was so thin and malnourished that she did not recognize him.

While in the hospital, Isabel and her husband saw one of their daughters on a news program featuring interviews with children who had been “abandoned” at the U.S.-Mexico border. They were subsequently contacted by U.S. immigration officials who accused Isabel of abandoning her children at the border and stated that they could not allow Isabel and her husband to come to the United States to be with their children because of Title 42. Eventually, Isabel and her husband were granted a humanitarian exception and were allowed to reunite with their daughters.

The hardship and danger that families face after their expulsion to Mexico also predictably cause traumatic family separation. **Javier**, for example, is a sixteen-year-old boy who was forced into labor by a gang in Honduras and, as the only means of escape, fled to the United States with his parents and older brother. In April 2021, Javier’s family attempted twice to enter the United States to apply for asylum, but they were expelled both times under Title 42. The family was returned to extraordinarily dangerous conditions in Mexico: Mexican police harassed and extorted the family, and they also narrowly escaped an attempted kidnapping by the cartel in Ciudad Juárez. Out of desperation to protect their child, Javier’s parents sent him across the border alone to keep him safe. Fortunately, Javier crossed the border safely, after which he was identified as a victim of trafficking because of the

labor he had been forced to provide in Honduras, and he was taken into custody as an unaccompanied child. Javier remains severely traumatized by the experience.

In addition to family separations wrought by the actions of gangs or by the hardship families suffer in Mexico after being expelled, the practical, day-to-day expulsions under Title 42 has also resulted in family separation. To enforce Title 42, for example, Border Patrol officers separated **Esperanza**, a thirteen-year-old girl, from her older sister, who had turned eighteen just one day before they presented themselves at the port of entry to apply for asylum. After a hurricane destroyed their home in Honduras and gangs started pursuing Esperanza's sister, the girls' mother had sent them to the United States with their family's entire savings. At the border, CBP officers took Esperanza into custody as an unaccompanied child and expelled her sister—her only caregiver—to Mexico. Esperanza now has only limited contact with her sister, with whom she has been unable to reunite. Esperanza remains distraught over the separation and terrified for her sister.

Beyond separating children from older siblings and other family members, the Title 42 policy has also separated children from their parents. For instance, **Daniel** and his two-year-old daughter were separated from his wife and six-year-old stepson when they attempted to cross the border to apply for asylum in August 2021. CBP admitted Daniel's wife and stepson pursuant to a humanitarian exception, but he and his toddler were expelled. Daniel and his daughter were forced to stay in a crowded

migrant shelter in a dangerous neighborhood in Tijuana while his wife and stepson were able to connect with extended family members in Virginia. The separation from her mother has been severely traumatic for Daniel's two-year-old daughter, who has lost weight, suffers from numerous health issues, and displays extreme emotional swings from disconnect or withdrawal to tantrums where she cries hysterically, begging for her mother. Daniel feels powerless to alleviate her trauma.

The experience of **Marisa** and her separation from her children is equally harsh. After her husband was killed, Marisa fled El Salvador with her eleven- and fifteen-year-old sons to protect them. They went directly to the border but were quickly expelled under Title 42. After facing the conditions in Mexico, they attempted to enter the United States a second time. On this second attempt, Marissa and her children spent seven hours wading through the river, then another hour walking, as Marisa bled from a wound on her stomach from a recent surgery. Along this journey, they were stopped by local sheriffs' deputies, who handed the family over to CBP officials. Despite showing her children's birth certificates, Marisa was accused of trafficking her own children and then expelled under Title 42 while her children were taken from her and put into custody. After she was expelled, Marisa was taken into custody by the Mexican federal police and handed over to the cartels, who subjected her to extensive sexual, physical, and psychological abuse. The cartels tied her up and left her for dead with several other women, and she survived

only because she found her way to safety after walking through the desert for days without water or food.

Although each of these families has suffered, and continues to suffer, trauma under Title 42 in their own unique way, the substantial harm of family separation is common to them all and stems directly from the ordinary operation of the Title 42 policy that the CDC has determined is no longer necessary. The district court erred in ignoring these harms when concluding that continued mass, summary expulsions under Title 42 are in the public interest. The Court should reverse the district court's decision.

CONCLUSION

As the stories in this brief demonstrate, expulsions under Title 42 have resulted in the return of vulnerable families to the same violence and persecution that drove them to leave their homes and seek protections afforded under U.S. law—without ever having the chance to be considered for humanitarian protection. This is not in accordance with the public interest in ensuring that their government is not returning individuals “to the countries where they are likely to face substantial harm.” *Nken*, 556 U.S. at 436; accord *Leiva-Perez v. Holder*, 640 F.3d 962, 971 (9th Cir. 2011) (finding public interest weighs in favor of a stay where the migrant argued for the public interest in “ensuring that we do not deliver [individuals seeking asylum] into the hands of their persecutors”). Given this interest, and the

humanitarian concerns central to immigration policy, *see Arizona v. United States*, 567 U.S. 387, 395–96 (2012) (noting that the enforcement of “immigration policy can affect,” among other things “human concerns”), the public interest is decidedly in favor of terminating the Title 42 policy.

The injunction granted by the district court, requiring Appellants to summarily expel asylum-seeking migrants under Title 42, disservices the public interest. As discussed above, these individuals, *Amici*, and the public at large have a compelling interest in ensuring that asylum-seekers’ access to congressionally created protections are respected and that these individuals are not unlawfully removed to countries where they are likely to be persecuted and experience extreme suffering and trauma. This Court should reverse.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Mary Yanik, the undersigned, hereby certify that on August 1, 2022, I electronically filed the foregoing Brief of *Amici Curiae* Legal Service and Advocacy Organizations in Support of Reversal by using the appellate CM/ECF system. All participants in the case are registered CM/ECF users and will be served by the appellate CM/ECF system.

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CERTIFICATE OF COMPLIANCE

The undersigned counsel certifies that: (i) this brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7) because, excluding the parts exempted by Rule 32(f), it contains 4976 words; (ii) this brief complies with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6) because it has been prepared using Microsoft Word and is set in Times New Roman font in a size measuring 14 points or larger.

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No. 22-30303 State of LA v. Centers for Disease
USDC No. 6:22-CV-885

Dear Ms. Yanik,

The following pertains to your brief electronically filed on August 1, 2022.

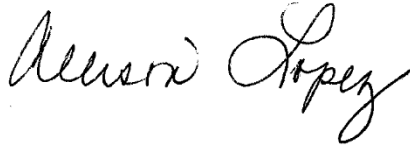
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Sincerely,

LYLE W. CAYCE, Clerk

A handwritten signature in black ink, appearing to read "Allison Lopez", written in a cursive style.

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