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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION**

IMMIGRANT DEFENDERS LAW CENTER,
et al.,

Plaintiffs,

v.

CHAD WOLF, et al.,

Defendants.

Case No. 2:20-cv-09893-JGB-SHK

DECLARATION OF JOYCE NOCHE

1 I, Joyce Noche, hereby declare under the penalty of perjury pursuant to 28 U.S.C. §
2 1746:

3 1. I make this declaration based on my personal knowledge. If called as a
4 witness, I could and would testify competently and truthfully to these matters.

5 2. I am the Legal Services Director at Immigrant Defenders Law Center
6 (“ImmDef”), where I have been employed since January 16, 2018. Before ImmDef,
7 I was a senior attorney at Stone Grzegorek and Gonzalez, a private immigration law
8 firm. I have been practicing immigration law for over twenty years. I am based in
9 ImmDef’s Los Angeles office. I represent both detained and non-detained
10 noncitizens in their immigration removal proceedings.

11 3. In my role as Legal Services Director, I oversee ImmDef’s Cross-
12 Border Initiative Project (CBI Project), which focuses on providing, among other
13 things, (1) advocacy for individuals subject to the Migrant Protection Protocols
14 (MPP), including persons with cases pending in the San Diego Immigration Court;
15 (2) direct representation to individual MPP respondents; and (3) Know-Your-Rights
16 (KYR) presentations and asylum clinics for persons impacted by MPP.

17 **MPP Respondents are Treated Like Detainees**

18 4. I have represented detained and non-detained individuals appearing
19 before the Los Angeles, Adelanto, Otay Mesa, and San Diego immigration courts. I
20 also represent individuals in MPP proceedings before the San Diego immigration
21 court. I have personally represented approximately 12 clients in MPP proceedings.
22 I also represent many more MPP respondents because I supervise all of ImmDef’s
23 MPP direct legal services, which includes the representation of approximately 86
24 total MPP respondents by attorneys I directly supervise. I am therefore familiar with
25 both non-detained and detained immigration court proceedings as well as how the
26 Department of Homeland Security treats detainees held in its custody in the interior
27 of the United States and those that it holds in Mexico who are in MPP proceedings.

1 DHS does not treat MPP respondents any differently from how it treats those
2 detained inside the United States.

3 5. By returning MPP respondents to Mexico, DHS has impacted my
4 ability to represent them in much the same way as if they were detained in the United
5 States. For example:

6 a. Noncitizens detained in the United States do not enjoy freedom
7 of movement. Therefore, my detained clients cannot leave the detention center to
8 meet with me in my office; I must travel to the detention center to meet with my
9 clients. Confidentiality is difficult to achieve or obtain inside the detention center.
10 Even when my meetings with detained clients are confidential, many clients who
11 have survived trauma struggle to disclose their fears of harm because they do not
12 feel safe inside detention facilities. Additionally, I cannot meet with my detained
13 clients for the length of time necessary to fully understand the facts of their cases
14 or to best gather evidence to support their claims. When clients are detained, they
15 cannot help me gather evidence because they cannot freely speak with other fact-
16 witnesses to help prepare declarations or statements, or assist with other evidence
17 gathering, including obtaining documentary evidence, medical and psychological
18 evaluations.

19 b. Detainees held in Mexico in the MPP program similarly do not
20 enjoy freedom of movement and therefore cannot travel outside of detention in
21 Mexico to meet with me in my office in San Diego. Because my MPP clients
22 cannot enter the United States to meet with me, I must travel to Mexico to meet
23 with them, just like I must travel to detention facilities to meet with detained
24 respondents in the United States. It is not always possible for me to travel to
25 Mexico for various reasons, including pandemic border closures, extremely long
26 and unpredictable wait-times at the border, and safety conditions. Many of our
27 clients have been victims of kidnappings and robberies in Mexico and have
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1 described incidents of harm to me. During a KYR clinic in Mexicali, our
2 community partner, Border Kindness, also advised me and our staff about unsafe
3 conditions and warned us to take precautions. Indeed, if I were to follow the safety
4 recommendations of U.S.-travel-advice announcements, I would never travel to the
5 locations where my MPP respondent clients are detained in Mexico, particularly as
6 a woman travelling alone, because U.S. travel bulletins describe these areas as
7 particularly unsafe. I have, however, put myself in danger and traveled to multiple
8 locations where my clients reside because I decided to take that enormous safety
9 risk for the sake of my clients. I was afraid for my personal safety on each of these
10 occasions. MPP respondents are also forced to remain in very specific places
11 along the Mexico-United States border. This restriction on their travel and
12 movement impacts my ability to freely communicate with my clients in MPP
13 proceedings because, much like my clients who are detained in the United States, I
14 cannot find safe, confidential meeting spaces where I can collect facts and
15 documents and provide advice. Further, because my MPP clients often lack access
16 to a reliable means of communication and are forced primarily to focus on
17 protecting their safety and fulfilling their basic needs, they often are restricted in
18 their ability to gather evidence in support of their claims.

19 c. Compared to representing detained clients (either those
20 detained in MPP or in detention facilities located within the United States), the
21 experience of representing clients who are *not* detained is very different. My non-
22 detained clients travel freely to my office in the United States for our attorney-
23 client meetings, where I can guarantee a safe and confidential space to
24 communicate. I can meet with my non-detained clients for any length of time I
25 desire without concern about my or their safety. I can also have multiple meetings
26 with my non-detained clients to develop their claims for relief, which is not
27 possible when meeting with a detained or MPP client. Depending on the facts in a
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1 particular case, I often meet with my non-detained clients at least five to seven
2 times before their merits hearings, for periods of time ranging up to several hours.
3 For detained clients, by contrast, I can meet with them at most three to four times
4 due to the constraints imposed by detention facilities. For MPP clients, I often can
5 meet with them only once or twice because of the time, distance, and safety
6 concerns of traveling to Mexico. Communicating with US-detained or MPP-
7 detained clients by telephone often does not suffice, either because the connection
8 (especially in Mexico) is unreliable, confidentiality is not guaranteed, or my clients
9 cannot afford the cost of regular telephone communications – e.g., owning a smart
10 phone, paying for access to the internet, and/or paying for minutes.

11 6. In my experience and based on my observations of MPP immigration
12 court proceedings, both DHS and the immigration judges treat MPP respondents as
13 if they are in custody and detained by the U.S. government:

14 a. DHS officers accompany all U.S-detained respondents and
15 MPP respondents in their immigration removal proceedings. DHS officers are
16 never present for in immigration court hearings for non-detained individuals,
17 however. In U.S-detained and MPP court proceedings, DHS officers control and
18 restrict the respondents' movement. DHS dictates where a U.S-detained
19 respondent and a MPP respondent can sit in court, to whom they can speak in
20 court, and when they can speak, stand up, and sit down. If a U.S-detained
21 respondent or MPP respondent needs to use the restroom, they must ask for
22 permission and wait until a DHS officer can escort them to and from the bathroom.
23 If a U.S-detained respondent or MPP respondent wants to speak with their attorney
24 in immigration court, they must seek permission from DHS to do so, and DHS
25 often requires me to first show proof that I am the detained individual's attorney.

26 b. DHS similarly restricts the items a U.S-detained or MPP
27 respondent can bring with them inside the courtroom. A U.S.-detained respondent
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1 is allowed to bring only documents inside the courtroom. Similarly, a MPP
2 respondent can bring only documents that fits into a legal envelope or clear
3 Ziplock bag.

4 c. Unlike non-detained individuals in immigration court
5 proceedings who are allowed to bring electronic devices into the courtroom and
6 can therefore communicate on their cellphones before or after their immigration
7 court hearings, U.S-detained and MPP respondents are prohibited from doing so.
8 Just as a U.S-detained respondent cannot have any telephonic communication
9 before or immediately after their hearing, DHS similarly restricts an MPP
10 respondent's ability to communicate and prohibits them from bringing cellphones
11 with them.

12 d. Unlike non-detained respondents who can ask anyone to
13 accompany them to their immigration court proceedings and communicate freely
14 with anyone during their immigration court proceedings (subject to ordinary
15 restrictions on speaking while the judge is on the bench and/or with witnesses
16 during a merits hearing, etc.), DHS imposes practical and legal restrictions that
17 deprive U.S-detained respondents and MPP respondents of the same freedoms.
18 Practically speaking, U.S-detained respondents and MPP respondents can rarely
19 bring anyone other than their legal representatives to immigration court. I say
20 practically speaking, because by forcing MPP respondents to remain in Mexico in
21 dangerous conditions that fail to provide for their basic health, safety, and food,
22 and other basic needs, MPP respondents rarely have the ability to coordinate with
23 family or friends in the United States, even assuming MPP respondents have notice
24 of when and where their next hearing will actually occur. Moreover, although
25 theoretically anyone should be allowed to enter the MPP courthouse to attend these
26 public hearings, the reality is that white-appearing lawyers are the only group that
27 generally sails inside without hassle. Friends and family of MPP respondents,
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1 along with other people with brown skin, are usually stopped, questioned, and
2 often turned away. The exception is if they obtain immigration court and/or DHS
3 approval, which, in my experience, is only possible if they have an attorney present
4 to advocate for them. In my experience, I, as an attorney, must specifically request
5 and obtain permission for friends and/or family of my MPP respondent clients to
6 attend hearings. I cannot imagine unrepresented clients would even know
7 permission could be obtained, much less how to successfully seek this permission
8 from DHS and/or the immigration court. Asking friends or family to travel often
9 very long distances to the MPP courthouse without any assurance they will even be
10 allowed to enter deters MPP respondents from even attempting such arrangements.
11 The reality, as I have observed it many times, is that almost no friends or family of
12 MPP respondents attend their hearings.

13 e. Finally, the immigration court treats U.S-detained and MPP
14 hearings alike. Both U.S-detained and MPP respondents' hearing dockets are
15 subject to a fast-track schedule, such that the immigration court strives to
16 adjudicate the merits of cases on both dockets within 90 to 120 days. This is not
17 the case for the court's non-detained docket, where the average time for
18 adjudicating a case on the merits is several years. Additionally, I have requested
19 bond hearings for certain MPP respondents while those clients are still in Mexico,
20 and DHS has never opposed such a request on custody grounds (*i.e.*, DHS has
21 never argued that a client in Mexico, in MPP, was not in DHS custody and
22 therefore had no need for a bond hearing). On at least one occasion, DHS has
23 expressly conceded that an MPP respondent was in its custody for purposes of a
24 bond request. I file motions for bond requests for MPP clients in advance of their
25 hearings, while my clients are still in Mexico; DHS then brings them from Mexico
26 to those hearings in the United States. The immigration judges have also never
27 rejected my request for a bond hearing for an MPP respondent on the basis that
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1 DHS lacks custody. Thus, in my experience, both DHS and the immigration
2 judges treat MPP respondents as being in DHS custody.

3 **DHS Enforcement of MPP has Impacted My Ability to Speak Freely**

4 7. DHS officers accompanying MPP respondents to immigration court
5 have routinely prevented me from freely communicating with current and potential
6 clients. These officers have interrupted my communications with my MPP clients
7 and other MPP respondents who are potential clients and ended our conversations
8 prematurely. DHS officers have also stopped me from giving documents to my MPP
9 clients and prospective clients who were seeking information or representation. I
10 was routinely questioned when talking with MPP client by DHS officers and told
11 that if I was not representing a potential MPP client, then I could not speak with him
12 or her.

13 8. In my experience, MPP respondents in the courthouse are monitored by
14 guards or officers at all times. DHS officers would “hover” near me while I was with
15 MPP respondents.

16 9. Government guards and officers also prohibit or restrict KYR
17 presentations for MPP respondents. Removal defense attorneys generally are not
18 permitted to give these presentations or disseminate KYR information to MPP
19 respondents while they are inside the United States. One of our sister organizations,
20 Jewish Family Service, was eventually allowed to do KYR presentations in the
21 courthouse before MPP hearings, but only after staging a sit-in protest.

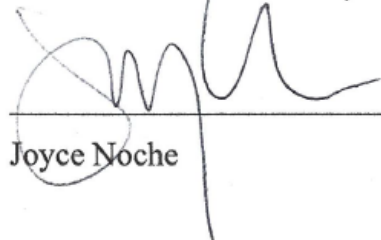
22 10. Though I know of no written policy mandating the above-described
23 behavior, I have been told by guards and/or officers on numerous occasions that I
24 was not allowed to speak with MPP respondents whom I did not represent. I often
25 received this kind of admonishment when MPP respondents approached me about
26 legal assistance or representation. On one occasion, I was reprimanded by an officer
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1 for attempting to obtain contact information from an MPP respondent who was
2 seeking pro bono representation.

3 11. These unwritten policies prevented me from practicing law as I
4 normally would have with these MPP respondents. Specifically, my communication
5 with clients was drastically constrained compared to my normal standard of practice.
6 Because of the above-described policies, I often had no more than ten minutes to
7 speak with an MPP client before their hearing. I was also forced to meet with my
8 clients in an open space with other MPP respondents or in a courtroom where other
9 MPP respondents were also waiting. Often, MPP respondents were literally sitting
10 right next to me as I tried to prepare my clients for their hearings. ICE monitored
11 the respondents and me at all times, and, while together, we were unable to move
12 freely within the courtrooms or the open space in the lobby outside. The movement
13 of MPP respondents is rigidly controlled: they were often packed into crowded rows
14 in courtrooms and small, lobby spaces. It is impossible to have confidential
15 communications in these environments. This is in stark contrast to my experience
16 on the detained docket in Los Angeles, where we are often allowed to speak with
17 our clients seated away from other respondents and to do screenings and intakes of
18 potential clients.

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20 I declare under penalty of perjury under the laws of the United States of
21 America that the foregoing is true.

22 Executed on November 8, 2020 at Irvine, California.

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Joyce Noche