DECLARATION OF LINDSAY TOCZYLOWSKI

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

IMMIGRANT DEFENDERS LAW CENTER, et al.,

Plaintiffs,

v.

CHAD WOLF, et al.,

Defendants.

DECLARATION OF LINDSAY TOCZYLOWSKI
I, Lindsay Toczylowski, hereby declare under the penalty of perjury pursuant to 28 U.S.C. § 1746:

1. I make this declaration based on my personal knowledge except where I have indicated otherwise. If called as a witness, I could and would testify competently and truthfully to these matters.

2. I am the Co-Founder and Executive Director of Immigrant Defenders Law Center (“ImmDef”) where I have been employed for five years. ImmDef is a non-profit organization headquartered in Los Angeles, California with additional offices in San Diego, Santa Ana, and Riverside; we also operate a workspace in Adelanto. ImmDef believes in providing universal representation so that no immigrant is forced to face removal proceedings without an attorney or accredited representative.

3. In my role as Executive Director, I make executive decisions related to all of ImmDef’s programs and budgets, oversee the management of ImmDef’s representation and advocacy programs, and fundraise to support ImmDef’s work. I am also a case-carrying attorney and represent a small number of individuals across all of ImmDef’s representation programs.

4. As of October 2020, ImmDef has a total of 104 employees, including 47 attorneys, 4 law fellows and 29 legal support staff members. Funding for our programs comes from a variety of sources that include the federal government, private foundations, and state and local governments. On occasion, especially when faced with urgent humanitarian crises, ImmDef also raises money through crowdsourcing and individual donor campaigns.

**ImmDef’s Removal Defense Representation**

5. ImmDef’s vision is to create a public defender system for immigrants facing deportation. It pursues this mission through a number of different programs and projects.
6. ImmDef represents approximately 1400 noncitizens annually in their removal proceedings and provides other legal services to approximately 1200 additional noncitizens. We provide pro bono representation to unaccompanied minor children, indigent detained adults, individuals deemed mentally incompetent to represent themselves, families separated at the border, and most recently, to individuals subject to the Migrant Protection Protocols (MPP).

7. ImmDef’s Children’s Representation Project is one of the largest programs of its kind in the United States and provides representation and pro bono placement (referrals for free representation by non-ImmDef attorneys) for more than 850 children each year. ImmDef has a subcontract via the Office for Refugee Resettlement (“ORR”), which is managed by the prime contractor Vera Institute of Justice, where we provide legal orientation classes to all unaccompanied children in ORR custody in the Los Angeles area and “friend of court” services or full-scope representation to any detained unaccompanied minor who has to go to court in the greater Los Angeles area while in custody. Further, we provide full-scope deportation defense to all unaccompanied children who are released from ORR shelters that we service to sponsors in any of the following counties in Southern CA: Los Angeles, Orange, San Bernardino, Riverside, Kern, Santa Barbara or Ventura. Full-scope representation includes representation in immigration court as well as any ancillary state court proceedings that are necessary to obtain relief from removal.

8. ImmDef’s “Local Funding Initiatives,” a separate program, provides removal defense through contracts with local government entities in Southern California to immigrants facing deportation. ImmDef currently receives local-government funding to protect our communities in the cities of Long Beach, Santa Ana and Los Angeles as well as the county of Los Angeles. We also receive some private foundation funding to supplement our local government funding and grow our detained removal defense programs in Los Angeles and the Inland Empire.

9. ImmDef’s National Qualified Representative Program provides
representation to immigrants in detention who are entitled to court-appointed counsel because of serious mental disorders that render them unable to represent themselves. This model of court-appointed counsel in immigration court is possible due to *Franco v Holder*, a class action lawsuit and settlement. For these cases, handled through the Executive Office for Immigration Review’s (EOIR) National Qualified Representation Program (“NQRP”), ImmDef has a contract with the Vera Institute of Justice through which ImmDef handles more than 100 deportation cases annually and agrees to a set number of new cases each year. When EOIR identifies a person who is not competent to represent themselves, they will refer the case to Vera, which will then assign it to us.

10. ImmDef’s Family Unity Project provides legal representation to separated families, pursues the release of parents, fights for the reunification of families, and provides reunified families with zealous defense in their immigration proceedings. ImmDef’s Family Unity Project is funded entirely through private donations and foundations. Since January 2019 some of the funding from this program has been diverted to our Cross-Border Initiative in order to meet the representation needs of clients subject to the Migrant Protection Protocols.

11. Finally, ImmDef’s Cross Border Initiative (“CBI”) fights against cruelty toward migrants at the border with a focus on assisting children and families. Since the Trump administration established MPP in January 2019, more than 50,000 migrants seeking asylum in the United States have been returned to overflowing shelters in border cities and put at grave risk. ImmDef’s CBI team, among other things, (1) provides legal screenings/consultations; (2) conducts “Know Your Rights” presentations; (3) trains families to represent themselves; (4) provides border “turn-in” preparation for asylum-seeking families and those who are seeking “non-refoulment” interviews; (5) identifies particularly vulnerable asylum-seeking families in Mexico who are at risk of family separation and provides them with specialized legal services to minimize risks of family separation and detention; (6) provides
comprehensive credible fear preparation; (7) provides full-scale deportation defense
to asylum-seeking families with MPP proceedings in San Diego, as well as those
released from MPP who are detained in Southern California ICE facilities, and those
who stay in Southern California following their release from border facilities; and (8)
seeks to create systemic change in treatment of children and families in CBP
custody by monitoring conditions and treatment of clients, publicizing information,
and engaging in policy advocacy.

12. ImmDef receives requests for assistance from our various projects in
several ways. As mentioned above, ImmDef provides representation for children and
adults who do not have the capacity to represent themselves through contracts with
the Vera Institute; we receive these cases as direct placements from Vera or through
Vera-funded legal service provider networks. ImmDef also has an email address for
referrals, and receives many clients through referrals from partner legal services
organizations that operate hotlines or Legal Orientation Programs. In addition, we
work with community-based organizational partners who refer cases to us for
residents of Santa Ana, Long Beach, Los Angeles, and Inland Empire.

**ImmDef-San Diego’s Cross-Border Initiative Project**

13. ImmDef opened its San Diego Office and established its Cross-Border
Initiative Project in response to the Trump Administration’s Migrant Protection
Protocols (“MPP”) or “Remain in Mexico” policy, which requires asylum seekers
from Central American countries to remain in Mexico while their claims for asylum,
withholding of removal, and/or protection under the Convention Against Torture are
adjudicated by an immigration court in the United States.

14. Implementation of MPP has had a major impact on ImmDef’s
representation and advocacy programs. First, given ImmDef’s mission of expanding
access to representation to any and all noncitizens in removal proceedings, we felt
compelled to assist and represent individuals placed in MPP. Second, the fact that
MPP respondents could not be easily paroled into the United States meant that we would have to represent them before the San Diego Immigration Court, which is the only court in California to hear MPP cases. Previously, most of ImmDef’s removal defense work took place in the Los Angeles immigration courts. Finally, to represent MPP respondents, ImmDef had no choice but to engage in international, cross-border travel into Mexico on a regular basis.

15. ImmDef’s CBI Program focuses on providing direct representation, pro se assistance, and advocacy for individuals subject to MPP who have cases pending before the San Diego Immigration Court. Our representation of MPP respondents entails representation of individuals and families in the following areas: (1) applications for immigration relief and requests for bond before the San Diego Immigration Court; (2) appeals before the Board of Immigration Appeals; (3) Non-Refoulement Interviews (NRI) before United States Citizenship and Immigration Services (USCIS); and (4) parole requests to U.S. Immigration and Customs Enforcement and U.S. Customs and Border Protection. ImmDef also conducts regular Know Your Rights Presentations in Spanish for pro se MPP respondents in Mexicali and Tijuana. In addition, ImmDef is engaged in advocacy on behalf of MPP respondents.

16. Prior to MPP, ImmDef attorneys, myself included, rarely needed to travel to Mexico to meet with our clients. Nor did we need to represent individuals before the San Diego Immigration Court because our motions to transfer venue to the immigration courts in Los Angeles, where our organization and most of our staff are based, were routinely granted. Motions for change of venue for MPP cases are routinely denied by the San Diego immigration courts.

17. Because ImmDef and other local legal service providers did not have advance notice of MPP, we were not prepared. From January 2019 until April 2019, some of my staff and I took turns traveling to Tijuana to provide pro se assistance to individuals placed in MPP. We also agreed to represent several clients during this
time. ImmDef attorneys, including myself, frequently traveled back and forth from our Los Angeles headquarters to Tijuana (240 miles roundtrip) and Mexicali (234 miles roundtrip) to meet with individuals placed in MPP, to escort them to the port-of-entry on days they had court, and to represent them before the San Diego immigration court. These trips, which sometimes required overnight stays in San Diego or Tijuana, took staff away from other projects in Los Angeles.

18. I quickly realized that travelling back and forth was unsustainable and that ImmDef would need to open a physical office in San Diego with its own dedicated staff. As soon as it became apparent that MPP would continue despite court litigation to enjoin it, I began spending significant portions of my time on fundraising, applying for grants to help sustain our MPP work, and opening our San Diego office.

19. In April 2019, ImmDef hired Margaret Cargioli as a temporary staff-attorney to help establish the CBI Project. Margaret was the first San Diego-based staff member we hired. By September 2019, to meet the growing need for representation of MPP clients, we promoted Margaret into a Managing Attorney position, assigned our Legal Services Director (who continues to be based in Los Angeles) to oversee the opening of the San Diego office, and hired a Supervising Attorney focused on federal litigation and a Paralegal. By November 2019, we added two staff attorneys, and in May 2020 we hired an additional administrative staff member to support the operations of the office. Additional fundraising was necessary to help cover the administrative costs of opening a new office, including IT support, human resources, development and communications, and operations.

20. ImmDef first opened an office within a co-working space in San Diego, but we have since moved into a permanent office location in downtown San Diego, within walking distance of the San Diego Immigration Court. Our San Diego office costs approximately $4500 monthly in utilities, rent and other associated costs.

21. ImmDef has diverted funding from planned projects in Los Angeles, including from our Family Unity Project, to fund our MPP representation work under
the Cross-Border Initiative. In 2018 when we opened our Family Unity Project, we had planned to have four full-time staff members on the project as the need for representation of families before the Los Angeles immigration courts remained high. However, given the crisis that has continued to fester with MPP at the San Diego/Tijuana border and the relative danger that clients in MPP face, ImmDef decided to eliminate positions within our Family Unity Project and use the funds to support expansion of our team in San Diego, which focuses almost exclusively on serving asylum seekers in MPP. This decision was driven by our sense of the urgency of the need and relative lack of resources from partner organizations to assist MPP families. As a result of our decision to redirect resources to address the MPP crisis, our Family Unity Project team has shrunk to the equivalent of one full-time staff attorney and a part-time case management associate; funds previously raised for that program now help support our Cross-Border Initiative. This was a strategic decision to put our resources where they were (and are) most needed, but the unfortunate result is that we are taking on far fewer cases of families at risk of separation in the Los Angeles area, despite the continued need.

22. Additional costs related to MPP representation include travel expenses to both Tijuana and Mexicali from San Diego, travel for leadership staff from Los Angeles to San Diego and Mexico, phones with international plans for staff, salaries for staff in San Diego, and rental of space to meet with clients in Tijuana. Since January 2019, ImmDef has spent approximately $400,000 on these costs associated with launching and sustaining our CBI program to support legal services for MPP clients. ImmDef has largely funded this work through reallocation of previously raised funds, individual donations and crowdsourcing, private foundations, and more recently through a grant from the state of California. ImmDef’s fundraising for our Cross-Border Initiative work has been time intensive and involved significant travel to Tijuana and Mexicali by ImmDef executive team members based in Los Angeles, including myself, to document and publicize our work in Mexico for donors.
Additionally, significant staff resources have been put into events to benefit our Cross-Border Initiative, including multiple large events in collaboration with our partners at This Is About Humanity. Prior to May 2019, such events would have benefited our Family Unity Project.

23. The fundraising for this project has been particularly challenging and resource-intensive because many people in the US (our primary individual donors) do not understand the dire predicament of people who are being forced to wait in Mexico. Further, we know that the most impactful requests for donations on social media or at events include statements, videos and photographs of the intended beneficiaries (clients) who need help, but this is nearly impossible to do with MPP clients because they remain in so much danger in Mexico that few are willing to publicly speak about the help they need. Discussing the risks and counseling our clients on engaging in this public-facing advocacy takes additional staff time, as does using those messages to educate potential donors.

24. ImmDef has struggled to find and retain qualified applicants for the jobs with our CBI due to the logistical barriers and risks involved in crossing an international border to provide legal assistance. The work is incredibly challenging and requires long hours given delays at the ports of entry and travel time. At times, crossing the border to meet with a client or to get documents signed can add several hours to a staff member’s workday. There have also been well-publicized instances of U.S. and Mexican immigration officials targeting attorneys from partner organizations for the work they do to assist asylum seekers, so engaging in the work of the CBP project creates personal risks for staff members. When we lose staff members whom we have already trained on the unique aspects of representing people in MPP, the loss of specialized skills is acute, and we have to invest significant time and resources in training replacement staff. On average, we get significantly fewer applications for our San Diego-based attorney positions than we do for similar staff attorney positions in Los Angeles. The time and energy we have to spend recruiting
for Cross-Border Initiative staff attorneys is therefore greater than for other projects.

25. Prior to the COVID-19 pandemic and the Centers for Disease Control border ban, ImmDef’s San Diego staff traveled regularly to Tijuana and Mexicali to meet with MPP clients. With the pandemic, ImmDef has implemented strict work-from-home policies for its entire staff to protect them and their families from infection, including a moratorium on all cross-border trips. Meanwhile, the San Diego Immigration Court has postponed all MPP hearings indefinitely. Despite this indefinite suspension, CBI attorneys must continue to prepare cases given the uncertainty around when and whether hearings will resume. CBI attorneys must also monitor their clients in Mexico for circumstances that might give rise to an opportunity to seek a non-refoulement interview, request release from MPP, or seek parole into the United States.

26. Our staff’s inability to travel across the border amidst this pandemic significantly impacts our ability to prepare cases, meet with clients, conduct consultations and conduct Know-Your-Rights presentations. Unlike our cases where clients are detained in ICE facilities in the United States, we are unable to regularly set confidential phone appointments with our MPP clients or meet with them in person. For our clients who are released into the United States, we are able to conduct meetings in our offices with proper health-related precautions. It is thus much easier to effectively represent U.S.-based clients than clients forced to remain in Mexico pursuant to MPP.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.
Executed on November 8, 2020 at Los Angeles, California

[Signature]

Lindsay Toczykowski