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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 MARGARET CARGIOLI

1 I, Margaret Cargioli, hereby declare under the penalty of perjury pursuant to
2 28 U.S.C. § 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 Managing Attorney at Immigrant Defenders Law Center
6 (“ImmDef”), where I have been employed since April 2019. Prior to ImmDef, *Marg Cargioli*
7 I worked at Legal Services of New Jersey in the Immigration Representation Project.
8 I have about 8 years of experience working on immigration and human rights law
9 matters. I work in ImmDef’s San Diego Office.

10 3. ImmDef is a nonprofit organization headquartered in Los Angeles with
11 offices in Santa Ana, Riverside, and San Diego, California. ImmDef was founded on
12 the belief that no person facing immigration removal proceedings should be forced to
13 do so without an attorney.

14 4. In my role as Managing Attorney, I oversee ImmDef’s Cross-Border
15 Initiative Project (“CBI Project”), which focuses on providing (1) advocacy for
16 individuals subject to the Trump Administration’s Migrant Protection Protocols
17 (MPP), including persons with cases pending in the San Diego immigration court; (2)
18 direct representation to individual MPP respondents; and (3) Know-Your-Rights
19 (KYR) presentations and asylum clinics for persons impacted by MPP. ImmDef
20 established its CBI Project in response to MPP, which forces asylum seekers who
21 attempt to enter the United States at the U.S.-Mexico border to return to Mexico and
22 wait there for the duration of their U.S. immigration court proceedings.

23 5. When I joined ImmDef in April 2019, I was hired as a temporary full-
24 time staff attorney because ImmDef had not secured funding for my position. In
25 August 2019, after ImmDef secured funding for its CBI Project, I was promoted to a
26 permanent, full-time managing attorney position. Around the same time, ImmDef
27 also added our Legal Services Director, Joyce Noche, to help oversee the CBI Project,
28 as well as a supervising attorney focused on federal litigation and a paralegal. Since

1 then, ImmDef has expanded the San Diego office to include two staff attorneys and a
2 paralegal/operations associate. In September 2020, ImmDef took on two legal
3 fellows who assist with MPP matters.

4 **ImmDef’s Representation of Individuals in MPP**

5 A. Scope of Legal Services ImmDef Provides to Individuals in MPP

6 6. Asylum seekers placed in the MPP program are primarily from majority
7 Spanish-speaking countries, including Cuba and Venezuela, but also include
8 Portuguese speakers from Brazil and others who speak indigenous languages. A DHS
9 memo purports to exempt Mexican nationals, unaccompanied children, and
10 “individuals from vulnerable populations . . . on a case-by-case basis,” but in my
11 experience, exemptions are infrequently honored and, in particular, the vague
12 category of people with “vulnerabilities” allows inconsistent application and frequent
13 exclusions.

14 7. Our goal is to provide full-scope representation for individuals and
15 families subject to MPP. To this end, we represent MPP respondents in the following
16 areas: (1) applications for immigration relief and requests for bond before the San
17 Diego immigration court; (2) appeals before the Board of Immigration Appeals
18 (“BIA”); (3) Non-Refoulement Interviews (NRI) before the United States Citizenship
19 and Immigration Services (USCIS); and (4) requests for parole to U.S. Immigration
20 and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP).

21 8. It is also ImmDef’s goal to regularly conduct KYR Presentations in
22 Spanish for pro se MPP respondents wherever we have the ability to safely do so,
23 including in Mexicali and Tijuana. Because ImmDef does not have an office in either
24 Mexicali or Tijuana, ImmDef has partnered with other organizations to organize and
25 hold the KYRs.

26 9. Our ability to provide legal assistance to MPP respondents is impeded by
27 the MPP rules, both written and unwritten. These rules, inconsistently applied,
28 include: (1) not speaking in private with MPP respondents, whether we represent them

1 or not (ICE officers “hover” nearby to enforce this rule); (2) not communicating to
2 MPP respondents whom we do not represent while they are at the San Diego
3 immigration court; (3) requiring attorneys to produce a signed notice of representation
4 form when seeking to speak with MPP respondents; and (4) prohibiting and/or
5 preventing immigration attorneys from speaking with MPP respondents inside the
6 San Diego immigration court who seek representation, information, and/or even
7 contact information. I was personally asked for my G-28 twice.

8 10. Because MPP respondents are particularly vulnerable, ImmDef works to
9 help MPP respondents find a way to address both their legal and non-legal needs,
10 including housing, food, and medical care. This work is essential because without
11 first having their basic needs met, MPP respondents cannot fully engage with us or
12 other legal representatives about their cases. In this way, representing MPP
13 respondents is different and much more time- and resource-intensive than providing
14 representation in removal proceedings to detained and non-detained individuals inside
15 the United States, where their lives are not constantly at risk.

16 11. In my experience, MPP respondents cannot leave Mexico while they wait
17 for their immigration proceedings to take place in the United States without risking
18 their entire ability to seek asylum or other immigration relief in the United States.
19 This is because of legal constraints and practical constraints imposed on them by the
20 MPP program. For example, our clients lack the visas necessary to travel outside of
21 Mexico and thus to leave would risk never being allowed back in. The MPP process
22 requires our clients to report at a certain time and place and date at a U.S. port of
23 entry. If permitted to enter the border patrol station, MPP respondents must then
24 board the DHS bus to be taken inside the United States for their immigration hearings.
25 Missing the bus for any reason means our clients will be denied all immigration relief
26 in absentia, without recourse. Practically speaking, after fleeing horrific abuse, finally
27 making it to the US border, and properly seeking asylum, our clients are financially
28 and emotionally depleted.

1 12. The MPP program then restricts their freedom and causes physical and
2 emotional harm to MPP respondents while they are forced to wait in Mexico for their
3 hearings in the United States. MPP requires respondents to stay near enough to the
4 POE that they are certain to be able to make the bus and attend the mandatory
5 immigration proceedings inside the United States that are their one chance at freedom
6 and asylum. The squalid refugee camps at the US border are the result of the MPP
7 program and a purported agreement with Mexico to assure the human rights,
8 economic development, and security interests of asylum-seekers the United States
9 choses to detain in Mexico through the MPP program. *See,*
10 *e.g.,* [https://www.dhs.gov/sites/default/files/publications/19_0129_OPA_migrant-
11 protection-protocols-policy-guidance.pdf](https://www.dhs.gov/sites/default/files/publications/19_0129_OPA_migrant-protection-protocols-policy-guidance.pdf) (“joint effort with the Government of
12 Mexico to develop a comprehensive regional plan . . . with the goal of promoting
13 human rights, economic development, and security”). In reality, and as I have
14 repeatedly and personally witnessed, the MPP program does not secure the human
15 rights, economic development, or security interests of MPP respondents.

16 13. Through our Litigation and Advocacy Unit, ImmDef also undertakes
17 advocacy to assist MPP clients in getting NRIs and seeking removal from MPP for
18 those with particular vulnerabilities that should have prevented them from being
19 placed in MPP in the first place. Supervising Attorney, Abigail Lloyd, from the
20 Litigation and Advocacy Unit, focuses a substantial portion of her time on MPP-
21 related issues, whereas in the absence of MPP, she would focus on appellate litigation
22 more broadly. Abigail is based out of ImmDef’s headquarters located in Los Angeles.
23 ImmDef’s Director of Litigation, Munmeeth Soni, also based in Los Angeles, also
24 assists me with MPP-related legal issues and also supervises Ms. Lloyd’s MPP-
25 related work.

26 14. ImmDef has represented approximately 83 individuals in MPP. Most of
27 ImmDef’s past and current MPP clients were initially, or continue to be, located either
28 in Tijuana or Mexicali. After we are retained, we are sometimes able to get clients

1 removed from MPP and paroled into the United States, either because they convince
2 an asylum officer that they will be persecuted or tortured in Mexico or because we
3 manage to convince the Department of Homeland Security (DHS) that they were
4 improperly subjected to MPP in the first place.

5 **B. Identifying Potential Clients**

6 15. The fact that MPP respondents are in Mexico makes it difficult for us to
7 identify and communicate with them regarding possible representation. Our inability
8 to freely communicate with MPP respondents in court is an added barrier to
9 identifying new cases. ImmDef staff have adopted a number of strategies to try and
10 overcome these obstacles.

11 16. First, ImmDef staff members assist with pro se asylum clinics in Tijuana
12 and Mexicali. Before the pandemic, we regularly conducted in-person clinics. In
13 recent months, we have conducted virtual clinics. In addition to offering pro se
14 assistance, we screen potential MPP clients for representation at these clinics.

15 17. Second, despite written or unwritten MPP policies that restrict or prohibit
16 such communications, pro se MPP respondents at the San Diego immigration court
17 occasionally approach us and give us their contact information. We then follow up
18 with them via email or phone because DHS officers do not permit us to speak
19 privately with them at the court and sometimes do not allow us to speak with pro se
20 respondents at all. This restriction applies even during the so-called one-hour
21 window.

22 18. Third, we receive referrals from our existing MPP clients and other legal
23 services organizations who know that we accept clients in MPP.

24 **C. Impediments to Providing Effective Representation for MPP**
25 **Respondents**

26 19. To provide effective representation, we need to build trust and rapport
27 with our clients, explain immigration court processes in general and the MPP process
28 in particular, explore their reasons for fleeing their home countries and any fear they

1 have in Mexico, assemble a parole packet if the client is eligible, prepare a Form I-
2 589 Application for Asylum, produce a written declaration, brainstorm and collect
3 witness statements and any other corroborating evidence, prepare for in-court
4 testimony, and work with the client to make various strategic decisions. All of these
5 goals are best met through in-person communication.

6 20. Given the substantial amount of work involved in preparing an asylum
7 case, ImmDef prefers to have multiple face-to-face meetings with our MPP clients.
8 Before the pandemic, we tried to meet at least three times with clients in Tijuana and
9 at least twice with clients in Mexicali. Each meeting lasted at least a couple hours.

10 21. Even before the pandemic, meeting in-person with our MPP clients was
11 not always practical because of the time involved in crossing the border, dangers to
12 staff and clients, limitations on the availability of confidential meeting space, and
13 clients' understandable focus on meeting their basic needs. Additionally, the time
14 and expense of meeting in-person with clients in Mexico is significant. The trip from
15 our San Diego office to Tijuana is just under 35 miles one-way. Factoring in mileage
16 reimbursement and parking, each roundtrip visit costs ImmDef around \$38 per
17 vehicle. Each round-trip visit from our San Diego office to Calexico/Mexicali is
18 about 122 miles one-way and costs ImmDef over \$140 per vehicle for mileage and
19 parking. In addition, we sometimes have to rent spaces to meet with clients in Tijuana
20 and Mexicali. In some cases, the only spaces we can find are not confidential or not
21 entirely safe, which severely undermines the trusting relationship that is critical to
22 represent asylum seekers.

23 22. We generally try to accommodate our clients' schedules during our visits
24 to Mexico. Due to safety concerns, however, we prefer to meet during daylight hours
25 in a location that is safe for both us and our clients. If ImmDef staff members meeting
26 with clients in Mexicali cannot complete their work by 6 PM, they may stay overnight
27 in Calexico, in which case ImmDef incurs the added expense of a hotel.

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1 23. Most of our staff does not have SENTRI (Secure Electronic Network for
2 Travelers Rapid Inspection) and so must wait in long lines to cross the border. The
3 wait time on the pedestrian bridge into Tijuana can vary widely. We try to pay
4 attention to the best days and times to cross, but it is unpredictable. The wait is
5 generally at least 30 minutes and often as long as two hours or more.

6 24. Given the difficulty of travel to Mexico, we also communicate with MPP
7 clients through other means, including phone calls and text messages over platforms
8 like WhatsApp, but none of these options is ideal. Clients do not always have the
9 money to pay for cell phone service or access to a confidential space to have sensitive
10 conversations. If they have Internet access and call over WhatsApp, the connection
11 is weak at times. Phone calls frequently drop. This kind of interruption can be
12 particularly disruptive in conversations regarding sensitive topics.

13 25. Phone communication, even if available, is generally not as effective as
14 in-person communication, especially given that our clients are often survivors of
15 extreme trauma. Eye contact and the ability to read bodily cues are particularly
16 important in communicating successfully with clients who have experienced trauma.
17 I cannot see when my client needs a break from a hard topic over the phone. I cannot
18 see if my client has put me on mute to pick up a crying child and is therefore less able
19 to pay attention over the phone. It is also harder to review documents or other
20 evidence over the phone. Hearing preparation invariably takes longer than necessary
21 and is much less effective than in a face-to-face meeting.

22 26. It also takes longer to prepare applications over the phone. When
23 meeting in person, a client has fewer distractions and can handwrite details rather than
24 my having to ask for the spelling of names, locations, and other information. In
25 addition, it is easier to elicit a more organized and chronological account of events at
26 an in-person meeting because the client and I can more easily work together to create
27 a written timeline of events. When recounting horrific events, victims of trauma
28 sometimes forget dates and times or skip from one time period to another.

1 **Barriers to Communication Before, During, and After Hearings**

2 27. During immigration court proceedings on the MPP docket in San Diego,
3 ImmDef attorneys are able to talk with clients only shortly before the hearings, and
4 only in the presence of governmental representatives – such as the immigration judge,
5 immigration court staff and officers, and/or ICE officers. We have no opportunity to
6 consult privately with clients on the day of their hearings. This makes it extremely
7 difficult to review sensitive documents, obtain client signatures, or answer last-minute
8 questions in a way that protects attorney-client confidentiality.

9 28. Despite Defendants’ stated policy that individuals in MPP should have an
10 hour to speak to their attorneys before a hearing, ImmDef rarely is provided that
11 amount of time. The officers typically do not allow defense attorneys into the
12 courthouse until all MPP respondents have already entered the building, gone up the
13 elevators to the floor of their hearing, passed through security, have been escorted
14 into court, and then escorted to the restrooms. This often takes a significant amount
15 of time, so attorneys are often not allowed to enter the court until only a few minutes
16 before the start of court hearings. Additionally, ImmDef staff members sometimes
17 have multiple clients with hearings on the same day. On those days, even with the
18 full hour, it would be impossible to have the necessary pre-court conversation with
19 more than one client.

20 29. Even if ImmDef staff members were provided a full hour to meet with
21 their MPP clients before a hearing, one hour generally is not enough time to fully
22 prepare for the hearing and conduct any other business necessary during that time.
23 Because communication with clients while they are in Mexico is so challenging, staff
24 members often must use the time they have before a hearing to obtain and/or provide
25 important updates about the client’s case, collect or exchange documents or other
26 information, review that information, and prepare the client for the hearing.

27 30. ImmDef attorneys are similarly unable to consult privately with clients
28 after their hearings before governmental officers takes them back to Mexico. When

1 we speak to our clients, an ICE officer is always present. Officers intimidate
2 immigration attorneys by hovering over us and refusing to move away when we ask,
3 even when there is plenty of room to do so. This has the effect of limiting what we
4 can say to our clients.

5 31. Even if there were private rooms and additional time to speak with our
6 MPP clients, there is currently no opportunity to speak to parents outside the presence
7 of their children. MPP respondents usually bring their children to court, either
8 because it is required or because there is no option to leave the child in Mexico. In
9 my experience, parents are at times hesitant to disclose traumatic experiences like
10 assault or kidnapping in front of their children, even when the information is essential
11 to their case.

12 32. These barriers to communication severely undermine ImmDef's ability to
13 effectively represent our MPP clients. The time before the hearing is often the most
14 critical because it is when our clients update us on important matters before we speak
15 on the record before the immigration judge.

16 33. The level of government-imposed restrictions on attorney
17 communications with individuals placed in MPP is unprecedented. When I comply
18 with these restrictions, I do so because I fear that I might otherwise be removed from
19 the courthouse, and these cases have life-and-death stakes for my clients.

20 34. Although unrepresented individuals sometimes approach ImmDef or
21 other pro bono attorneys in court to seek advice or representation, MPP policies
22 appear to prohibit us from speaking with MPP respondents whom we do not already
23 represent. On one occasion, I was specifically told that I am not permitted to speak
24 with an MPP respondent unless I have a signed G-28 on file. On another occasion
25 while speaking to my MPP client in the hallway, a government official approached
26 me and asked if I had a G-28. Officers prevent us from communicating with
27 individuals who are not already our clients. When I speak to MPP clients or potential
28

1 clients, I constantly look over my shoulder to keep an eye out for officers in an effort
2 to avoid any problems.

3 35. One incident stands out to me as an example of the ways MPP policies
4 impact my work as an attorney. I was speaking with two Cuban clients in an empty
5 courtroom, while three officers stood in the courtroom doorway. I asked the officers
6 to leave so I could speak privately with my clients. When the officers refused, I asked
7 if they would agree to move further away to afford us a modicum of privacy. They
8 nonetheless remained close to us, which prevented me from having a critical
9 conversation with my clients. I understand this behavior to be part of the
10 government's policies related to MPP.

11 **The COVID-19 Pandemic Has Exacerbated These Problems**

12 36. ImmDef staff have not traveled to Mexico for work since mid-March
13 2020, when Governor Newsom announced the first stay-in-place order. Since the
14 start of the pandemic, we have had to adjust to meeting with clients by phone even
15 when best practices favor meeting in-person. We are also no longer able to
16 accompany individuals in MPP to the San Ysidro port of entry to request NRIs or
17 removal from the program based on particular vulnerabilities. Indeed,
18 communication barriers often hinder our ability even to identify such individuals.

19 37. On April 1, 2020, EOIR temporarily postponed MPP immigration court
20 hearings through May 1. On April 30, EOIR extended the postponement through
21 June 1. On May 10, EOIR extended the postponement through June 19, 2020. On
22 June 16, 2020, EOIR further postponed MPP hearings to July 17, 2020. MPP hearings
23 have now been suspended indefinitely until various criteria relating to COVID-19 are
24 met.

25 38. Our MPP staff continues to monitor and prepare clients for their hearings
26 because of uncertainty regarding if and when immigration court hearings will resume.
27 With the heavy case load we are carrying, we cannot take the risk of having to prepare
28 all our clients at the same time. Thus, our staff must continue to develop facts, gather

1 evidence, prepare applications, collect declarations, and practice testimony on an
2 ongoing basis. In the meantime, we cannot take on as many new clients because we
3 must perpetually prepare and re-prepare our existing clients.

4 39. Given the existing barriers to communication for clients in Mexico, the
5 additional challenges posed by the COVID-19 pandemic, and the MPP policies and
6 rules themselves, our staff is spending much more time and resources per case to
7 meaningfully represent our clients. For example, we must answer questions from our
8 clients each time court hearings are rescheduled. We must call them to explain what
9 the new cancellations mean and provide any updates from the Mexican government
10 states about their visas. Although we do not give legal advice on Mexican law, we
11 do relay the messages issued by INM about Mexican visas, which is time-consuming.

12 40. The suspension of MPP hearings has caused confusion and hardship for
13 our clients. The challenges to communicating with MPP clients are exacerbated by
14 our inability to travel to Mexico. As a result, responding to urgent case-related and
15 safety-related issues has become more difficult, increasing the burden on staff
16 representing people subject to MPP.

17 41. Additionally, some people in Mexico are losing their jobs as a result of
18 the economic problems brought on by the pandemic. This means that they have fewer
19 resources to feed themselves and their families, and more frequently cannot afford to
20 add minutes to their phones. Without the ability to adequately communicate with our
21 clients, it is extremely difficult to prepare their cases. The pandemic has also made it
22 nearly impossible to have confidential meetings with MPP clients who are living in
23 shelters in Mexicali and Tijuana. Due to COVID-19, many shelters initially
24 implemented a rule that did not allow many individuals to leave the shelter without
25 risking giving up their beds. This made it impossible for them to get to an Internet
26 café to send documents via email. The shelters are so crowded that private
27 conversations are nearly impossible. To get documents signed, some clients must use
28 DocuSign, which costs ImmDef \$5.00 per transaction. This also requires taking the

1 time to explain DocuSign to our clients. If DocuSign is not an option, we have to
2 explain other alternative applications such as Adobe.

3 42. Due to travel restrictions during the pandemic, ImmDef has also had to
4 stop its in-person KYR presentations and asylum clinics in Mexico. In recent months,
5 we have developed and implemented virtual KYR presentations at clinics located in
6 Mexicali and Tijuana. But virtual presentations are not adequate replacements for in-
7 person presentations because it is much more difficult to build rapport with MPP
8 respondents. Based on my extensive experience conducting KYR presentations, it is
9 not until the end of an in-person presentation that some of the most vulnerable persons
10 feel comfortable enough to initiate a private one-on-one conversation to ask questions
11 about their cases or the U.S. immigration process. These presentations are often the
12 first and sometimes the only opportunity people in MPP have to seek legal advice. I
13 understand that many MPP respondents have attempted to call the phone numbers of
14 attorneys provided by the immigration court but have not received responses.

15

16 I declare under penalty of perjury under the laws of the United States of
17 America that the foregoing is true and correct.

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19 Executed on November 7, 2020 at San Diego, California.

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Margaret Cargioli

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