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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

LAS AMERICAS IMMIGRANT
ADVOCACY CENTER; ASYLUM
SEEKER ADVOCACY PROJECT;
CATHOLIC LEGAL IMMIGRATION
NETWORK, INC.; INNOVATION LAW
LAB; SANTA FE DREAMERS
PROJECT; AND SOUTHERN POVERTY
LAW CENTER,

Plaintiffs,

Case No. 3:19-cv-02051-SB

**DECLARATION OF ALLEGRA LOVE IN
SUPPORT OF EMERGENCY MOTION FOR
TEMPORARY RESTRAINING ORDER
PURSUANT TO 28 U.S.C. § 1651(a)**

DECLARATION OF ALLEGRA LOVE IN
SUPPORT OF EMERGENCY MOTION FOR
TEMPORARY RESTRAINING ORDER

129956-0004/147678853.1

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v.

DONALD J. TRUMP, in his official capacity as President of the United States; WILLIAM BARR, in his official capacity as Attorney General of the United States; U.S. DEPARTMENT OF JUSTICE; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; AND JAMES MCHENRY, in his official capacity as EOIR Director of the United States,

Defendants.

I, Allegra Love, declare as follows:

1. I am an attorney licensed to practice in the State of New Mexico. I am a member of the American Immigration Lawyers Association (AILA).

2. I am the founder and Executive Director of the Santa Fe Dreamers Project (SFDP), a nonprofit organization that provides free legal services to immigrants to promote economic empowerment, community development, family unity, and liberation from detention.

3. Our organization provides legal representation to immigrants with applications in front of USCIS and EOIR. We work in several detention centers across the United States including but not limited to, El Paso Processing Center, Otero County, Cibola County, Torrance County, South Texas Detention Center, Tacoma Detention Center, Aurora Detention Center, and Winn County Correctional.

4. I am over 18 and have personal knowledge of the facts described herein.

5. SFDP operates offices and several programs in New Mexico and Texas. These programs include SFDP's involvement in the El Paso Immigration Collaborative (EPIC). Through EPIC, SFDP provides free legal representation in immigration court to individuals detained within the El Paso region's immigrant detention centers. We also represent a large percentage of transgender women who are detained in various ICE detention centers across the United States.

6. Before the COVID-19 pandemic, SFDP staff members working in El Paso typically attended in-person court hearings for clients twice a week at the El Paso Processing Center, the El Paso Immigration Court, or the Otero Immigration Court. Staff members also visited detained clients four or five days a week in the El Paso Processing Center; the West Texas Detention Facility in Sierra Blanca, TX; and the Otero County Processing Center in Chaparral, NM. During these visits, staff typically met with clients and potential clients for approximately six hours each day. In total, our staff met with 50-100 clients in detention each week. Depending on the available facility at each detention center, these meetings either took place in a small room with our client or through a “contactless” visit, involving speaking on a phone to our client on the other side of a visitation window.

7. On March 12, 2020, SFDP made the organizational decision to suspend all staff visitation to immigration detention centers. We made this decision directly in response to the COVID-19 pandemic. The decision was primarily motivated by the risk that our staff members could pose to clients and other detained individuals if any visiting staff member inadvertently brought the coronavirus into a detention center and set off a deadly epidemic inside.

8. On March 12, 2020, SFDP also made the decision to partially close all staff offices and institute strict office protocols for disease mitigation and handwashing. On March 16, 2020, SFDP made the decision to close all staff offices given the escalation of the COVID-19 pandemic. Staff members are currently allowed to meet with a client only in an emergency situation, and no more than one person is allowed in an SFDP office at any time.

9. Our decision to close staff offices was largely driven by concerns about inadvertently spreading the coronavirus to staff members with particularly vulnerable family members. As an organization, we were unwilling to risk severe illness or death to our staff and their loved ones, particularly for individuals made vulnerable by certain health conditions. Three of our staff members have newborn babies at home. Another staff member’s spouse, in her

fifties, has just finished her first round of chemotherapy for cancer and as a result is severely immunocompromised. The Centers for Disease Control and Prevention have advised that individuals who are immunocompromised from cancer treatments are at particularly high risk for severe illness from COVID-19.

10. All SFDP staff are currently working remotely and are subject to stay-at-home orders imposed by state and local authorities. On March 23, 2020, New Mexico Governor Michelle Lujan Grisham announced a statewide stay-at-home order that is effective at least through April 10, 2020. SFDP staff based in El Paso are also subject to a stay-at-home order that was issued by local authorities on March 24, 2020.

11. SFDP's legal services in the El Paso region have been severely harmed by EOIR's continued operation during the current pandemic. EPIC's model depends on an initial in-person consultation that staff members conduct with detained individuals in the El Paso region detention centers. This initial in-person consultation enables SFDP's staff to connect with potential clients and to screen their cases for eligible relief. Without this initial contact, SFDP's staff have no way of initially contacting newly detained individuals. The restraints on visitation caused by COVID-19 thus preclude SFDP from providing legal services to detained clients in the El Paso region, in line with EPIC's fundamental mission. Nevertheless, EOIR currently continues to hold these individuals to the same deadlines for their cases, effectively forcing them to proceed pro se by preventing them from having the time or capability to access our legal support.

12. EOIR's failure to respond to the current health crisis has forced our staff into a position of choosing between our health and safety and our legal and ethical commitment to our clients. For example, our attorneys have failed to receive even minimal accommodations for the extreme pandemic conditions we currently face. On March 17, 2020, SFDP's staff attorney Estrella Cedillo, based in our El Paso office, filed a Motion for Telephonic Appearance with the

Atlanta Immigration Court in Atlanta, GA. The motion was filed for a bond hearing involving one of Ms. Cedillo's clients, who had been initially detained at the Otero Detention Facility and was subsequently abruptly transferred to Folkston, GA. Ms. Cedillo's motion explained that it would be a significant hardship for her to travel to Atlanta to attend her client's hearing in-person, citing the emergency circumstances of the COVID-19 pandemic. Ms. Cedillo's motion noted that she had no plans to travel due to the pandemic and was working from home indefinitely.

13. On March 23, 2020, Immigration Judge Wayne Houser denied Ms. Cedillo's motion for the sole reason that "good cause is not shown." Judge Houser's order failed to provide any additional explanation for the denial and did not make any acknowledgement of the COVID-19 pandemic. As a result, the court is forcing Ms. Cedillo to choose between traveling over 1500 miles to attend her client's bond hearing – jeopardizing her health and undermining public health interventions – or effectively abandoning her client during a critical custody determination hearing.

14. Attached as **Exhibit A** to this declaration is a true and correct copy of the March 23, 2020, order from Immigration Judge Houser.

15. For the past two weeks, SFDP's staff attorney Héctor Ruiz, also based in El Paso, has been extremely sick. Because Mx. Ruiz has been unable to be tested for COVID-19, they have self-quarantined to protect their clients from potential infection.

16. As of March 25, 2020, Mx. Ruiz has been unable to schedule legal calls with their clients detained in the El Paso Processing Center. Mx. Ruiz has tried to email their clients' Deportation Officers on several occasions but has been met with silence. After not receiving an initial response, Mx. Ruiz has asked ICE for guidance on how to set up a legal call, as just asking ICE to schedule it for them did not work. Again, Mx. Ruiz received no response. They have addressed the Deportation Officers and copied the Supervisory Detention and Deportation

Officers, but nobody has responded. As a result, Mx. Ruiz has had to rely on clients' calling them through the regular telephone lines of the detention center in order to have a legal consultation. These phone lines are subject to monitoring, thus jeopardizing the confidentiality of attorney-client conversations.

17. At least two courts where SFDP attorneys regularly appear have closed after individuals tested positive for COVID-19. In both cases, I learned of these issues from media reporting, rather than from any direct communication from EOIR itself. My understanding is that an immigration judge in the Denver Immigration Court was presiding over hearings while symptomatic for COVID-19 and was actively coughing in court. My understanding is that although the judge tested positive for COVID-19 on March 17, 2020, the court was not closed for cleaning until March 19, 2020. My understanding is also that, on March 25, 2020, the Aurora Immigration Court was closed after an "administrative staff" member at the Aurora Contract Detention Facility tested positive for COVID-19.

18. Our staff are also concerned that EOIR's continued operation during the COVID-19 pandemic will harm our ability to ensure that important filings are received by the court. SFDP understands that because of COVID-19, EOIR is currently encouraging or requiring mail-in filings at some immigration courts. Based on our staff's extensive experience with mail-in filings, immigration courts often fail to correctly process these filings. For example, we submitted a large volume of motions to the El Paso Immigration Court by Priority Mail in July 2019. In February 2020, a staff member contacted the court administrator because although we saw that delivery had occurred, we had still received no response or even confirmation that these motions were received. Our staff have frequently experienced hearings in which the judge says they have not received a mail-in filing, even though we have the Priority Mail record of successful delivery for that filing. In practice, when this issue arises, judges have typically allowed our staff to resubmit a copy of the filing in court; however, now that our attorneys will

be unable to attend hearings in-person, we will be unable to make this resubmission in person. As a result, our clients' cases may be prejudiced because we are unable to effectively submit crucial information to the court. Because the immigration courts abide by the "receipt rule," only counting a filing on the day the court processes it, failure to properly receive mail-in filings may also result in our clients unfairly missing deadlines through no fault of our efforts.

19. We have come to learn that EOIR has been announcing court closures and rules on Twitter. We do not actively monitor social media for changes in court rules and regulations and do not consider Twitter a trusted source of how to proceed against the Immigration Court Practice Manual.

20. In sum, SFDP's programming has been severely affected by EOIR's inadequate response to the COVID-19 pandemic. Our ability to provide meaningful legal services to our clients has been fundamentally undermined by our lack of access to detained clients and the ongoing operation of hearings and filing deadlines without appropriate case-by-case accommodations made for the current public health crisis. Our staff have been forced into an impossible situation of choosing between the health and safety of their loved ones, clients, and community members, and their ability to advocate zealously on behalf of their clients.

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

DATED: March 27, 2020



Allegra Love