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Immigration Network, Inc.; Innovation Law Lab;
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Poverty Law Center

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

DECLARATION OF ARIEL PRADO IN SUPPORT
OF EMERGENCY MOTION FOR TEMPORARY
RESTRAINING ORDER

129956-0004/147689675.1

Perkins Coie LLP
1120 N.W. Couch Street, 10th Floor
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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, Ariel Prado, declare as follows:

1. I am the Director of Defend Asylum for the Innovation Law Lab (“Law Lab”), a nonprofit founded to improve the rights and well-being of immigrants and refugees by combining technology, data analysis, and representation. I am a member of the Executive leadership of Innovation Law Lab

2. I am an Accredited Representative in good standing with the Executive Office of Immigration Review (EOIR) and the Department of Homeland Security, as recognized by the Office of Legal Access Programs of the Department of Justice. My full accreditation is recognized through the accredited nonprofit organization where I am employed, Innovation Law Lab.

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

4. Before working at Law Lab, I was the Project Coordinator of the Dilley Pro Bono Project, a detention-based project that provided universal representation to detained families in rapid removal proceedings. In my role with the Dilley Pro Bono Project, I mobilized, organized, and trained attorneys, law students, interpreters, researchers, social workers, and others to advocate for the rights of children and families seeking asylum in a detained setting.

5. At Law Lab, I assisted in the design, direction, and implementation of the pro bono representation project called the Centers of Excellence, launched in 2016, which provide

1- DECLARATION OF ARIEL PRADO IN SUPPORT
OF EMERGENCY MOTION FOR TEMPORARY
RESTRAINING ORDER

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support to noncitizens and their pro bono attorneys, including legal, technical, and strategic assistance in the preparation and presentation of claims. I currently supervise Law Lab's programming in the Southeast, which includes the Center of Excellence pro bono representation projects in Georgia and North Carolina. In Atlanta, Georgia, I designed and currently implement a monthly workshop at which unrepresented asylum seekers receive limited legal assistance with completion of their asylum applications, orientation to the legal process, assistance with filings and complying with deadlines, assistance in preparing for hearings, orientation to available physical and mental health resources, and referrals to other nonprofit legal and social service programs as available and appropriate. I also design and implement best practices and procedures for Law Lab's other representation projects throughout the country, including in Oregon, California, and Texas.

6. Since the onset of the COVID-19 pandemic, Law Lab's work offering limited legal services to unrepresented respondents has become exceedingly challenging and, in some cases, functionally impossible. Every day I am forced to weigh the constantly evolving public health instructions and orders from state and local government and the health and safety of Law Lab's clients and staff against the rigid and inflexible requirements of EOIR.

7. On March 12, 2020, Law Lab's Executive leadership team ordered the organization to comply with all public health recommendations in order to ensure the public health and the safety of our organization's employees during the emerging COVID-19 crisis. These steps included instructing all Law Lab employees to work from home whenever possible. On March 14, Georgia Governor Brian Kemp declared a public health state of emergency to address the spread of COVID-19 in Georgia. On March 16, the Centers for Disease Control and Prevention advised against any in-person gathering of more than ten people. On March 23, Atlanta Mayor Keisha Lance Bottoms issued a 14-day stay at home order for the city of Atlanta. This order included a prohibition on gatherings of any number of people who do

not share a household. On March 23, Governor Kemp ordered certain state residents with an increased risk of contracting COVID-19 to shelter in place.

8. Similar orders are in place in every state where Law Lab operates legal service programming. In California, Governor Gavin Newsom issued a statewide shelter-in-place order on March 19, requiring residents to work from home unless employed by an essential business. On March 8, Oregon Governor Kate Brown declared a state of emergency due to the public health threat posed by COVID-19; Governor Brown's declaration was soon followed by statewide school closures, a prohibition on gatherings of more than 25 people, and, on March 23, an emergency "stay home, save lives" order requiring Oregonians to stay home to the maximum extent possible and requiring business to implement work-from-home policies whenever feasible. The governor of Texas declared a state of disaster on March 13, 2020; soon thereafter, mayors of cities where Law Lab operates, including San Antonio and El Paso, issued shelter-in-place orders.

9. COVID-19 is a threat to everyone. Several Law Lab staff, however, have been urged to take particular precautions because of their own preexisting health conditions and vulnerabilities, or those of their immediate families and cohabitants. We have two staff members who are pregnant, in addition to several staff members who are caring for young children, elderly parents, or immuno-compromised family members. Others live with frontline healthcare workers and must take particular precautions to ensure the virus does not spread within their own homes or beyond. Additionally, many of Law Lab's most dedicated volunteers are above the age of 65, and our clients include pregnant women, young children, the elderly, and the sick.

10. In light of the multiple government orders and concerns for the health and safety of our staff, volunteers, and clients, Law Lab's capacity has been significantly reduced, and we have had to make immediate and impossible choices about who would receive legal services. Because we exclusively serve people in removal proceedings, every person we serve

has serious responsibilities to uphold in their immigration case; not complying with an immigration judge's order or a filing deadline can mean deportation back to serious harm and even death. Over the days of March 11th and March 12th, I made the difficult choice to radically shift the structure of our monthly asylum workshop, which was to be held on April 11, so that it would occur entirely remotely. This remote structure will impose significant challenges for both our operational structure, which depends largely on in-person volunteers, and for client access, as many of the unrepresented respondents we work with lack access to the technological resources needed for successful completion of remote applications.

11. EOIR's directives regarding the Atlanta Immigration Court have caused chaos, fear, and have endangered everyone. On March 17, EOIR announced, via Twitter, that the Atlanta Immigration Court located on W. Peachtree Street, which hears non-detained cases, would close as of March 18. An alternate filing location was provided, but EOIR specified (also via Twitter) that this location was to be used for "emergencies only." EOIR provided no guidance on what might constitute an "emergency," though a footnote on the EOIR website stated that filings due during the closure would be considered timely if received on the court's next business day. No information was provided regarding what type of non-emergency filings would be excused during the court's closure. On the evening of March 24, after the close of business, EOIR announced (again, on Twitter) that the Peachtree court would be open for filings on March 25, and that all filings due during the period of closure would be due that day. Given the short notice, and the impossibility of sending overnight mail at such a late hour, this meant that attorneys and pro se respondents would be forced to either flood the court for in-person filings on March 25 or miss their filing deadlines. Shortly after this posting, EOIR deleted the Tweet about the March 25 due date and tweeted that filings would be due on March 30.

12. Despite the fact that EOIR records phone numbers for respondents, it is my understanding that EOIR did not update respondents with respect to court closures and re-

openings. Law Lab has had to devote significant time and resources to making sense of EOIR's constantly changing requirements, all of which have been communicated by Twitter and by obscure updates to EOIR's website. These changes must be communicated to the unrepresented respondents with whom we work—none of whom speak English, and none of whom have Twitter accounts or facility with EOIR's website—in a way that does not cause further confusion and stress.

13. The only sources I have for information about EOIR's constantly changing closures or filing requirements are its @DOJ_EOIR Twitter feed and its website, and often the two conflict with one another.

14. In light of the conflicting information provided by EOIR, I determined, with others in leadership at Law Lab, that it was in the best interest of pro se respondents to file asylum applications before the deadlines applicable in each respondent's case- either the one-year filing deadline or the filing deadline set by the immigration judge. With remote operating procedures, however, it has been nearly impossible to provide the legal services that pro se respondents need to fully and accurately comply with these deadlines, while also complying with the shelter in place orders and the social distancing practices strongly recommended by public health officials.

15. For example, preparation of an I-589, application for asylum, generally requires an in-person meeting of several hours in order to gather accurate case information and complete the highly detailed 12-page form. Providing accurate information on the I-589 is crucial to the success of a respondent's immigration case because any errors or omissions can be used against the respondent later to deny their application. The vast majority of individuals applying for asylum have experienced severe past trauma and find it difficult to discuss their past trauma in a linear manner and disclose the full extent of what they suffered. In my experience managing volunteers, an in-person appointment is ideal for gathering this often highly sensitive

information. If an appointment must occur remotely, video conferencing is preferable so as to facilitate open communication and understanding between the respondent and the preparer. A phone appointment to complete an I-589 is feasible, but only with the work of a highly skilled preparer with excellent fluency in the respondent's native language, and the willingness of a respondent to describe trauma that they have survived over the phone to someone they have never met. Given that none of the respondents we work with have access to video conferencing, and the current circumstances prevent us from arranging this access, we will have to rely on a subset of our most highly skilled volunteers to complete asylum applications that are due in the next few weeks. Because we are now forced to rely on a small subset of our volunteer base, Law Lab staff will have to stop working on other vital Law Lab projects and step in to complete applications and ensure that the respondents in our program meet their one-year-filing deadlines.

16. EOIR has set up an impossible system, where people must either risk danger to themselves and to the public health or risk deportation. For example, EOIR requires an original signature on all filings, and will automatically reject any filings with e-signatures or signature copies. Because we cannot meet with clients in person, this means that we must mail applications back and forth in order to obtain original signatures. We must then also take careful pains to assist pro se respondents with filing their applications, especially considering the constantly changing information from EOIR regarding where, and how, filings will be accepted.

17. Efforts to comply with these filing deadlines have forced me to put my own health and safety at risk in order to meet my ethical responsibilities to Law Lab's clients. For example, on March 24, 2020, I submitted an asylum application to the Atlanta Immigration Court by overnight mail. Though EOIR had announced that the court would be open to accept filings on March 25- and that any filings due during the court's closure would now be due on March 30- the court was not open to accept filings when the mail service attempted delivery on the morning of March 25.

18. Because the mail service, FedEx, would not reattempt delivery until April 8- after the respondent's one-year filing deadline- I contacted FedEx to ask if they could reattempt the delivery earlier. The person with whom I spoke told me that they could reattempt delivery, but that FedEx had been informed that the building was closed, and no deliveries would be accepted. Therefore, I determined that I would have to leave my home- in possible violation of Atlanta's shelter-in-place order- to retrieve the package from FedEx and attempt hand-delivery at the immigration court, since EOIR had publicly stated on both Twitter and its website that filings were being accepted at that location. I had significant concerns about doing so because of possible exposure to COVID-19.

19. I arrived at the immigration court the morning of March 26, 2020. Upon my arrival, a security guard prevented me from entering the building and asked me to leave. I explained that I was there because I had attempted to file an application with the immigration court and the delivery person had been denied entrance. The guard told me that the immigration court was closed and referenced a sign on the door. I asked if FedEx and other mail service persons were being allowed to enter. The guard told me that they were not allowing anyone access to the building.

20. The guard directed me to a flyer taped to the door with the phone number for EOIR's Communications and Legislative Division. The person with whom I spoke instructed me to wait downstairs, and that someone from the immigration court would come down and let me in. I waited for approximately 50 minutes and was not given the opportunity to enter. During that time, I was able to reach the court clerk at Atlanta's detained court, located on Ted Turner Drive, who informed me that the Peachtree location was closed and that all filings should be submitted at the Ted Turner location. The security guard also informed me, without explanation, that attorneys were being allowed access to the building, but accredited representatives and unrepresented respondents would not be allowed in.

21. Given this experience, I am not confident that filings Law Lab submits by mail to EOIR will be accepted or timely, or that unrepresented respondents will be able to comply with urgent filing deadlines.

22. Because of the added operational burden of completing timely and accurate filings for pro se respondents in Atlanta, I had to make the difficult decision of canceling the pro se services that Law Lab was to provide unrepresented respondents in North Carolina. We had scheduled an asylum workshop series on March 28 and 29 in collaboration with University of North Carolina and Duke University. At that workshop, we would have assisted 20 families with filing their asylum applications before the one-year deadline. On March 11, University of North Carolina and Duke University canceled their participation because of the closure of the schools due to COVID-19. Under different circumstances, we could have completed these applications remotely, but given the overwhelming nature of the revamped workshop in Atlanta, Law Lab lacks capacity to do so. This is damaging not only to the respondents who we would have assisted, but also to Law Lab's reputation and organizational presence in North Carolina.

23. Other Law Lab programs have faced similar, and no less significant, ethical and operational challenges due to EOIR's continued operations during the COVID-19 crisis. Law Lab runs the Equity Corps of Oregon (ECO), a universal representation program which provides legal assistance and representation to low-income immigrants who are in removal proceedings before the Portland Immigration Court. EOIR's lack of transparency and changing directives for the Portland Immigration Court have caused similar confusion and chaos to those related to the Atlanta court. The Portland court has postponed all non-detained master calendar hearings scheduled through April 10 but has released no guidance or instructions on whether filing deadlines during that time frame have also been postponed. The Portland court has similarly been unclear about building closures related to the COVID-19 pandemic; ECO clients with filing deadlines have gone to court to attempt to file at the window but have been turned away. To my

knowledge, the Portland court is not communicating changes to its operating procedures publicly; we learn about rumored building closures and filing procedures from respondents, other attorneys and legal services providers through word-of-mouth or Twitter. The lack of transparency and constantly changing procedures have sowed confusion and anxiety among ECO clients, Law Lab staff, and the broader immigrant and legal advocate community. Moreover, because immigration court closures and reopenings are often announced via Twitter, pro se respondents who do not have access to Twitter are left completely in the dark. Law Lab has had to divert significant resources to updating and keeping ECO clients informed of changes to immigration court procedures as it learns of the changes.

24. Like in Atlanta, the ECO program had to cancel its in-person asylum workshops this month due to government orders and public health concerns. This included two asylum workshops that were to be staffed by law student volunteers from Columbia Law School and Lewis and Clark Law School. Law Lab staff have had to absorb much of the work that was to be completed by these law students, diverting staff from other important program priorities. Law Lab staff have also been forced to spend significant resources researching and implementing new practices and procedures for completing asylum applications for respondents with imminent filing deadlines in light of the current public health crisis. Incredibly, most immigration courts do not allow electronic filing, and despite the current crisis, the immigration court continues to require an original signature on all filings. To comply with the court's filing rules, Law Lab staff initially facilitated in-person signing appointments for applications that had been prepared remotely for ECO clients with immediate filing deadlines. Facilitating these in-person signing appointments slowed ECO's ability to serve ECO clients significantly, and the program was forced to reschedule or postpone numerous asylum application appointments in order to ensure that Law Lab staff and clients were sufficiently protected from risk of exposure to COVID-19 during these in-person appointments.

25. On March 23, 2020, Law Lab was forced to halt all in-person signing appointments in Oregon, following Oregon Governor Kate Brown's shelter-in-place order, which announced tightened stay-at-home restrictions and mandatory work-from-home policies for non-essential businesses. This order effectively prevents ECO from conducting any in-person appointments to obtain original signatures. We are currently scrambling to coordinate overnight mailings so that all ECO clients with urgent deadlines are able to timely file with the Portland court, while researching remote signature options for the clients with deadlines that cannot feasibly be met through mailing. While one immigration agency, U.S. Citizenship and Immigration Services (CIS) has announced it will accept electronic or reproduced signatures, the immigration courts continue to require original signatures on all filings. Law Lab has diverted significant resources into brainstorming and researching remote signature options. We are gravely concerned that mailed filings will be rejected by the court if the building is closed. We are also concerned that filings with electronic or reproduced signatures will be rejected by the Portland Immigration Court, which for many respondents, could result in an order of deportation.

26. Law Lab is a participant and founding member of the El Paso Immigration Collaborative (EPIC), an organization of immigrant rights advocates dedicated to implementing a massive collaborative representation strategy in five detention centers, detaining over 3,500 persons, in New Mexico and West Texas. EPIC connects on-the-ground legal services organizations with remote attorneys to bring high quality representation to asylum seekers in bond and parole cases. Though remote legal services are built into the program structure, these services cannot begin without at least two initial meetings with the person in detention to obtain consent and relevant case documentation. Under normal circumstances, EPIC staff and volunteers conduct these in-person meetings and facilitate remote representation.

27. On March 12, 2020, members of the EPIC collaborative collectively decided that it was no longer safe to send our staff and volunteers into the detention centers where we

work. Detention centers are particularly dangerous places for possible COVID-19 contamination because of the close quarters in which persons are held and because of Immigration and Customs Enforcement's (ICE) poor hygiene and safety practices. This was an extremely difficult decision to make, as it means that we can no longer serve nearly as many detained individuals, whose immigration cases continue to move forward in spite of their inability to consult with or be represented by counsel in person. For clients who we can continue to serve, our ability to provide legal services has been extremely limited because all meetings must happen by telephone. Telephonic legal consultations are particularly problematic due to poor coordination between ICE and detention center staff, poor infrastructure, inconsistent implementation of telephonic legal phone call protocols, and a lack of confidentiality. For example, on numerous occasions legal assistants have been told that detention center guards have to remain in the same room as our clients during the call but will be "out of earshot". The lack of confidentiality compromises the integrity of the legal call and our ability to provide quality legal services.

28. In addition, ICE will often arrange legal phone calls, but then fail to facilitate the call at the appropriate time. There is no accountability for these missed telephonic legal consultations, which are often time-sensitive due to the client's detention. To make matters more logistically difficult and problematic, for the last two weeks ICE has been transferring our clients between detention centers on a regular basis, further complicating our ability to locate and schedule a telephonic legal consultation, and further increasing their risk of contracting COVID-19 from unnecessary and irresponsible exposure to conditions inherently vulnerable to outbreak of infectious disease. These conditions force Law Lab to serve fewer detained clients, and to provide legal services to current clients under less than ideal conditions. We have no choice but to do so, given the continued operation of EOIR's detained docket without accommodations for the reality of the pandemic.

29. In sum, every single one of the Law Lab's existing programs has been and will be significantly affected by the potential harm to staff and diversion of resources caused by the ongoing operation of EOIR during the COVID-19 crisis. The ongoing operation of EOIR has caused, and will continue to cause, significant barriers in our ability to fully and effectively serve our clients, frustrating our mission, endangering our lives, and jeopardizing our clients' eligibility for relief from deportation. I cannot ethically serve our clients and continue our programs while also prioritizing my own health and safety and that of our staff and volunteers.

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

s/ Ariel Prado

Ariel Prado