

Stephen Manning, OSB No. 013373
smanning@ilgrp.com
Nadia Dahab, OSB No. 125630
nadia@innovationlawlab.org
Jordan Cunnings, OSB No. 182928
jordan@innovationlawlab.org
Tess Hellgren, OSB No. 191622
tess@innovationlawlab.org
INNOVATION LAW LAB
The Oregon Trail Bldg
333 SW 5th Ave Ste 200
Portland OR 97204
Telephone: 503.241.0035

Melissa Crow (*admitted pro hac vice*)
Melissa.Crow@splcenter.org
SOUTHERN POVERTY LAW CENTER
1101 17th Street, NW, Suite 705
Washington, DC 20036
Telephone: 202.355.4471

Attorneys for Plaintiffs
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

Bryan D. Beel, OSB No. 073408
BBeel@perkinscoie.com
Heidee Stoller, OSB No. 072835
HStoller@perkinscoie.com
Nathan R. Morales, OSB No. 145763
NMorales@perkinscoie.com
PERKINS COIE LLP
1120 N.W. Couch Street, 10th Floor
Portland, OR 97209-4128
Telephone: 503.727.2000

Rebecca Cassler (*admitted pro hac vice*)
Rebecca.Cassler@splcenter.org
Gracie Willis (*admitted pro hac vice*)
Gracie.Willis@splcenter.org
SOUTHERN POVERTY LAW CENTER
P.O. Box 1287
Decatur, GA 30031-1287
Telephone: 404.521.6700

Attorneys for Plaintiffs

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

DECLARATION OF LAURA G. RIVERA IN
SUPPORT OF EMERGENCY MOTION FOR
TEMPORARY RESTRAINING ORDER

129956-0004/147688962.1

Perkins Coie LLP
1120 N.W. Couch Street, 10th Floor
Portland, OR 97209-4128
Phone: 503.727.2000
Fax: 503.727.2222

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, Laura G. Rivera, Esq., declare as follows:

1. I serve as the Director of the Southeast Immigrant Freedom Initiative of the Southern Poverty Law Center (“SIFI”). SIFI provides *pro bono* representation to detained immigrants in proceedings before the Executive Office for Immigration Review (“EOIR”) and U.S. Immigration and Customs and Enforcement (“ICE”). SIFI prioritizes representing detained individuals in seeking their release from ICE custody. SIFI also represents some individuals in before the Board of Immigration Appeals (“BIA”), in EOIR merits proceedings, and by providing *pro se* support to custody clients in their merits proceedings.

2. Since SIFI’s founding in 2017, SIFI legal teams have represented hundreds of individuals confined inside five Deep South detention centers: the LaSalle Detention Center (“LaSalle”) in Jena, Louisiana; the Pine Prairie ICE Processing Center (“Pine Prairie”) in Pine Prairie, Louisiana; the Irwin County Detention Center (“Irwin”) in Ocilla, Georgia; the Folkston ICE Processing Center (“Folkston”) in Folkston, Georgia; and the Stewart Detention Center (“Stewart”) in Lumpkin, Georgia. Most of SIFI’s clients and legal teams appear before four Deep South EOIR courts: the LaSalle Immigration Court (“LaSalle”), the Oakdale Immigration Court (“Oakdale”), the Atlanta Immigration Court (“Atlanta”), and the Stewart Immigration Court (“Stewart”). The LaSalle and Stewart Courts are attached to the respective detention centers.

1- DECLARATION OF LAURA G. RIVERA IN
SUPPORT OF EMERGENCY MOTION FOR
TEMPORARY RESTRAINING ORDER

129956-0004/147688962.1

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Portland, OR 97209-4128
Phone: 503.727.2000
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Attorneys representing individuals confined inside Irwin must travel three and a half hours to Atlanta to appear in person for hearings. Attorneys representing individuals confined inside Folkston may travel more than five hours to Atlanta to appear in person for hearings, or they may appear along their clients inside Folkston via video teleconferencing (“VTC”).

3. While the outbreak of the novel coronavirus brings our communities to a standstill, most of the EOIR courts where SIFI lawyers practice continue to press forward on their detained dockets as though it were business as usual. Even where EOIR has announced shifts in operations in response to the pandemic, its actions have sown chaos and undermined the rights of our clients. Of the two courts where SIFI practices that have issued standing orders in response to COVID-19, one requires legal representatives to give up important rights of the client in exchange for the opportunity to appear telephonically. EOIR’s deficient operational response creates harm to SIFI staff and clients beyond the courtroom. Because cases continue apace, and avenues for the exchange of documents are woefully inadequate, SIFI legal workers have had to make dozens of in-person visits to detention centers during the past month to fulfill ethical obligations to their clients. They have little choice, as EOIR pushes clients’ cases forward with few accommodations for the catastrophic disruption that this pandemic represents to those in custody and to their legal representatives. Our ability to represent individuals under these conditions is under severe strain, due in part to EOIR’s failure to adopt protocols to safeguard immigrants and all other parties required to appear before its courts, as well as the public health more broadly.

4. Since the COVID-19 outbreak was declared a pandemic, SPLC joined a letter to EOIR, authored by Innovation Law Lab, requesting that the agency implement a more robust response plan for its operations to safeguard all parties from this pandemic, and that the agency inform us of their unfolding plans. To date, EOIR has not responded to the letter. Instead, like other practitioners before the detained courts, SIFI has resorted to scouring Twitter to track the

hodgepodge of announcements related to closures and re-openings of specific courts. Only through professional association listservs have we learned of the issuance of standing orders in Atlanta and Stewart, each with its own set of rules and requirements.

Filing pleadings with EOIR in the age of coronavirus

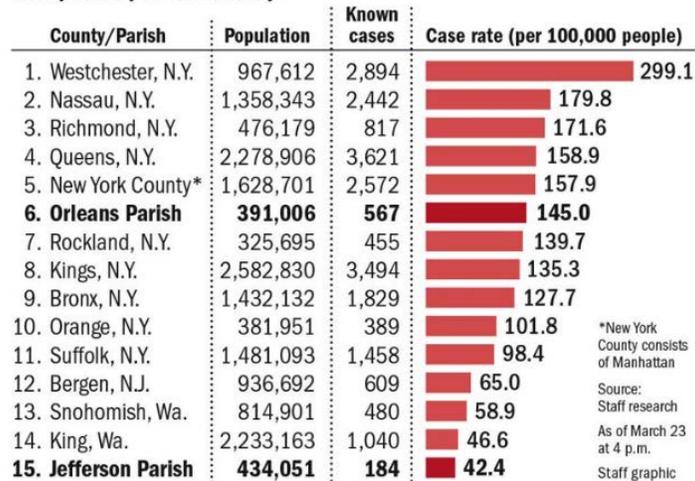
5. Before this pandemic, SIFI legal teams already faced significant obstacles to their mission of providing high-quality, pro bono representation to its clients before the EOIR courts. The operations of EOIR courts are a relic of twentieth century legal practice. Two of the four courts where SIFI legal teams practice—LaSalle and Oakdale—do not accept filings electronically. The Stewart court recently began to accept electronic filing, but only where respondents have been issued Notices to Appear on or after January 31, 2020. None of SIFI’s clients have yet met that criterion. On top of that, the mail is not a reliable method of service at some of the courts where SIFI practices. For example, at Stewart, the same mailing address is shared by four categories of recipients: the EOIR court, the Office of the Chief Counsel (“OCC”), ICE’s sub-field office, and all detained people. Because of bad experiences with previous filings by mail, SIFI legal workers at Stewart almost exclusively hand-file their pleadings through the window inside the Stewart court. One SIFI attorney at Stewart reported that even after hand-delivering copies of filings to OCC at the Stewart court window, OCC has sometimes denied receiving proper service.

6. Since the outbreak of the coronavirus, filing pleadings with the EOIR courts has become much more difficult. SIFI legal workers in Louisiana are working to vigorously represent detained clients even as they struggle to comply with a statewide shelter-in-place order. Unlike other similar orders, the Louisiana order contains no clear exceptions for using shipping and delivery services. Fearing running afoul of the order, SIFI staff for days have not picked up mail from the office post office box, where all communications from EOIR, and some from ICE and OCC, are delivered. To fulfill their ethical obligations to clients, SIFI legal workers will

need to leave their current homes in New Orleans soon to pick up and send legal mail. They will be doing so against the backdrop of a mushrooming rate of COVID-19 in Orleans Parish, which has the sixth highest per capita rate of COVID-19 infections of all counties nationwide.¹

Coronavirus hotbeds

Orleans Parish has one of the highest rates of known COVID-19 cases of any county in the country.



BY DAN SWENSON | GRAPHICS EDITOR

7. All of our teams are struggling to sustain a paper-based practice as we observe local and organizational policies to work from home. Since moving to remote work on March 17, 2020, SIFI Stewart attorneys have prepared and served several motions at significant personal cost. Because their small, at-home printers cannot handle the volume of printing 450 pages for a typical motion and the required copies, they must request permission from SPLC senior managers to enter their local office to access the office printer. These filings must be tabbed, hole-punched, and bound pursuant to EOIR rules of procedure. One of the SIFI Stewart attorneys is also juggling childcare responsibilities and must organize these trips around her

¹ GORDON RUSSELL and JEFF ADELSON, New Orleans has some of the highest coronavirus infection rates in the U.S. -- yet it's overlooked, The Times-Picayune (Mar. 23, 2020), available at: https://www.nola.com/news/coronavirus/article_c0509efc-6d4f-11ea-ae50-236ff5752610.html.

spouse's work schedule. They continue to hand-file at the Stewart court, exposing themselves to the risk of COVID-19 transmission so as not to prejudice their client's cases by using the mail. To file at the court window, they must pass through the same exterior gates that lead to the detention center, then enter a separate door for the court. To complete the security screening, they may interact with four or five guards in the waiting room, then approach the filing window inside that room. So far this week, SIFI Stewart legal workers have gone to the court to deliver filings three times, on March 23, 24, and, 25, 2020. Beginning on March 24, 2020, the court staff are taking people's temperatures before they can enter the court.

Sustaining communications with clients during the pandemic

8. These filing challenges pale against the obstacles SIFI legal teams are facing in maintaining communication with detained clients and potential clients. Before the pandemic, SIFI staff made in-person visits to detention centers an average of two to three days a week, collectively visiting two dozen people or more per week, depending on the week. Now, increased restrictions on all types of visitation, including phone, video teleconferencing (VTC), and in-person, are hamstringing SIFI's ability to represent its clients. Due to public health experts' recommendations of social distancing and local and state constraints on interpersonal interactions, SIFI has limited in-person visitation to detained clients to circumstances where it is necessary to obtain documents or signatures on a time-sensitive basis. All other business must be conducted by legal phone or VTC calls. This means SIFI staff need to be able to rely on VTC and phone calls whenever possible. Before the outbreak of the virus, slots for VTC and phone calls were already limited at all the detention centers. But due to the increased demand and the dearth of VTC consoles (laptops or computers) and private phone booths, VTC and phone wait times have become untenable.

9. One example is LaSalle, which is already under a federal court order mandating legal access. On March 17, 2020, an SPLC attorney requested VTC with a client. Within an

hour, she got a response assigning her a slot six days later, on March 23, 2020. On March 24, 2020, a SIFI legal worker requested VTC visitation with five people confined there. Within minutes, facility staff replied that there were no time slots available for six days, until March 30, 2020 at 3 p.m. Central. The SIFI legal worker was distressed to learn this as she had high-priority visits with two medically fragile clients who had engaged in a hunger strike for more than 140 days each, and who were recently subjected to forced feeding via nasogastric tubes. Other people she intended to visit by VTC are also medically fragile and require immediate assistance in seeking release in light of their increased vulnerability to serious illness or death should they contract COVID-19. On March 25, 2020, the same SIFI legal worker made another VTC request to visit a client with chronic medical problems that heighten her vulnerability to serious illness or death should she contract COVID-19. On March 26, 2020, LaSalle officials responded, saying the soonest slot for a VTC call was next Tuesday, March 31, 2020, at noon Central.

10. The sense of urgency to access clients and potential clients inside LaSalle has been heightened by several reports in the past week that ICE had brought two individuals displaying symptoms of COVID-19 into LaSalle. The reports came from people inside LaSalle who expressed fear of contracting the virus. When some refused food, ICE reportedly went into LaSalle. One of the individuals reported that he requested to be tested due to symptoms, but ICE and nurses told him they could only test for fever. Over the past two days, SIFI has also received reports that ICE or facility operators used tear gas against individuals inside LaSalle who were clamoring for their release. As a manager, I face the agonizing decision between delaying necessary communications with clients inside a facility with rapidly deteriorating conditions due to limited VTC options, or authorizing in-person visits by legal workers from New Orleans, a new hotspot for the virus. On one hand is knowing that medically fragile clients need us now more than ever to advocate for their release from confinement, given Homeland Security medical

experts' characterization of detention centers as a "tinderbox" for contagion. On the other is the real risk that SIFI staff who are living in an area with a large cluster of cases could unknowingly transmit the virus to people inside, where they will face a woefully deficient medical infrastructure. And if New Orleans-based staff should become infected and require hospitalization, they will be living in a zone that is expected to reach hospital capacity by the first week of April.

11. Folkston, too, is under strain as demand for VTC calls rises. In one wing of the facility, the annex, there are no VTC visitation options and the phone in the legal phone call area is not in a private space, so others may hear clients' communications to SIFI staff. In the other, where limited VTC slots are available, SIFI staff must typically wait a few days to speak with clients by video, or else they have to schedule phone calls. Document exchange is slowed by having to rely on the mail, which delays fact gathering. In the current situation, this means that to even start working on an individual's case, SIFI legal workers need to wait at least a week after their first client meeting to receive any documents from the client.

12. Stewart similarly lacks sufficient VTC slots, and will not arrange legal phone calls apart from VTC. On March 25, 2020, an SPLC attorney requested VTC with a client. Within a couple of minutes, facility staff responded that they were booked for the rest of the week. SPLC has scrambled to provide alternate methods of communication, including paying for collect calls from clients. SIFI contacted private phone companies to expand its account to list staff cell phones, and contacted ICE to request written assurances that calls will not be monitored or recorded. ICE has failed to provide any promises of confidentiality in writing, though the agency did verbally confirm that calls would be confidential at all facilities where we work except for Irwin. Our other method of communication, a free and confidential hotline, is operating at reduced capacity since the outbreak of the pandemic because of technology and staffing constraints.

13. When in-person visits are necessary, SIFI staff faced heightened risk of transmission, due to the facilities' failure to take adequate steps to protect all people inside the detention centers from the spread of the virus. The facilities have a shifting and spotty set of protocols for in-person visitors. At Stewart, SIFI staff have made around 20 visits since the virus was declared a pandemic. Guards started taking temperatures of would-be visitors on March 24, 2020. Passing through security requires interacting with two or three guards in the front lobbying. Last week, SIFI legal workers also observed detained people cleaning the lobby and bathroom without adequate personal protective equipment. Legal visitation is non-contact, in one of three rooms. A phone on either side of the glass may be used to communicate, and an opening in the glass facilitates document exchanges. Visitors may bring their own gloves, mask, and wipes.

14. Since March 16, 2020, a SIFI Folkston attorney has visited with five people over several days. Inside Folkston, visitors may interact with just one or as many as twenty facility staff, depending on whether a shift change is underway. Before she proceeded to the appropriate area for visitation, she was asked to sit six feet away from those she was visiting. In the main building, legal visitation and court are held in the same space. It is a large room with a waiting area that holds up to sixty people, ringed by modular and permanent rooms for legal visits and VTC court.

15. While court and detention center staff have failed to provide SIFI staff with sufficient safeguards, ICE this week posted conflicting language on its website as to whether legal visitors would be required to wear extensive personal protective equipment as a condition to conducting legal visitation in person.² This conflicting information directly affects our ability to effectively represent our clients. Initially, on March 23, 2020, the language under a section

² ICE Guidance on COVID-19 (last checked March 25, 2020), available at: <https://www.ice.gov/covid19>.

titled “Will individuals in ICE custody be able to meet with their legal representatives?” stated: “non-contact legal visitation...will continue to be permitted. In order to safeguard visitors, detainees, and ICE and facility staff, official visitors may be subject to special screening and procedures. ICE **may** impose additional requirements, such as mandating that visitors wear protective equipment.” (emphasis added). This implied that personal protective equipment was optional. Up until then, I had provided SIFI staff with gloves, disinfectant wipes, and hand sanitizer, but not masks or eye protection. However, another section of the same guidance document, titled “Will members of Congress be able to visit ICE detention facilities?” stated that “all legal visitors” must “provide and wear personal protective equipment,” including “disposable vinyl gloves, N-95 or surgical masks, and eye protection[] while visiting any detention facility.”

16. Not knowing which of the two statements would prevail, and out of an abundance of caution, that same day I mailed by overnight delivery several packages containing surgical masks to five SIFI staff members, including one staff member from each office except for Ocilla, which was not conducting in-person visits. The masks were not N-95 masks. Despite trying to procure them locally, I had been unable to, given the national shortage of those masks. Even if I had been able to procure them, SIFI’s use of N-95 masks would have taken those masks out of circulation for use by frontline health care providers, in contravention of the priorities urged by public health experts.

17. The next day, on March 24, 2020 at 2:15 p.m., ICE updated this guidance. The section titled, “Will individuals in ICE custody be able to meet with their legal representatives?” had been amended thusly:

Detainee access to legal counsel remains a paramount requirement and will be accommodated to the maximum extent practicable. Unless and until it is determined to pose a risk to the safety and security of the facility, legal visitation will continue; but ICE is encouraging all legal representatives to contact the facility at which they must visit their clients in-person to determine current policies and procedures regarding legal visits. Non-contact legal visitation (e.g., Skype or teleconference) should be offered first, if available, to limit exposure to ICE detainees; but if the attorney believes the legal visit requires contact, the facility should permit the visit with the appropriate guidelines it has established.

For in-person, contact (without any physical barriers) visits to occur, the attorney must undergo screening using the same procedures as staff. ICE will require all legal visitors to provide and wear PPE (e.g., gloves, N-95 masks, and eye protection) while visiting with any client at any facility. Legal representatives may also be required to go through similar testing as employees of the detention facility, as determined by the individual facility. The overall authority to approve legal visits lies with the Warden or Facility Administrator; however, the facilities have been asked to notify its local Field Office Director as soon as possible of any denied legal visits.

For attorneys appearing in-person for court at ICE facilities, they are encouraged to contact the Executive Office for Immigration Review for any additional requirements.

18. As of March 24, 2020, then, ICE requires for in-person, contact legal visitation: “gloves, N-95 masks, and eye protection.” While SIFI staff are amenable to non-contact legal visitation during this pandemic, this type of visitation is not available at all the detention centers where SIFI has clients. Folkston has both three non-contact meeting rooms and two contact meeting rooms, meaning that our visit capacity has been cut by nearly half. Pine Prairie has contact visitation exclusively. Given that SIFI Pine Prairie legal teams or any other legal representatives cannot obtain N-95 masks for use due to the critical shortage of N-95 masks across the country, this new N-95 mask standard virtually ensures that no legal visitation will occur at Pine Prairie.

19. Visits that occurred at Pine Prairie before the issuance of this guidance demonstrate the significant danger SIFI staff have been forced to risk in order to provide adequate and ethical representation to clients. In the days leading up to the issuance of this guidance, a SIFI legal worker had visited Pine Prairie on two occasions. On March 16, 2020, she visited five individuals confined there. As a condition, she was required to submit to a temperature check and to sign paperwork stating that she had not traveled out of the country and that she did not have physical symptoms. She was permitted to wear her own mask and gloves

into the visitation area. None of the facility staff or detained people wore masks or gloves. The visitation area is in a multi-purpose room where dozens of new arrivals may congregate at any given time for the purpose of intake. The SIFI legal worker was seated in this room at a table about six feet from those she visited. The five individuals she visited independently gave her a consistent message: none had received any information about the coronavirus. They also mentioned lacking access to hand soap. When she asked them whether the facility staff had changed any protocols in response to the pandemic, they said their conditions had not changed in any noticeable way.

20. On March 20, 2020, the same SIFI legal worker conducted in-person visitation at Pine Prairie with five individuals from a unit that had been placed under quarantine. Upon entering the detention center, she signed a form stating that she was not symptomatic and had not been exposed to COVID-19 or traveled to high risk areas. Her temperature was not checked. Some staff wore masks; others did not. As before, she sat at a six-foot table in the multi-purpose room. The visits were not private or confidential. The five men from the quarantined unit, Charlie Alpha, wore masks but no gloves. As they waited for their turn at visitation, they also sat in the multi-purpose room alongside other detained people who did not have masks or gloves. The men under quarantine told her that they were only given masks when they left the dorm, not while they were inside of it.

21. Our clients inside Pine Prairie need SIFI's legal assistance now as much as ever. This week, on Tuesday, March 24, 2020, guards inside the detention center deployed pepper spray against people inside. While ICE confirmed the account in a published report, its spokesman maintained seven people refused to follow guards' directives.³ Reports received by SPLC legal workers from people inside Pine Prairie present a different version of events. An

³ BEN FOX, PHILIP MARCELO and NOMAAN MERCHANT, "Trump administration urged to free migrants as virus surges," Associated Press (March 25, 2020), available at: <https://apnews.com/1a6f88a44189733bb9c033ff3ce1468c>.

eyewitness to use of force deployed against people inside the Bravo-Delta unit stated that at least eight officers in riot gear and an assistant warden used tear gas and rubber bullets against them after they protested poor conditions and ICE and the facility administrators' failure to protect them from the risk of contracting COVID-19. SIFI has a client who will likely need pro se assistance completing forms for his merits hearing. His attorney is concerned that her efforts to assist him by VTC will be insufficient. In the past, when units inside Pine Prairie are under quarantine—as now—guards stop movement in the facility. If that is the case, the client will not be permitted to go to the law library to print his filings. Because EOIR's detained docket continues to move cases to individual hearings in a matter of weeks, SIFI staff are pressured to keep meeting with clients and submit filings, in spite of unsafe conditions in the detention centers.

Hearings

22. Before the pandemic, across the program, staff appeared in court about eight times per week. At Stewart, SIFI attorneys have always attended hearings in person. For bond hearings at Stewart, SIFI attorneys usually spend about 30 minutes in the court. Bond hearings at Oakdale, LaSalle, and Irwin are almost always in person also. Depending on the relevant adjudicator's docket that day, SIFI attorneys may wait less than an hour or a couple of hours to be called to the bench. During that time, they may interact with various court personnel and parties with business before the court.

23. On the morning of March 25, 2020, a SIFI attorney felt compelled to attend two court hearings inside Folkston. She had prepared motions to appear telephonically in those cases, and served one upon opposing counsel at the Office of the Chief Counsel ("OCC"). Before she filed them with the Atlanta court, she learned that the Atlanta court had issued a standing order regarding telephonic appearances. However, that order requires legal representatives who appear telephonically to waive the respondent's right to object to the admission of documentary

evidence on the sole basis that the party has not had the opportunity to examine it. In her experience, ICE trial attorneys have often introduced documentary evidence at hearings without serving her with it in advance, and she has often failed to receive documents that OCC has filed with the court. That requirement gave her concern that she would prejudice her clients should OCC seek to introduce documentary evidence that she had not seen. She attempted several times to reach the duty attorney in advance of the hearing without success. Ultimately, this attorney concluded that the standing order would have required her to breach her ethical obligation to zealously represent her client by appearing telephonically, which she could not do.

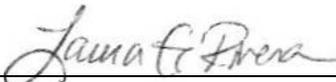
24. What few measures were available to safeguard this attorney from the risk of infection inside Folkston were largely of her own making, and nothing was available to protect her clients from the risk of transmission. Though detention center officials took her temperature upon her entry to the facility, they did not provide her with personal protective equipment of any kind or hand sanitizer. They did allow her to bring her own set of gloves and disinfectant wipes; however, she was not allowed to bring in a bottle of hand sanitizer because the guards considered it to be contraband. Once she passed security, the attorney walked into the visitation hall, which held about fifty people at the time. None of the people in ICE custody wore masks or gloves. She and her client entered the smaller of the available courtrooms at Folkston. Because of the size of the room, she and her client had to sit within six feet of each other, breaking one of the key rules of social distancing, one of the only tools at our disposal to prevent transmission. The attorney introduced evidence related to COVID-19 with the court—including evidence of low hospital capacity in the vicinity of Folkston—in advocating for the release of her client, who is ill. The court responded they understand there is a pandemic but that does not mitigate that they have to consider flight risk and denied bond, citing to *Matter of R-A-V-P*.

25. In sum, the continued operation of EOIR's detained docket, without adequate accommodations for the extreme and unusual circumstances in which advocates and respondents

are operating, forces SIFI staff to make impossible decisions between our duties to our clients and to public health and safety. SIFI is not going to give up on its mission to provide high-quality, pro bono representation to detained migrants in removal proceedings. But for SIFI and other Plaintiffs to fulfill this mission, EOIR must be obligated to conform its operations during this national emergency to safeguard the public health and afford immigrants and their legal representatives the rights they are guaranteed under law.

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



Laura G. Rivera, Esq.