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

DECLARATION OF MICHELLE MENDEZ IN
SUPPORT OF EMERGENCY MOTION FOR
TEMPORARY RESTRAINING ORDER

129956-0004/147689713.1

Perkins Coie LLP
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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, Michelle Mendez, declare as follows:

1. I am an attorney licensed to practice law in the State of Maryland and am admitted to practice in the District of Maryland. I am the Director of the Defending Vulnerable Populations (DVP) Program at CLINIC, whose main office is located at 8757 Georgia Avenue, Suite 850, Silver Spring, MD 20910. I work primarily from an office in Baltimore, Maryland, located at the University of Baltimore School of Law, 1401 N. Charles St., Baltimore, MD 21201.

2. In addition to my role at CLINIC, I am the program director for the immigration public programs at the National Institute for Trial Advocacy (NITA). CLINIC created the case file that we use for the NITA programs and the case file features an asylum-seeker in immigration court.

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

4. Prior to CLINIC, I worked in the Immigration Legal Services program at Catholic Charities of Washington where I provided direct legal services and represented dozens of respondents in immigration court and before the Board of Immigration Appeals. I also served as an adjunct professor at Catholic University Columbus School of Law teaching the Immigration Litigation Clinic from 2013 to 2016 and as a Visiting Clinical Lecturer in Law at Yale Law

1- DECLARATION OF MICHELLE MENDEZ IN
SUPPORT OF EMERGENCY MOTION FOR
TEMPORARY RESTRAINING ORDER

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School teaching a seminar entitled “Asylum Advocacy in Times of Crisis” during the spring semester of 2018 through which we represented asylum-seekers in immigration court.

5. CLINIC promotes the dignity and protects the rights of immigrants in partnership with its network of legal immigration programs since its founding in 1988. CLINIC’s network counts nearly 400 agencies in 49 states and Washington D.C. and includes faith-based institutions, farmworker programs, domestic violence shelters, ethnic community organizations, libraries, and other entities that serve immigrants. The network employs roughly 2,300 people who serve about 500,000 low-income people annually. CLINIC’s affiliate agencies represent immigrants regardless of their race, religion, gender or other characteristics.

6. CLINIC has been on the cutting edge of training nonprofit agencies that provide affordable, quality legal services to immigrants. Since President Trump took office, CLINIC responded to the growing demand for removal defense services by establishing the DVP Program, to focus exclusively on the issues of removal defense, asylum, special immigrant juvenile status, immigration consequences of criminal convictions or conduct, appeals to the Board of Immigration Appeals and the U.S. courts of appeals, federal litigation, and remote response models. The DVP team consists of nine members. The DVP team has trained almost 5,000 attorneys and Department of Justice-accredited legal representatives who represent immigrants in court and provide other key services; published the American Immigration Lawyers Association book, *Representing Clients in Immigration Court*, and over 50 free resources on timely topics; filed 15 cases in federal court, two of which had significant legal implications nationwide; and enacted 5 remote rapid response models to provide legal aid to victims of immigration enforcement and the Muslim travel ban. Two of our remote rapid response models, the BIA Pro Bono Project and the Motions to Reopen Project, are long-term projects that have existed since 2001 and 2016, respectively. Finally, to ensure that we expand

pro bono capacity and learn firsthand the issues immigrant advocates face in immigration court, many DVP attorneys take pro bono removal defense cases.

7. As the DVP Program director, I work with our team to issue written resources, plan and execute in-person and web-based trainings, respond to requests for technical support on immigration issues, strategize on new projects that serve the legal needs of the immigrant community, represent clients in select cases before the immigration court, the Board of Immigration Appeals (BIA), and the U.S. Courts of Appeals, and develop and present legal challenges in federal court. Through DVP's work, I have organized and led numerous court skills trainings for nonprofit and pro bono practitioners, including trainings focused specifically on removal defense. Due to the health risks posed by COVID 19, many of our upcoming in-person court skills trainings have been cancelled or postponed.

8. The COVID-19 pandemic has caused significant challenges and risks to the health and safety of CLINIC staff, as our programs must continue to operate at full capacity so long as the Executive Office of Immigration Review (EOIR) leaves most deadlines and filing requirements in place. We cannot slow or stop our work because our clients depend on us to vigorously represent their legal interests; yet the national, state, and local states of emergency and stay-at-home orders simultaneously require our staff to work from home and limit our ability to access the immigration courts and our offices. CLINIC Headquarters is in Silver Spring, Maryland; on March 23, 2020, Maryland Governor Larry Hogan issued a statewide order requiring the closure of all non-essential businesses in the state.

9. CLINIC staff has been working at home since March 13, 2020, in order to protect the health of our staff and their families. In my case, I am at higher risk of severe illness from COVID-19 because I am immunocompromised from persistent health conditions.

10. Due to COVID-19 and government orders to stay at home and work remotely whenever possible, CLINIC leadership has instructed staff that mail will only be checked once a

week. Checking the mail more regularly would allow us to have the maximum time possible to complete appellate briefing for our clients but would put our staff at greater risk of contracting, or spreading, COVID-19. By taking health precautions and checking once a week, we receive mail in a delayed basis, which impacts deadlines.

11. CLINIC's work on motions to reopen has been particularly impeded by the coexistence of the COVID-19 pandemic and EOIR's continued inflexibility. CLINIC is a leader in the area of motions to reopen; we have developed and issued several legal resources on this form of relief, represented hundreds of immigrants on *in absentia* motions to reopen at immigration courts nationwide, and partner with law firms to file motions to reopen for particularly vulnerable clients such as formerly separated families. A motion to reopen is often the only remedy available to prevent final execution of a removal order issued by the immigration court; for many types of motions to reopen, strict filing deadlines apply, and, absent a few exceptions, an immigrant only has one opportunity to file a motion to reopen and will not be allowed a second filing. For regular, non-*in absentia* motions to reopen, the deadline is 90 days, while *in absentia* motions to reopen based an argument of missing the hearing because of exceptional circumstances are subject to a 180-day deadline. This means that the facts supporting a motion to reopen must be extremely thoroughly and carefully developed before filing; therefore, in almost all cases, review of the immigration court case file and the Digital Audio Recording (DAR) of the hearing(s) is a mandatory part of the legal work. The only way to review the case file immediately is to request it from the immigration court that issued the removal order and physically review it at the immigration court that entered the removal order. The only way to immediately review the DAR is to request a copy by mail from the immigration court that entered the removal order, which the immigration court provides in a CD format.

12. Since the start of the COVID-19 pandemic, EOIR court staff have denied CLINIC staff and pro bono attorneys access to court files that need to be reviewed for urgent motion to

reopen filings. CLINIC has been informed that “limited staffing” prevents EOIR staff from allowing file review and DAR production at this time. Additionally, even if file review were available, I would have significant concerns about sending staff members, or going myself, to the immigration courts’ physical locations in order to review files, considering the stay-at-home orders in place throughout the country.

13. Because we are unable to review the record of proceedings in court, we have had to resort to Freedom of Information Act (FOIA) requests to obtain the information needed for clients’ motions to reopen. FOIA responses were already considerably delayed before this pandemic, but when one of our attorneys called the EOIR FOIA unit, the person seemed extremely stressed by staffing issues related to the pandemic and noted that, at least for the one case the attorney was inquiring about, they did not expect to be able to share disclosures until at least May.

14. Practically speaking, this lack of information means that we face an impossible ethical choice regarding motions to reopen. We can file a skeletal motion to reopen, without having reviewed the record of proceeding, and hope that the immigration judge will allow time for the filing of supplemental evidence once the court file is available. This is risky because many immigration judges will rule quickly on motions to reopen and not allow time for the submission of additional evidence. Or, we can wait to file the motion until we have access to the court records, or until we have received the court file via an EOIR FOIA request, which can take several months. This option is also risky because a client with an outstanding removal order is at risk of deportation at any time, and would require an additional argument based on tolling if unable to comply with the filing deadline. We would not face this impossible choice if EOIR were to extend filing deadlines in light of the COVID-19 pandemic.

15. Another one of CLINIC’s projects, the BIA Pro Bono Project, has faced similar limits and ethical challenges due to the failure of the BIA to extend filing deadlines or grant

extensions during these unusual times. The BIA Pro Bono Project primarily relies on trained pro bono attorneys, who receive technical assistance from CLINIC staff, to represent detained indigent immigrants whose cases are on appeal to the BIA. The project's manager also takes on a limited number of direct appeals herself. Therefore, communications from the BIA, which are sent exclusively by mail and not through electronic filing, regularly arrive at the CLINIC office. Under normal circumstances, we check the mail daily because the BIA sets a short timeline for appeals briefing, 21 days with no added days to account for mail delivery time, and, under a recent policy change, rarely grants briefing extensions. Normally, by the time we receive these briefing schedules by mail, approximately 15 days remain for the briefing. But now that we are unable to check mail more than once a week, in order to comply with the federal and state government's stay at home orders and for our own safety, only approximately 7 days will remain in the briefing schedule. Before this pandemic, the BIA had changed its position on requests for briefing extensions, noting that it would no longer approve requests for these automatically. Again, if the BIA were to extend filing deadlines due to the logistical barriers caused by the pandemic, we would not face this impossible choice.

16. In addition to these challenges for existing clients, we have also been impeded from accessing prospective clients who may urgently need the BIA Pro Bono Project's assistance. We are no longer receiving summaries of new cases for the BIA Pro Bono Project, because all Office of Legal Access Programs (OLAP) staff are working remotely and cannot access the paper files located at their offices in Falls Church, Virginia. Non-profit partners, who we rely on to meet with prospective clients in detention, are no longer entering detention centers for their own safety, because of local orders, or because of ICE's own restrictive policies (including requiring self-provided personal protective equipment). Partners thus cannot meet with potential BIA Pro Bono Project clients, pick up documents, or obtain signatures on forms, and we are prevented from communicating with these clients in time to support their appeal. The

BIA Pro Bono Project thus has effectively ceased to function during this COVID-19 crisis – yet as detention and removal proceedings continue, this means our detained clients or potential clients will be deported.

17. Additionally, CLINIC’s DVP attorneys all carry a limited pro bono caseload. Though non-detained hearings have been postponed through April 10, staff who have individual, or merits, hearings scheduled in the upcoming weeks face difficult decisions about whether to move forward or to seek a continuance. For example, I have an individual hearing scheduled for April 15 before the Baltimore Immigration Court. The client has been waiting for several years for this hearing and would like to proceed. However, I already know that two important witnesses will not be able to attend the hearing: the client’s elderly grandmother, whose testimony may be required to prove the client’s derivative citizenship, and an expert who was to appear and testify but is now concerned about appearing in person. My ability to prepare my client for the hearing is also limited by the stay-at-home order in place in Maryland; since the client lives with an elderly, immunocompromised person, he cannot have contact with anyone outside of his household even if we were permitted to meet face-to-face.

18. Another CLINIC attorney has an upcoming hearing in Boston Immigration Court. The Boston court has issued a standing order approving telephonic appearances during the COVID-19 epidemic. Under this order, however, “[a]ny party appearing telephonically waives the right to object to admissibility of any document offered in Court on the sole basis that they are unable to examine the document.” This provision would restrict our client’s rights and limit our attorney’s ability to zealously advocate on their behalf, again posing an untenable choice between risking the health of our staff and jeopardizing the quality of our legal representation.

19. Our concerns about attending court in person are compounded by the lack of COVID-19 precautions that we understand have been taken by the immigration courts. I was at the Baltimore Immigration Court on March 3, 2020 for a bond hearing, and my co-counsel for

the same case was at the Baltimore Immigration Court on March 16, 2020 to make an in-person filing. I did not see any special health or safety precautions being taken on March 3 and my co-counsel reported that no health or safety precautions were in place on March 16. Although I have heard no reports of positive COVID-19 cases in the Baltimore court, on March 25, 2020, EOIR tweeted that the Baltimore court would be closed on March 26 as a “precautionary measure.” While EOIR provided no additional explanation, Baltimore was listed as closed along with two other immigration courts, both of which have reportedly had recent cases of COVID-19.

20. Our attorney with a pending pro bono case before the Boston Immigration Court understands that the Boston court has not publicly reported any exposure to positive COVID-19 cases. However, she has heard from other local immigration attorneys that at least one immigration judge is reported to have closed her courtroom because she believed that there was recently someone with COVID-19 in it.

21. EOIR’s inadequate response to the current public health crisis continues to put our staff in the impossible position of choosing between our health and our commitment to zealously represent our clients. As the COVID-19 pandemic continues to escalate in the United States, we are deeply concerned that the immigration courts’ failure to adapt to this challenging time will jeopardize our lives and the lives of our 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



Michelle Mendez