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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,

v.

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

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

DECLARATION OF LINDA CORCHADO IN
SUPPORT OF EMERGENCY MOTION FOR
TEMPORARY RESTRAINING ORDER

129956-0004/147689519.1

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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, Linda Corchado, declare as follows:

1. I am an attorney licensed to practice law in New York. Since May 2019, I have been the Legal Director at Las Americas Immigrant Advocacy Center (“Las Americas”). As Legal Director, I engage in direct representation of noncitizen clients and also supervise attorneys and other staff at Las Americas who represent individuals detained during immigration proceedings. My responsibilities include overseeing the involvement of Las Americas in the El Paso Immigration Collaborative (“EPIC”), which provides legal support to detained individuals seeking release from detention centers the El Paso region.

2. I have been practicing law since 2015. I have focused my practice on immigration law, with a particular focus on asylum and the detention of asylum seekers. Prior to joining Las Americas, I worked as a private immigration attorney for four years.

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

4. Our work in the detained and non-detained legal representation programs has been significantly harmed by the onset of the COVID-19 pandemic and the Executive Office of Immigration Review’s (EOIR) complete unwillingness to prioritize the health and safety of respondents, immigration attorneys, and court staff. My staff and I are constantly faced with

impossible ethical dilemmas as we are torn between advocating for our clients' best interests and protecting the health of our clients, our staff, and the public.

5. On March 13, 2020, El Paso reported its first case of a confirmed COVID-19 diagnosis. That same day, the governor of Texas declared a state of disaster due to the emerging public health crisis caused by COVID-19. In consultation with other leadership, we made the decision that all Las Americas staff should work from home starting the following Monday, March 16, and that our in-person visits to meet with clients held in Immigration and Customs Enforcement (ICE) detention centers should cease entirely. On March 24, the mayor of El Paso issued a shelter-in-place order, which requires El Paso residents to stay home and work remotely whenever possible. The order is in place indefinitely, and violations are punishable by fine or jail time.

6. The decision to require at-home work was an extremely difficult one to make, since much of our detained work in particular relies on in-person contact with clients. The decision was necessary, however, to protect the health of our staff, our clients, and the El Paso community at large. Several members of the Las Americas staff, including attorneys who regularly make several visits a week to detention centers, live with and care for family members who are particularly at risk of contracting COVID-19, including elderly parents and persons with pre-existing health conditions. Due to the closure of schools and the health risks associated with continuing to send children to the childcare centers that remain open, some members of our staff must work from home in order to care for their children. Additionally, we are particularly concerned about the risk of inadvertently passing COVID-19 to persons in detention. Due to the extremely close quarters in which immigrants are held and ICE's poor hygiene and medical

practices, persons in detention are uniquely vulnerable to contracting, and spreading, COVID-19. In the past few weeks, we have received several alerts about the quarantine of persons detained in both the El Paso and Otero detention centers.

7. On March 21, 2020, ICE announced that no attorneys or support staff would be able to access any detention facility without wearing protective gear, including gloves, an N-95 or surgical mask, and eye protection. Las Americas staff does not have access to such protective gear, effectively barring us from the detention centers.

8. In the face of this public health crisis, both the detained and non-detained immigration dockets on which we work have continued to move forward. Non-detained hearings have been postponed through April 10, 2020, but the court has remained open for filings and has not issued any guidance regarding the extension of filing deadlines. Detained hearings have proceeded as initially scheduled unless a continuance is formally requested and granted by the immigration judge.

9. This has forced us to make impossible choices between prioritizing the health of our clients and staff, and the needs of our clients' immigration cases. For example, we have had to decide whether to seek continuances in detained merits hearings. In most cases, our priority is moving forward with a case on the merits so that our clients can be released from detention. Given that we can no longer meet with our detained clients in-person, however, our only option is to prepare for merits hearings by phone. ICE has been unable to facilitate many of our requests for legal calls with our detained clients. Even when our requests for phone appointments have been granted, ICE has failed to provide confidential phone access and at times has cut our client calls short. One of our clients was forced to use the rest of the minimal

money in his commissary account to call his lawyer after ICE cut off his phone meeting with counsel the day before his merits hearing. He could only afford to speak to his attorney for thirty minutes. In this case, we were forced to ultimately seek a continuance of his merits hearing due in part to insufficient time to prepare by phone; practically speaking, this means our client could be detained for an additional several months in extremely dangerous conditions. In this case, our proposed witness also notified us that she would be unable to testify due to limited access to cellular and internet services caused by circumstances exacerbated by the COVID-19 pandemic.

10. The lack of access to confidential phone calls has also impeded our ability to intake and begin representation of new clients. Under normal circumstances, Las Americas attorneys and staff conduct intakes only during contact visits, where the staff member and the person in detention meet face-to-face in a confidential space in a small room at the detention center. Given our inability to conduct in-person visits at this time, we have been forced to move to phone intakes. This has caused significant problems because the phone calls are not scheduled in a confidential space- we can often hear ICE officers talking in the background when we speak with new clients. Some clients have decided to move forward with intakes despite the lack of confidentiality, as there is no other way for them to obtain legal advice and possible representation. Others are too uncomfortable speaking to us in a non-confidential space and cannot proceed with the intake interview. For example, we recently spoke with a transgender person who was unable to proceed with the intake out of fear that sharing information in front of ICE would jeopardize her safety. These choices are devastating because EOIR continues to move forward with its detained cases, meaning many persons will be forced to proceed with their cases without counsel or legal advice. Our lack of access to in-person intakes has also severely

harm our ability to access new clients through the EPIC program, which relies on initial in-person intakes to screen cases and inform detained individuals about our legal services.

11. EOIR's policies for attorney appearances on the detained docket have also been entirely inadequate. When I contacted the El Paso detained court about a client's upcoming master calendar hearing, I was effectively encouraged to allow our client to appear alone: I was told that the judge stated "there was no reason for [the attorney of record] to appear in court," as the client would just be read their rights and given another hearing date. On March 24, I asked the El Paso detained court's court clerk about the proper procedures for attorney appearance at a merits hearing scheduled for March 25. I was notified that attorneys were still expected to appear in court for their merits hearings, but that in this instance, the attorney would be allowed to appear telephonically. We were further told that no video appearance option would be provided due to EOIR's Office of Information Technology "security measures." Additionally, we were informed that if either party needed to file any documents, the hearing would be rescheduled. These policies effectively force our attorneys to either move forward with a hearing that does not comply with basic due process protections, or seek a continuance, which will leave our clients in dangerous detention conditions for several more months. On March 26, 2020, the El Paso non-detained court issued a standing order that allows telephonic appearances by any attorney without prior approval or a motions requirement, but this does not assuage our due process concerns. As of this moment, no standing order has been issued by the detained court in El Paso, Texas or Otero, New Mexico.

12. The filing of applications, evidence, and pre-hearing briefs has also become nearly impossible due to EOIR dysfunction and restrictions on access to the court. Filing in

person at the detained court is not possible because attorneys are required to wear their own protective gear to even access the court's filing window. The EOIR Courts and Appeals System (ECAS), which would allow electronic filing in our cases, supposedly went live in El Paso on March 12; however, a user training scheduled for March 19 was subsequently canceled, and the system is currently nonfunctional, as no documents can be uploaded. For now, the court administrator has agreed to accept filings by email, but this is not an official policy, is not allowed by the immigration court practice manual, and is subject to change.

13. Our work on the non-detained docket has been similarly complicated by EOIR's insistence that filing deadlines, and even some non-detained cases, move forward. For example, while EOIR announced (via Twitter) that all non-detained hearings scheduled through April 10 would be postponed, this appears not to be true for the juvenile docket. We received notice of a hearing set on the juvenile non-detained docket for March 24, 2020. The clerk for the immigration judge who handles the juvenile docket informed one of our paralegals that the hearing would move forward as scheduled, in spite of the announced postponement of all non-detained cases. Soon thereafter, the automated EOIR information portal indicated that the hearing would not take place. Yet, on a follow-up call to the clerk, the clerk again stated that the hearing would move forward. We were forced to file an emergency motion for a telephonic appearance and for waiver of the children's presence. The motion was never ruled on, and the attorney had to make the difficult ethical decision to advise the children not to appear in court for their own safety, which placed them at risk of being ordered removed in absentia by the immigration judge.

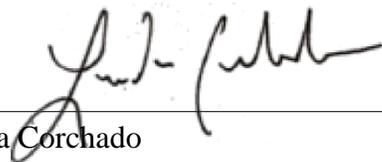
14. Las Americas also continues to support families we have worked with on the “Migrant Protection Protocols” (MPP) docket who have been released into the United States until they are able to find new counsel. The confusion around court closures and filing deadlines around the country has significantly hampered our work to ensure that these families meet the rigid requirements of their immigration cases. For example, a family we work with was required to file their applications for asylum by March 25, 2020. Not filing by this date would make them presumptively ineligible for asylum due to the one-year filing deadline. The family, now located in New York City, depends on the financial support of other family members who have recently lost their jobs due to the COVID-19-related economic crisis. This led to the loss of the family’s cell phone line, making it extremely difficult to reach the family to complete their application. After significant back and forth, the family was able to sign the needed documents, but were unable to locate a functioning United States Postal Service (USPS) mailing location due to COVID-19-related closures in New York. Our paralegal ended up submitting a photo copy of the signed pages- a practice that does not comply with the EOIR practice manual- to both the immigration court at Federal Plaza, which is completely closed, and the immigration court at Varick Street, which is usually a detained-only court but was supposedly open for filings that would normally go to the Federal Plaza location. According to USPS tracking, USPS has attempted to deliver the documents to the Varick court on both March 24 and March 25 and has been unable to complete delivery.

15. Las Americas is facing an existential threat to the very existence of both our organization and our clients. EOIR is effectively forcing us to proceed with hearings that cannot comply with due process or the statutory protections provided in the Immigration and Nationality

Act (INA). The only way we can continue to operate effectively and ethically is if EOIR stops enforcing arbitrary case timelines and deadlines and puts procedures in place that prioritize the health and safety of attorneys, legal workers, court staff, and 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



Linda Corchado

8- DECLARATION OF LINDA CORCHADO IN
SUPPORT OF EMERGENCY MOTION FOR
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