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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION**

IMMIGRANT DEFENDERS LAW CENTER,
et al.,

Plaintiffs,

v.

ALEJANDRO MAYORKAS, et al.,

Defendants.

Case No. 2:20-cv-09893-
JGB-SHK

SUPPLEMENTAL DECLARATION OF LINDSAY TOCZYLOWSKI

1 I, Lindsay Toczyłowski, hereby declare under the penalty of perjury pursuant
2 to 28 U.S.C. § 1746:

3
4 1. I make this declaration based on my personal knowledge except where
5 I have indicated otherwise. If called as a witness, I could and would testify
6 competently and truthfully to these matters. I have previously submitted a
7 declaration in this case.

8 2. I am the Co-Founder and Executive Director of Immigrant Defenders
9 Law Center (“ImmDef”).

10 3. Other ImmDef staff and I have been representing individuals subject to
11 the Migrant Protection Protocols (“MPP”) since the inception of the program. In the
12 weeks leading up the transition from the Trump administration to the Biden
13 administration, ImmDef staff began preparing for the potential wind-down of MPP
14 and the corresponding processing of those enrolled in MPP for entry into the United
15 States. In this capacity, ImmDef became part of the California Welcoming Task
16 Force (“CWTF”). The CWTF worked closely with U.S. government agencies in an
17 attempt to prepare for the wind-down. Despite this regular communication with the
18 government, CWTF did not receive clear or uniform information about the process.
19 The CWTF initially held weekly meetings for the general task force and for its Legal
20 Services subgroup which ImmDef co-leads. While the Legal Services subgroup
21 continues to meet on a weekly basis, beginning in March the general task force is
22 meeting on a monthly basis. Because of ImmDef’s leadership role in the Legal
23 Services subgroup, ImmDef continues to devote significant time towards the
24 meetings. Three of our staff members must attend weekly hour-long planning
25 meetings. Preparation for and participation in these meetings has, in the aggregate,
26 taken dozens of hours of ImmDef staff time.

1 government.

2 8. Parts of the wind-down have been catastrophic failures, including the
3 roll-out of conecta.acnur.org (“Conecta”), the UNHCR website migrants use to
4 register for MPP processing, which was not properly functioning the first week it
5 launched. For example, some individuals who attempted to register for processing
6 on Conecta—including individuals who had been waiting for two years at the U.S.-
7 Mexico border—did not receive notification via UNHCR’s website that their
8 information had been received. This caused mass panic among individuals desperate
9 for confirmation that they would be processed.

10 9. After most of the problems with Conecta had been resolved, UNHCR
11 officials publicly announced that anyone who had tried to register using Conecta
12 before February 20 had not actually been registered because the site had not been
13 “live.” Because hundreds of individuals had already registered, a mass outcry
14 ensued. UNHCR thereafter walked back this representation and indicated that
15 individuals who had registered before February 20 had indeed completed their pre-
16 processing requirement.

17 10. Since the launch of the website, many migrants, including an ImmDef
18 client, have been simply unable to register because the website crashed or failed to
19 load. These problems have caused many affected individuals to panic.

20 11. Compounding these problems, the telephone and WhatsApp numbers
21 provided by UNHCR for migrants seeking information about processing did not
22 function during the first several days of Phase One processing. Though UNHCR has
23 attempted to work out these technological kinks, I have observed that migrants still
24 have difficulty obtaining information regarding Phase One processing from UNHCR
25 and the U.S. government. This is particularly true for individuals who are
26 unrepresented and those whose attorneys are less familiar with the web of
27 intersecting border policies and the ongoing humanitarian crisis in Tijuana.

1 12. In addition to the above technological difficulties, many migrants
2 would not be able to understand relevant UNHCR-provided informational
3 documents and web pages because neither the U.S. government nor UNHCR has
4 made these resources available in all the necessary languages. For example, I have
5 encountered many migrants at the POE whose primary—and often only—spoken
6 language is an indigenous Central American language such as Mam. This systematic
7 failure to disseminate information in all the necessary languages renders already
8 vulnerable migrants confused, helpless and desperate.

9 13. Finally, many migrants at the POE simply do not have safe and reliable
10 access to Internet, so they cannot access any information provided by the U.S.
11 government or UNHCR regarding MPP processing. Because the U.S. government
12 and UNHCR have not established other channels of communication with these
13 individuals, ImmDef staff must make every effort to share processing-related
14 information in-person with migrants at the POE.

15 14. Similarly, UNHCR was originally sending confirmation of registration
16 only to email addresses, which many migrants do not have. Thus, those who did not
17 have email addresses could not register online because there was no alternative to
18 the email address requirement for confirmation. Non-governmental organizations
19 complained, demanding that UNHCR create an alternative registration process for
20 those migrants who either lack email addresses or reliable internet. UNHCR
21 eventually responded by creating a system for migrants to register by phone. Until
22 then, however, those migrants who did not have an email address and therefore could
23 not register, were panicked, confused, and without adequate information in the
24 meantime.

25 15. Some migrants do not have even the basic information required to
26 register via Conecta, including their A-numbers. This is often the case for migrants
27 who have been victims of crime in Mexico. I encountered two families at the San
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1 Ysidro POE who had been kidnapped in Mexico and lost all their documents.
2 Consequently, they do not know their A-numbers and thus cannot register on
3 Conecta for processing.

4 16. Additionally, I observed many sick children in the growing
5 encampment of migrants at the San Ysidro Port of Entry. I observed many children
6 coughing and/or with runny noses. I heard from parents that their children had
7 diarrhea and were experiencing stomach issues. Due to the lack of medical care
8 given to families trapped in MPP, many children are sick after having lived without
9 proper shelter in harsh conditions in Mexico for months or even years because of
10 MPP. These individuals are in dire need of accurate information and speedy
11 processing.

12 **Migrants Are Being Misinformed About Their Rights Once They Enter the**
13 **United States**

14 17. In addition to the pervasive lack of information about Phase One
15 processing, I also witnessed U.S. government and UNHCR officials spreading
16 misinformation among migrants at the San Ysidro POE. For example, an ImmDef
17 client processed during Phase One received a UNHCR brochure that stated that he
18 could apply for work authorization after 150 days in the United States. In fact, U.S.
19 law prohibits migrants from applying for work authorization until they have been in
20 the country for 365 days. There is an exception to this 365-day rule for certain
21 migrants who are members of the Asylum Seeker Advocacy Project or CASA de
22 Maryland, but the brochure did not explain this.

23 18. Further, migrants have not been given adequate information regarding
24 mandatory ICE check-ins once they are in the United States. ImmDef has reviewed
25 the materials provided to processed migrants, which provide few details about these
26 check-ins and make it difficult for individuals to comply with the terms of their
27 parole into the United States. Migrants are not told what the check-in process entails,
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1 what is required of them, or even the date of their check-in. The paperwork also does
2 not explain the potentially severe consequences of failing to comply with ICE’s
3 check-in requirements. Based on ImmDef’s experience, we know that ICE can and
4 has re-detained individuals on this basis.

5 **Migrants Excluded Under Phase One Require Legal Assistance and Advocacy**

6 19. In addition to failing to provide accurate information to affected
7 individuals, the U.S. government has administered Phase One processing in a
8 manner that unfairly excludes many desperate migrants, some of whom have been
9 waiting in Mexico since 2019.

10 20. Particularly egregious is the exclusion of individuals with *in absentia*
11 removal orders from Phase One. At the San Ysidro POE, I encountered a mother
12 traveling with minor children who had originally presented at the Arizona border.
13 The U.S. government had relocated her from Arizona to the El Paso/Juarez POE,
14 where the International Organization for Migration (“IOM”) took them into custody
15 and bussed them over 1,000 miles south to Chiapas to wait for their hearing. The
16 mother was unable to find transportation back to the Juarez POE for the hearing and
17 subsequently received an *in absentia* removal order. She and her children are now
18 living in the encampment in Tijuana, ineligible for Phase One processing. The U.S.
19 government has not put out any information about whether people like her with *in*
20 *absentia* orders will be eligible for processing during a future phase.

21 21. I also spoke with a young man at the San Ysidro POE who had been
22 hospitalized in Tijuana while waiting for his court date. Immediately after being
23 discharged from the hospital, he went directly to the POE but arrived several hours
24 late for his court hearing. Customs and Border Protection officers refused to allow
25 him to enter the United States to attend his hearing even though he had a medical
26 note. This young man, who subsequently received an *in absentia* order, must wait
27 indefinitely at the San Ysidro POE because he does not qualify for Phase One
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1 processing.

2 22. In addition, I met with a father who had traveled with his two minor
3 daughters to the San Ysidro POE. He and his daughters had been the victims of crime
4 in Mexicali that caused them to miss their immigration court hearings and receive *in*
5 *absentia* orders. This family is consequently now also excluded from Phase One
6 processing and have no idea whether they will ever have a meaningful opportunity
7 to seek asylum in the United States.

8 23. Hundreds of other migrants are similarly ineligible for Phase One
9 processing because they received final orders of removal after having tried
10 unsuccessfully to navigate Trump-era asylum policies without legal assistance and
11 while trapped in Mexico.

12 24. ImmDef has another client who was initially excluded from Phase One
13 because his case was terminated. After ImmDef attorneys spent dozens of hours
14 arguing and briefing complex legal issues, the client's proceedings were reopened
15 so that she could seek protection.

16 25. The scope of Phase One processing remains unclear. ImmDef and other
17 legal service providers have received conflicting information about whether clients
18 with pending BIA appeals are included in Phase One. Other case postures that appear
19 to be excluded include those with pending petitions for review in federal court, those
20 where an application for admission was withdrawn, and those where an individual
21 has been ordered removed but would want to appeal to the BIA or seek federal court
22 review if they had access to an attorney in the United States.

23 **The Government Has Taken No Steps to Create Safety and Security for**
24 **Migrants at the San Ysidro POE**

25 26. The San Ysidro POE, like much of Tijuana, is alarmingly unsafe,
26 especially for migrants. Over the last few weeks, more than one thousand migrants
27 have gathered around the POE, forming a large encampment. Many of these
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1 migrants are not eligible for Phase One processing or even subject to MPP, but they
2 came to the POE because they did not have adequate information about what the
3 U.S. government is doing there.

4 27. This encampment presents serious concerns regarding the spread of
5 COVID-19 within the migrant community. Though most in the encampment are able
6 to access tents, some individuals are simply sleeping outside, often in the rain or
7 exposed to other elements. There is practically no space in which to socially distance
8 in the encampment, especially for those who cannot access a tent.

9 28. The encampment also lacks basic sanitation, which could have
10 catastrophic consequences for its inhabitants. There is no running water or reliable
11 bathroom access—let alone access to soap and other hygienic supplies—in the
12 encampment. Many migrant children play in the encampment unaware of the lurking
13 dangers to their health.

14 29. Several ImmDef staff members and I have spent time at the San Ysidro
15 POE at great personal risk in order to ensure that migrants there are aware of what
16 is going on, educate them about their rights, and screen for those in need of legal
17 representation. With our partner organizations, we set up tables at which migrants
18 may consult with us and from which we can observe conditions at the POE and
19 encampment. Although we wear double face masks and face shields when working
20 at the tables, none of us feels safe because of the conditions at the encampment at
21 the POE. Given the humanitarian crisis at the San Ysidro POE, we feel compelled
22 to continue this work.

23 30. On Sunday, March 7, I visited the encampment for the fourth time. It
24 had grown so significantly in the week since my last visit that there was no longer
25 space to set up tables where we could advise and screen migrants. The encampment
26 is spilling across the adjacent road onto median strips; more than one thousand
27 individuals are now estimated to be living there.

1 35. ImmDef’s efforts to provide information and legal services to migrants
2 at the San Ysidro POE have required even more time and resources than we had
3 anticipated. Because we cannot safely access the CIM and can no longer set up tables
4 at the POE, we have to continually reevaluate and shift how we reach vulnerable
5 individuals who are desperately in need of information and guidance.

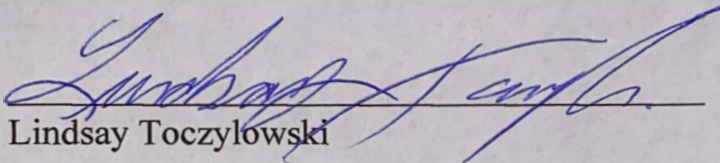
6 36. ImmDef has sought volunteers to assist with this work. Because of the
7 level of expertise required for our work, our volunteer pool is primarily comprised
8 of immigration law practitioners. However, volunteering in Mexico could jeopardize
9 their existing client obligations because of USCIS’ policy that prohibits anyone who
10 has been outside of the United States from entering their offices for 14 days. Thus,
11 we have had to rely on our own staff who have diverted significant time and other
12 resources to the MPP wind-down.

13 37. MPP has been devastating for the people who have been forced to wait
14 in Mexico over the last two years. ImmDef has worked tirelessly to ensure that those
15 trapped in Mexico have access to legal services, legal information and humanitarian
16 assistance. Since the government announced the wind-down, ImmDef’s work with
17 those subject to MPP has not slowed down.

38. Phase One does not even begin to account for a substantial number of the individuals impacted by MPP. Given the problems identified in my earlier declaration, the U.S. government must provide access to counsel and relief for each and every person who has been subject to MPP, regardless of the current posture of their case.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on March 15, 2021 at Los Angeles, California


Lindsay Toczyłowski