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19 **UNITED STATES DISTRICT COURT**
20 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
21 **WESTERN DIVISION**

22 IMMIGRANT DEFENDERS LAW
23 CENTER; *et al.*,
24
25 Plaintiffs,
26
27 v.
28 U.S. DEPARTMENT OF HOMELAND
SECURITY; *et al.*,
Defendants.

Case No. 2:21-cv-00395-FMO-RAO

**DECLARATION OF MARION
DONOVAN-KALOUST IN
SUPPORT OF REPLY ISO
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

Date: June 17, 2021
Time: 10:00 a.m.
Ctrm: 6D
Judge: Hon. Fernando M. Olguin

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1 I, **MARION DONOVAN KALOUST**, make this declaration based on
2 personal knowledge and a review of records related to my position as a Directing
3 Attorney for ImmDef’s Children’s Representation Project:

4 1. I am a Directing Attorney for ImmDef’s Children’s Representation
5 Project. I am licensed to practice law in the state of California.

6 2. At the time of filing my first declaration, submitted in support of
7 Plaintiffs’ Motion for Preliminary Injunction, ImmDef had just begun providing
8 legal services to the Office of Refugee Resettlement’s Emergency Intake Sites
9 (“EIS”) located in Long Beach and Pomona, which were set up in response to the
10 increase in numbers of unaccompanied children entering the country. Through our
11 work at these two EISs, I have now encountered unaccompanied children previously
12 placed in the Migrant Protection Protocols (“MPP-unaccompanied children”). The
13 Government’s failure to provide these children with protections under the
14 Trafficking for Victims Reauthorization Act (“TVPRA”) is overwhelming our
15 program now more than ever because of the increase in the number of children we
16 are serving.

17 3. In the past month, the population of unaccompanied children we
18 normally serve has more than quadrupled. At the Long Beach EIS, since we began
19 serving children at that facility on April 26, 2021, we have provided Know Your
20 Rights (“KYR”) presentations to 781 children and conducted individualized legal
21 screenings for 306 children. At the Pomona EIS, which we began serving on May 3,
22 2021, we have provided KYR presentations to 659 children and individual legal
23 screenings to 297 children. In comparison, between April 28, 2021 and June 2,
24 2021, we provided KYR presentations to a total of 463 children across all twelve of
25 the ORR shelters our staff normally serves.

26 4. In addition to our staff, we must rely on volunteers to help us with
27 KYR presentations and legal screenings. We have had to train our staff and are in
28 the process of training volunteers to make sure they screen for MPP-unaccompanied

1 children. However, given the high volume of children we are serving at the EISs, we
2 are not able to individually screen every child we encounter at an EIS. Moreover,
3 the legal screenings we do conduct are severely truncated due to sheer numbers and
4 lack of confidential space at the facilities. Because of these constraints, we cannot
5 identify all MPP-unaccompanied children sheltered at the Long Beach and Pomona
6 EISs.

7 5. Of those we have identified however, the process of identifying them
8 and understanding the specific type of advocacy or litigation they require to protect
9 their rights under the TVPRA has proved challenging because the children do not
10 always self-identify as being placed in MPP and we do not have the capacity to
11 conduct in depth legal screenings for each child at the EIS. For example, I
12 encountered two siblings at the Pomona EIS. On May 4, 2021, the younger sibling
13 was interviewed for a legal screening by my ImmDef colleague. During the
14 screening, the child responded “No” when asked “Were you waiting in Mexico for
15 immigration court hearings with your family before you entered alone?” On May 7,
16 2021, the older sibling was brought to our KYR presentation in a wheelchair with a
17 bandaged leg. Although he did not request to speak with us, I decided to pull him for
18 a legal screening to check and see if he had received adequate medical care. . When
19 I asked the older sibling whether he had previously been in MPP proceedings, the
20 older sibling also answered “no.” However, when I asked the child where his mother
21 was located, he responded that she was in Reynosa, Mexico. As I asked more
22 questions about his mother, I eventually realized that both siblings had been
23 processed through MPP with their mother. However, these siblings could have
24 easily been overlooked because of their initial response saying they had not been
25 placed in MPP. They also could have been easily overlooked because it was sheer
26 luck that I requested to speak with the older sibling because of his apparent injury.
27 No one at the EIS site had referred him to me, nor had he requested an appointment
28 with our legal team.

1 6. After identifying the siblings as MPP-unaccompanied children, I had to
2 conduct further investigation into their case because they were unable to tell me
3 what occurred in those MPP immigration proceedings. They had no paperwork
4 related to their MPP immigration proceedings. Eventually, I discovered that both
5 children have in absentia removal orders that were entered against them in their
6 MPP immigration proceedings. Neither child however was aware that an in absentia
7 order had been entered against them nor did they understand the impact of those
8 orders. Upon realizing this, we agreed to represent both siblings. However,
9 representing these siblings falls outside the scope of the services we have agreed to
10 perform at the EIS. While ImmDef is contractually mandated to enter representation
11 in all cases where an unaccompanied child at an ORR facility we serve will be
12 reunified locally, that requirement does not apply for the local EISs, where the
13 number of children who will reunify in the Los Angeles area is simply too great and
14 exceeds our staff capacity. However, for these two siblings we had to make an
15 exception. We did so out of concern that they would be removed on their MPP-in
16 absentia removal order before we would be able to exercise their TVPRA rights
17 such as securing their release from ORR and submitting an I-589 application with
18 USCIS. The lack of clarity and guidance from DHS and HHS with respect to their
19 treatment of MPP-unaccompanied children has meant that we must continue to
20 prioritize these children for our services above all others even if they fall outside the
21 scope of our contractual obligations.

22 7. However, both mine and my staff's time to handle case work associated
23 with representing and advocating for MPP-unaccompanied children is severely and
24 critically limited because of our work at the EISs. While my capacity was already
25 strained as a result of MPP-unaccompanied children cases, my additional
26 responsibilities at the EISs have left me with no capacity to serve MPP-
27 unaccompanied children. As such, we have to assign these cases to other attorneys
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1 who are not normally funded or contracted to provide services to unaccompanied
2 children.


3 8. With the opening of the EISs, ImmDef’s ability to identify, serve, and
4 represent MPP-unaccompanied children has become further constrained. In the
5 context of the EISs, encountering even one MPP-unaccompanied child means
6 diverting attention and resources away from other unaccompanied children at the
7 EIS. Until and unless the Government stops treating MPP-unaccompanied children
8 differently from unaccompanied children and stops prioritizing the child’s MPP
9 proceedings over their TVPRA protections, our organization and the children we
10 serve will continue to suffer harm.

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I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 3rd day of June, 2021 in Riverside, CA.

By 

Marion Donovan-Kaloust