

1 HARRISON J. FRAHN, IV (206822)
hfracn@stblaw.com
2 STEPHEN P. BLAKE (260069)
sblake@stblaw.com
3 SIMPSON THACHER &
BARTLETT LLP
4 2475 Hanover Street
Palo Alto, California 94304
5 Telephone: (650) 251-5000
Facsimile: (650) 251-5002

6 BROOKE E. CUCINELLA
7 (*pro hac vice* forthcoming)
brooke.cucinella@stblaw.com
8 SIMPSON THACHER &
BARTLETT LLP
9 425 Lexington Avenue
New York, New York 10017
10 Telephone: (212) 455-3070
Facsimile: (212) 455-2502

11 *Attorneys for Plaintiffs*

12
13 **UNITED STATES DISTRICT COURT**
14 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
15 **WESTERN DIVISION**

16 IMMIGRANT DEFENDERS LAW
17 CENTER; *et al.*,
18 Plaintiffs,
19 v.
20 U.S. DEPARTMENT OF HOMELAND
SECURITY; *et al.*,
21 Defendants.

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

**DECLARATION OF CARLY L.
SALAZAR IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

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

1 I, **CARLY L. SALAZAR**, declare under penalty of perjury pursuant to 28
2 U.S.C. § 1746 that the following is true and correct. I make this declaration based
3 upon personal knowledge and a review of records related to my position as the Legal
4 Director for the South Texas Pro Bono Asylum Representation Project (“ProBAR”),
5 a project of the American Bar Association (“ABA”)¹ located in Harlingen, Texas:

6 1. In my role as Legal Director, I oversee ProBAR’s operations in South
7 Texas, including its representation of unaccompanied children. I am licensed to
8 practice law in California and Illinois.

9 2. The mission of the ABA is to serve equally its members, the legal
10 profession, and the public by defending liberty and delivering justice as the national
11 representative of the legal profession. Through ProBAR, the ABA pursues fair
12 treatment and full due process rights for immigrants and refugees within the United
13 States. ProBAR provides legal education, representation, and connections to services
14 for immigrants in the Texas Rio Grande Valley border region with a particular focus
15 on the legal needs of adults and children who fall under the Immigration and
16 Nationality Act’s definition of “unaccompanied children” in federal custody.

17 **I. About ProBAR**

18 3. In 2003, ProBAR established the Immigrant Children’s Assistance
19 Project (“Children’s Project”), which focuses on providing direct services and legal
20 representation to the large volume of unaccompanied children clients detained in
21 South Texas ORR shelters. ProBAR is a leading expert on representing and assisting
22 detained unaccompanied children and has developed guides and videos on best
23 practices for effectively engaging with young clients, providing “Know Your Rights”
24 (“KYR”) presentations, and conducting effective individual screening processes.

25
26 ¹ The ABA is a 501(c)(6) voluntary professional association comprised of judges,
27 lawyers, and law students. Founded in 1878, the ABA’s mission is to advocate for
28 the legal profession, promote full and equal participation in the justice system, and
advance the rule of law. Through its Commission on Immigration, the ABA
established ProBAR.

1 survivors of trauma, abuse, or neglect. Detained in remote shelters, many are
2 separated from their families. ProBAR’s services fill an area of acute need for
3 immigrant children who are otherwise unable to afford private counsel.

4 7. ProBAR serves more unaccompanied children entering the United States
5 than any other legal service provider. ProBAR represents its unaccompanied child
6 clients before United States Citizenship and Immigration Services (“USCIS”), the
7 Executive Office for Immigration Review (“EOIR”), local state probate and family
8 courts, and federal circuit courts. ProBAR regularly represents unaccompanied
9 children and prepares affirmative applications for asylum as well as defensive
10 applications for asylum, withholding of removal, and protection under the Convention
11 Against Torture. ProBAR also represents unaccompanied children, where eligible, in
12 their applications for Special Immigrant Juvenile Status visas, U-visas, and T-visas.
13 ProBAR has extensive experience working with clients of all ages and consistently
14 partners with and provides expertise to other legal service providers. Through these
15 processes, ProBAR seeks to fulfill its core mission to provide legal education,
16 representation, and connections to integrated services for all unaccompanied children
17 in our service area.

18 **II. How ProBAR Encounters Children**

19 8. U.S. Customs and Borders Protection (“CBP”) transports
20 unaccompanied children by vehicles and often places them in local ORR shelters
21 within hours or days. Due to ProBAR’s proximity to the U.S.-Mexico border, ORR
22 shelters inform ProBAR about newly arrived children, and ProBAR schedules
23 appointments to provide group KYR presentations and individual screenings within
24 ten (10) days of their arrival. This timeframe allows unaccompanied children to
25 adjust to their surroundings physically and mentally, as children are more receptive
26 to information after they have slept, showered, eaten several meals, and received
27 medical treatment, reducing the fight-or-flight response carried during travel.

28

1 9. KYR presentations inform unaccompanied children about the basics of
2 the immigration process, immigration case law, the court process, and reunification.
3 ProBAR tailors the sophistication and delivery of the information based upon the
4 ages and capacities of children. One key legal concept that ProBAR covers with
5 children is the importance of the Form I-862, Notice to Appear (“NTA”), which
6 indicates the child’s name, country of origin, date and location of recent entry into
7 the U.S., and immigration charges. We stress the importance of confirming the
8 accuracy of the information in the NTA and inform children to notify the
9 immigration judge if any information is inaccurate. After explaining the NTA
10 charging document, we then educate children on types of immigration cases under
11 the law, and help prepare them for court. Additionally, we inform children about
12 the process of reunifying with family or securing a release from the ORR shelter to
13 live with an approved custodian.

14 10. During individual screenings, ProBAR discusses with each child their
15 individual circumstances in a confidential setting and reviews their NTAs. The NTAs
16 are helpful to confirm biographical information with children directly and review the
17 circumstances of their entries into the country. The NTA is a conversational gateway
18 to assessing eligibility for legal claims, and it sets the stage for follow-up visits with
19 children. ProBAR typically has access to these critical NTAs during individual
20 screenings because ICE serves the NTAs on ORR staff who store and provide them
21 to children for their ProBAR visits.

22 **III. Migrant Protection Protocols Impacts How ProBAR Provides Legal**
23 **Education**

24 11. The Migrant Protection Protocols (“MPP”) were implemented in January
25 2019. In July 2019, it was implemented along the South Texas border. By October
26 2019, ProBAR began to see children in local ORR custody who were previously
27 processed through the MPP program (“MPP-unaccompanied children”).
28

1 12. In October 2019, ProBAR first noticed that certain children in local ORR
2 shelters did not have recent NTAs or told stories of being returned to Mexico with
3 parents. Shelter staff informed us that the children were awaiting imminent ICE
4 removals to their country of origin. We learned that they were at risk of imminent
5 removal because of their previous ties to MPP. This experience led ProBAR to
6 develop a monitoring system of unaccompanied children in shelters where ProBAR
7 staff immediately call the immigration court hotline for all newly admitted children
8 in each area shelter to check whether each child has a removal order. These additional
9 efforts were not necessary prior to MPP, and they continue to this day.

10 13. ProBAR also discovered that if an unaccompanied child was previously
11 subject to MPP proceedings, ICE would generally not issue a new NTA for the MPP-
12 unaccompanied child. Instead, all MPP-unaccompanied children were made to
13 continue under the proceedings initiated while they were accompanied under MPP.
14 The children are co-mingled with children who are proceeding as unaccompanied
15 children in accordance with the William Wilberforce Trafficking Victims Protection
16 Reauthorization Act of 2008 (“TVPRA”). This often creates confusion as ProBAR
17 frequently does not know, and cannot readily discern, whether a child has any ties to
18 MPP until the child is asked specific questions in screening or we discover
19 information from other sources that suggests a child has MPP ties.

20 14. In response to these challenges, we tailored our information sessions
21 with MPP-unaccompanied children to inform them that the government would not
22 provide them with a new document as an unaccompanied minor to accurately reflect
23 their entry into the country or the charges against them. We also inform MPP-
24 unaccompanied children that their legal case depends on their parent or parents’ case
25 under MPP. Whereas, for other unaccompanied children, we focus on their individual
26 immigration options, for MPP-unaccompanied children we must dedicate additional
27 resources to learning the actions, statements, pleadings, or claims of the child’s
28 parents in prior MPP court hearings. Often, we are in a position of crafting arguments

1 and providing representation without access to a full record of MPP proceedings. This
2 is because children are unable to accurately convey to us what occurred before an
3 MPP Immigration Judge, and communications with parents are frequently unstable.
4 It is difficult to locate a child's parents and to stay in frequent communication as they
5 navigate unsafe options in Mexican hotels, refugee tent encampments, and refugee
6 shelters, or are missing, kidnapped, or in transit.

7 15. Prior to MPP, we routinely obtained case information related to our
8 clients from government agencies such as ORR and ICE. This information is critical
9 to our duties and efforts. However, any such information became substantially more
10 difficult to come by for MPP-unaccompanied children with removal orders because
11 ICE often attempts to immediately remove these children without ever providing a
12 child's information to ProBAR. When informal and formal requests for information
13 are denied because ICE attempts to immediately remove the child, or months pass
14 before a response, ProBAR has no reliable way of timely obtaining critical
15 information on a child's immigration history.

16 16. We are also unable to provide educational services to all MPP-
17 unaccompanied children because of ICE's attempts to immediately remove MPP-
18 unaccompanied children with prior removal orders. As a result, instead of including
19 a child in a legal information session with our Shelter Services team, our first
20 conversation with the child is a sprint effort by a staff attorney to secure direct legal
21 representation for the child.

22 **A. MPP Impacts How ProBAR Provides Direct Legal Representation**

23 17. As part of ProBAR's regular practice with respect to MPP
24 unaccompanied children, after ProBAR's Shelter Services staff provide
25 unaccompanied children with a legal information session and screening, ProBAR's
26 Legal staff assess the intakes for each child to determine whether a child is eligible
27 for legal relief. Attorneys provide follow up visits with children to establish rapport
28 and help determine whether there are applicable avenues of legal relief for the child.

1 Typical questions during these sessions include questions about the child’s family,
2 the circumstances that led to their migration, and any ties they have to the United
3 States. We find that a large majority of unaccompanied children fled violent and
4 dangerous conditions and fear harm if they were to be returned to their home
5 countries.

6 18. Additionally, ProBAR attorneys and legal support staff attend each
7 juvenile docket to ensure that children are not alone in court. In most cases, children
8 will reunify with family members or secure a release to an approved sponsor, where
9 they will then be allowed to request a change of venue in their case and, if granted,
10 proceed with removal proceedings in a jurisdiction closer to their new home. As such,
11 ProBAR frequently appears in a “Friend of Court” role to inform the court about
12 upcoming reunifications, releases, and transfers to other ORR shelters. This allows
13 the court to receive key information for planning its dockets while also assisting
14 children who may be confused or timid during court hearings. When a child reunifies
15 with family or otherwise leaves the ProBAR geographical service area, ProBAR
16 provides the child with information on how to update their address with the court and
17 pursue a *pro se* change of venue. ProBAR staff attorneys retain as clients those
18 children who do not have upcoming reunification or shelter transfers and
19 unaccompanied children who expect to be released from ORR custody within
20 ProBAR’s geographic service area. For those children, we develop the child’s claims
21 for immigration relief and pursue legal relief in accordance with TVPRA provisions.
22 If at any time a child reunifies or transfers out of our service area, we withdraw our
23 representation and refer the child’s case to attorneys in the new jurisdiction.

24 19. With MPP-unaccompanied children, our first hurdle in direct
25 representation is identifying which children have ties to MPP. Staff members
26 regularly monitor ORR shelter populations with an urgency that we did not have to
27 exert prior to MPP because ICE is poised to immediately remove MPP-
28 unaccompanied children with MPP removal orders without ever allowing the child to

1 appear in court as an unaccompanied child. Accordingly, it is crucial that we quickly
2 identify those children who may be subject to immediate removal from the country.
3 Further, we must immediately determine whether children have independent legal
4 claims or bases to appeal or reopen the accompanied immigration cases presented by
5 their parents.

6 20. This “mad dash” to identify MPP-unaccompanied children and their
7 legal claims before immediate removal stands in stark contrast to the longer period
8 we generally can anticipate having to work with unaccompanied children. Under
9 normal circumstances, we work with their families and child advocates to find
10 evidence and develop strong legal claims for immigration relief that statutorily allows
11 the children to remain in the U.S. Contacting witnesses and preparing applications
12 for immigration relief can be a slow and difficult process, often requiring between 35
13 and 60 hours to create the strongest applications possible. Prior to MPP, ProBAR
14 built a sustainable practice of providing excellent legal services for hundreds of
15 children by developing their claims and evidence over an extended period of time,
16 because unaccompanied children were not immediately at risk of removal. The time
17 crunch created by MPP is a significant barrier to carrying out ProBAR’s core mission.

18 21. Once an MPP-unaccompanied child is identified, the next hurdle is the
19 inability to obtain an NTA that accurately reflects a child’s immigration charges, or
20 the date and location of his entry into the U.S. We are at an immediate knowledge
21 deficit on the procedural posture of the child’s case and what his or her parents may
22 have said on their child’s behalf on the record or in response to pleadings in prior
23 MPP proceedings. This is due to insufficient lines of communication and
24 collaboration from the government, and the above-mentioned time crunch. As stated
25 earlier, obtaining procedural case information is a burden that we do not have with
26 other unaccompanied children whose proceedings are based on their most recent entry
27 into the country.

28

1 22. To illustrate, one of ProBAR’s unaccompanied child clients reported that
2 he and his father returned to their native country after receiving a removal order from
3 an MPP judge. The boy’s father subsequently abandoned him, and the child returned
4 to the U.S. on his own, entering as an unaccompanied minor. In accordance with the
5 TVPRA, any other non-MPP-unaccompanied child with a prior removal order would
6 receive a new NTA reflecting their recent entry. This is a procedural reality and
7 requires no effort on our part. For this MPP-unaccompanied child, however, our staff
8 had to take on additional tasks, including reporting the case to the DHS Office for
9 Civil Rights and Civil Liberties to pursue service of a proper NTA for the child.
10 Efforts have failed thus far, and the child will proceed on charges from his MPP
11 accompanied case—despite the fact that, upon receipt of an MPP removal order, this
12 child indeed returned to his home country and then was abandoned. Our client’s rights
13 have been directly undermined by this procedural denial, as accompanied children
14 must file for asylum within one (1) year, whereas unaccompanied children have the
15 flexibility to file anytime before their eighteenth birthday. DHS’s refusal to issue an
16 unaccompanied NTA, as it would for other unaccompanied children, jeopardizes this
17 child’s ability to file for asylum, especially given the inaccurate “start” date indicated
18 on his old NTA issued in MPP.

19 23. When an MPP judge has denied an asylum claim or ordered a child
20 removed, and we encounter the child months later, we must trace the timing of the
21 order and secure a copy of the removal order. This is because our first act of legal
22 representation for MPP-unaccompanied children with existing removal orders is to
23 decide whether we can file an appeal of a decision or file a Motion to Reopen
24 proceedings. In essence, instead of initiating a direct representation by developing
25 the record and facts of a child’s case and filing an application, we must immediately
26 jump into the appellate phase, often appealing the unknown facts and filings of a
27 parents’ prior claim for which the government has sole access to the records.
28 Timelines for these actions are also very tight and frequently require the payment of

1 \$75 for a same-day filing service. Additionally, in four cases we have filed a Form I-
2 246, or an Application for Stays of Deportation or Removal with ICE, to try and
3 prevent ICE from repatriating an MPP-unaccompanied child without due process.
4 This application also requires an additional \$155 payment that is atypical for
5 unaccompanied children generally. In each case, ICE processed the fees and denied
6 the child’s request for a stay, demonstrating that this approach was a futile use of time
7 and resources.

8 24. When successful in an appeal or Motion to Reopen, ProBAR is then
9 bound to represent the child in the reopened proceedings and potentially dispute
10 claims originally presented by the child’s parents. In a recent case, an appeal was
11 remanded to rehear the entire trial because the audio recording of the original trial
12 was defective, and the court had no transcript. The trial was based on a parent’s
13 asylum application where the child was a derivative. In contrast, in another recent
14 instance, the Board of Immigration Appeals (“BIA”) remanded a case and stated that
15 the trial judge erred in treating the child as a derivative. Ordinarily, in a case of direct
16 representation, our attorneys would have the benefit of targeted knowledge based on
17 a child’s procedural history. However, when our attorneys cannot access the full
18 record that the government has at its fingertips, and face time pressures to quickly file
19 an appeal and/or Motion to Reopen before a child is summarily removed, our
20 resources get stretched especially thin. This is because we are forced to cast a wide
21 net for each filing, which requires additional time and effort on the part of our lawyers
22 and staff. These added difficulties would not be necessary if MPP-unaccompanied
23 children received their TVPRA rights and were allowed proper immigration
24 proceedings completely separate from their non-accompanying parents.

25 25. Further, the Government’s inconsistent handling of these cases has put
26 MPP-unaccompanied children in procedural postures we never anticipated or thought
27 possible—forcing ProBAR to defend children from MPP removal orders before the
28 BIA while these same children pursue immigration relief through proceedings

1 initiated based on their new unaccompanied child NTAs. For example, ProBAR
2 represents two siblings, ages 5 and 10, who were sent to Mexico with their father in
3 MPP proceedings in February 2020. They later entered the United States as
4 unaccompanied children in September 2020, having separated from their father. Both
5 siblings in fact received new NTAs upon reentry reflecting their status as
6 unaccompanied children. Still, ICE sought to enforce their MPP removal orders,
7 moving in October 2020 to dismiss their new proceedings before an Immigration
8 Judge. This meant the children were simultaneously involved in two immigration
9 proceedings, one stemming from their first entry with their father, and one from their
10 September 2020 entry as unaccompanied children. ProBAR successfully contested
11 the motions and appealed the MPP removal orders before the BIA. After the children
12 reunified with family in Dallas, Texas, ProBAR filed a motion to transfer venue,
13 which was granted. Though the Immigration Judge denied the ICE motions to dismiss
14 the siblings' new NTA proceedings, ProBAR must now represent the siblings in the
15 BIA appeal of their MPP removal, while we also try to locate separate counsel to
16 represent them in the continued proceedings based on their new NTAs in Dallas.
17 Situations such as the one faced by the siblings, where competing processes mean that
18 a child is simultaneously represented by ProBAR in a BIA appeal while also
19 represented by another organization in proceedings to seek affirmative relief, did not
20 occur prior to MPP and have caused additional logistical challenges for our
21 organization.

22 26. When appeals or Motions to Reopen are not successful, we must quickly
23 pursue additional appellate relief while also preparing the child for a swift repatriation
24 to their country of origin. Our representation continues even when a client has been
25 removed from the country. This continued representation entails international calls
26 and efforts to secure safe housing and ongoing social services for our clients in their
27 native countries. Our normal course of work is to provide direct legal representation
28 to individuals in our area. Representing individuals who have been removed to

1 another country frustrates our core mission and diverts resources ProBAR would
2 typically expend on representation of individuals in our geographic service area.

3 27. To represent MPP-unaccompanied children, ProBAR's legal staff must
4 also manage unique due process challenges. As mentioned, we frequently must enter
5 the appeals phase of a case without access to the full record, while ICE attorneys and
6 the BIA have access to a full record. Also, for all other unaccompanied children, we
7 are able to pursue asylum claims with USCIS asylum officers, Special Immigrant
8 Juvenile Status relief, and other forms of immigration remedies. Yet, MPP-
9 unaccompanied children who have received prior MPP court orders are not afforded
10 the same opportunities. Currently, we have one (1) asylum application filed for an
11 MPP-unaccompanied child before USCIS. Although the case before USCIS was not
12 rejected, we had to file proof that an appeal of the child's MPP case was also pending
13 before the BIA as a precautionary measure, which is a new and unconventional step
14 that has become a prerequisite in MPP-unaccompanied children asylum cases.

15 28. Unfortunately, in some instances, ProBAR has not been able to prevent
16 ICE from immediately removing MPP-unaccompanied children before they have had
17 an opportunity to pursue their TVPRA benefits. For example, ProBAR represents an
18 MPP-unaccompanied child who was subject to MPP when she and her mother fled
19 Honduras after receiving threats of retribution for reporting a sexual assault by her
20 father. The MPP-unaccompanied child later entered the United States after facing
21 violence in a Matamoros, Mexico refugee camp, and was designated as an
22 unaccompanied child. After taking on representation, ProBAR learned that ICE
23 intended to immediately remove the child. ProBAR immediately filed a Motion to
24 Reopen the unaccompanied child's MPP proceeding and a motion to stay execution
25 of removal with the MPP Immigration Judge. DHS opposed the Motion to Reopen
26 and the MPP Immigration Judge refused to grant a stay of removal. ProBAR then
27 pivoted and filed an I-246 Application for a Stay of Deportation or Removal with ICE
28 and an Emergency Motion to Stay Execution of Removal Order and an appeal with

1 the BIA to stay the execution of the MPP removal order. ICE denied the application
2 for unknown reasons and the BIA denied the stay request. Thereafter, ProBAR
3 secured *pro bono* counsel to file a federal lawsuit and a Motion for a Preliminary
4 Injunction on behalf of the child to prevent DHS from removing her without giving
5 her the opportunity to seek relief from removal as an unaccompanied child,
6 independent from her mother’s MPP claims. ICE did not await a ruling on the
7 Preliminary Injunction, and instead sought to remove the child before a hearing could
8 be held, forcing ProBAR to file a motion for a Temporary Restraining Order (“TRO”).
9 The TRO motion was unsuccessful, and ICE removed the unaccompanied child
10 within hours. The BIA subsequently granted the child’s appeal, which reopened her
11 MPP-based case. Yet, ProBAR continues to invest resources as it encounters hurdles
12 returning the child to the U.S. to appear for her immigration case. Having navigated
13 burecratic issues in both the United States and Honduras, this process has stalled
14 because in order to obtain a Honduran passport, the child must obtain a signture from
15 her father—who was her abuser and is now imprisoned. If that dilemma is resolved,
16 and ProBAR is able to faciliate her return, ProBAR will still face the challenge of
17 convincing the immigration judge to allow her to present a claim for relief as an
18 unaccompanied child. This is something that would have been resolved over a year
19 ago if ICE had simply issued her an NTA when she entered as an unaccompanied
20 child and treated her as an unaccompanied child when she was placed in ORR
21 custody. Based on our professional judgment and experience, we are highly certain
22 that we would have secured legal relief for this child by now if she had been afforded
23 the legal rights that the TVPRA provides for unaccompanied children.

24 29. For all unaccompanied children who pursue reunification with family or
25 release to an approved custodian, ProBAR typically serves in an informational role.
26 ProBAR staff ensure children can ask questions or raise concerns in a confidential
27 setting, inform the court of upcoming reunifications or releases, and provide
28 information to family members. Usually, ProBAR has minimal to no involvement in

1 this process, known as the “reunification process.” Initially, ProBAR was informed
2 that ICE officers instructed ORR shelters to prohibit reunification for MPP-
3 unaccompanied children with MPP removal orders. ProBAR had to dedicate staff to
4 advocate for these rights for each MPP-unaccompanied child and was required to
5 prove that the MPP-unaccompanied children were contesting their MPP removal
6 orders to prevent stalled reunifications. ProBAR legal staff and program leadership
7 raised the issue via a variety of forums by advocating for this statutory right with local
8 shelter leaders, ORR officials, and ICE. Ultimately, the efforts continued on a case-
9 by-case basis without success until ICE was compelled to allow reunification for
10 MPP-unaccompanied children in accordance with the *Flores* Settlement Agreement
11 in May 2020. However, because of reunification delays caused by prior ICE
12 interference and confusion amongst shelter staff about reunification rights for MPP-
13 unaccompanied children, ProBAR continues to carefully monitor the reunification of
14 MPP-unaccompanied children, a task we did not need to perform prior to MPP. As a
15 matter of normal course, when unaccompanied children ProBAR represents reunify
16 with family members, we will assist with a Motion to Change Venue and then
17 withdraw as attorneys of record. However, with MPP-unaccompanied children who
18 have Motions to Reopen or appeals pending, ProBAR staff attorneys are compelled
19 to remain counsel of record due to the unique harm caused to a child’s case if an
20 attorney withdraws from an appellate case or while litigating a motion.

21 30. To ensure that MPP-unaccompanied children complete an appeal or
22 Motion to Reopen, or simply to avoid removal or change of venue problems, ProBAR
23 legal staff started tracking MPP-unaccompanied children in our service area. This
24 has required considerable time from at least one paralegal and one attorney. As of the
25 date of this Declaration, ProBAR has served and tracked at least 174 MPP-
26 unaccompanied children. ProBAR staff also receive requests for assistance from
27 other legal service organizations around the country that have MPP-unaccompanied
28 child clients with pending MPP hearings in local courts. Early on, we realized that

1 we could not serve both locally detained MPP-unaccompanied children and MPP-
2 unaccompanied children held in ORR shelters across the country who had hearings
3 scheduled on local MPP court dockets. Accordingly, we shifted our resources to
4 provide information to other legal service providers on how they could attempt to
5 secure a change of venue from afar. Historically, ProBAR has always come to the
6 aid of other legal service providers by ensuring that all children included on our
7 juvenile dockets are covered by our staff through representation or as “Friend of
8 Court.” The number of MPP-unaccompanied children appearing on local MPP
9 dockets became impossible for our staff to cover, and therefore has taken a toll on our
10 mission, staff’s morale, and proud record of serving all children.

11 31. Further, representing MPP-unaccompanied children has forced
12 ProBAR’s attorneys to find alternative coverage for hearings, client meetings, and
13 other deadlines for non-MPP clients. For example, one ProBAR attorney was
14 required to clear her calendar for three weeks to engage in emergency motion practice
15 for an MPP-unaccompanied child facing removal, requiring her typical caseload to be
16 managed by others. Another attorney dedicated one hundred hours pursuing a Motion
17 to Reopen an MPP order for a child that had a new NTA, but was still at risk of
18 removal based on the prior MPP removal order. Prior to MPP, these situations did
19 not arise, barring unusual circumstances. With MPP, these situations arise all too
20 often, creating an unsustainable practice.

21 32. To date, ProBAR has filed forty-three motions to reopen/reconsider
22 and/or appeals of MPP-unaccompanied children’s removal orders. To gather
23 information about the MPP cases, ProBAR filed twenty FOIA requests across five
24 government agencies, reviewed court files, and listened to court recordings, as the
25 children and their families often did not have the necessary legal information to assist
26 in their representation. For example, in two *in absentia* cases, ProBAR was unable to
27 confirm any information with the parents because the parents disappeared in Mexico.
28 To this day, neither of the two parents has been located. This is consistent with a

1 disturbing record of difficulties locating parents in MPP in at least 24 of ProBAR's
2 MPP-unaccompanied child cases. Tragically, too many parents disappeared in
3 Mexico or Guatemala, after U.S. authorities removed them pursuant to a safe third-
4 country agreement with that country. To say the least, we and our young clients fear
5 the worst, and cannot understand why these children who are alone in this country
6 and cannot locate their parents are being treated as though they are moving through
7 the immigration process together.

8 **B. MPP Impacts How ProBAR Provides Integrated Services for**
9 **Children**

10 33. ProBAR has a Release Support Department that coordinates integrated
11 services to assist children in ORR shelters and ProBAR clients. Typically, these
12 services include: counseling services, assistance with safe travel planning when
13 reunifying with family, referrals for legal services in other parts of the country, and
14 information sessions for family members on how to change venue, comply with court
15 requirements, and locate services in their area. Since ProBAR has continued legal
16 services for MPP-unaccompanied children in some cases, the need to secure
17 integrated services for those children is greater.

18 34. To illustrate, ProBAR represents a girl and a boy who entered as
19 unaccompanied children but were previously ordered removed by an MPP judge. For
20 each child, ProBAR filed a Form I-246 Application for Stay of Deportation or
21 Removal with ICE, paying the \$155 fee for each, and quickly filed Motions to
22 Reopen/Appeal via overnight priority mail for each child. ICE processed the form
23 fees and promptly denied both applications for unknown reasons. In the case of the
24 girl (who is also discussed in ¶ 28, *supra*), ProBAR secured *pro bono* counsel to file
25 a TRO in federal district court to enjoin DHS from removing her so that she could
26 present an immigration case as an unaccompanied child, independent from her
27 mother's MPP claims. The federal action was not successful. The boy's motion to
28 reopen was ultimately granted; however, within an hour prior to the motion being

1 granted, ICE placed him and the girl on the same removal flight. As motions and
2 appeals continued for both children, ProBAR quickly had to account for the children
3 when they arrived in their country, secure safe transportation and safe housing, and
4 locate on-the-ground services so we could constantly monitor the children's safety
5 and situation. This has required an all-hands-on-deck approach to cover integral
6 services for clients in a foreign country and to maintain ongoing communications with
7 our young clients abroad. Threats that led both clients to flee their country persist.
8 As a result, both children are living in concealed locations apart from their parents,
9 and ProBAR secured a contract for services with an organization to continue
10 supporting our clients while they in hiding abroad. Now that we have obtained a
11 favorable result in at least one appeal, we find ourselves in a position of advocating
12 for ICE and ERO to return our client while simultaneously arranging travel for our
13 client in the event that ERO fails to arrange transportation. This is a complex and
14 multi-step process and includes, for example, obtaining consent for passport, a
15 passport, a travel letter from the U.S. Embassy, flight arrangements, a social
16 worker/safe travel escort, hotel, and more.

17 35. Despite recent executive changes impacting MPP broadly, ProBAR
18 continues to undertake additional efforts that were not necessary prior to MPP to
19 protect the rights of MPP-unaccompanied children. For example, ProBar represents
20 an unaccompanied child that entered the U.S. unaccompanied in late January 2021
21 after becoming separated from his mother in Mexico. This child had a prior removal
22 order issued in MPP proceedings, but was in fact issued a new NTA. ProBAR does
23 not believe this new NTA was served on EOIR, and filed a motion to reopen in
24 February 2021, which was then denied by EOIR. ICE expressed concern to ProBAR
25 in early April 2021 that it may have to move forward with removal unless ProBAR
26 took additional action on the child's behalf. ProBAR filed a second motion to reopen
27 on April 3, 2021, which was granted on April 28, 2021. This illustrates the ongoing
28 issue faced by MPP-unaccompanied children given their prior MPP status.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

Executed this 13 th day of May, 2021 in CHICAGO, IL.

By 
Carly L. Salazar