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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 MICHELLE
GARZA IN SUPPORT OF
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, Michelle Garza, declare under penalty of perjury pursuant to 28 U.S.C.
2 § 1746 that the following is true and correct. I make this declaration based on
3 personal knowledge and a review of records related to my position as a Chief Legal
4 Programs Officer at Refugee and Immigrant Center for Education and Legal
5 Services

6 1. The facts contained in this declaration are known personally to me and,
7 if called as a witness, I could and would testify competently thereto under oath. I
8 submit this sworn declaration in support of Plaintiffs’ Motion for Preliminary
9 Injunction.

10 2. I serve as the Chief Legal Programs Officer for Refugee and Immigrant
11 Center for Education and Legal Services (“RAICES”), an organizational plaintiff in
12 this action. I have been licensed to practice law in the State of Texas since 2010 and
13 have worked at RAICES since that time — first as a staff attorney, then program
14 director, then Associate Executive Director, and currently as Chief Legal Programs
15 Officer. I manage all administrative and programmatic aspects of RAICES’s legal
16 programs and its staff of over 50 attorneys.

17 **I. About RAICES**

18 3. RAICES is a 501(c)(3) nonprofit, non-partisan corporation. Our
19 mission is to defend the rights of immigrants and refugees; empower individuals,
20 families, and communities; and advocate for liberty and justice. We promote justice
21 by providing free and low-cost legal services to underserved immigrant children,
22 families, refugees, and other individuals via the provision of robust legal services,
23 social programs, bond assistance and advocacy work. Our Legal Department
24 provides affirmative, defensive, and litigation services, and our Social Services
25 Department provides case management, resettlement services, and transit support,
26 and connects migrants with community resources.

27 4. Founded in 1986 as the Refugee Aid Project, RAICES has grown to be
28 the largest immigration legal services provider in Texas. With offices in Austin,

1 Corpus Christi, Dallas, Fort Worth, Houston, and San Antonio, RAICES is a
2 frontline organization in the debate about immigration and immigrants in the world.
3 As an organization that combines expertise developed from the daily practice of
4 immigration law with a deep commitment to advocacy, RAICES is unique among
5 immigration organizations. A diverse staff of 283 attorneys, legal assistants, social
6 workers, advocates, and support staff provide consultations, direct legal services
7 representation, social services assistance, and advocacy work on behalf of
8 immigrants throughout Texas. In 2019, RAICES managed 28,257 legal cases.

9 5. RAICES’s Children’s Program has thirty-eight attorneys and thirty-five
10 support staff who provide free legal services to unaccompanied children detained in
11 Office of Refugee Resettlement (“ORR”) shelters throughout Texas and in
12 emergency reception centers (“ERC”). In 2014, the Children’s Program expanded
13 to provide legal services to designated unaccompanied immigrant children who have
14 been released from detention and reside within RAICES’s service area. RAICES’s
15 Children’s Program provides a wide array of services to its clients and the Texas
16 immigrant community, including direct legal services, representation in affirmative
17 and defensive cases, as well as court support, general legal guidance, Know Your
18 Rights (“KYR”) presentations, case management, resettlement services, transit
19 support, bond assistance, and assistance with social services.

20 6. RAICES’s Children Program staff work with some of the most
21 vulnerable unaccompanied children and have expertise working with children with
22 special needs, including teens who are pregnant or are parenting, sibling groups,
23 tender age children, and children in need of a heightened level of supervision. The
24 Program includes a Detained Unaccompanied Children Services unit, which serves
25 the 14 ORR-contracted shelters and foster care programs in the San Antonio, Corpus
26 Christi, and Waco area, as well as a Release Unaccompanied Children Services unit,
27 which provides legal screenings, immigration representation and case management
28 support to unaccompanied children who were released from an ORR shelter and are

1 now living with an immediate family member, relative or family friend in the San
2 Antonio, Austin, Dallas, Ft. Worth, Houston, and Corpus Christi areas. For both
3 detained and released unaccompanied children, the Children’s Program’s primary
4 goal is to protect the children’s legal rights as established by the Trafficking Victims
5 Protection Reauthorization Act (“TVPRA”), the *Flores* Settlement, and other
6 applicable law.

7 7. Each year, RAICES provides social and legal services to thousands of
8 unaccompanied children who qualify for immigration relief, including KYR
9 presentations and legal intakes, preliminary legal consultations, social services
10 support, referrals, and legal representation. Because of its 13 years of experience
11 working with unaccompanied children, RAICES has extensive knowledge and
12 experience assisting children in seeking immigration relief, including through
13 preparing affirmative asylum applications, representing children in the state-court
14 proceedings necessary to apply for Special Immigrant Juvenile Status (“SIJS”), and
15 representing children in the full removal proceedings mandated by the TVPRA.
16 RAICES advocates for the release and reunification of unaccompanied children
17 through legal avenues as well as its relationships with stakeholders such as child
18 advocates, ORR case managers, Juvenile U.S. Immigration and Customs
19 Enforcement (“ICE”) Coordinators, and Health and Human Services Federal Field
20 Specialists. The services we provide are primarily designed to provide assistance
21 and legal counsel to children as they move through ORR processing to be reunited
22 with a sponsor, and—if a child is to remain on a long-term basis within RAICES’s
23 service area—to provide legal representation to the child as his or her immigration
24 case moves forward, including helping the child seek asylum and other forms of
25 immigration relief.

26 8. RAICES’s Children’s Program provides a wide array of services to its
27 unaccompanied child clients and the immigrant community in Texas, but our
28 operations and service model have been severely strained by the introduction of the

1 “Migrant Protection Protocols” (“MPP”) under the Trump administration. Although
2 the federal government has stated that unaccompanied children shall not be subject
3 to MPP, it has nevertheless chosen to prioritize enforcement of MPP proceedings
4 and removal orders against unaccompanied children over its statutory duty to abide
5 by the TVPRA and the many protections and rights that statute extends to
6 unaccompanied children. Our service model, which was predicated on the basic and
7 noncontroversial assumption that all unaccompanied children have been and should
8 be able to benefit from the TVPRA’s protections, has been radically upended now
9 that RAICES must engage in extraordinary advocacy and motions practice to ensure
10 that the government provides unaccompanied children the TVPRA protections they
11 are due.

12 **II. RAICES’s Practice Prior to MPP**

13 9. Before the Trump Administration implemented the Migrant Protection
14 Protocols (“MPP”) in January 2019, RAICES’s Children’s Program provided
15 multiple services to unaccompanied children, including KYR presentations,
16 resettlement services, and case management, but offered legal representation only to
17 children in one of the following five “mandatory” categories: (1) unaccompanied
18 children expected to reunify with family or friends in RAICES’s service area of
19 Texas; (2) unaccompanied children who requested or desired voluntary departure
20 instead of placement in removal proceedings; (3) unaccompanied children who were
21 approaching their 18th birthday and thus could “age out” of the legal definition of an
22 “unaccompanied alien child,” causing transfer to ICE custody; (4) children who
23 were separated from family members under the Trump Administration’s zero
24 tolerance policy in 2018 that separated children from their parents; and (5)
25 unaccompanied children who were particularly vulnerable, due to mental health
26 issues or other circumstances. This last category includes “tender age” children,
27 both with or without mental health issues, as well as children with other special
28 needs, such as pregnant teens; young mothers and their babies; children with

1 trafficking or other safety concerns; children with medical issues; children unable to
2 reunify with a viable sponsor who were approaching their 18th birthday; children
3 unable to reunify with a viable sponsor who were not able to be placed in a long-
4 term foster care program due to age or length of stay in ORR custody; and children
5 who require a heightened degree of supervision.

6 10. In prioritizing these five categories of unaccompanied children,
7 RAICES generally did not offer formal legal representation to unaccompanied
8 children who would, for example, be reunified with a sponsor outside of RAICES's
9 geographic service area. This practice permitted RAICES to allocate resources
10 efficiently to the cases where our help was needed most and where we could be
11 most effective.

12 11. Unaccompanied children's cases generally take extra time and
13 specialized resources. Prior to MPP, the government processed unaccompanied
14 children in accordance with the special protections afforded by the TVPRA, which
15 allow an unaccompanied child to, among other things, be placed in the "least
16 restrictive setting," which for many children means release from government
17 custody to reunite with a parent or family member; to seek asylum before an asylum
18 officer trained to interact with children through trauma-informed interviewing
19 techniques; and to be given full removal proceedings before being removed. These
20 TVPRA protections allowed RAICES to represent unaccompanied children in a
21 manner consistent with its mission of advocating and promoting liberty and justice,
22 because the TVPRA process afforded sufficient time for RAICES attorneys and
23 staff to investigate a child's circumstances and immigration history and take steps to
24 seek affirmative asylum, reunification, or other favorable outcomes. RAICES
25 typically had months to prepare an unaccompanied child client's case and start the
26 process of affirmatively seeking immigration relief before entering pleadings in the
27 child's immigration proceedings. This was also true for the special needs cases that
28 require even more time and attention. RAICES was previously able to devote the

1 time required and the resources needed to properly counsel and represent
2 unaccompanied children throughout Texas, including children with a range of
3 special needs, in a full array of legal matters and cases, as well as to provide social
4 services and other important assistance.

5 12. Prior to MPP, RAICES very rarely encountered children with prior
6 removal orders. To the extent we did, we observed no difference in those children’s
7 ability to access and benefit from their TVPRA rights compared to children without
8 prior removal orders.

9 **III. RAICES Was Forced to Substantially Change Its Practice After MPP
10 Was Introduced**

11 13. In the fall of 2019, RAICES began seeing unaccompanied children
12 entering ORR custody with either upcoming MPP hearing schedules or prior,
13 concluded MPP proceedings that had resulted in a removal order, sometimes issued
14 *in absentia* (“MPP-unaccompanied children”). These children had not been placed
15 in Section 240 removal proceedings as required by the TVPRA. As a result, many
16 were under threat of immediate removal. For example, after one of our attorneys
17 learned of a child’s ties to MPP, the ORR shelter staff alerted him the very next day
18 that ICE intended to execute an MPP removal order against the child that very night.
19 Through our communications with Defendants, we quickly realized they intended to
20 execute prior MPP removal orders unless a motion to reopen or a notice of appeal
21 was pending before the court.

22 14. Because MPP unaccompanied children with prior removal orders can
23 be removed at any time—and because repeated interactions with Defendants made
24 clear to us that they intended to execute MPP removal orders against MPP
25 unaccompanied children, sometimes with very little notice—RAICES began
26 entering into, and continues to enter into, representation of both detained and
27 released MPP-unaccompanied children within RAICES’s geographical service area,
28 to defend these children in their MPP immigration proceedings. Doing so is

1 necessary so that these children receive the TVPRA protections to which they are
2 entitled, but it also places extraordinary burdens on RAICES. For one thing, most
3 of the MPP-unaccompanied children that RAICES has served would not have
4 otherwise received such legal representation under RAICES’s service model
5 because they did not fall into one of RAICES’s “mandatory” categories for
6 representation. For another, as described in further detail in this declaration,
7 representing an MPP-unaccompanied child can require anywhere from 60 to 100
8 extra hours of work for RAICES attorneys, which represents an extraordinary
9 undertaking that burdens RAICES staff as well as RAICES’s ability to serve
10 children without ties to MPP.

11 15. The experience of the Doe family¹ illustrates the crisis that MPP has
12 caused for children and the strain it has placed on RAICES’s resources. The Doe
13 family, which consists of a husband and wife and their three children, aged sixteen,
14 eight, and four, fled their home country after suffering harm and threats from gangs.
15 Upon entering the United States, United States Customs and Border Protection
16 (“CBP”) arbitrarily split the Doe family unit in two when placing them in MPP
17 proceedings. The mother was placed as the lead in one case with two of the children
18 as derivatives. The father was designated as the lead with the third child in another
19 case. This resulted in two different Immigration Judges (“IJs”) being assigned to
20 what should have been a single, family unit case, and the family thus was required
21 to appear at two separate hearings. CBP provided no explanation to the family, or
22 later to RAICES, as to why the family was bifurcated for its immigration
23 proceedings and forced to proceed along two separate tracks.

24 16. The mother and two of the children were the first to be scheduled for a
25 merits hearing. Without so much as a KYR presentation, let alone access to
26 counsel, the family was unable to gather documents and supporting evidence for

27 _____
28 ¹ The “Doe” family is identified here with a pseudonym to protect their identity.

1 their case. The mother’s case was denied and thus she and two of the Doe children
2 were ordered removed. The father and the third child’s case, at that time, had yet to
3 be heard by an IJ.

4 17. Forced to live in unsafe conditions in a shelter near the Texas-Mexico
5 border placed further stress on the Doe family. The children’s father eventually
6 abandoned them and their mother entered into an abusive relationship with another
7 man who beat her regularly. Soon the Doe children found themselves trapped inside
8 a dangerous home in a dangerous country, with no father and with a mother who
9 was powerless to protect them, much less herself, from constant abuse and violence.
10 The verbal and physical abuse of the children’s mother was so extreme that the
11 eldest sibling finally made the courageous decision to protect his younger siblings
12 and fled with them to the border. After being apprehended by CBP and designated
13 as unaccompanied children, the siblings were then transferred to ORR custody.

14 18. Once the Doe siblings were in ORR custody, RAICES performed an
15 intake process with the children and discovered through questioning the eldest
16 sibling that all three children were MPP-unaccompanied children. With two of the
17 children subject to removal orders, we knew that immediate action was necessary to
18 protect the children from removal to their home country. RAICES immediately
19 arranged with the ORR shelter to meet with the eldest sibling again, to get the facts
20 of the children’s stories, and reached out to the local ICE Field Office Juvenile
21 Coordinator (“FOJC”) to inquire about the Doe siblings’ MPP proceedings via e-
22 mail on September 23, 2020.

23 19. Shortly thereafter, RAICES received a response from the FOJC
24 informing us that the two siblings with MPP removal orders were going to be
25 removed to their home country within approximately one week, on September 30 or
26 October 2, 2020. This was despite the fact that ICE previously confirmed with us
27 that they were going to file Notices to Appear (“NTA”) with Immigration Court and
28 place the children in INA Section 240 proceedings pursuant to the TVPRA.

1 Unbeknownst to RAICES, however, these children had been issued two separate
2 alien numbers in two different NTAs. RAICES had only received a copy of the
3 NTA that CBP generated when the children entered as unaccompanied immigrant
4 children. We had no knowledge of the existence of a previous NTA created when
5 the children were placed in MPP with their parents, and ICE did not inform us of
6 this NTA, despite advocacy and outreach efforts from RAICES, the ORR Federal
7 Field Specialist assigned to the children, and the Young Center for Immigrant
8 Children’s Rights, an organization that helps advocate on behalf of unaccompanied
9 children.

10 20. With only a week of notice that ICE intended to execute the MPP
11 removal orders of two of the Doe siblings, RAICES was forced to go through
12 extraordinary efforts to prevent these children’s deportation, including activating a
13 team staffed by both attorneys from the Children’s Program and the Litigation
14 Department to prepare and file emergency motions to reopen, emergency
15 applications for asylum and SIJS, and an emergency federal petition for mandamus
16 and a motion for a temporary restraining order. Because of the imminence of the
17 threatened removal, the team worked in shifts so that someone was working on the
18 children’s cases around the clock, drafting the necessary papers and doing frantic
19 outreach during office hours via phone and e-mail to advocate for relief for the
20 children. While preparing the motion to reopen, for example, RAICES sent multiple
21 e-mails to the FOJC asking that ICE file and serve the NTAs reflecting the
22 children’s most recent entry as unaccompanied children. If ICE did so, the new
23 NTAs would supersede the old NTAs they received when they were placed in MPP
24 with their parents, which would initiate new 240 removal proceedings and prevent
25 them from being summarily removed on the basis of the MPP removal order. But
26 the FOJC refused to do so, stating that he was following instructions from the
27 United States Department of Homeland Security’s (“DHS”) Office of Chief Counsel
28 and that he was directed to execute the MPP removal order. RAICES was therefore

1 forced to halt all other work for the team members until the they were able to
2 complete and file the motion to reopen, the asylum applications for the children, and
3 the federal mandamus petition. Thanks to the team’s around-the-clock work,
4 RAICES sent emergency asylum applications for all three siblings to United States
5 Citizenship and Immigration Services (“USCIS”) on September 30, 2020, via
6 overnight Express mail; a federal petition for the writ of mandamus and a motion for
7 an ex parte temporary restraining order, also on September 30, to prevent ICE from
8 removing the two children subject to MPP removal orders; and the motion to reopen
9 the two children’s MPP proceedings on October 1, 2020.

10 21. Because the immigration court swiftly denied the motion to reopen that
11 RAICES filed on behalf of the Doe siblings, ICE indicated that it intended to move
12 forward with executing the MPP removal order. RAICES staff therefore undertook
13 another round of emergency briefing to appeal the denied motion to reopen and to
14 request an emergency stay from the Board of Immigration Appeals. It was only
15 when the BIA granted this stay that ICE relented and ceased its efforts to remove the
16 children. And, notwithstanding this grant of relief, the asylum office rejected the
17 applications of the two siblings with MPP removal orders for lack of jurisdiction –
18 twice. The first rejection forced RAICES staff to conduct extra investigation and
19 advocacy with the asylum office, urging USCIS to take jurisdiction over the
20 children’s application because the TVPRA mandates that USCIS shall exercise
21 initial jurisdiction over the asylum application of an unaccompanied child. But we
22 were unsuccessful: Even after the children’s removal order had been stayed,
23 RAICES tried to re-file the children’s asylum applications a month later, but USCIS
24 again rejected the applications of the children subject to removal orders, citing a
25 lack of jurisdiction.

26 22. As the example of the Doe siblings illustrates, DHS considers the MPP
27 removal orders of MPP-unaccompanied children to be unexecuted and has therefore
28 sought to enforce MPP removal orders against MPP-unaccompanied children, often

1 with very little notice. Such summary removal, all based on the child's prior ties to
2 MPP, eliminates an MPP-unaccompanied child's ability to benefit from many
3 TVPRA protections, including the right to seek asylum and other immigration relief
4 and to be released to a sponsor in the meantime, even though the child indisputably
5 meets the statutory definition of an unaccompanied child under the TVPRA. This
6 has forced RAICES to divert significant resources into protecting these uniquely
7 situated unaccompanied children. As explained in more detail below, RAICES has
8 had to expand its initial screening process, engage in appellate advocacy and take
9 other extraordinary measures it otherwise would not have to because of Defendants'
10 subjection of unaccompanied children to MPP.

11 **A. Expanded Screening and Intake Process**

12 23. After RAICES became aware that MPP-unaccompanied children were
13 entering the ORR shelters and being denied TVPRA protections, it became essential
14 for us to create a system to quickly identify MPP-unaccompanied children and offer
15 informed representation and counsel to the child as soon as possible. We realized
16 that we needed to take additional steps to elicit information from a child to ascertain
17 whether the child may have prior ties to MPP; to corroborate and confirm that
18 information by contacting the child's parents or other relatives; and to schedule an
19 attorney follow-up meeting with the child so that the attorney is better informed
20 about the complexities of the child's case and can advise the child about possible
21 avenues for immigration relief.

22 **1. More Detailed and Time-Consuming Screening**

23 24. RAICES has had to train its staff, and has had to allow its staff more
24 time in the intake process, to elicit answers from unaccompanied children that will
25 help the staff determine whether the children are in current, or have been in prior,
26 MPP proceedings. MPP-unaccompanied children require a far more detailed intake
27 process because they present a far more complex case than an unaccompanied child
28 with no ties to MPP.

1 25. Ascertaining whether a child has prior MPP ties, however, is difficult
2 and time-consuming. As an initial matter, children may not have an NTA providing
3 information about their immigration status, and CBP, ICE, and ORR often do not
4 provide us with any record of MPP-unaccompanied children’s MPP proceedings. In
5 addition, migrant children apprehended at the border typically lack information
6 about family, knowledge of the reasons why the family fled their home country, or
7 documents or evidence to support a potential claim for legal relief. Children
8 typically do not know what has occurred in their immigration proceedings or their
9 parents’ proceedings. They do not know whether they have been placed in MPP,
10 nor do they know whether they are subject to a prior order of removal. This general
11 lack of knowledge about their case posture applies to all children and is exacerbated
12 for younger children. Accordingly, as part of RAICES’s due diligence in
13 conducting the initial client screenings, once our staff determine that a child may
14 have prior MPP ties, we ask them to conduct a more in-depth interview with an
15 unaccompanied child. The staff ask additional questions, not required of our routine
16 intake interviews, to determine whether the child has any ties to MPP and to gather
17 more information about the child’s prior MPP proceedings.

18 **2. Additional Corroboration Screening**

19 26. If the interview indicates that a child has pending or past MPP
20 proceedings, we typically have our staff take steps to corroborate the child’s version
21 of events that forms the basis for potential immigration relief with an adult relative,
22 preferably a parent, if they can be located. This corroboration, though time-
23 consuming, is necessary for RAICES staff to understand the child’s MPP history
24 because it is even more time-consuming and difficult, if not impossible, to get such
25 information from CBP, ICE, or ORR.

26 27. Such expanded screenings, however, require additional time and effort
27 that are not required for ordinary unaccompanied child cases, which places a burden
28 on RAICES’s ability to represent its other clients and fulfill its mission.

1 Interviewing an MPP-unaccompanied child and following up with parents or
2 relatives can take up to 8 hours or more. When viewed over the course of all
3 screenings conducted by RAICES, this is a substantial amount of time and a
4 significant additional burden on our organization that pulls RAICES personnel away
5 from working on other matters.

6 **3. Attorney Follow-Up with All MPP-Unaccompanied Children**

7 28. Additionally, we now require an attorney follow-up meeting with all
8 MPP-unaccompanied children. Such a meeting allows the attorney to confirm the
9 procedural posture of the case as best he or she can, begin identifying possible
10 avenues for immigration relief, counsel the child about potential claims for legal
11 relief, and offer appropriate levels of representation. If the child agrees to
12 representation, a retainer letter and G-28 are signed, and additional data is recorded
13 in the appropriate RAICES database. Such a meeting with an attorney is not
14 required for intakes of routine unaccompanied children, who do not need legal
15 representation to defend against an immigration proceeding that has already
16 occurred. And because RAICES attorneys have always continued to serve routine
17 unaccompanied children in addition to MPP-unaccompanied children, our attorneys
18 have had to work overtime to perform the follow-up meetings for MPP-
19 unaccompanied children and to take the necessary steps to protect their TVPRA
20 rights.

21 29. The involvement of RAICES attorneys from the earliest stages of
22 RAICES's interaction with an MPP-unaccompanied child is significant and
23 necessary. RAICES attorneys regularly correspond with OCC regarding MPP-
24 unaccompanied children throughout RAICES's screening process, far more than
25 RAICES has occasion to do with respect to children with no ties to MPP. Finally,
26 RAICES legal staff regularly field questions regarding the effect of MPP
27 proceedings from case managers and social workers at the shelters where MPP-
28 unaccompanied children are in custody.

1 30. In addition, if a child agrees to RAICES representation, a RAICES
2 attorney enters his or her appearance and, when necessary, contacts ICE to confirm
3 if it will issue and file a new NTA reflecting the child’s most recent apprehension as
4 an unaccompanied child. If the government indicates that it intends to enforce an
5 MPP removal order against an MPP-unaccompanied child, the RAICES attorney
6 will e-mail the ICE officer, copying the Office of the Chief Counsel (“OCC”),
7 asking that the client be placed in Section 240 proceedings pursuant to the TVPRA.

8 **B. Expanded Intake Process and Additional Burden in Acquiring
9 Information and Documents**

10 31. The effort to gather information about an MPP-unaccompanied child’s
11 story, immigration status, and prior MPP proceedings does not end with RAICES’s
12 initial, expanded screening process. Such information is critical for, in the first
13 instance, determining what immigration relief might be available to an MPP-
14 unaccompanied child, then preparing whatever papers may be necessary to, for
15 example, seek asylum, or to prevent ICE from summarily removing the child before
16 the child can reap any benefit from the TVPRA’s protections. But acquiring facts
17 and documents about an MPP-unaccompanied child’s immigration history and
18 personal history requires sustained effort from RAICES staff who, as part of an
19 expanded intake process, must engage in constant outreach with ORR, ICE, DHS,
20 and, when they can be identified, and reached the parents and relatives of the child.
21 Moreover, because the government agencies often cannot or will not provide
22 information, documents, and transcripts from an MPP-unaccompanied child’s MPP
23 proceedings in a timely fashion, if at all, RAICES has often had to resort to
24 submitting Freedom of Information Act (“FOIA”) requests to get more information
25 about an MPP-unaccompanied child’s prior MPP proceedings.

26 **C. Extra Effort to Gather Facts and Evidence of Prior MPP
27 Proceedings**

28 32. When MPP ties are identified for an unaccompanied child, RAICES
staff also undertake additional correspondence with the government, the ORR

1 shelters, and the child’s parents or relatives to get the information and documents
2 that reveal what happened in the child’s prior immigration proceeding in MPP.
3 Such expanded intake efforts are typically unnecessary for children with no MPP
4 history, as the procedural posture of non-MPP unaccompanied children’s cases
5 tends to be straightforward, and their documentation easier to obtain.

6 33. RAICES’s efforts to reconstruct an MPP-unaccompanied child’s
7 immigration history begin with RAICES staff calling a hotline number provided by
8 the Executive Office for Immigration Review (“EOIR”) and referencing the
9 unaccompanied child’s A-number to obtain information on the child’s MPP case—
10 an unnecessary step for non-MPP unaccompanied children. RAICES also requests
11 the EOIR file, including audio of any prior MPP proceedings, and often contacts
12 ICE to request courtesy copies of any filings, information regarding whether
13 pleadings have been taken, whether a change of address or venue has already been
14 filed, and, in some cases, to determine the basis of an MPP removal order. In most
15 cases it takes several attempts before any information is obtained. When
16 unaccompanied children are not in prior MPP proceedings, RAICES does not have
17 to go through such difficulties to obtain basic information about its clients’ cases.

18 34. Even trying to determine if there are further MPP hearings at all and, if
19 so, when they are scheduled and whether there will be a filing deadline associated
20 with the court date requires extra research not required in other cases. R AICES has
21 served children who received Notices to Appear with the time and location of the
22 hearing listed as “Facebook.” Our staff had to search Facebook to see if hearings
23 were taking place on a daily basis, as there were no reliable sources of up-to-date
24 information. In our experience, this does not occur outside of MPP proceedings.

25 35. RAICES must also request and wait for ORR case managers to provide
26 us with the last known contact information for an MPP-unaccompanied child’s
27 parents and then undertake significant efforts to contact the parents and obtain
28 documents relating to the family’s immigration and MPP proceedings. For

1 example, in researching and preparing asylum applications for our unaccompanied
2 clients, we sometimes have to obtain critical information from the parents—but,
3 unlike the parents of non-MPP-unaccompanied children, the parents of MPP-
4 unaccompanied children are often still in Mexico due to MPP. Attempting to
5 communicate with a parent without a fixed address in a foreign country can be
6 challenging, especially when the parents often have unstable housing, unreliable
7 phone numbers, and extremely limited or no access to the internet. Even if a parent
8 has a cell phone, service in Mexico is spotty, and some parents do not always have
9 the funds to maintain their cell service—so there have been many times when we
10 have tried a parent’s cell phone number and we simply cannot reach them, or we
11 have found that the phone has been disconnected. Our legal assistants have had to
12 work outside of normal working hours, skip their lunch breaks, and devote overtime
13 just to be able to contact parents still in Mexico under MPP. Even when we are able
14 to reach parents, it is often the case that the parents themselves do not understand
15 what transpired in their MPP proceedings, and/or they never received paperwork
16 from the government documenting what happened, and/or they do not have access
17 to the necessary technology to send us a copy of their paperwork for us to review. In
18 other cases, the child’s parent has disappeared, and our staff is left without a contact
19 person who is aware of what occurred during the previous MPP proceedings. The
20 inconsistent communication with families caused by the conditions MPP forces
21 families to live in adds to the burden on RAICES staff working on MPP-
22 unaccompanied child cases.

23 36. By contrast, the process of contacting the family or parents of typical
24 unaccompanied children clients is much less burdensome and stressful because the
25 parents living in the United States or home country have stable living arrangements
26 and methods of contact, and there is less urgency because the UC’s removal
27 proceedings are in their initial stages.

28

1 37. Obtaining the necessary documentation and files for MPP-
2 unaccompanied children is challenging and time-consuming and, in some instances,
3 simply not possible. For instance, EOIR may not respond to requests for the file on
4 a child’s MPP proceedings; a transcript may not be available for a child’s MPP
5 hearing; or RAICES may not be able to get in touch reliably with the child’s parent
6 or family member to get more information. Although any one e-mail or phone call
7 to a government agency or a child’s parent may take as little as a few minutes, they
8 cumulatively add up to multiple hours of extra work for each MPP-unaccompanied
9 child client. In addition, given how little notice we typically receive when ICE seeks
10 to execute an MPP removal order against a child, our inability to obtain the
11 documents and information required to properly represent an MPP-unaccompanied
12 child in the short timeframe before the child is removed is a serious impediment to
13 RAICES’s ability to serve its clients and meet its mission.

14 **1. Preparing FOIA Requests To Ascertain an MPP-**
15 **Unaccompanied Child’s MPP Immigration History**

16 38. Because of the difficulties with obtaining information on the child’s
17 and parents’ MPP cases, RAICES often prepares and submits CBP and ICE FOIAs
18 for many of its MPP-unaccompanied child cases, as well as a file request to EOIR.
19 Although RAICES staff use our existing stakeholder relationships with the ORR
20 shelters, EOIR, and ICE to request documents and files, sometimes submitting a
21 FOIA and requesting files directly from EOIR is the best or only way to acquire the
22 necessary information about an MPP-unaccompanied child’s prior MPP
23 proceedings.

24 39. Submitting FOIA requests is not part of the Children’s Program’s
25 regular practice and is not done during the course of RAICES’s representation of
26 unaccompanied children on more routine matters. For some children—especially
27 those under 14, for whom the signature of an adult relative is required before a
28 FOIA requesting a child’s personal file can be submitted—preparing a FOIA can

1 take a RAICES attorney half a normal workday. Thus, this is an additional
2 significant burden that RAICES must undertake for its MPP-unaccompanied child
3 clients. In addition, it can take several months to receive a response to a FOIA
4 request, and it can take several weeks to several months to receive a response to an
5 EOIR request. For multiple cases, when a child's removal was imminent and it was
6 imperative to see a record of the child's MPP proceedings, RAICES staff had to
7 drive from Corpus Christi to Harlingen to submit a request for a copy of the record
8 and view the record in person. This drive alone can take up to three hours one way,
9 to say nothing of how long it takes for an attorney to request the record, wait for the
10 request to be fulfilled, and to review the record. This kind of extraordinary effort is
11 simply unnecessary for unaccompanied children who have no ties to MPP and are
12 not at risk of summary removal.

13 **D. Motion Practice and Investigation**

14 40. Because ICE's practice has shown that MPP-unaccompanied children
15 are uniquely at risk of imminent removal, RAICES must initiate representation of
16 MPP-unaccompanied children immediately and file motions as quickly as possible
17 on their behalf to prevent their summary removal without due process. Other
18 unaccompanied children do not require immediate representation or motions as they
19 are typically placed in Section 240 proceedings, which affords them the fullest
20 amount of due process available under the INA and TVPRA and therefore are not in
21 danger of immediate or summary removal.

22 41. Plaintiff RAICES regularly files motions to sever, motions to change
23 venue, and motions to reopen on behalf of MPP-unaccompanied child clients
24 because such motion practice is the only way to ensure that MPP-unaccompanied
25 children will be timely reunited with a sponsor and will not be summarily removed
26 based on a prior MPP removal order. This motion practice can be grueling,
27 especially when ICE threatens to remove a child on very short notice, which forces
28 multiple RAICES staff to pull multiple all-nighters to file the necessary papers

1 seeking relief before the child can be removed. In addition, drafting such motions
2 can add anywhere from 60 to 100 more hours of work to one child’s case, and
3 accordingly, filing such motions presents procedural and workload difficulties. For
4 example, when RAICES attorneys become aware of unaccompanied children
5 subject to MPP proceedings while the children are at a shelter, or after they have
6 been released within RAICES’s service area, our attorneys must assist these children
7 in filing a *pro se* motion for change of venue from their MPP proceedings. RAICES
8 attorneys may have to follow up with the immigration court with jurisdiction over
9 the case. If the child is detained, our attorney usually must call DHS’s Office of
10 Chief Counsel and ask them to file the motion on the child’s behalf. In some cases,
11 our attorney may have to enter an appearance with the court and draft a represented
12 motion to change venue. Some IJs will not grant a change of venue unless more
13 detailed pleadings are entered and/or unless the motion is accompanied by a motion
14 for severance to separate the child’s case from the parent’s case, which requires
15 additional effort from the attorney.

16 42. If the child has been removed *in absentia*, the attorney must file a
17 motion to reopen. If the child was removed with an order on the merits of the case,
18 the RAICES attorney will file a motion to reconsider, a motion to reopen, or assist
19 the child with filing a *pro se* notice of appeal and appellate brief, depending on the
20 posture of the case. These types of motions require substantive merits briefing and
21 can involve hundreds of pages of supporting documents, so knowing the procedural
22 posture of the child’s MPP proceedings is essential for counsel to properly assist an
23 MPP-unaccompanied child. As noted above, however, there are serious difficulties
24 in obtaining information about a child’s MPP procedural posture, and these
25 difficulties—as well as the need for such a varied motions practice—are not issues
26 that arise in normal unaccompanied child cases where the children or their families
27 are not subjected to MPP proceedings.

28

1 43. RAICES has filed seven motions to reopen *in absentia* removal orders
2 for MPP-unaccompanied children, most of which the government opposed or
3 provided no comment on. In each of these cases, staff attorneys learned of their
4 clients' *in absentia* orders only through our expanded intake process. Then, our
5 attorneys draft motions to reopen, arguing insufficient notice, exceptional
6 circumstances, and that DHS failed to meet their burden of removability, among
7 other arguments. In total, each of these seven motions represented forty or more
8 hours of work.

9 44. This burden of emergency motions practice is exacerbated and
10 complicated by the difficulty in obtaining the necessary information about the
11 procedural history of MPP-unaccompanied children. For example, at one point,
12 RAICES attorneys entered into the representation of certain MPP-unaccompanied
13 children who arrived at the shelter with MPP removal orders, but because ICE had
14 indicated that it intended to remove the children within a matter of days, our staff
15 had to file appeals for the children without having any access to the transcripts of
16 the children's MPP proceedings. RAICES was thus forced to guess as to why the IJ
17 might have denied the children's claim for immigration relief and instead include
18 generalized arguments for appeal.

19 45. In another case, ICE informed RAICES that within a matter of days, it
20 intended to remove a sibling group because they had a final MPP removal order.
21 Given the short notice, RAICES staff had to scramble to gather information about
22 the children's MPP proceedings. Although we were able to obtain a copy the
23 removal order, we could not secure a copy of the record of the MPP proceedings
24 before our attorneys were forced to file a motion to reopen on behalf of the children
25 to prevent their imminent removal. Knowing only that the child did not recall
26 having testified in MPP court, RAICES argued in its motion to reopen that, among
27 other issues, the MPP court violated its regulatory duty to develop the record for the
28 children's asylum claim when it failed to take the children's testimony. The MPP

1 court rejected the motion, holding in relevant part that it did develop the record, as
2 evidenced by, (a) one of the children signing his own asylum and SIJS application,
3 and (b) the transcript of proceedings showed that one of the children had an
4 opportunity to develop his claim when he answered "no" to the IJ's question,
5 "because you are fifteen years old, is there something you would like to say that
6 your mother has not said?" Naturally, RAICES had no way of preparing for this
7 type of argument without a transcript of the MPP proceedings. Nor did RAICES
8 have any way of confirming with the child what actually happened with whatever
9 "application" he signed, because RAICES had no copy—and still has no copy—of
10 the document the child purportedly signed. This kind of information deficit is all too
11 common when it comes to moving to reopen the MPP proceedings of MPP-
12 unaccompanied children, making it extremely difficult, if not impossible, for
13 RAICES or any other legal service provider to file a meritorious motion for an
14 MPP-unaccompanied child client.

15 46. Between coordination with ICE and opposing counsel, the
16 investigations required to determine the procedural posture of the case, drafting of
17 the motions, contacting the child's parents, and completing the actual filings—all
18 done under the stress of the pending removal of the child, the time it takes RAICES
19 staff to complete the needed advocacy and litigation is significantly greater than that
20 needed for non-MPP-unaccompanied children. Multiple RAICES staff have been
21 forced to work late nights and overtime just to represent MPP-unaccompanied
22 children and draft the motions, affidavits, asylum applications, appeal notices, and
23 briefs that are all necessary to ensure that these children are able to benefit from the
24 protections afforded by the TVPRA before they are summarily removed. The work
25 necessary for an ordinary unaccompanied child's case is far more routine and
26 straightforward and is far less time sensitive.

27 47. Because of the urgency of these cases caused by looming MPP removal
28 orders, RAICES is forced to represent unaccompanied children who fall outside of

1 our geographical service area because they reunify with a sponsor outside of Texas.
2 Generally, RAICES would only provide these children with court preparation
3 support and assist as a "Friend of the Court," and would not provide representation.
4 But with MPP-unaccompanied children, RAICES has to file motions for these
5 children outside our service area. The additional burden of providing legal
6 representation to MPP-unaccompanied children has meant that RAICES staff have
7 had to work overtime to handle all of RAICES's obligations to both MPP- and non-
8 MPP-unaccompanied children, and RAICES staff have had less time for the
9 discretionary follow-ups they normally would perform for non-MPP-
10 unaccompanied children.

11 **E. Failure to Provide Access to Affirmative Asylum Applications**

12 48. The TVPRA gives USCIS initial jurisdiction over asylum applications
13 filed by all unaccompanied children. However, unaccompanied children with MPP
14 removal orders face serious challenges in seeking asylum and it has been a constant
15 struggle for RAICES staff to ensure that MPP-unaccompanied children are able to
16 seek asylum, as the TVPRA allows. Because DHS considers the removal orders of
17 MPP-unaccompanied children to be unexecuted, this means that ICE can move to
18 execute the removal order and remove an MPP-unaccompanied child at any time,
19 thereby eliminating the child's ability to seek asylum and other immigration relief
20 and cutting off the child's access to the full protections of the TVPRA. As the
21 example of the Doe siblings demonstrates, DHS has moved to remove children even
22 as they are pursuing and attempting to exhaust all possible appeals within the
23 immigration court system. As a result, in addition to undertaking emergency
24 motions practice to prevent ICE from executing a child's MPP removal order,
25 RAICES must scramble to prepare and file the child's asylum application before the
26 child is removed and can no longer seek asylum before a USCIS asylum officer.
27 These emergency asylum applications place a substantial burden on RAICES's
28 ability to fulfill its mission and represent its clients, but it would be entirely

1 unnecessary if unaccompanied children simply received the TVPRA protections to
2 which they are entitled and were allowed to seek asylum and any other avenues for
3 immigration relief, and to have their case heard by an immigration attorney before
4 they can be removed. RAICES has had multiple clients with asylum applications
5 pending with USCIS whom ICE has nevertheless sought to remove on the basis of
6 prior MPP removal orders.

7 49. In addition, RAICES has seen various inconsistencies in whether the
8 Asylum Office accepts the asylum applications of MPP-unaccompanied children.
9 For example, RAICES has received asylum interview notices for some MPP-
10 unaccompanied children's asylum applications, but USCIS has also rejected other
11 asylum applications with the following language: "This office is unable to accept
12 your Form I-589 because government records indicate that a decision has already
13 been made." In other words, USCIS rejected these MPP-unaccompanied children's
14 asylum applications because they had already been ordered removed in their MPP
15 proceedings. This can lead to a child being removed without ever having a
16 legitimate opportunity to seek asylum, as the TVPRA requires.

17 50. In one case handled by RAICES, for example, USCIS rejected an MPP-
18 unaccompanied child's asylum application because the child had been ordered
19 removed while the child was a derivative to the child's mother's MPP immigration
20 proceedings—despite the fact that the child was never given an opportunity to speak
21 in court, never had the chance to present the child's own individual claim for
22 asylum, and, after being designated as an unaccompanied child, had filed an
23 affirmative asylum application with the USCIS, as the TVPRA allows. In addition,
24 as mentioned previously, the asylum office rejected two of the Doe siblings I-589
25 applications because of the children's previous involvement in MPP proceedings.
26 When USCIS rejects an application due to lack of jurisdiction, it forces RAICES to
27 conduct extra investigative steps and advocacy to urge USCIS to accept jurisdiction
28 over these unaccompanied children's applications, as required by the TVPRA.

F. Failure to Release to a Sponsor in a Timely Manner

1 **F. Failure to Release to a Sponsor in a Timely Manner**
2 51. The TVPRA requires that unaccompanied children be promptly placed
3 in the “least restrictive setting,” which usually involves release from ORR custody
4 and reunification with sponsor, who is often a parent or family member present in
5 the U.S. This enables an unaccompanied child to be in a setting most conducive to
6 the child’s mental and physical health while the child’s immigration proceedings
7 move forward and the child seeks asylum and other forms of immigration relief.
8 But such reunification has not always been prompt or consistent for MPP-
9 unaccompanied children, even when the children have similar MPP case postures.
10 Moreover, whenever an MPP-unaccompanied child enters with a removal order, it
11 has become ICE’s typical practice to e-mail the shelter with instructions not to
12 reunify the child with a sponsor due to the child’s prior removal order. It is only
13 when RAICES files a motion to reopen the proceedings underlying the MPP
14 removal order—or, more typically, if or when RAICES is able to secure a stay of
15 the removal order from the immigration court or the Board of Immigration Appeals
16—that ICE has allowed ORR to proceed with reunifying an MPP-unaccompanied
17 child with a sponsor. Because MPP-unaccompanied children are often delayed in
18 reunification, or are sometimes threatened with summary removal before they can
19 be reunified with a sponsor, RAICES has had to engage in more advocacy and, in
20 some instances, emergency motions practice, to secure children’s release and
21 reunification while they seek immigration relief.

22 52. In one example, a group of siblings with removal orders was allowed to
23 reunify with a family member yet another set of siblings in the same shelter, also
24 with removal orders and also with an available sponsor, have endured prolonged
25 detention and ORR is no longer seeking their reunification with a sponsor. In
26 another example, RAICES had three MPP-unaccompanied children siblings as
27 clients who had an available sponsor from the time they were apprehended by CBP
28 and designated as unaccompanied children—but they remained in ORR custody for

1 more than three months until finally, on January 13, 2021, their case manager sent
2 both the children’s RAICES attorney and the ICE FOJC assigned to the children’s
3 case a Pre-Discharge Notification that the children would imminently be released to
4 reunite with their sponsor. Upon being notified that ORR intended to release the
5 children, the FOJC responded to the Pre-Discharge Notification by directing ORR to
6 halt the children’s reunification. The FOJS informed ORR and the RAICES
7 attorney that the children were scheduled to be removed on January 20, 2021, and
8 would possibly be removed as early as January 15, 2021, stating: “per JFRMU
9 guidance, these [unaccompanied children] will be removed using the existing [MPP]
10 orders.” This was despite the fact that the children had asylum and SIJS
11 applications pending before USCIS, and that RAICES had previously filed an
12 emergency motion on behalf of the children for relief with the BIA. RAICES began
13 contacting the BIA multiple times a day, urging the court to issue a decision on the
14 motion before the children could be removed. The BIA ultimately did award relief,
15 preventing the children’s removal, and USCIS subsequently granted the children’s
16 applications for SIJS.

17 53. The inconsistent treatment of MPP-unaccompanied children in being
18 reunified with sponsors, as well as the possibility that ICE could take steps to
19 remove an MPP-unaccompanied child with little or no notice, requires RAICES to
20 engage in constant communication and advocacy with ORR and ICE. This strains
21 RAICES’s already limited resources and burdens our ability to represent
22 unaccompanied children not encumbered by MPP.

23 **G. Organizational Impact Post-MPP**

24 54. Defendants’ actions have increased the burden on the entire RAICES
25 organization, diverted RAICES’s services from unaccompanied children we
26 otherwise would prioritize, and jeopardized RAICES’s mission. Because
27 Defendants insist on enforcing MPP removal orders against MPP-unaccompanied
28 children, there has been a marked increase in the number of unaccompanied children

1 within the shelters and service areas served by RAICES at imminent risk of
2 removal. Thus, RAICES has been forced to shift its priorities and resources from
3 serving other unaccompanied children, including those with special needs, to
4 focusing its services on those children who were about to be removed because of
5 MPP.

6 55. The increase in unaccompanied children at imminent risk of removal
7 due to MPP limits RAICES's ability to provide legal services to other
8 unaccompanied children. RAICES has had multiple clients threatened with removal
9 within a matter of days. As a result, when an unaccompanied child is identified as
10 an MPP-unaccompanied child, RAICES staff must immediately prioritize that
11 child's case over all other cases on their dockets.

12 56. Prior to MPP, unaccompanied children were generally released from
13 ORR custody and reunited with a sponsor before removal proceedings commenced.
14 For at least several years before MPP, it had been standard practice for DHS to
15 refrain from initiating removal proceedings against an unaccompanied child until the
16 child has been detained for at least 60 days. This time period allowed most children
17 to be released from ORR custody and reunified with a sponsor, and the NTA could
18 be filed in the jurisdiction where the child had reunified with his or her sponsor.
19 Under this system, RAICES had sufficient time to provide detained unaccompanied
20 children with KYR presentations, consultations, and post-release referrals to private
21 counsel, but generally did not provide representation during the actual removal
22 proceedings. RAICES's ability to provide only these limited services to
23 unaccompanied children allowed RAICES to represent additional clients and to
24 serve clients on cases that require special care and expertise, including representing
25 unaccompanied children with special needs.

26 57. This system does not work with an MPP-unaccompanied child's case.
27 Instead, to prevent the child's summary removal and to ensure that she has full
28 access to her TVPRA rights, RAICES is required to enter an appearance in the

1 matter right away, and conduct expanded screening, intake, and investigation as
2 quickly as possible, with the additional burden of needing to communicate with
3 family members still in Mexico, which can be difficult and even impossible. We
4 then must file several motions and prepare an asylum application for the child, all
5 under the stress of the child’s potential imminent removal.

6 58. As a result of MPP and the resource-shifting required to respond to
7 MPP, RAICES has not been able to provide the extensive assistance to
8 unaccompanied children with special needs, but who are not facing the risk of
9 immediate risk of removal, that it once did. RAICES struggles under the weight of
10 the enhanced screenings and investigations and the increased motions and appeals
11 required by MPP-unaccompanied child cases. Consequently, RAICES had to
12 narrow its case acceptance criteria as the volume of immigration court cases has
13 increased due to MPP, further undermining the program’s commitment to represent
14 the most vulnerable populations, including unaccompanied children with special
15 needs.

16 59. RAICES has also been forced to compromise its commitment to
17 trauma-sensitive practices when engaging with unaccompanied children. Before
18 MPP, RAICES waited until unaccompanied children were released to sponsors to
19 begin building their asylum claims over several meetings. Released children are
20 surrounded by better support systems and can better handle the difficult, sometimes
21 painful, discussions that attorneys must have with clients to develop their asylum
22 claims. For MPP-unaccompanied children, however, RAICES attorneys do not have
23 the luxury of waiting to complete a child’s affirmative asylum application pursuant
24 to the TVPRA under their normal timeline. Having to prepare an asylum
25 application under an expedited timeline weakens the overall application, harms the
26 relationship that RAICES staff try to build with traumatized children, and leads to
27 worse results—legally, mentally, emotionally, and developmentally—for the child.
28 In particular, it is difficult, if not impossible, to build rapport with a traumatized

1 child under a compressed timeline. But such rapport is necessary to draw out the
2 facts and information necessary to support the child’s asylum and SIJS applications.
3 To use a few of RAICES’s cases as an example, it takes time for a child to be
4 willing to tell a RAICES staff member of a sexual assault the child survived, or the
5 abuse the child’s mother endured from the child’s stepfather. In addition, asking a
6 child to divulge such sensitive and traumatizing details immediately to a stranger,
7 without giving the child time to acclimate to his or her new circumstances and to
8 learn to trust the adults involved in the process, almost invariably guarantees that the
9 child will have problems explaining what happened in clear, chronological way, and
10 that both the attorney-client relationship and the content of the asylum application
11 will suffer as a result.

12 60. In addition, RAICES staff are required to work extensive hours on an
13 ongoing basis on MPP-unaccompanied children’s cases to prepare motions and
14 affirmative applications seeking some form of legal relief. This increased workload,
15 as well as the harsh consequences that may occur if we fail to identify and
16 vigorously represent an MPP-unaccompanied child, has forced RAICES to redeploy
17 its staff to meet the additional challenges of serving MPP-unaccompanied children.

18 61. For example, RAICES had to reallocate one of its more experienced
19 Supervising Attorneys to create an MPP Toolkit and MPP Policy Manual outlining
20 the roles and goals of attorneys and legal assistants with MPP-unaccompanied
21 children, templates of motions and briefs, practice advisories, and other resources.
22 Preparing this Toolkit and Manual, as well as training for RAICES’s Children’s
23 Program staff. This effort required over 450 hours of work above and beyond the
24 Supervising Attorney’s regular duties, including at least 160 hours of research, 160
25 hours to prepare the templates, 80 hours to create and update the manual, and 40
26 hours of preparing training—which the attorney then provided to each the San
27 Antonio, Corpus Christi, and Austin offices of RAICES separately, to accommodate
28 the schedules of RAICES staff. While preparing the Toolkit and Manual and the

1 related training, the attorney often worked overtime and had to deprioritize other
2 responsibilities, such as meeting with the staff she supervised, drafting BIA appeals,
3 and completing other assignments. In addition, because the consequences of failing
4 to identify and represent an MPP-unaccompanied child were so harsh, RAICES
5 required all Children's Program staff to attend the training in order to better inform
6 RAICES staff of how to represent unaccompanied children with MPP ties and
7 ensure that they could exercise their statutory TVPRA rights. In the aggregate,
8 developing and providing the training to RAICES staff has cost us hundreds of
9 hours of attorney and staff work time that, while necessary under the circumstances,
10 would have been unnecessary if the government gave MPP-unaccompanied children
11 the same access to TVPRA rights and benefits as all other unaccompanied children.

12 62. RAICES also had to reallocate existing staff and pull them from their
13 previous roles so they could work on MPP-unaccompanied children's cases.
14 Typically, to fulfill RAICES legal representation of an unaccompanied child seeking
15 asylum or special immigrant juvenile status, RAICES need only assign one attorney
16 and one legal assistant to a case. However, due to the fast-track process Defendants
17 impose on MPP-unaccompanied children while in ORR custody, RAICES has
18 formed a team of eleven attorneys and twelve support staff specifically assigned to
19 these cases to ensure robust representation.

20 63. In one case, RAICES Children's Program in San Antonio discovered
21 there were several MPP-unaccompanied children with removal orders at one of the
22 ORR shelters it services. A task force was quickly created between RAICES's MPP
23 Supervising Attorney, a staff attorney in RAICES's Litigation Department, and two
24 attorneys and four legal assistants from the Children's Program team in an effort to
25 prevent their removal, which ICE indicated would occur within the week for at least
26 two of the children. In less than two days, the team prepared declarations and state
27 court documents for two of the children while preparing five asylum applications.
28 Because the threatened removal of the two children was so imminent, RAICES's

1 Litigation Department filed a mandamus petition and a request for a temporary
2 restraining order in federal court to prevent their removal. Despite DHS's
3 obligation under the TVPRA to issue new NTAs to these children and put them into
4 new Section 240 proceedings as unaccompanied minors, the government instead
5 attempted to deport the children under their MPP orders. The herculean effort of
6 this "SWAT" team would not have been possible without removing RAICES
7 personnel from other departments and members of the legal team from other cases.
8 And it could not have been completed without extensive overwork and overtime
9 pay. Finally, the matter prevented personnel from working on other cases—all
10 because of MPP and DHS's decision to not provide unaccompanied children with
11 the protections they are due under the TVPRA.

12 64. RAICES anticipates it will continue to divert time and resources to
13 serving the unique needs of unaccompanied children with prior MPP removal
14 orders, and thus will not have capacity to prioritize other unaccompanied children's
15 cases where the children do not face imminent removal.

16 **IV. Defendants Have Continued to Pursue Removal of Our Unaccompanied**
17 **Child Clients Because of Their History in MPP Proceedings Post-**
Inauguration

18 65. Despite policy guidance explicitly stating unaccompanied minors are
19 not amenable to MPP and the Biden Administration's promise to end the program,
20 the federal government has continued to pursue removal of our unaccompanied
21 child clients based on MPP removal orders, including such removal orders entered
22 *in absentia*.

23 66. In February 2021, for example, ICE attempted to remove two RAICES
24 clients, causing us to divert precious staff time to prevent these two children from
25 being summarily removed before they could seek asylum or reunification with a
26 sponsor. One client, Alex,² entered a shelter serviced by RAICES in January 2021.

27 ² Like the Doe Family above, "Alex" is a pseudonym to protect the identity of
28 RAICES clients.

1 Alex was asylum eligible but had an MPP removal order that was about a year old.
2 ORR shelter staff notified the RAICES attorney assigned to Alex's case that ICE
3 was planning to remove him within twelve days after Alex was placed at the ORR
4 shelter, even though the attorney received no such notice and had yet to receive a
5 copy of the removal order that ICE would supposedly be executing. Our attorney
6 immediately asked the local FOJC for a copy of the removal order. Because the
7 Officer did not yet have the child's file, our attorney was forced to email all the
8 other JOFC officers he was in contact with until one was able to send him the
9 removal order. Alex has since been released to family in Austin, Texas—but only
10 because the RAICES attorney responsible for his case dropped all other case work
11 for two days to prepare and file a motion to reopen his MPP proceedings.

12 67. The other client, John,³ entered as an unaccompanied minor on January
13 18, 2021. On February 1, 2021, the shelter notified RAICES that ICE was going to
14 remove the child the next day. The attorney assigned to John's case immediately
15 started working to file a Motion to Reopen to protect him from removal. The saving
16 grace was that John was from Honduras, which requires a COVID test before
17 repatriation. Because John's COVID test was scheduled a few days out, the
18 RAICES attorney knew that ICE would be unable to remove the child immediately.
19 On February 4, 2021, the attorney filed the Motion to Reopen, protecting John from
20 removal.

21 68. The recent examples of Alex and John show that RAICES has good
22 reason to anticipate that the Biden Administration will continue to deny MPP-
23 unaccompanied children their TVPRA rights and pursue removal of unaccompanied
24 children with prior MPP removal orders. ICE's attempts to remove RAICES's
25 clients continue to strain our organization because of the need to divert time and
26

27 _____
28 ³ Like the Doe Family above, "John" is a pseudonym to protect the identity of
RAICES clients.

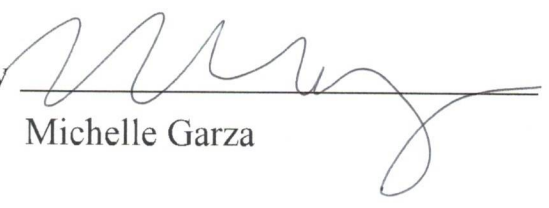
1 resources to reinstating the rights we expect to be conferred upon all unaccompanied
2 children to those unaccompanied children with prior MPP removal orders.

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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 12th day of May, 2021 in Dallas, Texas.

By 
Michelle Garza