

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

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

*Attorneys for Plaintiffs Immigrant
Defenders Law Center; Refugee and
Immigrant Center for Education and
Legal Services; South Texas Pro Bono
Asylum Representation Project, a
project of the American Bar
Association; and The Door*

[Additional counsel listed below]

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

IMMIGRANT DEFENDERS LAW CENTER; *et al.*,

Plaintiffs,

V.

U.S. DEPARTMENT OF HOMELAND
SECURITY; *et al.*,

Defendants

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

**DECLARATION OF MARIA
ODOM, ESQ. IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

Date: June 17, 2021

Date: June 17, 2010
Time: 10:00 a.m.

Ctrm: 6D

Judge: Hon. Fernando M. Olguin

1 KAREN C. TUMLIN (234691)
2 karen.tumlin@justiceactioncenter.org
ESTHER H. SUNG (255962)
3 esther.sung@justiceactioncenter.org
JANE BENTROTT (323562)
4 jane.bentrott@justiceactioncenter.org
DANIEL J. TULLY (309240)
5 daniel.tully@justiceactioncenter.org
JUSTICE ACTION CENTER
P.O. Box 27280
6 Los Angeles, California 90027
Telephone: (323) 316-0944
7

8 *Attorneys for Plaintiffs Immigrant
Defenders Law Center; Refugee and
Immigrant Center for Education and
Legal Services; and The Door*
9

10 MUNMEETH KAUR SONI (254854)
11 meeth@immdef.org
12 HANNAH K. COMSTOCK (311680)
13 hcomstock@immdef.org
14 CAITLIN E. ANDERSON (324843)
15 caitlin@immdef.org
16 IMMIGRANT DEFENDERS
17 LAW CENTER
18 634 S. Spring Street, 10th Floor
19 Los Angeles, California 90014
20 Telephone: (213) 634-7602
21 Facsimile: (213) 282-3133
22
23
24
25
26
27
28

1 1. I, Maria Odom, declare under penalty of perjury pursuant to 28 U.S.C.
2 § 1746 that the following is true and correct. If called as a witness, I could and would
3 testify as follows.

4 2. I am an attorney licensed to practice law in the State of Georgia. Since
5 2017, I have been Vice President for Legal Programs (formerly named Legal
6 Services) at Kids in Need of Defense (“KIND”). I previously served as the United
7 States Department of Homeland Security (“DHS”) Citizenship and Immigration
8 Services Ombudsman (2012-2017), as Executive Director of the national legal
9 services organization Catholic Legal Immigration Network, Inc. (“CLINIC”) (2009-
10 2012), and as an immigration attorney in private practice.

11 3. I lead KIND’s Legal Programs team, comprising approximately 203
12 attorneys, social service professionals, and support staff across KIND’s Headquarters
13 and ten field offices. I also work closely with KIND’s International Programs team.
14 In preparing this declaration I have consulted with KIND’s staff and reviewed records
15 from both our Legal and International Programs.

16 **I. About KIND**

17 4. KIND is a national non-profit organization, founded in 2008 by the
18 Microsoft Corporation and UNHCR Special Envoy Angelina Jolie, to provide free
19 legal services to refugee and immigrant children who arrive in the United States
20 unaccompanied by a parent or legal guardian and face removal proceedings in
21 immigration court.

22 5. KIND is headquartered in Washington, D.C., and provides legal and
23 social services to children through its ten field offices, located throughout the country
24 in Atlanta, GA; Baltimore, MD; Boston, MA; Houston, TX; Los Angeles, CA; New
25 York, NY; Newark, NJ; San Francisco and Fresno, CA; Seattle, WA; and
26 Washington, D.C. and Northern Virginia, and through additional staff in El Paso, TX,
27 and San Diego, CA. These field offices serve children through a combination of
28 direct representation, social services support, and the recruitment, training, and

1 mentorship of pro bono counsel. As a federal subcontractor to the Department of
2 Health and Human Services' Office of Refugee Resettlement ("ORR"), we provide
3 legal Know Your Rights presentations, legal intakes, and related services at ORR
4 shelter facilities and foster-care programs, currently in four states.

5 6. Complementing KIND's domestic Legal Programs and advocacy,
6 KIND's International Programs team works to address the root causes of migration
7 from Central America and Mexico, and promotes the rights and well-being of
8 children in countries of origin and as they migrate in search of safety. The KIND
9 team works with regional partners to provide safe and sustainable reintegration
10 options for children returning to Guatemala and Honduras. KIND's programming
11 in Europe seeks to improve the treatment of children on the move and seeking
12 permanency, in collaboration with a worldwide community of advocates for the
13 protection of unaccompanied children.

14 **II. KIND's Work with Children Affected by MPP**

15 7. KIND's Legal and International Programs have worked with hundreds
16 of children impacted by DHS's Migrant Protection Protocols ("MPP") program.
17 Through this work I have observed the ways in which the program has blocked
18 thousands of families from safely seeking humanitarian protection. The
19 unaccompanied children KIND serves (defined by statute as "unaccompanied alien
20 children") are technically exempt from DHS's MPP policy, but we have worked
21 with many children whose cases have been affected by MPP in various ways.

22 8. Our Legal Programs field offices have encountered approximately 200
23 children who entered the United States without an accompanying parent or legal
24 guardian and were previously subject to MPP, the majority of them presenting to
25 our New York field office. Most of these children were in a family unit processed
26 through MPP and subsequently entered the United States unaccompanied. In many
27 cases, these unaccompanied children left their families after their accompanying
28 family members were kidnapped, became ill, disappeared, or died (including by

1 murder) while awaiting MPP hearings in Mexico. Approximately three-quarters of
2 these children came to KIND's attention through our contracted work in ORR
3 shelters. Many of the children (88 of approximately 200) were age 12 or younger at
4 the time of KIND's intake. Sixty-three unaccompanied children with prior MPP
5 proceedings have been placed with counsel for further immigration representation.
6 Other children await placement with counsel, have been removed, or have moved
7 out of KIND's geographic service areas. For children who have moved outside of
8 KIND's service area, our attorneys provided referrals to other legal providers where
9 possible.

10 9. Most of these MPP cases reached KIND in the second half of 2019 or
11 the beginning of 2020, but we continue to encounter unaccompanied children
12 affected by MPP. For instance, two children (a young child and a teenager)
13 previously in MPP entered the country unaccompanied in early 2021 and reached
14 our program in New York City in March 2021.

15 **III. KIND's Challenges Representing Children Impacted by MPP**

16 10. Under federal law, unaccompanied children are transferred from law
17 enforcement agencies that apprehend them (usually United States Customs and
18 Border Protection ("CBP")) to an ORR shelter program. In addition to housing the
19 child safely, it is ORR's responsibility to identify a "sponsor"—generally a family
20 member—in the United States who can take physical custody of the child while
21 legal proceedings progress.

22 11. In our experience, cases involving unaccompanied children processed
23 through MPP require unusual expenditures of KIND resources, sometimes on very
24 tight timelines, relative to other unaccompanied children's cases. Providing
25 representation to these children is particularly challenging for several reasons.

26 **A. KIND Has Experienced Challenges in the Initial Screening Process**

27 12. Because unaccompanied children who have been previously placed in
28 MPP rarely have records or documentation of their MPP hearings, KIND's intake

1 staff screens every child we meet with to identify whether they previously spent
2 time in Mexico or attended any court hearings prior to their entry into the United
3 States as an unaccompanied child. Because many children are “tender-aged” (a
4 term used by government agencies imprecisely, but generally for children under
5 twelve years old), they rarely can articulate if they had been in MPP, or even if they
6 had seen an immigration judge. Indeed, most children in this cohort have not been
7 in front of a judge because the children entered the United States as unaccompanied
8 children before their first scheduled MPP hearing. The Executive Office for
9 Immigration Review (“EOIR”) portal rarely provides information about
10 unaccompanied children’s prior MPP cases. KIND staff is often left to deduce
11 whether a child was in MPP based on the limited information provided by the child,
12 the ORR care provider, and in some instances, Immigration and Customs
13 Enforcement (“ICE”). KIND regularly contacts the ICE parental interests
14 coordinator to request information on individual cases, seeking to confirm whether
15 a particular child had previously been in MPP, but in our experience, ICE’s
16 information is often inaccurate or unreliable. These inaccuracies have led to
17 additional complications, such as in cases where KIND counseled children based on
18 an understanding that they had never previously entered the United States, only to
19 later learn they had been previously ordered removed through MPP under a
20 different “A-number.”

21 **B. KIND Faces Time-Sensitive Demands from Pending MPP Cases**

22 13. Once a child is identified as having been in MPP, KIND’s response
23 depends on the case’s procedural posture. For children with upcoming MPP
24 hearings, KIND staff help the child file a request to change venue from the MPP
25 court to the immigration court serving the child’s then-current location, usually the
26 New York Immigration Court. Because a child’s hearing is sometimes just days
27 away by the time KIND staff discover a child’s prior placement in MPP, these cases
28 often require emergency filings. Our New York office, which encountered the

1 majority of our MPP cases, has filed at least 50 of these urgent motions to change
2 venue.

3 **C. Children Released from ORR Require Additional Assistance**

4 14. For many children, the MPP court will not grant the child's change of
5 venue request until the child has been released from an ORR facility (such as the
6 one we serve in New York), and that release may be to a sponsor in another state.
7 These cases require KIND staff to assist with change of venue requests and make
8 individualized calls to children and families all over the country to ensure that they
9 understand how to confirm that the child's case is properly transferred to the
10 immigration court nearest their current residence in order to avoid an *in absentia*
11 removal order.

12 **D. KIND Has Had to Seek Reopning of MPP *In Absentia* Removal
13 Orders**

14 15. KIND has also served children who had already missed MPP hearings
15 and received *in absentia* orders of removal. For these children, KIND staff has
16 filed a motion to reopen the removal order, or requested that ICE file a motion, or
17 has liaised with ICE and the MPP court to facilitate re-opening the removal order
18 *sua sponte*, on the basis that a child missed a hearing due to being in ORR custody
19 at the time of the hearing.

20 **E. KIND Has Had to Appeal Other MPP Orders**

21 16. For six children who received orders of removal following a merits
22 adjudication by an MPP court, KIND's legal team pursued appeals to the Board of
23 Immigration Appeals ("BIA"), the appellate body within the Department of
24 Justice's EOIR. KIND undertook substantial efforts to timely file appeals in each
25 of the six cases. The BIA has affirmed an MPP removal order issued against the
26 child in each case, and KIND has (with assistance from pro bono attorneys)
27 appealed those decisions to the Fifth Circuit Court of Appeals, which has
28 jurisdiction to review removal orders issued by MPP courts in Texas.

F. KIND's Clients Have Experienced Delayed ORR Release

17. In addition to challenges in their immigration defense, in KIND's experience, children with prior MPP proceedings encounter substantial and unique obstacles to being released from ORR custody to their sponsors. For example:

- a. As described above, KIND’s New York office has represented six children (three sibling pairs) who arrived at the ORR program after removal orders were entered in their MPP cases, and appealed those orders to the BIA.
- b. For each of the three sets of siblings, ORR identified an available and appropriate sponsor, who submitted all necessary documentation for ORR’s approval. *See 8 U.S.C. § 1232* (requiring ORR to “promptly” place children in the “least restrictive setting that is in the interest of the child”); ORR, *Children Entering the United States Unaccompanied, Section 2*, Policy Manual (Jan. 30, 2015),
<https://www.acf.hhs.gov/orr/policy-guidance/children-entering-united-states-unaccompanied-section-2>.
- c. Nonetheless, the release of all six children was substantially delayed during March and April 2020, even as the Covid pandemic was increasing their health risk from being in an ORR program.¹ ORR’s stated reason for refusing to release the children was their removal orders from their MPP proceedings. However, an individual with a pending BIA appeal cannot be removed until the appeal is adjudicated. *See 8 C.F.R. § 1003.6(a)*. Only after KIND and an outside law firm wrote demand letters with an intention to file litigation were the children released to their ORR-approved sponsors.

¹ While most of the ORR programs KIND works with are group residential housing, the children discussed in this paragraph were placed in a short-term foster care program. They were nonetheless expected to attend school and other programs on-site at the ORR-contracted facility until Covid protocols limited in-person services.

G. KIND's Clients Have Not Received Access to All TVPRA Procedures and Safeguards Designed for Unaccompanied Children

18. Children who reach the United States unaccompanied after being in MPP are also deprived of other services to which they are entitled under the 2008 Trafficking Victims Protection Reauthorization Act (“TVPRA”).

19. For children who have prior removal orders when they encounter KIND, or who are in MPP proceedings that have not resulted in a removal order, it has been the government’s position that it will continue to seek removal as part of the child’s MPP case. In particular, the government has failed to file a new Notice to Appear (“NTA”) that would commence removal proceedings as mandated by the TVPRA for unaccompanied children, with the attendant recognition that the child is entitled to the array of TVPRA protections. This denial of Congressionally prescribed processes has multiple potential adverse consequences for these children who are in the United States without a parent or legal guardian to protect or support them through the legal process.

20. The TVPRA creates a system for processing unaccompanied children's asylum claims that allows those applications to be heard, in the first instance, by a trained asylum officer within United States Citizenship and Immigration Services ("USCIS") through a non-adversarial interview. This procedure is more sensitive to unaccompanied children's needs and can avoid the re-traumatization that may arise from presenting a victim's testimony in an adversarial immigration court hearing. KIND has attempted to file asylum applications with USCIS for unaccompanied children with prior MPP proceedings and has had such filings rejected, with USCIS indicating that it "is unable to accept [the asylum application] because government records indicate that a decision has already been made" — that is, as part of an MPP family case, rather than evaluating the claim as that of an unaccompanied child.

21. However, in one case, KIND encountered a child who was issued an

1 NTA reflecting her most recent entry and status as an unaccompanied child, which
2 led to further complications. Even though DHS knew that the nine-year-old
3 unrepresented child had an NTA reflecting her unaccompanied status, and had been
4 transferred to an ORR program in New York, it did not take steps to change the
5 venue of her proceedings from an MPP court in Texas to New York. Only when
6 she was released to a relative in New York after two months in ORR custody did
7 she learn that a mandatory hearing in her case was scheduled for three days later.
8 Unbeknownst to the child, the hearing was set in the MPP proceedings in Texas,
9 where it would have been impossible for the family to travel on less than seventy-
10 two hours' notice, even if they had been aware of the location. Instead, inferring
11 that the hearing would take place at a New York immigration court, the child and
12 her caregiver appeared there, only to be told no relief was available for her failure
13 to appear that day in Texas. The child received an *in absentia* removal order in her
14 Texas MPP proceeding, which KIND is now seeking to have reopened.

15 **H. Children Affected by MPP May Lack Access to Child Advocate
16 Support**

17 22. Under the TVPRA, especially vulnerable unaccompanied children can
18 be appointed a federally-funded child advocate whose role is “to effectively
19 advocate for the best interests of the child.” 8 U.S.C. § 1232(c)(6). But if a child is
20 to be removed pursuant to a prior MPP removal order, he or she does not have the
21 opportunity to be appointed a child advocate to assess their best interests regarding
22 return to the country of origin.

23 **I. Children Affected by MPP May Lack Access to Repatriation and
24 Return Services**

25 23. When removed under their MPP removal orders, unaccompanied
26 children are also denied the opportunity to receive orientations regarding their
27 repatriation, reception, and reunification with family members. The U.S.
28 government contracts with organizations, including KIND, to provide these
services, which include screening for particular risks the child may face upon

1 repatriation or return. A risk assessment, as is performed for unaccompanied
2 children, is essential to avoid return to an abusive or otherwise dangerous situation.
3 Children who are denied repatriation services – such as accompaniment at
4 disembarkation points or on flights, coordinated reception, and assistance with safe
5 transportation home from the port of entry – will likely face added uncertainty,
6 anxiety, and potentially retraumatization if unsafe repatriation exposes them to
7 dangers such as those that caused them to flee in the first place. Further, owing in
8 part to a lack of clear communication from DHS, representatives of the receiving
9 governments KIND works with (primarily Guatemala, Honduras, and El Salvador)
10 are often unclear as to which returning children have had access to protection
11 screenings and which have not; they may assume that all children being repatriated
12 from the United States have received legal screenings and have been deemed
13 eligible for a safe return to their countries of origin, and may therefore provide the
14 children with a less robust screening upon arrival.

15 **J. Children Affected by MPP May Not Be Reunited With Parents
16 Still in MPP**

17 24. Children formerly in MPP face particular risk of being repatriated to
18 their home countries while their parents and primary caregivers remain in Mexico
19 under MPP. This contrasts with other unaccompanied children who, if repatriated,
20 may be able to join caregivers in their country of origin (sometimes the caregivers
21 they had prior to departure for the United States). Children whose primary
22 caregivers are stuck in Mexico awaiting their United States immigration
23 proceedings are therefore at increased risk of returning to unsafe or inadequate
24 caregivers.

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

3 Executed this 11 th day of May, 2021 in New York, NY.

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

Maria Odom