

1 HARRISON J. FRAHN, IV (206822)
hfrahn@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

8 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

[Additional counsel listed below]

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

20 IMMIGRANT DEFENDERS LAW
CENTER; *et al.*,

Plaintiffs.

V.

23 U.S. DEPARTMENT OF HOMELAND
24 SECURITY: *et al.*

Defendants

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

**DECLARATION OF ASHLEY
HUEBNER IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

Date: June 17, 2021

Date: June 17, 2011
Time: 10:00 a.m.

Time: 10:
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 I, Ashley Huebner, 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 an Associate
4 Director at the National Immigrant Justice Center. If called as a witness, I could and
5 would testify to the truth of the following:

6 1. I am an attorney licensed to practice law in the State of Illinois. I have
7 been an attorney at the National Immigrant Justice Center (“NIJC”) since 2008 and
8 an Associate Director of Legal Services since 2018.

9 **I. About NIJC**

10 2. NIJC provides direct legal services to, and advocates for, immigrants
11 through policy reform, immigration litigation, and public education. NIJC is based
12 in Chicago, Illinois, and has offices in Indiana, California, and Washington, D.C.
13 NIJC provides a wide range of legal services to low-income immigrants, including
14 asylum and deportation defense for detained and non-detained adults and children.

15 3. NIJC’s Unaccompanied Immigrant Children’s Project (“Children’s
16 Project”) provides Know Your Rights presentations and legal screenings to all
17 unaccompanied children who enter the short-term care of the Office of Refugee
18 Resettlement (“ORR”) in Illinois and Indiana. In addition, NIJC offers full
19 representation to all children in long-term ORR care in Illinois and Indiana, children
20 who fall into other, specific categories while in ORR custody, and children who are
21 released from ORR care in Illinois and Indiana to a sponsor in NIJC’s geographic
22 service area of Illinois, Indiana, and Wisconsin. NIJC also provides representation
23 to unaccompanied children who have been released from ORR shelters in other parts
24 of the country to sponsors within NIJC’s geographical service area. NIJC provides
25 removal defense before immigration courts and U.S. Citizenship and Immigration
26 Services (“USCIS”) in unaccompanied child cases.

27 4. As an Associate Director, I oversee and coordinate a team of sixteen
28 attorneys handling unaccompanied child cases. I also work with fourteen paralegals

1 to coordinate Know Your Rights presentations in ORR shelters and prepare filings
2 for unaccompanied child clients. We currently represent approximately 800
3 previously designated unaccompanied children. We also provide Know Your
4 Rights presentations and legal screenings to hundreds of unaccompanied children in
5 ORR custody each month who are later released to sponsors in jurisdictions outside
6 of NIJC's service areas. We have provided legal services to approximately thirty
7 previously designated unaccompanied children affected by the Migrant Protection
8 Protocols ("MPP") since 2019.

9 **II. NIJC's Representation Practices Prior to MPP**

10 5. Before the Trump Administration implemented MPP in January 2019,
11 NIJC met with and offered representation to unaccompanied children in short-term
12 ORR custody using the following practice:

13 a. First, paralegals and attorneys met with potential unaccompanied
14 child clients in short-term ORR custody to deliver Know Your Rights presentations
15 and provide a legal screening within 10 days of their arrival.

16 b. Second, after supervisory review of the legal screening, NIJC
17 offered to represent children who: (i) we expected would be released to a sponsor in
18 our jurisdiction; (ii) lacked a viable sponsor and who would be transferred to long-
19 term ORR care; (iii) elected voluntary departure; (iv) were scheduled for a court
20 hearing where pleadings must be taken; or (v) possessed a particular vulnerability.

21 c. Third, NIJC staff would begin case preparation, including
22 analyzing the child's legal options and speaking with the child and his or her family
23 members.

24 **III. MPP Has Substantially Changed NIJC's Approach to Screening and
25 Representing Unaccompanied Children**

26 6. The Trump Administration imposed MPP on January 25, 2019. In
27 mid-2019, NIJC attorneys began encountering unaccompanied children with a
28 history of prior MPP proceedings (referred to as "MPP-unaccompanied children").

1 Some MPP-unaccompanied children had cases pending before MPP courts while
2 others had been issued *in absentia* removal orders.

3 7. Between June 2019 and April 2021, NIJC represented approximately
4 thirty MPP-unaccompanied children. These cases present atypical challenges
5 because there is no consistent process for us to determine whether a child was
6 previously in MPP proceedings. Additionally, most MPP-unaccompanied child
7 cases require expedited filings and defensive representation to avoid severe legal
8 consequences, including deportation.

9 8. Because any of the hundreds of unaccompanied children entering our
10 service area could have previously been in MPP proceedings, NIJC significantly
11 altered our screening procedures and representation model to protect children who
12 had experienced MPP.

13 **A. Changes to NIJC's Client Screening and Representation-Initiating
14 Procedures**

15 9. As more MPP-unaccompanied children arrived in our service area,
16 NIJC realized we had to modify our screening and representation-initiating
17 procedures because MPP-unaccompanied children were particularly vulnerable to
18 being removed or receiving an *in absentia* removal order. Our organization made
19 three primary changes to our screening and representation-initiating procedures.

20 10. First, we now monitor all arriving unaccompanied children for
21 indicators that a child may have previously been in MPP. We have trained our staff
22 to identify if a child was previously in MPP by asking the child specific questions
23 during the screening process, paying attention to the language the child uses to
24 describe their experiences before entering the U.S. and being designated as an
25 unaccompanied child, and examining the child's files for any MPP-related
26 documents, such as a previously issued NTA that does not line up with the child's
27 most recent entry, a prior hearing, or a removal order from an immigration court
28 along the border.

1 11. Second, if it appears a child may have previously been in MPP
2 proceedings, we typically initiate representation immediately so we can advocate on
3 the child's behalf to immigration agencies and obtain information regarding the
4 child's immigration history. This representation includes significant additional
5 work, such as entering our appearance as counsel for the child in the MPP court;
6 filing motions to change venue, to sever, and to reopen in the MPP court; appeals of
7 the MPP case before the BIA; and filing relief requests with USCIS.

8 12. Third, we speak with the child and the child's family to learn more
9 about the child's immigration history, including any prior attempts to come to the
10 United States. In our experience, both the children and their families often have a
11 limited understanding of what occurred during a prior interaction with immigration
12 officials at the border. We may file a Freedom of Information Act request to receive
13 more information about a child's immigration history, but we often do not receive a
14 response fast enough to assist us in our representation. This delayed response means
15 that our emergency motions are often filed based solely on what little information
16 we can obtain from the child and family.

17 **B. NIJC's Representation Model for MPP-Unaccompanied Children**

18 13. Once NIJC begins representing an MPP-unaccompanied child, we first
19 investigate the procedural posture of the child's MPP case. Further steps in our
20 representation depend on whether the child has an *in absentia* removal order or a
21 case pending before an MPP court. We have not yet encountered an MPP-
22 unaccompanied child with an MPP-removal order on the merits.

23 **1. NIJC's Approach for Children with *in Absentia* Removal
24 Orders.**

25 14. Since February of 2021, most MPP-unaccompanied children entering
26 our service area have arrived with *in absentia* removal orders. For these children,
27 NIJC immediately initiates representation and informs the ORR shelter that the child
28

1 has an attorney. This allows us to receive notice if DHS requests to meet with the
2 child in advance of executing a removal order.

3 15. After initiating representation, NIJC contacts ICE's Office of
4 Enforcement and Removal Operations ("ERO") to ask whether they intend to issue a
5 new NTA that reflects the child's most recent entry to the United States (referred to
6 as a "TVPRA-NTA"). We next ask our local DHS Office of the Principal Legal
7 Advisor ("OPLA") if it will facilitate the issuance of a TVPRA-NTA. We also
8 generally contact the OPLA where the MPP removal order was issued to request
9 issuance of a new NTA. These attempts are often complicated because each OPLA
10 has different procedures for how to contact them and the procedures are rarely
11 publicly accessible. Usually, OPLA is not willing to assist us in securing issuance
12 of a TVPRA-NTA.

13 16. In requesting issuance of a new NTA, NIJC also often requests that the
14 OPLA covering the MPP court that issued the *in absentia* removal order join our
15 motion to reopen the MPP case. To date, OPLA has not formally announced that
16 they would agree to join motions to reopen *in absentia* orders that have been issued
17 against MPP-unaccompanied children, nor do they appear to have a uniform policy
18 on how to approach MPP-unaccompanied children with *in absentia* orders. For
19 each of our clients with *in absentia* removal orders, we have had to ask OPLA to
20 join in our motion without any guarantee that OPLA will agree to do so. In recent
21 weeks, they have agreed to join our motions to reopen *in absentia* orders that were
22 entered against MPP-unaccompanied children who had returned to their home
23 country when the order was issued.

24 17. In 2021 alone, we have filed four emergency motions to reopen to
25 protect unaccompanied children from imminent removal. The following narratives
26 describe three of these four cases involving an MPP-unaccompanied child with an *in*
27 *absentia* removal order. By virtue of the *in absentia* order and threat of removal,
28 these children are being deprived of the opportunity to seek relief afforded to all

1 unaccompanied children under the Trafficking Victims Protection Reauthorization
2 Act (“TVPRA”).

3 18. In February 2021, our staff encountered C., an unaccompanied child
4 with a prior MPP removal order. Before his transfer, C. was detained in Texas,
5 where Plaintiff ProBAR filed a skeletal motion to reopen to prevent his immediate
6 removal. The motion was denied while C. was being transferred to an ORR shelter
7 in our service area. After initiating representation for C., NIJC filed a second
8 motion to reopen and appealed the denial of the first motion. Throughout our
9 advocacy efforts, ERO expressed its unequivocal intent to remove C. unless an
10 appeal was filed. After we filed the appeal, ERO unexpectedly issued a TVPRA-
11 NTA for C. Notwithstanding the issuance of a TVPRA-NTA, we were informed by
12 an OPLA trial attorney that the NTA would not be filed. The reason provided by
13 OPLA was that they believed the pendency of the case before the BIA prevented
14 them from being able to file the TVPRA-NTA. To address OPLA’s concern, we
15 requested that they join a motion to remand and reopen the case. Although OPLA
16 initially seemed willing to do so, they ultimately declined to join a motion unless
17 NIJC withdrew the appeal. To date, OPLA refuses to file the TVPRA-NTA based
18 on alleged jurisdictional issues relating to our appeal.

19 19. In March 2021, NIJC initiated representation for G., another MPP-
20 unaccompanied child with an *in absentia* removal order. On March 17, 2021, we
21 requested that ERO issue a TVPRA-NTA for G. ERO refused to do so. ERO also
22 informed us that they were instructing ORR not to make further efforts at reunifying
23 G. with his family because ERO was preparing to execute the removal order.
24 Because G. was turning eighteen years old on March 23, 2021, we only had a few
25 days to file a motion to reopen in order to protect G. from being removed pursuant
26 to the *in absentia* order. We filed a motion on March 22, 2021, and on April 30,
27 2021, NIJC learned that G.’s motion was granted.

28 20. On April 1, 2021, NIJC encountered E., an unaccompanied child with

1 an MPP *in absentia* order. NIJC immediately requested that OPLA join in a motion
2 to reopen E.'s proceedings. OPLA agreed and NIJC prepared a joint motion to
3 reopen. On April 6, 2021, the day NIJC and OPLA intended to file the joint motion,
4 but before it had been filed, ERO notified NIJC that it would move forward with
5 E.'s removal if the motion was not filed that day, notwithstanding OPLA's
6 agreement that the underlying removal order should be reopened. The joint motion
7 to reopen in E.'s case remains pending.

8 **2. NIJC's Approach for MPP-Unaccompanied Children Not at
9 Risk of Imminent Removal**

10 21. For unaccompanied children with pending MPP proceedings but no *in
11 absentia* removal order, NIJC first reaches out to our local OPLA to see if it will
12 facilitate a change of venue. We also contact the OPLA where the child's MPP
13 proceedings were held to request a change of venue. Typically, OPLA will not
14 agree to facilitate a change of venue on its own.

15 22. NIJC will initiate representation for the unaccompanied child in the
16 MPP immigration court and file a Motion to Sever and a Change of Venue to
17 prevent the child from being ordered removed *in absentia*. In our experience, the
18 immigration judge generally does not grant the motions on the papers, requiring us
19 to appear before the MPP court telephonically. The requirement to appear
20 telephonically in the MPP court complicates our work because we must represent a
21 child in proceedings outside of our normal practice and the court is generally
22 unaware of the child's current location when ruling. For example, a motion to
23 change venue may ultimately be granted after the child has been released to a
24 jurisdiction outside of our service area, necessitating NIJC to file a new request to
25 change the child's venue to their new location. We must then withdraw our
26 representation and assist the child with securing a legal service provider.

27 **IV. Impact of Efforts to Protect MPP-Unaccompanied Children on NIJC**

28 23. The significant number of MPP-unaccompanied children in NIJC's

1 service area and the lack of clear agency policies and procedures regarding the
2 children's unaccompanied status has resulted in inefficiencies and a strain on NIJC's
3 resources as we advocate to defend these children's TVPRA and due process rights.

4 **A. Staffing Changes**

5 24. Before MPP was implemented, NIJC paralegals conducted most of the
6 initial screenings for unaccompanied children in the shelters we serve. As more
7 children with MPP proceedings arrived in our service area, we shifted many initial
8 screening procedures for these cases to attorneys and supervising attorneys. We
9 made this change because the next steps after discovering a child's previous
10 involvement in MPP can be very complicated and the child will require immediate
11 advocacy in their case. Representing MPP-unaccompanied children requires
12 attorneys and staff to immediately dedicate approximately fifty to eighty hours of
13 work to protect the child from receiving an *in absentia* order or prevent the child
14 from being removed by ICE if he or she already has a removal order.

15 **B. Trainings**

16 25. In addition to the modifications to NIJC's intake procedures detailed
17 above, we also had to train staff on how to communicate with other divisions of
18 DHS that staff do not interact with in a typical unaccompanied child case. For
19 example, NIJC has a relationship with and regularly communicates with our local
20 OPLA. But we have had to quickly form relationships with other OPLA offices and
21 train staff on the procedures required for communicating with the OPLA offices
22 outside our jurisdiction, as each office has its own distinct procedures.

23 **C. Impact on Legal Services**

24 26. MPP-unaccompanied child cases have significantly impacted NIJC's
25 practice. If we continue to see the same volume of MPP-unaccompanied children as
26 we have thus far in 2021, we expect this impact will increase.

27 27. Protecting an MPP-unaccompanied child with an *in absentia* order
28 from imminent removal requires our paralegals, attorneys, and supervising attorneys

1 to dedicate significantly more time and resources to work on emergency filings as
2 compared to other unaccompanied child cases.
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

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 Chicago, IL.

4 By 

5 Ashley Huebner

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