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[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 YLIANA
JOHANSEN-MENDEZ IN
SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY
INJUNCTION**

Date: June 17, 2021

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

Time: 10
Ctrm: 6D

Judge: Hon. Fernando M. Olguin

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1 I, YLIANA JOHANSEN-MENDEZ, HEREBY DECLARE AS FOLLOWS:

2 1. I make this declaration based on personal knowledge and a review of
3 records related to my position as Legal Services Director at Immigration Defenders
4 Law Center.

5 2. I am the Legal Services Director at Immigrant Defenders Law Center
6 (“ImmDef”) in Los Angeles, California. As Legal Services Director, I oversee the
7 Children’s Representation Project (“CRP”), which includes our Detained Youth
8 Empowerment Project (“DYEP”), to ensure that the organization achieves its overall
9 mission to protect the rights of immigrants in removal proceedings.

10 3. I have personal knowledge of the facts set forth herein, except as to those
11 stated on information and belief, and as to those, I believe them to be true. If called
12 as a witness, I could and would testify competently to the following.

13 4. I have been an attorney admitted to the State Bar of California since
14 December 2011. I received my B.A. from Occidental College in 2006 and J.D. from
15 Boston College Law School in 2011.

16 5. I first started working with immigrant youth who had been designated as
17 “unaccompanied children” in 2010 while I was in law school. Thereafter, I was an
18 Equal Justice Works Fellow at Kids in Need of Defense, in Los Angeles, CA from
19 September 2011 to August 2013. I provided direct representation and removal
20 defense exclusively to unaccompanied children in removal proceedings before the
21 Los Angeles Immigration Court.

22 6. When my Equal Justice Works Fellowship ended, I was accepted to the
23 U.S. Department of Justice Honors Program. From September 2013 to August 2015,
24 I worked for the Executive Office of Immigration Review (“EOIR”). I was an
25 Attorney Advisor and functioned as a judicial law clerk to the judges of the Las Vegas
26 Immigration Court.

27 7. Immediately prior to working at ImmDef, from August 2015 to February
28 2018, I worked for the Department of Homeland Security’s (“DHS”) United States

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1 Citizenship and Immigration Services (“USCIS”) at the Los Angeles Asylum Office.
2 I was hired as an Asylum Officer and was later promoted to Senior Asylum Officer.

3 8. I joined Immigrant Defenders Law Center in February 2018 as a
4 Managing Attorney in the CRP and was promoted to Legal Services Director in May
5 2019. In this role, I oversee ImmDef’s largest projects, the CRP and the DYEP. My
6 responsibilities include leading the CRP team in representing unaccompanied
7 children in their removal proceedings and the DYEP team in providing know-your-
8 rights presentations and legal screenings to detained unaccompanied children. I also
9 work collaboratively with the Executive Director, Litigation and Advocacy Director,
10 and the Legal Services Director for Universal Representation Programs to develop
11 the organization’s strategic direction and facilitate the integration of ImmDef’s
12 strategic framework into the legal departments’ work. Lastly, I engage with key
13 stakeholders, including government agencies, contractors, grantors, donors,
14 community partners, and allies to further ImmDef’s mission.

15 **I. ImmDef Represents Unaccompanied Children in Removal Proceedings**

16 9. ImmDef’s mission is to achieve universal representation for immigrants
17 in removal proceedings. We pursue our mission by providing *pro bono* services and
18 advocacy to Southern California’s most marginalized immigrant and refugee
19 communities through legal services, community empowerment, strategic litigation,
20 and direct representation of clients before the asylum office, immigration court, the
21 Boards of Immigration Appeals, and the Ninth Circuit. ImmDef is a social justice
22 law firm that defends immigrant communities against injustices in the legal system.

23 10. ImmDef has offices in Downtown Los Angeles, Santa Ana, Riverside,
24 and San Diego. ImmDef currently employs a staff of 116 people across four Southern
25 California offices, providing *pro bono* representation to adults, children, and families
26 facing deportation. ImmDef represented more than 1,600 noncitizens in removal
27 proceedings and provided education and outreach services to about 1,100
28 noncitizens, the vast majority of whom were not clients, in 2019.

1 11. Our CRP team is the largest of our direct representation programs and
2 includes eight directing and managing attorneys, twenty-two staff attorneys, and
3 twenty paralegals, legal assistants, and other support staff. Additionally, we have a
4 ten-person non-attorney DYEP team that provides legal services for twelve Office of
5 Refugee Resettlement (“ORR”) unaccompanied children’s shelters and foster care
6 programs in the Los Angeles region and surrounding counties. In response to an
7 anticipated increase of unaccompanied children and the opening of new ORR-
8 contracted shelters in our geographic service area in the coming year, ImmDef has
9 secured additional funding to hire one new managing attorney, one additional DYEP
10 coordinator, and two additional DYEP associates.

11 12. Additionally, in April 2021, ImmDef began to provide legal services to
12 the ORR Emergency Intake Site (“EIS”) located at Long Beach Convention Center
13 and Pomona Fairplex. ImmDef is aiming to provide Know Your Rights presentations
14 to all children in the EIS facilities, limited-scope legal screenings for as many
15 children as possible, full-scope representation when necessary to avoid harm or
16 prejudice to the child, and advocacy for children experiencing extreme emotional
17 distress, in need of medical attention, or who otherwise would benefit from their
18 immediate transfer to a standard ORR facility that is better equipped to meet their
19 needs. Combined, these EIS facilities are expected to house as many as 3,500
20 children at any given time. As of May 6, 2021, ImmDef has hired or contracted an
21 additional four staff members, and upon finalization of the contract terms anticipates
22 hiring several more attorneys and program associates to provide legal services at
23 these sites. In the meantime, ImmDef is detailing the existing members of its staff to
24 the EIS facilities in order to provide Know Your Rights (“KYR”) presentations and
25 legal screenings to the children in these facilities. As of May 6, 2021, ImmDef staff
26 has conducted KYR presentations to 518 individual children and legal screenings for
27 156 individual children at the Long Beach EIS, and KYR presentations to 113
28 individual children and legal screenings for at least fifty-seven individual children at

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1 the Pomona EIS.

2 13. CRP is one of the largest programs of its kind in the United States. It
3 currently provides representation for close to 1,000 unaccompanied children,
4 including detained unaccompanied children in shelters or federal long-term-foster
5 care, as well as all unaccompanied children who have been released to sponsors
6 within the jurisdiction of the Los Angeles Immigration Court and some children in
7 the jurisdiction of the San Diego Immigration Court. CRP is contracted by the Vera
8 Institute of Justice to do so as part of the TVPRA's guarantee that unaccompanied
9 children must be granted access to counsel "to the greatest extent practicable." 8
10 U.S.C. § 1232(c)(5). These contracts obligate us to provide legal services to all
11 unaccompanied children in local ORR custody, and to provide removal defense
12 representation to all children in local long-term foster care programs, those seeking
13 voluntary departure while in ORR custody, as well as those children released from
14 local shelters and reunified with family or friends within our geographic service area.
15 ImmDef exceeds its contractual obligations by also offering removal defense
16 representation to children who fall into one of the following categories: 1) children
17 at risk of "aging out" of minority and at risk of transfer to ICE custody upon turning
18 eighteen years old; 2) children in temporary ORR facilities who are particularly
19 vulnerable for reasons such as mental health issues; and 3) children subjected to the
20 Trump Administration's zero tolerance policy. We have extremely limited additional
21 funding to represent other non-detained children.

22 14. The vast majority of our clients are released from ORR custody to reside
23 with a sponsor in the greater Los Angeles area, including Los Angeles, Orange,
24 Riverside, San Bernardino, Ventura, Santa Barbara, and Kern Counties. ImmDef
25 also represents all unaccompanied children who remain in ORR custody in long-term
26 foster care placements and a subset of unaccompanied children who are in short-term
27 ORR custody. On rare occasions, ImmDef continues to represent clients after their
28 transfer to other states and service areas. ImmDef cannot represent all children who

1 pass through its service area due to funding limits.

2 15. Every year CRP provides up to 1,200 locally detained and released
3 unaccompanied children with various social and legal services including KYR
4 presentations, legal screenings and consultations, case management support, legal
5 and community referrals, court preparation, “Friend of the Court” appearances for
6 unrepresented minors on the Los Angeles Immigration Court juvenile detained
7 docket, and full-scope legal representation. In 2020, ImmDef served 1,112
8 unaccompanied minors in total. This number is expected to be exponentially higher
9 in 2021 due to the opening of the EIS facilities in Long Beach and Pomona.

10 16. CRP aims to provide holistic representation to unaccompanied children
11 in removal proceedings in accordance with these clients’ stated interests. Consistent
12 with the TVPRA’s requirement that unaccompanied children receive legal services
13 to the extent practicable, we zealously advocate to ensure our unaccompanied child
14 clients receive the protections of the TVPRA, *Flores* Settlement Agreement, and
15 other benefits. We assist our clients to pursue all forms of relief for which our clients
16 may be eligible, including asylum, special immigrant juvenile status (“SIJS”), U
17 visas, T visas, and family-based petitions. ImmDef advocates for the release and
18 reunification of detained children through informal advocacy with stakeholders such
19 as child advocates, ORR case managers, Field Office Juvenile Coordinators
20 (“FOJCs”), and Health and Human Services Federal Field Specialists (“FFSs”), and
21 through formal legal avenues including habeas petitions and bond motions.
22 ImmDef’s representation therefore encompasses advocacy before USCIS, EOIR,
23 BIA, state court, federal district courts, federal appeals courts, and through informal
24 channels. The vast majority of ImmDef’s unaccompanied child clients are in INA
25 section 240 removal proceedings.

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1 **II. ImmDef's Initial Identification of Unaccompanied Children Has Been
2 Impacted by MPP**

3 17. The Migrant Protection Protocols (“MPP”) was launched in January
4 2019. Pursuant to DHS’ announcement stating unaccompanied children would be
5 exempt from MPP, we did not anticipate or plan for unaccompanied children to be
6 subjected to MPP. By the summer of 2019, however, we began to witness and
7 understand the impact of the MPP program on unaccompanied children. Generally,
8 children who presented initially at the border as unaccompanied children were not
9 being placed in the MPP program and instead were being processed pursuant to the
10 TVPRA. Thus, they were placed in ORR custody after their apprehension and issued
11 a Notice to Appear (“NTA”)—the legal document that initiates removal proceedings
12 under INA section 240, which the TVPRA requires before an unaccompanied child
13 can be removed. By September 2019, our program began to identify several children
14 in ORR custody who had previously been placed in MPP proceedings with their
15 parents, but later entered unaccompanied (hereinafter “MPP-unaccompanied
16 children”). Although it is possible that our DYEP team had conducted legal
17 screenings for MPP-unaccompanied children without realizing they had previously
18 been in MPP, according to our case management records, by September 2019 we had
19 identified five MPP-unaccompanied children. In October 2019, that number
20 increased by an additional seventeen MPP-unaccompanied children. By the end of
21 February 2020, ImmDef had served at least fifty-six MPP-unaccompanied children.

22 18. In March 2020, in response to the COVID-19 pandemic, DHS
23 announced that the border would be closed pursuant to Title 42. Anyone apprehended
24 at the southern border would be summarily expelled from the United States, without
25 any opportunity to seek asylum or to be placed in normal immigration proceedings.
26 Consequently, there was a significant decrease in the placement of unaccompanied
27 children in ORR custody and our team only identified two MPP-unaccompanied
28 children that month. It was not until October 2020, after a court had entered a

1 preliminary injunction preventing the government from expelling children under
2 Title 42, that we again saw children in the local ORR shelters who had been in MPP
3 proceedings. We also have begun to identify MPP-unaccompanied children in the
4 EIS facilities. As of May 6, 2021, ImmDef is providing ongoing full-scale
5 representation services to thirty-two identified MPP-unaccompanied children.

6 **III. MPP-Unaccompanied Children Are Treated Differently from Other
7 Unaccompanied Children with Prior Removal Orders**

8 19. Our experience thus far with MPP-unaccompanied children is that they
9 are treated differently at every stage of the process than other unaccompanied
10 children with recent entries and prior removal orders not from MPP proceedings.
11 This, coupled with the DHS's inconsistent treatment of MPP-unaccompanied minors,
12 has created huge hurdles in representing MPP-unaccompanied minors and securing
13 their rights under the TVPRA.

14 20. *Failure to Issue NTAs.* Before MPP was implemented, ImmDef had
15 represented unaccompanied children with prior removal orders but these children
16 were not placed in reinstatement proceedings. Instead, they were placed in new
17 Section 240 proceedings pursuant to the TVPRA. In our observation, any of these
18 children who subsequently re-entered the U.S. as unaccompanied children were
19 issued a new Form I-862 NTA. DHS made no distinction between unaccompanied
20 children who were entering the U.S. for the first time and unaccompanied children
21 who had a prior immigration history, including prior removal orders. For both
22 unaccompanied children who had entered the U.S. for the first time as well as
23 unaccompanied children with prior removal orders, DHS might file an NTA
24 reflecting the child's most recent entry with EOIR. In other cases, DHS never filed
25 the NTA even though it issued and served the NTA upon the unaccompanied child.
26 DHS's failure to file an NTA for an unaccompanied child is not uncommon. Some
27 unaccompanied child clients we have represented never had their NTA's filed, and
28 others had their NTA's filed several years after their entry and the issuance of that

1 NTA. Regardless, unaccompanied children with removal orders from a prior entry
2 were never at risk of removal based on prior proceedings because the TVPRA
3 requires unaccompanied children be placed in section 240 removal proceedings. 8
4 U.S.C. § 1232(a)(5)(D). Placement in 240 removal proceedings through the issuance
5 of a new NTA that reflects the child's most recent entry and unaccompanied child
6 designation prohibits DHS from placing the child in expedited removal proceedings
7 or reinstating a prior removal order, thus protecting the child from removal based on
8 a prior order.

9 21. By contrast, DHS has been inconsistent regarding its policy of issuing
10 new NTAs reflecting unaccompanied children's most recent entries into the United
11 States as unaccompanied minors for children who were previously in MPP. In the
12 majority of ImmDef's cases in which unaccompanied children have prior MPP
13 removal orders, DHS has refused to issue a new NTA reflecting their most recent
14 date, manner, and location of entry to the U.S. as UC even when requested by
15 ImmDef attorneys. If ImmDef successfully severs a child's case from a parent's MPP
16 proceedings and changes venue to the Los Angeles Immigration Court, the removal
17 proceedings usually continue before the court based on the NTA issued while in
18 MPP. However, in at least one case where an MPP-unaccompanied child was
19 removed *in absentia*, DHS did issue a new NTA reflecting the child's most recent
20 entry as an unaccompanied minor while our Motion to Reopen was pending before
21 an MPP judge. Ultimately, this new NTA was never filed with EOIR because the
22 case was subsequently reopened and proceedings continued based on the original
23 NTA from MPP. Even if the child has their case severed from their parents' case,
24 forcing the child to proceed under the MPP-NTA prohibits the unaccompanied child
25 from accessing TVPRA protections, such as the right to seek voluntary departure,
26 because that NTA does not reflect their most recent entry without inspection as an
27 unaccompanied child.

28 22. *Extra Motion Practice and Delayed Release to Sponsors.* Unlike their

1 treatment of unaccompanied minors with removal orders, DHS Field Office Juvenile
2 Coordinators (FOJCs) have indicated that ICE intends to execute MPP removal
3 orders of MPP-unaccompanied children in ORR custody unless a Motion to Reopen
4 or a Notice of Appeal is filed. To avoid the immediate removal of an MPP-
5 unaccompanied child in ORR custody, ImmDef staff have had to draft and file these
6 motions and appeals within extremely short timeframes. Also, in several cases it
7 became clear that ORR delayed release of MPP-unaccompanied children to family
8 members or sponsors due to the FOJC's indication that they would enforce the
9 unaccompanied child's prior MPP removal order if no motions or appeals were filed.

10 23. In contrast, I am not aware of any instances in which DHS has interfered
11 with the release of an unaccompanied child with recent entry and a prior removal
12 order or repatriation or has demanded that the legal service provider (LSP) serving
13 the child's ORR shelter file a Motion to Reopen or Notice of Appeal of a prior
14 removal to avoid the unaccompanied child's immediate removal. Rather, children
15 were released to sponsors and could then seek asylum at USCIS pursuant to the
16 TVPRA or apply for SIJS.

17 24. *Failure to Change Venue and Address.* ImmDef serves some
18 unaccompanied children who were detained in ORR facilities in other states or in the
19 jurisdiction of other immigration courts, and who are later transferred to ORR shelters
20 or foster care in our service area. When ORR transfers children from one facility to
21 another, they provide a "Notice of Transfer to ICE Chief Counsel – Change of
22 Address/Change of Venue" to DHS. Additionally, for those children with removal
23 proceedings that have already been initiated, DHS initiates the change of address and
24 change of venue of their proceedings to the receiving court jurisdiction by filing Form
25 I-830, *Notice to EOIR: Alien Address*. Thus, for purposes of updating the
26 unaccompanied child's address with the court and changing venue, DHS's practices
27 require it to take responsibility for ensuring that EOIR is updated regarding the
28 unaccompanied child's detention status and address.

1 25. I have not observed DHS follow these practices for MPP-
2 unaccompanied children. Instead, these children's MPP proceedings seem untouched
3 by their subsequent entry and placement in ORR custody. We have found that their
4 hearings are generally still scheduled with their parents' hearings in Texas, even
5 while they are detained in ORR custody in California. DHS has not been initiating a
6 change of venue or change of address based on the location of their detention in ORR
7 custody for all MPP-unaccompanied children the way they have for other
8 unaccompanied children. Not only does this failure on the part of DHS prevent MPP-
9 unaccompanied children from accessing their rights and protections under the
10 TVPRA, it has also led to some MPP-unaccompanied children being ordered
11 removed *in absentia* because they were in government custody in California during
12 their scheduled MPP hearing in Texas.

13 26. *Denial of Opportunity to Apply for Asylum.* Another issue of concern is
14 that DHS's policies are denying MPP-unaccompanied children their right to have
15 their asylum applications adjudicated by USCIS. The TVPRA gives USCIS initial
16 jurisdiction over asylum applications filed by all unaccompanied children. As a
17 former asylum officer and immigration attorney focused on unaccompanied children
18 representation, my understanding has always been that a prior removal order would
19 not bar an unaccompanied child from seeking TVPRA-asylum before USCIS. This
20 is consistent with ImmDef's experience prior to MPP. For example, before MPP,
21 ImmDef filed an asylum application for a child who had already been ordered
22 removed by an immigration judge and USCIS still accepted jurisdiction and
23 adjudicated his application.

24 27. However, we have faced several challenges in helping our MPP-
25 unaccompanied child clients assert their right to seek asylum before USCIS. First,
26 DHS's indication that they will remove unaccompanied children with MPP removal
27 orders unless a motion to reopen or appeal is filed means that our MPP-
28 unaccompanied child clients will be deported before they can even file asylum

1 applications with USCIS. Second, ImmDef's limited resources have been diverted
2 from developing our MPP-unaccompanied child clients' asylum claims to preparing
3 BIA appeals and motions to remand on the child's MPP case. Third, at least one of
4 our clients had her application rejected by USCIS because "a decision had already
5 been made," referring to her MPP removal order.

6 **IV. MPP-Unaccompanied Children Require Emergency and Time-
7 Consuming Services Not Required by Other Unaccompanied Children**

8 28. Beginning with the initial screenings and continuing throughout our
9 entire representation, MPP-unaccompanied children require significantly more
10 resources and more urgent attention than other unaccompanied children ImmDef
11 serves.

12 29. *DYEP Screenings.* When our team realized that we were starting to see
13 a new population of unaccompanied children that had previously been in MPP
14 proceedings (MPP-unaccompanied children), we realized that our existing
15 procedures made it likely that we had encountered other MPP-unaccompanied
16 children but failed to identify them through our legal screening process. But because
17 it became increasingly clear that DHS was not affording these MPP-unaccompanied
18 children the protections to which they were entitled under the TVPRA, it was
19 imperative to identify these children so that we could take the necessary steps to
20 defend their rights and interests and to advocate on their behalf. Thus, our DYEP
21 team, under the leadership of Directing Attorney Mickey Donovan-Kaloust, had to
22 adjust our screenings and our case management system to make sure we were asking
23 questions that would elicit the information needed to determine if each child had been
24 in MPP and record that information in our case management systems.

25 30. Simply figuring out that a child was in MPP can be a difficult process.
26 More than half of the MPP-unaccompanied children we have encountered have been
27 "tender aged," or ages 12 and under. Thus, many of the children we have served have
28 been very confused about their immigration procedural history and unable to

1 articulate that they were in MPP. After reviewing multiple NTAs for children who
2 were previously in MPP, we noticed certain patterns that allowed us to distinguish
3 MPP-unaccompanied children cases. For instance, if a child's address on her NTA
4 is blank or is an address in Mexico, it likely indicates the child was in MPP. Or if an
5 NTA was issued several weeks or months prior to the child's admission to ORR
6 custody, it is likely because they were in MPP, because the TVPRA requires DHS to
7 transfer UC to ORR custody within 72 hours of apprehension. But these techniques
8 are not foolproof and take away from time our shelter staff should be using to address
9 the pressing needs of unaccompanied minors with no MPP history.

10 31. *Urgent Representation.* Once we figure out that a child has been in
11 MPP, we must act quickly to determine the posture of the case and what types of
12 advocacy are necessary. ImmDef staff prioritize MPP-unaccompanied children cases
13 over other unaccompanied children cases because they need to be triaged quickly to
14 avoid *in absentia* removal orders or the execution of existing MPP removal orders.
15 This additional and urgent work for MPP-unaccompanied children cases increases
16 the workloads of DYEP program associates and coordinators, legal assistants,
17 paralegals, staff attorneys, and all of their supervisors. ImmDef's staff have gone to
18 great lengths to try to prevent the execution of *in absentia* removal orders issued
19 against our MPP-unaccompanied children clients, some of whom have ongoing MPP
20 proceedings in other jurisdictions, by filing motions to sever and change venue or by
21 appearing telephonically.

22 32. *Burden of Outreach Regarding MPP Proceedings.* ImmDef staff face
23 considerable hurdles in communicating with courts and the DHS Office of the
24 Principal Legal Advisor (OPLA) outside of our jurisdiction—circumstances that are
25 unique to representing children with ongoing MPP proceedings. For instance, for
26 MPP-unaccompanied children whose proceedings were ongoing before the MPP
27 immigration courts in Texas, we need to investigate how to appear telephonically in
28 case a motion to change venue wasn't granted, what motions need to be filed, how to

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1 file by mail to courts in Texas, and how to communicate with and serve ICE when
2 several Texas courts are served by OPLA in San Antonio but use different email and
3 mailing addresses. This information is not always accessible online and requires
4 considerable time spent reaching out to practitioners in Texas or accessing
5 information that is not available to the public. For practically every child that
6 required our representation before an MPP court, ImmDef staff had to embark on this
7 burdensome discovery of the procedures specific to that child's MPP tent court.

8 33. In addition to contacting OPLA, we must repeatedly reach out to both
9 EOIR and DHS to understand the status and posture of MPP-unaccompanied
10 children's MPP removal proceedings. Because we cannot review the EOIR record
11 of proceedings in person (because staff cannot travel to MPP courts), our only
12 practical resort is to send emails and make phone calls to the MPP immigration court
13 and to OPLA. We request courtesy copies of any filings and ask whether pleadings
14 have been taken, a change of address or change venue has already been filed, and in
15 some cases try to determine the basis of an MPP removal order. Often it takes several
16 attempts before we obtain any information, which is often incomplete, leaving us
17 guessing as to our MPP-unaccompanied child client's procedural history.

18 34. *Burden of Outreach to Family in MPP.* Especially for tender-aged
19 children who are unable to articulate their reasons for coming to the U.S. or their
20 procedural history, we must rely heavily on statements from adult family members
21 to determine the child's eligibility for relief and procedural history. This means that
22 ImmDef staff must go to great lengths to get in touch with parents who are stuck at
23 the southern border while their MPP proceedings are ongoing. DYEP team members,
24 paralegals, and attorneys have also spent a significant amount of time contacting
25 family members of MPP-unaccompanied children to consult with them regarding our
26 MPP-unaccompanied children clients' cases, to assess whether motions to reopen or
27 appeals are necessary, and to determine the impact a motion to sever may have. In
28 most cases, speaking directly to a child's parent is the only timely way to find out the

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1 history of the MPP proceedings, but it has proven to be challenging to manage the
2 logistics of speaking to migrants who are still in transit to the U.S. Most have
3 unstable housing, unreliable phone numbers, and extremely limited or no access to
4 the internet. By contrast, the process of contacting the families or parents of typical
5 unaccompanied children clients is much less burdensome for several key reasons.
6 First, those children's parents tend to be living in the United States or a child's home
7 country and therefore have stable living arrangements and methods of contact as
8 opposed to the dire circumstances faced by individuals forced to remain in Mexico
9 under MPP. Second, in typical cases, there is considerably less urgency because
10 unaccompanied children without ties to MPP are not at risk of immediate removal,
11 or their release from ORR custody to reunify with a sponsor is not being delayed.
12 Third, other unaccompanied children are not subjected to ongoing immigration
13 proceedings dating from their prior immigration history before the DHS has
14 determined them to be unaccompanied children.

15 35. *Increased Need to Enter Appearances.* For unaccompanied children
16 without ties to MPP, ImmDef will only provide support with court preparation and
17 assist as "Friend of the Court" for those children who are unlikely to remain within
18 the jurisdiction of the Los Angeles Immigration Court. By contrast, ImmDef has
19 been forced to represent a significant number of MPP-unaccompanied children whom
20 it would not otherwise spend the resources to represent due to the high risk of
21 immediate removal of children with MPP removal orders and delays in their release
22 to *Flores* sponsors. As a result, ImmDef attorneys have entered appearances and
23 initiated representation for MPP-unaccompanied children clients who were not going
24 to remain in the local ORR LTFC program and were going to reunify in other parts
25 of the country—diverting precious resources we would not otherwise expend.
26 ImmDef had to enter our appearances for at least fourteen MPP-unaccompanied
27 children that our team would not have represented otherwise in order to protect the
28 child from removal. We expended resources by having to temporarily enter

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1 appearance and thereafter, withdraw our appearance once the child moved away from
2 our service area. These cases do not include the thirty-two current MPP-
3 unaccompanied children clients described in paragraph 18.

4 36. *Burden of BIA Appeals.* ImmDef has represented four clients who were
5 issued removal orders by MPP judges who denied their parents' asylum applications
6 before the BIA. The BIA processed these cases on the "detained" docket and issued
7 expedited brief schedules, even though all 4 children had been released from ORR
8 custody to sponsors or family members. This expedited processing put a significant
9 burden on ImmDef staff in part due to the difficulties we have had obtaining
10 information regarding MPP-unaccompanied children's procedural history. Notably,
11 one of these cases was for a child who reunified with a sponsor in Texas. ImmDef
12 continues to represent this child in his appeal, even though under normal
13 circumstances we would not have initiated representation of a child that was
14 reunifying outside of our service area. Our CRP team rarely, if ever, has had to take
15 on this type of representation before the BIA. We have also never previously
16 represented unaccompanied children outside of the Ninth Circuit.

17 37. ImmDef identified one unaccompanied child's MPP ties during intake
18 on January 23, 2020, and later learned his brief on appeal was due July 6, 2020.
19 ImmDef entered its appearance before the BIA, but we did not timely receive the
20 record of proceedings, the order of removal, or a transcript of the hearing. The BIA
21 likewise did not respond to our requests for production of the record below or a
22 briefing extension, so ImmDef had no option but to set aside most all other cases and
23 devote more than sixty hours over only six days to preserve the child's rights on
24 appeal and defend against his MPP removal order. We were even forced to draft
25 some of our arguments without having seen the basis of the immigration court's
26 removal order. We separately had to prepare a 133-page motion to remand to argue
27 for our client's rights under the TVPRA.

28 38. *Burden of Filings Motions to Reopen MPP Proceedings.* ImmDef

1 attorneys have been forced to file several motions to reopen proceedings after MPP-
2 UC were removed *in absentia* by MPP judges. One of the children was in ORR
3 custody at the time of the removal order. Had the government followed their usual
4 procedures of notifying EOIR of the child's change in custody, this child would not
5 have received the *in absentia* removal order and we would not have had to divert time
6 usually spent developing the child's applications for relief on filing a Motion to
7 Reopen. In our practice, ImmDef has never before had to file Motions to Reopen
8 cases based on the government's failure to recognize the child was in their custody
9 outside of the jurisdiction of their proceedings. The other children missed their MPP
10 hearings with their parents, so filing Motions to Reopen required contacting parents
11 to gather evidence of the reasons they could not attend.

12 **V. ImmDef's Organizational Resources Are Being Diverted to Meet the
13 Urgent Needs of MPP-Unaccompanied Children**

14 39. As Legal Services Director managing CRP, I have overseen the
15 significant diversion of our funding, staffing, and time to serve MPP-unaccompanied
16 children who are being denied access to rights that other unaccompanied children
17 receive and to which they are entitled.

18 40. For example, one of my responsibilities is assigning new cases to my
19 team of attorneys. Although generally supervisors are not included in the rotation for
20 case assignments, due to the urgent nature and complexity of representing MPP-
21 unaccompanied children, I have had to assign some of these cases to Managing
22 Attorneys or the Directing Attorney, and I have taken some on myself.

23 41. I also facilitate a weekly meeting for the CRP team during which we
24 field questions from the entire legal team and provide technical assistance and
25 guidance. As the number of MPP-unaccompanied child cases increased, I found
26 myself fielding attorneys' questions and anxieties around the tenuous procedural
27 posture of their clients' MPP proceedings in these weekly meetings, in individual
28 conversations, and in supervisory meetings. In order to be able to instruct my staff

1 on how to respond to these issues, I have spent a significant amount of time reading
2 policy announcements, reviewing litigation updates, and reaching out to attorneys to
3 learn about the status of MPP hearings and DHS practices, and managing them
4 accordingly.

5 42. Despite my additional research and communications to my team, I found
6 that we still needed additional support in understanding and combating the complex
7 challenges facing MPP-unaccompanied children. Thus, in September 2020, ImmDef
8 hired El Paso-based attorney Taylor Levy to train ImmDef staff regarding MPP
9 procedures, Title 42, and other DHS policies and practices impacting unaccompanied
10 children and other migrants along the southern border. I assessed my team's training
11 needs and then worked with her to ensure that this training addressed the MPP-
12 unaccompanied-children-specific questions from our team.

13 43. These efforts to meet the unique needs of MPP-unaccompanied children
14 have diverted staff time from preparing applications for asylum, SIJS (through
15 guardianships, parentage, and custody proceedings and I-360 filings), and other
16 forms of relief for MPP-unaccompanied children and our other unaccompanied child
17 clients.

18 44. This diversion of our time and resources has also prevented us from
19 moving forward on other projects. For example, before we started seeing MPP-
20 unaccompanied children, I was preparing to work with our litigation and advocacy
21 team to address a systemic problem that harms many of our unaccompanied child
22 clients relating to delayed processing of SIJS applications.¹ To begin to address this
23 issue, during the summer of 2019, I put together a list of cases with I-360s pending

24 ¹ The TVPRA mandates that USCIS adjudicate SIJS applications within 180 days.
25 Nevertheless, USCIS is taking as long as a year and a half, and sometimes longer, to
26 adjudicate the I-360 petitions for SIJS classification. Not only is this a direct
27 violation of the INA and regulations, it can be the difference between adult ICE
28 detention and unaccompanied refugee minor ("URM") continued housing and care.
Without an I-360 approval, children detained in ORR custody who are turning 18
cannot qualify for URM placement—which constitutes a release from immigration
custody—and instead can be transferred to adult detention centers.

1 for more than 180 days in preparation for a possible mandamus action. The list
2 contained approximately 100 clients that could benefit from such an action.
3 However, due to ImmDef's need to prioritize and focus on the crisis affecting MPP-
4 unaccompanied children, we did not have the capacity to continue that work.
5 Although many of our clients would benefit from a potential mandamus action
6 regarding delays in processing their SIJS I-360 applications, it is unclear when
7 ImmDef's litigation team will have capacity to prepare those filings and how many
8 of our clients are being harmed in the meantime.

9 45. There have also been several recent policy changes that have negatively
10 impacted our ImmDef clients—such as relating to obtaining government-issued
11 identification—but which we have not had the capacity to challenge due to our need
12 to focus our limited resources on serving clients impacted by MPP.

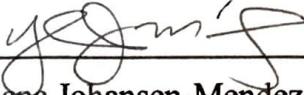
13 **VI. ImmDef's Organizational Resources Will Continue to Be Diverted to
14 Meet the Urgent Needs of MPP-Unaccompanied Children**

15 46. Now that Title 42 can no longer be applied to expel unaccompanied
16 children at the southern border, and the Biden Administration is winding down MPP,
17 ImmDef has seen a rise in the number of children—some of them MPP-
18 unaccompanied children—arriving in our local ORR shelters, including the
19 Emergency Intake Sites (EIS) we are serving. I expect we will continue to face the
20 same challenges that we faced with MPP-unaccompanied child cases from 2019 and
21 early 2020. Consequently, I anticipate that ImmDef will continue to divert time and
22 resources to serve the unique needs of MPP-unaccompanied children, and thus will
23 not have capacity to provide the same service for all of our unaccompanied child
24 clients, or to prioritize issues other systemic issues impacting many of our vulnerable
25 clients.

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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 Los Angeles, CA.

4
5 By 
6 Yliana Johansen-Mendez

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