

1 HARRISON J. FRAHN, IV (206822)
2 hfrahn@stblaw.com
3 STEPHEN P. BLAKE (260069)
4 sblake@stblaw.com
5 SIMPSON THACHER &
6 BARTLETT LLP
7 2475 Hanover Street
8 Palo Alto, California 94304
9 Telephone: (650) 251-5000
10 Facsimile: (650) 251-5002
11 BROOKE E. CUCINELLA
12 (*pro hac vice* forthcoming)
13 brooke.cucinella@stblaw.com
14 SIMPSON THACHER &
15 BARTLETT LLP
16 425 Lexington Avenue
17 New York, New York 10017
18 Telephone: (212) 455-3070
19 Facsimile: (212) 455-2502

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

27 *[Additional counsel listed below]*

28
1 UNITED STATES DISTRICT COURT
2
3 FOR THE CENTRAL DISTRICT OF CALIFORNIA
4
5 WESTERN DIVISION

6
7 IMMIGRANT DEFENDERS LAW
8 CENTER; *et al.*,
9
10 Plaintiffs,
11
12 v.
13
14 U.S. DEPARTMENT OF HOMELAND
15 SECURITY; *et al.*,
16
17 Defendants.

18 Case No. 2:21-cv-00395-FMO-RAO
19
20 **DECLARATION OF MARION
21 DONOVAN-KALOUST IN
22 SUPPORT OF PLAINTIFFS'
23 MOTION FOR PRELIMINARY
24 INJUNCTION**
25
26 Date: June 17, 2021
27 Time: 10:00 a.m.
28 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, MARION DONOVAN-KALOUST, 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 a Directing Attorney for the Children's
4 Representation Program at Immigration Defenders Law Center ("ImmDef"). If
5 called as a witness, I could and would competently testify based on personal
6 knowledge—or, where indicated, information and belief—to the following:

7 2. I have been licensed to practice law in the State of California since 2014.
8 I received my B.A. from Goucher College in 2006 and J.D. from University of
9 California, Los Angeles School of Law in 2014.

10 3. I am the Directing Attorney of Immigrant Defenders Law Center's
11 ("ImmDef") Children's Representation Program ("CRP"). Prior to completing my
12 law degree, I was an intake specialist with Kids in Need of Defense ("KIND"), a non-
13 profit organization that provides legal representation to unaccompanied children. I
14 also worked as a paralegal with Esperanza Immigrant Rights Project in Los Angeles.
15 Upon graduation from law school, I received a Skadden Fellowship, through which I
16 provided immigration representation to juvenile court-involved youth in Riverside
17 and San Bernardino Counties in California. Following completion of my two-year
18 fellowship, I worked as a staff attorney with ImmDef's CRP before being promoted
19 to Managing Attorney in 2017 and Directing Attorney in 2019. I have also served as
20 an adjunct immigration law professor at the University of La Verne School of Law.

21 4. CRP is ImmDef's largest direct representation program. As a
22 subcontractor of the Office of Refugee Resettlement ("ORR") through funding
23 received from the Vera Institute for Justice and other sources, ImmDef provides no-
24 cost representation to Los Angeles-area unaccompanied children in removal
25 proceedings. We represent children who are either referred by Vera Institute of
26 Justice partner organizations or are screened by ImmDef staff at area ORR shelters,
27 transitional foster care ("TFC"), and long-term foster care ("LTFC") programs. Our
28 staff file applications for and advocate on behalf of their unaccompanied child clients

1 with State of California family, probate, dependency, and delinquency courts; United
2 States Citizenship and Immigration Services (“USCIS”); and the Executive Office
3 for Immigration Review (“EOIR”).

4 5. In my capacity as a Directing Attorney, I manage CRP’s day-to-day
5 operations, with a particular emphasis on our provision of services to detained
6 unaccompanied children. I currently supervise three managing attorneys, each of
7 whom supervise three to four staff attorneys; these managing and staff attorneys each
8 provide direct representation to unaccompanied children. My supervisor, Yliana
9 Johansen-Mendez, ImmDef’s Legal Services Director, supervises three additional
10 CRP managing attorneys, each with a supervision load of three to four staff attorneys.
11 I coordinate with, but do not directly supervise, our support staff, consisting of fifteen
12 paralegals, three legal assistants, and two case managers. I likewise oversee the
13 Detained Youth Empowerment Project (“DYEP”), which meets with unaccompanied
14 children in Los Angeles area short-term detained settings. DYEP provides Know
15 Your Rights presentations and legal screenings to all detained unaccompanied
16 children in the ORR facilities we serve, as well as representation to a subset of those
17 children.

18 **I. ImmDef’s Representation Model Before MPP**

19 6. Prior to the implementation of the Trump Administration’s Migrant
20 Protection Protocols (“MPP”), ImmDef met, offered representation to, and developed
21 immigration relief claims for unaccompanied children as follows:

22 7. As the designated Legal Service Provider (“LSP”) for ORR-contract
23 facilities throughout greater Los Angeles, ImmDef relies on ORR facility staff to
24 provide lists of unaccompanied children arriving at their locations. The facilities
25 typically email ImmDef a daily roster that includes the names, birth dates, and A-
26 numbers for incoming unaccompanied children.

27 8. ImmDef’s DYEP team uses this ORR-provided information when it
28 goes to each ORR shelter and TFC facility to screen unaccompanied children within

1 roughly one week of their arrival. First, DYEP staff provide a Know Your Rights
2 presentation to the children. Then, except on the rare occasion that unaccompanied
3 children refuse our services because, for example, they are already represented,
4 DYEP staff meet with each child one-on-one to screen for immigration relief. The
5 screening process takes 30 to 90 minutes and includes questions about their treatment
6 by the U.S. government and their eligibility for immigration relief, including asylum
7 and Special Immigrant Juvenile Status (“SIJS”). The vast majority of
8 unaccompanied children have fled violent and dangerous conditions in their home
9 countries and fear they would be harmed if deported.

10 9. Many of the children we screen eventually reunify with a “sponsor”—a
11 vetted family member or friend—in the United States after being processed by ORR.
12 ImmDef generally cannot represent children who reunify with a sponsor outside our
13 greater-Los Angeles service area because as a Southern California-based
14 organization, we lack the capacity to serve children in other jurisdictions. As such,
15 we monitor the cases of all unaccompanied children we screen to determine whether
16 and where they can reunify before initiating representation.

17 10. Before MPP, we could generally expect a child’s reunification status to
18 become clear within a month of their arrival at an LA-area shelter or TFC. Moreover,
19 delays in release unrelated to a sponsor’s suitability were rare before MPP, so
20 ImmDef was generally not involved in advocating for a child’s release. When
21 ImmDef attorneys did engage in release advocacy, it was typically limited to
22 contacting the sponsor to ensure they completed the appropriate paperwork and
23 attended a fingerprinting appointment.

24 11. Before MPP, ImmDef offered representation only to children meeting at
25 least one of the following criteria: 1) children who were expected to reunify with
26 family or friends in our service area; 2) children who wanted voluntary departure
27 (that is, who wished to return to their home country voluntarily); 3) children who
28 might “age out” of minority and were therefore at risk of transfer to ICE custody on

1 their 18th birthday; 4) children who were particularly vulnerable—for instance, due
2 to mental health issues; and 5) children who were separated from family members
3 under the Trump Administration’s zero tolerance policy, popularly known as family
4 separation.

5 12. Once ImmDef initiates an attorney-client relationship with an
6 unaccompanied child, ImmDef staff begin the administrative, investigative, and legal
7 steps involved in representing unaccompanied children. We meet with the child and
8 his or her sponsor to gather information relevant to potential legal relief, contact
9 family in their home country to verify facts and gather corroborating evidence, and
10 file applications for immigration relief.

11 13. As an initial step, staff request records and evidence relevant to an
12 unaccompanied child’s eligibility for immigration relief. We often submit formal
13 requests for our clients’ ORR files, which the agency provides us after anywhere
14 between a few days and a few months. Before MPP, ORR generally shared a child’s
15 Notice to Appear (“NTA,” the child’s charging document) and limited health
16 information—for example, notifying us if our client needed medical attention, but
17 not providing HIPAA-protected medical records—in response to simple email
18 requests. We usually did not need to submit FOIA requests, which take several
19 months, to ICE or CBP.

20 14. ImmDef attorneys generally entered an appearance before the
21 immigration court by submitting a form EOIR-28 after a child reunified or was
22 transferred to LTFC, within roughly one to three months after the child is first placed
23 in ORR custody.

24 15. In initial hearings before EOIR, CRP attorneys litigate motions to
25 terminate based on improperly served NTAs, enter pleadings, and update the court as
26 to an unaccompanied child’s eligibility for relief. CRP attorneys usually file an initial
27 application for immigration relief—for example, a Trafficking Victims Protection
28 Reauthorization Act (“TVPRA”) asylum application filed with USCIS or a state court

1 petition in support of SIJS—by the third hearing.

2 16. Attorneys and staff spend months developing unaccompanied children's
3 claims. Many children are too young to understand why their families were forced
4 to flee their homes, so we need to contact relatives or witnesses—often in the
5 children's home countries—to piece together the bases for their relief. Other children
6 suffer from severe trauma or find it difficult to disclose the harm they have suffered
7 to those they see as authority figures. Facilitating access to mental health services
8 and building relationships with these children is important to ensure they are
9 comfortable telling us their stories.

10 17. Once we know the facts of a child's story, we must assemble them and
11 the appropriate evidence into cognizable claims for relief. When pursuing asylum
12 through the affirmative procedure authorized by the TVPRA, we file a paper form I-
13 589 via mail with USCIS. USCIS generally sends a receipt notice unless the
14 application is rejected. If we receive a rejection notice, we correct any alleged
15 deficiencies with the filing and re-file the application. Once received, USCIS
16 transfers the case to the local asylum office. USCIS asylum interview scheduling
17 policies lead to some interviews being scheduled within 30 days, but the majority are
18 scheduled within two to five years. Once the interview is scheduled, we submit
19 additional evidence and meet with the child two to five times to prepare the child for
20 the interview.

21 18. ImmDef spends on average 40–47 hours preparing a full TVPRA-
22 asylum filing. That time includes record requests and initial meetings with the child;
23 filling out an I-589 application to file with USCIS; preparing a declaration, brief, and
24 country conditions evidence; and preparing for and attending an asylum interview.
25 This work is often spread out over years both because developing a relationship with
26 a child who has experienced trauma takes time, and because of the USCIS asylum
27 interview scheduling policy referenced above.

28 19. Prior to MPP, ImmDef's service model succeeded due in large part to

1 the predictability associated with unaccompanied children's cases. We could expect
2 the Government to provide us with accurate and complete information about the
3 status of our clients' proceedings. We could expect ORR to process children for
4 release to a sponsor without unreasonable delay. We could expect that our clients
5 would generally be eligible for TVPRA asylum and/or SIJS, and that we would have
6 the time we needed to build relationships with our clients and then prepare
7 applications for these forms of relief. We could expect that neither our newly arrived
8 clients nor other children in ORR custody would face immediate deportation because
9 they would first be entitled to full removal proceedings as required by the TVPRA.
10 In short, we relied upon the Government's adherence to the TVPRA to sustain a
11 practice that successfully served a large number of unaccompanied children. Those
12 expectations were undermined by the Government's treatment of unaccompanied
13 children with ties to MPP.

14 **II. Observations Regarding Defendants' Treatment of Unaccompanied
15 Children with Ties to MPP**

16 20. In January 2019, the Trump Administration implemented the Migrant
17 Protection Protocols ("MPP") requiring asylum seekers to remain on the Mexican
18 side of the United States' Southern border while litigating their immigration cases.

19 21. MPP has had particularly grave consequences for children. The story of
20 ImmDef client A. Doe is illustrative. When he was eleven years old, A. Doe and his
21 mother fled from Honduras in July 2019 after a gang physically abused, intimidated,
22 and threatened A. Doe with death. While traveling through Mexico en route to the
23 United States, A. Doe and his mother were kidnapped and held for ransom. They
24 were imprisoned for several days until they escaped while their kidnappers were too
25 intoxicated to stop them. Once A. Doe and his mother reached the border, they were
26 subjected to MPP and sent back to Matamoros, Mexico to await a hearing. They
27 faced dangerous conditions and struggled to find food and shelter while in
28 Matamoros, and they had no access to counsel who could represent them in their

1 immigration proceedings.

2 22. A. Doe and his mother appeared alone, without counsel, for a video
3 teleconference (“VTC”) hearing in September 2019. They were given asylum
4 applications, which they filed separately during their second hearing in October.
5 During that hearing, they requested a nonrefoulement interview, but there is no record
6 of the outcome of that request.

7 23. At their merits hearing in January 2020, A. Doe was not allowed to
8 testify to the threats and abuse he experienced at the hands of the gang. Instead, the
9 judge treated him as a derivative to his mother’s asylum application and ignored his
10 separate application for asylum. The judge ordered them removed. Knowing that
11 she would be unable to protect him from violence in Honduras or Matamoros, A.
12 Doe’s mother made the unimaginably difficult decision to send her son across the
13 border alone in the hopes that he would be reunited with his grandfather.

14 24. We began seeing many children with experiences like A. Doe’s arriving
15 in Los Angeles ORR facilities starting in Fall 2019. Initially, we were unsure whether
16 the children we were screening had been formally processed under MPP. Many
17 unaccompanied children described hearings or other experiences that we thought
18 indicated that they had been in MPP before they entered unaccompanied. However,
19 when we looked up their A-numbers in the online EOIR portal, we could not find any
20 MPP case information. Either EOIR was not consistently entering MPP case
21 information into its system, or DHS was issuing these children new A-numbers when
22 they entered unaccompanied. In any event, the Government’s handling of these cases
23 made it difficult for us to connect unaccompanied children to their former MPP
24 proceedings.

25 25. Compounding this problem, ImmDef observed inconsistent NTA
26 practices with respect to our unaccompanied child clients who had prior ties to MPP
27 (“MPP-unaccompanied children”). In some cases, we had access only to MPP-
28 NTAs, which the children received when they were processed into MPP with their

1 parents; in others, we only had access to the NTAs issued to them upon their
2 unaccompanied child designation (“TVPRA-NTA”), which reflected their recent
3 entry into the United States as unaccompanied children.

4 26. The cumulative effect of these inconsistent practices was that ImmDef
5 did not immediately realize that children could be coming into custody with prior
6 MPP proceedings and, in some instances, with upcoming MPP hearings scheduled or
7 with outstanding MPP removal orders.

8 27. Once we discovered MPP-unaccompanied children with MPP removal
9 orders entered against them, we scrambled to enter representation, irrespective of
10 whether the children fit one of our five representation criteria. We feared that if we
11 did not act, the Government would try to deport children with MPP removal orders.
12 These fears were later confirmed by ICE’s Office of Principal Legal Advisor
13 (“OPLA”) attorney who made it clear to me that the Government intended to remove
14 children with MPP removal orders unless those removal orders were subject to
15 pending appeals or motions to reopen.

16 28. We knew that unaccompanied children with MPP removal orders were
17 not the only ones in danger. Unaccompanied children with pending MPP proceedings
18 were at risk of being ordered removed *in absentia* by MPP Immigration Judges
19 because the Government failed to notify the MPP immigration courts that these
20 children were in ORR custody in Los Angeles and therefore that venue should be
21 transferred.

22 29. To illustrate, ImmDef has had three unaccompanied child clients who
23 were ordered removed *in absentia* by MPP judges *while they were in ORR custody*.
24 Two were siblings who were ordered removed by a Texas MPP judge in October
25 2019 *after* they had been placed into ORR custody in California. We immediately
26 initiated representation with them to file a Motion to Reopen once we learned of the
27 *in absentia* order. ORR did not appear to be aware of the *in absentia* order either,
28 and reunified the siblings with a sponsor outside of our service area shortly after

1 ImmDef learned of the order. Luckily, the siblings obtained pro bono counsel in their
2 release location and were able to have their proceedings reopened. The third child
3 was ordered removed by an MPP judge in Texas one day after the child arrived at the
4 California facility in February 2020, before we had even met her for the first time.

5 30. The lack of consistency around NTA practices has made it difficult even
6 to know where to begin. For example, ImmDef met siblings sixteen-year-old C.G.G.
7 and twelve-year-old B.G.G. in an ORR shelter. These siblings presented at the border
8 after being separated from and unable to find their mother in an MPP camp. They
9 did not have NTAs reflecting their most recent entry to the United States as
10 unaccompanied children, so we did not know when and where the siblings entered
11 the United States, what type of proceedings they had been placed in, and whether
12 they were eligible for voluntary departure. C.G.G. and B.G.G. told us they thought
13 they were scheduled for an upcoming MPP hearing. Because C.G.G. and B.G.G. had
14 no TVPRA NTAs, we did not know when and where the siblings entered the United
15 States, what type of proceedings they had been placed in, and whether they were
16 eligible for voluntary departure. Moreover, there was no upcoming hearing date for
17 them reflected in the EOIR public information system. Concerned that the siblings
18 could have pending MPP proceedings and be at risk of *in absentia* removal by an
19 MPP immigration court, ImmDef reached out to OPLA and requested that the
20 children's cases be severed from their mother's presumed MPP case, and that venue
21 be changed to Los Angeles. When OPLA failed to provide responsive information,
22 ImmDef followed up, asking OPLA to shed light on the procedural posture of the
23 siblings' case. OPLA then replied that EOIR had not processed the children's MPP
24 NTAs and that new ones would need to be issued and filed. This type of confusion
25 makes it difficult for us to make informed decisions about how to represent MPP-
26 unaccompanied children, and it is something we never had to deal with for other
27 unaccompanied children because we know they will be given access to TVPRA
28 rights.

1 31. Since the implementation of MPP, ERO has threatened to remove
2 unaccompanied children based on MPP removal orders; ORR has delayed or
3 threatened to delay unaccompanied children's reunification with sponsors; and
4 USCIS has rejected asylum applications filed on behalf of unaccompanied children
5 with ties to MPP, all in violation of the TVPRA. In response, ImmDef has been
6 forced to reconfigure its practice—first, to simply figure out which unaccompanied
7 children the Government's practices are impacting and how; and then to develop
8 strategies to advocate for MPP-unaccompanied children in situations we never
9 anticipated. To address the list of consequential problems created by the
10 Government's failure to ensure MPP-unaccompanied children access to their rights
11 under the TVPRA, ImmDef has been forced to change its model of representation at
12 every stage from screening through appeals.

13 **III. Defendants' Prosecution of Unaccompanied Children Under MPP**
14 **Required Major Changes to ImmDef's Practice**

15 32. To identify and represent children with MPP proceedings who entered
16 the United States as unaccompanied children, ImmDef implemented the following
17 changes to its practice:

18 **A. Changes to Screening and Intake**

19 33. We had to significantly speed up our intake process because MPP-
20 unaccompanied children are in danger of being ordered removed or actually deported.
21 Because of these risks, we must quickly determine the procedural posture of each
22 child's case and intervene as appropriate—whether by informally advocating with
23 DHS or by entering our appearance and filing motions on the child's behalf, as
24 described below. As such, we had to develop and train staff to implement an
25 expanded legal screening and intake process that now includes additional questions
26 and follow-up investigation.

27 34. First, DYEP asks each child MPP-specific questions to help us unravel
28 whether a child was previously in MPP. Those questions add an additional two to

1 ten minutes to each child's screening. For example, during our most recent month of
2 reporting, from April 2, 2021 to May 2, 2021, that meant an additional two to ten
3 minutes for each of the 274 unaccompanied children DYEP screened.

4 35. Second, if we suspect a child may have ties to MPP, DYEP checks the
5 case processing information available from EOIR. DYEP runs the child's A-number
6 and adjacent A-numbers (because family members subjected to MPP are often
7 assigned consecutive A-numbers) through EOIR's system. This adds roughly five
8 minutes per case. When DYEP staff are screening hundreds of children per month,
9 that additional time adds up quickly.

10 **B. Additional Investigative Work, Including Contact with Parents**

11 36. If, based on the initial screening and EOIR case information, the child
12 may have been in MPP, ImmDef attempts to gather information about their
13 proceedings from other sources.

14 37. In MPP and non-MPP cases alike, ImmDef coordinates with parents to
15 develop the evidentiary record, give parents notice of state court SIJS-related
16 proceedings, and more. If a child has prior MPP proceedings, this coordination is
17 critical not just to advocating for the child's prospective relief, but also because we
18 need to determine what happened during the MPP case and whether we need to
19 represent the child in those proceedings. Our clients are often too young, and the
20 MPP proceedings too confusing, for them to understand.

21 38. But unlike other unaccompanied children, whose parents are either in
22 the United States or their home country, MPP-unaccompanied children's parents are
23 difficult to reach because they are in Mexico with no permanent address, no social
24 network, and very little ability to communicate. When we are able to speak with
25 them, they are often in public spaces and are therefore unable to answer sensitive
26 questions in detail. Contacting them is thus more important and more onerous work
27 for CRP staff, requiring multiple phone calls sometimes from multiple staff.

28 39. When these efforts do not yield complete information, we submit FOIA

1 requests, which are not a routine part of our unaccompanied child practice. This type
2 of investigative work is necessary in part because ImmDef attorneys cannot review
3 children's EOIR files in person, which, as far as we know, remain in Texas or San
4 Diego attached to their parents' cases, and have faced difficulties getting information
5 about MPP proceedings. For example, I requested the Digital Audio Recordings
6 ("DAR") of a client's MPP removal proceedings using the method EOIR requested
7 in anticipation of a Board of Immigration Appeals ("BIA") appeal, but EOIR never
8 responded.

9 **C. Immediate Representation of Children with Removal Orders**

10 40. ERO has threatened to remove unaccompanied children with MPP
11 removal orders, so once we identify an MPP-unaccompanied child case, we must
12 immediately determine whether the child was ordered removed by the MPP
13 immigration court. ImmDef staff do this by checking the online EOIR portal and
14 seeking further information from the ORR case manager or the ICE Field Office
15 Juvenile Coordinator ("FOJC") assigned to the child's case. If the child has an MPP
16 removal order, ImmDef immediately meets with the child to get representation
17 documents signed. Then we file a form E-28 with the immigration court or an E-27
18 with the BIA to ensure we enter representation as soon as possible so we can file
19 motions and appeals or otherwise advocate to prevent removal.

20 41. Many of these children do not fall into our standard representation
21 categories, and therefore we would not usually offer to represent them. But because
22 these children face the threat of imminent deportation, ImmDef now represents all
23 MPP-unaccompanied children with removal orders as a matter of policy. As
24 described below, once we initiate representation, ImmDef must quickly prepare
25 motions to reopen and, where possible, appeals to prevent the Government from
26 executing their removal orders.

27
28

1 **D. Motions to Reopen and BIA Appeals Related to MPP Removal
2 Orders**

3 42. As OPLA made clear, an unaccompanied child's best hope of protection
4 from deportation is litigation—motions to reopen or appeals filed with the BIA.
5 These motions and appeals must be filed quickly to prevent ERO from enforcing
6 removal orders and to make sure our clients are released from ORR custody without
7 delay, as discussed in sub-section I, below. If proceedings are reopened, the child
8 will have a chance to present his or her claims the way the TVPRA intended.

9 43. Because the stakes are so high, we must move quickly. Shortly after
10 screening a child for relief and discovering his or her ties to MPP, we enter our
11 appearance and begin preparing the motion to reopen or remand and, if within the
12 appeal period window, the notice of intent to appeal. While we prepare the briefing,
13 we closely monitor the child's release status and court hearing schedule—checking
14 frequently for any updates. We gather declarations from family members and other
15 evidence to attach as evidence with our motions. These time-sensitive, substantive
16 motions and appeals require hours or days of staff time and must be filed as quickly
17 as possible, so ImmDef attorneys and support staff must deprioritize all other
18 unaccompanied child clients to work on MPP-unaccompanied child cases.

19 44. So far, ImmDef has represented three children with *in absentia* MPP
20 removal orders for whom we prepared motions to reopen. We initially discovered
21 their removal orders only by checking the EOIR hotline. If we had not incorporated
22 this step into our intake and case preparation practice, we may not have discovered
23 all of these children's removal orders because no federal agency has any systematic
24 policy or practice of informing legal service providers like ImmDef about extant
25 removal orders.

26 45. After discovering these orders, ImmDef attorneys scrambled to draft
27 motions to reopen based on changed or extraordinary circumstances, insufficient
28 notice, presence in ORR custody, and, in the alternative, the court's *sua sponte*

1 authority to reopen. ImmDef staff simultaneously had to gather supporting evidence,
2 such as verification that the child had been in ORR custody at the time of the hearing
3 at which the judge ordered removal *in absentia*, declarations and news articles
4 demonstrating that an MPP hearing had been cancelled due to a protest, or court and
5 DHS documents from parents in MPP.

6 46. In one case, this whole process started when an ORR-subcontracted case
7 manager forwarded me a copy of a removal order for one of my clients, M. Doe. I
8 was confused, because we had no other evidence that M. Doe had been ordered
9 removed by an MPP Immigration Judge. I re-checked the EOIR portal, and it still
10 listed his case as pending, which means no decision has been made. I made multiple
11 attempts to contact the FOJC and OPLA to clarify the procedural posture of M. Doe's
12 case. When I finally learned that M. Doe had, in fact, been ordered removed *in
13 absentia* by an MPP immigration Judge, and was in danger of being removed, I
14 immediately worked with my paralegal to prepare a motion to reopen. I drove to the
15 ORR facility where he was in custody to prepare a declaration with him. Then I
16 contacted his father who remained in MPP in Mexico to get a declaration. My
17 paralegal had to work with M. Doe's father to get a signature page, which was
18 logistically difficult given the lack of technology available in the MPP tent
19 encampment where he was residing. I drafted the motion, assembled the exhibits,
20 and filed it one week after we first learned that he was at risk of removal. None of
21 this is part of my regular practice—if I had not needed to address M. Doe's
22 emergency situation, I would have spent most of that time supervising staff attorneys,
23 providing guidance as they help other unaccompanied children apply for TVPRA
24 asylum and SIJS.

25 47. ImmDef has also represented three children who were ordered removed
26 on the merits in their MPP proceedings. For two of them we filed notices of intent
27 to appeal with the BIA; the third's notice of intent to appeal was filed *pro se* with the
28 help of a volunteer attorney in Mexico. In the third case, the child's mother knew

1 only the first name of the volunteer, so I had to put out multiple calls to volunteer
2 networks to find out who had assisted her and obtain a copy of the *pro se* Notice of
3 Intent to Appeal. Through a stroke of sheer luck, I was able to locate the volunteer,
4 who sent me a copy of the conformed notice, which I provided to the FOJC to prevent
5 his removal. One of the three children was expected to reunify with his father in
6 Texas, and another was expected to reunify with family in Northern California, so
7 we would not have initiated representation with those two children if they had not
8 been in danger of immediate deportation due to their MPP removal orders. We
9 researched, wrote, and filed the appeal briefs for two of the three children; another
10 legal services provider represented the third on appeal after he reunified with his
11 sponsor and we transferred his case.

12 48. In one child's case—six-year-old J. Doe—ImmDef staff spent more than
13 eighty hours over eleven days drafting an appeal brief and a motion to remand.
14 Because the MPP court had treated J. Doe as a derivative to his mother's application
15 for relief, ImmDef appealed the MPP removal order and filed a motion to remand
16 arguing J. Doe's eligibility to seek asylum independently. The BIA failed to timely
17 send the transcript of the MPP hearing to ImmDef or J. Doe, so we were forced to try
18 to reconstruct the record through interviews with J. Doe and his parents. Eventually,
19 in response to our request, DHS counsel provided a courtesy copy of the transcript,
20 which we used to write our brief. J. Doe's appeal and motion to remand was denied
21 by the BIA on April 19, 2021 in an opinion that primarily discussed his mother's
22 claim. We immediately reached out to OPLA attorneys to determine whether they
23 would join a motion to reopen, which is now pending before the BIA. These efforts
24 would not have been necessary if J. Doe had been treated like all other
25 unaccompanied children and accorded his rights under the TVPRA.

26 **E. Additional Monitoring and Informal Advocacy to Protect Children
27 Without Removal Orders**

28 49. As explained above, children with prior MPP proceedings who arrive at

1 ORR facilities *without* removal orders are in danger, too. They can be ordered
2 removed *in absentia* by MPP judges if motions to sever (asking the immigration court
3 to separate the child's case from their parent's) and change venue (asking the child's
4 case to be transferred from the MPP location to the jurisdiction where the child is
5 located) are not filed in their cases. The Government had not been filing these
6 motions, and as a result, some of ImmDef's clients were ordered removed while in
7 ORR custody before ImmDef could intervene.

8 50. When we raised this issue with the Government, OPLA requested that
9 we flag children with upcoming MPP hearings for them so they could try to prevent
10 *in absentia* orders from being issued to children in ORR custody. This suggested
11 there were no systems in place to ensure unaccompanied children were not ordered
12 removed by MPP courts while they were in Los Angeles area ORR facilities.

13 51. Initially, we had been advocating for MPP-unaccompanied children
14 without removal orders by initiating representation for each of them and preparing to
15 file motions to sever and change venue. But after OPLA suggested the informal
16 information-sharing agreement described above, we immediately developed a system
17 to flag unaccompanied children with ongoing MPP proceedings for OPLA so OPLA
18 could notify their counterparts in the MPP courts that the minor was in ORR custody
19 and that a change of venue was appropriate. That way, we could avoid the problems
20 created by entering representation for children reunifying outside of our service area.
21 Since then, ImmDef has been collecting data on and monitoring *all* cases of
22 unaccompanied children at Los Angeles-area ORR facilities to ensure we catch all
23 MPP-unaccompanied children because the Government does not have any system in
24 place to identify them and ensure their TVPRA rights are protected.

25 52. Based on data from its screening and intake process, ImmDef determines
26 which children were previously in MPP and continuously keeps tabs on their
27 proceedings. CRP and DYEP staff and leadership check the EOIR portal and seek
28 clarification from the relevant OPLA offices, taking note of any upcoming hearing

1 dates, existing removal orders, and any indication that DHS intends to execute a
2 removal order. ImmDef then compiles a list of children with MPP ties that includes
3 the child's name, A-number, next court date, and current location (i.e. ORR facility).
4 We regularly send that list to OPLA Los Angeles to flag cases for motions to sever
5 and motions to change venue. This work takes several hours per week because, in
6 addition to tracking these cases and frequently following up with OPLA, it also
7 requires an additional five to fifteen minute attorney consultation for each child with
8 upcoming MPP proceedings so that we can explain the consequences of moving to
9 sever and change venue, as well as obtain the children's consent to share their
10 information with OPLA.

11 53. Fortunately, OPLA attorneys have been amenable to helping prevent *in*
12 *absentia* removals for unaccompanied children once we flag them. However they
13 still lack an official policy, which means we have no assurance of what they will
14 ultimately decide in a given MPP-unaccompanied child's case. To my knowledge,
15 our informal arrangement with OPLA has prevented *in absentia* MPP removal orders
16 in 100% of the cases ImmDef has been involved in since its implementation.

17 **F. Correspondence with OPLA, ICE, and ORR**

18 54. On top of ImmDef's regular correspondence with OPLA about children
19 flagged for motions to sever and change venue (including children we do not
20 represent because they are reuniting outside our geographic service area), ImmDef
21 advocates with FOJCs. I emailed the FOJC several times to argue that clients with
22 MPP removal orders should not be removed and instead the Government should issue
23 and file NTAs reflecting the child's most recent entry and unaccompanied child
24 designation for them.

25 55. I also spoke with an OPLA attorney to discuss how the Government was
26 treating children with MPP removal orders. They were clear that they considered an
27 MPP removal order one that should be effectuated, unless there was a pending BIA
28 appeal or motion to reopen.

1 56. Additionally, our staff attorneys regularly field questions from case
2 managers at ORR facilities where clients are in custody regarding the effect of MPP
3 proceedings. Case managers often want to know the status of the client's MPP
4 proceedings, figure out how they should handle pending MPP proceedings, or discuss
5 the effect of a removal order on a child's reunification and the likelihood the child
6 will be removed.

7 **G. Motions to Sever and Motions to Change Venue**

8 57. Because MPP-unaccompanied children have immigration cases
9 associated with the MPP courts established along the border, it is necessary for
10 ImmDef to file (i) motions to sever our clients' proceedings from their parents'
11 proceedings, and (ii) motions to change venue when the Government fails to move
12 their proceedings from Texas or San Diego to Los Angeles, where they are in ORR
13 custody. These motions were not part of ImmDef's unaccompanied child practice
14 prior to MPP and are likely responsible for the largest single diversion of time for
15 most ImmDef staff attorneys. As the attorneys of record for these children, it would
16 not have been appropriate to rely on a handshake agreement with OPLA as the only
17 defense against an *in absentia* removal order, so we did not use the above-described
18 informal information sharing protocol for these clients.

19 58. Each ImmDef staff attorney faced a learning curve in representing MPP-
20 unaccompanied children with pending MPP proceedings. They were drafting
21 motions they had never drafted before, which required them to investigate clients'
22 prior MPP proceedings by contacting their parents in Mexico. They were filing in
23 jurisdictions they had never filed in before, which required them to spend time
24 figuring out which of the many MPP courts a child's case was docketed with and
25 where the motion should be filed—whether with the clerk of the MPP court or with
26 an Immigration Judge appearing VTC from another location. And once filed,
27 attorneys had to repeatedly check back to see if the Immigration Judge had ruled.

28 59. In many cases, motions were not ruled upon in a timely manner.

1 Accordingly, ImmDef attorneys were forced to repeatedly check the status of motions
2 and be ready to file motions to appear telephonically if hearings went forward before
3 a change of venue was granted.

4 **H. Coordination with Out-of-Jurisdiction Immigration Courts**

5 60. Also, because MPP-unaccompanied children have immigration cases
6 associated with the MPP courts established along the border, it is necessary for
7 ImmDef attorneys to correspond with ICE's OPLA attorneys and court staff at the
8 Harlingen and San Diego Immigration Courts regarding those children's MPP cases.
9 Because ImmDef does not normally practice in these courts and had no preexisting
10 relationships with the federal personnel in those venues before MPP, even basic
11 communications about a child's pending matter have required significantly more
12 effort from ImmDef staff. For example, staff attorneys have struggled to figure out
13 exactly where to file motions because a child's MPP case may be venued at a tent
14 court in Brownsville but be heard by an Immigration Judge who appears via VTC
15 from another city. ImmDef's lack of familiarity with these and other local practices
16 means attorneys have to invest more time researching the appropriate steps and
17 following up when those steps prove unsuccessful.

18 **I. Release Advocacy**

19 61. ORR has delayed or threatened to delay reunification for children with
20 MPP proceedings, so now ImmDef must intervene on behalf of MPP-unaccompanied
21 children to advocate for their release from ORR custody—including for children with
22 sponsors outside our service area whom we would not otherwise represent. We
23 initiate representation with or informally advocate on behalf of these children to help
24 them navigate whatever legal hurdles ICE has placed between them and their release
25 to an approved sponsor. In several cases, this has meant filing motions with the BIA
26 so ORR would release our client to the approved sponsor.

27 62. For example, in November 2019, an ORR case manager advised us that
28 one unaccompanied child client could not be reunified with her sponsor until her MPP

1 proceedings were resolved, and that the ORR Federal Field Specialist (“FFS”) had
2 advised the case manager to seek our assistance. We reached out to OPLA to
3 coordinate the filing of a motion to change venue. I informed ORR that OPLA had
4 filed the motion to change venue, and ORR finally approved reunification.

5 63. In another case in April 2020, an ICE FOJC advised ImmDef that an
6 MPP-unaccompanied child could not be reunified because her MPP proceedings had
7 been terminated and DHS had appealed the termination. The FOJC stated that the
8 child’s proceedings would need to be remanded to the Immigration Judge in order
9 for her release to move forward. Our staff began drafting such a motion while
10 continuing to advocate with OPLA, as well as the FFS and the ORR case manager
11 assigned to the child’s case. Although the child was ultimately released without our
12 having to file the motion, it took 10 hours of additional effort to prepare the motion,
13 consult with colleagues, and send multiple e-mails to OPLA and the case manager—
14 just to achieve the result mandated by the TVPRA.

15 64. In other cases, reunification advocacy for MPP-unaccompanied children
16 has required filing motions to reopen or BIA appeals of MPP removal orders so ICE
17 would consent to their release. These are substantive merits motions that can require
18 anywhere from 5 to 80 hours of intensive attorney time to prepare, depending on the
19 complexity of the case.

20 65. For example, in early 2020 we screened five children who were at risk
21 of removal based on MPP removal orders. Even though we expected three of them
22 to reunify outside our service area, we nevertheless initiated representation because
23 they were at risk of being removed. Two of the children had *in absentia* removal
24 orders; the other three had been ordered removed on the merits, but the orders were
25 not final yet.

26 66. In one early case, the ICE FOJC advised he would not allow for the
27 reunification of children with MPP removal orders, and instead intended to remove
28 them unless their removal orders were quickly reopened. ImmDef argued that the

1 children should all be placed in new INA section 240 proceedings pursuant to the
2 TVPRA, but received no response. Thus, to secure their release to their sponsors,
3 ImmDef had to prepare motions to reopen and notices of intent to appeal. First, I had
4 to make appointments to see my three- and six-year-old clients at the ORR facility
5 where they were in custody. I drove to the ORR facility so I could meet with them
6 and prepare a declaration in support of a fee waiver request—which we needed to file
7 with the notice of intent to appeal—for the six-year-old. Second, my paralegal helped
8 me reach out to both children’s parents in MPP and coordinate getting copies of any
9 documents related to their cases they had. Third, we drafted declarations for the
10 parents in support of the motion, which meant getting signature pages from Mexico.
11 Finally, I drafted the motion, attached the exhibits, prepared the notice of intent to
12 appeal, and then filed. In total, I spent around 27 hours preparing these two filings.
13 It was only when we were able to provide evidence of these pending motions to ICE
14 and ORR that our clients were finally released and reunified with sponsors.

15 67. Conversely, in one case, staff at an ORR shelter informed me that they
16 were seeking to reunify three Salvadoran siblings with their father, who was enrolled
17 in MPP in Mexico. I dropped everything to drive to the shelter and interview the
18 three children to figure out their wishes so I could advocate for them appropriately.
19 Afterward, I spoke to the FFS and secured assurances that they would not be
20 attempting to send the children to Mexico.

21 **J. Increased Burden on Staff**

22 68. Screening, investigating, and collecting data creates significantly more
23 work for our DYEP team.

24 69. A full CRP attorney caseload is 50 to 70 clients. These caseloads are
25 manageable under normal circumstances but are not sustainable when cases demand
26 the specialized attention required in MPP-unaccompanied child cases. Our CRP
27 attorneys do not have the time or resources to devote long stretches of time to a single
28 client without prejudicing other unaccompanied children they represent.

1 70. I have absorbed some of the burden imposed by the representation work
2 MPP-unaccompanied children require. Since becoming a managing attorney, and
3 later a directing attorney, I have rarely taken on new unaccompanied child cases,
4 except if a staff attorney resigned and I needed to absorb some of their caseload until
5 we could hire their replacement. Instead, I devoted my time to my existing clients,
6 participating in programmatic decision-making, and to supervising staff attorneys.
7 But during MPP, I shared the responsibilities of monitoring MPP-unaccompanied
8 children's cases with another attorney, Cynthia Felix. Every time we found a child
9 with an MPP removal order, I personally represented the child because Ms. Felix had
10 no additional capacity given her heightened responsibilities tracking and monitoring
11 the cases of unaccompanied children with open MPP proceedings.

12 71. Taking on these extra cases means I have to work longer and less
13 predictable hours. I worked through the only two vacations I have taken in the past
14 18 months—a family reunion in Maine and a short trip to Zion National Park—to
15 address emergent issues for MPP-unaccompanied children. These types of
16 emergencies rarely arise in other unaccompanied children's cases, which are much
17 more predictable because of the TVPRA's guarantees.

18 **K. Research and Training Related to Novel Legal Issues and
19 Procedural Postures**

20 72. My team and I do additional research to address new issues that arise
21 because we are representing children with prior MPP proceedings. For example, one
22 MPP child wanted voluntary departure to Mexico where the child's mother was in
23 MPP. Usually an unaccompanied child would be repatriated to his or her home
24 country, and not to a third country where neither the child nor his or her family have
25 status. We had to investigate the options for this child and advocate for them
26 accordingly. When a new issue arises, I often spend hours trying to figure out what
27 to do or how to advise staff to move forward.

28 73. I frequently share what I learn about MPP with our staff during program-

1 wide and one-on-one meetings. Much of this informal training addresses the unique
2 procedural aspects of MPP cases as applied to our unaccompanied child clients, as
3 we discover the myriad ways in which the Government continues to deny
4 unaccompanied children access to TVPRA rights based on prior MPP proceedings.

5 74. I have also assisted in preparing and presenting hours of formal trainings
6 offered to our staff and other LSPs on best practices for working with MPP-
7 unaccompanied child clients.

8 **L. Postponing Applications for Relief**

9 75. Any time ImmDef screens a child who has prior MPP proceedings,
10 especially if they were ordered removed, we immediately have to prioritize their case
11 over all the others on our dockets. We must postpone filing relief applications for
12 other clients to focus on advocacy on behalf of our MPP clients to ensure they are
13 not deported before we can apply for relief on their behalf.

14 **IV. Effect of Changes to MPP and Title 42**

15 76. Recent changes have increased the strain that representing MPP-
16 unaccompanied children places on our staff. For much of 2020, ImmDef was seeing
17 fewer overall cases of unaccompanied children coming into Los Angeles area shelters
18 because the Trump Administration expelled unaccompanied children under “Title
19 42,” an order issued by the Centers for Disease Control that allows the U.S.
20 government to “expel” asylum seekers in connection with the COVID-19 pandemic.
21 A federal district court order ruling this practice unlawful, and the Biden
22 Administration’s long-awaited decisions to stop enforcing Title 42 against
23 unaccompanied children, have increased the number of unaccompanied children
24 entering the United States.

25 77. Since inauguration, ImmDef has seen a three-to-four-fold increase in
26 unaccompanied children coming into the ORR shelters we serve. Some of these
27 children were previously subject to MPP, and as a result, all must be screened for
28 MPP ties. This increase is further straining CRP’s limited resources. The CRP

1 representation model was designed to sustainably serve the current number of non-
2 MPP-unaccompanied child clients but cannot handle the extreme demands of MPP-
3 unaccompanied child cases.

4 78. ImmDef continues to expend significant resources to identify MPP-
5 unaccompanied children and to represent those children with MPP removal orders.
6 For example, twelve-year-old J.O.O. fled her home with her mother after her father,
7 a police officer, was “disappeared” by fellow officers working with cartels. When
8 J.O.O. and her mother reached the U.S. border, they were enrolled in MPP. J.O.O.’s
9 mother filed an I-589 application with the Harlingen immigration court, but the MPP
10 Immigration Judge denied the application and ordered her and her daughter removed.
11 Shortly thereafter, in February 2020, J.O.O. entered the United States as an
12 unaccompanied child. She was transferred to an ORR shelter in New York and
13 provided an attorney. By the time her attorney discovered her MPP removal order,
14 the appeal period had run, rendering the removal order “final.” As such, New York
15 counsel began preparing a motion to reopen. New York City was then the global
16 epicenter of the COVID-19 pandemic, and everyday life had come to a halt.
17 Establishing a trusting, confidential relationship with a child who has experienced
18 the type of trauma J.O.O. has suffered—first losing her father, then struggling to
19 survive in the Matamoros camps, then being separated from her mother for the first
20 time—requires many in-person meetings. But J.O.O. and her attorney could not meet
21 in person. Adding to these difficulties, J.O.O. eventually contracted COVID-19. Her
22 attorney prepared and filed an I-589 application and a motion to reopen, which he
23 filed with USCIS and EOIR, respectively. The Immigration Judge denied her motion
24 to reopen, and USCIS denied her asylum application, saying her case had already
25 been decided because her MPP removal order was final.

26 79. ImmDef prepared and filed a notice of appeal of the Immigration Judge’s
27 order denying her motion to reopen after J.O.O. was released to a sponsor in Los
28 Angeles and ImmDef took on representation. ImmDef staff collectively spent 46

1 hours preparing a brief in support of J.O.O.'s motion to reopen appeal and filed it on
2 March 31, 2021. That same day, in response to ImmDef's inquiry, OPLA Harlingen
3 agreed to file a joint motion to reopen and thereafter withdrew its motion for summary
4 affirmation. J.O.O.'s case is pending before the BIA.

5 80. Even under the Biden administration, ImmDef continues to divert
6 resources and invest significant staff time in protecting unaccompanied children
7 because the federal government does not guarantee them access to their TVPRA
8 rights. And because our staff are facing additional burdens connected to the increased
9 number of unaccompanied children being processed into the United States, some of
10 whom have MPP ties, representing children with MPP ties is even less sustainable.

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 12 th day of May, 2021 in Riverside, California.

4 By _____
5

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