

DECLARATION OF CLAUDIA CUBAS

I, Claudia Cubas, declare under penalty of perjury as prescribed in 28 U.S.C. § 1746:

1. The facts contained in this declaration are known personally to me and, if called as a witness, I could and would testify competently thereto under oath. I submit this sworn declaration in support of Plaintiffs' Motion for Temporary Restraining Order.

2. I serve as the Litigation Director for the Capital Area Immigrants' Rights Coalition ("CAIR Coalition"), an organizational plaintiff in this action. Prior to serving as Litigation Director, I was the Senior Program Director for the Detained Adult Program at CAIR Coalition. I worked for CAIR Coalition since 2011. I manage and coordinate litigation across the organization, involving issues related to access to justice, detention, and eligibility for immigration relief for children and adults who are detained by U.S. Immigration and Customs Enforcement ("ICE").

3. CAIR Coalition is a 501(c)(3) nonprofit organization headquartered in Washington, D.C.

4. CAIR Coalition is the only organization dedicated to providing legal services to immigrant men, women, and children who are detained by ICE or the Office of Refugee Resettlement ("ORR") in Virginia and Maryland. CAIR Coalition strives to ensure equal justice for all migrant men, women, and children at risk of detention and deportation in the Washington, D.C. metropolitan area and beyond.

5. CAIR Coalition is comprised of three main programs: the Detained Adult Program, the Detained Children's Program, and the Immigration Impact Lab. The Detained Adult Program helps detained migrants learn to understand the Immigration Court and deportation process so they can make better-informed decisions about their cases. CAIR Coalition also represents detained clients and refers clients to pro bono attorneys if they are unable to pay counsel to represent them.

6. The Detained Adult Program has four main work components: (1) providing educational services in the form of “know your rights” presentations, conducting individual consultations (intakes), and conducting *pro se* workshops with unrepresented detained noncitizens in the custody of ICE at facilities located in Virginia and Maryland; (2) connecting unrepresented detained migrants who cannot afford a lawyer with pro bono attorneys from CAIR Coalition’s various pro bono partners; (3) representing detained immigrants found legally incompetent while appearing *pro se* before an immigration judge as part of the National Qualified Representative Program (“NQRP”); and, as the newest component, (4) providing in-house direct representation to indigent immigrants throughout the course of their removal proceedings.

7. The Detained Children’s Program has three main work components: (1) providing educational services in the form of “know your rights” presentations and conducting individual consultations (intakes) with unrepresented detained noncitizens in the custody of ORR at facilities located in Virginia and Maryland; (2) connecting unrepresented detained immigrants who cannot afford a lawyer with pro bono attorneys from CAIR Coalition’s various pro bono partners; and, (3) providing in-house direct legal representation to indigent immigrants throughout the course of their removal proceedings.

8. With respect to asylum, CAIR Coalition focuses on defensive asylum applications, as all of CAIR Coalition’s clients are in active removal proceedings.

9. Asylum applications represent a vital component of CAIR Coalition’s organizational mission and account for much of the services we provide to detained immigrants.

10. CAIR Coalition interacts with hundreds of immigrants seeking asylum who entered the U.S. at the southern border each year. Between January 1, 2018 and July 15, 2019, CAIR

Coalition conducted intakes for 434 adults and 1,318 children who reported being apprehended at the southern border or having lived outside the U.S. before they were apprehended.

11. Most of these individuals were from the Northern Triangle countries (Guatemala, Honduras, and El Salvador), not Mexico. For example, of the 2,991 adult intakes CAIR Coalition conducted between January 1, 2018 and July 15, 2019, 1,809 (60%) were for individuals from the Northern Triangle. Only 444 (15%) were for individuals from Mexico.

12. CAIR Coalition encounters even more children from the Northern Triangle. Of the 1,486 child intakes CAIR Coalition conducted between January 1, 2018 and July 15, 2019, 1,394 (94%) were for individuals from the Northern Triangle. Only 47 (3%) were for individuals from Mexico.

13. The New Interim Rules and caselaw issued by former Attorney General Sessions in 2017 and 2018 have made Special Immigrant Juvenile Status (“SIJS”) a more difficult path for children to seek as a means of relief from removal. Due to this, children with factual backgrounds that support both SIJS and asylum claims are now more apt to seek asylum or both forms of relief simultaneously, whereas in the past SIJS was more prevalent or the only identified form of relief.

14. Absent an injunction, the Interim Rule challenged in the Complaint, *see Asylum Eligibility and Procedural Modifications*, 84 Fed. Reg. 33,829 (July 16, 2019), would irreparably harm CAIR Coalition in multiple ways similar to the asylum rule issued in November 2018, including by frustrating CAIR Coalition’s mission to serve as many detained immigrants lawfully seeking asylum as possible. If fewer asylum seekers are able to reach the Washington, D.C. area, CAIR Coalition would face a drastic reduction in its client base.

15. The Interim Rule would also significantly limit the overall number of clients CAIR Coalition serves, whether or not those clients entered through the southern border after traveling

through a third country. Because CAIR Coalition must create costly new resources and procedures under the Interim Rule, it cannot serve as many individuals. The Interim Rule would put the organization in an impossible position: it must raise more funds to serve the same number of clients, or reduce the number of clients it serves to fit within the current budget.

16. CAIR Coalition would be forced to divert significant staff resources to analyzing and interpreting the Interim Rule, overhauling its client information database, and preparing new informational and advocacy materials.

17. Under the Interim Rule, CAIR Coalition must develop new materials and procedures for jail visits specifically for asylum seekers who crossed the southern border after traveling through a third country. Traditionally, CAIR Coalition provided one orientation for all detainees, regardless of how or where they entered the country. But under the Interim Rule, CAIR Coalition must prepare separate orientations for adult asylum seekers who traveled through another country before crossing the southern border to explain the different standard for their credible fear interview and the limited forms of relief available. CAIR Coalition would also need to prepare a new set of orientation materials for children asylum seekers who crossed the southern border after traveling through a third country and new methods to intake children to account for travel and potentially persecutory experiences in each country. This latter change in our process is very concerning as it already takes a significant amount of time to question a child about persecutory or torturous conduct experienced in home country, the country they most know, not to mention countries where children have stayed for a passing or fleeting period of time.

18. Under the Interim Rule, CAIR Coalition's staff would spend substantial resources identifying and sorting asylum seekers subject to the Interim Rule from other asylum seekers (i.e., those who entered outside of the southern border, those who did not travel through a third country,

those from Mexico, and those who entered prior to the effective date for the Interim Rule). Unlike organizations at the southern border who primarily serve clients who are detained after apprehension at the border, CAIR Coalition serves clients who are placed in detention following a variety of scenarios, including entering the country at the southern border, being apprehended in the interior of the United States, or entering the country at ports of entry at the three major international airports in the Washington, D.C. area.

19. CAIR Coalition also must develop materials for this new orientation, train its staff on the new orientation, exert double staff time to conduct two orientations rather than one for children and adults, and spend more staff time on the longer, more complicated dual orientations. Simply updating CAIR Coalition's client database to include information relevant to asylum eligibility under the Interim Rule, for example, would take between three to five days of a staff member's time.

20. With respect to adult immigrants, CAIR Coalition will incur significant expenditures of funds and staff time due to the Interim Rule.

21. CAIR Coalition also would expend more resources to prepare each adult asylum seeker who crossed the southern border after traveling through a third country for his or her credible fear interview. During the approximately 1,500 intake sessions for detained adults that CAIR Coalition conducts each year, a staff member traditionally spent about five to ten minutes with each adult eligible for such an interview preparing him or her for the credible fear interview process.

22. Following the Interim Rule, however, CAIR Coalition estimates that its staff would need to spend about double that time (ten to twenty minutes), at least, in order to prepare each adult asylum seeker subject to the Interim Rule for interviews. Under U.S. Citizenship and

Immigration Services (“USCIS”) guidance for the Interim Rule, asylum seekers subject to the Interim Rule effectively would need to meet the higher “reasonable fear” standard rather than the traditional “credible fear” standard to obtain relief. To prevail in a reasonable fear interview, an individual must show effectively at least a 51% chance—i.e., that they “more likely than not”—will be persecuted or tortured in their country of origin. In contrast, in a credible fear interview, an individual must show an approximately 10% chance—i.e., that they have a “well-founded fear”—of persecution or torture in their country of origin.

23. As a result of the heightened reasonable fear standard, each preparation session for an adult asylum seeker subject to the Interim Rule would take longer, whether to elicit and prepare more facts to satisfy the higher standard or related to follow-up interviews. It is much more difficult for migrants to receive a positive determination in a reasonable fear interview. It is our experience at CAIR Coalition that the heightened standard significantly alters the ability of immigrants to receive a positive outcome from an interview. During 2018, roughly 13% of credible fear interviews CAIR Coalition was involved with received a negative determination. Conversely, during the same time period 38% reasonable fear interviews CAIR Coalition was involved with received a negative determination—a three-fold increase.

24. The Interim Rule would cut in half the number of adults CAIR Coalition can prepare during each jail visit. CAIR Coalition cannot compensate for this loss; it has finite resources and permission to make jail visits only a few times a month.

25. CAIR Coalition’s staff would spend more resources during credible fear interviews for adult asylum seekers subject to the Interim Rule, too. For about eight years, CAIR Coalition has had a Memorandum of Understanding with U.S. Citizenship and Immigration Services (“USCIS”) permitting CAIR Coalition’s staff and volunteer attorneys to attend credible fear

interviews with clients. Prior to the Interim Rule, CAIR Coalition stopped sending staff and volunteers to attend credible fear interviews in person, because the vast majority of clients received positive determinations. Rather than spending limited staff and volunteer time attending interviews with clients who would be successful anyway, CAIR Coalition staff would review the transcripts from interviews with negative determinations to advise on further proceedings.

26. Now that the interviews will apply the higher reasonable fear standard under the Interim Rule, however, it is crucial that CAIR Coalition send staff and volunteer attorneys to as many interviews as possible to increase the likelihood that the person will pass. If CAIR Coalition staff members are busy attending these interviews, they would be unable to assist as many clients in trial proceedings under Section 240 of the Immigration and Nationality Act (“INA”) as is typical.

27. Given the increased burden of proof that would be required at interviews, CAIR Coalition also anticipates that it would not be able to staff interviews with legal assistants or law student volunteers, as it sometimes had in the past.

28. CAIR Coalition also would need to recreate its now-defunct volunteer program for attending credible fear interviews as a result of the higher standard under the Interim Rule. This program would require a dedicated staff member—either a new hire or a staff member reallocated from another already understaffed program—to recruit and train volunteer lawyers to sit in on credible fear interviews. CAIR Coalition already has discussed hiring another attorney or legal assistant to manage this program.

29. The heightened need for volunteer lawyers would have a ripple effect on the rest of CAIR Coalition’s programs. When volunteer attorneys are used for credible fear interviews, they would have less time available to volunteer for trial stage proceedings under INA Section 240 or

perhaps would not be in a position to volunteer for that subsequent representation at all. Because CAIR Coalition's organizational model relies on volunteer lawyers to represent clients in those trial stage proceedings, reduced volunteer capacity overall naturally reduces CAIR Coalition's capacity to represent as many clients as possible.

30. Reduced volunteer capacity also would divert resources from other of CAIR Coalition's initiatives, such as providing translations or conducting country conditions research.

31. The Interim Rule also would force CAIR Coalition to spend more time and resources on each child client, because all child cases would be time- and resource-intensive trial cases.

32. Children do not undergo credible fear interviews. Prior to the Interim Rule, children would undergo proceedings at the USCIS Asylum Office, meaning that despite being issued a Notice to Appear in Immigration Court, because under the Trafficking Victims Protection Reauthorization Act (TVPRA) children get an opportunity for an affirmative asylum interview to apply for asylum, unlike adults it is often the case most children's cases get adjudicated without having to go trial in immigration court . These USCIS asylum application proceedings for children are conducted as interviews with an asylum officer and are less adversarial than a full trial with an immigration judge. The interviews are not attended by counsel for DHS or the Department of Health and Human Services (which oversees ORR) advocating against the child, as occurs in immigration court trials. There is also no direct or cross-examination in asylum office interviews and no third-party witnesses. As such, asylum interviews for children require significantly less preparation time of CAIR Coalition staff than a hearing in front of an immigration judge in immigration court.

33. The Interim Rule, however, prevents asylum seekers who crossed the southern border after traveling through a third country, including children, from obtaining asylum. There thus would be nothing for the Asylum Office to adjudicate in terms of a child's asylum case; the case would move directly to trial at immigration court. This is because the Asylum Office does not have jurisdiction to grant a child (or any person), relief from removal in the form of Withholding of Removal under the INA or protection under the Convention against Torture, which are alternative forms of protective relief available to people when they are barred from asylum.

34. For each fear-based case of a child that CAIR Coalition works on, staff will need to now spend considerable hours preparing for a trial rather than an interview. Further, CAIR Coalition's staff members who work with unaccompanied minors would have less time to work on each child case, as the docket for detained children moves much faster than the timeframe at the Asylum Office.

35. CAIR Coalition must spend more time and resources on cases for mothers and their children as well. Each year, CAIR Coalition serves roughly 20 to 30 young mothers and their immigrant children who live in shelters. Many of these mothers would be found ineligible for asylum under the new Interim Rule, such that their children can no longer be counted as derivatives within a single asylum application. CAIR Coalition anticipates that it now would have to divert additional resources to preparing separate cases for each family member given the absence of derivative asylum eligibility, significantly increasing the total time that must be spent on each client family's case.

36. At the trial stage, CAIR Coalition's staff also would spend added time and resources on each case for asylum seekers subject to the Interim Rule to brief eligibility issues.

37. The Interim Rule also will jeopardize CAIR Coalition's already tight budget. If the organization places fewer asylum cases with volunteers at law firms, it is likely to receive fewer of the much-needed firm donations upon which it depends on for close to 12% of its annual budget. Much of CAIR Coalition's funding from law firm donations also is targeted to work on asylum cases; to the extent many clients are no longer eligible for asylum, CAIR Coalition expects that such donations could decrease.

38. Moreover, some of CAIR Coalition's funding is tied to the number of adult clients that the organization serves each year. At the Caroline County detention center, for example, CAIR Coalition receives funding to provide adults with jail visit services and immigration court representations. This funding is from an anonymous foundation that provides funding to serve a targeted number of detained adults each year. The more hours that each asylum seeker is going to require will reduce the overall numbers of people served, putting future funding in jeopardy. Indeed, because the Interim Rule reduces the number of clients CAIR Coalition will be able to serve in trial proceedings; it is unclear whether CAIR Coalition would be able to comply with its existing funding conditions tied to numbers of trial representations.

39. In sum, the Interim Rule would irreparably harm CAIR Coalition, including by frustrating its fundamental organizational mission to serve as many detained noncitizens as possible. CAIR Coalition would be unable to represent the same number of clients that it has traditionally, both because fewer clients would be eligible for asylum relief and because the organization would have to spend more of its limited resources on each individual case to apply for additional forms of relief such as withholding of removal of protection under the Convention Against Torture. The Interim Rule also would force CAIR Coalition to divert scarce resources

away from other important programs to compensate for the additional time, procedures, and staff required to continue serving clients under the Interim Rule.

40. The Interim Rule's lack of notice and comment procedures also irreparably compromised CAIR Coalition's ability to inform the Government of the substantial and irreparable harms—both to the organization and its clients—that the policy would create. Commenting on Interim Rules and regulations is an integral part of CAIR Coalition's mission to improve the lives of migrants in the Washington, D.C. area. Had CAIR Coalition been given the opportunity to comment on the Interim Rule, it would have done so.

41. The relief requested in Plaintiffs' Complaint would properly address the injuries to CAIR Coalition as described above. If Plaintiffs prevail in this action, CAIR Coalition would be able to devote its staff time and resources to more clients than if the Interim Rule were in effect.

42. CAIR Coalition has no plain, adequate, or complete remedy at law. It would suffer immediate and irreparable injury under the Interim Rule, if not enjoined.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: July 16, 2019

Washington, D.C.

A handwritten signature in black ink, appearing to read 'Claudia Cubas', written over a horizontal line.

Claudia Cubas