THE HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

NORTHWEST IMMIGRANT RIGHTS PROJECT ("NWIRP"), a nonprofit Washington public benefit corporation, *et al.*, Plaintiffs, v. JEFFERSON B. SESSIONS III, *et al.*, Defendants.	Case No. 2:17-cv-00716 **PROPOSED BRIEF OF IMMIGRANT LEGAL RIGHTS ORGANIZATIONS as AMICI CURIAE**

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I. INTEREST OF AMICI

Proposed amici are nonprofit organizations that provide free or low cost legal services to immigrants, often through or with affiliated entities. A full list of amici is set forth in Appendix A. The lead amicus is Catholic Legal Immigration Network, Inc. (CLINIC), the umbrella organization for a network of nearly 300 affiliates. *See* https://cliniclegal.org/directory (identifying affiliates). Amici, including many CLINIC affiliates, provide limited-scope legal services that could be implicated by a broad interpretation of the cease-and-desist letter at issue in this litigation. Amici believe the interpretation of the Executive Office for Immigration Review's (EOIR) regulations as expressed in the cease-and-desist letter, if enforced nationwide, will significantly impair their ability to provide assistance to immigrant communities and will diminish the quality of justice in immigration courts.

II. ARGUMENT

A. Immigrants face a crisis in access to legal representation

Approximately 570,000 cases are currently pending before the nation's immigration courts. *See* TRAC Immigration, Immigration Court Backlog Tool (available at http://trac.syr.edu/phptools/immigration/court_backlog/). In the current fiscal year some 267,000 new removal cases will be filed. *Id.*, New Filings Seeking Removal Orders (available at http://trac.syr.edu/phptools/immigration/charges/apprep_newfilings.php). At stake in these cases is the ability of a person, and sometimes a family, to remain in the United States. Respondents in removal proceedings can include green card holders who have lived in the United States for decades and established a family here; refugees who fled persecution in their home countries; and undocumented individuals detained at border crossings. In all these cases, access to legal representation is the single most important factor in determining outcome. *Id.*, Representation Makes Fourteen-Fold Difference in Outcome (available at http://trac.syr.edu/immigration/reports/396/). Without legal assistance, immigrants face nearly insurmountable barriers. Cultural and language differences, coupled with economic hardship and an unfamiliar and complex legal

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system, make it nearly impossible for most respondents to succeed without professional assistance. *Aris v. Mukasey*, 517 F.3d 595, 600 (2d Cir. 2008). Yet there is an acute shortage of attorneys willing and able to represent indigent immigrants. According to one study, only 14% of detained immigrants facing removal were able to secure representation. I. Eagly & S. Shafer, *A National Study of Access to Counsel in Immigration Court*, 164 U. PA. L. REV. 1, 2 (2015).

A day in any immigration court in America would be an enlightening experience for most U.S. citizens, including for much of the bar. Respondent after respondent pleads for a continuance to find a lawyer. Shackled detainees ask anyone in a suit for a card. Detainees who have run out of continuances stare blankly at an overworked judge who asks the most basic questions, or they ask for help understanding a form, or they unknowingly provide incomplete responses that seal their fate.

Amici have learned through experience that they can do the most good by parceling their resources: providing unrepresented immigrants with proper immigration forms; advising them how to collect evidence and what questions they will need to answer; interpreting and preparing legal documents when necessary; and yes, entering appearances or finding private lawyers to enter appearances when the resources are available and the need is acute. But the ideal that all persons in immigration proceedings have full-scope legal representation is a far cry from reality. If anyone knows this better than amici, it is EOIR itself.

B. To broaden their impact, amici provide limited scope assistance to *pro se* immigrant litigants

In light of the crushing shortage of full-scope representation for immigrants, amici have developed a number of effective, limited-scope forms of assistance. Some amici organize workshops to teach general immigration concepts to immigrants or attorneys; some help answer questions on forms such as the I-589 asylum application; some provide templates for petitions, motions, and briefs; and some help draft documents that a *pro se* litigant will file in immigration court. For example, multiple amici hold regular asylum workshops where pro bono attorneys

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help individuals complete Form I-589 asylum applications (which must be completed in the English language). The pro bono attorney will typically sign the Form I-589 as the preparer. Other amici provide legal assistance to detained immigrants at detention facilities. That assistance can consist of helping detained immigrants understand the immigration court and removal process, giving individualized advice as to what legal avenues to pursue, and helping with any necessary applications, forms and/or motions.[1] At least one amicus provides legal services to unaccompanied children in removal proceedings. It holds Know Your Rights presentations for custodians of unaccompanied children, and helps those custodians with any necessary motions. It commonly helps custodians with change-in-venue motions to ensure that the child does not receive an in absentia order of removal in a different jurisdiction.

The programs amici operate give immigrant litigants some direct or indirect access to an experienced immigrant-rights lawyer. The most critical cases can be funneled into full-scope representation, when available. For other cases, meritorious arguments can be flagged, and presented in a way that immigration officials and courts will understand even if the *pro se* litigant does not. And immigrants can avoid the fees and the bad advice often rendered by nonlawyer "notarios" who prey upon vulnerable litigants.

C. EOIR's interpretation of the representation regulations would severely undermine amici's ability to reach immigrants in need

Some forms of the assistance itemized above might constitute "preparation" or "practice" under the expansive interpretation of the attorney-appearance regulations that EOIR adopted in the cease-and-desist letter. At the very least, EOIR's interpretation will chill assistance of immigrants by qualified *pro bono* counsel. Amici believe this will have a devastating impact on the vast segment of immigrants who are unable to secure full-scope legal representation. People

[1] EOIR's cease-and-desist letter to NWIRP targeted a form motion to reopen that was hand-written by a NWIRP attorney in the Tacoma Detention Facility on behalf of a detained individual who sought to explain to the court that he had not understood what was happening during his hearing, but wanted to fight his cancellation case. This kind of assistance – in essence, translating and transcribing a detained immigrant's assertions onto a form motion – is provided by many immigrant legal rights organizations, including certain amici.

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will miss deadlines and court appearances and fail to seek relief they are entitled to obtain. A perfect example is one of the matters at issue in the cease-and-desist letter – a motion to reopen drafted on behalf on an illiterate and uneducated woman and her two minor children. The mother spoke Mam (a Mayan language), waited for months for a credible-fear interview that never happened, and then missed her hearing because of a mistranslation of her hearing notice. Almost certainly she could not and would not have prepared a motion to reopen without limited-scope legal representation.

It is unrealistic to think that EOIR's cease-and-desist letter will increase full-scope legal representation of immigrants. To prepare and litigate a removal proceeding or asylum case on the merits can take scores if not hundreds of hours. Amici do not have the resources or the staff to devote to merits litigation for every individual in need, nor in most cases can they find private *pro bono* or low cost counsel for full-scope representation. But amici and their affiliates can provide professional assistance on individual motions, forms, and applications after relatively brief consultations. And once that application or motion is filed and the individual's rights are preserved, the respondent has additional time to search for low cost or *pro bono* counsel.

D. Limited scope assistance benefits the immigration courts, in addition to immigrant litigants

The policy of the cease-and-desist letter would harm not only immigrant communities, but also the immigration courts. Indeed, the cease-and-desist letter is especially perplexing to amici because it seems inconsistent with the views of immigration judges, who often refer respondents to amici for provision of limited-scope legal services. The Office of the Chief Immigration Judge has recognized the contribution of *pro se* assistance programs. *See, e.g.*, Memorandum, Office of the Chief Immigration Judge, Operating Policies and Procedures Memorandum 08-01: Guidelines for Facilitating Pro Bono Legal Services (March 10, 2008) (observing that "pro bono representation benefits both the respondent and the court, providing respondents with welcome legal assistance and the judge with efficiencies that can only be

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realized when the respondent is represented," and encouraging judges and courts "to support legal orientations and group rights presentations" which can "greatly assist local pro bono efforts to disseminate critical legal information, prepare respondents for master calendar hearings, screen respondents for eligibility for relief, and identify cases for referral to pro bono counsel").

Former Immigration Judge Eliza Klein, in an attached declaration, explains that immigration law is "extraordinarily complicated" and "extremely difficult" for immigrants to master. Ex. 1 at ¶ 3. While Judge Klein was on the bench, she was "grateful for the assistance of high quality non-profit legal service providers" and "regularly referred pro se litigants to such organizations." *Id.* at ¶¶ 4-5. "For those cases in which Respondents do appear *pro se*, their ability to consult with immigration practitioners is very important to the goals of efficient, full and fair removal hearings." *Id.* at ¶ 3. She knew that legal service organizations had provided assistance in "drafting motions and answering the substantive questions on applications for asylum, cancellation of removal and other forms of relief, as well as assisting in obtaining supporting documentation from relatives and other witnesses, or country conditions materials." *Id.* at ¶ 6. She "welcomed assistance from nonprofit legal services organizations because it made it far easier for me to ensure that the hearings I conducted were complete and efficient and that the decisions I issued were fair." *Id.* at ¶ 8. As Judge Klein explains:

> Without the assistance of these non-profit organizations, there is a real danger that people with valid asylum claims will not seek relief or may not present their claim in such a way that the judge will understand the validity of the claim. Even when they are able to present their case, if they have had no prior assistance in filling out forms, writing statements and obtaining supporting evidence, the amount of time the court must dedicate to the case (both in questioning the Respondent about unexplored avenues of relevant information and in continuing a case to obtain evidence) is greatly increased. In essence, by preventing these organizations from assisting asylum seekers in preparing their applications, EOIR would deprive asylum applicants of the "full and fair hearing" to which they are entitled.

Id. at ¶ 11 (citation omitted). This perspective accords with amici's experience. In multiple

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jurisdictions across the country, immigration judges have referred clients to amici's *pro se* assistance programs and expressed gratitude for the availability of such services.

E. Ethics rules have shifted toward permitting ghostwriting and other limited forms of representation and assistance, particularly for indigent clients

One of the chief developments in legal ethics over the past two decades is a growing acceptance and promotion of limited-scope legal assistance for people who cannot afford lawyers. This movement toward the "unbundling" of legal services is widely supported by national and state bar associations and regulators. *See*, *e.g.*, American Bar Association, Resolution 108 and Report on Unbundling of Legal Services, at 44 (adopted by House of Delegates Feb. 11, 2013) ("the [ABA] encourages practitioners, when appropriate, to consider limiting the scope of their representation, including the unbundling of legal services as a means of increasing access to legal services"); *id.* at 47-48 (summarizing similar reports of state commissions). Nearly all jurisdictions permit lawyers to limit the scope of representation if the limitation is reasonable and the client gives informed consent. *See* ABA Model Rule Prof'l Cond. 1.2(c); ABA Ethics 2000 Comm'n, Reporter's Explanation of Changes to Model Rule 1.2(c) (observing that proposed changes to Rule 1.2(c) were in part "intended to provide a framework within which lawyers may expand access to legal services by providing limited but nonetheless valuable legal service to low or moderate-income persons who otherwise would be unable to obtain counsel"). Most jurisdictions also permit *pro bono* lawyers to provide short-term limited services through a nonprofit organization or court without triggering the broad proscriptions on conflicts of interest. *See* ABA Model Rule Prof'l Cond. 6.5. State disciplinary authorities, ethics commissions, and courts have further interpreted their ethics rules to let an attorney provide substantial assistance to a client without requiring the attorney to sign on for the full matter, such as by entering an appearance in litigation.

Amici, like the plaintiffs in this case, are engaged in the most socially beneficial element of the unbundling movement: providing limited-scope, *pro bono* assistance and representation

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for indigent clients who have no recognized right to a lawyer and who often have grave legal interests at stake, including their liberty. Amici provide these services not only through their own staff attorneys, but also by sponsoring programs in which private attorneys can provide legal assistance to immigrants in accordance with Model Rule 6.5, which limits the scope and reach of the conflicts rules for certain short-term, *pro bono* representations. The ABA has concluded that "Rule 6.5 does not require that the lawyer's participation be disclosed to the court or to the other parties." ABA Center for Professional Responsibility, Annotated Model Rules of Professional Conduct 531 (7th ed. 2011).

A key component of providing effective but limited assistance for indigent clients is help in preparing legal documents. In ethics jurisprudence this practice is known as *ghostwriting* – a misleading term because in many cases, including this one, the lawyers fully disclose their participation. The EOIR's cease and desist letter is dangerously out of touch with the consensus among ethics authorities that ghostwriting legal papers for *pro se* litigants is permissible.

Historically, a number of decisions by courts and disciplinary authorities proscribed ghostwriting, sometimes in harsh terms. *See e.g., Klein* v. *Spear, Leeds & Kellogg*, 309 F. Supp. 341, 342 (S.D.N.Y. 1970); ABA Standing Comm. on Ethics, Formal Op. No. 07-466, at 1-2 & nn. 3-5 (May 5, 2007) (collecting opinions). These authorities generally found that ghostwriting gave an unfair advantage to a *pro se* litigant, who would benefit both from an attorney's assistance and from the rule that *pro se* filings are liberally construed. *See* Jona Goldschmidt, *In Defense of Ghostwriting*, 29 FORDHAM U. L.J. 1145, 1158 (2001). Some authorities also concluded that ghostwriting was fundamentally deceptive, and therefore implicated the ethical duties of candor or the proscriptions against dishonesty and deceit, *see id.* at 1159-68, or that it violated court rules against bad faith litigation, such as Rule 11. *Id.* at 1169-78.

In 2007 the ABA's Standing Committee on Ethics and Professional Responsibility issued a formal opinion declaring that the Model Rules of Professional Conduct – the source of most state and federal ethical codes, including the EOIR's – not only did not prohibit ghostwriting, but

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also did not require ghostwriting lawyers to disclose their participation to a tribunal. Formal Op. No. 07-446.

The ABA's 2007 opinion reflected a movement among state ethics authorities toward authorization of ghostwriting. This movement coalesced into a consensus after the ABA published its opinion. A stream of state ethics opinions interpreted their local ethical rules to permit ghostwriting, sometimes with disclosure but often without. *See* Ala. Ethics Op. 2010-01; Colo. Bar Ass'n Ethics Comm. Op. 101 (new opinion approved May 21, 2016); D.C. Bar Ass'n Comm. Legal Ethics Op. No. 330 (July 2005); Mich. State Bar Op. No. RI-347 (April 23, 2010); N.C. State Bar Formal Ethics Op. 2008-3 (Jan. 23, 2009); N.J. Advisory Comm on Prof'l Ethics, Op. 713, at 4; NY County Lawyers' Ass'n Comm. on Prof'l Ethics, Op. 742 at 1 (2010) ; Pa. Bar Ass'n Comm. on Legal Ethics & Phila. Bar Ass'n Prof'l Guidance Comm., Joint Formal Op. 2011-100, at 11-16; Utah State Bar Ethics Advisory Op. Comm., Formal Op. 08-01 (2008); W.Va. Lawyer Disciplinary Bd. Legal Ethics Op. 2010-01.[2] Many of these opinions contain thoughtful analyses of the traditional objections to ghostwriting and other limited-scope representations, balanced against the harm imposed on a vast segment of the public who cannot afford full-scope legal representation. They consistently conclude that ghostwriting is a public good that outweighs the harm caused when lawyers are told they cannot touch a matter that might end up in court unless they sign on for the entire litigation. *E.g.*, NY County Lawyers' Ass'n Comm. on Prof'l Ethics, Op. 742 at 2 (2010) ("limited scope arrangements can promote an efficient judicial system in a number of ways," including "by crystallizing and clarifying relevant issues for trial, thereby assisting untrained individuals through the complex legal and procedural aspects of litigation and assisting judges in making appropriate determinations"); N.C. Ethics Op. 2008-03 (nondisclosed ghostwriting permissible because "public policy reasons" support it and ethical rules do not prohibit it).

[2] To be clear, many of these opinions caution that lawyers still have to follow the rules of a tribunal, including rules or practices in some federal tribunals that require disclosure of ghostwriting. *See, e.g.*, Ala. Ethics Op. 2010-01, at 1.

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Federal courts have been slower to follow this trend, in part because Federal Rule of Civil Procedure 11 is sometimes interpreted to prohibit ghostwriting. *E.g.*, HANDBOOK ON LIMITED SCOPE LEGAL ASSISTANCE, *supra* at 119-27. Although a number of federal decisions have disapproved of ghostwriting, recent cases suggest federal courts have begun to reconsider the practice. Most prominently, the Court of Appeals for the Second Circuit, citing the 2007 ABA opinion, rejected a disciplinary committee's decision to reprimand an immigration attorney for ghostwriting petitions to the Court of Appeals for review of decisions by the Board of Immigration Appeals. *In re Fengling Liu*, 664 F.3d 367 (2d Cir. 2011). A leading immigration attorney described the significance of the decision in the immigration context:

> [B]roader protection for attorney ghostwriting might discourage individuals from seeking help from so-called notarios, non-attorneys who often do more harm than good, suggests Parisa K. Karaahmet, New York City, cochair of the Section of Litigation's Immigration Litigation Committee. "I've seen instances where notarios, or people who hold themselves out as immigration specialists, have helped people complete forms that have ultimately had a detrimental impact on them," she says.

Lisa R. Hasday, *Second Circuit Lifts Sanction on Ghostwriting Petition*, Litigation News (Feb. 3, 2012). *See also Torrens* v. *Hood (In re Hood)*, 727 F.3d 1360 (11th Cir. 2013) (no ethical violation in lawyer's filling out form for *pro se* client's petition for relief under chapter 13 of bankruptcy code); *FIA Card Servs., N.A.* v. *Pichette*, 116 A.3d 770 (R.I. 2015) (state case disagreeing with federal interpretations of Rule 11 on ghostwriting); B. Tanase, *Note: Give Ghosts a Chance: Why Federal Courts should Cease Sanctioning Every Legal Ghostwriter*, 48 GA. L. REV. 661, 665 (2014) (federal courts "have relied on a strained interpretation of Rule 11, referencing not the text but the 'spirit' of the rule, a justification which can be safely ignored or overruled."). The federal decisions objecting to ghostwriting usually turn on a perceived deception – a failure to disclose work on a *pro se* client's document – that is simply not at issue in this case, and that innumerable ethics authorities have concluded is not a deception at all.

The trend in favor of ghostwriting is grounded in the bar's salutary effort to ensure that

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indigent and *pro se* clients have better access to legal services. Many commentators have explained the importance of ghostwriting among this sector of the public. *E.g.*, Debra Lyn Bassett, *Characterizing Ghostwriting*, 5 ST. MARY'S J. LEGAL MALPRACTICE 286, 310 ("legal ghostwriting benefits both the *pro se* litigant and the court by enabling the litigant to conform to procedures and legal writing conventions, thereby increasing compliance and comprehension which, in turn, assures that the court will understand the legal arguments, correspondingly reducing frustrations associated with pro se litigation"). Amici do not need to rely on commentary – they spend their days among crowds of unrepresented immigrants. They know that limited-scope representation is no longer a theoretical construct aimed at increasing legal services for the poor. It is a working doctrine that has materially improved the quality of justice for untold numbers of indigent populations, including especially immigrant communities.

The EOIR disciplinary regulations should be read in light of these principles. The disciplinary rule requiring an entry of appearance for "practice" or "preparation," *see* 8 C.F.R. §§ 1003.102(t), 1001.1(i) & (k), appears aimed at practitioners who do *not* limit the scope of their engagements, yet repeatedly avoid entering an appearance in immigration court. *See* 73 Fed. Reg. 44178, 44183 (July 30, 2008) ("the Department does not believe that a practitioner who *agrees to undertake a client's case* – thereby causing the client to reasonably rely on his or her claims as to the competency of such representation – should be able to avoid the legal obligations that flow from such a relationship") (emphasis added). EOIR's regulations, like the ethical rules of virtually all states, appear to permit limited-scope representations, *see* 8 C.F.R. § 1003.102(q)(3) ("A practitioner should carry through to conclusion all matters undertaken for a client, *consistent with the scope of representation as previously determined by the client and practitioner* ….") (emphasis added), notwithstanding EOIR's current position to the contrary. Section 1003.102(t) imposes discipline only if practitioners fail to submit notices of appearance "in compliance with applicable rules and regulations." The applicable regulation requires an entry of appearance only in "any proceeding before an Immigration Judge in which the alien is

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represented," 8 C.F.R. § 1003.17, whereas a limited-scope engagement may establish that the attorney will *not* represent the alien in the proceeding. EOIR's rules should not prohibit limited scope representations when they are expressly permitted, with the client's informed consent, by virtually every state disciplinary organ, and are not clearly prohibited by EOIR's regulations.

F. EOIR's interpretation may interfere with a client's rights to proceed *pro se*, to establish the scope of representation, and to terminate the representation

The cease and desist letter, by *requiring* a lawyer to enter an appearance in contravention of the lawyer-client agreement, transgresses the basic ethical foundation of the lawyer-client relationship that clients have the right to determine whether and when they will be represented by a lawyer. This right to self-representation arises from a combination of ethics principles and statutory or common law. In federal courts, the right was enshrined in the Judiciary Act of 1789 – predating the Bill of Rights – and is now codified at 28 U.S.C. § 1654 ("In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein."); *see* Judiciary Act of 1789, 1 Stat. 73, § 35 (Sep. 24, 1789). In immigration courts, EOIR regulations effectively give clients the right to proceed *pro se*. *See* 8 C.F.R. § 1003.16(b) ("The alien *may be* represented in proceedings before an Immigration Judge by an attorney or other representative of his or her choice … at no expense to the government.") (emphasis added); *see also* 8 U.S.C. § 1362 (right to private counsel in removal proceedings).

Moreover, state ethical rules give clients a virtually unfettered right to terminate a lawyer's services – it is generally unethical for a lawyer to represent a client against the client's will. *See* ABA Model Rule Prof'l Cond. 1.16(a)(3) ("Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if … the lawyer is discharged."). EOIR's regulations are in accord. *See* 8 C.F.R. § 1003.102(q)(3) (practitioner should carry through representation to conclusion "*unless the client terminates the relationship* ….") (emphasis added).

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The EOIR's cease-and-desist letter undermines these principles by compelling the client to accept a lawyer that the client may not want. EOIR apparently assumes the client always wants full-scope representation but lawyers unscrupulously limit the representation against the client's interest. That assumption misunderstands the lawyer-client relationship. That relationship does not form when the lawyer drafts one sentence too many in a document and suddenly becomes the lawyer for the balance of an immigration court matter. The lawyer-client relationship forms at the outset, when the client gives informed consent to a limited-scope representation that specifically provides the lawyer will not enter an appearance in immigration court. In that context, a requirement that the lawyer enter an appearance is in fact a violation of the client's right to terminate the lawyer's services and proceed *pro se*.

One might argue that the engagement is subject to external law that compels the lawyer's entry of appearance in certain circumstances. Again, however, this is bad policy if not bad law. It leaves two possibilities for the client: no representation or full-scope representation. EOIR may imagine a world where the latter option prevails. But it is not the world amici know.

III. CONCLUSION

Full enforcement of the policy set forth in the cease-and-desist letter would be catastrophic to immigrant communities and, amici believe, to justice. Amici request that the Court consider their views when ruling on plaintiffs' request for relief.

Dated: May 12, 2017

Respectfully submitted,

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** Not admitted in this court; pro hac vice motions pending*

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APPENDIX A

LIST OF AMICI

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The Immigrant Law Center of Minnesota 450 North Syndicate Street, Suite 200 Saint Paul, Minnesota 55104 651 641 1011	The Immigrant and Non-Citizen Rights Clinic of Main Street Legal Services, Inc., at CUNY School of Law 2 Court Square Long Island City, NY 11101 718 340 4558
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DECLARATION

I, Eliza C. Klein, hereby state as follows:

1. I am a retired United States Immigration Judge. I served as an Immigration Judge in Miami, Boston and Chicago from September 1994 through January 2015.

2. During my time on the bench, the number of cases that each Immigration Judge was assigned increased tremendously. When I first was appointed, the anticipated caseload was 850 to 1100 cases per Judge, and if a case needed to be continued, the reset would be for about six months. When I left, individual judges handling a non-detained docket frequently had in excess of 3000 cases. For a non-detained case, a continuance would usually be for several years. The caseloads also vary tremendously depending on such factors as whether the Immigration Judge is assigned to an exclusively detained docket. From July of 2011 until my retirement in January of 2015, I was assigned to the Chicago Detained Immigration Court. On my detained docket in Chicago, the caseload varied between 85 to 400 cases, and my merits hearings were scheduled out anywhere from a month to three months depending on the caseload. My understanding is that current caseloads in Chicago and other detained settings can be much higher, with waits of several weeks even for a bond hearing.

3. Immigration law is extraordinarily complicated, and for an individual in Immigration Court, access to legal assistance can be outcome determinative. It is extremely difficult for Respondents to adequately represent themselves (including examining evidence put in by DHS Attorneys and raising objections; knowing whether they are removable and whether to admit or deny charges; knowing if they are eligible for various forms of relief; and being able to adequately prepare, present and argue their case.) It is also far more difficult for both DHS Attorneys and Immigration Judges to ensure due process and just results in situations where the

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Respondents are appearing *pro se*. For those cases in which Respondents do appear *pro se*, their ability to consult with immigration practitioners is very important to the goals of efficient, full and fair removal hearings. For this reason, EOIR supports the existence of Know Your Rights and other educational programs sponsored by non-profit agencies.

4. While I was on the bench, I was grateful for the assistance of high quality non-profit legal service providers. *Pro se* litigants who had interacted with those organizations came to my courtroom more prepared, with better understanding of the legal proceedings and culture of the Immigration Court, and better equipped to litigate their case and to either accept my decision or know how to appeal it.

5. I and other Immigration Judges regularly referred *pro se* litigants to such organizations.

6. I know that, on occasion, non-profit legal service organizations had provided assistance in drafting motions and answering the substantive questions on applications for asylum, cancellation of removal and other forms of relief, as well as assisting in obtaining supporting documentation from relatives and other witnesses, or country conditions materials. This was especially important for Respondents who had limited funds and could not, due to the imposition of rules at various detention facilities, communicate easily with family, friends or attorneys. It was also especially important for Respondents who spoke indigenous languages where interpreters were rarely available, or where Respondents suffered from other barriers to self-representation, such as mental illness or lack of education.

7. For example, one of the motions to reopen identified by EOIR in the cease and desist letter sent to NWIRP involved someone who spoke Mam and missed her hearing because of a lack of notice. There is a critical shortage of interpreters in Central American indigenous

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languages. For that person to have an understanding of her case and the ability to present a motion to reopen without legal assistance would be virtually impossible.

8. I welcomed assistance from nonprofit legal services organizations because it made it far easier for me to ensure that the hearings I conducted were complete and efficient and that the decisions I issued were fair. It is extremely important for Respondents to be able to meaningfully participate in their hearings. Attorneys who draft motions and applications usually present the issues and case for relief more clearly than most *pro se* applicants can do. This allowed me to make rulings more quickly and efficiently.

9. Attorney assistance is especially critical for motions to reopen. By regulation, a respondent is only permitted to file one motion to reopen. *See* 8 CFR § 1003.23(b). If that first motion is denied, unless with the specific language that the denial is "without prejudice", the Respondent in the future can only seek *sua sponte* reopening. Further, given the interest in finality for agency decisions, motions to reopen are generally disfavored. It is thus exceedingly important that the motion be clear and understandable, and that it include the basis for the reopening, the facts, and all discretionary factors. It is rarely possible for a *pro se* litigant to get this done correctly without legal assistance.

10. Attorney assistance in preparing asylum applications was also helpful to me when I was serving as a judge. Having a full and comprehensible asylum application is important to getting the cases heard in a timely and reasonable manner, as well as to the fairness of the final decision. I believe that it takes at least 20-30 hours to prepare for an asylum hearing. I understand that non-profit legal service organizations do not have the staff to devote to such a time-intensive undertaking. When such organizations are able to assist applicants in preparing their applications, this is invaluable to the Court.

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11. Without the assistance of these non-profit organizations, there is a real danger that people with valid asylum claims will not seek relief or may not present their claim in such a way that the judge will understand the validity of the claim. Even when they are able to present their case, if they have had no prior assistance in filling out forms, writing statements and obtaining supporting evidence, the amount of time the court must dedicate to the case (both in questioning the Respondent about unexplored avenues of relevant information and in continuing a case to obtain evidence) is greatly increased. In essence, by preventing these organizations from assisting asylum seekers in preparing their applications, EOIR would deprive asylum applicants of the "full and fair hearing" to which they are entitled. *Matter of M-A-M-*, 25 I. & N. Dec. 474, 479 (BIA 2011) ("In immigration proceedings, the Fifth Amendment entitles aliens to due process of law. Included in the rights that the Due Process Clause requires in removal proceedings is the right to a full and fair hearing. A removal hearing must be conducted in a manner that satisfies principles of fundamental fairness.) (internal citations and quotation marks omitted)); *see also Shaughnessey v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) (stating that immigration proceedings must conform to traditional standards of fairness encompassed in due process)).

12. The assistance of the non-profit agencies is also very important in preparing Respondents who do not in fact qualify for relief, and explaining to them what is likely to happen if they appeal a likely removal order. I do not believe that an Immigration Judge should discourage an individual from seeking relief or from appealing a negative decision. Explaining the likelihood of success of either an application or an appeal can in many instances feel to the Respondent that the judge is warning them against taking a particular course of action, or can

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make the outcome of the case seem pre-ordained. This all has a negative effect on the perception of justice.

13. While I served on the bench, I did not consider it unethical for reputable and highly skilled non-profit legal services organizations to "ghostwrite" motions or applications for asylum or other forms of relief on behalf of unrepresented Respondents. The key is that the Respondent understands the limited scope of assistance and is able to verify the truth of all information contained in the motion or application, and that the assistance be disclosed.

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 3, 2017.

Eliza C. Klein

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