

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

P.L., et al.,

Plaintiffs

v.

U.S. IMMIGRATION AND CUSTOMS  
ENFORCEMENT, et al.,

Defendants.

Civil Action No. 19-CV-01336 (ALC)

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**SUPPLEMENTAL DECLARATION OF ANDREA SAENZ**  
**IN SUPPORT OF PLAINTIFFS' MOTIONS FOR**  
**A PRELIMINARY INJUNCTION AND CLASS CERTIFICATION**

I, Andrea Saenz, declare under perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. My name is Andrea Saenz. I am the Attorney-in-Charge of the New York Immigrant Family Unity Project ("NYIFUP") team at Brooklyn Defender Services ("BDS"), located at 180 Livingston Street, Brooklyn, NY, 11201. I am admitted to practice law in the State of New York. I supervise the NYIFUP staff at BDS.
2. The ICE Refusal to Produce Policy ("RTP Policy" or "Policy") has been in place since June 2018. Although the implementation of the policy and use of videoconference ("VTC") has evolved, the ongoing harmful impact on our clients remains the same.
3. As I explained in my February 25 declaration in support of Plaintiffs' Mot for a Prelim. Injunction (Doc. 45), our clients are typically detained at the Hudson County or Bergen County Jails in New Jersey, or the Orange County Jail in New York. Our clients detained at the Hudson and Orange County Jails have not been produced to the Varick Street Court in

person since June 2018. The threats to confidentiality, impediments to fair immigration proceedings, and persistent due process violations continue at those facilities as I described in my February 25 declaration.

4. Although ICE temporarily resumed in-person production from the Bergen County Jail in late 2018, ICE has always maintained that this is temporary. In the last month, this in-person production has been inconsistent, and some clients housed at Bergen have not been produced in person but rather appeared by videoconference for their hearings at the Varick Street Court instead. Further, since the Policy was implemented, Varick Street Court has been closed or its opening delayed due to inclement weather several times, which caused hearings to be canceled even though they were scheduled to take place by VTC. For example, among others, on March 4, 2019, Varick Street was closed, and on February 12, 2019, its opening was delayed for inclement weather.
5. New, additional, VTC-enabled courtrooms that have opened at Varick Street since my February 25 declaration further exacerbate the harms and cause more clients to be impacted each day. In mid-March 2019, EOIR opened two additional courtrooms specifically designated for the detained docket on the 5<sup>th</sup> floor at Varick Street. In early April 2019, EOIR opened five additional courtrooms on the 5<sup>th</sup> floor that are primarily designated for the non-detained docket, although my understanding is that they are all equipped for VTC. I do not know whether detained cases will appear in those courtrooms, but EOIR staff previously commented to us that EOIR can use these courtrooms with flexibility to hear additional detained cases. As a result of new courtrooms opening, some pending detained cases are being transferred to new judges.

6. Compounding the due process problems caused by ICE's refusal to bring our clients to court, EOIR has adopted a new practice of rapidly advancing dates for clients' merits hearings without consulting the attorney of record if he or she is available and prepared to go forward with the case. In the last month, EOIR had repeatedly advanced merits dates, often on complex and sensitive claims for asylum and other relief from removal that require significant factual development, such that their final hearings are weeks away instead of two or three months away. Because of the RTP policy, attorneys cannot meet confidentially with clients before or during proceedings. With merits hearings sometimes now starting far earlier than originally scheduled, attorneys have even fewer opportunities to meet with and prepare their clients at jails. As a result, in-person attorney-client exchanges at a client's hearing are even more vital so that attorneys can confer with clients about important strategic decisions, evidence, or when and whether the case should be adjourned.
7. I am also very concerned about EOIR's March 29 memo regarding their "no dark courtrooms" policy, which instructs immigration courts to ensure all courtrooms are in use and hold hearings in all courtrooms every day, even if the judge assigned to that courtroom is not available. The memo specifically encourages use of VTC technology to allow more hearings to take place. This can include using VTC to allow immigration judges in other states to adjudicate cases at the Varick Street Court while the respondent is appearing from jail on a second screen. Unless EOIR has developed a workaround that would allow the "visiting" judge to view the respondent directly, this practice could result in the "visiting" judge watching a screen that shows a courtroom with a second monitor showing the respondent. This eliminates both the judge and the respondent from the physical courtroom and exacerbates audio, interpretation, comprehension, and perception issues. The "no dark

courtrooms” policy is a further expansion of the use of VTC at Varick Street, and the impact likely will be devastating as it will exacerbate the already serious and severe problems of the RTP Policy.

8. Since my February 25 declaration, we have seen more instances of our clients suffering as a result of the Policy, including delays, clients being disconnected from the proceedings, clients having a difficult time understanding, and concerns about confidentiality.
9. For example, during one client’s individual hearing for his asylum claim in April 2019, the client, appearing via VTC, encountered various issues during his testimony. Upon entering the courtroom, the Immigration Judge began discussing procedural issues with the attorneys. When the client interrupted to greet the judge, his “good morning” went unacknowledged. Throughout his testimony from a purportedly “soundproof booth” at the Hudson County Jail, the camera angle was pointed down such that it appeared he was looking at the ground rather than at the judge and captured only his face and the very top of his shoulders. Those in the courtroom, including the judge, could not look at the client at eye-level or into his eyes. The camera did not allow those in the courtroom to see scars or injuries on body parts out of view—such as his lower back, stomach, or legs. After the judge and DHS attorney expressed confusion regarding exactly where on his leg he had been shot, the client’s only option to clarify was by lifting his ankle up by his head so that the camera could capture his indications. Moreover, the camera failed to capture many of this client’s hand gestures that he used to explain instances when he had been shot and stabbed. Judges rely on these types of details, indications, and mannerisms to fully comprehend and appreciate testimony, and to assess our client’s consistency and credibility.


10. Furthermore, our clients' privacy continues to be compromised as a result of the RTP Policy.

For instance, during the same client's individual hearing in April, the client was in a purportedly "soundproof" booth at Hudson. Nonetheless, throughout the hearing the ICE agents and other detainees *outside* the booth could be heard in the courtroom. This sheds further doubt on whether the booths are soundproof and the client's testimony is confidential.

11. The RTP Policy continues to impose significant hardships on the NYIFUP program in all of the ways I have previously described. Although BDS NYIFUP attorneys request that our clients be produced, Immigration Judges do not grant motions to produce and suggest they do not have the power to order production at Varick Street. Since the Policy went into effect, none of our clients have been produced, outside of the temporary production from Bergen. It is not our experience that ICE will produce individuals in person if due process requires it.

12. I have reviewed the declarations of Leena Khandwala and Sarah Deri Oshiro, and they accurately describe the same experiences I have described in this supplemental declaration and the experiences of the NYIFUP staff at BDS.

13. For these reasons and the reasons I described in my February 25 declaration, I believe our clients will suffer irreparable harm unless the court orders Plaintiffs' preliminary injunction.

  
ANDREA SAENZ  
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Dated: April 10, 2019  
Brooklyn, NY