

Keith S. Dubanevich, OSB No. 975200

Email: kdubanevich@stollberne.com

Gary M. Berne, OSB No. 774077

Email: gberne@stollberne.com

STOLL STOLL BERNE LOKTING & SHLACHTER P.C.

209 S.W. Oak Street, Suite 500

Portland, Oregon 97204

Telephone: (503) 227-1600

Facsimile: (503) 227-6840

Attorneys for *Amici Curiae*

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

LAS AMERICAS IMMIGRANT
ADVOCACY CENTER; ASYLUM
SEEKER ADVOCACY PROJECT;
CATHOLIC LEGAL IMMIGRATION
NETWORK, INC.; INNOVATION LAW
LAB; SANTA FE DREAMERS
PROJECT; AND SOUTHERN POVERTY
LAW CENTER,

Plaintiffs,

v.

DONALD J. TRUMP, in his official
capacity as President of the United States;
WILLIAM BARR, in his official capacity
as Attorney General of the United States;
U.S. DEPARTMENT OF JUSTICE;
EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW; AND JAMES
MCHENRY, in his official capacity as
EOIR Director of the United States,

Defendants.

Case No. 3:19-cv-02051-IM

MOTION FOR LEAVE TO APPEAR AS
AMICI CURIAE BY FORMER
IMMIGRATION JUDGES AND
MEMBERS OF BOARD OF
IMMIGRATION APPEALS IN
SUPPORT OF PLAINTIFFS' MOTION
FOR TEMPORARY RESTRAINING
ORDER

ORAL ARGUMENT REQUESTED

LOCAL RULE 7-1 CERTIFICATION

On March 30, 2020, counsel for the former federal immigration judges and former members of the Board of Immigration Appeals who seek leave to appear in this case as *Amici Curiae* attempted to confer by phone with Brian Ward of counsel for defendants. Mr. Ward's voice mailbox was full. Counsel then emailed both Mr. Ward and Erez Reuveni of counsel of defendants, and neither have responded as of the time of filing of this motion. Counsel for *Amici Curiae* proceeded to file this motion in light of the scheduled hearing on the Temporary Restraining Order and the importance of the issues.

LEGAL STANDARD

The district court has broad discretion to appoint amici curiae." *Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982), overruled on other grounds by *Sandin v. Conner*, 515 U.S. 472, (1995). The "classic role of amicus curiae" is "assisting in a case of general public interest, supplementing the efforts of counsel, and drawing the court's attention to law that escaped consideration." *Miller-Wohl Co. v. Comm'r of Labor & Indus. State of Mont.*, 694 F.2d 203, 204 (9th Cir. 1982).

MOTION AND STATEMENT OF INTEREST

Amici move the court for an order allowing them to appear as *amici* in this case with respect to Plaintiffs' Motion for Temporary Restraining Order, filed March 30, 2020, and to file an *amicus curiae* brief in support of the Plaintiffs' Motion for Temporary Restraining Order. *Amici* are former immigration judges and former members of the Board of Immigration Appeals who have spent their careers conducting proceedings in the immigration courts of the United States. Individually and collectively, *Amici* have decades of hands-on, real-world experience with the immigration court system. Further, *Amici* are familiar with the questions presented by the emergency motion such as what procedures are available to the immigration court system, options that the immigration court system can put into place to preserve the rights of individuals appearing in immigration court, and how the emergency health measures that the federal and

state governments have instituted can be accommodated to protect the public health. For example, *Amici* have a particular understanding of immigration court procedure and the state of the resources the immigration courts have to implement emergency procedures such as electronic filing and remote access.

Their experience and expertise directly relate to the important questions presented in the emergency motion; their perspective as adjudicators would benefit the Court in its consideration. Importantly, based on their expertise, *Amici* have outlined an easy to implement, three-phase process by which order can be quickly restored to the system: a 28-day pause by granting the relief requested by Plaintiffs to protect the public health right now and allow the agency to issue interim administrative guidance along the recommendations set forth herein that then permits the agency to more fully address the questions and stakeholders in a comprehensive manner.

Amici have an interest in protecting the full and fair adjudication of cases in the immigration courts and the safety of those who participate in and adjudicate those cases. *Amici* also seek to offer the Court an understanding of the resources—technological or otherwise—available to immigration court judges and how those resources may best be used to protect the immigration courts in the face of a global pandemic.

The names and dates of service of *Amici* are set forth in Appendix A. As indicated in the appendix, amici are uniquely qualified as to the issues presented by the TRO motion. This obviously is a unique time for the immigration court system and in the history of the United States, and *Amici* respectfully submit that their experience can assist this process.

DATED this 30th day of March, 2020.

STOLL STOLL BERNE LOKTING & SHLACHTER P.C.

By: s/ Keith S. Dubanevich

Keith S. Dubanevich, OSB No. 975200

Gary M. Berne, OSB No. 774077

209 SW Oak Street, Suite 500

Portland, OR 97204

Telephone: (503) 227-1600

Email: kdubanevich@stollberne.com
gberne@stollberne.com

Attorneys for *Amici Curiae* Former Federal Immigration
Judges and Members of Board of Immigration Appeals

APPENDIX A

Steven Abrams was an Immigration Judge (“IJ”) in New York City from 1997 to 2013
Silvia Arellano was appointed as an IJ in Florence, Arizona in 2010
Terry A. Bain was an IJ in New York City from 1994 to 2019
Sarah Burr was an IJ in New York City from 1994 to 2006
Esmeralda Cabrera IJ in New York, Newark, and Elizabeth, 1994-2005
Teofilo Chapa was an IJ in Miami, Florida from 1995 to 2018
Jeffrey Chase was an IJ in New York City from 1995 to 2007 and an attorney advisor and senior legal advisor at the Board of Immigration Appeals (“BIA”) from 2007 to 2017
George Chew was an IJ in New York from 1995 to 2017
Bruce J. Einhorn was an IJ in Los Angeles, California from 1990 to 2007
Cecelia Espinoza was a Member of the BIA from 2000 to 2003 and served in the Office of the General Counsel from 2003 to 2017
Noel Ferris was an IJ in New York from 1994 to 2013 and an attorney advisor to the BIA from 2013 to 2016
James Fujimoto was an IJ in Chicago, Illinois from 1990 to 2019
Thaddeus Gembacz was an IJ in Los Angeles from 1996 to 2008
Jennie Giambastiani was an IJ in Chicago, Illinois from 2002 to 2019
John Gossart was an IJ in Baltimore, Maryland from 1982 to 2013
Paul Grussendorf was an IJ in Philadelphia, Pennsylvania and San Francisco, California from 1997 to 2004
Miriam Hayward was an IJ in San Francisco, California from 1997 to 2018
Charles Honeyman was an IJ in Philadelphia, Pennsylvania and New York from 1995 to 2020
Rebecca Bowen Jamil was an IJ in San Francisco, California from 2016 to 2018
William Joyce was an IJ in Boston, Massachusetts from 1996 to 2002
Carol King was an IJ in San Francisco, California from 1995 to 2017
Elizabeth Lamb was an IJ in New York City from 1995 to 2018
Margaret McManus was an IJ in New York City from 1991 to 2018
Charles Pazar was an IJ in Memphis, Tennessee from 1998 to 2017
George Proctor was an IJ in Los Angeles and San Francisco from 2003 to 2012
John Richardson was an IJ in Phoenix, Arizona from 1990 to 2018
Lory Rosenberg was a Member of the BIA from 1995 to 2002
Susan Roy was an IJ in Newark, New Jersey from 2008 to 2010
Paul Schmidt was an IJ in Arlington, Virginia from 2003 to 2016
Ilyce Shugall was an IJ in San Francisco, California from 2017 to 2019
Andrea H. Sloan was an IJ in Portland, Oregon from 2010 to 2017
Polly Webber was an IJ in San Francisco, California from 1995 to 2016
Robert Weisel was an IJ in New York from 1989 to 2016