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13
14
15 Attorneys for Plaintiffs (continued on next page)

16 **UNITED STATES DISTRICT COURT**
17 **CENTRAL DISTRICT OF CALIFORNIA**
18 **EASTERN DIVISION – RIVERSIDE**

19 FAOUR ABDALLAH FRAIHAT, *et al.*,
20 Plaintiffs,
21 v.
22 U.S. IMMIGRATION AND CUSTOMS
23 ENFORCEMENT, *et al.*,
24 Defendants.

Case No.: 19-cv-01546-JGB(SHKx)

Corrected Declaration of
Maureen A. Sweeney
Date: March 24, 2020

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26 Attorneys for Plaintiffs (continued from previous page)

27 *Admitted Pro Hac Vice

28 **Pro Hac Vice Application Forthcoming

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DECLARATION OF MAUREEN A. SWEENEY, ESQ.

I, Maureen A. Sweeney, hereby declare:

1. I am a Law School Professor at the University of Maryland Carey School of Law, where I have taught Immigration Law, the Immigration Clinic, and other courses for sixteen years. I am also an attorney licensed to practice law in the state of Maryland. Prior to my work at the university, I practiced immigration law at Catholic Charities Immigration Legal Services and Lutheran Immigration and Refugee Services in Baltimore. My scholarly and practice areas of specialization are in immigration removal litigation, with particular specialty in the areas of asylum and the immigration consequences of criminal convictions. My curriculum vitae is attached as Exhibit A.
2. The Immigration and Nationality Act (INA) gives Immigration Customs Enforcement (ICE) the authority to exercise broad discretion over the decision of whether and on what conditions to detain an individual who is in removal proceedings before the Immigration Court or is awaiting removal. *See, e.g.,* 8 U.S.C. §1226(a) (providing for discretionary detention allowing for release on bond or on conditional parole); 8 U.S.C. §1182(d)(5)(A) (providing for parole of inadmissible individuals “on a case-by-case basis for urgent humanitarian reasons or significant public benefit”). Federal regulations provide that:

[t]he authority of the Secretary [of Homeland Security] to continue an alien in custody or grant parole under section 212(d)(5)(A) of the [INA] shall be exercised by [a range of ICE and Customs and Border Protection officers]. The Secretary or his designees may invoke, in the exercise of discretion, the authority under section 212(d)(5)(A) of the Act.”).

8 C.F.R. §212.5(a). In exercising this discretion, ICE agents have historically considered a broad range of factors, including an individual’s health, their potential for legal relief, their family and other ties to the community, their criminal history and even the availability of detention capacity. *See* 8 C.F.R. §212.5(b) (providing for case-by-case parole determinations for individuals who, among other things, “have serious medical conditions in which continued detention would not be appropriate” or whose continued detention would not be in the public interest).
3. The INA also provides for what is commonly known as “mandatory” detention for individuals with a history of certain criminal convictions. *See* 8 U.S.C. §1226(c)(1). Despite the nominally “mandatory” nature of this detention, however, ICE has always, in fact, exercised discretion over individuals in this category, even if rarely exercising that discretion to release individuals.
4. By way of but one example, several years ago, our clinic represented a client who was subject to “mandatory” detention under 8 U.S.C. §1226(c)(1) because of a theft conviction from many years prior. ICE agents detained our client when he appeared at his master calendar hearing, informing him and us that the client was subject to

1 mandatory detention. Our client did, in fact, fall within the terms of §1226(c), but after
2 they detained him, ICE agents chose to exercise their discretion to release him for
3 medical reasons. Our client suffered from a number of medical conditions, including high
4 blood pressure, heart conditions, and depression, and he did not have any of his
5 medications with him when he was detained. We provided the ICE agents with proof of
6 these conditions, and our client, for his part, made it clear that he would refuse to take
7 medication that had not been prescribed by his doctors. When the agents realized the
8 seriousness of our client’s medical conditions and the risk created by his detention, they
9 decided to release him that same day on his own recognizance.

7 5. This case constituted an example exercise of the discretion that ICE clearly has – and has
8 exercised historically – to release individuals for urgent medical reasons, even when they
9 fall within the terms of the “mandatory” detention provision. Nothing has changed in the
10 statute or regulations to alter this authority since the day our client was detained and
11 released. ICE has this authority to this day.

11 6. Based on my legal scholarship as an expert in immigration law, as well as my experience
12 as an immigration practitioner, it is soundly within ICE’s authority to release individuals
13 from detention based on, among other things, medical conditions that cannot be
14 adequately managed in a custodial setting. In such cases, ICE retains jurisdiction over the
15 prosecution of immigration proceedings and the enforcement of removal orders but
16 adjudication occurs in non-detained settings, allowing individuals to shelter in place with
17 family, friends, or service providers able to provide for their needs.

15 I, Maureen A. Sweeney, swear under the penalty of perjury pursuant to 28 U.S.C. § 1746, that
16 the foregoing declaration is true and correct to the best of my knowledge and belief.

17 Executed on this 23rd day in March, 2020 at Baltimore, Maryland.

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19 _____
20 Maureen A. Sweeney, Esq.

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EXHIBIT A

MAUREEN A. SWEENEY, Esq.
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Academic Positions

University of Maryland Carey School of Law, Baltimore, Maryland, Fall 2004 to present.

Law School Professor

Immigration Clinician

Responsible for the Immigration Clinic in which students represent individuals in immigration removal proceedings (in cases involving criminal convictions, asylum, and challenges to abusive enforcement) and participate in Access to Justice projects such as a *pro bono* consultation project and collaboration to provide advice to public defenders on the immigration consequences of proposed plea deals. Also teach Immigration Law survey course and Practicing Law in Spanish.

Adjunct Clinical Faculty, 1996 to 2001, Summer 1995

Education

Yale Law School, New Haven, Connecticut, Juris Doctor, 1989

Jerome N. Frank Legal Services Organization; Student Funded Fellowships; The Initiative for Public Interest Law at Yale, Board Member; Yale TRO Project for Battered Women, Director

Wesleyan University, Middletown, Connecticut, Bachelor of Arts, Romance Languages and Literature, 1984

Phi Beta Kappa, June 1984

Publications

Enforcing / Protection: The Danger of Chevron in Refugee Act Cases, 71 Admin. L. Rev. 127(2019). Available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3228530.

Shadow Immigration Enforcement and its Constitutional Dangers, 104 J. Crim. L. & Criminology 227 (2014). Available at <http://scholarlycommons.law.northwestern.edu/jclc/vol104/iss2/1>

Penalty and Proportionality in Deportation for Crimes, 31 St. Louis U. Pub. L. Rev. 11 (2011), with Hillary Scholten. Available at http://digitalcommons.law.umaryland.edu/fac_pubs/1196/.

Where do we go from Padilla v. Kentucky? Thoughts on Implementation and Future Directions, 45 New England Law Review 353 (Spring 2011). Available at http://digitalcommons.law.umaryland.edu/fac_pubs/1166/.

Fact or Fiction: The Legal Construction of Immigration Removal for Crimes, 27 Yale Journal on Regulation 47 (2010). Available at http://digitalcommons.law.umaryland.edu/fac_pubs/708/.

Reviewed, "Article: Courts Should Reject The Direct/Collateral Distinction When Dealing With Crimmigration Issues," The crImmigration.com Blog (4/26/10). Available at <http://crimmigration.com/2010/04/26/article-courts-should-reject-the-directcollateral-distinction-when-dealing-with-crimmigration-issues.aspx>.

A Check on the Real Realities of Immigration: A Reflection, The Maryland Law Journal of Race, Religion, Gender and Class, Vol. 5, No. 2 (Spring 2006). Available at http://digitalcommons.law.umaryland.edu/fac_pubs/818/.

Occupational Injuries Among North Carolina Migrant Farmworkers, with Steven Ciesielski and S.P. Hall, American Journal of Public Health, Vol. 81, No. 7 (July 1991). Available at <http://ajph.aphapublications.org/doi/pdf/10.2105/AJPH.81.7.926>.

Between Sorrow and Happy Endings: A New Paradigm of Adoption, 2 Yale J.L. & Feminism 329 (1989-1990). Available at http://heinonline.org/HOL/Page?handle=hein.journals/yjfem2&div=20&g_sent=1&collection=journals. Reprinted in *Family Law in Action: A Reader*, ed. by Margaret F. Brinig, Carl E. Schneider, and Lee E. Teitelbaum, Anderson Publishing, 1999.

Practice-oriented writing and work

Brief of *Amici Curiae* and oral argument, *Maricela Leyva-Martinez v. Sessions* (892 F.3d 655, 4th Cir.) (holding Maryland theft offense is not a crime involving moral turpitude that can trigger deportation under the Immigration and Nationality Act)

Contributed to Brief of *Amici Curiae* American Immigration Lawyers Association, et al., *Mathis v. United States*, 136 S.Ct. 2243 (2016).

Brief and Reply Brief of Respondent, *Matter of Chairez and Sama*, I. & N. Dec. 796 (A.G. Sept. 6, 2016) (divisibility of offenses under the categorical analysis in *Descamps v. United States* and *Mathis v. United States*).

Abbreviated Chart for Criminal Defense Practitioners of the Immigration Consequences of Criminal Convictions Under Maryland State Law (updated August 2015). Available at <http://www.law.umaryland.edu/programs/clinic/initiatives/immigration/articles.html>.

Amicus brief, *Matter of Sama*, Board of Immigration Appeals, April 2015 (indivisibility of Maryland theft offense under the categorical analysis in *Descamps*).

Instructional video, *Divisibility of Criminal Statutes and the Modified Categorical Analysis of Immigration Consequences*, April 2015.

Instructional video, *Categorical Analysis of Immigration Consequences*, July 2014. Both videos available at <http://www.law.umaryland.edu/programs/clinic/initiatives/immigration/>

Brief and Reply Brief of Petitioner, *Martinez v. Holder*, 740 F.3d 902 (4th Cir. 2014).

Amicus brief, *Rivera v. State*, 409 Md 176 (2009) (whether plea was knowing and voluntary when based on erroneous information about immigration consequences).

A Practical Guide to the Immigration Consequences of Domestic Violence and Drug Charges in Maryland, The Maryland Institute for Continuing Professional Education of Lawyers, Inc. (October 2008).

Classes offered

Immigration Clinic (2004 to present)

Immigration Law (Fall 2016 to present)

Practicing Law in Spanish (Fall 2014 to present)

Human Rights in US Law Legal Theory and Practice (Spring 2018)

Immigration Law and Policy Seminar: Criminalization of Immigration (Spring 2016)

Criminalization LTP: Strategies and Solutions for Non-Citizens Charged with Crimes (Spring 2014)

Research Interests

The balance of *Chevron* deference and international legal obligations

Agency deference and the Refugee Act of 1980

Interpretive questions in the application of the exclusionary clauses of the 1951 Refugee Convention

Duress in the application of the exclusionary clauses

Maureen A. Sweeney

Curriculum vitae

Page 2

The intersection of criminal and immigration law, including

The overlap of criminal and immigration enforcement

The immigration consequences of convictions

Practical implementation of the right to counsel recognized in *Padilla v. Kentucky*

The role of the Constitution in immigration law and enforcement, including The Fourth Amendment and the exclusionary rule in immigration The Eighth Amendment and proportionality in criminal deportation

The Fifth Amendment privilege against self-incrimination in immigration enforcement and proceedings

Academic conferences and presentations

Moderator, The Network for Public Health Law Conference, *Immigration and Public Health* panel, University of Maryland Carey School of Law (Baltimore, MD), February 13, 2019.

Participant, Immigration Law Scholars and Teachers Workshop, presenting *Enforcing / Protection*, Thomas R. Kline School of Law, Drexel University (Philadelphia, PA) May 2018.

Presenter, Chasing Liberty: Family Detention symposium, David A. Clarke School of Law, University of the District of Columbia (Washington, DC), February 3, 2017.

Participant Clinical Law Review Writers' Workshop, presenting *Fair Measure of Deference*. New York University (New York, NY) September 2016.

Works-in-Progress discussion facilitator, Association of American Law Schools Conference on Clinical Legal Education (Baltimore, MD), May 2016.

Junior Faculty Exchange, University of North Carolina, presenting *Tied to the Mast of Refugee Protection: Separation of Powers when Chevron meets Charming Betsy*, October 8, 2015 (work in progress).

Moderator, *The World According to Padilla v. Kentucky: The Importance of Immigration Advice in the Criminal Justice System*. University of Maryland Carey School of Law (Baltimore, MD), July 16, 2012.

Panelist, *Racial Profiling Hiding Behind Lopez-Mendoza*. Border Patrols: The Legal, Racial, Social and Economic Implications of United States Immigration Policy; Symposium of the Journal of Civil Rights and Economic Development; St. John's University School of Law (Queens, NY), March 16, 2012 (with Liliana Yanez, CUNY School of Law).

Discussion facilitator, *Immigration Working Group*, Association of American Law Schools Conference on Clinical Legal Education (Los Angeles, CA), May 1-3, 2012.

Panelist, *Where do we go from Padilla v. Kentucky? Thoughts on Implementation and Future Directions*. Crossing the Border: The Future of Immigration Law and Its Impact on Lawyers; Symposium of the New England Law Review (Boston, MA), November 12, 2010.

Panelist, *What Do We Expect From Faculty and Law Students When Faced With a Student Who Lacks the Competency or Ethical Commitment to Practice Law?* Association of American Law Schools Conference on Clinical Legal Education (Baltimore, MD), May 5, 2010.

Panelist, *Supreme Court Preview: Collateral consequences and juvenile incarceration*, University of Maryland School of Law, October 12, 2009.

Selected Presentations and Media

Trainer, *Psychological Evaluation in Support of the Asylum Application for Survivors of Torture and Inhumane Treatment*, Intercultural Counseling Connection co-sponsored with Inspirit Counseling Services, Inc., Baltimore, MD, September 27, 2019.

Presenter, *Immigration and Healthcare*, Healthcare for the Homeless, Baltimore, MD, November 15, 2018.

Panelist, *Board of Immigration Appeals and Circuit Court Litigation*, American Immigration Lawyers Association DC Chapter Fall 2018 Conference, Rockville, MD, November 7, 2018.

Panelist, *Effective Use of the Categorical Approach in Motions to Dismiss*, American Immigration Lawyers Association Annual Conference 2018, San Francisco, CA, June 15, 2018.

Presenter, *Immigration Enforcement and Health Access*, Digestive Disease Week, Washington, DC, June 3, 2018.

Keynote speaker, Human Rights Day retreat, Maryland Legal Aid Bureau, Arundel Mills, MD, November 28, 2017.

Panelist, *DACA and Beyond*, University of Maryland Schools of Law and Social Work and JHU Bloomberg School of Public Health, October 30, 2017.

Panelist, *Immigration Values and History*, League of Women Voters, Baltimore County Library, Towson, MD, October 2017.

Presenter, *Advanced Issues in Challenging Evidence of Alienage*, National Immigration Project National Lawyers Guild annual CLE, Washington, DC, August 2, 2017.

Webinar panelist, *How to do a Motion to Suppress in Immigration Court*, Immigration Advocates Network, June 20, 2017.

Panelist, *Community Day in Court*, Office of the State's Attorney for Baltimore City, Baltimore, MD, June 17, 2017.

Opening speaker, *The Global Refugee and Immigrant Crisis: The Search for Fertile Soil*, University of Maryland School of Nursing, Baltimore, MD, April 19, 2017.

Panelist, Muslim Town Hall, Columbia, MD, November 2016.

Moderator, *Immigration Issues in the 2016 Election*, Journal of Race Religion Gender and Class, University of Maryland Carey School of Law, Oct 27, 2016.

Panelist, *Working with Central American Immigrants and Refugees*, University of Maryland School of Social Work, February 22, 2016.

Panelist, *The Peculiarities of Immutability, Particularity, and Social Distinction: Asylum for Members of Particular Social Groups*, American Immigration Lawyers Association Asylum CLE Conference, San Antonio, Texas, February 8, 2016.

Instructor, *Immigration and Criminal Defense Institute*, Baltimore, Maryland, September 26, 2015.

Panelist, *Immigration Consequences of Convictions*, Maryland State Bar Association Annual Conference, Ocean City, Maryland, June 11, 2015.

Immigration Law and Psychiatric Care or Testimony, University of Maryland Forensic Psychiatry Fellows Program, Baltimore, Maryland, November 14, 2014.

Panelist, *Immigration: The Human Rights Crisis at the Border*, MLAW Program, University of Maryland, College Park, Maryland, November 10, 2014.

Coordinator, keynote speaker and workshop presenter, *Immigration Law in Maryland Courts*. Keynote (with the Honorable John F. Gossart, Jr.): *Overview of U.S. Immigration Law and Special Considerations with Non-Citizens in the Courtroom*; Workshop: *Maryland Judges in the Criminal/Immigration Context*. Judicial Institute of Maryland, October 17, 2013.

Maryland Judges in the Criminal/Immigration Context, 2013 Maryland Judicial Conference, Cambridge, Maryland, May 10, 2013.

Guest speaker, *The Supreme Court's Ruling on Arizona's Controversial Immigration Law*, The Marc Steiner Show, WEAA, Baltimore, Maryland, June 26, 2012.

Moderator, *Protecting Clients and Communities in Immigration Enforcement*, Maryland Partners for Justice Conference, Baltimore, MD, May 26, 2011.

Immigration 101 for State Mental Health Facility Staff, Spring Grove Hospital, Catonsville, MD; April 16, 2012.

Interdisciplinary Collaboration in a Law School-Based Immigration Clinic, National Organization of Forensic Social Work (NOFSW); Baltimore, MD; April 16, 2012 (with Rebecca Bowman-Rivas, L.C.S.W.).

Preparing for Practice in Immigration Law, Webinar for UM Carey Admissions Office, Baltimore, MD, February 8, 2012. Available at <http://www.law.umaryland.edu/prospective/video/>.

Immigration Law and Psychiatric Care or Testimony, University of Maryland Forensic Psychiatry Fellows Program, Baltimore, Maryland, January 13, 2012.

Immigration Consequences of Criminal Convictions,

Maryland Office of the Public Defender: Numerous trainings from 2005 to present.

Maryland Criminal Defense Attorneys Association, Annapolis, MD, June 15, 2010. Maryland Partners for Justice Conference, Baltimore, Maryland, May 3, 2007.

Criminal Practice and Procedure: Winning in District Court; Maryland Institute for Continuing Professional Education of Lawyers, August 11, 2006.

Montgomery County (Maryland) Bar Association Criminal Section, April 25, 2006. Maryland Association of Criminal Defense Attorneys, September 20, 2005.

Immigration 101, Maryland Legal Aid Bureau, Domestic Law Unit, November 17, 2011.

Constitutional Anatomy of an ICE Home Raid, Arrest, Detention and Removal, panelist, web seminar, American Immigration Lawyers Association, August 31, 2010.

Panel Moderator: *Working Session: Practical Considerations: Creating a Domestic Best Interests Determination*, Practical Considerations: The Nexus of Social Work and Law in International Child Welfare Conference, University of Maryland School of Social Work, October 31, 2009.

Panelist, *Immigration Law for the Non-Immigration Practitioner – Focus on Interactions with Family, Business and Criminal Law*, Maryland State Bar Association, June 12, 2009.

Presenter, *A Practical Guide to the Immigration Consequences of Domestic Violence and Drug Charges in Maryland*, Immigration Consequences of Criminal Activity, The Maryland Institute for Continuing Professional Education of Lawyers, Inc., October 2008.

Presenter, *Immigration Consequences of Criminal Convictions*, ABA Commission on Effective Criminal Sanctions, Collateral Consequences of a Criminal Proceeding, June 13, 2008.

Immigrant Workers in Baltimore, 2nd Annual Law & the City Panel, Loyola College in Maryland, November 8, 2007.

Immigration Pitfalls in Family and Criminal Cases, Maryland State Bar Association, 9th Annual Solo and Small Firm Conference, November 3, 2007.

Impacts of Legislative and Policy Proposals, Panel Moderator, Broken Fences: Legal and Practical Realities of Immigration Reform in the Post-9/11 Age, University of Maryland Law Journal of Race, Religion, Gender and Class, Fall Town Hall, November 10, 2005.

Serving the Latin American Immigrant Community: A Multi-Faceted Social Service Approach, University of Maryland School of Social Work, December 6, 2004.

Immigration and Cultural Perspectives, Third Annual Domestic Violence Conference, Baltimore City Commission for Women and Baltimore City Department of Social Services, October 28, 1999.

Perspectives from Diverse Communities, "DV 101" Conference, Domestic Violence Coordinating Committee for Baltimore City, June 17, 1999.

Other Legal Employment

Associated Catholic Charities Immigration Legal Services, Baltimore, Maryland
Staff attorney, 1995 to 2001. Provided legal assistance to low income refugees and immigrants in a variety of cases including asylum, family and domestic violence related applications.

Lutheran Immigration and Refugee Service, Baltimore, Maryland
Interim staff attorney: March - May 2004

Migrant Legal Action Program, Washington, DC
Staff attorney, 1994 to 1995. Represented migrant farmworkers in legislative and administrative advocacy on environmental and occupational safety and health issues.

Farmworker Legal Services of North Carolina, Raleigh, North Carolina
Staff attorney, 1990 to 1994. Director, Worker Safety and Health Project, 1989 to 1990. Represented migrant and seasonal farmworkers in multi-faceted federal civil legal practice, with an emphasis on employment and occupational safety and health law.

Texas Center for Immigrant Legal Assistance, Houston, Texas
Paralegal and coordinator of Central American refugee program, 1984 to 1986.

Selected Memberships and Awards

2019 USM Board of Regents Faculty Award for Excellence in Public Service, April 2019

Public Service Award, Maryland Hispanic Bar Association, September 2017

Benjamin L. Cardin Distinguished Service Award, Maryland Legal Services Corporation, December 2015

Maureen A. Sweeney
Curriculum vitae

Page 6

Dr. Martin Luther King Jr. Special Diversity Recognition Award 2016, for participation in planning the course “Freddie Gray’s Baltimore: Past, Present and Moving Forward”

Dr. Martin Luther King Jr. Special Diversity Recognition Award 2015, for supervising student response to Central American minor crisis

Maryland Office of the Public Defender, Immigration Working Group, 2009-present

Public Service Award, Maryland Hispanic Bar Association, September 2010

Maryland Immigrant Rights Coalition, Inc., founding Board of Directors, 2008-2015

Advocates for Survivors of Torture and Trauma, Board of Directors, member, 1996-2012

Maryland State Bar Association, member, 2008-present

Academic Representative, Immigration Section Council, 2008-2015

American Immigration Lawyers Association, member, 1997-2001, 2004 – present

DC Chapter Pro Bono Award, Fall 2007

Mayor’s Domestic Violence Coordinating Committee, Multi-ethnic Workgroup, Baltimore, Maryland, member, 2000-2001

Society for American Law Teachers, member, 2012

Bar Memberships

Maryland

North Carolina (inactive status)

United States District Court for the District of Maryland

United States District Court for the Eastern District of North Carolina

United States Court of Appeals for the Fourth Circuit

Languages

Fluent in Spanish and French, proficient in Dutch and Italian