Federal Court  Cour fédérale

Date: 20180810

Dockets: IMM-2977-17
IMM-2229-17
IMM-775-17

Citation: 2018 FC 829

Toronto, Ontario, August 10, 2018

PRESENT: The Honourable Mr. Justice Diner

BETWEEN:

THE CANADIAN COUNCIL FOR REFUGEES, AMNESTY INTERNATIONAL, THE CANADIAN COUNCIL OF CHURCHES, ABC, DE [BY HER LITIGATION GUARDIAN ABC], FG [BY HER LITIGATION GUARDIAN ABC], MOHAMMAD MAJD MAHER HOMSI, HALA MAHER HOMSI, KARAM MAHER HOMSI, REDA YASSIN AL NAHASS AND NEDIRA MUSTEFA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION AND THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondents

ORDER AND REASONS

I. Introduction

[1] Before me is a motion by the Applicants, filed July 3, 2018 under Rule 369 of the *Federal Courts Rules*, SOR/98-106, [Rules], and subsequently heard orally on July 31, 2018, for an order granting leave to call more than five expert witnesses, pursuant to Rule 52.4. Specifically, the Applicants seek leave to file four affidavits containing expert evidence [Additional Affidavits], in addition to the five already filed.

[2] In short, the Respondents oppose the relief sought because, in their view, the Additional Affidavits are irrelevant and unnecessary, and therefore inadmissible for failing to meet the factors set out in *R v Mohan*, [1994] 2 SCR 9 [*Mohan*]. The Applicants disagree that the *Mohan* factors must be met at this stage, and maintain that the Affidavits meet the threshold of what is required for leave under Rule 52.4.

[3] For the reasons that follow, I have been persuaded by the Applicants' position and am therefore granting their motion for leave. However, I agree with the Respondents that a joint expert affidavit is improper, and so the Applicants' leave in respect of that affidavit is contingent on their rectifying that defect.

II. Background

[4] The Applicants in this case challenge the constitutionality of the legislation implementing the *Safe Third Country Agreement* [STCA] in Canada. They allege that by returning ineligible refugee claimants to the United States [US] under the STCA, Canada exposes such claimants to a

substantial risks in the form of detention, *refoulement*, and other violations of their rights under the 1951 *Convention Relating to the Status of Refugees*, 28 July 1951, 189 UNTS 137. The Applicants argue that, as a result, the legislation implementing the STCA runs contrary to sections 7 and 15 of the *Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982* being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [*Charter*].

[5] In *Canadian Council for Refugees v Canada (Citizenship and Immigration)*, 2017 FC 1131, the Canadian Council for Refugees, Amnesty International, and the Canadian Council of Churches were granted public interest standing in this application. The remaining individual Applicants are (a) a mother and her children from Central America, whose refugee claim relates to gang and gender-based persecution, and who were previously detained in the United States, (b) a Muslim family from Syria who left the United States following the issuance of the first Travel Ban by the United States government, and (c) a Muslim woman from Eritrea who was held in detention for an extended period after her attempt to enter Canada from the United States.

[6] Broadly speaking, the five filed expert affidavits address the current situation for refugee claimants in the US, which the Applicants argue has deteriorated in the decade since this Court last examined the US's treatment of refugees and compliance with its non-*refoulement* obligations in *Canadian Council for Refugees v R*, 2007 FC 1262 [*Canadian Council for Refugees*]. These affidavits are written by the authors, and for the purposes, that follow:

- **Prof. Musalo,** law professor at the University of California's Hastings College of the Law, focuses on the impact of US asylum law on women, especially those fleeing gender-based persecution.

- **Anwen Hughes**, Deputy Legal Director of the Refugee Representation Program at Human Rights First and law professor at New York University Law School, comments on the effects of detention on asylum seekers and on their ability to present their claims, and the criminal prosecution of asylum seekers.

- **Prof. Deborah Anker**, long-time law professor and the Director of Harvard Law School's Immigration and Refugee Clinical Program, reviews the practice, law and recent developments regarding asylum-seekers, as well as of the issues of detention and enforcement.

- **Katharina Obser**, a senior policy advisor at the Migrant Rights and Justice Program of the Women's Refugee Commission, considers the effect on and realities of families experiencing separation and detention within the US immigration system, including having extensively interviewed detained women.

- **Prof. Hathaway** provides an overview of the relevant rules of international and comparative refugee law, including "responsibility-sharing" arrangements, with reference to the four experts listed above, with particular attention on the *non-refoulement* obligation in refugee law.

[7] Further, some of the authors of the Filed Expert Affidavits have provided supplementary affidavits, to address recent law and policy changes in the US.

[8] The four Additional Affidavits for which the Applicants seek leave in this motion were tendered from:

- **Abed Ayoub,** National Legal Director of the American-Arab Anti-Discrimination Committee, who considers discrimination faced by Muslim asylum-seekers in the United States, including through what he describes as "Arab and Muslim Bans", the No Fly List, Fear of Hate Crimes, Housing Discrimination, the US Countering Violent Extremism initiative, and Muslims in Detention.

- **Professors Ramji-Nogales** (Associate Dean at Beasley School of Law, Temple University), **Shoenholtz** (co-director of the Centre for Applied Legal Studies at Georgetown University), and **Schrag** (Public Interest Law professor, also at Georgetown), who have co-published two major books in the last decade on asylum adjudication and reform in the US, as well as various articles. They focus, after having completed broad-based empirical studies, on the human the effect of the "one-year bar" and other factors in US law and policy that increase the risk of *refoulement*.

- **Elizabeth Kennedy,** a scholar who previously trained at Oxford and is currently completing her Ph.D. in California, currently based both out of the US and Central America, who is an expert on asylum-seekers from Latin American and in

particular El Salvador, Honduras, and Guatemala. She documents how these individuals face harm and sometimes death when returned to those countries, and considers, in particular, victims of gang-related and domestic violence.

- **Professor Benson**, currently teaching at New York Law School, focuses on the treatment of children in detention and claiming US asylum, as well as the obstacles faced by them and their families.

[9] More detailed summaries of the qualifications and expertise of these individuals, as set out by the Applicants in their Written Representations, are reproduced as Annex A to this Order and Reasons.

III. Issues

[10] The central issue before me is whether the Applicants should be granted leave to call more than five expert witnesses under Rule 52.4. However, the Respondents have also raised the subsidiary issue of whether one of the Additional Expert Affidavits is improper, because it is sworn jointly by three affiants.

[11] I note that the Respondents also raised concerns about whether some of the Applicants' other affidavits are in fact expert affidavits in the guise of lay evidence. As I made clear at the hearing, I will make no findings on this issue, as it is not the subject of the motion before me.

IV. Analysis

A. *Should the Applicants be granted leave under Rule 52.4?*

[12] Since amendments to the *Rules* made in 2010, a party must seek leave to call more than five expert witnesses in a proceeding, pursuant to Rule 52.4:

Limit on number of experts	**Limite du nombre d'experts**
52.4 (1) A party intending to call more than five expert witnesses in a proceeding shall seek leave of the Court in accordance with section 7 of the Canada Evidence Act.	**52.4 (1)** La partie qui compte produire plus de cinq témoins experts dans une instance en demande l'autorisation à la Cour conformément à l'article 7 de la Loi sur la preuve au Canada.
Leave considerations	**Facteurs à considérer**
(2) In deciding whether to grant leave, the Court shall consider all relevant matters, including	**(2)** Dans sa décision la Cour tient compte de tout facteur pertinent, notamment :
(a) the nature of the litigation, its public significance and any need to clarify the law;	**a)** la nature du litige, son importance pour le public et la nécessité de clarifier le droit;
(b) the number, complexity or technical nature of the issues in dispute; and	**b)** le nombre, la complexité ou la nature technique des questions en litige;
(c) the likely expense involved in calling the expert witnesses in relation to the amount in dispute in the proceeding.	**c)** les coûts probables afférents à la production de témoins experts par rapport à la somme en litige.

[13] As Rule 52.4 invokes section 7 of the *Canada Evidence Act*, RSC, 1985, c C-5) [CEA], I will reproduce it here:

Expert witnesses	**Témoins experts**
7 Where, in any trial or other proceeding, criminal or civil, it is	**7** Lorsque, dans un procès ou autre procédure pénale ou civile, le

intended by the prosecution or the defence, or by any party, to examine as witnesses professional or other experts entitled according to the law or practice to give opinion evidence, not more than five of such witnesses may be called on either side without the leave of the court or judge or person presiding.	poursuivant ou la défense, ou toute autre partie, se propose d'interroger comme témoins des experts professionnels ou autres autorisés par la loi ou la pratique à rendre des témoignages d'opinion, il ne peut être appelé plus de cinq de ces témoins de chaque côté sans la permission du tribunal, du juge ou de la personne qui préside.

[14] In order to determine whether the Applicants should be granted leave, I will first consider the factors set out in Rules 52.4(2). I will then consider other factors that have arisen in the jurisprudence. In doing so, I remain mindful of the Respondents' position that this Rule reflects a strong concern with the proliferation of expert evidence (see *R v DD*, [*2000*] 2000 SCC 43, 2 SCR 275). Specifically, the Rule safeguards against the undue expansion of the number of expert witnesses (*Apotex Inc v Sanofi-Aventis*, 2010 FC 1282 at para 20 [*Sanofi*]), and avoids duplication and wasted resources (*Airbus Helicopters, SAS v Bell Helicopter Textron Canada Ltée*, 2016 FC 590 [*Airbus*] at para 52; *Altana Pharma Inc. v Novopharm Ltd.*, 2007 FC 1095 [*Altana*] at para 55). There is a high threshold to meet before leave will be granted (*Airbus* at para 64).

(1) Factors under Rule 52.4(2)

(a) *The nature of the litigation, its public significance and any need to clarify the law*

[15] As mentioned above, the applications underlying this motion involve a constitutional challenge to the legislation giving effect to the STCA. The STCA affects many asylum-seekers who wish to apply for refugee status at a Canadian port of entry — its repercussions have

become increasingly evident with the “irregular arrivals” of refugee claimants who avoid land ports of entry. The Applicants claim that, since *Canadian Council for Refugees*, the situation has substantially deteriorated for the various individuals and groups impacted by the STCA.

[16] Constitutional litigation of this nature is uniquely broad in its impact. If the Applicants succeed in their challenge, the consequences will affect many individuals beyond those named as parties to these proceedings. For the purposes of this motion, I am satisfied that the Additional Affidavits contain evidence that is relevant to the legal issues in dispute, both personally in respect of the individual Applicants, as well as to the broader constitutional issues raised in particular by the public interest parties.

[17] I am mindful of the cases relied on by the Respondents, including *R v Moriarity*, 2015 SCC 55, which has been cited for the proposition that the Supreme Court of Canada does not necessarily require expert evidence for *Charter* claims. However, the nature of this litigation can be distinguished from *Moriarity*, given the human rights issues raised. It also differs from the intellectual property cases cited by the Respondents, including *Sanofi*, *Airbus*, and *Eli Lilly and Co v Apotex Inc*, 2007 FC 1041, which were civil proceedings, and did not broadly engage the public interest, as does this litigation.

[18] Thus, this factor weighs heavily in favour of granting the Applicants leave.

(b) ***The number, complexity or technical nature of the issues in dispute***

[19] It is not disputed that the matters raised in this litigation are complex, and raise many factual and legal issues regarding US asylum law. The Applicants claim that the asylum system in the US renders the STCA unconstitutional, including with respect to the impact of the one-year bar, treatment of gender-based claims, criminalization of asylum seekers, and widespread detention and separation of families.

[20] Further, the Applicants contend that recent changes to US law and policy over the last decade by both the current and previous administrations, including political decisions such as the Executive Orders, have worsened the situation since *Canadian Council for Refugees* took place. The Applicants also point out that practices and procedures vary between regions due to immigration enforcement, such that additional evidence is required to give a full picture of the situation in the US.

[21] The Applicants assert, and I accept, that the relationship between the current legal and factual realities confronting asylum-seekers in the US is complex. Experts are required to speak to these realities, and create a complete evidentiary record to allow the application judge to adequately assess the constitutional and other issues raised in this litigation. And, generally speaking, I am of the view that a fulsome record is desirable in these proceedings, given the *Charter* rights at stake and the complexity of the factual matrix.

[22] Again, in my view, this factor weighs in favour of granting leave.

(c) *The expense in calling the expert witnesses in relation to the amount in dispute*

[23] This factor is not directly applicable as the Applicants do not claim damages. Thus, this favour weighs neither against nor in favour of granting leave.

(2) Other considerations

[24] While not explicitly required under the Rules, the jurisprudence has established additional considerations that guide the analysis under Rule 52.4.

(a) *Proportionality and Avoiding Excess*

[25] The objective behind section 7 of the CEA, is, at least in part, "to prevent abuse, trouble, expense and delay caused by excessive use of expert evidence" (*Altana* at para 55). However, I find that the spirit animating Rule 52.4 is proportionality. Here, the underlying applications raise issues of national significance that have garnered much media attention, both now, and going back a decade to when the constitutionality of the STCA legislation was first litigated before the Federal Courts. There are multiple parties involved in these proceedings, with many others impacted by and awaiting the outcome of this case. Further, the risks alleged by the Applicants are serious and broad in nature.

[26] Having considered the materials before me, I find that the Additional Affidavits are not "excessive" in the sense contemplated in *Altana*. Rather, they are proportionate in scope and number to the complexity and importance of the issues raised.

(b) ***Duplication***

[27] At its heart, duplication invokes necessity: if the evidence is duplicative, it is unnecessary. I agree with the Respondents that there is some duplication in the Applicants' expert evidence. However, I note, first of all, that a small degree of overlap is inevitable given this subject matter, and the backgrounds of the experts; duplication certainly does not disqualify their admission given the complexity of the subject matter (*Sam v British Columbia*, 2016 BCSC 86 at paras 26, 31).

[28] Second, I am satisfied that, although there is thematic overlap, in my view that overlap does not extend to the affiants' expertise. For instance, Professor Musalo discusses asylum law as it affects women, while Ms. Kennedy provides a perspective on gender-based domestic and gang-related violence claims focusing on Central America (including El Salvador, the country of origin of an Applicant). Lastly, and more significantly, I am satisfied that, for the purposes of this motion, each of the Additional Affidavits speaks to different elements of the legal and factual issues raised, and approaches them from different perspectives.

[29] The Respondents have provided this Court with detailed, pinpoint submissions on the redundancy, irrelevancy, and lack of necessity of the Additional Expert Affidavits. They point to *R v Mohan*, [1994] 2 SCR 9 at 20 [*Mohan*], which holds that expert evidence must be (i) relevant; (ii) necessary to assist the trier of fact; (iii) not subject to any exclusionary rule; and (iv) adduced by a properly qualified expert, in order to be admissible.

[30] In brief, it is the Respondents' position that the Applicants must demonstrate the admissibility of the Additional Affidavits under the *Mohan* factors at this time, in order to receive leave under Rule 52.4. They refer to *Airbus*, in which Justice Martineau held that the moving party "must show that a greater number of experts is necessary for the determination of the issues, that there are no unnecessary duplications in the evidence, and that the additional strain on the time and resources of the Court and the parties is justified" (at para 52). In the Respondents' view, "necessity" for the purposes of this motion is the same as "necessity" under *Mohan*.

[31] I disagree. The motion before me is not about admissibility. In my view, Rule 52.4 sets out the factors which guide this Court in determining whether leave should be granted to call more than five experts in meritorious cases.

[32] Having taken those criteria and the relevant case law into account, I am satisfied that the Applicants have met their onus, and that they have demonstrated necessity for the purposes of a leave motion.

[33] In conclusion, given the important constitutional issues raised, I find that the benefits of granting leave outweigh the risk that doing so will unnecessarily complicate or lengthen the proceedings. It will be for the application judge to determine the Respondents' concerns over admissibility, whether at the hearing of the application, in the context of the entire evidentiary record, or at a further preliminary motion, at the Court's discretion.

B. ***Is the joint affidavit improper?***

[34] The Respondents contend that the affidavit co-authored by Professors Ramji-Nogales, Schoenholtz, and Schrag should not be considered by this Court for the purposes of Rule 52.4, because "joint" affidavits are not permitted under the Rules. The Respondents rely on the strong statements of Justice Rennie, as he then was, in *Elhatton v Canada (Attorney General)*, 2013 FC 71 [*Elhatton*] that "joint affidavits are unknown to our legal system. There are many good reasons for this; they inherently reflect a collusion between two separate and distinct witnesses and interfere with the truth-seeking function of cross-examination" (at para 72). Similarly, Justice Bell struck a joint affidavit in *Top v Canada (Citizenship and Immigration),* 2015 FC 736 [*Top*] (at para 1).

[35] The Applicants argue in response that nothing in the Rules precludes joint affidavits, and that the joint affidavit tendered in this case is distinguishable from those at issue in *Top* and *Elhatton* because it is an expert affidavit containing evidence in respect of a study prepared specifically for this litigation, based on a history of joint academic work, including the publishing of joint articles and books.

[36] The Applicants further submit that cooperation amongst experts is to be encouraged. They also note that these professors provided a joint affidavit in *Canadian Council for Refugees,* where it was relied on without the Court questioning its form. At the hearing, counsel for the Applicants suggested that the professors could be joint cross-examined on their affidavit without issue.

[37] I do not agree with the Applicants' position. In my view, the fact that a joint affidavit was proffered and relied on in *Canadian Council for Refugees* is of little import, because the issue was not put to Justice Phelan. As held by Justice Heneghan in *Antoine v Sioux Valley Dakota Nation*, 2008 FC 794 (at para 33), the Rules do not contemplate joint affidavits: Rule 80(1) requires affidavits to be drawn in the first person, in Form 80A, which permits only a single deponent.

[38] I also share the Respondents' concerns, expressed at the hearing, over the fairness of any "joint" cross-examination of the authors. If the authors vary in expertise and knowledge, then it would be unfair to require the Respondents to attempt to test their evidence on the basis of a single affidavit. On the other hand, if each author is equally qualified to speak to the opinions and facts deposed, then there is no need for the affidavit to be filed in joint form.

[39] To avoid the cost and delays of a further motion, I will grant the Applicants leave to file additional expert evidence covering the subject matter set out in the joint affidavit, but only if it is proffered by a single expert.

V. Conclusion

[40] The Applicants motion is allowed in part, in accordance with this Order and Reasons.

ORDER IN IMM-2977-17, IMM-2229-17, IMM-775-17

THIS COURT ORDERS that:

1. The Applicants are granted leave to file the affidavits of Abed Ayoub, Elizabeth Kennedy, and Professor Benson in accordance with Rule 52.4.

2. The Applicants are granted leave to file an affidavit covering the subject matter contained in the affidavit of Professors Ramji-Nogales, Shoenholtz, and Schrag, limited to a single deponent.

3. No costs will issue.

"Alan S. Diner"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKETS:	IMM-2977-17, IMM-2229-17, IMM-775-17
STYLE OF CAUSE:	THE CANADIAN COUNCIL FOR REFUGEES, AMNESTY INTERNATIONAL, THE CANADIAN COUNCIL OF CHURCHES, ABC, DE [BY HER LITIGATION GUARDIAN ABC], FG [BY HER LITIGATION GUARDIAN ABC], MOHAMMAD MAJD MAHER HOMSI, HALA MAHER HOMSI, KARAM MAHER HOMSI, REDA YASSIN AL NAHASS AND NEDIRA MUSTEFA
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	JULY 31, 2018
ORDER AND REASONS:	DINER J.
DATED:	AUGUST 10, 2018

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ANNEX A

The five affiants (#1-5) on whom the Applicants are relying, as well as the four additional affidavits (#6-9) for which leave is sought through this motion, are reproduced below from the Applicants' Written Representations in support of this Motion.

1. **Prof. Karen Musalo,** a professor at the University of California, Hastings College of the Law, and the co-author of "Refugee Law and Policy: A Comparative and International Approach". She has researched and written on gender asylum claims, is the founding director of the UC Hastings Center for Gender and Refugee Studies, and has litigated or provided support in landmark cases concerning gender-based asylum in the U.S. Professor Musalo provides expert evidence by way of initial and supplemental affidavits concerning the most significant barriers to protection faced by women asylum seekers in the U.S.

2. **Anwen Hughes** is the Deputy Legal Director of the Refugee Representation Program at Human Rights First, formerly known as the Lawyers Committee for Human Rights. She has worked as a lawyer for that program for 18 years and teaches as an adjunct professor at New York University Law School. Ms. Hughes' initial affidavit addresses immigration detention in the US.

3. **Prof. Deborah Anker** is a Clinical Professor of Law at Harvard Law School and the Founder and Director of the Harvard Law School Immigration and Refugee Clinical Program. Prof. Anker has taught immigration, refugee and asylum law to students at Harvard Law School for over thirty years, and is the author of the leading treatise "Law of Asylum in the United States." Her initial affidavit addresses detention of asylum seekers, criminal prosecution of asylum seekers, expedited removal, credible fear interviews, barriers preventing migrants from applying for asylum at the U.S.-Mexico border, and the one-year bar, as well as recent developments in jurisprudence and procedure of asylum adjudication in the United States.

4. **Katharina Obser** is a Senior Policy Advisor in the Migrant Rights and Justice Program of the Women's Refugee Commission, a non-profit organization that advocates for the rights of women, children, and youth fleeing violence and persecution. Ms. Obser's affidavit documents the detention issues and separation of families.

5. **Prof. James C. Hathaway,** an academic, as specialized in international and comparative refugee law for 35 years. He has written more than 80 articles in this field, as well as two leading treatises: *The Law of Refugee Status* (1991, second edition co-authored with M. Foster 2014), and *The Rights of Refugees under International Law* (2005). He is currently a professor of law at the University of Michigan Law School and the founding Director of Michigan Law's Program in Refugee and Asylum Law, among other posts. His affidavit explains the relevant rules of international and comparative refugee law, and the risk of indirect *refoulement* from the asylum practices and policies of the U.S., with reference to the initial and supplemental expert affidavits of Prof. Deborah Anker, Anwen Hughes, Prof. Karen Musalo and Katharina Obser.

6. **Professors Jaya Ramji-Nogales**, **Andrew I. Shoenholtz** and **Philip G. Schrag** have co-written an affidavit regarding the "one-year bar" and other arbitrary factors that increase the likelihood of *refoulement*, based, in part, on their analysis of statistical data from over 640,000 cases adjudicated by Department of Homeland Security asylum officers between October 1995 and July 2015. Prof. Ramji-Nogales is a law professor at Temple University who has authored or co-authored more than twenty articles about immigration and human rights. Prof. Shoenholtz is the co-director of the Center for Applied Legal Studies at Georgetown University, and has authored or co-authored a book on forced migration and more than a dozen articles on refugee law and human rights. Prof. Schrag is the Delaney Family Professor of Public Interest Law at Georgetown University, and co-director of Georgetown's Center for Applied Legal Studies. He has authored or co-authored three books about asylum law and policy and more than forty law review articles.

7. **Abed Ayoub** is the National Legal Director of the American-Arab Anti-Discrimination Committee. His affidavit provides evidence on discrimination against Muslims and Arabs in the United States, with a focus on Muslim asylum-seekers, including the impact of the Muslim travel ban, the rise in hate crimes since the 2016 Presidential election, the impact of surveillance and national security laws, and discrimination against Muslims in detention.

8. **Elizabeth Kennedy** is a scholar on country conditions in El Salvador, Honduras and Guatemala who has served as an expert in asylum proceedings in the United States, Canada, the U.K. and Sweden. She has conducted extensive research in El Salvador, Honduras and Guatemala on return conditions for male and female deportees, including former gang members, from Mexico and the U.S., among other issues. Her affidavit

outlines her research results concerning persons deported from the United States to face death and other harm in El Salvador, Honduras and Guatemala.

9. **Prof. Lenni Beth Benson** is a recognized expert on U.S. immigration law, with a particular expertise in the rights of children and their ability to seek and gain asylum. She is a professor at New York Law School, has served as an adjunct professor at Columbia Law School and other U.S. law schools, and has served as a consultant to the Administrative Conference of the United States (a bipartisan commission that studies administrative law and procedure). Prof. Benson is the founder and former director of the Safe Passage Project Corporation (a legal services provider that recruits, trains, and mentors pro bono counsel to aid immigrant children), is a founding member of the American Immigration Representation Project (that sought to expand pro bono resources for people held in U.S. immigration detention), has testified as an expert witness concerning children in U.S. Federal Courts, has written extensively concerning migrant children, and has participated in numerous inter-agency governmental meetings concerning the treatment of immigrant children in detention and in the asylum process. Prof. Benson's affidavit sets out the complex treatment of children's asylum claims in the U.S.; describes the rapidly evolving situation at the U.S. southern border concerning prosecution of parents for illegal entry and separation from or detention with their children; and explains the obstacles children face in presenting asylum claims with no free legal counsel. Prof. Benson also addresses the ways in which the U.S. interpretation of the refugee definition is not responsive to the forms of harm children experience, and the absence of child-friendly procedures in U.S. asylum adjudication.