

Statement Regarding the Events that Took Place Between Sylvia Delgado and Philip Wischkaemper Beginning 11/18/21

I have known Ms. Delgado since December of 1995 when she was in her last year of law school at the University of Texas. In late August or early September of 2021, she began working as a contract defense attorney with Operation Lone Star, under the direction of the Lubbock Private Defender's Office (LPDO), which acts as a central hub to outsource work to private defense attorneys to represent indigent cases of illegals crossing the border. At the time, I assisted Ms. Delgado with technical support and data management for her case load, including acting as legal assistant for her due to my technical/data background and ability to manage data and forms efficiently.

On the evenings leading up to the 11/18/21 Kinney County misdemeanor docket, I had been assisting Ms. Delgado in trying to locate clients that were set to appear on the 11/18/21 docket. Many of the clients she had for that docket were instructed via Bond Conditions paperwork to stay in contact with her. A couple were confirmed to be in ICE custody after having bonded out. Others were old cases where they paid cash bonds and bonded out within a short period of Ms. Delgado being assigned the cases. For these clients we generally had little, if any, contact information as they were not given any Bond Conditions that required them to stay in contact with their attorney. We were successful in locating a few clients, including Robert Gil Hernandez and Byran Enmanuel Montoya Martinez, that had bonded out on 9/26/21 and 11/4/21, respectively. Both had been deported back to Mexico after bonding out. Mr. Hernandez was interested in a *nolo contendere* plea bargain with the State if it would allow him to receive his cash bond back and allow him an opportunity to return to the United States, while Mr. Martinez was interested in pleading *not guilty*. In cooperation with visiting Kinney County Attorney for the State Kris Krishna, Ms. Delgado drafted *nolo contendere* plea paperwork for Mr. Hernandez. We sent the paperwork to Mr. Hernandez, which he signed and returned in the same evening in preparation for the 11/18/21 docket.

On November 18, 2021 Ms. Delgado was in the Kinney County docket via Zoom with the first eighteen of twenty cases (the other two cases were with defense attorney Kristin Etter). I was in the same building during the Zoom docket as Ms. Delgado, but in a different room. As such, I was watching the broadcast of the Zoom meeting on YouTube and making notes while she appeared live in the Zoom meeting.

Mr. Hernandez, who attended the Zoom docket from Mexico, appeared to make his *nolo contendere* plea as previously agreed to. While Judge Kitty Schild was getting plea paperwork printed, I saw Ms. Delgado receive a call. The call went on for approximately 4 minutes, during which Judge Schild was not able to get Ms. Delgado's attention. Ms. Delgado ended the phone call while Judge Schild was asking Mr. Hernandez what his plea would be. Mr. Hernandez plead *nolo contendere* on the record. Judge Schild stated she could not accept his plea without ensuring he understood the ramifications of pleading *nolo contendere*. While the Judge was explaining the ramifications to Mr. Hernandez, Ms. Delgado was clearly distressed. Before Judge Schild accepted the plea, Ms. Delgado interrupted and requested to reform the bond from a cash bond to a no-fee PR bond. After Judge Schild agreed to this, Ms. Delgado asked if the case could be dismissed. D.A. Kris Krishna refused and wanted to continue with the *nolo contendere* plea. Before a plea could be reached a second time, Ms. Delgado requested Judge Schild allow Mr. Hernandez to be released on the no-fee PR bond and not plead *nolo contendere*, but *not guilty* instead. When asked by Judge Schild, Mr. Hernandez maintained his *nolo contendere* plea, but after urging from Ms. Delgado to confer with her client and Operation Lone Star defense attorney Kristin Etter (who also receives cases from LPDO), ultimately Mr. Hernandez agreed to plead *not guilty* on the record.

This was a shock to me as this was not what I expected to occur. After several other cases went through the docket, Judge Schild recessed for a few minutes. It was at this time I had an opportunity to speak with Ms. Delgado about the events that had transpired.

During the recess, I asked Ms. Delgado why she opted to not plea Mr. Hernandez *nolo contendere* as previously agreed to with Kris Krishna. She stated that Philip Wischkaemper, Chief Defender of LPDO, and the person responsible for overseeing Operation Lone Star indigent defense cases, called her and pressured her to not allow Mr. Hernandez to plead to anything, including cursing at her on the phone. As a result, and a need to assist Mr. Hernandez as his counsel, Ms. Delgado instead requested the no-fee PR bond for Mr.

Hernandez, which was granted. This was a best effort to assist Mr. Hernandez after Philip Wischkaemper told her not to allow him to plead.

Later that afternoon, Ms. Delgado's client Byran Enmanuel Montoya Martinez, also appeared via Zoom from Mexico. Ms. Delgado plead Mr. Martinez *not guilty* even as Mr. Krishna offered a plea deal again. Ms. Delgado stated she had discussed the possibility of plea deals for time served with her clients, but that she had been advised by her "supervising attorneys" to not offer those deals to her clients and to not plead them to anything. She finally stated she would not "waste the court's time" with accepting plea offers. She then requested than any cases that the State could dismiss be dismissed, especially those where the client would be deported to another country because it was very difficult for them to appear in court. Mr. Krishna declined any dismissals. Judge Schild then went on to state Ms. Delgado had a "professional obligation" to notify all of her clients of plea offers. The case was set for 12/15/21.

Following the docket, at approximately 3:00 p.m. on November 18, 2021, Philip Wischkaemper called Ms. Delgado. We were discussing the events of the docket that day and I was present for the call. She placed him on speaker phone. He immediately began to curse at her, something akin to "Goddamn It, Sylvia..." at which point she told him not to speak to her that way. He apologized, but did continue with various complaints:

- He complained that she "threw him under the bus" during the Bryan Enmanuel Montoya Martinez portion of the docket (when she stated that her "supervising attorneys" did not want her to accept plea deals)
- He complained that everyone else on the day's docket got dismissals (which was not true, as Ms. Delgado had 18 of 20 of the cases on the docket, and the final two from Ms. Etter were not dismissed).

He told her that she should not be pleading clients and stated it was her job to talk them out of pleading if at all possible, even if they wanted to do so. He further stated she was "acting like a D.A. or a judge" in her desire to assist in moving dockets faster so she could have more clients released from jail more quickly. His rationale was that even if clients stayed in jail a long time, at the same time Texas Department of Public Safety officers were "retiring in droves," and so if the defense could slow down the docket/legal process, then there would be no officers to attend trial cases. He finished with a statement akin to "good things can happen if we just hold out long enough." At this point, in my opinion, Philip Wischkaemper's obvious motivation was to grind the Operation Lone Star legal process to a halt until all cases could be dismissed. My understanding of LPDO's role in Operation Lone Star is to act as a contracting hub for private defense attorneys to defend indigent cases. However, since LPDO controls all funding to private defense attorneys, they have de facto capability to control what contracted attorneys can do – essentially acting as a private law firm that can utilize tens or hundreds of private attorneys across the state of Texas in a unified fashion. LPDO can fundamentally act as an employer in this manner, to the detriment of defendants and the defense attorneys they fund – all via Philip Wischkaemper's strategy of slowing down the legal system. While I am no expert in this area, this appears to be both illegal and unethical.

Though I do not recall the exact day, within a few days of the 11/18/21 docket, Ms. Delgado informed me that she had contacted the State Bar of Texas' Ethics Hotline to discuss the ethical consequences of what had occurred. At this time, she felt she did not need to file a formal complaint since the Operation Lone Star judges she was working with were granting no-fee PR bonds, so that was another tool that could be used to get clients out of jail as quickly as possible instead of pleading them. As I understand it, the Ethics Hotline attorney encouraged her to file a complaint.

Following the events of November 18, 2021, Philip Wischkaemper put Ms. Delgado under increasing levels of scrutiny. Some examples include:

- On the evening of 11/18/21, Philip Wischkaemper requested a list of resolved cases from Ms. Delgado. I put together the list. At the time, of some 287 cases, Ms. Delgado had plead 5 cases from Misdemeanor A to Misdemeanor B with time served and no court costs. She had 6 dismissals. She had secured at least 53 PR bonds for clients, and many more had bonded out with cash bonds – all within about 6 weeks of her coming on board. When it was stated via email on November 19,

2021 that there were 6 pleas (erroneously, there were 5), Philip Wischkaemper stated via email “Perfect. That is what I like to hear. Lets keep it that way.”

- Philip Wischkaemper requested detailed information on some cases over time, most of which I compiled. My understanding is that this level of discussion on individual cases did not occur with other LPDO attorneys, and did not occur with Ms. Delgado prior to the events of November 18, 2021.
- Though I am not sure of the exact date, Philip Wischkaemper assigned Ms. Delgado a “2nd chair” attorney to “assist with her case load.” Aside from a initial meeting that included this 2nd chair attorney, I do not believe has been involved with any of Ms. Delgado’s cases to date.
- Philip Wischkaemper stated that Ms. Delgado had too many cases based on guidelines from the Texas Indigent Defense Commission. Based on my understanding from conversations Ms. Delgado has had with other attorneys working with LPDO, no other attorneys – even if their case loads were higher – were given any notice that their case loads were too high, or even assigned a 2nd chair attorney to assist.

On December 15, 2021, there was another docket in Kinney County where Ms. Delgado had 18 of 47 total docket cases. Many of these cases were from clients that had bonded out very soon after Ms. Delgado began working with Operation Lone Star and LPDO, and many of the cases were resets from the November 18, 2021 docket (already discussed). Ms. Delgado was in Austin, Texas, and I was not present in person with her.

For the cases where clients had bonded out early on, we had not had success in locating them. In most of those cases, the clients bonded out after meeting with Ms. Delgado while in jail via Zoom and had her phone number and/or EZ Texting service number. She had arranged to ensure Mr. Robert Gil Hernandez, from the 11/18/21 docket, would appear again via Zoom from Mexico. In none of these cases were these clients appearing on the docket for the first time. During the morning docket session with Judge Tully Shahan, the State requested that if defendants did not appear by 3:00 p.m. Central Time, a bond forfeiture and capias would be issued for them. Judge Shahan agreed. This situation applied to most of Ms. Delgado’s clients with the exception of Mr. Hernandez. Ms. Delgado explained to Judge Shahan that she stopped mid-plea with Mr. Hernandez on the 11/18/21 docket but he would be able to appear so he could request his bond payment be returned. Judge Shahan agreed to take up the matter in the afternoon. For the rest of Ms. Delgado’s clients, she explained that they had bonded out and not contacted her. In all cases, Judge Shahan stated that if any of the clients did not appear by 3:00 p.m., a capias would be issued. If they appeared by 3:00 p.m., the capias would either be withdrawn (if issued) or none would be issued.

Between the morning and afternoon portions of the docket, Philip Wischkaemper contacted Ms. Delgado and requested she call him. She called me beforehand so I could be witness to the conversation and then added Philip Wischkaemper to the call (he was not aware I was on the line). During the call, Mr. Wischkaemper stated he would be removing Ms. Delgado from the December 15, 2021 docket cases immediately while he (Mr. Wischkaemper) contacted Judge Shahan to “fix her mess.” He was not happy that she did not have contact from most of her clients and that she stated accurately to the court their failures to appear in prior dockets. He wanted Ms. Delgado to contact bonding companies and otherwise spend time manually hunting down clients, which was not a role she was notified of prior to this discussion and was not a part of LPDO training for onboarding attorneys. The lack of communication from clients is not unique to Ms. Delgado’s cases, but is rather the norm as it applies to Operation Lone Star defendants that have bonded out. This is evident in watching the dockets over time.

After the call, during which I did not speak, we discussed the fact that on November 4, 2021, Ms. Delgado had contacted a private investigator through and recommended by LPDO (specifically by Philip Wischkaemper), Juan R. Soto, to locate several clients – including many of those that failed to appear on the 11/18/21 and 12/15/21 dockets. Mr. Soto was unable to locate any of them. When Ms. Delgado originally contacted Mr. Soto, it was evident that he had not been asked to perform this function for Operation Lone Star defendants before.

Between the morning and afternoon portions of the 12/15/21 docket, Philip Wischkaemper contacted Judge Shahan via email and stated he wanted Ms. Delgado removed from her cases on the docket immediately, he

would have new counsel in her place by end of the week, and requested that the court not issue bond forfeitures.

After this email was sent out, Ms. Delgado filed a grievance with the State Bar of Texas and then responded to Philip Wischkaemper's email asking the court for a hearing on the matter and attaching the grievance.

On the afternoon portion of the 12/15/21 docket, Ms. Delgado appeared to represent her clients from the afternoon. Judge Shahan did not object or make any comment – at least publicly – as I watched the YouTube feed of the live docket. She pled Mr. Robert Gil Hernandez *nolo contendere* per his initial desire on the 11/18/21 docket in which Philip Wischkaemper interfered. In return, upon Ms. Delgado's request, the court granted the return of his bond money, which was also his original interest. As expected, the other clients which failed to appear had a capias issued.

Since the grievance was filed, most of the Operation Lone Star defense attorneys have pled clients *nolo contendere*. To my knowledge Philip Wischkaemper has not tried to stop attorneys from pleading clients since 12/15/21, when the grievance was filed. However, Ms. Delgado has not received any additional cases from LPDO, who again, appears to be the only entity which can contract Operation Lone Star defense attorneys.

Respectfully,
Brian Gildon

