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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

Ilsa Saravia, as next friend for A.H., a
minor, and on behalf of herself individually
and others similarly situated,

Plaintiff,

v.

Merrick Garland, Attorney General, *et al.*,

Defendants.

Case No. 3:17-cv-03615-VC

Honorable Vince Chhabria

**DECLARATION OF MARTIN S. SCHENKER
IN SUPPORT OF PLAINTIFFS' MOTION
FOR ATTORNEY'S FEES**

I, Martin S. Schenker, declare as follows:

1. I am a partner with the law firm of Cooley LLP, counsel of record in the above-captioned matter for named Plaintiffs and the provisionally certified Class in this action.

2. I submit this Declaration in Support of Plaintiff's Motion for Approval of Settlement Regarding Attorneys' Fees and Costs.

3. I have personal knowledge of the facts set forth below and, if called as a witness to testify, could and would testify competently thereto.

4. In provisionally certifying the class in this matter, this Court determined that the class was adequately represented. *See Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1205 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) (“[H]aving reviewed the proof submitted by plaintiffs' counsel regarding their experience litigating complex civil actions and cases involving issues similar to those raised in this case, the Court is satisfied that the adequacy requirement is met.”).

5. This Court later preliminarily approved of the Class Settlement and appointed Cooley LLP (together with our co-counsel) as class counsel. (ECF No. 245.)

6. Shortly before Plaintiff filed her Motion seeking Preliminary Approval, counsel for Plaintiff and Defendants (collectively, “Parties”) initiated negotiations regarding Plaintiff's intent to file a Motion seeking Fees and Costs pursuant to 28 U.S.C. § 2412 of the Equal Access to Justice Act. The Parties engaged in active, arms-length, negotiations for over six months before agreeing to mediate their dispute before Magistrate Judge Laurel Beeler. (ECF No. 256). With the assistance of Judge Beeler, the Parties settled Plaintiff's request for fees and costs on April 22, 2021. (ECF No. 259).

7. Attached hereto as Exhibit A is a true and correct copy of the executed Fees and Costs Settlement Agreement entered into by the Parties on May 27, 2021.

DETAILS REGARDING COOLEY'S TIMEKEEPERS

8. A total of eight timekeepers from Cooley recorded time on this case from July 2017 through March 2020: Martin Schenker; Nathaniel Cooper; Ashley Corkery; Kathlyn Querubin; Trevor Kempner; Robert Paris; Evan Slovak; and Erik Kruger (paralegal).

9. As part of the settlement negotiations for Plaintiff's fees and costs, and in connection with this Motion, I reviewed the time records of each of these individuals and am knowledgeable about the tasks performed as I was responsible for overseeing the strategy of this case. I believe that each of the individuals who worked on this matter worked efficiently and contributed substantially to the representation of the named Plaintiff and class members.

10. Over the course of the litigation, the Cooley team included six litigation associates, all of whom are members of the California Bar and are admitted to practice law before all state and federal courts in the State of California.

11. I am a partner in the Business Litigation practice group at Cooley LLP. I received a bachelor's degree with highest honors from U.C. Davis in 1978, a master's degree from the London School of Economics and Political Science in 1979, and a J.D. *magna cum laude* from Harvard Law School in 1983. During my last year in law school, I worked with the Southern Poverty Law Center for approximately six months investigating conditions in the State of Alabama's juvenile detention facilities, including spending a month working out of the Center's offices in Montgomery, Alabama, and thereafter analyzing potential Constitutional challenges to conditions in those facilities. After receiving my J.D., I clerked for the Honorable Mariana R. Pfaelzer on the federal district court in Los Angeles for one year, and I have been in private practice as a litigator for over 30 years.

12. I joined Cooley LLP as a partner in 1999. I am a member of the California Bar and am admitted to practice law before all state and federal courts in the State of California and the United States Courts of Appeals for the Ninth Circuit. My practice focuses on complex business litigation, and I have significant trial experience. I have litigated numerous "bet the company" cases and multiple cases with hundreds of millions, and even billions, of dollars at stake, and have tried many cases in both state and federal courts.

13. I have been selected for *Northern California Super Lawyers* lists for more than ten years.

14. In addition to my extensive experience litigating complex business matters, I am also counsel of record in *Angel de Jesus Zepeda Rivas, et al. v. David Jennings, et al.*, No. 20-cv-

02731-VC, a class action seeking to remedy fundamentally unsafe conditions endangering the health of immigrants detained at the Mesa Verde Detention Facility and the Yuba County Jail in the midst of the global COVID-19 pandemic. This Court has provisionally certified that class and entered numerous temporary restraining orders and preliminary injunctions to mitigate the dangers to the provisional class. *See, e.g., Zepeda Rivas v. Jennings*, 445 F. Supp. 3d 36 (N.D. Cal. 2020); *Zepeda Rivas v. Jennings*, No. 20-cv-02731-VC, 2020 WL 4554646, at *1 (N.D. Cal. Aug. 6, 2020); *Zepeda Rivas v. Jennings*, No. 20-CV-02731-VC, 2020 WL 7066346, at *11 (N.D. Cal. Dec. 3, 2020).

15. Ashley K. Corkery's practice focuses on complex commercial disputes, class action defense, and privacy and data protection. She received her J.D. *magna cum laude* from University of California, Hastings College of the Law in 2014, and her B.A. from Stanford University in 2008. She was a judicial extern to the Honorable Charles Breyer of the U.S. District Court for the Northern District of California and to the Honorable Joyce Kennard of the Supreme Court of California.

16. Evan G. Slovak's practice focuses on general commercial litigation, including technology and privacy matters. He received his J.D. from University of Pennsylvania Law School in 2017 and his B.A. from Pitzer College in 2014 with highest honors. He was a judicial law clerk to the Honorable Karen S. Crawford in the U.S. District Court for the Southern District of California.

17. Nathaniel R. Cooper's practice, at the time he was working on this case, focused on consumer class actions, commercial and real estate litigation, and founder and intellectual property owner disputes. He received his J.D. from the University of San Diego School of Law in 2008, and his B.A. from University of California, San Diego, in 2004.

18. Trevor Kempner's practice, at the time he was working on this case, focused on complex commercial, securities, and privacy related litigation. He received his J.D. from Stanford Law School in 2015, and his B.A. from Yale University in 2009.

19. Kathlyn Querubin's practice, at the time she was working on this case, focused on commercial and shareholder class actions, privacy and data breach litigation, and intellectual

property disputes. She received her J.D. from University of California, Hastings College of the Law in 2010, and her B.A. from University of San Francisco in 2003.

20. Robert Paris's practice, at the time he was working on this case, focused on commercial, and privacy related litigation. He received his J.D. from Stanford University in 2018, and his B.A. from Harvard University in 2012.

SUMMARY OF COMPENSABLE TIME AND COSTS EXPENDED BY COOLEY LLP

21. As explained in Plaintiffs' Motion for Attorneys' Fees filed herewith, this case involves complex immigration and constitutional issues and has been highly resource-intensive to litigate. As a result, this case required extremely skilled attorneys with extensive hearing and trial experience. Accordingly, I believe Plaintiff is entitled to an enhanced hourly rate for attorneys consistent with the private San Francisco market in which the attorneys normally practice.

22. Plaintiffs seek a total award of \$1,279,659.42 for Cooley LLP attorneys' fees, and \$31,165.41 in costs. The costs include filing fees, document preparation services, postage and delivery service, computerized legal research, audio and videoconferencing services, and copying expenses. Each category of costs represented in the total are routinely billed to clients by my firm.

23. Cooley LLP attorneys are salaried employees of the law firm. Cooley LLP has taken on this matter pro bono. Because Cooley LLP has taken on this matter pro bono, there is no economic incentive for its attorneys to do any more work on this case than is necessary to serve the interests of our pro bono clients.

24. Cooley LLP began its work on this case in August 2017 and contributed substantively to the litigation of this case, in all phases, including pleadings, motion practice, locating and working with experts, witness examinations at the preliminary injunction hearing, discovery, mediation, and settlement.

25. The total amount of fees incurred by Plaintiff for services performed by Cooley LLP in this matter from July 2017 through March 2020, subject to the applicable EAJA rate caps—except for myself for whom Plaintiff would seek enhanced rates—is \$694,014.92. Enhanced rates for my work is \$585,644.50. The total amount of hours worked for this time period by Cooley LLP timekeepers was 3,917 hours. This number does not include any fees associated with

litigation after March 30, 2020 such as Plaintiff's Motions for Preliminary and Final Approval of the Class Settlement, nor the EAJA fee negotiations that prompted this Motion.

26. Similarly, these calculations omit any costs incurred after March 30, 2020.

27. Cooley timekeepers billed 1,680.1 hours from July 18, 2017 through November 21, 2017. That period included, *inter alia*, drafting the Amended Complaint and First Amended Petition for Writ of Habeas Corpus and Class Action Complaint for Injunctive and Declaratory Relief (ECF No. 31), the ensuing discovery related to the Complaint and preliminary injunction proceedings, as well as the hearing for same. Cooley timekeepers also expended substantial time working with experts in preparation for the hearings on Plaintiff's requested preliminary injunction. The Court held two hearings during which the Government presented witnesses and Plaintiff had the opportunity for cross-examination, requiring substantial preparation. *See* Pl. Mot., ECF No. 61; *see also* 10/27/2017 Hr'g Tr., ECF No. 98; 11/1/2017 Hr'g Tr., ECF No. 170.

28. The Court granted Plaintiff's requested Preliminary Injunction and provisionally certified the class on November 20, 2017. (ECF No. 100). From November 22, 2017 through July 13, 2018, Cooley timekeepers billed 790.6 hours. That period included, *inter alia*, the government's appeal to the Ninth Circuit, the attendant briefing and oral argument, and numerous *Saravia* hearings. (ECF No. 124-1, Chart re: *Saravia* Hearings.)

29. Cooley timekeepers billed 610 hours from July 14, 2018 through January 28, 2019. That period included, *inter alia*, extensive written discovery, drafting of a Second Amended Complaint (ECF No. 164), briefing in opposition to Defendants' Motion to Dismiss (ECF No. 172), and preparation of a Motion to Clarify the Definition of the Class (ECF No. 159, 160).

30. Cooley timekeepers billed 836.3 hours from January 29, 2019 through March 30, 2020. That period marked the beginning of the Parties' settlement negotiations, substantial settlement-related discovery efforts, mediation before Magistrate Judge Laurel Beeler, and the protracted drafting of the Final Class Settlement Agreement.

31. For purposes of the Parties' Settlement of Plaintiff's Fees and Costs, Plaintiff omitted all hours billed by all Plaintiff timekeepers after March 30, 2020. Therefore the hours billed by Cooley timekeepers related to the Motion for Preliminary Class Certification (ECF No.

237), Motion for Final Approval of Class Certification (ECF No. 246), the Parties' negotiations to settle Plaintiff's fees and costs, and the instant Motion were not part of the Parties' settlement efforts.

32. If the Parties failed to reach agreement regarding fees and costs, Plaintiff would have sought compensation for fees and costs incurred by all counsel after March 30, 2020 in a Motion for Fees and Costs pursuant to the Equal Access to Justice Act.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 1, 2021 in San Francisco, California.

/s/ Martin S. Schenker
Martin S. Schenker

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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

Ilsa Saravia, as next friend for A.H., a
minor, and on behalf of herself individually
and others similarly situated,

Plaintiff,

v.

Merrick Garland, Attorney General, *et al.*,

Defendants.

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Case No. 3:17-cv-03615-VC

Honorable Vince Chhabria

**EXHIBIT A TO DECLARATION OF MARTIN
S. SCHENKER IN SUPPORT OF
PLAINTIFFS' MOTION FOR ATTORNEY'S
FEES**

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Settlement Agreement”) is entered into by and between Plaintiff, Ilsa Saravia, as next friend for A.H., a minor at the time Saravia filed the above-captioned matter (“Plaintiff”), on behalf of herself and all Class Members, and Defendants Merrick Garland, Attorney General of the United States; Jean King, Director of the United States Executive Office for Immigration Review; Xavier Becerra, Secretary of the Department of Health and Human Services of the United States; JooYeun Chang, Acting Assistant Secretary of the Administration for Children and Families; Cindy Huang, Director of the Office of Refugee Resettlement; Alejandro Mayorkas, Secretary of the Department of Homeland Security; Tae D. Johnson, Acting Director of U.S. Immigration and Customs Enforcement; Tracy Renaud, Director of U.S. Citizenship and Immigration Services (collectively, the “Parties”), by and through their attorneys, in which Defendants have agreed to pay, and Plaintiff has agreed to accept, subject to the Court’s approval, one million, nine hundred and fifty thousand dollars (\$1,950,000) in full and complete satisfaction of any claims by Plaintiff for costs, attorneys’ fees, and litigation expenses, including any interest in connection with this lawsuit. This Settlement Agreement is effective as of the date it is executed by all Parties and upon final approval of the Court pursuant to Rule 23 of the Federal Rules of Civil Procedure, as set forth below.

RECITALS

On October 16, 2020, the Court granted Plaintiff’s Motion for Preliminary Approval of Proposed Class Settlement. (ECF No. 245.)

On January 19, 2021, the Court granted Plaintiff’s Motion for Final Approval of Class Action Settlement. (ECF No. 249.)

The Parties vigorously negotiated at arm’s length to resolve Plaintiff’s claim for attorneys’ fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412. At the Parties’ request, the Court referred their dispute regarding fees and costs to Magistrate Judge Laurel Beeler (ECF No. 255), during which they reached agreement on April 22, 2021.

The Parties have concluded that further litigation regarding Plaintiff's fees and costs would be protracted and expensive for all Parties. After taking into account these factors, as well as the risks of further litigation, the Parties agreed to settle in the manner and upon the terms set forth in this Agreement.

NOW, THEREFORE, it is hereby STIPULATED AND AGREED, by and among the Parties, through their respective attorneys, subject to the final approval of the Court pursuant to Rule 23 of the Federal Rules of Civil Procedure, as follows:

1. The Parties do hereby agree to settle and compromise Plaintiff's claim or request for attorneys' fees ("fees") and litigation costs ("costs") in this matter, including any such claim or request not already before the Court up to and including the date of execution of this stipulation, whether known or unknown, arising directly or indirectly from the acts or omissions that gave rise to the claim or request for fees and costs in the above-titled action under the terms and conditions set forth in this Settlement Agreement.
2. This Settlement Agreement is not, is in no way intended to be, and shall not be construed as, an admission of liability or fault on the part of Defendants, their agents, servants, or employees, and it is specifically denied that they are liable to Plaintiff. All Parties enter into this Settlement Agreement for the purpose of settling Plaintiff's request for fees and costs under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d), relating to or arising from the above-captioned civil action, and avoiding the expenses and risks of further litigation. Further, none of the terms of this Settlement Agreement may be offered or received into evidence or in any way referred to in any civil, criminal, or administrative action or proceeding other than proceedings that may be necessary to enforce the terms of this Settlement Agreement against Plaintiff or Defendants.

3. Plaintiff understands that she is waiving any additional claims or requests, known or unknown, which may arise, but only with respect to seeking any fees or costs from Defendants arising out of the above-titled matter up to and including the date of execution of this Settlement Agreement.
4. In full settlement and satisfaction of any and all claims, demands, rights, or causes of action for fees and taxable costs only, against Defendants in the above-titled case up to and including the date of execution of this agreement, including those which are not parties to this Settlement Agreement, of whatsoever kind and nature, arising out of or in connection with any event related to this action, including Plaintiff's request for fees and costs and subsequent mediation:
 - a. The Parties agree that Defendants will pay Plaintiff \$1,950,000.00 in settlement of Plaintiff's EAJA claim or request for fees and costs.
 - b. Defendants' payment, as identified in Paragraph 4(a) above, shall be accomplished by electronic funds transfer to Plaintiff's counsel's account on behalf of Plaintiff. Within ten business days of the execution of this Settlement Agreement by all Parties, Plaintiff's counsel shall provide Defendants with the banking information necessary for Defendants to effectuate payment. Defendants will make every effort to remit payment of these fees and costs in a timely manner and, in any event, no more than 90 days after both execution of this Settlement Agreement and Plaintiff's counsel provides the information necessary to facilitate payment.
 - c. Plaintiff represents that her request for fees and costs has been assigned to her counsel and waives all rights for payment of fees and costs in this action.

Defendants accept the assignment and waive any applicable provisions of the Anti-Assignment Act, 31 U.S.C. § 3727.

5. This Settlement Agreement contains the entire agreement between the Parties hereto. Plaintiff acknowledges and agrees that no promise or representation not contained in this Settlement Agreement has been made to her, and acknowledges and represents that this Settlement Agreement contains the entire understanding between the Parties to this Settlement Agreement and contains all terms and conditions pertaining to the compromise and settlement of the disputes referenced herein. No oral or written statement, remark, agreement, or understanding that is not contained herein shall be recognized or enforced, nor does this Settlement Agreement reflect any agreed-upon purpose other than the desire of the parties to reach a full and final conclusion of Plaintiff's request for fees and costs without the time and expense of further litigation.
6. This Settlement Agreement cannot be modified or amended except by an instrument in writing, agreed to and signed by the parties to this Settlement Agreement, nor shall any provision hereof be waived other than by a written waiver signed by the parties to this Settlement Agreement.
7. This Settlement Agreement shall be binding upon Plaintiff and Defendants and their respective assignees and representatives, including any person, entity, department, or agency succeeding to the interests or obligations of any party hereto or having an interest herein.
8. This document constitutes the complete integration of the Agreement between the Parties and supersedes any and all prior oral or written representation, understandings, or agreements among or between the parties with regards to fees and costs. Plaintiff has

discussed this Settlement Agreement with her counsel, understands the terms and conditions of this Settlement Agreement, and is fully authorized to enter into it.

9. This Settlement Agreement may be signed in counterparts. Facsimile or electronic transmissions of the original signatures to this agreement shall have the same effect as the original signatures.
10. This Settlement Agreement is deemed executed when the Settlement Agreement is last signed by all of the individuals listed in the signature block below, and on the date the Court grants final approval of the Settlement Agreement.
11. The Parties shall jointly make reasonable and good faith efforts to secure the Court's approval of the Settlement Agreement.
12. Within 30 days of Plaintiff's receipt of payment, the Parties shall file a joint stipulation for dismissal of Plaintiff's claim or request for fees and costs under EAJA.

Dated: May 25, 2021, 2021

COOLEY LLP

By: Martin S. Schenker
Martin S. Schenker

Dated: May 26, 2021, 2021

AMERICAN CIVIL LIBERTIES UNION
IMMIGRANTS' RIGHTS PROJECT

By: Stephen B. Kang
Stephen B. Kang

Dated: May 27, 2021, 2021

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF NORTHERN CALIFORNIA

By: William S. Freeman
William S. Freeman

Dated: May 26, 2021, 2021

LAW OFFICES OF HOLLY COOPER

By: Holly Cooper
Holly S. Cooper

Dated: May 25, 2021, 2021

NEW YORK CIVIL LIBERTIES UNION
FOUNDATION

By: Amy Belsher
Amy Belsher
Attorneys for Petitioner/Plaintiff

Dated: May 25, 2021, 2021

UNITED STATES DEPARTMENT OF JUSTICE

By: Fizza Batool
Fizza Batool

Dated: May 25, 2021, 2021

By: Sarah B. Fabian
Sarah B. Fabian
Counsel for Defendants

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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
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Ilsa Saravia, as next friend for A.H., a
minor, and on behalf of herself individually
and others similarly situated,

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Case No. 3:17-cv-03615-VC

Honorable Vince Chhabria
**DECLARATION OF AMY BELSHER IN
SUPPORT OF PLAINTIFFS' MOTION FOR
ATTORNEY'S FEES**

I, Amy Belsher, declare as follows:

1. I am a Staff Attorney with the New York Civil Liberties Union Foundation (“NYCLU”), counsel of record in the above-captioned matter for the named Plaintiff and the provisionally certified Class in this action.

2. I submit this Declaration in Support of Plaintiff’s Motion for Approval of Settlement Regarding Attorneys’ Fees and Costs.

3. I have personal knowledge of the facts set forth below and, if called as a witness to testify, could and would testify competently thereto.

4. In provisionally certifying the class in this matter, this Court determined that the class was adequately represented. *See Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1205 (N.D. Cal. 2017), *aff’d sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) (“[H]aving reviewed the proof submitted by plaintiff’s counsel regarding their experience litigating complex civil actions and cases involving issues similar to those raised in this case, the Court is satisfied that the adequacy requirement is met.”).

5. This Court later preliminarily approved of the Class Settlement and appointed the NYCLU (together with our co-counsel) as class counsel. (ECF No. 245.)

6. Shortly before Plaintiff filed her Motion seeking Preliminary Approval, counsel for Plaintiff and Defendants (collectively, “Parties”) initiated negotiations regarding Plaintiff’s intent to file a Motion seeking Fees and Costs pursuant to 28 U.S.C. § 2412 of the Equal Access to Justice Act. The Parties engaged in active, arms-length, negotiations for over six months before agreeing to mediate their dispute before Magistrate Judge Laurel Beeler. (ECF No. 256). With the assistance of Judge Beeler, the Parties settled Plaintiff’s request for fees and costs on April 22, 2021. (ECF No. 259).

DETAILS REGARDING NYCLU’S TIMEKEEPERS

7. A total of two timekeepers from the NYCLU recorded time on this case from May 2019 through March 2020: Amy Belsher and Jessica (“JP”) Perry.

8. As part of the settlement negotiations for Plaintiff’s fees and costs, and in connection with this Motion, I reviewed the time records for myself and Jessica Perry and am

knowledgeable about the tasks performed. I believe that both myself and Jessica Perry worked efficiently and contributed substantially to the representation of the named Plaintiff and class members, and that our time records are accurate and were kept contemporaneously.

9. I have worked as a Staff Attorney at the NYCLU since 2019 where my work focuses on immigration and civil liberties. I received a J.D. from University of California, Berkeley School of Law in 2014 and a bachelor's degree from University of California, Berkeley in 2011. After receiving my J.D., I worked in civil litigation for a non-profit organization, the Center for Justice and Accountability, and two law firms, Chadbourne & Park, LLP, and Cooley, LLP. Before joining the NYCLU, I clerked for the Honorable Margo K. Brodie in the Eastern District of New York. I am a member of the California Bar and the New York Bar and am admitted to practice law before state and federal courts in California, New York, and the United States Courts of Appeals for the Second Circuit.

10. I am counsel of record in several immigration class actions including *Velesaca v. Decker*, No. 20-cv-1803, a class action challenging Immigration and Customs Enforcement's failure to perform individualized custody determinations at its New York Field Office, and *Onosamba-Ohindo v. Barr*, No. 20-cv-00290, a class action challenging custody determination practices at the Batavia and Buffalo immigration courts. Both cases have preliminary injunctions in place.

11. Jessica Perry is a Staff Attorney at the NYCLU where her practice focuses on the civil and constitutional rights of immigrant youth, protestors, and LGBTQ and pregnant individuals. She received her J.D. from the City University of New York School of Law in 2018, and her B.A. from Bryn Mawr College in 2009. During law school, she was a judicial intern to the Honorable Ronnie Abrams of the U.S. District Court for the Southern district of New York. After law school, Ms. Perry was awarded a Skadden Fellowship focused on the rights of immigrant students, which she completed at the NYCLU between 2018-2020. Ms. Perry is admitted to the New York bar and admitted to practice before state and federal courts in New York.

SUMMARY OF COMPENSABLE TIME AND COSTS EXPENDED BY THE NYCLU

12. As explained in Plaintiff's Motion for Attorneys' Fees filed herewith, this case involves complex immigration and constitutional issues and has been highly resource-intensive to litigate. As a result, this case required extremely skilled attorneys with extensive hearing and trial experience. Accordingly, I believe Plaintiff is entitled to an hourly rate for NYCLU attorneys consistent with the private San Francisco market rate.

13. The total amount of fees incurred by Plaintiff for services performed by the NYCLU in this matter from May 2019 through March 2020, subject to the applicable EAJA rate caps is \$43,911.55. The total amount of hours worked for this time period by NYCLU attorneys was 213.8 hours. This number does not include any time spent after March 30, 2020 regarding Plaintiff's Motions for Preliminary and Final Approval of the Class Settlement, nor the EAJA fee negotiations that prompted this Motion.

14. NYCLU timekeepers billed 213.8 hours from May 20, 2019 through March 31, 2021. That period marked the beginning of the Parties' settlement negotiations, substantial settlement-related discovery efforts, mediation before Magistrate Judge Laurel Beeler, and the protracted drafting of the Final Class Settlement Agreement.

15. For purposes of the Parties' Settlement of Plaintiff's Fees and Costs, Plaintiff omitted all hours billed by all Plaintiff timekeepers after March 30, 2020. Therefore, the hours billed by NYCLU timekeepers related to the Parties' negotiations to settle Plaintiff's fees and costs, and the instant Motion were not part of the Parties' settlement efforts.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 1, 2021 in New York, New York.

/s/ Amy Belsher
Amy Belsher

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

Ilsa Saravia, as next friend for A.H., a
minor, and on behalf of herself individually
and others similarly situated,

Plaintiff,

v.

Merrick Garland, Attorney General, *et al.*,

Defendants.

Case No. 3:17-cv-03615-VC

Honorable Vince Chhabria

**DECLARATION OF STEPHEN B. KANG IN
SUPPORT OF PLAINTIFFS' MOTION FOR
ATTORNEY'S FEES**

I, Stephen B. Kang, declare:

1. I am an attorney duly licensed to practice law in the State of California and a member of the Bar of this Court. I am a Senior Staff Attorney with the ACLU Foundation Immigrants' Rights Project ("ACLU IRP"), and co-counsel for the Plaintiff Class in this action. The following is based on my personal knowledge.

2. This declaration will describe both the contribution of ACLU IRP to this case, as well as my qualifications in support of ACLU IRP's request for market EAJA rates.

QUALIFICATIONS OF ACLU IRP COUNSEL

3. A total of two timekeepers from ACLU IRP recorded time on this case from July 2017 through the filing of the instant Motion of which this Declaration is filed in support—Judy Rabinovitz and myself. As part of the settlement negotiations for Plaintiff's fees and costs, and in connection with this Motion, I reviewed the time records ACLU IRP compiled for this case. I believe that Ms. Rabinovitz and myself worked efficiently and contributed substantially to the representation of the named Plaintiff and class members.

4. Ms. Rabinovitz billed eight hours of total time at the beginning of this litigation, advising on developing legal claims and strategy during the initial case planning process. For purposes of settlement negotiations, her time was omitted from the negotiation with the government.

5. This declaration thus focuses on my billed time and contributions to this case.

6. As explained in Plaintiffs' Motion for Attorneys' Fees, this case involves complex immigration and constitutional issues that required unique expertise in the intricacies of the immigration laws. This case was even more complicated because it involved the custody rights of unaccompanied children in immigration custody, an issue that lies at the intersection of multiple overlapping statutory regimes. Accordingly, Plaintiff is entitled to an enhanced hourly rate for myself consistent with the private San Francisco market where this case was litigated.

7. I graduated *magna cum laude* and Order of the Coif from the New York University School of Law in 2011, and clerked for Judge Kermit V. Lipez of the U.S. Court of Appeals for the First Circuit, and Judge Margaret M. Morrow (ret.) of the U.S. District Court for the Central

District of California. I am admitted to the California bar, the U.S. Courts of Appeals for the Third, Fifth, Sixth, Ninth, and D.C. Circuits, and the U.S. District Courts for the Central, Northern, and Southern Districts of California, the District of Colorado, and the District of Columbia. I have been an attorney at ACLU IRP since 2013, and am currently a Detention Attorney focusing on the detention and removal rights of vulnerable noncitizens in immigration custody.

8. I have served as counsel for plaintiffs in numerous systemic cases involving the rights of children in immigration custody. Among my cases in this area are: *Ms. L. v. ICE*, 310 F. Supp. 3d 1133 (S.D. Cal. 2018), *modified*, 330 F.R.D. 284 (S.D. Cal. 2019) (enjoining government practice of separating asylum-seeking children from their parents at border); *A.I.L.L. v. Sessions*, 19-cv-00481-JAS (D. Az. filed Oct. 3, 2019) (damages action on behalf of separated immigrant families); *Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) (affirming preliminary injunction against unlawful arrest and detention of noncitizens based on flawed or unfounded gang allegations); *Duchitanga v. Lloyd*, 1:18-cv-10332 (S.D.N.Y. filed Nov. 6, 2018) (challenging widespread and severe delays in release of children in government custody due to fingerprinting backlogs); *R.I.L.-R. v. Johnson*, 80 F.Supp.3d 164 (D.D.C. 2015) (preliminarily enjoining detention of asylum-seeking families on grounds that such detention would deter others from migrating). I have also represented amici in the courts of appeals on matters related to the custody of noncitizen children. *See Flores v. Sessions*, 862 F.3d 863 (9th Cir. 2017) (amicus counsel) (upholding rights of detained immigrant children to custody hearings).

9. I have also served as counsel in a number of other cases concerning the procedural rights of noncitizens—in particular, children—in the removal process. These cases include: *Hernandez-Galand v. Garland*, ___ F.3d ___, 2021 WL 1900137 (9th Cir. 2021) (argued) (reversing in absentia removal orders of mother and child); *P.J.E.S. by & through Escobar Francisco v. Wolf*, ___ F. Supp. 3d ___, 2020 WL 6770508, at *1 (D.D.C. Nov. 18, 2020) (granting preliminary injunction against summary expulsion of unaccompanied children); *C.J.L.G. v. Barr*, 880 F.3d 1122 (9th Cir. 2018) (en banc) (reversing removal order of unrepresented child for failure to advise of relief eligibility); *Damus v. Nielsen*, 313 F. Supp. 3d 317, 329 (D.D.C. 2018) (granting preliminary injunction against categorical detention of asylum seekers); *J.E.F.M. v. Lynch*, 837

F.3d 1026 (9th Cir. 2016) (dismissing for lack of jurisdiction class action seeking appointed counsel for children); *Franco-Gonzalez v. Holder*, No. CV-10-02211 DMG DTBX, 2014 WL 5475097 (C.D. Cal. Oct. 29, 2014) (issuing detailed injunctive order concerning appointed counsel rights for noncitizens with mental disabilities facing removal); *United States v. Peralta-Sanchez*, 705 F. App'x 542 (9th Cir. 2017) (amicus counsel) (addressing rights of noncitizens to legal representation in fast-track removal process).

10. Many of these cases, including *Ms. L. v. ICE*, *P.J.E.S. v. Wolf*, *Saravia v. Sessions*, *J.E.F.M. v. Lynch*, *Damus v. Nielsen*, and *R.I.L.R. v. Johnson*, are class actions where I was appointed class counsel.

11. I have unique expertise at the intersection of immigration law and the rights of children. I am also among the small group of attorneys with such expertise who practices federal civil rights litigation. As a result, I am consistently called upon to advise other lawyers and advocates concerning the due process rights of children facing deportation, particularly those who are litigating federal court actions. I regularly give CLE and other public presentations to attorneys concerning the rights of detained noncitizens and immigrant children. I also provide technical assistance, including reviewing briefs and assisting in preparation for hearings, to other practitioners litigating federal cases on these topics. I also regularly speak to nonlegal audiences and the media regarding immigration and asylum policy.

12. Judy Rabinovitz is Deputy Director and Director of Detention and Federal Enforcement Programs at ACLU IRP. Although her hours were not considered during negotiations with the government for Plaintiff's fees and costs, Ms. Rabinovitz's experience and expertise justifies enhanced rates. The Ninth Circuit has previously awarded market rates for Ms. Rabinovitz's work in the immigration detention context. *See Nadarajah v. Holder*, 569 F.3d 906, 914 (9th Cir. 2009) (recognizing that Ms. Rabinovitz and other counsel possessed unique expertise in, inter alia, "historical material concerning immigration detention, detailed treatment of new and relatively obscure statutory provisions governing [mandatory immigration detention].").

13. She is admitted to practice in New York and has been admitted to practice before numerous federal courts, including the U.S. Supreme Court; the U.S. Courts of Appeals for the

First, Second, Third, Fifth, Sixth, Eighth, Ninth, Tenth, Eleventh, and D.C. Circuits; and the U.S. District Courts for the Central District of California, District of Colorado, Eastern District of New York, and Southern District of New York. She graduated from New York University Law School in 1985. She has worked at IRP since 1988. She has also served as adjunct faculty at New York University Law School since 1997.

14. Ms. Rabinovitz is one of the nation's leading civil rights attorneys working in the area of immigration detention. She was lead counsel and argued before the U.S. Supreme Court in *Demore v. Kim*, 538 U.S. 510 (2003) (challenge to mandatory detention statute), and played key roles in the litigation culminating in *Zadvydas v. Davis*, 533 U.S. 678 (2001) (striking down indefinite detention of postfinal order deportees who could not be removed), and *Clark v. Martinez*, 543 U.S. 371 (2005) (holding that *Zadvydas* limitation on indefinite detention applies to noncitizens apprehended at the border).

15. Ms. Rabinovitz has also served as lead counsel, co-counsel, or counsel for amici curiae in numerous other detention cases in the federal courts of appeals, including: *Diouf v. Napolitano*, 634 F.3d 1081 (9th Cir. 2011) (argued) (requiring bond hearings for noncitizens detained six months or longer under post-final order detention statute); *Singh v. Holder*, 638 F.3d 1196 (9th Cir. 2011) (amicus counsel) (requiring that the government justify continued prolonged immigration detention by clear and convincing evidence); *Nadarajah v. Gonzales*, 443 F.3d 1069 (9th Cir. 2006) (holding that asylum seeker could not be subject to prolonged and indefinite immigration detention as national security threat); *Tijani v. Willis*, 430 F.3d 1241 (9th Cir. 2005) (ordering bond hearing for mandatory detainee where removal proceedings were not "expeditious"); *Gayle v. Warden, Monmouth Cty. Correctional Institution*, 838 F.3d 297 (3d Cir. 2016) (class action challenging the mandatory detention of individuals with substantial challenges to removal in New Jersey); *Leslie v. Attorney General*, 678 F.3d 265 (3d Cir. 2012) (argued as amicus counsel in pro se case) (holding that detainees cannot be penalized for the time required to pursue bona fide challenges to removal in assessing reasonableness of their prolonged detention); *Diop v. ICE/Homeland Security*, 656 F.3d 221 (3d Cir. 2011) (argued as amicus counsel in pro se case) (holding that mandatory detention statute only authorizes such detention for a "reasonable"

period of time); *Alli v. Decker*, 650 F.3d 1007 (3d Cir. 2011) (holding that immigration detainees are not barred from challenging their detention in a class action); *Rosales-Garcia v. Holland*, 322 F.3d 386 (6th Cir. 2003) (en banc) (argued) (striking down indefinite detention of excludable noncitizens).

16. Ms. Rabinovitz has also served as lead counsel or co-counsel in district court litigation concerning the detention and due process rights of noncitizens facing removal. *See, e.g., R.I.L.R. v. Johnson*, 80 F. Supp. 3d 164 (D.D.C 2015) (granting classwide preliminary injunction prohibiting government from detaining women and children seeking asylum based on desire to deter others from migrating).

17. Ms. Rabinovitz serves as a resource for nonprofit, pro bono, and private attorneys litigating immigration detention cases throughout the country. She has provided advice and editorial assistance to dozens of attorneys during this time, and shared IRP's briefing in these and other cases on many occasions. Ms. Rabinovitz has also taught continuing legal education workshops on immigration detention litigation.

SUMMARY OF COMPENSABLE TIME AND COSTS EXPENDED BY ACLU IRP

18. I billed a total of 888.2 hours to this matter from the time period of July 2017 through March 2020. For purposes of negotiation, and consistent with the rest of the litigation team on behalf of Plaintiff, this number does not include any work I conducted after March 30, 2020, even though my colleagues and I expended significant efforts to finalize the Class Settlement and negotiate the Attorneys' Fees and Costs Settlement Agreement.

19. ACLU IRP timekeepers billed over 347.8 hours from July 18, 2017 through November 21, 2017. In terms of time spent by ACLU IRP timekeepers, that period included, *inter alia*, developing and researching the legal claims and issues in the case, drafting portions of and revising the First Amended Complaint (ECF No. 31), reviewing written discovery requests during the preliminary injunction proceedings, drafting portions of and revising the preliminary injunction papers and accompanying declarations, preparing for arguing part of the preliminary injunction hearings, conducting media advocacy concerning the case, as well as the hearing for same.

20. The Court granted Plaintiff's requested Preliminary Injunction and provisionally

certified the class on November 20, 2017. (ECF No. 100). From November 21, 2017 through July 13, 2018, I billed 237.9 hours. For ACLU IRP, that period included, *inter alia*, litigating emergency motions immediately after the preliminary injunction, coordinating legal representation for numerous Class Members who had *Saravia* hearings in the months following the injunction, providing technical assistance to the lawyers in those cases, disseminating notice to Class Members of their rights under the preliminary injunction, drafting the motion to lift the stay of proceedings, drafting and revisions on Plaintiff's briefs and motions to the Ninth Circuit, and assisting lead counsel in preparing for the oral argument. (ECF No. 124-1, Chart re: *Saravia* Hearings.)

21. I billed 133.5 hours from July 15, 2018 through January 28, 2019. That period included, *inter alia*, coordinating legal services provision for Class Members, advising lawyers representing Class Members at *Saravia* Hearings, significant research and writing on the Second Amended Complaint and the briefing in opposition to Defendants' Motion to Dismiss (ECF No. 172), and arguing the merits issues raised in Defendants' Motion to Dismiss.

22. I billed 169 hours from January 29, 2019 through March 30, 2021. That period involved the Parties' extensive settlement negotiations, significant review of draft agreements, researching legal issues raised during settlement discussions, mediation before Magistrate Judge Laurel Beeler, and the protracted drafting of the Final Class Settlement Agreement.

23. Had Plaintiff moved for a full award of my time on this case, Plaintiff would have sought \$381,017.25 in attorneys' fees.

I declare under penalty of perjury that the foregoing is true and correct.

Executed May 28, 2021 in Vienna, Virginia.

/s/ Stephen B. Kang
Stephen B. Kang

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

Ilsa Saravia, as next friend for A.H., a
minor, and on behalf of herself individually
and others similarly situated,

Plaintiff,

v.

Merrick Garland, Attorney General, *et al.*,

Defendants.

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Case No. 3:17-cv-03615-VC

Honorable Vince Chhabria

**DECLARATION OF HOLLY S. COOPER IN
SUPPORT OF PLAINTIFFS' MOTION FOR
ATTORNEY'S FEES**

I, HOLLY S. COOPER, declare:

1. I am an attorney, clinical professor, and Co-Director of the UC Davis School of Law's Immigration Law Clinic. My business address is: One Shields Ave. TB-30, Davis, CA 95616. I am licensed to practice law before the courts of the State of California, the United States District Courts for the Northern, Central, Southern and Eastern Districts of California, the United States Courts of Appeals for the Ninth Circuit and the Supreme Court of the United States. My California State Bar number is 197626.

2. I received my Juris Doctorate from U.C. Davis School of Law in May of 1998.

3. I make this declaration in support of Plaintiffs' Motion for Attorney Fees under the Equal Access to Justice Act in *Saravia v. Garland*, Docket Number: 3:17-cv-03615. I am co-counsel in the case representing Petitioner-Plaintiffs.

4. Before coming to U.C. Davis School of Law, I worked at Reed Smith LLP (formerly Crosby, Heafey, Roach & May LLP), Fellom & Solorio, and the Florence Immigrant & Refugee Rights Project in Florence, Arizona. At the Florence Project I initiated the first friend of the court program for detained immigrant children in collaboration with the Executive Office for Immigration Review. These experiences helped me develop an expertise in litigating the rights of immigrants, especially the rights of detained immigrant children.

5. I began teaching at UC Davis School of Law in March 2006 as the Associate Director of the Immigration Law Clinic. I became the Co-Director of the Clinic around 2016. The focus of my practice at the Clinic is training students in complex federal immigration litigation. The Clinic represents immigrants in detention in federal court actions, including writs of habeas corpus, petitions for review, petitions at the Supreme Court, and class action litigations in pursuit of more procedural fairness and to obtain better conditions in immigration detention centers.

6. Since 1998, my practice has been almost exclusively in the area of immigration law. I specialize in the intersection of immigrants' rights, civil rights, the immigration consequences of criminal convictions, and prisoners' rights. In the Immigration Law Clinic, I focus on creating a pedagogical program to educate law students on the civil rights of immigrant prisoners and detainees and how to effectively advocate on their behalf.

7. Since 1998, I estimate that I have represented hundreds of individuals in individual proceedings before the United States Citizenship and Immigration Services, the former Immigration and Naturalization Service, the Department of Homeland Security, the Executive Office for Immigration Review, the Board of Immigration Appeals, the United States District Courts, the United States Circuit Courts of Appeals for the Ninth Circuit, and the Supreme Court of the United States. I have also represented the interests of thousands of class members in class action litigations or enforcement of consent decrees.

8. I have been a member of the American Immigration Lawyers Association (“AILA”) since 1999. I was appointed for two years to the AILA Liaison Committee to the Office of the Chief Immigration Judge and Board of Immigration Appeals. I also served for a full five-year tenure on the ABA’s Immigration Commission, and currently serve on the Immigration Committee under the Criminal Justice Section of the ABA.

9. I have also received the following awards for my advocacy:

- The Al Otro Lado Honey Badger Award For Tenacious Advocacy 2020
- UC Davis Distinguished Public Service Award 2019
- Woman of the Year 2018 for District 04 (selected by Assemblymember Aguiar-Curry)
- Woman of the Year 2018 Congressman Garamendi
- Mexican American Concilio Community Award (2017)
- Legal Services for Children’s Community Partner Award (2017)
- Yolo County District Attorney’s Multi-Cultural Community Council Award (2017)
- UC Davis Immigration Law Clinic Recognition State Senate (2017)
- UC Davis Immigration Law Clinic Recognition State Assembly (2016)
- National Lawyers Guild – Carol Weiss King Award (2011)
- King Hall Legal Foundation – Outstanding Alumni Award (2011)
- UC Davis Immigration Clinic Alumni Council – Public Interest Award (2007)

10. I have successfully litigated, as the attorney of record and as amicus counsel, several cases published as precedent by the federal courts and the California Supreme Court, and many more that were not designated as precedent. I have directly represented clients or provided amicus briefing in multiple favorable published decisions, including but not limited to: *Flores v. Rosen*, 984 F.3d 720 (9th Cir. 2020)(holding that portions of the federal regulations were in breach of the Flores Settlement Agreement); *Flores v. Sessions*, 862 F. 3d. 863 (9th Cir. 2017)(holding detained children have a continued right to a bond hearing under the Flores Settlement Agreement); *Saravia v. Sessions*, 280 F. Supp. 3d 1168 (N.D. Cal. 2017) *aff'd* by *Saravia v. Sessions*, 905 F.3d 1137 (9th Cir. 2018)(finding immigrant children who were rearrested on purported gang allegations had right to a bond hearing); *Rodriguez, et al. v. Robbins*, 804 F.3d 1060 (9th Cir. 2015)(finding immigrants have a right to an individualized bond hearing)¹; *People v. Patterson*, 2 Cal. 5th 885 (2017)(holding criminal defenders have a duty to provide specific advice as to the immigration consequences of a plea); *Flores-Torres v. Mukasey*, 548 F.3d 708 (9th Cir. 2008)(finding federal court could exercise habeas jurisdiction over person in immigration custody with colorable claim to US citizenship), and *Flores-Torres v. Holder*, 680 F. Supp. 2d 1099 (N.D. Cal. 2010) (declaring petitioner was a US citizen), *Robles-Urrea v. Holder*, 678 F.3d 702 (9th Cir. 2012)(holding misprision of a felony was not a crime involving moral turpitude); *Flores-Lopez v. Holder*, 685 F.3d 857(9th Cir. 2012)(finding resisting arrest was not an aggravated felony); *Singh v. Holder*, 638 F.3d 1196 (9th Cir. 2011)(holding government bore the burden of proof by clear and convincing evidence in administrative bond hearings where immigrant in prolonged detention). The cases have changed the legal landscape of immigration detention, federal court habeas jurisdiction, and criminal deportability.

11. I have lectured and provided numerous trainings throughout the United States on litigating immigration detention issues at continuing legal education seminars and at the national conferences hosted by the U.S. Court of Appeals for the Ninth Circuit. The American Immigration Lawyers Association (“AILA”), the National Immigration Project of the National Lawyers’ Guild,

¹ This case was overruled in part by the Supreme Court of the United States in *Jennings v. Rodriguez*, but remand on the constitutional issue is pending. 138 S. Ct. 830 (2018).

and the American Bar Association.

12. I have published various articles on detention litigation strategies for AILA including: *Getting Out: Strategies for Challenging Unlawful Detention in Federal Court* (2006) and *Freedom from ICE Custody: A Desert Illusion or A Litigation Possibility?* (2009). I also authored the detention chapter in the Immigrant Legal Resource Center's book entitled Defending Immigrants in the Ninth Circuit (ILRC 2008).

13. I have testified as an expert witness on immigration law. I have served as an expert consultant to Amnesty International and Human Rights Watch for their reports on immigration detention conditions and the rights of immigrant detainees, and provide expert immigration consultations to Santa Barbara County Public Defenders Office. Moreover, I provided expert declarations in support of Defendants in *USA v. California*, Case No. 2:18-cv-00490-JAM-KJN (lawsuit filed by Trump administration against California, in part, regarding the legality of California's sanctuary laws) and *Padilla v. ICE*, Case No. 2:18-cv-00928-MJP (class action litigation surrounding the legality of detention for arriving asylum seekers). My declarations were cited by the courts in their favorable orders.

14. I believe that my particular expertise and knowledge were required for successful resolution of this case. This was a complex case that raised complex issues of immigration detention jurisprudence as it pertains to immigrant children, federal litigation, child welfare laws, consent decrees, and constitutional standards. This was not a standard immigration case, such as a straightforward petition for review involving the application of settled law routinely applied. The very fact that the case was a federal class action that involved the intersection of the rights of unaccompanied minors, gang allegations, constitutional law, interpretations of the TVPRA, substantive rights under the Flores Settlement Agreement and rights to immigration benefits particular to children, this case unique and more complex than the ordinary case. Highly contested issues of the interpretation of the TVPRA, bond proceedings, standards of proof for benefits and custody proceedings, and the rights under the FSA raised complex issues requiring substantive knowledge of Constitutional and immigration principles beyond the scope of that required for most immigration practice. Conversely, although many federal litigators are familiar with adult bond

processes, few have the requisite knowledge of complex immigration laws pertaining to children in immigration custody, including the governing settlement agreements and statutory schemes specific to unaccompanied minors. Accordingly, this case required counsel with expertise covering the Immigration and Nationality Act along with specialized knowledge of constitutional rights, settlement agreements, and statutory schemes pertaining to unaccompanied children.

15. My experience successfully litigating *Flores v. Sessions*, 862 F. 3d. 863 (9th Cir. 2017) gave me the critical litigation experience to understand legal standards governing consent decrees, and their intersectionality with the instant case. I also litigated *Singh v. Holder*, 638 F.3d 1196 (9th Cir. 2011) where I successfully challenged the legal standards applied to immigrants in prolonged detention. Moreover, I gained expertise in federal court jurisdiction through my litigation of *Flores-Torres v. Mukasey*, 548 F.3d 708 (9th Cir. 2008) and *Flores-Torres v. Holder*, 680 F. Supp. 2d 1099 (N.D. Cal. 2010) –where critical aspects of the cases was federal court jurisdiction and the constitutionality and legality of the detention. I also assisted on the amici brief in *Casas-Castrillon v. Dept. of Homeland Sec.*, 535 F.3d 942 (9th Cir. 2008) and *Rodriguez v. Robbins*, 804 F.3d 1060, where the critical issues were determining the substantive and procedural due process rights of immigrants who are detained for prolonged periods of time. I also successfully filed a petition for writ of habeas corpus *Ramirez v. Burwell*, Case No. 2:16-cv-1511-TLN-EFB, a case involving the legality of the detention of an unaccompanied minor in the custody of the Office of Refugee Resettlement (“ORR”). It was one of the first habeas petitions filed against ORR for a child in prolonged detention. Moreover, most of my published legal articles have dealt with substantive and procedural due process rights of detained immigrants.

16. I believe that my expertise in these fields of law was necessary for successful resolution of this case because of the important but complicated statutory construction issues, analysis of the Flores Settlement Agreement, and unique issues that apply to the release and custody of unaccompanied minors.

17. Very few immigration attorneys in the country engage in federal court litigation on behalf of detained immigrant children—in fact *Ramirez v. Burwell* was one of the few habeas petitions in the entire nation that had been filed on behalf of a detained child in the custody of the

Office of Refugee Resettlement. Of those attorneys, very few would have taken on a case of this complexity. I do not believe that there are any qualified attorneys that would be willing to engage in this complex litigation at the EAJA statutory rate. My experience with and expertise in immigration-related cases justifies an enhanced hourly rate under the EAJA consistent with the private San Francisco market where this case was litigated.

18. I am proficient in Spanish. The majority of class members in the litigation are monolingual Spanish-speakers. In my opinion, the ability to communicate with these class members in their native language is essential to afford them a fair chance of prevailing and understanding their rights.

19. I have personally reviewed the records and I am now seeking attorneys' fees for only 268.30 hours I spent on this litigation, which under enhanced rate calculations amounts to \$178,220.00. This is a conservative number and is nowhere close to the amount of time I have expended on this litigation reviewing drafts, participating in extensive settlement negotiations, conducting legal research, and speaking to class members and their counsel. Moreover, for purposes of negotiation, and consistent with the rest of the litigation team on behalf of Plaintiff, this number does not include any work I conducted after March 30, 2020, even though I expended significant efforts to finalize the Class Settlement and negotiate the Attorneys' Fees and Costs Settlement Agreement.

20. I billed 52.2 hours from June 13, 2017 through November 21, 2017. That period included, *inter alia*, drafting the Amended Complaint and First Amended Petition for Writ of Habeas Corpus and Class Action Complaint for Injunctive and Declaratory Relief (ECF No. 31), the ensuing discovery related to the Complaint and preliminary injunction proceedings, as well as the hearing for same.

21. The Court granted Plaintiff's requested Preliminary Injunction and provisionally certified the class on November 20, 2017. (ECF No. 100). From November 22, 2017 through July 13, 2018, I billed 63.9 hours. That period included, *inter alia*, the government's appeal to the Ninth Circuit, the attendant briefing and oral argument, and numerous *Saravia* hearings. (ECF No. 124-1, Chart re: *Saravia* Hearings.)

22. I billed 49 hours from July 14, 2018 through January 28, 2019. That period included, *inter alia*, extensive written discovery, drafting of a Second Amended Complaint (ECF No. 164), briefing in opposition to Defendants' Motion to Dismiss (ECF No. 172), and preparation of a Motion to Clarify the Definition of the Class (ECF No. 159, 160).

23. I billed 103.2 hours from January 29, 2019 through March 30, 2020. That period marked the beginning of the Parties' settlement negotiations, substantial settlement-related discovery efforts, mediation before Magistrate Judge Laurel Beeler, and the protracted drafting of the Final Class Settlement Agreement.

I declare under penalty of perjury that the foregoing is true and correct.

Executed June 1, 2021 in Woodland, California.

/s/ Holly S. Cooper
Holly S. Cooper
Declarant

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

Ilsa Saravia, as next friend for A.H., a
minor, and on behalf of herself individually
and others similarly situated,

Plaintiff,

v.

Merrick Garland, Attorney General, *et al.*,

Defendants.

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Case No. 3:17-cv-03615-VC

Honorable Vince Chhabria

**DECLARATION OF WILLIAM S. FREEMAN
IN SUPPORT OF PLAINTIFFS' MOTION
FOR ATTORNEY'S FEES**

I, William S. Freeman, declare:

1. I am a Senior Counsel with the American Civil Liberties Union Foundation of Northern California (“ACLU-NC”), a member in good standing of the State Bar of California, and one of the attorneys of record for Plaintiffs in this action. I have personal knowledge of the facts set forth in this declaration.

2. I have reviewed the Declaration of Martin S. Schenker in Support of Plaintiffs’ Motion for Attorneys’ Fees, submitted contemporaneously with this declaration. To avoid repetition, I have personal knowledge of, and agree with, the statements in Mr. Schenker’s declaration describing the history of this litigation, the Class Settlement and the Attorneys’ Fees Settlement, and I adopt those statements as my own.

3. As the Court is aware, the parties, in a mediation conducted by the Honorable Magistrate Judge Laurel Beeler, reached agreement on an aggregate award of \$1,950,000 in attorneys’ fees and costs to Plaintiff, subject to the approval of this Court. This amount represented a compromise of the amount in excess of \$2.7 million that represents the total award that Plaintiff could have sought via motion if the parties had not reached agreement in mediation. Having been involved in this case since inception, I believe that the \$1,950,000 award agreed to by the parties and sought by this motion is more than reasonable. The remaining paragraphs of this declaration describe the basis for Plaintiffs’ attorney’s fee request, to the extent based on the work of ACLU-NC in this case.

4. Had Plaintiff been unsuccessful mediating her fees and costs dispute, she would have sought reimbursement for fees at enhanced rates under the Equal Access to Justice Act (“EAJA”) for the work of three ACLU-NC attorneys in this case: myself, Julia Harumi Mass, and Sean Riordan. Plaintiff does not seek any reimbursement for the work of any ALCU-NC paralegals or staff, nor for the work of our investigator, Theodora Simon, even though her efforts were extremely valuable. In addition, Plaintiff does not seek reimbursement for the work of any attorneys after March 30, 2020, even though my colleagues and I expended significant efforts in finalizing the Class Settlement and negotiating the Attorney’s Fee Settlement after that date.

5. The ACLU-NC is a non-profit corporation that is tax-exempt under § 501(c)(3) of

the Internal Revenue Code. It is a nonpartisan organization dedicated to defending the civil liberties and civil rights guaranteed by the federal and state constitutions. The ACLU-NC does not receive government funding. The ACLU-NC litigates civil rights cases, frequently in conjunction with private counsel, combining our expertise in civil rights and impact litigation with the resources and experience of the private bar.

6. The ACLU-NC maintains a system for the recording of time spent by attorneys in connection with each case or matter in which the attorney is involved. Attorneys are required to record their time contemporaneously, and to record time necessarily incurred to complete the tasks required to conduct the matter successfully. The ACLU-NC does not maintain time records for, or bill for, the services of paralegals or support staff.

7. I have carefully reviewed the time entries for each of the attorneys who have worked on this case. My own time entries accurately reflect the time that I necessarily devoted to this case. I am informed and believe that the time entries applicable to Ms. Mass and Mr. Riordan are similarly accurate.

8. As demonstrated in the following paragraphs, the ACLU-NC brought to this litigation a combination of strength and experience in complex class action litigation and immigration litigation – a combination that was critical to Plaintiff’s success before this Court and in the Ninth Circuit Court of Appeals, and in negotiating the favorable Class Settlement. The experience of the ACLU-NC attorneys fully justifies enhanced rates under EAJA, as Defendants implicitly recognized in negotiating the Fee Settlement.

9. I graduated *summa cum laude* from Harvard College in 1974 and *cum laude* from Harvard Law School in 1978. Prior to joining the ACLU-NC in 2017, I worked as a Trial Attorney in the Civil Division of the U.S. Department of Justice for three years (1978-81), and in private practice for 35 years as an associate and partner with Cooley LLP (1981-2010) and as a partner with Jones Day (2010-2016).

10. During the time I was in private practice, I served as lead counsel in dozens of federal and state court class actions and tried over ten cases to jury verdict. I also assisted in the trial to jury verdict of numerous other complex cases. I was named a *Northern California Super*

Lawyer for over 10 years.

11. Also while in private practice, I litigated numerous individual asylum cases, and became familiar with U.S. immigration law generally and the intricacies of asylum law and the immigration court system in particular. For my work in asylum cases I was recognized as Advocate of the Year by Community Legal Services in East Palo Alto in 2015.

12. Since joining the ACLU-NC in January 2017, I have participated as lead or co-lead counsel in a number of immigration cases challenging government policies in addition to the instant case, including *Al-Mowafak, et al. v. Trump, et al.*, Case No. 3:17-cv-0557-WHO, N.D. Cal. (seeking declaratory and injunctive relief from executive orders banning travel to the United States by citizens or majority-Muslim countries); *Ramos v. Nielsen*, Case No. 18-cv-1554-EMC, N.D. Cal. (challenging Administration's attempts to end Temporary Protected Status for immigrants from various countries); *Ramos v. G4S Secure Solutions (USA), Inc.*, No. 19-cv-2757-LB (complaint for personal injury arising out of transportation by ICE contractor); *Zepeda Rivas, et al. v. Jennings, et al.*, No. 20-cv-02731-VC, N.D. Cal. (challenging conditions of confinement in immigration detention facilities during COVID-19 pandemic). I have also served as lead or co-lead counsel in litigating other class action cases challenging government action, including *Sanchez, et al. v. California Department of Transportation, et al.*, Case No. RG16842117, California Superior Court, Alameda County (seeking injunctive relief regarding Caltrans' alleged constitutional violations in connection with sweeps of homeless encampments on rights-of-way); *Sacramento Regional Coalition to End Homelessness, et al. v. City of Sacramento*, Case No. 2:18-cv-00878-MCE, E.D. Cal. (preliminary injunction granted, enjoining city from enforcing ordinance targeting solicitation of funds by indigent persons); *Harris v. City of Fontana*, Case No. CIVDS 1710589, California Superior Court, County of San Bernardino (writ of mandate granted, invalidating portions of municipal ordinance restricting residents' rights to engage in personal indoor cultivation of marijuana pursuant to California Proposition 64); and *Asian Americans Advancing Justice – Los Angeles, et al. v. Padilla*, Case No. CPF-18-516155, California Superior Court, County of San Francisco (writ of mandate granted in part, requiring Secretary of State to provide additional election language assistance).

13. Julia Harumi Mass graduated from UCLA Law School in 1996, served as a judicial clerk to the Hon. Warren J. Ferguson of the U. S. Court of Appeals for the Ninth Circuit, and from 2003-2018 was a senior litigation attorney at ACLU-NC. At the time the *Saravia* action was filed, she was the leader of ACLU-NC's immigration litigation team, and she had litigated a number of class actions on behalf of immigrants and immigration detainees, including *Lyon v. ICE*, No. 13-cv-05878-EMC, N.D. Cal. (challenging lack of telephone access for immigration detainees in Northern California). She received a California Lawyer of the Year (CLAY) Award from the California Lawyer Magazine/Daily Journal in 2014 and 2015 in the area of immigration.

14. Sean Riordan, a graduate of UCLA Law School, has been a Senior Staff Attorney at the ACLU of Northern California since 2018. Previously, he worked for six years as an attorney at the ACLU of San Diego and Imperial Counties, where he litigated a range of civil rights and civil liberties issues and helped found the organization's Border Litigation Project. He was lead counsel in *Lopez-Venegas v. Johnson*, 2014 WL 12772087 (C.D. Cal. Aug. 28, 2014), a class action lawsuit on behalf of Mexican nationals who were eligible for U.S. residency, but were deceived into signing their own expulsion orders by government officials. He was also counsel in *Franco v. Holder*, 767 F.Supp.2d 1034 (C.D. Cal. 2010), which established a right to appointed counsel for mentally incompetent immigration detainees. Mr. Riordan also worked for several years as a federal public defender, where he specialized in defending immigration-related criminal prosecutions and obtained the court ordered dismissal of several of those cases. The American Immigration Lawyers' Association recognized the *Franco* team with the Jack Wasserman Memorial Award for excellence in litigation in the field of immigration law.

15. The total amount of fees incurred by Plaintiff for services performed by ACLU-NC in this matter from June 2017 through March 2020 is \$827,751.23. The total amount of hours worked for this time period by ACLU-NC timekeepers was 1,240.9, which does not include any time spent after March 30, 2020.

16. ACLU-NC timekeepers billed 757.4 hours from June 15, 2017 through November 21, 2017. That period included, *inter alia*, drafting the Amended Complaint and First Amended Petition for Writ of Habeas Corpus and Class Action Complaint for Injunctive and Declaratory

Relief (ECF No. 31), the ensuing discovery related to the Complaint and preliminary injunction proceedings, as well as the hearing for same.

17. The Court granted Plaintiff's requested Preliminary Injunction and provisionally certified the class on November 20, 2017. (ECF No. 100.) From November 22, 2017 through July 13, 2018, ACLU-NC timekeepers billed 242.5 hours. That period included, *inter alia*, the government's appeal to the Ninth Circuit, the attendant briefing and oral argument, and numerous *Saravia* hearings. (ECF No. 124-1, Chart re: *Saravia* Hearings.)

18. ACLU-NC timekeepers billed 119.7 hours from July 14, 2018 through January 28, 2019. That period included, *inter alia*, extensive written discovery, drafting of a Second Amended Complaint (ECF No. 164), briefing in opposition to Defendants' Motion to Dismiss (ECF No. 172), and preparation of a Motion to Clarify the Definition of the Class (ECF No. 159, 160).

19. ACLU-NC timekeepers billed 121.3 hours from January 29, 2019 through March 30, 2020. That period marked the beginning of the Parties' settlement negotiations, substantial settlement-related discovery efforts, mediation before Magistrate Judge Laurel Beeler, and the protracted drafting of the Final Class Settlement Agreement.

20. As one of the lead attorneys in this case, I helped to coordinate the actions of all members of the Plaintiff's counsel team, to prevent duplicative or wasteful effort. Work on the case was at all times managed so as to eliminate any such duplication to the maximum extent possible.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Hillsborough, California on June 1, 2021.

/s/ William S. Freeman
William S. Freeman