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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 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