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19 UNITED STATES DISTRICT COURT  
20 CENTRAL DISTRICT OF CALIFORNIA

21 ISIDORA LOPEZ-VENEGAS, *et al.*,

22 Plaintiffs,

23 v.

24 JEH JOHNSON, *et al.*,

25 Defendants.  
26  
27  
28

No. CV 13-03972-JAK (PLAx)

**DECLARATION OF BARDIS VAKILI  
IN SUPPORT OF MOTION FOR  
ATTORNEYS' FEES AND COSTS**

**Date: February 9, 2015  
Time: 8:30 a.m.  
Place: Courtroom 750  
Judge: Hon. John A. Kronstadt**

**DECLARATION OF BARDIS VAKILI**

I, Bardis Vakili, hereby declare:

1. I submit this declaration in support of Plaintiffs’ Motion for Attorneys’ Fees and Costs. I have personal knowledge of all matters stated in this declaration and if called to testify, I could and would do so competently.

2. I am an attorney licensed to practice before the courts of the State of California, the United States Court of Appeals for the Ninth Circuit, and United States District Courts for the Central and Southern Districts of California.

3. I am one of the attorneys of record for Plaintiffs in this action and have been since the case’s inception. Beginning with the initial fact investigation and throughout the majority of the case, I was employed with the American Civil Liberties Union Foundation of Southern California (“ACLU SoCal”). However, since September 2014, I have been employed as a Senior Staff Attorney by the American Civil Liberties Union Foundation of San Diego and Imperial Counties (“ACLU SDIC”). Because both organizations represent Plaintiffs, I have represented Plaintiffs throughout this litigation without interruption. A copy of a recent resume is attached as Exhibit A to this Declaration.

4. I graduated from University of San Diego School of Law in 2006. After graduation, I worked at the ACLU So Cal as an Immigrants Rights Consultant. In that role, I provided technical and legal assistance to *pro se* immigrant detainees in removal proceedings. This required me to develop expertise with immigration law and removal proceedings, including the various forms of relief available to immigrants facing removal. I also assisted other ACLU So Cal attorneys with fact development in their cases, including in *Rodriguez v. Hayes* (Case. No. CV 07-03239-TJH) (C.D. Cal.), a class action challenge to prolonged detention of immigrant detainees, and in *Bavi v. Mukasey* (Case No. SACV 07-1394 DOC) (C.D. Cal.), a class action challenging delays in the processing of immigration naturalization applications.

1           5.     From November 2007 to July 2011, I was employed by Casa Cornelia  
2 Law Center (“CCLC”), a non-profit organization in San Diego, California that  
3 provides *pro bono* legal representation to indigent immigrant victims of civil and  
4 human rights violations. In my capacity as the Director of the Political Asylum  
5 Program, I represented immigrants subject to removal proceedings, whether before  
6 the Immigration Court, on appeal to the Board of Immigration Appeals, and on  
7 Petition for Review before the Ninth Circuit. I also provided regular CLE trainings  
8 and ongoing mentorship to volunteer attorneys who did the same. My role at  
9 CCLC required me to assess dozens of intakes every week from immigrants facing  
10 removal proceedings and requesting our services. Although, due to limited  
11 resources, we could not represent everyone who requested our services, I  
12 endeavored to assess the eligibility for immigration relief of every individual who  
13 contacted us, and I advised them accordingly. In nearly four years of doing this, I  
14 developed particular expertise in immigration law and forms of relief for  
15 immigrants facing removal. In my career, I estimate that I have evaluated well over  
16 2000 individual cases for potential immigration relief.

17           6.     While at CCLC, I briefed several cases in the Ninth Circuit, including  
18 *Vanegas Arrubla v. Holder*, No. 07-72764 (9th Cir. 2011) (successful appeal  
19 establishing Colombian asylum applicant met her burden of proof to establish  
20 asylum eligibility), *Kakla v. Holder*, No. 08-72856 (9th Cir. 2008) (successfully  
21 negotiated, after full briefing, remand of asylum case involving Iraqi ex-police  
22 officer). I was also co-counsel with the ACLU So Cal and ACLU SDIC in  
23 *Santander-Leyva v. Baker*, No. 08 CV 01485 JH(NLS) (S.D. Cal. 2008) (habeas  
24 petition securing release of transgender immigrant detainee) and in *Sanchez de*  
25 *Gomez v. Baker*, No. 10 CV 652-JM(JMA) (S.D. Cal. 2010) (habeas petition  
26 securing release of mentally disabled immigrant detainee).

27           7.     From July 2011 until September 2014, I was employed once again by  
28 ACLU So Cal, where I handled complex civil rights cases in a variety of areas,

1 including immigrants' rights cases such as *Muhanna v. USCIS* (Case No. 2:14 CV-  
2 05995) (C.D. Cal. 2014) (pending challenge to Department of Homeland Security  
3 policy for processing applications of certain Muslim immigrants) and *Hamdi v*  
4 *USCIS* Case No. 5:10 CV-05995-VAP-DTB (C.D. Cal 2011) (successful  
5 citizenship claim in federal court on behalf of Egyptian national). I also provided  
6 numerous CLE trainings on issues related to immigrants' rights and national  
7 security.

8 8. In addition, I handled cases involving civil rights in other areas,  
9 including: free speech (*Fitzgerald v. County of Orange*, SA CV 11-01355 JVS  
10 (MLGx) [co-lead counsel] and *Acosta v. City of Costa Mesa*, 718 F.3d 800 (9th Cir.  
11 2013) [both involving First Amendment challenges to ordinances restricting speech  
12 in public government meetings]); voting rights (*Moreno v. City of Anaheim*, Case  
13 No. 30-2012-00579998-CU-CR [lead counsel][successfully settled voting rights  
14 challenge to change city's election system, filed in Orange County Superior  
15 Court]), and criminal justice (*People v. Townsend St.*, Case No. 30-2014-00727728  
16 [lead counsel] [filed amicus brief in Orange County Superior Court and court  
17 accepted our recommendations regarding due process rights in gang injunction  
18 cases]).

19 9. From September 2014 until present, I have been employed at ACLU  
20 SDIC, where my primary litigation responsibilities thus far include this case, as  
21 well supervising the work of Gabriela Rivera in *Olivas v. Whitford*, Case. No. 17-  
22 CV-1434 WQH (BLM) (S.D. Cal 2014) (a pending citizenship claim against  
23 Border Patrol).

24 10. In 2006, I was awarded the Wiley M. Manuel Award for Pro Bono  
25 Legal Services. In 2008, several colleagues and I were awarded the Daniel Levy  
26 Award from the National Lawyers Guild's National Immigration Project for our  
27 work in the field of immigrants' rights.

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1                    **Settlement and Post-Settlement Procedural Activity**

2            11.    On April 10, 2014, in an effort to reach a resolution of this case, the  
3 parties and representatives of the parties attended an in-person settlement  
4 conference before Judge Paul L. Abrams. The parties arrived at the settlement  
5 conference having provided Judge Abrams with extensive briefing on their  
6 respective litigation and settlement positions. Although I did not personally attend  
7 this settlement conference or any others thereafter held, I was in regular contact  
8 with my co-counsel who did attend, including Sean Riordan and Lucero Chavez,  
9 throughout that time.

10           12.    According to my co-counsel, and as confirmed by the Declaration of  
11 Sean Riordan in Support of Representative Plaintiffs’ Motion for Preliminary  
12 Approval of Class Action dated August 18, 2014, Doc. 90-3 (“August Riordan  
13 Decl.”) (Dkt 90-3), over the course of that day, the parties engaged in productive  
14 arms’-length negotiations but were unfortunately unable to reach a settlement. The  
15 parties and representatives of the parties thereafter participated in additional in-  
16 person settlement conferences before Judge Abrams on April 25, 2014, and May  
17 23, 2014. (*Id.* at ¶ 6.) These later settlement conferences, combined with additional  
18 telephonic and video discussions between counsel for the parties, resulted in the  
19 parties tentatively agreeing to settlement terms. (*Id.*) During this time, I consulted  
20 on the class definition and immigration procedural aspects of the settlement  
21 agreement, based on my experience and expertise in immigration law and forms of  
22 relief from removal and deportation.

23           13.    Only after reaching an agreement in principle on the vast majority of  
24 the settlement terms, the parties thereafter negotiated the attorneys’ fee portion of  
25 the settlement agreement and attended an additional settlement conference before  
26 Judge Abrams on June 10, 2014 to address this and the few other remaining issues.  
27 (*Id.*) Following the June 10, 2014 settlement conference, the parties completed

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1 their exchange of drafts of a written agreement. Thereafter, the parties executed the  
2 settlement agreement.

3 14. On August 28, 2014, the Court granted provisions certification of the  
4 settlement class and preliminary approval of the class-wide terms of the parties'  
5 Settlement Agreement. (Dkt. 94.) The Court also approved the Notice Plan set  
6 forth in Sec. 3.3 of the Agreement, which the parties have diligently pursued, and  
7 which allows for objections to be received until December 26, 2014. Specifically,  
8 the parties have retained Dahl Administration LLC ("Dahl") to act as Settlement  
9 Administrator. Dahl has held regular conference calls with the parties and provided  
10 weekly updates on its activities implementing the Notice Plan. Dahl has created  
11 and maintained a settlement website, [www.salidavoluntariaacuerdo.com](http://www.salidavoluntariaacuerdo.com), and the  
12 parties have jointly created informational materials in English and Spanish for  
13 placement on the website. I received confirmation from Dahl on September 27,  
14 2014 that the website was "live" and accessible by the general public. Dahl  
15 reported on December 6, 2014 that the website had received 14,421 visits to date.

16 15. Dahl has implemented the publication of notice via various forms of  
17 print-media, electronic media, radio ads, and other physical media such as  
18 advertisement on billboards in Mexico near the U.S. border in Tijuana. Electronic  
19 media advertisement, including social media, launched on October 10, 2014 and, as  
20 reported by Dahl on December 6, 2014, has generated a total of 20,054,996 "Web  
21 Impressions". Radio ads began on October 20, 2014 and billboard advertisement  
22 began on November 3, 2014. As of December 6, 2014 Dahl has received no  
23 objections to the settlement.

24 16. I also supervise the work of legal staff devoted to processing intakes  
25 related to this Settlement. Since Dahl began its Notice Plan, we have experienced a  
26 significant rise in the number of e-mail and telephonic inquires from potential class  
27 members seeking information about the case, averaging about thirty per week in  
28 November 2014. To date, we have received no objections to the Settlement.

1           **Billing Practice**

2           17.    The Declaration of Ahilan Arulanantham filed concurrently herewith  
3 details the billing practice for attorneys at ACLU SoCal. I have reviewed his  
4 declaration and affirm that, during the time I was employed by ACLU SoCal, I  
5 engaged in contemporaneous timekeeping in the manner he describes.

6           18.    At ACLU SDIC, I do the same. Specifically, I keep track of my time  
7 through the use of contemporaneous timekeeping records. For this purpose, our  
8 office utilizes Time Matters, a computer billing program that maintains  
9 contemporaneous time records of work performed on our cases. I have been  
10 informed and believe that at times throughout this litigation, our billing program  
11 was not available for use for technical or other reasons. Attorneys working on the  
12 case have created spreadsheets to track time not kept in our billing program. Thus,  
13 the combination of time records in our billing program and those in the attorneys'  
14 spreadsheets represent a reasonable accounting of the time the attorneys in this  
15 office have tracked for work performed on this case.

16           19.    In preparation for this motion, the billing entries from Time Matters  
17 and the attorneys' spreadsheets were all forwarded to Anna Hoyle, a paralegal in  
18 our office. Ms. Hoyle combined the entries to create one master spreadsheet  
19 containing all of the billing entries for all ACLU-SDIC attorneys in this case.  
20 Using that spreadsheet, I categorized each entry based on the general tasks  
21 performed in this litigation pursuant to this Court's directives. I also reviewed each  
22 entry and exercised billing judgment, marking certain entries as "Do Not Bill"  
23 based on how closely connected to the litigation the activities were. I eliminated  
24 over a dozen hours of entries for media work in the case, even though that time was  
25 undertaken specifically as a means of outreach to potential witnesses, victims, and  
26 Class members, and is recoverable as work performed in the "fact development"  
27 aspect of the case.

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1           20. I also noted the absence of entries in specific instances where I know  
2 attorneys for ACLU SDIC performed work. For instance, when we had conference  
3 calls with co-counsel, often one or some of the ACLU SDIC attorneys would bill  
4 for that time, while others did not. As their co-counsel at the time, I know that Ms.  
5 Rivera, Ms. Ebadolahi, and Mr. Riordan rarely missed these co-counsel  
6 conferences, and the absence of billing records does not indicate that the work was  
7 not performed, only that it was not recorded. Other examples in which I noted a  
8 discernible absence of billing records involve work performed late at night or doing  
9 fact development outside the United States. That this work was performed, but not  
10 recorded, is confirmed by the Declarations of Sean Riordan (“Riordan Fee  
11 Declaration”), Mitra Ebadolahi, and Gabriela Rivera, all filed concurrently  
12 herewith, and by my own knowledge as their former co-counsel. The number of  
13 billing entries that correspond to these activities represents only a portion of work I  
14 know to have occurred. Finally, I noticed that there were almost no entries from  
15 Mr. Riordan, Ms. Rivera, and Ms. Ebadolahi after May 2014, even though I know  
16 they spent significant time in the settlement process, both working on substantive  
17 issues and dealing with practical issues in keeping our clients informed, obtaining  
18 their feedback, and executing the Agreement. Upon speaking with Mr. Riordan  
19 about this, I am informed that this absence of billing records began as a showing of  
20 good faith during negotiations, to show the government that Plaintiffs’ were not  
21 “running up” fees. Once the settlement negotiations progressed, Ms. Rivera, Ms.  
22 Ebadolahi, and Mr. Riordan ceased keeping time records altogether.

23           21. Although many of these hours can be “reconstructed” by going  
24 through old email, cross-referencing the entries of other attorneys, or reviewing  
25 other available and reliable information, I have instead simply declined to include  
26 that time in our summary of work performed, even though it is compensable. I  
27 have also declined to include all time performed by paralegals on this case,  
28 amounting to 35.24 hours.



22. Based on the entries for which we are seeking recovery, Ms. Hoyle created a summary chart that categorizes the time spent in each general category of work for this case, pursuant to this Court’s directive in its Standing Order. I supervised this work. A true and correct copy of the chart summarizing and categorizing ACLU SDIC time records up to and including December 10, 2014, as well as spreadsheet with the daily entries under each category, is attached as Exhibit B. Because the Equal Access to Justice Act (“EAJA”) applies different rates to work performed in different years, the summary chart also tallies the work performed on this case by year.

23. The total number of hours for which ACLU SDIC seeks recovery, broken down by year and attorney, is set forth below in the following table:

<b>Year</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>
<b>Attorney: Hours Performed</b>	<u>Riordan</u> :149.10	<u>Riordan</u> : 58.7 <u>Rivera</u> : 125.65	<u>Riordan</u> : 220.33 <u>Rivera</u> : 587.25 <u>Ebadolahi</u> : 300.70 <u>Loy</u> : 17.64	<u>Riordan</u> : 145.57 <u>Rivera</u> : 281.80 <u>Ebadolahi</u> : 261.98 <u>Loy</u> : 79.18 <u>Vakili</u> : 45.46
<u>Total Hours = 2273.36</u>				

**The Time Spent is Reasonable**

24. In my opinion, the number of hours billed by attorneys on this case was necessary to its success, and reasonable in light of the complex legal issues involving the intersection of substantive and procedural immigration law, constitutional law, and civil rights, the significant practical obstacles to bringing a class action case like this on behalf of a class of largely indigent Mexican nationals living abroad, and the heavily litigated nature of even minor issues in this case.

25. This case required extensive cross-border fact gathering, with Class Counsel spending significant time interviewing witnesses in Mexico and

1 throughout Southern California. Fact investigation and legal research to support the  
2 complaint began as early 2011, when Mr. Riordan began following up on a fact  
3 pattern that had repeatedly come to his attention, regarding long time United States  
4 residents being pressured or misinformed into accepting removal to Mexico without  
5 a hearing before an immigration judge. Mr. Riordan is the primary “architect”  
6 behind this case, and he developed the complicated legal theories justifying the  
7 exceptional relief sought in the Complaint and achieved in the settlement.

8 26. For example, I am aware from my conversations with him at the time,  
9 as well as from reviewing the time records, that in 2011, Mr. Riordan spent  
10 significant time speaking to immigration attorneys and individuals who had  
11 experienced VR, interviewing potential plaintiffs, witnesses, and class members  
12 throughout the year. He also conducted extensive legal research to develop the  
13 novel legal theories and proposed remedies that would eventually form the basis of  
14 the complaint. I also engaged in factual development for this case as early as 2011,  
15 interviewing and securing declarations from immigrant detainees who had reported  
16 witnessing VR procedures.

17 27. Because VR can be effectuated against Mexican nationals within  
18 hours, locating individuals who could be witnesses, potential class members, or  
19 even Plaintiffs required an intensive cross-border strategy, with attorneys from  
20 Class counsel devoting significant time to interviews and outreach in Mexico.  
21 Indeed, when this case was filed, each individual Plaintiff was located in Mexico.  
22 Given the difficulty of travel in Mexico and long wait times coming back across the  
23 border, this often resulted in significant hours being spent. Of course, whenever  
24 possible, interviews were conducted by phone, but because many of the individuals  
25 were indigent, telephone communication was not always possible. The vast  
26 majority of these interviews were conducted in the Spanish language, which Mr.  
27 Riordan, Mr. Arulanantham, and I – among others on our team – all speak and  
28 utilized heavily in this case.

1           28. These obstacles occurred not only in the initial factual development  
2 aspect surrounding the complaint and FAC, but throughout the litigation and in the  
3 factual development necessary in preparing for class certification. Although a  
4 motion for class certification was never filed before the settlement was reached,  
5 significant time was reasonably expended preparing for that motion, and the  
6 deadline was looming in the event settlement talks broke down. “(E)xtensive  
7 authority supports awarding fees for time spent on unfiled motions.” *Charlebois v.*  
8 *Angels Baseball LP*, 2012 U.S. Dist. LEXIS 91069 at \*36-37, *citing Marbled v.*  
9 *Pacific Lumber Co.*, 163 F.R.D. 308, 327 (N.D. Cal. 1995) (rejecting defendant's  
10 argument that plaintiffs should not be awarded fees for time spent on motions  
11 which were never filed, where the court found that it had no reason to doubt  
12 plaintiffs' representation that the work was reasonably related to the case at hand);  
13 *ExperExchange, Inc. v. Doculex, Inc.*, 2010 U.S. Dist. LEXIS 54530,\*9 (N.D. Cal.  
14 2010) (awarding party fees for time spent preparing a motion that was never filed  
15 and stating “[t]he fact that the motion was not, ultimately, filed, does not mean that  
16 the time spent preparing the motion was unreasonable.”); *Rux v. Starbucks Corp.*,  
17 2007 U.S. Dist. LEXIS 30180, \*3-4 (E.D. Cal. 2007) (granting attorneys' fees for  
18 time spent drafting plaintiff's portion of a related joint statement regarding a  
19 discovery dispute which was ultimately not filed).

20           29. One way that we attempted to keep the time spent in factual  
21 development cost effective was by assigning much of this work to junior attorneys  
22 for whom we are not seeking market rates. Indeed, Ms. Rivera and Ms. Ebadolahi  
23 logged far more hours in this case than the more senior attorneys at ACLU SDIC.  
24 Even though they possess specialized skills – including Spanish language skills,  
25 familiarity with the needs of class members, and expertise in immigration issues  
26 along the border – ACLU SDIC is not seeking market rates for the time they spent  
27 on this case.

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1           **Lodestar and Costs**

2           30. I have never worked for an organization that charges fees to its clients,  
3 but I have sought attorneys' fees in cases as part of settlements or from the courts  
4 when I have represented a prevailing party. In February 2014, Judge David O.  
5 Carter awarded me fees for work performed in 2012-13 in the *Acosta* case at a rate  
6 of \$475/ hour. A true and correct copy of that ruling is attached hereto as Exhibit  
7 C.

8           31. I have further confirmed the justification for the rates ACLU SDIC is  
9 seeking for David Loy, Sean Riordan and myself through my communications with  
10 Carol Sobel, an experienced civil rights attorney in the Southern California region,  
11 and through a review of the materials she has provided with her declaration in  
12 support of Plaintiffs' Motion for Attorneys' Fees. Ms. Sobel has conducted  
13 extensive analysis of the fees charged by and awarded to attorneys in the Southern  
14 California region in a variety of civil rights contexts, and our rates are very  
15 reasonable in light of her analysis.

16           32. After reviewing all of our time entries and exercising billing judgment  
17 in the manner described above, I have calculated our lodestar for the hours upon  
18 which we seek compensation, using prevailing market rates for Mr. Riordan, Mr.  
19 Loy, and myself, and the EAJA statutory maximum rates, adjusted for cost of living  
20 as calculated by the Ninth Circuit,<sup>1</sup> for Ms. Rivera and Ms. Ebadolahi. Under this  
21 formulation, our lodestar in this case as of December 10, 2014 is \$651,648.54.

22           33. I have reviewed the lodestar calculations attached to the Declarations  
23 of my co-counsel. Adding them together, Class Counsel's total lodestar in this case  
24 is \$1,210,029.34.

25           34. Although we are entitled to market rates for several attorneys,  
26 calculating the ACLU-SDIC lodestar using only the EAJA statutory maximum  
27 rates, without market rates for Mr. Riordan, Mr. Loy, and myself, our lodestar

28 <sup>1</sup> [http://www.ca9.uscourts.gov/content/view.php?pk\\_id=0000000039](http://www.ca9.uscourts.gov/content/view.php?pk_id=0000000039)

1 would be \$425,963.94. For all of Class Counsel together, it would be \$860,910.23.

2 35. I reviewed our costs in this case to date by asking our Business  
3 Manager to prepare a costs report for costs and expenses assigned to this case. I  
4 have reviewed the report and confirmed that the expenses contained therein relate  
5 to the litigation of this case. I then asked Aude Ruffing, a legal assistant, to  
6 organize the costs into general categories, which I then reviewed. A true and  
7 correct copy of our summary costs report is attached here in as Exhibit D. ACLU  
8 SDIC has incurred a total of \$41,316.70 in recoverable costs and expenses in this  
9 case.

10 36. I have reviewed the cost summaries of my co-counsel ACLU Social  
11 and Cooley. ACLU SoCal incurred costs of \$2384.61, and Cooley incurred costs of  
12 \$37,522.93. Taken together, Class Counsel's total costs are \$81,224.24.

13 37. In addition, we have committed to play a significant role in the  
14 implementation of the class mechanism going forward. This means that staff  
15 members from ACLU SDIC will continue to monitor the email address and phone  
16 line that we have specifically dedicated to this case, as they do now, for roughly the  
17 next 18 months. Staff members from ACLU SDIC will follow up to screen  
18 individuals for class eligibility, and ACLU SDIC will act as an Approved Service  
19 Provider ("ASP"), *see* Sec. 1.2 of the Agreement, and will prepare and submit  
20 applications for class relief to the government. We have budgeted for the hiring of  
21 two additional legal staff – one for intake and one for class applications – in order  
22 to comply with these ongoing commitments under the Settlement Agreement.

23 38. To be eligible for a fee award under EAJA, a prevailing plaintiff must  
24 have a net worth of less than \$2,000,000. Based on my interactions with our  
25 clients, particularly discussing severe financial difficulties that many of them face, I  
26 believe that each individual Plaintiff meets this threshold. We are awaiting

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1 Declarations from the Plaintiffs and intend to supplement the record once we  
2 receive them.

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

4 Executed this 17<sup>th</sup> day of December, 2014, at San Diego, California.

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6

/s/Bardis Vakili  
BARDIS VAKILI

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8 *[Additional Counsel]*

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