

UNITED STATES DISTRICT COURT
WESTERN WASHINGTON

Maria Sandra RIVERA, on behalf of herself as an individual and on behalf of others similarly situated,

Plaintiff-Petitioner,

v.

Eric H. HOLDER, Jr., Attorney General of the United States; Juan P. OSUNA, Director, Executive Office for Immigration Review, United States Department of Justice; Jeh JOHNSON, Secretary of Homeland Security; Thomas S. WINKOWSKI, Principal Deputy Assistant Secretary for United States Immigration and Customs Enforcement; Nathalie R. ASHER, Director, Seattle Field Office of United States Immigration and Customs Enforcement; Lowell CLARK, Warden, Northwest Detention Center; and the UNITED STATES OF AMERICA,

Defendants-Respondents.

Civil Action No.

DECLARATION OF SARAH DUNNE
IN SUPPORT OF PLAINTIFF-
PETITIONER'S MOTION FOR CLASS
CERTIFICATION

Pursuant to 28 U.S.C. § 1746, I, SARAH DUNNE, declare and state as follows:

1. I am duly licensed to practice law in the States of Washington and California. I am the Legal Director of the American Civil Liberties Union of Washington Foundation ("ACLU of Washington"). I am counsel of record for Plaintiff-Petitioner in this case. I have

1 knowledge of the facts set forth herein and if called upon to testify as a witness thereto, I could
2 and would competently do so under oath.

3 2. The ACLU of Washington is one of the largest regional affiliates of the American
4 Civil Liberties Union. It is dedicated to defending and securing important constitutional rights
5 and to extending these rights to people who have been excluded from their protection. The
6 ACLU of Washington has extensive expertise in class action litigation and has participated in
7 numerous cases in federal court involving due process rights.
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9 3. Founded in 1987, the ACLU Immigrants' Rights Project ("ACLU IRP") is dedi-
10 cated to expanding and enforcing the civil liberties and civil rights of non-citizens and to com-
11 bating public and private discrimination against immigrants. ACLU IRP has been at the forefront
12 of almost every major legal struggle on behalf of immigrants' rights through class action law-
13 suits, law reform litigation, judicial rulings and legal advocacy.
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15 4. I graduated from the University of Chicago Law School in 1998. In addition to
16 being admitted to practice in Washington and California, I am a member in good standing of the
17 Washington State Bar Association (WSBA) and the State Bar of California. I was a member of
18 the Virginia Bar Association from 1999-2007, until I resigned in good standing. I am admitted to
19 practice in the United States District Courts for the Western and Eastern Districts of Washington
20 and the Central District of California, and the United States Court of Appeals for the Ninth Cir-
21 cuit. While representing the United States in my work at the U.S. Department of Justice, I prac-
22 ticed in multiple federal district courts in various states, including Virginia, South Carolina,
23 Georgia, Mississippi, Alabama, Florida, Michigan, and South Dakota.
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25 5. After law school, I served as a judicial clerk for the Honorable Richard A. Paez,
26 then serving at the United States District Court for the Central District of California. After leav-

ing my clerkship, I litigated complex constitutional cases, representing the United States during all stages of trial litigation in federal district courts for four years as a trial attorney in the Civil Rights Division of the U.S. Department of Justice. I was lead counsel and responsible for over 20 desegregation cases throughout Alabama, Mississippi, Georgia and South Carolina, including serving as counsel for the desegregation case involving Jefferson County Schools – the largest public school district in Alabama with over 35,000 students. All of these cases sought injunctive relief against the defendant state or local government institutions. Many of these cases I litigated alongside the NAACP Legal Defense Fund who represented classes of student plaintiff-intervenors. Notable other cases that I litigated concerning constitutional claims include *Peder-sen and United States v. South Dakota High School Activities Association*, Case No. CV 00-4113-LLP (D.S.D.) (first Title IX athletics lawsuit filed by U.S. Department of Justice), *Communities for Equity v. Michigan State High School Athletics Association*, 178 F. Supp. 2d 805 (W.D. Mich. 2001) (judgment in class action ending decades of discrimination against more than 50,000 female student athletes), and the remedial phase of *United States v. Commonwealth of Virginia*, Case No. CV 90-00126-JLK (W.D. Va.) (responsible for implementing remedy requiring the gender integration of formerly male-only public institution). While at the U.S. Department of Justice, I received the Special Achievement Award in 2001 and 2002 for my litigation efforts.

6. In 2003, I relocated to Washington state where I worked as a litigation associate at Hillis, Clark, Martin & Peterson (HCMP), where I represented clients in complex civil and constitutional litigation in federal and state courts, including among others: *Washington Association of Churches v. Reed*, Case No. CV 06-726-RSM (W.D. Wash.) (voting rights); and *Farris v. State of Washington*, Case No. 06-2-00900-0 (Thurston County Sup. Ct., WA) (sex discrimina-

1 tion). In 2006, I was honored by the WSBA's Young Lawyers Division with its Professionalism
 2 Award for my pro bono work on cases involving constitutional claims while in private practice at
 3 HCMP.

4 7. Since 2006, I have served as the Legal Director of the ACLU of Washington
 5 Foundation where I actively litigate civil rights and constitutional cases in federal and state
 6 courts, including class actions under Rule 23(b)(2) seeking injunctive relief. At the ACLU of
 7 Washington, I have obtained relief for clients in matters involving due process, right to counsel,
 8 freedom of speech and expression, and discrimination, including: *Wilbur v. City of Mount*
 9 *Vernon*, Case No. CV 111100-RSL (W.D. Wash.) (judgment in class action finding violation of
 10 indigent accused Sixth Amendment right to counsel); *Ramirez-Martinez v. U.S. Immigration and*
 11 *Customs Enforcement*, Case No. CV 14-5273-RJB (W.D. Wash.) (case voluntarily dismissed af-
 12 ter ICE immediately removed immigrant detainees from solitary confinement where they had
 13 been placed in retaliation for exercising First Amendment rights); *Wilson v. Rentgrow, Inc.*, Case
 14 No. 13-2-15514-1 DSL (King County Sup. Ct.) (class action challenging tenant screening com-
 15 pany violations of state credit reporting laws resolved by settlement); *Sanchez v. U.S. Office of*
 16 *Border Patrol*, Case No. CV 12-5378-BHS (W.D. Wash.) (class action involving illegal vehicle
 17 stops by Border Patrol resolved by settlement); *Witt v. U.S. Department of Air Force*, Case No.
 18 CV 06-5195-RBL (W.D. Wash.) (ruling after 2-week bench trial finding Don't Ask Don't Tell
 19 policy unconstitutional as applied to Plaintiff Major Witt); *Roshandel v. Chertoff*, Case No. CV
 20 07-1739-MJP (W.D. Wash.) (first class action in country certified on this issue and resolved by
 21 settlement providing for timely processing of plaintiffs' applications for citizenship); *Tarrer &*
 22 *Garland v. Pierce County*, Case No. CV 10-5670-BHS (W.D. Wash.) (class action involving re-
 23 ligious accommodations in jail resolved by settlement); and *Khoury v. Asher*, Case No. CV 13-
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1 1367-RAJ (W.D. Wash.) (class of immigration detainees in Washington who have or will be
 2 subject to mandatory detention even though ICE failed or fails to take them into custody at the
 3 time of their release from criminal custody).

4 8. Co-counsel with me on this case are Margaret Chen of the ACLU of Washington
 5 Foundation, and Judy Rabinovitz and Michael Tan of the ACLU Immigrants' Rights Project.

6 9. Since October 2012, Margaret Chen has been a staff attorney at the ACLU of
 7 Washington Foundation who works on constitutional litigation. Ms. Chen graduated from the
 8 University of California, Berkeley, School of Law in 2012. She has been admitted to practice in
 9 the State of California since December 2012 and the State of Washington since June 2013. She is
 10 a member in good standing of the Washington State Bar Association (WSBA) and the State Bar
 11 of California. Ms. Chen has been admitted to practice in the United States District Court for the
 12 Western District of Washington.

13 10. During her time at the ACLU of Washington, Ms. Chen has gained considerable
 14 litigation experience. She has served as co-counsel on *Ramirez-Martinez v. U.S. Immigration and*
 15 *Customs Enforcement, supra*, involving a challenge to the placement of immigrant detainees in
 16 solitary confinement in retaliation for exercising their First Amendment rights. She currently
 17 serves as co-counsel on *Ingersoll v. Arlene's Flowers, Inc.*, Case No. 13-2-00953-3 (Ben-
 18 ton/Franklin Sup. Ct.), involving a gay couple refused service by a florist because of their sexual
 19 orientation.

20 11. Judy Rabinovitz is Deputy Project Director and Director of Detention and Federal
 21 Enforcement Programs of the ACLU Immigrants' Rights Project. She is one of the nation's lead-
 22 ing civil rights attorneys working in the area of immigration detention. Ms. Rabinovitz was lead
 23 counsel and argued before the U.S. Supreme Court in *Demore v. Kim*, 538 U.S. 510 (2003) (chal-

1 lenge to mandatory detention statute), and played an active role in the litigation culminating in
 2 *Zadvydas v. Davis*, 533 U.S. 678 (2001) (striking down indefinite detention of post-final order
 3 deportees who could not be removed), and *Clark v. Martinez*, 543 U.S. 371 (2005) (holding that
 4 *Zadvydas* limitation on indefinite detention applies to noncitizens apprehended at the border).
 5 Ms. Rabinovitz has also served as lead counsel, co-counsel, or counsel for *amici curiae* in nu-
 6 merous other detention cases in the federal courts of appeals, including: *Rodriguez v. Robbins*,
 7 715 F.3d 1127 (9th Cir. 2013) (affirming partial classwide preliminary injunction ordering bond
 8 hearings for noncitizens detained six months or longer pending their removal proceedings);
 9 *Diouf v. Napolitano*, 634 F.3d 1081 (9th Cir. 2011) (argued) (requiring bond hearings for noncit-
 10 izens detained six months or longer under post-final order detention statute); *Singh v. Holder*,
 11 638 F.3d 1196 (9th Cir. 2011) (amicus counsel) (requiring that the government justify continued
 12 prolonged immigration detention by clear and convincing evidence); *Rodriguez v. Hayes*, 591
 13 F.3d 1105 (9th Cir. 2010) (certifying class of noncitizens detained for six months without ade-
 14 quate bond hearings while their immigration cases are pending); *Nadarajah v. Gonzales*, 443
 15 F.3d 1069 (9th Cir. 2006) (holding that asylum seeker could not be subject to prolonged and in-
 16 definite immigration detention as national security threat); *Tijani v. Willis*, 430 F.3d 1241 (9th
 17 Cir. 2005) (ordering bond hearing for mandatory detainee where removal proceedings were not
 18 “expeditious”); *Leslie v. Attorney General*, 678 F.3d 265 (3d Cir. 2012) (argued as amicus coun-
 19 sel in pro se case) (holding that detainees cannot be penalized for the time required to pursue bo-
 20 na fide challenges to removal in assessing reasonableness of their prolonged detention); *Diop v.*
 21 *ICE/Homeland Security*, 656 F.3d 221 (3d Cir. 2011) (argued as amicus counsel in pro se case)
 22 (holding that mandatory detention statute only authorizes such detention for a “reasonable” peri-
 23 od of time); *Alli v. Decker*, 650 F.3d 1007 (3d Cir. 2011) (holding that immigration detainees are
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not barred from challenging their detention in a class action); *Ly v. Hansen*, 351 F.3d 263 (6th Cir. 2003) (argued) (holding that mandatory detention statute only authorizes such detention for a “reasonable” period of time); *Rosales-Garcia v. Holland*, 322 F.3d 386 (6th Cir. 2003) (argued before en banc court) (striking down indefinite detention of excludable noncitizens); *Castaneda v. Souza*, --- F.3d ----, 2014 WL 4976140 (1st Cir. 2014) (counsel in companion case, *Gordon v. Holder*, 13-2509) (holding that mandatory detention statute applies only where the immigration authorities take custody of an individual upon their release from relevant criminal custody).

12. Ms. Rabinovitz has also served as co-counsel or amicus counsel in all the district court matters related to immigration detention cited *infra*, ¶¶ 16-17, except for *Reid v. Donelan*, No. 3:13-cv-30125, 297 F.R.D. 185 (D. Mass. 2014), --- F. Supp. 2d ----, 2014 WL 2199780 (D. Mass. 2014), and *Preap v. Johnson*, No. 13-05754, --- F.R.D. ----, 2014 WL 1995064 (N.D. Cal. 2014).

13. Through these cases and others, Ms. Rabinovitz has come to have distinctive knowledge and specialized skill in the area of immigrants’ rights litigation in the federal courts and immigration detention in particular.

14. In addition to serving as counsel in these cases, Ms. Rabinovitz has served as a resource for nonprofit, pro bono, and private attorneys litigating prolonged and mandatory immigration detention cases throughout the country since approximately 1998. Ms. Rabinovitz 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.

15. Michael Tan has been worked as a staff attorney at IRP since 2012. He is admitted in to practice in California and New York and has been admitted to the bars of the U.S.

Courts of Appeals for the First, Third, Ninth, Tenth, and Eleventh Circuits and the U.S. District Courts for the Northern District of California and the Eastern District of Michigan. He graduated from Yale Law School in 2008 and served as a Law Clerk to the Honorable M. Margaret McKeown, U.S. Court of Appeals for the Ninth Circuit, from 2009 to 2010. Previously, he was a Skadden Fellow at IRP from 2010 to 2012 and a Liman Fellow at IRP from 2008 to 2009.

16. Mr. Tan's practice focuses primarily on immigration detention litigation and advocacy. He has served as co-counsel on numerous class action lawsuits on behalf of immigration detainees, including *Rodriguez v. Robbins*, No. 07-03239-TJH-E (C.D. Cal), 591 F.3d 1105 (9th Cir. 2010), 715 F.3d 1127 (9th Cir. 2013) (class action challenging the prolonged detention without bond hearings of immigrants held in the Central District of California pending completion of their removal cases); *Alli v. Decker*, No. 4:09-cv-00698-JEJ-SF (M.D. Pa), 644 F. Supp. 2d 535 (M.D. Pa. 2009), 650 F.3d 1007 (3d Cir. 2011) (class action challenging prolonged mandatory detention of immigrants held in Pennsylvania); *Reid v. Donelan*, No. 3:13-cv-30125, 297 F.R.D. 185 (D. Mass. 2014), --- F. Supp. 2d ----, 2014 WL 2199780 (D. Mass. 2014) (same, for immigrants held in Massachusetts); *Gayle v. Napolitano*, No. 3:12-cv-02806-FLW, --- F.Supp.2d ----, 2014 WL 1044074 (D.N.J. 2014) (class action challenging the mandatory detention of individuals with substantial challenges to removal in New Jersey); *Khoury v. Asher*, No. 2:13-cv-01367, 3 F. Supp. 3d 877 (W.D. Wash. 2014) (class action challenging the mandatory detention of immigrants in the Western District of Washington who were not taken into immigration custody upon their release from relevant criminal custody); *Gordon v. Johnson*, 3:13-cv-30146, --- F.R.D. ----, 2014 WL 2120002 (D. Mass. 2014) (same, for immigrants detained in Massachusetts); *Preap v. Johnson*, No. 13-05754, --- F.R.D. ----, 2014 WL 1995064 (N.D. Cal. 2014) (same, for immigrants detained in California).

1 17. Mr. Tan has also litigated several individual habeas cases challenging prolonged
 2 and mandatory immigration detention as co-counsel or counsel for *amici curiae*. See, e.g., *Cas-*
 3 *taneda v. Souza*, --- F.3d ----, 2014 WL 4976140 (1st Cir. 2014) (counsel in companion case,
 4 *Gordon v. Holder*, 13-2509); *Leslie v. Attorney General*, 678 F.3d 265 (3d Cir. 2012) (amicus
 5 counsel in pro se case); *Diop v. ICE/Homeland Security*, 656 F.3d 221 (3d Cir. 2011) (amicus
 6 counsel in pro se case); *Occelin v. District Director for ICE*, No. 3:09 CV-00164, 2009 WL
 7 1743742 (M.D. Pa. June 17, 2009); *Wilks v. DHS*, No. 1: CV-07-2171, 2009 WL 1542771 (M.D.
 8 Pa., June 02, 2009); *Scarlett v. Dep't of Homeland Security*, No. 08-cv-534, 632 F. Supp. 2d 214
 9 (W.D.N.Y. 2009) (amicus counsel); *Beckford v. Aviles*, No. 10-02035, 2011 WL 3515933
 10 (D.N.J. Aug. 09, 2011) (amicus counsel).

12 18. Through these cases and others, Mr. Tan has come to have distinctive knowledge
 13 and specialized skill in the area of immigrants' rights litigation in the federal courts and immi-
 14 gration detention in particular.

15 19. Mr. Tan also provides technical assistance to immigration attorneys nationwide
 16 seeking to challenge the prolonged and mandatory detention of individuals in removal proceed-
 17 ings and has taught continuing legal education workshops on immigration detention litigation.

18 20. The ACLU of Washington Foundation and ACLU Immigrants' Rights Project
 19 have the capacity to thoroughly and vigorously litigate the claims in this case and properly repre-
 20 sent the plaintiff class, and intends to commit all necessary resources to do so. If appointed class
 21 counsel, I will ensure that Ms. Chen, Ms. Rabinovitz, Mr. Tan and I zealously represent the in-
 22 terests of the class to the best of our collective ability.
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1 I declare under penalty of perjury under the laws of the United States and the State of
2 Washington that the foregoing is true and correct and that this declaration was executed on Oc-
3 tober 16, 2014, at Seattle, Washington.

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5 /s/ Sarah Dunne
6 SARAH DUNNE
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CERTIFICATE OF SERVICE

I hereby certify that on October 16, 2014, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system. I further certify that copies of the same will be served, via United States Postal Service, Certified Mail, Return Receipt Requested, to the following on October 17, 2014:

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Dated: October 16, 2014, at Seattle, Washington.

/s/ Sarah Dunne

Sarah Dunne, WSBA No. 34869

Attorney for Plaintiff

CERTIFICATE OF SERVICE

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