

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ANGE SAMMA *et al.*, on behalf of
themselves and others similarly situated,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
DEFENSE *et al.*,

Defendants.

Civil Action No. _____

DECLARATION OF BRETT MAX KAUFMAN

I, Brett Max Kaufman, declare as follows:

1. I am a Senior Staff Attorney with the American Civil Liberties Union’s Center for Democracy (“ACLU CFD”). I have personal knowledge of the facts contained in this declaration and am competent to testify as to them, apart from certain information provided to me by other attorneys concerning their experience and qualifications. I submit this declaration in support of Plaintiffs’ Motion for Class Certification and Appointment of Class Counsel to address the qualifications of Plaintiffs’ counsel to serve as Class Counsel in this action.

2. At present, Plaintiffs’ counsel—as identified by name on the Complaint—include attorneys from ACLU CFD (including members of the ACLU National Security Project (“ACLU NSP”)), the ACLU of Southern California (“ACLU SoCal”), and the ACLU of the District of Columbia (“ACLU DC”). As noted below, Plaintiffs’ counsel have extensive federal litigation experience on a wide range of issues, including immigrants’ rights, national security, privacy and surveillance, and prisoners’ rights. Collectively, they have worked on numerous class actions and cases brought under the Administrative Procedure Act (“APA”).

3. I have worked for ACLU NSP between 2012 and 2014 and for ACLU CFD since 2015, and I am experienced in complex federal litigation. I am admitted to practice in New York State, as well as the Supreme Court of the United States; the United States Courts of Appeals for the Second, Third, Ninth, and Federal Circuits; and the United States District Courts for the Southern District of New York, the Western District of New York, and the District of Columbia.

4. Prior to working at the ACLU, I completed two federal clerkships, first with Judge Robert D. Sack in the Second Circuit Court of Appeals, and next with Judge Richard J. Holwell and then (after Judge Holwell's resignation) Judge Lewis A. Kaplan of the U.S. District Court for the Southern District of New York.

5. I have litigated several cases involving national security, constitutional law, and the Freedom of Information Act, including *Leaders of a Beautiful Struggle v. Baltimore Police Department*, No. 20-cv-929 (D. Md. filed Apr. 9, 2020) (constitutional challenge to wide-area aerial surveillance system in Baltimore); *Hassoun v. Searls*, No. 19-CV-370, 2019 WL 6798903 (W.D.N.Y. Dec. 13, 2019) (constitutional challenge to indefinite civil detention of non-citizen on national security grounds); *Commonwealth v. Davis*, 220 A.3d 534 (Pa. 2019) (criminal appeal concerning Fifth Amendment right against self-incrimination); *Doe v. Mattis*, 928 F.3d 1 (D.C. Cir. 2019) (civil habeas challenge to military detention of American citizen in Iraq); *Carpenter v. United States*, 138 S. Ct. 2206 (2018) (criminal appeal concerning Fourth Amendment protection for cell site location information); *In re: Certification of Questions of Law to the Foreign Intelligence Surveillance Court of Review*, No. FISCR 18-01, 2018 WL 2709456 (FISCR Mar. 16, 2018) (First Amendment right of access motion for secret surveillance opinions); *ACLU v. Clapper*, 785 F.3d 787 (2d Cir. 2015) (APA challenge to National Security Agency's bulk collection of Americans' telephone records); *Al-Aulaqi v. Panetta*, 35 F. Supp. 3d 56 (D.D.C.

2014) (civil damages action concerning targeted killing of American citizens); *N.Y. Times Co. v. DOJ*, 756 F.3d 100 (2d Cir. 2014) (FOIA litigation concerning Office of Legal Counsel memorandum authorizing killing of American citizen).

6. Arthur B. Spitzer is Senior Counsel at ACLU DC, where he has worked for 40 years. Mr. Spitzer has served as counsel in numerous class action lawsuits, including *Dellums v. Powell*, 566 F.2d 167 (D.C. Cir. 1977) (successful class action for damages on behalf of 1,200 falsely accused demonstrators); *Smith v. Montgomery County*, 573 F. Supp. 604 (D. Md. 1983), *appeal dismissed*, 740 F.2d 963 (4th Cir. 1984) (successful class action for damages on behalf of thousands of arrestees unlawfully strip-searched at detention center); *Lampkin v. District of Columbia*, 27 F.3d 605 (D.C. Cir. 1994), *cert. denied*, 513 U.S. 1016 (1994) (class action to obtain school transportation for homeless children); *Green v. District of Columbia*, 134 F.R.D. 1 (D.D.C. 1991) (class action for injunctive relief regarding health care, legal materials and educational opportunities for prisoners); *Barry v. Little*, 669 A.2d 115 (D.C. 1995) (class action challenging cutoff of welfare benefits), *cert. denied*, 519 U.S. 1108 (1997); *LaShawn A. v. Dixon*, 762 F. Supp. 959 (D.D.C. 1991), *aff'd sub nom. LaShawn A. v. Barry*, 990 F.2d 1319 (D.C. Cir. 1993), *cert. denied*, 510 U.S. 1044 (1994) (still-ongoing class action for injunctive relief on behalf of children in foster care); *Carr v. District of Columbia*, 565 F. Supp. 2d 94 (D.D.C. 2008), *aff'd in part, rev'd in part*, 587 F.3d 401 (D.C. Cir. 2009) (class action for damages arising out of mass arrest); *Wood v. Moss*, 572 U.S. 744 (2014) (class action for damages arising out of breakup of peaceful demonstration); *J.D. v. Azar*, 925 F.3d 1291 (D.C. Cir. 2019) (class action on behalf of unaccompanied minor immigrants denied access to abortions); *Almaqrami v. Pompeo*, 933 F.3d 774 (D.C. Cir. 2019) (suit on behalf of Diversity Visa lottery winners blocked by Executive Order from obtaining immigration visas) (class

certification motion pending on remand); *Costa v. Bazron*, No. 19-cv-3185 (D.D.C. filed Oct. 23, 2019) (putative class action regarding conditions at Saint Elizabeths Hospital); *Banks v. Booth*, No. 20-cv-849 (D.D.C. filed Mar. 30, 2020) (putative class action regarding COVID-19 virus at the D.C. Jail); and *Williams v. Federal Bureau of Prisons*, No. 20-cv-890 (D.D.C. filed Apr. 2, 2020) (putative class action regarding COVID-19 virus at D.C. halfway house).

7. Jennifer Pasquerella is Senior Staff Attorney and Director of Immigrants' Rights at ACLU SoCal, where she has worked since 2008. Ms. Pasquerella has extensive experience litigating class actions involving immigrants' rights. Notably, she served as counsel in *Kuang v. U.S. Department of Defense*, 340 F. Supp. 3d 873 (N.D. Cal. 2018), *vacated and remanded by Kuang v. U.S. Department of Defense*, 778 Fed. App'x 418 (9th Cir. 2019), a class action on behalf of lawful permanent resident service members challenging the validity of a new Department of Defense enhanced screening policy. She has served as co-lead counsel in *Wagafe v. Trump*, No. 17-cv-00094 (W.D. Wa. filed Jan. 22, 2017) (class action challenging the Controlled Application Review and Resolution Program, including under the APA), *Roy v. County of Los Angeles*, CV 12-09012 BRO (FFMx) (C.D. Cal. filed Oct. 29, 2012) (class action on behalf of individuals detained by the Los Angeles County Sheriff's department on ICE detainer requests), and *Gonzalez v. ICE*, No. CV 13-04416 BRO (FFMx) (C.D. Cal. filed June 19, 2013) (class action on behalf of individuals subject to detention by local law enforcement on ICE detainers). Her other representative cases include: *Kolhatkar v. Arellano*, No. CV 07-1394 DOC (RNBx) (C.D. Cal. dismissed Oct. 6, 2010) (class action challenging backlogs in processing naturalization applications in the Central District of California due to the FBI "name check"); *Morales v. Terra Universal, Inc.*, No. CV 10-6490 PA (SSx) (C.D. Cal. filed Aug. 31, 2010) (class action wage and hour lawsuit on behalf of immigrant workers); and *Fazaga v. FBI*,

884 F. Supp. 2d 1022 (C.D. Cal. 2012), *aff'd in part, rev'd in part*, 916 F.3d 1202 (9th Cir. 2019) (First Amendment class action challenge to FBI surveillance of mosques and individuals on account of their religious practice and beliefs).

8. Over the past several months, Plaintiffs' counsel—including me, Ms. Pasquerella, Mr. Spitzer, and other attorneys listed on Plaintiffs' complaint—have collectively done considerable work investigating potential legal and factual claims in preparation for filing this case. We have spent countless hours interviewing and corresponding with non-citizen service members in order to identify plaintiffs, develop facts, and gather relevant documents and information. We have conducted extensive research and prepared legal memoranda analyzing relevant statutory provisions, constitutional law, and legislative history. We have also consulted with outside immigration and military law experts concerning the factual and legal issues presented in this case.

9. Plaintiffs' counsel have devoted and will continue to devote significant time and resources to fully and vigorously represent the class in this case. Neither I nor any co-counsel are receiving or will receive payment or reimbursement from the individual plaintiffs or class members in this case.

10. Attached as Exhibit 1 is a true and correct copy of a memorandum from the Office of the Under Secretary of Defense with the subject line “Certification of Honorable Service for Members of the Selected Reserve of the Ready Reserve and Members of the Active Components of the Military or Naval Forces for Purposes of Naturalization,” dated October 13, 2017.

11. Attached as Exhibit 2 is a true and correct copy of a fact sheet from the Department of Defense titled “Military Accessions Vital to National Interest (MAVNI) Recruitment Pilot Program” and available at: <https://dod.defense.gov/news/mavni-fact-sheet.pdf>.

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

Executed on April 22, 2020

A handwritten signature in blue ink, appearing to read "Brett Max Kaufman", with a long horizontal flourish extending to the right.

Brett Max Kaufman
D.D.C. Bar No: NY0224