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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION**

MARCO ANTONIO ALFARO GARCIA, ) Case No. 4:14-cv-01775-YGR  
CREDY MADRID CALDERON, GUSTAVO )  
ORTEGA, and CLAUDIA RODRIGUEZ DE )  
LA TORRE, on behalf of themselves and all )  
others similarly situated, )

8 *Plaintiffs,* )  
9 )

v. )  
10 )

JEH JOHNSON, Secretary of Homeland )  
Security, LEON RODRIGUEZ, Director of )  
U.S. Citizenship and Immigration Services, )  
and JOSEPH LANGLOIS, Associate Director )  
of Refugee, Asylum and International )  
Operations, )

14 )  
15 *Defendants.* )  
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**SETTLEMENT AGREEMENT AND RELEASE**

Plaintiffs in the above-captioned matter, on behalf of themselves and all Class Members (collectively "Plaintiff Class"), and Defendants Jeh Johnson, in his official capacity as Secretary of Homeland Security, Leon Rodriguez, in his official capacity as Director of U.S. Citizenship and Immigration Services ("USCIS"), and Joseph Langlois, in his official capacity as Associate Director of USCIS Refugee, Asylum, and International Operations ("Defendants"), by and through their attorneys, hereby enter into this Settlement Agreement and Release ("Agreement"), as of the date it is executed by all parties hereto (the "Agreement Date") and effective upon approval of the Court pursuant to Rule 23 of the Federal Rules of Civil Procedure.

**WHEREAS:**

- A. On April 17, 2014, Plaintiffs commenced a civil action against Defendants on behalf of themselves and all others similarly situated, captioned *Garcia, et al., v. Johnson, et al.*, United States District Court for the Northern District of California Case No. 4:14-cv-01775-YGR (the "Action"), and sought class certification, designation of Class Counsel, and declaratory and injunctive relief.
- B. The United States District Court for the Northern District of California certified the proposed class with some modifications; appointed Class Counsel on November 21, 2014; and denied Defendants' motion to dismiss on the same date.

- 1 C. Defendants deny all liability with respect to the Action, deny that they have engaged in  
2 any wrongdoing, deny the allegations in the Complaint, deny that they committed any  
3 violation of law, deny that they acted improperly in any way, and deny liability of any  
4 kind to the Plaintiffs or the Plaintiff Class, but have agreed to the settlement and  
5 dismissal of the Action with prejudice in order to: (i) avoid the substantial expense,  
6 inconvenience, and distraction of protracted litigation; and (ii) finally put to rest and  
7 terminate the Action and any and all Settled Claims as defined in Section I.I.
- 8 D. Both the Plaintiff Class and Defendants have conducted discussions and arm's length  
9 negotiations regarding a compromise and settlement of the Action with a view to settling  
10 all matters in dispute.
- 11 E. Considering the benefits that the Plaintiffs and the Plaintiff Class will receive from  
12 settlement of the Action and the risks of litigation, Class Counsel have concluded that the  
13 terms and conditions of this Agreement are fair, reasonable, and in the best interests of  
14 the Plaintiffs and the Plaintiff Class; Plaintiffs have agreed that Defendants shall be  
15 released from the Settled Claims pursuant to the terms and provisions of this Agreement;  
16 and have agreed to the dismissal with prejudice of all Settled Claims as defined in  
17 Section I.I.

18 NOW, THEREFORE, it is hereby STIPULATED AND AGREED, by and among the parties to  
19 this Agreement, through their respective attorneys, subject to the approval of the Court pursuant  
20 to Rule 23(e) of the Federal Rules of Civil Procedure, in consideration of the benefits flowing to  
21 the parties hereto from the Agreement, that the Settled Claims shall be compromised, settled,  
22 forever released, barred, and dismissed with prejudice, upon and subject to the following terms  
23 and conditions:

24 **I. DEFINITIONS:**

25 Wherever used in this Agreement, the following terms have the meanings set forth below:

- 26 A. "Action" means the civil action captioned *Garcia, et al., v. Johnson, et al.*, United  
27 States District Court for the Northern District of California Case No. 4:14-cv-  
28 01775-YGR.
- 29 B. "Effective Date of Settlement" or "Effective Date" means the date upon which this  
30 Agreement shall become effective, as set forth in Section VI., below.
- 31 C. "Plaintiff(s)" means Marco Antonio Alfaro Garcia, Credy Madrid Calderon,  
32 Gustavo Ortega, and Claudia Rodriguez de la Torre.
- 33 D. "Class Member(s)" means any person who, during the period of this Agreement:
- 34 a. is or will be subject to a reinstated order of removal under 8 U.S.C. § 1231(a)(5)  
35 or an administrative removal order under 8 U.S.C. § 1228(b);
  - 36 b. has expressed, or in the future expresses, a fear of returning to his or her country  
37 of removal;
  - 38 c. is detained in the custody of the Department of Homeland Security ("DHS"); and
  - 39 d. has not received, or does not receive, an initial reasonable fear determination by  
40 USCIS under 8 C.F.R. § 208.31 within ten (10) days of referral to USCIS;  
41 however,

1 e. the defined class does not include individuals who have received their reasonable  
2 fear determination.

3 E. Unless otherwise specified, all periods of time expressed within this Agreement of  
4 thirty (30) days or fewer shall be calculated as court days; i.e., any day in which the  
5 federal courts are not in session shall not be counted.

6 F. "Plaintiffs' Counsel" or "Class Counsel" means Michael Kaufman, Carmen Iguina  
7 and Ahilan T. Arulanantham of the American Civil Liberties Union ("ACLU") of  
8 Southern California, Julia Harumi Mass of the ACLU of Northern California,  
9 Claudia Valenzuela and Charles Roth of the National Immigrant Justice Center,  
10 and John D. Pingel, Timothy R. Carraher, David Z. Smith, Christopher R. Murphy  
11 and James A. Rolfes of Reed Smith LLP. Should these entities change their  
12 names or merge with other entities, those new entities shall also qualify as Class  
13 Counsel.

14 G. "Defendants" means Jeh Johnson, in his official capacity as Secretary of Homeland  
15 Security, Leon Rodriguez, in his official capacity as Director of USCIS, and  
16 Joseph Langlois, in his official capacity as Associate Director of USCIS Refugee,  
17 Asylum, and International Operations, their predecessors and successors, their  
18 departments and agencies, and their past or present agents, employees, and  
19 contractors.

20 H. "Quarter" means Fiscal Year Quarters.

21 I. "Settled Claims" means the claims that were asserted by Plaintiffs on behalf of  
22 themselves and the Class Members in this Action, including claims regarding the  
23 process of referral by U.S. Immigration and Customs Enforcement ("ICE") to  
24 USCIS, under 8 C.F.R. §§ 208.31(b), 238.1(f)(3), or 241.8(e), for a reasonable fear  
25 determination, and the process of USCIS's determination as to whether the asserted  
26 fear is reasonable.

27 J. "Settlement" means the settlement provided for in this Agreement.

28 K. "Published training guide or manual" refers to any new or revised version of a  
training guide or manual (including interim or draft documents) that is issued,  
promulgated or otherwise distributed by ICE after the Effective Date, but does not  
include guidance regarding specific and limited issues dealing with reinstatement  
of removal and/or administrative removal.

## II. **RELEASE: SCOPE AND EFFECT OF RELEASE**

21 A. On the Effective Date, the Plaintiffs and the Class Members, on behalf of  
22 themselves, their heirs, executors, administrators, representatives, attorneys,  
23 successors, assigns, agents, affiliates, and partners, and any persons they represent,  
24 by operation of any final judgment entered by the Court, shall have fully, finally,  
25 and forever released, relinquished, and discharged the Defendants of and from any  
26 and all of the Settled Claims, and the Plaintiffs and the Class Members shall forever  
27 be barred and enjoined from bringing or prosecuting any Settled Claim against any  
28 of the Released Parties. This Release shall not apply to claims that arise or accrue  
after the termination of this Agreement.

B. This Agreement is subject to and contingent upon Court approval under Rule 23(e)  
of the Federal Rules of Civil Procedure.

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### III. REASONABLE FEAR PROCESSING

A. For individuals in the custody of ICE who have been issued either a reinstated order of removal under 8 U.S.C. § 1231(a)(5) or an administrative order of removal under 8 U.S.C. § 1228(b), and who express fear of return to the designated country of removal, ICE shall refer the individual immediately, as practicable, to USCIS for a determination of whether that expressed fear is reasonable, after both (i) the issuance of the removal order, and (ii) the individual’s expression of fear.

1. ICE shall reduce the amount of time between (i) the “triggering date” and (ii) the referral date to USCIS (the “benchmark”) to an average of five days or less no later than one year from the Agreement Date. The “triggering date” shall be the latest date of:
  - i. The date ICE assumes custody;
  - ii. The date of issuance of either a reinstated order of removal under 8 U.S.C. § 1231(a)(5) or an administrative order of removal under 8 U.S.C. § 1228(b); and
  - iii. The date on which an alien expresses a fear of return.
2. After one year, ICE will propose to Plaintiffs a new, lower benchmark for such referral times. The parties shall either agree to that benchmark as proposed or will meet and confer to decide upon a new benchmark.
3. ICE shall regularly report to Plaintiffs information on the referral process.
  - i. ICE will make its best efforts to modify its internal systems to track the following information: (1) the total number of cases referred; (2) the average number of days for referrals; (3) the total number of referrals which took more than 5 days; and (4) the total number of referrals which took more than 10 days. If successful, ICE will provide to Plaintiffs a report containing these statistics both by area of responsibility and nationally according to the schedule provided in subsection (ii). If efforts to modify internal systems prove unsuccessful, Defendants’ Counsel shall immediately report this fact to Plaintiffs’ Counsel, and the parties will meet to discuss alternate reporting arrangements. In all events, Defendants’ Counsel shall provide Plaintiffs with a progress report on ICE’s efforts to modify its databases, and whether the proposed changes are feasible, within six months after the Agreement Date.
  - ii. The first report is due no later than one year and one month from the Agreement Date. Thereafter, ICE will provide quarterly reports on the first business day of the second month following the end of each quarter.

B. ICE shall refer an individual to USCIS by sending a referral package to USCIS.

1. A “proper” referral package consists of:
  - i. Either:
    - (1) A fully executed Form I-851A, *Final Administrative Removal Order*, or
    - (2) A fully executed Form I-871, *Notice of Intent/Decision to Reinstate Prior Order*, including the prior order of removal; and

- 1                   ii. An indication, whether in oral, written, or electronic form, that the  
2                   individual has made a fear claim during the reinstatement or  
3                   administrative removal process.
- 4                   2. For the purposes of this provision, with regard to the Form I-851A, “fully  
5                   executed” means the certificate of service is signed by an immigration officer,  
6                   and with regard to the Form I-871, “fully executed” means that the decision,  
7                   order, and officer’s certification is signed by an immigration officer.
- 8                   C. To implement paragraphs III(A)-(B), Defendants shall take the following measures:
- 9                   1. ICE shall include the requirements specified in paragraphs III(A)-(B) in any  
10                  future published training guide or manual that addresses its procedures with  
11                  regard to persons subject to either reinstated orders of removal under 8 U.S.C.  
12                  § 1231(a)(5) or administrative orders of removal under 8 U.S.C. § 1228(b).
- 13                  D. The reasonable fear determination period commences once USCIS receives a  
14                  “proper” referral package from ICE.
- 15                  1. If a referral package is not “proper” because it does not contain the  
16                  documentation required by paragraph III(B), USCIS shall coordinate with ICE  
17                  immediately, as is practicable, to obtain such documentation. In such a case,  
18                  the reasonable fear determination period commences following USCIS’s  
19                  receipt of a “proper” referral package.
- 20                  E. By November 2, 2015, or 30 calendar days after the Effective Date, whichever  
21                  occurs later in time, USCIS shall achieve an average national reasonable fear  
22                  determination period of no more than ten (10) days. The average shall be calculated  
23                  on a monthly basis, and shall not include cases in which a class member withdraws  
24                  his or her request for a reasonable fear determination. An average of ten (10) days  
25                  is achieved if the average is less than 10.5 days.
- 26                  F. Any request by the individual or the individual’s representative to defer the  
27                  reasonable fear interview, if approved by USCIS, shall toll the reasonable fear  
28                  determination period. The tolling period shall be limited to the time period agreed  
29                  to by USCIS and requested by the individual or the individual’s representative to  
30                  defer the interview or, if no time period is specified, a period no longer than 10  
31                  days. In addition, refusal to participate in the reasonable fear interview or accept  
32                  service of written documentation of the reasonable fear determination shall toll the  
33                  reasonable fear determination period during the length of the refusal to participate  
34                  or accept service.
- 35                  1. Nothing in this provision shall be read to prevent an individual or an  
36                  individual’s representative from requesting deferral of more than 10 days, or  
37                  multiple deferrals. Nor shall this provision be read to require USCIS to grant  
38                  any such deferral request or to explain its reasons for denying the request.
- 39                  G. As provided in 8 C.F.R. § 208.31(b), exceptional circumstances shall toll the  
40                  reasonable fear determination period during the existence of such exceptional  
41                  circumstances. Exceptional circumstances do not include unusual but reasonably  
42                  foreseeable circumstances, shall be determined on an individualized basis, and shall  
43                  be of limited duration.
- 44                  H. By November 2, 2015, or 30 calendar days after the Effective Date, whichever is  
45                  later in time, USCIS shall ensure that no Class Member’s reasonable fear  
46                  determination period exceeds 20 days, not including any tolling or delays due to

1 exceptional circumstances. USCIS shall immediately report to the Director of the  
2 Asylum Division all individual cases that exceed 20 days.

- 3 1. Notice shall be provided to Class Counsel, along with a remedial plan of  
4 action, within one day of any such reporting.
- 5 2. An update will be provided to Class Counsel within five further days  
6 indicating whether the reasonable fear determination has been completed.
- 7 3. If the reasonable fear determination for a particular Class Member has not  
8 been completed within 26 days, not including any tolling or delays due to  
9 exceptional circumstances, the dispute resolution procedure provided in this  
10 Agreement does not preclude Plaintiffs or the particular individual Class  
11 Members from taking any action they may deem appropriate, including  
12 seeking individualized relief. Moreover, an individual Class Member whose  
13 reasonable fear determination has not been completed within 26 days, not  
14 including any tolling or delays due to exceptional circumstances, may seek  
15 enforcement of this Agreement, and remedies for such violation, from the  
16 Court without having to follow or be bound by the Alternative Dispute  
17 Resolution provisions in this Agreement.

18 I. Starting 90 days after the Agreement Date, or 30 calendar days after the Effective  
19 Date, whichever date is later in time, USCIS will provide to Class Counsel on the  
20 15<sup>th</sup> day of the month (unless such date falls on a weekend or federal holiday, and  
21 then on the first non-weekend or federal holiday date following the 15<sup>th</sup> date of the  
22 month) a monthly report reflecting both completed and pending reasonable fear  
23 cases for the prior month. The reports shall include: the average time for completed  
24 cases, not including cases in which the applicant withdraws his or her request for a  
25 reasonable fear determination; the average time for cases in which the applicant  
26 withdraws his or her request for a reasonable fear determination; the average time  
27 for pending cases; the number of cases in which the reasonable fear determination  
28 period exceeded 10 days; the number of cases in which the reasonable fear  
determination period exceeded 20 days; the number of cases in which the  
reasonable fear determination period was tolled due to a Class Member's, or his or  
her representative's, request for a deferral; the number of cases in which the  
reasonable fear determination period was tolled due to a Class Member's alleged  
refusal to participate in the reasonable fear interview or to accept service of the  
reasonable fear determination; and the number of cases in which the reasonable fear  
determination period was extended based on exceptional circumstances. The  
statistics shall be reported both by asylum office, and in aggregate for the nation as  
a whole.

1. If twelve (12) consecutive monthly reports show both (i) that USCIS has  
reasonable fear determination period averages as provided in paragraph III (E)  
above; and (ii) no more than ten (10) individuals per month for whom USCIS  
has not made a reasonable fear determination within twenty (20) days, the  
reports shall be provided quarterly on the 15<sup>th</sup> day of the month (unless such  
date falls on a weekend or federal holiday, and then on the first non-weekend  
or federal holiday date following the 15<sup>th</sup> date of the month) following the end  
of the quarter. Thereafter, if eight consecutive quarterly reports show both (i)  
that USCIS has reasonable fear determination period averages of no more than  
ten (10) days and (ii) that no more than twenty (20) individuals per quarter for  
whom USCIS has not made a reasonable fear determination within twenty

1 (20) days of receipt of a proper referral package, the parties will agree to  
2 terminate the Agreement.

3 J. Starting 90 days after the Effective Date, if Class Counsel so requests, USCIS will  
4 provide Class Counsel with relevant documents from the alien files of a sampling  
5 of Class Members, pursuant to the protective order, including any documentation  
6 generated related to Sections III.B, III.F, and III.G of this Agreement. Class  
7 Counsel may request files from no more than 30 Class Members per quarter.  
8 Plaintiffs will receive the sampling of relevant documents from files no less  
9 frequently than on a quarterly basis and within a reasonable period after request.

10 1. Class Counsel may contact counsel for Defendants to seek an explanation  
11 regarding information contained in any of the documents from files produced  
12 pursuant to this subsection. Within fifteen days after receipt of the notice from  
13 Class Counsel, counsel for Defendants shall respond with an explanation.

#### 9 **IV. DISPUTE RESOLUTION PROCEDURES; CONTINUING JURISDICTION**

10 A. The Court shall retain jurisdiction to supervise the implementation of this  
11 Agreement and to enforce its terms, and the terms of this Agreement shall be  
12 incorporated into the Order of the Court approving the Agreement.

13 B. The parties agree that the Court will not be asked to exercise jurisdiction to  
14 supervise the implementation of this Agreement or to enforce its terms until  
15 exhaustion of the following dispute resolution process:

16 1. Should Class Counsel believe in good faith that Defendants have failed to  
17 implement specific terms of this Agreement, Class Counsel will promptly notify  
18 counsel for Defendants, in writing, of the specific grounds upon which non-  
19 compliance is alleged. Within twenty (20) calendar days after receipt of the  
20 notice from Class Counsel, counsel for Defendants shall notify Class Counsel of  
21 Defendants' position and any action it has taken or intends to take in connection  
22 therewith. The parties shall negotiate in good faith in an effort to resolve any  
23 remaining disputes. The parties agree that this negotiation period will be  
24 considered exhausted if the parties jointly determine that negotiations have  
25 reached an impasse.

26 2. Should Defendants believe in good faith that a properly promulgated regulation  
27 or statute materially changes the processes for determination of whether a  
28 claimed fear is reasonable, counsel for Defendants will promptly notify Class  
Counsel, in writing. Within twenty (20) calendar days after receipt of the notice  
from Defendants, Class Counsel shall notify Defendants of Class Counsel's  
position. The parties shall negotiate in good faith in an effort to resolve any  
remaining disputes. The parties agree that this negotiation period will be  
considered exhausted if the parties jointly determine that negotiations have  
reached an impasse.

3. If any dispute cannot be resolved informally by either set of counsel for the  
parties under paragraphs 1 or 2 of this section of the Agreement, counsel shall  
notify counsel for the opposing party by letter and request that counsel meet and  
confer. The parties shall meet within ten (10) calendar days of such notice in an  
attempt to arrive at an amicable resolution of the dispute.

4. Upon mutual agreement of the parties, and the consent of Magistrate Judge  
Laurel Beeler, the parties may refer any unresolved dispute to Magistrate Judge

1 Beeler for mediation. Such mediation is not a condition precedent to enforce  
2 this Agreement or terminate the Agreement as moot through a motion in district  
3 court. If the parties elect to pursue mediation and the dispute has not been  
4 resolved through mediation within 45 days, counsel may seek to enforce the  
5 Agreement or terminate the Agreement as moot through a motion in district  
6 court.

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5. If the parties do not reach resolution under the procedures of Paragraphs 1-4, either party may then file a motion requesting that the district court resolve the dispute.

6. The parties agree that the mediation process shall be conducted confidentially and that no public disclosure shall be made relating to the dispute before or during the mediation process. All documents and information disclosed by either party during the mediation process shall not be admissible in any judicial proceeding. All statements or conclusions of the mediator shall not be admissible in any subsequent judicial proceeding.

C. The parties agree that any action or proceeding to enforce the terms of this Agreement or terminate the Agreement as moot shall be brought exclusively in the United States District Court for the Northern District of California. The Court in this proceeding shall have the power to award such relief and issue such judgments as the Court deems proper and appropriate.

#### **V. TERMS OF ORDER FOR NOTICE, HEARING AND FINAL JUDGMENT**

A. Concurrently with their filing of this Agreement, Class Counsel and Defendants' Counsel shall jointly apply to the Court for Preliminary Approval of the Settlement provided for in this Agreement and entry of a Preliminary Approval Order. Such Preliminary Approval will seek approval of a Notice to the Class substantially in the form appended hereto as Exhibit A, as well as a finding that the following satisfies the publication requirements of Rule 23 of the Federal Rules of Civil Procedure: Within five (5) business days of the date of the Preliminary Approval, (i) posting the Notice to the Class and this Settlement Agreement in appropriate places on the USCIS public website; (ii) providing the Notice to the Class and this Agreement to USCIS' Public Engagement Division for distribution to the existing network of community-based and non-profit organizations who provide advice and assistance to immigrants; (iii) providing the Notice to the Class and this Agreement in appropriate places on the websites of ACLU of Southern California, ACLU of Northern California and National Immigrant Justice Center; and (iv) posting or otherwise making available the Notice to the Class at all ICE immigration detention facilities in which Class Members may be detained, in an area prominently visible to immigration detainees.

B. If the Settlement contemplated by this Agreement is approved by the Court, counsel for the parties shall request that the Court enter a Final Judgment substantially in the form appended hereto as Exhibit B.

C. Within ten (10) business days following the Court's entry of the Final Judgment, USCIS will provide the Notice of Final Settlement substantially in the form appended hereto as Exhibit C to all current Class Members identified under Section III of this Agreement by U.S. Mail to their last address provided to USCIS.



- 1 D. USCIS will provide the Notice of Final Settlement substantially in the form  
2 appended hereto as Exhibit C to all future potential Class Members in person, once  
3 USCIS receives a proper referral package from ICE.

## 4 **VI. EFFECTIVE DATE OF SETTLEMENT; TERMINATION**

- 5 A. The Effective Date of this Agreement shall be the date when all of the following  
6 shall have occurred: (a) entry of the Preliminary Approval Order; (b) approval by  
7 the Court of this Agreement, following notice to the Class and a fairness hearing, as  
8 prescribed by Rule 23 of the Federal Rules of Civil Procedure; and (c) entry by the  
9 Court of Final Judgment, in all material respects in the form appended hereto as  
10 Exhibit B.
- 11 B. In the event that the Court does not approve the Agreement, or the Court's approval  
12 of the Agreement or the Final Judgment is reversed, vacated, or terminated, on  
13 appeal, the parties' good-faith adherence to the terms of this Agreement prior to  
14 said reversal, vacatur, or termination shall not be considered unlawful.
- 15 C. Defendants' Counsel or Class Counsel shall have the right to terminate this  
16 Agreement by providing written notice of their election to do so ("Termination  
17 Notice") to all other parties hereto within thirty (30) days of (a) the Court's  
18 declining to enter the Preliminary Approval Order or modifying that Preliminary  
19 Approval Order in any material respect; (b) the Court's declining to approve the  
20 Settlement embodied in this Agreement or any material part of it; (c) the Court's  
21 declining to enter the Final Judgment or modifying the Final Judgment in any  
22 material respect; or (d) the Court of Appeals or the United States Supreme Court's  
23 reversing, vacating, or modifying in any material way the Final Judgment.
- 24 D. Except as otherwise provided herein, in the event the Settlement is terminated or  
25 modified in any material respect or fails to become effective for any reason, then  
26 the Settlement shall be without prejudice and none of its terms shall be effective or  
27 enforceable; the parties to this Agreement shall be deemed to have reverted to their  
28 respective status in the Action as of the date and time immediately prior to the  
execution of this Agreement; and except as otherwise expressly provided, the  
parties shall proceed in all respects as if this Agreement and any related orders had  
not been entered. In the event the Settlement is terminated or modified in any  
material respect, the parties shall be deemed not to have waived, not to have  
modified, or not be estopped from asserting any additional defenses or arguments  
available to them.

## 29 **VII. TERMINATION OF OBLIGATIONS**

30 Unless earlier terminated by operation of Section VI, the obligations of this Agreement shall  
31 terminate within five (5) years of the Effective Date. All referrals for individuals with a  
32 reinstated order of removal or an administrative order of removal who express a fear of return to  
33 the country of removal and reasonable fear adjudications that remain pending will continue to be  
34 treated under the terms of this agreement until a reasonable fear determination is made. By joint  
35 agreement of all parties, the Agreement may terminate at an earlier date, if USCIS meets  
36 reporting obligations as set out in paragraph III.I.1.

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**VIII. NO ADMISSION OF WRONGDOING**

- A. This Agreement, whether or not executed, and any proceedings taken pursuant to it:
1. shall not be construed to waive, reduce, or otherwise diminish the authority of the Defendants to enforce the laws of the United States against Class Members, consistent with the Constitution and laws of the United States, and applicable regulations;
  2. shall not be offered or received against the Defendants as evidence of, or construed as or deemed to be evidence of, any presumption, concession, or admission by any of the Defendants of the truth of any fact alleged by the Plaintiffs or the validity of any claim that had been or could have been asserted in the Action or in any litigation, or the deficiency of any defense that has been or could have been asserted in the Action, or of any liability, negligence, fault, or wrongdoing of the Defendants; or any admission by the Defendants of any violations of, or failure to comply with, the Constitution, laws or regulations; and
  3. shall not be offered or received against the Defendants as evidence of a presumption, concession, or admission of any liability, negligence, fault, or wrongdoing, or in any way referred to for any other reason as against any of the parties to this Agreement, in any other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Agreement; provided, however, that if this Agreement is approved by the Court, Defendants may refer to it and rely upon it to effectuate the liability protection granted them hereunder.

**IX. ATTORNEYS' FEES**

Within 60 days of the Effective Date, Defendants shall pay to Class Counsel the sum of \$ 325,000 to settle and resolve Plaintiffs' claims to attorneys' fees and costs under the Equal Access to Justice Act, 28 U.S.C. § 2412 (the "Attorneys' Fee and Cost Amount"), plus \$ 2,047.66 in taxable costs under 28 U.S.C. § 1920. Such payments shall satisfy all of Defendants' obligations, if any, under 28 U.S.C. § 2412 for Plaintiffs' attorney fees and costs related to and for the Action.

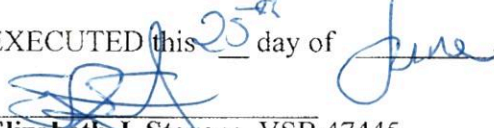
- A. The parties agree to the "Attorneys' Fee and Cost Amount" to avoid further litigation and costs associated with litigating a fee and cost request and to avoid the risks attendant to such proceedings.
- B. Defendants shall deliver the Attorneys' Fee and Cost Amount to Class Counsel by direct wire transfer into Class Counsel's designated account, which Class Counsel shall provide to Defendants within five days of the Effective Date. Plaintiffs and Class Counsel acknowledge that payment of the Attorneys' Fee and Cost Amount by Defendants or any of them in accordance with the wire instructions shall resolve all of Defendants' liability for such amount.
- C. Class Counsel shall be fully responsible for the allocation and payment of the Attorneys' Fees and Cost Amount among themselves.
- D. In the event that Class Counsel seek to enforce the terms of the Agreement pursuant to Section IV.C., nothing in this Agreement shall be interpreted as precluding Plaintiffs from seeking attorneys' fees solely for such enforcement action.

1 **X. ADDITIONAL PROVISIONS**

- 2 A. This Agreement, and the obligations incurred herein, shall be in full and final  
3 disposition of the Action with prejudice, including any and all Settled Claims against  
4 Defendants. On the Effective Date, Plaintiffs and the Plaintiff Class shall be deemed  
5 to have fully, finally, and forever released, relinquished, and discharged Defendants  
6 of and from any and all Settled Claims.
- 7 B. All of the exhibits attached hereto are hereby incorporated by reference as though  
8 fully set forth herein.
- 9 C. This Agreement may not be modified or amended, nor may any of its provisions be  
10 waived except by a writing signed by all parties hereto or their successors-in-interest.
- 11 D. The waiver by one party of any breach of this Agreement by any other party shall not  
12 be deemed a waiver of any other prior or subsequent breach of this Agreement.
- 13 E. This Agreement and its exhibits constitute the entire agreement among the parties  
14 hereto concerning the Settlement of the Action, and no representations, warranties,  
15 or inducements have been made by any party hereto other than those contained and  
16 memorialized in such documents.
- 17 F. This Agreement may be executed in one or more counterparts. All executed  
18 counterparts and each of them shall be deemed to be one and the same instrument  
19 provided that counsel for the parties to this Agreement shall exchange among  
20 themselves original signed counterparts.
- 21 G. This Agreement shall be binding upon, and inure to the benefit of, the successors and  
22 assigns of the parties hereto.
- 23 H. DHS expressly reserves its discretion, authority and prerogative to issue new  
24 regulations, including any amendments to 8 C.F.R. § 208.31.
- 25 I. Nothing in this Agreement should be construed as establishing any right or interest in  
26 challenging an adverse reasonable fear determination, a reinstatement of removal  
27 order, an administrative removal order, a custody or detention determination, or any  
28 other DHS or USCIS action, decision, determination, order, form, instruction,  
training material, delay, or process or procedure, beyond those expressly provided  
herein or under law.
- J. This Agreement shall not be construed more strictly against one party than another  
merely by virtue of the fact that it, or any part of it, may have been prepared by  
counsel for one of the parties, it being recognized by the parties that this Agreement  
is the result of negotiations between the parties and that all parties have contributed  
substantially and materially to the preparation of this Agreement.
- K. All counsel and any other person executing this Agreement and any of the exhibits  
hereto, or any related settlement documents, warrant and represent that they have the  
full authority to do so and that they have the authority to take appropriate action  
required or permitted to be taken under the Agreement to effectuate its terms.
- L. Class Counsel and Defendants' Counsel agree to cooperate fully with one another in  
seeking Court approval of this Agreement and to promptly agree upon and execute  
all such other documentation as may be reasonably required to obtain final approval  
by the Court of the Settlement.

1 For and on behalf of Defendants:

2 EXECUTED this <sup>25<sup>th</sup></sup> day of June, 2015.

3   
4 **Elizabeth J. Stevens**, VSB 47445  
5 Assistant Director, District Court Section  
6 Office of Immigration Litigation Civil Division  
7 United States Department of Justice  
8 P.O. Box 868, Ben Franklin Station Washington, D.C. 20044

6 **Counsel for Defendants**

7 For and on behalf of Plaintiffs and the Class:

8 EXECUTED this 17<sup>th</sup> day of June, 2015.

9 

10  
11 **Michael Kaufman**  
12 **Carmen Iguina**  
13 **Ahilan Arulanantham**  
14 American Civil Liberties Union  
15 of Southern California  
16 1313 West 8th Street  
17 Los Angeles, CA 90017  
18 213-977-5284  
19 213-977-5297 (fax)  
20 mkaufman@aclu-sc.org

21  
22 **Julia Harumi Mass, Esq.**  
23 American Civil Liberties Union  
24 of Northern California, Inc.  
25 39 Drumm Street  
26 San Francisco, CA 94111  
27 415-621-2493  
28 415-255-8437 (fax)  
jmass@aclunc.org

**Charles Roth**  
croth@heartlandalliance.org  
**Claudia Valenzuela**  
cvalenzuela@heartlandalliance.org  
National Immigrant Justice Center  
A Heartland Alliance Partner  
208 South LaSalle, Suite 1300  
Chicago, Illinois 60604  
Telephone: (312) 660-1308  
Facsimile: (312) 660-1505

27 **Counsel for Plaintiffs**

**James A. Rolfes**  
jrolfes@reedsmith.com  
**David Z. Smith**  
dzsmith@reedsmith.com  
**Timothy R. Carraher**  
tcarraher@reedsmith.com  
**Christopher R. Murphy**  
crmurphey@reedsmith.com  
Reed Smith LLP  
10 South Wacker Drive  
Chicago, IL 60606  
(312) 207-1000  
(312) 207-6400 (fax)

**John D. Pingel**  
Reed Smith LLP  
101 Second Street, Suite 1800  
San Francisco, CA 94015  
415-659-5683  
415-391-8269 (fax)  
jpingel@reedsmith.com