

**NOTICE OF FINAL SETTLEMENT INVOLVING DETAINED NON-CITIZENS
WHO ARE AWAITING A “REASONABLE FEAR DETERMINATION”**

**ALFARO GARCIA, ET AL. V. JOHNSON, ET AL., Case No. 4:14-cv-01775-YGR
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

TO: All individuals who meet all of the following characteristics (collectively “the Class”):

- Are or will be subject to a reinstated order of removal under 8 U.S.C. § 1231(a)(5) or an administrative removal order under 8 U.S.C. § 1228(b);
- Have expressed, or in the future express, a fear of returning to their country of removal;
- Are detained in the custody of the Department of Homeland Security (“DHS”); and
- Have not received, or do not receive, an initial reasonable fear determination by U.S. Citizenship and Immigration Services (“USCIS”) under 8 C.F.R. § 208.31 within ten (10) days of referral to USCIS and still have not received a reasonable fear determination.

You are hereby notified that on October 27, 2015, the Honorable Yvonne Gonzalez Rogers of the United States District Court for the Northern District of California approved a settlement of the claims that were brought on your behalf in this lawsuit.

Background

This class action lawsuit alleges that the U.S. Government is failing to process, in a timely manner, claims to protection from removal from the United States based on a fear of persecution or torture, in violation of a binding federal regulation at 8 C.F.R. § 208.31(b), which requires a “reasonable fear determination” be made within ten days in the absence of exceptional circumstances. The parties have now reached a settlement that the Court has approved.

Description of Settlement Agreement

The following description is only a summary of the key points in the Settlement Agreement. Information on obtaining a copy of the full Agreement is provided after this summary.

1. ICE must make prompt referrals for reasonable fear determinations: U.S. Immigration and Customs Enforcement (“ICE”) will refer an individual who qualifies for a reasonable fear determination to USCIS “immediately, as practicable.” Within a year after the date of the Settlement Agreement, ICE will achieve a national average of no more than **five (5) days** for referrals and, at that time, the parties will meet and confer to establish a new, shorter benchmark for referrals. ICE will update any future published training guides or manuals addressing procedures for reinstatement of removal and/or administrative removal to include its obligations under the Settlement Agreement.

2. The USCIS Asylum Division must conduct reasonable fear determinations promptly and within a national average of ten days: By November 27, 2015, USCIS is obligated to achieve a national average of no more than **ten (10) court days** from the date of referral to complete reasonable fear determinations. In addition, USCIS will take no longer than **twenty (20) court days** from the date of referral to complete any individual reasonable fear

determination and, if USCIS fails to complete any reasonable fear determination within twenty (20) court days from the date of referral, it will notify Class Counsel.

3. **The time periods can be extended in certain circumstances:** The period for calculating the relevant time period for completion of the reasonable fear determination begins on the date of a “proper” referral from ICE to USCIS and ends on the date that USCIS makes the reasonable fear determination and serves it upon the Class Member. The determination period shall be “tolled” (which means it will be extended but the extension will not count toward calculation of the average time period in paragraph 2 above) when an individual (or his or her representative) requests additional time to prepare for the interview. The tolling period will be limited to the time requested by the individual (or his or her representative) and agreed to by USCIS or a default period of no longer than ten (10) court days. The determination period can also be tolled if an individual refuses to participate in the reasonable fear interview or accept service of the determination. The determination period can also be tolled for “exceptional circumstances,” which do not include “unusual but reasonably foreseeable circumstances.”

4. **The government must regularly report information about whether it is meeting the requirements of the agreement:** To facilitate monitoring of the Government’s compliance with the prescribed timing requirements, the Government must make best efforts to produce regular reports with data on referrals, and will produce reports on reasonable fear determinations to Class Counsel and permit Class Counsel to access a sample of class members’ files. If the Government achieves certain benchmarks after one (1) year, reporting will thereafter be required only on a quarterly basis. If, at the end of three (3) years, the Government has achieved all benchmarks, the government can seek an early termination of the five (5)-year Agreement.

5. **The Court can enforce the agreement if there are any violations:** The Court will retain jurisdiction to enforce the terms of the Settlement Agreement.

6. **Attorneys’ fees and costs:** The Government will pay Class Counsel reasonable attorneys’ fees and costs in the amount of \$327,047.66.

7. **Release of claims:** Class Members will release the Government from all claims that were asserted on behalf of the Class arising from or related to the facts and circumstances alleged in the lawsuit.

For Further Information:

THIS IS A SUMMARY OF THE AGREEMENT. TO UNDERSTAND IT FULLY, YOU SHOULD READ THE ENTIRE AGREEMENT. Copies of the final Settlement Agreement may be obtained from: (1) the USCIS website (www.uscis.gov); (2) the ACLU of Southern California website (www.aclusocal.org/alfaro-garcia); (3) the ACLU of Northern California website (www.aclunc.org/alfaro); (4) the National Immigrant Justice Center website (www.immigrantjustice.org/court_cases/alfaro-garcia-et-al-v-jeh-johnson-et-al); (5) local community-based and non-profit organizations through USCIS’s Public Engagement Division; and (6) by writing to Class Counsel at: **Alfaro Garcia Class Action Settlement, c/o ACLU Foundation of Southern California, 1313 West 8th Street, Los Angeles, California 90017.**