**UNITED STATES DISTRICT COURT**
**FOR THE WESTERN DISTRICT OF WASHINGTON**

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AURELIO DURAN-GONZALEZ, et al., No. C06-1411

Plaintiffs,

v.

U.S. DEPARTMENT OF HOMELAND SECURITY, et al.,

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 United States Department of Homeland Security ("DHS") and Jeh Johnson, in his official capacity as Secretary of Homeland Security ("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 and effective upon approval of the Court pursuant to Rule 23 of the Federal Rules of Civil Procedure.

WHEREAS:

A. On September 28, 2006, Plaintiffs commenced a civil action against Defendants on behalf of themselves and all others similarly situated, captioned *Duran Gonzalez, et al., v. United States Dep't of Homeland Sec., et al.* ("DHS"), United States District Court for the Western District of Washington Case No. C06-1411 (the "Action"), and sought class certification, designation of Class Counsel, and declaratory and injunctive relief.

B. The United States District Court for the Western District of Washington certified the proposed class; appointed Class Counsel on November 13, 2006; and issued a preliminary injunction on the same date. On December 19, 2006, the district court issued an order modifying the terms of the preliminary injunction.

C. On January 8, 2007, Defendants appealed the issuance of a preliminary injunction to the United States Court of Appeals for the Ninth Circuit, and on November 30, 2007, the Ninth Circuit Court of Appeals vacated the injunction and remanded the case to the district court for further proceedings. *See*

*Duran Gonzales v. DHS*, 508 F.3d 1227 (9th Cir. 2007) (*Duran Gonzales I*). The Plaintiff Class sought rehearing, which the court of appeals denied, and the mandate issued on January 23, 2009.

D. On remand, the Plaintiff Class moved to amend the complaint and the class definition, arguing that *Duran Gonzales I* should not apply to them because it would be impermissibly retroactive. The district court denied both motions, and the Plaintiff Class appealed.

E. On October 25, 2011, the court of appeals affirmed the district court's decisions denying the motions. *See Duran Gonzales v. DHS*, 659 F.3d 930 (9th Cir. 2011) (*Duran Gonzales II*). The Plaintiff Class sought rehearing en banc.

F. While en banc rehearing was pending, the court of appeals decided *Garfias-Rodriguez v. Holder*, 702 F.3d 504 (9th Cir. 2012) (en banc), in which it determined that the multi-factor, individualized inquiry articulated in *Montgomery Ward & Co., Inc. v. FTC*, 691 F.2d 1322, 1333 (9th Cir. 1982), should be applied to determine the retroactivity of the pertinent agency determination in all cases where the Ninth Circuit defers to that agency's statutory interpretation under *Nat'l Cable and Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967 (2005).

G. On March 29, 2013, the court of appeals vacated *Duran Gonzales II* and issued a new decision, remanding the case for further proceedings in light of *Garfias-Rodriguez*. *See Duran Gonzales v. DHS*, 712 F.3d 1271 (9th Cir. 2013) (*Duran Gonzales III*).

H. Defendants deny all liability with respect to the Action, deny that they have engaged in any wrongdoing, deny the allegations in the Complaint and the proposed Amended Complaint, deny that they committed any violation of law, deny that they acted improperly in any way, and deny liability of any kind to the Plaintiffs or the Plaintiff Class, but have agreed to the settlement and dismissal of the Action with prejudice in order to: (i) avoid the substantial expense, inconvenience, and distraction of protracted litigation; and (ii) finally put to rest and terminate the Action and any and all Settled Claims as defined in Section I.9.

I. Both the Plaintiff Class and Defendants have conducted discussions and arm's length negotiations regarding a compromise and settlement of the Action with a view to settling all matters in dispute.

J. Considering the benefits that the Plaintiffs and the Plaintiff Class will receive from settlement of the Action and the risks of litigation, Class Counsel have concluded that the terms and conditions of this Agreement are fair, reasonable, and in the best interests of the Plaintiffs and the Plaintiff Class; Plaintiffs have agreed that Defendants shall be released from the Settled Claims pursuant to the terms

and provisions of this Agreement; and have agreed to the dismissal with prejudice of all Settled Claims as defined in Section I.9.

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

## I. DEFINITIONS:

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

A. "Action" means the civil action captioned *Duran-Gonzalez, et al., v. DHS et al.*, United States District Court for the Western District of Washington, Case No. C06-1411. Both parties note that despite the contrary language in the decision of the Ninth Circuit Court of Appeals in *Duran Gonzales III*, 712 F.3d at 1274 n.4, Mr. Duran Gonzalez's name is correctly spelled in the instant caption, but is incorrectly spelled in the decisions of the Ninth Circuit Court of Appeals.

B. "Effective Date of Settlement" or "Effective Date" means the date upon which this Agreement shall become effective, as set forth in Section VII., below.

C. "Plaintiff(s)" means Aurelio Duran Gonzalez, Maria C. Estrada, Maria Luisa Martinez de Munguia, Irma Palacios de Banuelos, Lucia Muniz de Andrade, Karina Noris, and Adriana Pouparina.

D. As the class is defined more narrowly here than in the district court's November 13, 2006 class certification order, this agreement requires the parties to seek modification of the class definition.

"Class Member(s)" means any person who(se):

1. Is the beneficiary or derivative beneficiary of an immigrant visa petition or labor certification filed on or before April 30, 2001, provided that, if the immigrant visa petition or labor certification was filed after January 14, 1998:

    a. the beneficiary was physically present in the United States on December 21, 2000, or

b. If a derivative beneficiary, the derivative beneficiary or the primary beneficiary was physically present in the United States on December 21, 2000.

2. Is inadmissible to the United States under section 212(a)(9)(C)(i)(II) of the Immigration and Nationality Act ("INA"), because he or she entered or attempted to reenter the United States without being admitted after April 1, 1997, and without permission after having previously been removed;

3. Properly filed a Form I-485 (Application to Adjust Status) and Form I-485 Supplement A (Adjustment of Status Under Section 245(i)) while residing within the jurisdiction of the Ninth Circuit on or after August 13, 2004, and on or before November 30, 2007;

4. Filed a Form I-212 (Application for Permission to Reapply for Admission Into the United States After Deportation or Removal) on or after August 13, 2004, and on or before November 30, 2007;

5. Form I-485, Form I-485 Supplement A, and Form I-212 were denied by U.S. Citizenship and Immigration Services ("USCIS") and/or the Executive Office for Immigration Review ("EOIR") on or after August 13, 2004, or have not yet been adjudicated;

6. Is not currently subject to pending removal proceedings under INA § 240, or before the United States Court of Appeals for the Ninth Circuit on a petition for review of a removal order resulting from proceedings under INA § 240; and

7. Did not enter or attempt to reenter the United States without being admitted after November 30, 2007.

E. The Class members are further divided into three subclasses, as follows:

1. Subclass A: Class Members (i) who have remained physically present in the United States since the filing of the Form I-485, Form I-485 Supplement A, and Form I-212, and (ii) against whom removal proceedings under INA § 240 were not initiated with the filing of a Notice to Appear subsequent to the filing of the Form I-485, Form I-485 Supplement A, and Form I-212 ("Subclass A Members");

2. Subclass B: Class Members: (i) who have remained physically present in the United States since the filing of the Form I-485, Form I-485 Supplement A, and Form I-212; (ii) against whom removal proceedings under INA § 240 were initiated by the filing of a Notice to

Appear, subsequent to the filing of the Form I-485, Form I-485 Supplement A, and Form I-212; (iii) who have a final, unexecuted order of removal; (iv) who have no pending direct appeals of that order, including a petition for review before the Court of Appeals for the Ninth Circuit; (v) whose applications to adjust status were denied based upon final administrative determinations of inadmissibility by the Executive Office for Immigration Review under INA § 212(a)(9)(C)(i)(II) and whose final orders of removal were not entered *in absentia*; and (vi) for whom the Ninth Circuit Court of Appeals did not apply the *Montgomery Ward* test as set forth in the *Garfias-Rodriguez* decision, to determine whether *Matter of Torres-Garcia*, 23 I. & N. Dec. 866 (BIA 2006) was properly retroactively applied to them ("Subclass B Member"); and

3. Subclass C: Class Members (i) who have departed the United States after filing the Form I-485, Form I-485 Supplement A, and Form I-212, (ii) who remain physically outside the United States; and (iii) who have properly filed an immigrant visa application with the United States Department of State, or who will file an immigrant visa application within one year of the effective date of this agreement ("Subclass C Members").

F. "Plaintiffs' Counsel" or "Class Counsel" means Beth Werlin of the American Immigration Council; Trina Realmuto of the National Immigration Project of the National Lawyers Guild; Stacy Tolchin of the Law Offices of Stacy Tolchin; Marc Van Der Hout of Van Der Hout, Brigliano & Nightingale, LLP; and Matt Adams of the Northwest Immigrant Rights Project. Should these entities change their names or merge with other entities, those new entities shall also qualify as Class Counsel.

G. "Defendants" means DHS and Jeh Johnson, in his official capacity as Secretary of Homeland Security, their predecessors and successors, their departments and agencies, and their past or present agents, employees, and contractors.

H. "*Montgomery Ward* factors" are the five factors set out by the Ninth Circuit Court of Appeals in *Montgomery Ward*, 691 F.2d at 1333, to determine whether an agency decision may be retroactively applied:

- (1) whether the particular case is one of first impression,
- (2) whether the new rule represents an abrupt departure from well-established practice or merely attempts to fill a void in an unsettled area of law,

- (3) the extent to which the party against whom the new rule is applied relied on the former rule,

- (4) the degree of the burden which a retroactive order imposes on a party, and

- (5) the statutory interest in applying a new rule despite the reliance of a party on the old standard ("*Montgomery Ward* factors").

I. "Settled Claims" means any and all actions, in law or equity, that were asserted or that could have been asserted by Plaintiffs or Class Members or anyone acting on behalf of or in place of a Class Member, based upon the facts alleged or that could have been alleged in the Complaint or proposed First Amended Complaint relating to the subject of this Action, including but not limited to claims under the Administrative Procedure Act ("APA").

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

## II. RELEASE: SCOPE AND EFFECT OF RELEASE

A. On the Effective Date, the Plaintiffs and the Class Members, on behalf of themselves, their heirs, executors, administrators, representatives, attorneys, successors, assigns, agents, affiliates, and partners, and any persons they represent, by operation of any final judgment entered by the Court, shall have fully, finally, and forever released, relinquished, and discharged the Defendants of and from any and all of the Settled Claims, and the Plaintiffs and the Class Members shall forever be barred and enjoined from bringing or prosecuting any Settled Claim against any of the Released Parties.

B. The Parties recognize that the class definition presented in this agreement does not include persons subject to pending removal proceedings under INA § 240, or before the United States Court of Appeals for the Ninth Circuit on a petition for review of a removal order resulting from proceedings under INA § 240, as those individuals may request that EOIR or the Ninth Circuit Court of Appeals apply the *Montgomery Ward* test and other controlling case law.

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

## III. CLASS MEMBER IDENTIFICATION

A. Within five (5) business days after the District Court enters an order preliminarily approving the Agreement under Rule 23(e) of the Federal Rules of Civil Procedure, DHS will identify all known possible Class Members to the extent it is technically feasible, and will provide Class Counsel with the total number identified and a list of all identified possible Class Members, along with the last known address, including any name and address provided on Form G-28 by the last known legal representative.

B. If Class Counsel know or become aware of an individual who they believe is a Class Member, Class Counsel may provide DHS with the individual's name, Alien Registration Number or other evidence that the individual is a Class Member, including, but not limited to, filing receipts for the Form I-485, Form I-485 Supplement A, and Form I-212, and any evidence that the individual was residing within the jurisdiction of the Ninth Circuit at the time of filing. DHS will examine the evidence, including all evidence in its possession in the individual's Alien File (A-File), and discuss the basis of any findings with Class Counsel.

C. The presence of an individual on the list compiled under subsection 1 does not mandate that the individual is a Class Member.

## IV. SETTLEMENT SUBCLASS RELIEF

In consideration of the releases contained herein and subject to this Agreement's conditions, the parties stipulate and agree to the following:

A. Subclass A Members:

1. Subclass A Members may file a request with USCIS to file a service motion to reopen their I-212 and I-485 applications, based upon the *Montgomery Ward* factors within eighteen months of the Effective Date. Such requests should be filed with the same USCIS office where the I-212 was originally filed, and may be accompanied by additional information or evidence to supplement the application.

2. Upon receipt of a request for a service motion to reopen, USCIS will reopen the case if the Subclass A member submits sufficient evidence to prove Subclass A membership. If not, USCIS

will issue a service motion to reopen, under 8 C.F.R. § 103.5(a)(5), providing the Subclass A member with 30 days to submit any brief and supporting evidence.

3. In the case of a Subclass A Member subject to a reinstated removal order under INA § 241(a)(5), within 30 days of receiving written notice that the Subclass A Member has filed a request for a USCIS service motion to reopen based upon the *Montgomery Ward* factors as specified in paragraphs IV.A.1 or IV.A.2, U.S. Immigration and Customs Enforcement ("ICE") will cancel the reinstated removal order. This written notice may come from either the Class Member himself or herself, in the form of a copy of the filing receipt notice, or from USCIS.

4. In adjudicating a request to file a service motion to reopen based on the *Montgomery Ward* factors for a Subclass A Member who filed his or her Form I-485, Form I-485 Supplement A, and Form I-212 between August 13, 2004, and January 26, 2006, USCIS shall: (a) find that *Matter of Torres-Garcia* does not retroactively apply to the application; and that the Subclass A Member is eligible to have the Form I-485, Form I-485 Supplement A, and Form I-212 adjudicated on their merits; (b) reopen the Form I-485, Form I-485 Supplement A, and Form I-212; and (c) re-adjudicate these applications *de novo*.

5. In adjudicating a request to file a service motion to reopen based on the *Montgomery Ward* factors for a Subclass A Member who filed his or her Form I-485, Form I-485 Supplement A, and Form I-212 between January 27, 2006, and November 30, 2007, USCIS shall determine whether, through application of the *Montgomery Ward* factors, *Matter of Torres-Garcia* should not apply to the Class Member's application, and the Subclass A member is eligible to have the Form I-485, Form I-485 Supplement A, and Form I-212 adjudicated on their merits. If USCIS so finds, USCIS shall reopen the Form I-485, Form I-485 Supplement A, and Form I-212 and re-adjudicate these applications *de novo*.

6. In adjudicating a request to file a service motion to reopen based on the *Montgomery Ward* factors, USCIS shall deem any evidence demonstrating reliance on the District Court's November 13, 2006 Order to be relevant. However, the Subclass A member must still demonstrate that such reliance was reasonable in light of the decision in *Matter of Torres-Garcia*, as discussed by the Ninth Circuit Court of Appeals in *Carrillo de Palacios v. Holder*, 708 F.3d 1066, 1072 (9th Cir. 2013).

7. If USCIS finds that *Matter of Torres-Garcia* retroactively applies to the Subclass A Member, or denies his or her Form I-485, Form I-485 Supplement A, or Form I-212 on the merits, he or

she may individually pursue all available avenues of further administrative and/or federal court review of that determination.

B. Subclass B Members:

1. Subclass B Members may request that ICE counsel join a motion to reopen their removal proceedings for consideration of the *Montgomery Ward* factors before the immigration court or the Board of Immigration Appeals, depending on which entity last exercised jurisdiction over the removal proceedings, within eighteen months of the Effective Date. An individual Subclass B member may only make one such request. A request that ICE join a motion to reopen under this Agreement must include the coversheet at Exhibit D, providing notice that the request is made pursuant to this Agreement.

2. Upon verification that the individual is a Subclass B Member, ICE will join the motion to reopen removal proceedings for the sole and limited purpose of consideration of the Subclass B Member's *Montgomery Ward* motion and, if appropriate, adjudication of the Form I-485, Form I-485 Supplement A, and Form I-212 on the merits. This does not limit EOIR in its decision as to the scope of reopened proceedings. No fee is required for the joint motion to reopen.

3. In the joint motion to reopen, ICE will represent that in any reopened proceedings, ICE will not take a position contrary to the following:

a. *Matter of Torres-Garcia* is not applicable to the application of a Subclass B Member who filed his or her Form I-485, Form I-485 Supplement A, and Form I-212 on or after August 13, 2004, and on or before January 26, 2006, and that EOIR should adjudicate the Subclass B Member's Form I-485, Form I-485 Supplement A, and Form I-212 adjudicated on their merits *de novo*; and

b. A Subclass B Member who filed his or her Form I-485, Form I-485 Supplement A, and Form I-212 on or after January 27, 2006, and on or before November 30, 2007, is eligible to present his or her *Montgomery Ward* motion to EOIR, and if EOIR determines that the Subclass B Member demonstrates that, pursuant to the *Montgomery Ward* test, the Board's decision in *Matter of Torres-Garcia* should not be applied to his applications, he or she is eligible to have the Form I-485, Form I-485 Supplement A, and Form I-212 adjudicated on their merits *de novo*.

c. In arguing whether *Matter of Torres-Garcia* applies to a Subclass B member, ICE shall not dispute that evidence demonstrating reliance on the District Court's November 13, 2006 Order is relevant. However, ICE may contest whether the Subclass B member has demonstrated that such reliance was reasonable in light of the decision in *Matter of Torres-Garcia*.

These representations will be binding on ICE in any future proceedings reopened pursuant to the joint motion. (A sample joint motion is attached as Exhibit E.)

4. ICE reserves the right to join a motion to reopen for further proceedings or, in its discretion, to move for dismissal of reopened proceedings without prejudice so that the applications may be adjudicated by USCIS.

5. In reopened proceedings, ICE may, however, present evidence and/or argument regarding the application of the *Montgomery Ward* test in the individual case. ICE reserves the right to oppose the Form I-485, Form I-485 Supplement A, and Form I-212 applications on the basis of discretion and/or any other applicable basis.

6. ICE will not oppose Subclass B Members updating and supplementing their applications with the motions to reopen or before the immigration judge, given the substantial amount of time that has elapsed since the filing of these applications.

7. This agreement shall not be construed as requiring any specific outcome from the Board of Immigration Appeals or the Immigration Court with regard to a motion to reopen or in any reopened proceedings.

C. Subclass C Members:

1. Subclass C Members must have already applied for an immigrant visa within the past year, or must initiate the immigrant visa process within one year of the effective date by contacting the National Visa Center.

2. If the Department of State finds a Subclass C Member to be inadmissible under INA § 212(a)(9)(C)(i)(II) based on a return to the United States without admission on or after April 1, 1997, but also on or before November 30, 2007, the Subclass C Member may request that USCIS file a service motion to reopen the former Form I-212 applications. Subclass C members should provide any updated evidence and arguments regarding the *Montgomery Ward* factors. Such requests must be filed no later than eighteen months from the effective date.

3. If the Subclass C Member is also inadmissible on other grounds for which a waiver is available, the Subclass C member may separately file a Form I-601, if needed, to obtain a waiver of any other ground of inadmissibility for which the Form I-601 is used. Such filings are not covered by any portion of this Agreement.

4. If the Subclass C Member filed a Form I-485, Form I-485 Supplement A, and Form I-212 between August 13, 2004, and January 26, 2006, USCIS shall find that the Subclass C Member satisfies the *Montgomery Ward* test; that *Matter of Torres-Garcia* does not retroactively apply to the Subclass C Member; and USCIS shall adjudicate the Form I-212 *de novo*.

5. If a Subclass C Member filed a Form I-485, Form I-485 Supplement A, and Form I-212 between January 27, 2006, and November 30, 2007, USCIS shall determine whether the Subclass C Member is able to demonstrate that, under the *Montgomery Ward* test, the Board's decision in *Matter of Torres-Garcia*, should not be applied retroactively to the application. If USCIS so finds, USCIS shall adjudicate the Form I-212 *de novo*.

6. In applying the *Montgomery Ward* test, USCIS shall deem any evidence demonstrating reliance on the District Court's November 13, 2006 Order to be relevant. However, the Subclass A member must still demonstrate that such reliance was reasonable in light of the decision in *Matter of Torres-Garcia*.

7. If USCIS denies the Form I-212, the Subclass C Member may pursue administrative appeal and/or judicial review to the extent permitted by law.

8. Upon approval of a Subclass C Member's Form I-212 (and any Form I-601), USCIS shall promptly notify the National Visa Center, advising that the Subclass C Member's Form I-212 has been approved. Nothing in this agreement provides for the adjudication of a Form I-212 that requests permission to reapply for admission after re-entries that occurred after November 30, 2007.

9. Nothing in this agreement mandates approval of an immigrant visa application by the Department of State.

D. Nothing in this Agreement shall be interpreted to limit the authority or discretion of DHS to initiate administrative removal under section 238 of the INA against any Class Member. Nothing in this Agreement may be interpreted for any purpose to constitute consent to any non-Class Member reapplying for readmission after removal.

E. Approval of the I-212 does not cure any ground of inadmissibility other than section 212(a)(9)(A) (if at issue and requested on the form) or (C)(i)(II) as sought and granted through the Form I-212.

## V. DISPUTE RESOLUTION PROCEDURES; CONTINUING JURISDICTION

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

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

1. Should Class Counsel believe in good faith that DHS has failed to implement specific terms of this Agreement, Class Counsel will promptly notify counsel for Defendants, in writing, of the fact or facts that form the basis of the contention. Such notice must be substantiated with specific detailed information sufficient to enable DHS to investigate and respond. Within 45 days after receipt of the notice from Class Counsel, counsel for Defendants shall notify Class Counsel of Defendants' position and any action it has taken or intends to take in connection therewith.

2. During the 90 days following the completion of the process outlined in paragraph 1, 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 the parties are unable to resolve any issues raised between them, after exhausting all of the applicable procedures in paragraphs 1 and 2, class counsel must raise the claim, including any challenge to a determination regarding class membership, before a Magistrate Judge of the Western District of Washington upon which all parties agree and who shall hear, mediate, and, to the fullest extent possible, obtain the agreement of both parties to resolve the issue(s) in dispute. Where both parties acknowledge that the claim is not amenable to negotiation before the Magistrate Judge, class counsel may then request that the district court exercise jurisdiction to resolve the dispute.

4. If the parties do not reach resolution within 60 days after commencement of negotiations before the Magistrate Judge, a party may then request that the district court exercise jurisdiction to resolve the dispute.

5. 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 shall be brought exclusively in the United States District Court for the Western District of Washington at Seattle, the Hon. Marsha J. Pechman presiding. Nothing in this agreement provides jurisdiction over decisions reserved for the Courts of Appeals in conjunction with a petition for review under 8 U.S.C. § 1252 or not subject to judicial review under 8 U.S.C. § 1252.

## VI. 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, approval of the modification of the Class Definition, 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' Community Relations Program for distribution to the existing network of community-based and non-profit organizations who provide advice and assistance to immigrants in the Ninth Circuit Court of Appeals; and (iii) providing the Notice to the Class and this Agreement in appropriate places on the websites of Class Counsel.

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 24 months of the effective date, Defendants will provide Class Counsel with a final run of the Class Member list, which will include all identified Class Members and identify whether each Class Member has requested reopening and the result of that request, if any.

D. Within ten (10) business days following the Court's entry of the Final Judgment, Defendants will provide the Notice of Final Settlement to all potential Class Members identified under Section III of

this Agreement by U.S. Mail to their last address provided to USCIS. A copy of the notice is attached as Exhibit C.

## VII. EFFECTIVE DATE OF SETTLEMENT; TERMINATION

A. The Effective Date of this Agreement shall be the date when all of the following shall have occurred: (a) entry of the Preliminary Approval Order; (b) approval by the Court of this Agreement, following notice to the Class and a fairness hearing, as prescribed by Rule 23 of the Federal Rules of Civil Procedure; and (c) entry by the Court of Final Judgment, in all material respects in the form appended hereto as Exhibit B.

B. In the event that the Court does not approve the Agreement, or the Court's approval of the Agreement or the Final Judgment is reversed, vacated, or terminated, on appeal, the parties' good-faith adherence to the terms of this Agreement prior to said reversal, vacatur, or termination shall not be considered unlawful.

C. Defendants' Counsel or Class Counsel shall have the right to terminate this Agreement by providing written notice of their election to do so ("Termination Notice") to all other parties hereto within thirty (30) days of (a) the Court's declining to enter the Preliminary Approval Order or modifying that Preliminary Approval Order in any material respect; (b) the Court's declining to approve the Settlement embodied in this Agreement or any material part of it; (c) the Court's declining to enter the Final Judgment or modifying the Final Judgment in any material respect; or (d) the Court of Appeals or the United States Supreme Court's reversing, vacating, or modifying in any material way the Final Judgment.

D. Except as otherwise provided herein, in the event the Settlement is terminated or modified in any material respect or fails to become effective for any reason, then the Settlement shall be without prejudice and none of its terms shall be effective or enforceable; the parties to this Agreement shall be deemed to have reverted to their 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.

## VIII. TERMINATION OF OBLIGATIONS

Unless earlier terminated by operation of Section VII, the obligations of this Agreement shall terminate within 30 months of the Effective Date. All timely filed applications or adjudications that remain pending will continue to be treated under the terms of this agreement until a final adjudication.

## IX. 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.

## X. ATTORNEYS' FEES

All parties agree to bear their own costs and fees, including attorneys' fees, which could be or could have been claimed in the Action. However, in the event that Class Counsel seek to enforce the terms of the instant settlement agreement pursuant to Section V.C., nothing in this settlement agreement shall be interpreted as precluding Plaintiffs' from seeking attorneys' fees solely for such enforcement action.

## XI. ADDITIONAL PROVISIONS

A. This Agreement, and the obligations incurred herein, shall be in full and final disposition of the Action with prejudice, including any and all Settled Claims against Defendants. On the Effective Date, Plaintiffs and the Plaintiff Class shall be deemed to have fully, finally, and forever released, relinquished, and discharged Defendants of and from any and all Settled Claims.

B. All of the exhibits attached hereto are hereby incorporated by reference as though fully set forth herein.

C. This Agreement may not be modified or amended, nor may any of its provisions be waived except by a writing signed by all parties hereto or their successors-in-interest.

D. The waiver by one party of any breach of this Agreement by any other party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

E. This Agreement and its exhibits constitute the entire agreement among the parties hereto concerning the Settlement of the Action, and no representations, warranties, or inducements have been made by any party hereto other than those contained and memorialized in such documents.

F. This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument provided that counsel for the parties to this Agreement shall exchange among themselves original signed counterparts.

G. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the parties hereto.

H. 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.

I. 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.

J. 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.

For and on behalf of Defendants:

EXECUTED this 14th day of March, 2014.

ELIZABETH J. STEVENS, VSB 47445
Assistant Director, District Court Section
Office of Immigration Litigation Civil
Division
United States Department of Justice
P.O. Box 868, Ben Franklin Station Washington,
D.C. 20044

Counsel for Defendants

For and on behalf of Plaintiffs and the Class:

EXECUTED this 30th day of January, 2014.

MATT ADAMS, WSBA No. 28287
Northwest Immigrant Rights Project
615 Second Avenue, Suite 400
Seattle, WA 98104
206-587-4009 (main)
matt@nwirp.org

Beth Werlin
AMERICAN IMMIGRATION COUNCIL, Suite 200
1331 "G" Street, NW
Washington, DC 20005

Trina Realmuto
NATIONAL IMMIGRATION PROJECT OF THE
NATIONAL LAWYERS GUILD
14 Beacon Street, Suite 602
Boston, MA 02108

Marc Van Der Hout
VAN DER HOUT BRIGAGLIANO &
NIGHTINGALE, LLP
180 Sutter Street
San Francisco, CA 94104

Stacy Tolchin
LAW OFFICES OF STACY TOLCHIN
634 S. Spring Street Suite 714
Los Angeles, CA 90014

Counsel for Plaintiffs and the Class