The Honorable Richard A. Jones
United States District Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

B.H., M.A., A.S.D., M.F., H.L., L.M.M.M., B.M., G.K., L.K.G., and D.W., Individually and on Behalf of All Others Similarly Situated,[1] Plaintiffs, v. U.S. CITIZENSHIP AND IMMIGRATION SERVICES; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; Janet NAPOLITANO, Secretary, Department of Homeland Security; Alejandro MAYORKAS, Director, U.S. Citizenship and Immigration Services; Eric H. HOLDER, Jr., Attorney General of the United States; Juan OSUNA, Director, Executive Office for Immigration Review, Defendants.	No. CV11-2108-RAJ SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into by and between Named Plaintiffs B.H., M.A., A.S.D., M.F., H.L., L.M.M.M., B.M., G.K., L.K.G., and D.W., (the "Named Plaintiffs") and the Class (defined in Section II.A. below) (collectively, "Plaintiffs"), and Defendants U.S. CITIZENSHIP AND IMMIGRATION SERVICES ("USCIS"); EXECUTIVE OFFICE FOR IMMIGRATION REVIEW ("EOIR"); Janet

[1] The original caption for this action listed "A.B.T., K.M.-W., G.K., L.K.G., [and] D.W." as the individual plaintiffs. This Notice will refer to this action as "ABT," the Settlement Agreement in this action as "the ABT Settlement Agreement," claimants under the Agreement as "ABT claimants," and the individual claim review process under the Agreement as the "Individual ABT Claim Review process."

NAPOLITANO, Secretary, Department of Homeland Security; Alejandro MAYORKAS, Director, U.S. Citizenship and Immigration Services; Eric H. HOLDER, Jr., Attorney General of the United States; Juan OSUNA, Director, Executive Office for Immigration Review ("Defendants") (together with the Plaintiffs, the "Parties"), with reference to the facts recited herein.

I. RECITALS

WHEREAS:

A. The Litigation.

1. On December 15, 2011, Plaintiffs filed a putative class action complaint, challenging the Federal Government's practices with respect to Employment Authorization Documents ("EAD") for applicants for asylum;

2. Plaintiffs are "all noncitizens in the United States who have been placed in removal proceedings, have filed a complete Form I-589, *Application for Asylum and Withholding of Removal* ("asylum application"), [and] have filed or will file a Form I-765, *Application for Employment Authorization*, pursuant to 8 C.F.R. § 274a.12(c)(8)";

3. On June 5, 2012, Plaintiffs amended their complaint. Defendants timely answered the amended complaint on June 19, 2012;

4. The Action remains pending before the U.S. District Court for the Western District of Washington.

B. Benefits of Settlement.

1. The Parties recognize the need to draw to a close litigation of this Action, which has been pending for roughly a year, and desire to resolve the Action – after engaging in two productive mediation sessions – by entering into this Agreement, thereby avoiding the time and expense of further litigation;

2. Plaintiffs, in consultation with their counsel, have determined that this Agreement is fair, reasonable, adequate and in the best interests of Plaintiffs; and

3. Defendants deny that they have committed any act or omission giving rise to any liability, deny any wrongdoing, and state that they are entering into this Agreement solely to eliminate the uncertainties, burden, and expense of further protracted litigation. By entering into this Agreement, Defendants do not admit any factual allegations against them; do not concede any defense or objection to the Action; do not admit having violated any law, whether constitutional or statutory, federal or state; and do not admit having violated any regulation or administrative or judicial case law.

II. DEFINITIONS, CONDITIONS, AND MISCELLANEOUS PROVISIONS

NOW THEREFORE in recognition that the Parties and the interests of justice are best served by concluding the litigation, subject to the Court's approval and entry of an order consistent with this Agreement, the undersigned Parties, through counsel, hereby stipulate and agree as follows:

A. Definitions.

1. Action. "Action" means the lawsuit of *B.H., et al. v. United States Citizenship and Immigration Services, et al.*, No. CV11-2108-RAJ (W.D. Wash.).

2. Application for Employment Authorization. "Application for employment authorization" means the Form I-765, *Application for Employment Authorization*.

3. Asylum application. "Asylum application" means the Form I-589, *Application for Asylum and Withholding of Removal*.

4. Class. The definition of the "Class," as jointly proposed by the Parties and approved by the Court, is as follows:

a. Notice and Review Class: All noncitizens in the United States who meet all of the following criteria: (1) have filed or will file or lodge with Defendants a complete asylum application; (2) whose asylum applications have neither been approved nor subjected to a denial for which no rights of review or appeal remain; (3) whose applications for employment authorization have been or will be denied; (4) whose eligibility for employment authorization based on a pending asylum application will be determined in a manner that is alleged to provide insufficient notice and/or opportunity for review; and (5) who fall in one or more of the following Subclasses:

i. Hearing Subclass: Individuals who meet all of the following criteria: (1) who have been or will be issued a Form I-862, *Notice to Appear* in removal proceedings, or Form I-863, *Notice of Referral* to an immigration judge; (2) who have filed or lodged, or sought to lodge, or who will lodge or seek to lodge a complete defensive asylum application with the immigration court prior to a hearing before an immigration judge; and (3) whose eligibility for employment authorization has been or will be calculated from the date the asylum application was or will be filed at a hearing before an immigration judge.

ii. Prolonged Tolling Subclass: Asylum applicants who meet all of the following criteria: (1) non-detained asylum applicants whose time creditable toward employment authorization is or will be stopped due to delay attributed to them by Defendants; (2) who have allegedly resolved the issue causing the delay or will allegedly resolve the issue causing the delay prior to the next scheduled hearing before an

immigration judge; (3) but whose time creditable toward employment authorization remains or will remain stopped until the next hearing date.

iii. Missed Asylum Interview Subclass: Asylum applicants who meet both of the following criteria: (1) who have failed or will fail to appear for an asylum interview with USCIS; and (2) who have not or will not accrue time creditable toward eligibility for employment authorization following the date of the missed asylum interview on account of missing that asylum interview.

iv. Remand Subclass: Asylum applicants who meet both of the following criteria: (1) whose asylum applications were or will be denied by the immigration court before they have been pending at least 180 days exclusive of applicant caused delays; and (2) who subsequent to an appeal in which either the Board of Immigration Appeals (BIA) or a federal court of appeals remands their case for further adjudication of their asylum claim by an immigration judge, have not or will not accrue additional time creditable toward eligibility for employment authorization.

5. Class counsel. "Class counsel" means counsel appointed to represent the Class in accordance with Federal Rule of Civil Procedure 23(g), as follows:

Matt Adams
Christopher Strawn
NORTHWEST IMMIGRANT RIGHTS PROJECT (NWIRP)
615 2nd Avenue, Suite 400
Seattle, WA 98104

Melissa Crow
Mary Kenney
Emily Creighton
AMERICAN IMMIGRATION COUNCIL (AIC)
1331 G Street NW, Suite 200
Washington, DC 20005

Robert H. Gibbs
Robert Pauw
GIBBS HOUSTON PAUW
1000 Second Avenue, Suite 1600
Seattle, WA 98104

Iris Gomez
MASSACHUSETTS LAW REFORM INSTITUTE (MLRI)
99 Chauncy Street, Suite 500
Boston, MA 02111

6. Class member. "Class member" means a member of the Class.

7. Court. "Court" means the U.S. District Court for the Western District of Washington.

8. EAD. "EAD" means Employment Authorization Document.

9. Fairness Hearing. "Fairness Hearing" means the hearing required for Final Approval of the settlement pursuant to Federal Rule of Civil Procedure 23(e)(2) and described at Section II.B.5. of this Agreement.

10. Individual ABT Claim Review. "Individual ABT Claim Review" refers to the exclusive process used by individual ABT claimants who allege to be Class or Subclass members and allege that USCIS and/or EOIR has failed to comply with terms of this Agreement, as described in Section II.C.11.b.

11. Parties. "Party" or "parties" means the Defendants and the Plaintiffs, including all Class members.

12. Preliminary Approval. "Preliminary Approval" means that the Court has granted the Parties' Joint Motion for Preliminary Approval of Settlement as described in Section II.B.2. of this Agreement and ordered a Fairness Hearing.

B. Conditions and Approval of Settlement.

1. Effective Date of Agreement. After this Agreement has been executed by all Parties, it will become effective upon Preliminary Approval of the settlement by the Court.

2. Submission of the Settlement Agreement to Court for Preliminary Approval. Within fifteen (15) days after execution of this Agreement, the Parties shall apply to the Court for Preliminary Approval of the settlement. The Parties shall file a Joint Motion for Preliminary Approval and Request for a Fairness Hearing, and they shall attach a copy of this Agreement, the proposed Notice to the Class, in the form of Exhibit A attached hereto, and such other documents that the Parties determine are necessary for the Court's consideration. The Parties further agree to file by that same time a joint motion to stay proceedings pending the Court's consideration of the matter.

3. Effect of the Court's Denial of the Agreement. If the Court rejects this Agreement, in whole or in part, or otherwise finds that the Agreement is not fair, reasonable, and adequate, this Agreement shall become null and void.

4. Attorney's Fees and Costs. The Parties have resolved the matter of fees arising from this litigation as follows: Within ninety (90) days of the Court's Final Approval of the Agreement, as described in Section II.B.7., Defendants will deliver to Plaintiffs' Counsel the sum of $425,000, in settlement of all claims for attorneys' fees

and costs that could have been or will be claimed in this litigation to date. Plaintiffs and Class members do not waive any claims to attorney's fees and costs should future litigation pursuant to the Dispute Resolution Mechanism in Section II.C.11. be necessary.

5. Fairness Hearing. At the Fairness Hearing, the Parties will jointly request that the Court approve the settlement as final, fair, reasonable, adequate and binding on the Class, all Class Members, and all Plaintiffs.

6. Objections to Settlement. Within seven days following the Court's Preliminary Approval of the Agreement, Defendants will post the Notice to the Class, attached as Exhibit A to this Agreement, on USCIS' website and on EOIR's website, post in all immigration courts, distribute to the EOIR pro bono list, and distribute to community-based organizations and other interested parties. Specifically, EOIR will post the notice on a bulletin board in the waiting room for each immigration court where there is such a bulletin board. This is where all notices to the public are typically posted, and aliens and their counsel should know to look for important notices there. In immigration courts that lack bulletin boards, EOIR will post the notice in the equivalent location where respondents and their counsel should know to look for notices. Additionally, to accommodate detained class members, EOIR will post the notice in a visible place in EOIR's space within each facility that is accessible to aliens and where aliens should know to look for important notices, where such a space is available. Each immigration court has a Court Administrator that can ensure that the notices will be available within the seven-day deadline. Plaintiffs will distribute the Notice to the Class, attached as Exhibit A to this Agreement, to all American Immigration Lawyers Association (AILA) chapters, and post on AILA InfoNet and on Northwest Immigrant Rights Project (NWIRP), American Immigration Council (AIC) and Massachusetts Law Reform Institute (MLRI) websites. Within thirty (30) days of issuance of the Notice to the Class, in the above-described manner, any Plaintiff who wishes to object to the fairness, reasonableness or adequacy of this Agreement or the settlement contemplated herein must file with the Clerk of Court and serve on the Parties a statement of objection setting forth the specific reason(s), if any, for the objection, including any legal support or evidence in support of the objection, grounds to support his or her status as a Plaintiff, and whether the Plaintiff intends to appear at the Fairness Hearing. The Parties will have thirty (30) days following the objection period in which to submit answers to any objections that are filed. The notice to the Clerk of the Court shall be sent to: Clerk, U.S. District Court for the Western District of Washington, 700 Stewart Street Seattle, WA 98101, and both the envelope and letter shall state "Attention: *A.B.T., et al. v. United States Citizenship and Immigration Services*, No. CV11-2108-RAJ (W.D. Wash.)." Copies shall also be served on counsel for Plaintiffs and counsel for Defendants as set forth in the Notice to Class, Exhibit A.

7. Final Approval.

a. The Court's Final Approval of the settlement set forth in this Agreement shall consist of its orders granting each of the Parties' requests made in connection with the Fairness Hearing, as described in Section II.B.5. of this Agreement,

resolving all claims before the Court, and dismissing the Action with prejudice, with the exception that following Final Approval of this Agreement, the Court shall retain jurisdiction over only the following matters:

i. claims by any party in accordance with the provisions laid out in Section II.C.11. hereto that any other party has committed a violation of this Agreement;

ii. the express repudiation of any of the terms of this Agreement by any party; and

iii. any applications for attorney fees and costs relating to Court enforcement of this Agreement under the dispute resolution provisions in Section II.C.11.a.iv. and II.C.11.b.vi. of this Agreement.

C. Miscellaneous Provisions.

1. Entire Agreement. This Agreement, including the Exhibit(s) and the notices, interim notices and other information described under the Terms of Agreement at Section III.A., constitutes the entire agreement between the Parties with respect to the Action and claims released or discharged by the Agreement, and supersedes all prior discussions, agreements and understandings, both written and oral, among the Parties in connection therewith.

2. No modification. No change or modification of this Agreement shall be valid unless it is contained in writing and signed by or on behalf of Plaintiffs and Defendants and approved by the Court.

3. Full and Final Settlement. The Parties intend that the execution and performance of this Agreement shall, as provided above, be effective as a full and final settlement of and shall fully dispose of all claims and issues that Plaintiffs raise against Defendants in the Action. The Parties acknowledge that this Agreement is fully binding upon them during the life of the Agreement.

4. Severability. If any provision of this Agreement is declared null, void, invalid, illegal, or unenforceable in any respect, the remaining provisions shall remain in full force and effect.

5. Notices. All notices required or permitted under or pertaining to this Agreement shall be in writing and delivered by any method providing proof of delivery. Any notice shall be deemed to have been completed upon mailing. Notices shall be delivered to the Parties at the following addresses until a different address has been designated by notice to the other Party:

TO PLAINTIFFS:

Matt Adams
NORTHWEST IMMIGRANT RIGHTS PROJECT
615 2nd Avenue, Suite 400
Seattle, WA 98104

TO DEFENDANTS:

J. Max Weintraub
Senior Litigation Counsel
United States Department of Justice
Civil Division
Office of Immigration Litigation – District Court Section
P.O. Box 868, Ben Franklin Station
Washington, D.C. 20044

6. Opportunity to Review. The Parties acknowledge and agree that they have reviewed this Agreement with legal counsel and agree to the particular language of the provisions it contains. In the event of an ambiguity in or dispute regarding the interpretation of the Agreement, interpretation of the Agreement shall not be resolved by any rule providing for interpretation against the drafter. The Parties expressly agree that in the event of an ambiguity or dispute regarding the interpretation of this Agreement, the Agreement will be interpreted as if each Party hereto participated in the drafting hereof.

7. Construction of Agreement. This Agreement involves compromises of the Parties' previously stated legal positions in connection with the Action. Accordingly, this Agreement does not reflect upon the Parties' views as to rights and obligations with respect to matters or persons outside of the scope of this Agreement.

8. Execution of Other Documents. Each party agrees to execute and deliver such other documents and instruments and to take further action as may be reasonably necessary to fully carry out the intent and purposes of this Agreement.

9. No Precedential Value. This Agreement, whether or not executed, and any proceedings taken pursuant to it:

a. Shall not be offered or received against any party as evidence of, or construed as or deemed to be evidence of, any presumption, concession, or admission by any of the Parties of the truth in any fact of the validity of any claim that had been or could have been asserted in the action, or 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

b. Shall not be offered or received against the Defendants as evidence of a presumption, concession, or admission of any liability, negligence, fault, wrongdoing, or in any other way referred to for any other reason as against the Parties to

this Agreement, in any other civil, criminal, or administrative action or proceedings, other than in proceedings to enforce 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.

10. Headings. The Parties agree the captions or underlined paragraph headings in this Agreement are included in the Agreement solely for the convenience of the Parties, are not part of the terms and conditions of the Agreement, and do not limit, alter, or otherwise affect the provisions of, and the Parties' rights and obligations under, this Agreement.

11. Dispute Resolution Mechanism. With regard to claims raised in the Action and resolved by this Agreement, the dispute resolution provisions described below shall provide the sole means to challenge performance of obligations arising under this Agreement. Claims alleging that a Party has failed to comply with the terms of this Agreement with respect to the entire Class or an entire Subclass, or multiple members of the Class or a Subclass must be brought pursuant to subparagraph (a) and as further provided by subparagraphs (c) – (f) below. Claims alleging that Defendants have failed to comply with the terms of this Agreement with respect to individual asylum applicants alleging to be Class members (individual ABT claimants) must be brought pursuant to the "Individual ABT Claim Review" process, described in subparagraph (b) and as further provided by subparagraphs (c) - (f) below. This Agreement shall not affect or in any way limit the ability of parties, individuals, groups, or classes to challenge or obtain review of claims not resolved by or arising under this Agreement (including those claims listed in subparagraph (b)(ii) below) through any existing right or authority under law, regulations, or applicable procedures.

a. Dispute Resolution Terms for multiple Class or Subclass members.

i. For allegations that a party has failed to comply with the terms of this Agreement with respect to the entire Class or an entire Subclass, or multiple members of the Class or a Subclass, the complaining party ("complaining party") shall notify the other party ("responding party") in writing of the specific ground(s) upon which they base their claim of non-compliance with this Agreement, substantiated with specific, detailed, and timely information about the alleged non-compliance sufficient to enable the responding party to investigate and respond.

ii. Within forty-five (45) days after the responding party receives notice of the allegation of non-compliance with this Agreement from the complaining party in accordance with subparagraph (a)(i) above, the responding party shall notify the complaining party in writing of the results of the responding party's investigation of facts and any action that it has taken or intends to take in connection with allegation of non-compliance.

iii. Should any dispute remain after a party has undertaken the dispute resolution mechanism set forth in subparagraphs (a)(i) – (ii) above, the parties

shall negotiate in good faith to resolve any such remaining disputes within thirty (30) days from the date the responding party sends notification of the results of its investigation under subparagraph (a)(ii) above.

iv. Should the parties be unable to resolve any dispute, and following implementation of the provisions of subparagraphs (a)(i) – (iii) above, the complaining party may apply to the Court for enforcement of this Agreement. The complaining party shall notify the responding party of its intent to do so before applying to the Court for enforcement of the Agreement. Any actions brought to the Court under subparagraph (a) must be brought by either Defendants USCIS or EOIR or by Class counsel appointed to represent Plaintiffs in accordance with Section II.A.5. of this Agreement.

b. Individual ABT Claim Review.

i. The Individual ABT Claim Review process shall be the exclusive process used by individual ABT claimants who allege that they are Class or Subclass members and that USCIS and/or EOIR has failed to comply with the terms of this Agreement. Nothing in this subparagraph limits an individual ABT claimant's ability to join a multi-member Class or Subclass challenge under subparagraph (a) above. An individual ABT claimant may only utilize the Individual ABT Claim Review process to challenge compliance with this Agreement. Specifically, individual ABT claimants may only raise the following claims under this review process:

(I) An individual ABT claimant was not provided with the notice referenced in Section I.A.1. of this Agreement ("notice") when he/she lodged or filed his/her asylum application with the immigration court, or when USCIS referred his/her case to the immigration court.

(II) EOIR did not make the notice available at subsequent hearings before the immigration court.

(III) EOIR did not stamp the individual ABT claimant's complete defensive asylum application at the immigration court clerk's window, mark as "lodged not filed," and return it to the claimant, or prevented or otherwise deterred the ABT claimant from lodging a complete asylum application.

(IV) In adjudicating an application for employment authorization, USCIS did not use the date on which an individual ABT claimant "lodged" his or her asylum application at an immigration court clerk's

window as the filing date for the purposes of EAD eligibility.

(V) USCIS did not mail a Failure to Appear Warning Letter to the individual ABT claimant after the claimant failed to appear for an asylum interview with a USCIS Asylum Office.

(VI) Where an individual ABT claimant failed to appear at a scheduled asylum interview with a USCIS Asylum Office, and the claimant did not attempt to reschedule his or her asylum interview with a USCIS Asylum Office, USCIS did not wait forty-five (45) days prior to issuance of a decision referring the asylum application to an immigration judge.

(VII) USCIS did not include a Referral Notice for Failure to Appear when referring an individual ABT claimant's asylum application to an immigration judge after the claimant missed an asylum interview and did not reschedule that interview within forty-five (45) days.

(VIII) After an ABT claimant requested a determination on exceptional circumstances referenced in Section I.A.4. of this Agreement, USCIS did not provide the individual ABT claimant and/or his or her representative of record with a determination letter, with notification of the determination to U.S. Immigration and Customs Enforcement's Office of the Principal Legal Advisor ("ICE OPLA").

(IX) After the Asylum Office reopened jurisdiction over an individual ABT claimant's asylum case, where the claimant had missed an asylum interview but later established exceptional circumstances with a USCIS Asylum Office and where an immigration judge dismissed proceedings, USCIS did not restart the time period for asylum adjudication and EAD eligibility on the date that the ABT claimant appeared for a rescheduled interview.

(X) In adjudicating an application for employment authorization, USCIS did not credit the applicant with the number of days that elapsed between the

immigration judge's initial denial of the individual ABT claimant's asylum claim and the date of the BIA's remand order for the purposes of EAD eligibility.

ii. The following non-exhaustive list of claims cannot be challenged through the Individual ABT Claim Review process; however, this Agreement shall not affect or in any way limit the ability of parties, individuals, groups, or classes to challenge or obtain review of claims not resolved by this Agreement through any existing right or authority under law, regulations, or applicable procedures.

(I) A challenge to whether an immigration judge made the reason(s) for the case adjournment clear on the record.

(II) A challenge to whether the immigration judge offered a non-detained individual ABT claimant an expedited hearing date that was a minimum of forty-five (45) days from the last master calendar hearing.

iii. Individual asylum applicants alleging to be Class or Subclass members who believe that USCIS and/or EOIR have failed to comply with the terms of this Agreement as required under Section III.A. (*i.e.*, individual ABT claimants) must complete and submit to USCIS and/or EOIR, as appropriate, an ABT Claim Form (attached to this Agreement as Exhibit B), detailing the basis for the alleged violation of the Agreement, together with copies of any documents, applications, receipts, notices, and/or letters in their possession that are requested in the ABT Claim Form or that the individual ABT claimants believe support their claim(s). Included in the ABT Claim Form, the individual ABT claimant must designate which ground he/she is claiming the Defendant(s) is/are noncompliant with in this Agreement (as enumerated in subparagraph (b)(i) above).

iv. Within forty-five (45) days after USCIS and/or EOIR's receipt of an ABT Claim Form in accordance with subparagraph (b)(iii) above, USCIS and/or EOIR will mail the claimant and/or his or her representative or record, if any, either a written Final Notice or a Notice of Preliminary Findings, as described in clause (I) and/or (II) below:

(I) The Final Notice will include the results of USCIS's and/or EOIR's investigation of the facts as follows: (1) a determination of whether or not the claimant is a Class or Subclass member; (2) if the individual claimant is found to be a Class or Subclass member, a determination of whether a violation of the Agreement occurred with respect to the individual ABT claimant; (3) a description of any

corrective action that it has taken or intends to take to remedy the violation (if any); and (4) in the event USCIS and/or EOIR determines that the individual ABT claimant is not a member of a Class or Subclass, or has not stated a claim cognizable under the Agreement, instructions regarding seeking review of that determination or any corrective action, as further described in subparagraph (vi) below.

(II) The Notice of Preliminary Findings will explain the basis for USCIS and/or EOIR's belief that the claimant is not a Class or Subclass member, or that there was no violation of the Agreement, and request additional information and/or evidence from the individual ABT claimant. If USCIS and/or EOIR send a Notice of Preliminary Findings, the applicant will have thirty (30) days (the "supplementation period") to submit additional written evidence or information to remedy the perceived deficiency. After the supplementation period has elapsed with no response from the individual ABT claimant, or within thirty days following timely receipt of any supplemental documents or information from the claimant, USCIS and/or EOIR will send a Final Notice, as described in clause (I) above, to the claimant and/or his or her counsel of record.

v. Should any dispute remain after an individual ABT claimant has undertaken the dispute resolution mechanism in subparagraph (b) above, the parties may negotiate in good faith to resolve any such remaining disputes within thirty (30) days from when USCIS and/or EOIR mailed the Final Notice under subparagraph (b)(iv) above. By way of example and not limitation, if a claim is granted, but the complaining party believes that the corrective action described in the Final Notice granting the claim is insufficient to correct error, he or she may attempt to negotiate a resolution of that dispute.

vi. Should the parties be unable to resolve a dispute, and following implementation of the provisions of subparagraphs (b)(i) – (v) above, individual ABT claimants may apply to the Court for enforcement of this Agreement. The parties agree that individual ABT claimants shall not apply to the Court for enforcement of the Agreement until applicable procedures detailed in subparagraph (b) above have been exhausted, and subject to the further terms and limitation provided in this Section II.C.11. The individual ABT claimants shall notify the Defendants of their intent to do so before applying to the Court for the enforcement of the Agreement.

c. All claims arising under this Agreement, pursuant to subparagraph (a) above must be raised by Class counsel as soon as possible, but no later than 180 days

after discovery of the claim; or in the case of individual ABT claimants seeking to implement the Individual ABT Claim Review process pursuant to subparagraph (b) above, as soon as possible, but by no later than 180 days following the denial of an application for employment authorization, based on an alleged violation of the terms provided under this Agreement.

d. The Parties agree that the provisions in Section II.C.11. will not be used to resolve any disputes regarding timeliness of the reports listed in Section II.C.13. of the Agreement. The Parties agree that failure to comply with the time periods or deadlines described in Section II.C.11. shall not constitute separate violations of this Agreement; however, if a responding party fails to respond to a claim presented in Section II.C.11. within the prescribed time period or by the required deadline, the complaining party may proceed to seek further review of the claim from the Court, or as otherwise provided in this Agreement.

e. Defendants agree to use reasonable and good faith efforts to implement the procedures described in this Agreement in a manner that avoids unnecessary interruption of asylum seekers' employment authorization where eligible, and that facilitates eligible asylum applicants' ability to provide documentation in accordance with the requirements of 8 U.S.C. § 1324a(b) and 8 C.F.R. § 274a.2.

f. The Parties agree that these dispute resolution terms in Section II.C.11. of this Agreement will terminate 180 days after the Termination Date of the Agreement under Section II.C.14. of this Agreement and, subject to the limitations described in subparagraph (c) above, all pending claims have been resolved under this paragraph.

12. Applicable Law. This Agreement and its terms shall be construed in accordance with the law of the United States of America and the United States Court of Appeals for the Ninth Circuit.

13. Periodic Reporting of Defendants. Because full implementation of each of the terms of this Agreement will take time (with settlement terms referenced in Sections III.A.1. and III.A.2., below, taking up to twenty-four (24) months from the Effective Date of this Agreement), Defendants agree to submit reports every six (6) months to Plaintiffs and file them with the Court detailing the progress made towards implementation of the settlement terms. When Defendants determine that a settlement term is fully implemented, they shall submit a report explaining the reasons for this conclusion to Plaintiffs and file it with the Court.

14. Termination Date. This Agreement and all of its terms, and all rights acquired hereunder, shall end either four (4) years following the full implementation of all the terms of Agreement, as documented by Defendants' reports to Plaintiffs and the Court with respect to each settlement term (described in Section II.C.13., above) of this Agreement, or upon the following date: the Effective Date of this Agreement plus six (6) years, whichever shall first occur.

15. Nothing in this Agreement shall prevent Defendants EOIR and/or USCIS from amending their regulations, manuals, policies, procedures, and/or practices as necessary or for purposes of complying with applicable statutory changes and/or precedential decisions, provided that Defendants continue to comply with all of their obligations under the terms of this Agreement. Should either Defendant determine that a change in law, whether statutory or by precedent decision, necessitates a change in their regulations, manuals, policies, procedures, and/or practices that would conflict with one or more of its obligations under the Agreement, the Parties shall attempt to reach an agreement with respect to the Defendant's continuing obligations under the Agreement and/or any amendments to this Agreement, pursuant to procedures outlined in Section II.11.a. of this Agreement. Should the Parties fail to agree, the question of how the Defendant's continuing obligations under the Agreement are affected by the change in the law will be submitted to the Court pursuant to Section II.11.a.iv. of this Agreement.

III. TERMS OF THE AGREEMENT

A. By this Agreement, Defendants have agreed to modify certain of their processes, policies, procedures, and practices. The terms of this Agreement shall apply to members of the Class commencing from the date upon which each of the changes, including interim changes, described herein are implemented, as further described below.

1. Notice & Review Claim.

a. Defendant EOIR will amend the November 15, 2011, Operating Policies and Procedures Memorandum 11-02: The Asylum Clock from Chief Immigration Judge Brian O'Leary, to state that an immigration judge must make the reason(s) for the case adjournment clear on the record. Furthermore, Defendants will provide general information, jointly produced by Defendants EOIR and USCIS, who shall work in good faith with Plaintiffs' counsel, regarding employment authorization for individuals with pending asylum applications, including where to obtain case-specific information, the impact of hearing adjournment codes on EAD eligibility, and where to direct inquiries relating to requests to correct hearing adjournment codes and inquiries relating to EAD eligibility. Defendant EOIR will provide the notice to an asylum applicant when an asylum application is lodged or filed with an immigration court. In addition, EOIR will make a copy of the notice available at each hearing. USCIS will make the information publicly available, including providing the notice to an asylum applicant upon referral. While the content of the EAD denial letter cannot be determined at this time, USCIS agrees to consider in good faith input from Plaintiffs' counsel as to the language and content of the EAD denial letter.

b. Defendants will amend the November 15, 2011, Operating Policies and Procedures Memorandum 11-02: The Asylum Clock from Chief Immigration Judge Brian O'Leary, within six (6) months of the Effective Date of this Agreement. With regard to the remaining resolutions described in subparagraph (a) above, Defendants will

implement these resolutions as soon as possible, but no later than twenty-four (24) months from the Effective Date of this Agreement.

c. In the interim, Defendants will implement the following procedures to provide relief to affected Class members: Defendants will work with Plaintiffs' counsel to create an interim notice regarding employment authorization for individuals with pending asylum applications within six (6) months of the Effective Date of this Agreement. Defendants will also provide contact information for inquiries regarding requests to correct the calculation of the asylum adjudications period before the Asylum Office, hearing adjournment codes before the immigration court, and asylum-related EAD denials.

d. Class members who have appeared or who will appear before EOIR or USCIS prior to the Defendants' implementation of these settlement terms shall not have a cause of action against the Defendants arising from the fact that they were not previously afforded the relief described herein as pertains to the Notice and Review Claim.

e. The interim and final relief described in this Agreement in Section III.A.1. shall apply prospectively to Notice and Review Class members at the time that these settlement terms are implemented.

2. Hearing Claim.

a. Defendant EOIR will accept complete defensive asylum applications at the immigration court clerk's window as "lodged not filed." EOIR will transmit the "lodged not filed" date to USCIS. The applicant will submit a Form I-765, *Application for Employment Authorization*, to USCIS, along with a copy of the asylum application that the EOIR immigration court clerk stamped "lodged not filed." An asylum applicant may only lodge a complete asylum application once. If an asylum application is lodged, it must be lodged before that application is filed with an immigration judge. The requirement that an asylum application be filed before an immigration judge will not change. Defendant EOIR considers the asylum application "filed" on the date an immigration judge accepts the application at a hearing. Defendant USCIS will consider the date on which the asylum application was "lodged not filed" at the EOIR clerk's window as an application filing date for the purpose of calculating the time period for EAD eligibility. Defendants will implement these resolutions as soon as possible but no later than twenty-four (24) months from the Effective Date of this Agreement.

b. In the interim, Defendants will implement the following procedures to provide relief to affected Class members: If an asylum application is submitted to an immigration court outside of a hearing before an immigration judge, the asylum application will be stamped "lodged not filed" by a clerk at the EOIR court at which the application is lodged. When filing a Form I-765, *Application for Employment Authorization*, with USCIS, the applicant will submit a copy of the asylum application that an EOIR immigration clerk stamped "lodged not filed." In adjudicating the

application for employment authorization, USCIS will consider the date on which the application was stamped "lodged not filed" as the application filing date for the purpose of calculating the time period for EAD eligibility. Defendants will implement these resolutions within six (6) months of the Effective Date of this Agreement.

c. Hearing Subclass members who are or will be in immigration proceedings before EOIR prior to the Defendants' implementation of these settlement terms shall not have a cause of action against the Defendants arising from the fact that they were not previously afforded the relief described herein as pertains to the Hearing Claim.

d. The interim and final relief described in this Agreement at Section III.A.2. shall apply prospectively to Hearing Subclass members whose asylum applications have not previously been deemed filed by an immigration judge at a hearing at the time that these settlement terms are implemented.

3. Prolonged Tolling Claim.

a. Defendant EOIR will amend the November 15, 2011, Operating Policies and Procedures Memorandum 11-02: The Asylum Clock from Chief Immigration Judge Brian O'Leary, to change section VI.E.2.c. ("Proceedings Before the Immigration Court: Offering Future Hearing Dates: Expedited Cases: Offering an 'Expedited Asylum Hearing Date'") from "minimum of 14 days should be allowed" to "minimum of 45 days must be allowed." Defendant EOIR will add an exception for detained cases, in which the "minimum of 14 days" time period will remain. Defendants will implement these resolutions within six (6) months of the Effective Date of this Agreement.

b. Prolonged Tolling Subclass members who have appeared or who will appear before EOIR prior to the Defendants' implementation of these settlement terms shall not have a cause of action against the Defendants arising from the fact that they were not previously afforded the relief described herein as pertains to the Prolonged Tolling Claim.

c. The interim and final relief described in this Agreement in Section III.A.3. shall apply to prolonged tolling Subclass members in immigration proceedings who have not had their merits hearing calendared for the first time before EOIR at the time these settlement terms are implemented, and shall apply prospectively.

4. Missed Asylum Interview Claim.

a. Defendant USCIS will mail a "Failure to Appear" Warning Letter as soon as possible after an asylum applicant misses an interview. The letter will describe the effect of the failure to appear on EAD eligibility and list procedural steps the applicant must take to establish "good cause" for failing to appear for the interview. It

will also describe the effect of failing to respond to the warning letter within a forty-five (45) day period.

b. Defendant USCIS will extend the period prior to issuance of a decision (including a referral letter) from fifteen (15) to forty-five (45) calendar days, during which time submission of an excuse for missing an interview will be treated as a request to reschedule under the Asylum Division's Affirmative Asylum Procedures Manual and the "good cause" standard will apply.

c. Defendant USCIS will include a new "Referral Notice for Failure to Appear" with charging documents mailed to the applicant. This notice will describe the effect of the failure to appear on EAD eligibility and list procedural steps the applicant must take to establish "exceptional circumstances" with an Asylum Office.

d. Defendants will provide Plaintiffs' counsel with drafts of the "Failure to Appear" Warning Letter and the "Referral Notice for Failure to Appear" and will consider their input in good faith before finalizing these documents.

e. Defendant USCIS will revise the process of establishing exceptional circumstances with an Asylum Office as follows. Upon determining whether exceptional circumstances exist, the Asylum Office will issue a determination letter to the applicant and/or his or her representative of record, and notify ICE OPLA of the determination. If the Asylum Office determines that exceptional circumstances exist, the applicant may then request that ICE OPLA file a joint motion for dismissal of immigration proceedings. If the proceedings are dismissed, and the asylum application is returned to the Asylum Office, the Asylum Office will reopen the asylum application and take jurisdiction over the applicant's case.

f. Defendant USCIS will restart the 180-day time period for determining asylum adjudication and EAD eligibility following the resolution of the missed interview based on exceptional circumstances. If the applicant establishes exceptional circumstances, and the application is returned to the Asylum Division, the time period for determining asylum adjudication and EAD eligibility, which stopped on the date of the failure to appear, would restart on the date the applicant appears for the rescheduled interview at an Asylum Office.

g. Defendants will implement these resolutions in subparagraph (a) – (f) within six (6) months of the Effective Date of this Agreement.

h. Missed Asylum Interview Subclass members who have appeared or who will appear before USCIS prior to the Defendants' implementation of the settlement terms shall not have a cause of action against the Defendants arising from the fact that they were not previously afforded the relief described herein as pertains to the Missed Asylum Interview Claim.

i. The relief described in this Agreement in Section III.A.4., shall apply to Missed Asylum Interview Subclass members who have filed or will file an asylum application with USCIS and who have not yet had that application referred to an immigration judge at the time that the Defendants implement these settlement terms, and shall apply prospectively. This paragraph does not preclude any Class member from seeking relief under the provisions of the Affirmative Asylum Procedures Manual dated November 2007 (revised July 2010) pre-dating this Agreement in Section I (1), page. 91-92, regarding post-referral review of exceptional circumstances.

5. Remand Claim.

a. Following a BIA remand of a case for the adjudication of an asylum claim, whether on appeal from an immigration judge decision or following a remand from a U.S. Court of Appeals, for purposes of EAD eligibility, the applicant will be credited with the number of days that elapsed between the initial immigration judge denial and the date of the BIA remand order. An asylum applicant seeking employment authorization must attach a copy of the complete BIA order remanding the case for the adjudication of an asylum claim to the immigration court to his or her application for employment authorization.

b. Remand Subclass members who have appeared or who will appear before EOIR prior to the Defendants' implementation of these settlement terms shall not have a cause of action against the Defendants arising from the fact that they were not previously afforded the relief described herein as pertains to the Remand Claim.

c. The relief described in this Agreement in Section III.A.5. shall apply to all Remand Subclass members whose asylum cases have been remanded and whose asylum cases are pending before EOIR at the time the Defendants implement these settlement terms, and shall apply prospectively.

B. EADs for Named Plaintiffs. The named plaintiffs and relatives of named plaintiffs who received limited 240-day EADs pursuant to the Parties' earlier agreement will remain eligible for one-year renewals of their EADs for so long as their asylum applications remain pending.

IN WITNESS WHEREOF, the Parties have executed this Agreement, which may be executed in counterparts and the undersigned represent that they are authorized to execute and deliver this Agreement on behalf of the respective Parties.

Consented and agreed to by:

DATED: April 12, 2013 Respectfully submitted,

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