

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

LUIS JAVIER PEREZ-OLANO, CASA)
LIBRE YOUTH SHELTER, FREDDY)
GARRIDO-MARTINEZ, MANUEL)
GOMEZ, YAN JUN LI, LUIS MIGUEL)
MORALES, MICHAEL YUBAN OBANDO,)
MAEJEAN ROBINSON, LUCIA UREY,)

Plaintiffs,)

- vs -)

ERIC H. HOLDER, JR., United States)
Attorney General, JANET NAPOLITANO,)
Secretary of United States Department of)
Homeland Security, and OFFICE OF)
REFUGEE RESETTLEMENT,)

Defendants.)

Case No. CV 05-3604

SETTLEMENT AGREEMENT

PREAMBLE

This Settlement Agreement (“Agreement”) is entered into by all Plaintiffs and Defendants in this class action lawsuit (collectively, “the Parties”). Plaintiffs Luis Javier Perez-Olano, Freddy Garrido-Martinez, Manuel Gomez, Yan Jun Li, Luis Miguel Morales, Michael Yuban Obando, Maejean Robinson, and Lucia Urey, are or were juvenile aliens (“juveniles”) seeking status and adjustment of status as special immigrant juveniles (“SIJ”) under §§ 101(a)(27)(J) and 245 of the Immigration and Nationality Act (“INA”), 8 U.S.C. §§ 1101(a)(27)(J) and 1255. Defendants are the Attorney General of the United States, the Secretary of Homeland Security, both of whom are being sued in their respective official capacities, and the Office of Refugee Resettlement (“ORR”), an agency in the United States Department of Health and Human Services (“HHS”).

WHEREAS Plaintiffs filed this lawsuit challenging, *inter alia*, several of Defendants’ policies, practices, and regulations regarding SIJ status and SIJ-based adjustment of status pursuant to 8 U.S.C. §§ 1101(a)(27)(J) and 1255; and

1 WHEREAS the District Court certified this case as a class action on behalf of (i)
2 juveniles whose requests for specific consent to state court jurisdiction Defendant Department of
3 Homeland Security (“DHS”) denied or failed to decide prior to the juveniles’ attaining 18 years
4 of age (“Specific Consent Subclass”); and (ii) juveniles whose petitions for SIJ status Defendant
5 DHS denied or revoked pursuant to 8 C.F.R. §§ 204.11(c)(1) or (5), or 205.1(a)(3)(iv)(A), (C),
6 or (D) (“Age-Out Subclass”); but declined to certify a class on behalf of (iii) juveniles
7 undergoing removal proceedings whose applications for SIJ-based adjustment of status
8 Defendant DHS refused to adjudicate pursuant to 8 C.F.R. §§ 245.2(a)(1) and 1245.2(a)(1)(i),
9 and 8 C.F.R. § 1003.2(c)(2) or 1003.23(b)(1) (“Removal Proceedings Subclass”); and

10 WHEREAS the District Court enjoined Defendants from requiring that juveniles in actual
11 or constructive custody to obtain Defendants’ specific consent prior to invoking the jurisdiction
12 of state juvenile courts except where such courts determine or alter custody status or placement;
13 and

14 WHEREAS the District Court upheld the facial validity of 8 C.F.R. §§ 204.11(c)(1), (5),
15 and 205.1(a)(3)(iv)(A), (C), or (D), but reserved for trial whether Defendants unreasonably
16 delayed the adjudication of SIJ applications subject to those regulations; and

17 WHEREAS the District Court sustained the facial validity of 8 C.F.R. §§ 245.2(a)(1),
18 1245.2(a)(1)(i), 1003.2(c)(2), and 1003.23(b)(1), but reserved for trial whether Defendants
19 abused their discretion in applying those regulations to juveniles seeking SIJ status including
20 plaintiff Freddy Garrido Martinez; and

21 WHEREAS the Parties have filed an appeal and cross-appeal with the United States
22 Court of Appeals for the Ninth Circuit (“Ninth Circuit”), and such appeals remain pending and
23 their outcome uncertain; and

24 WHEREAS a trial in this case would be complex, lengthy and costly to all parties
25 concerned, and the decision of the District Court may be subject to appeal by the losing Party
26 with the final outcome uncertain; and

1 WHEREAS Congress has enacted the Wilberforce Trafficking Victims Protection
2 Reauthorization Act of 2008 (“TVPRA 2008”), Pub. L. 110-457, 122 Stat. 5044 (2008), on
3 December 23, 2008, and § 235(d) of the TVPRA 2008 amended the eligibility requirements for
4 SIJ status at 8 U.S.C. § 1101(a)(27)(J) and amended the eligibility requirements for adjustment
5 of status at 8 U.S.C. § 1255(h); and

6 WHEREAS § 235(d) of the TVPRA 2008 (1) transferred the authority over specific
7 consent from DHS to HHS; and (2) extended the eligibility for SIJ status to all aliens who were
8 under 21 years of age at the time they filed a completed application with USCIS; and

9 WHEREAS HHS, as of March 23, 2009, has assumed full authority over the specific
10 consent determinations for the purposes of SIJ status under 8 U.S.C. § 1101(a)(27)(J), has issued
11 public guidance clarifying that “specific consent” is only required if an SIJ petitioner seeks a
12 juvenile court order determining or altering his or her custody status or placement, and has
13 established a process for requesting specific consent and reconsideration of denials of specific
14 consent; and

15 WHEREAS the Parties have conducted discussions and arm’s length negotiations with
16 respect to a compromise and settlement of this case, with a view to settling the issues in dispute
17 and achieving the most effective relief possible consistent with the interests of the Parties; and

18 WHEREAS the Parties have (1) concluded that the terms and conditions of this
19 Settlement are fair, reasonable, and in the best interests of the Named Plaintiffs and all Class
20 Members; and (2) agreed to the dismissal of the Action with prejudice, and to seek dissolution of
21 the Court’s permanent injunction Order of January 8, 2008, *Perez-Olano v. Gonzalez*, 248 F.R.D.
22 248 (C.D. Cal. 2008), after considering the substantial benefits that the Parties will receive from
23 settlement of the Action; and

24 NOW, THEREFORE, in full settlement of this action and in consideration of the
25 promises and undertakings set forth herein and other consideration, the sufficiency of which is
26 hereby acknowledged, it is hereby AGREED, by and among the parties to this Settlement,

1 through their respective attorneys, subject to the approval of the Court pursuant to Rule 23(e) of
2 the Federal Rules of Civil Procedure, in consideration of the benefits flowing to the Parties
3 hereto from the Settlement, that the claims as against the parties shall be compromised, settled,
4 forever released, barred and dismissed with prejudice, upon and subject to the following terms
5 and conditions:

6 I. DEFINITIONS

7 As used throughout this Settlement the following definitions shall apply:

8 1. "Adjustment of status" refers to adjustment of status of SIJs pursuant to INA § 245(h),
9 8 U.S.C. § 1255(h), as amended by the TVPRA 2008.

10 2. "Alien" has the same meaning as that term is defined at INA § 101(a)(3), 8 U.S.C.
11 § 1101(a)(3).

12 3. "Class member" or "class members" applies to all aliens, including, but not limited to,
13 SIJ applicants, who, on or after May 13, 2005, apply or applied for SIJ status or SIJ-based
14 adjustment of status based upon their alleged SIJ eligibility.

15 4. "Defendants" are Eric H. Holder, Jr., United States Attorney General; Janet
16 Napolitano, Secretary of Homeland Security; and ORR, and their agents, employees, contractors
17 and successors in office.

18 5. "Dependency order" means an order issued by a State juvenile court located within
19 the United States, declaring a juvenile to be dependent on that juvenile court or legally
20 committing to, or placing the juvenile under the custody of, an agency or department of a State,
21 or an individual or entity appointed by a State or juvenile court located in the United States.

22 6. "Effective date" is the date upon which the Agreement enters into effect, in
23 accordance with paragraph 36.

24 7. "Specific consent" refers to HHS's consent to permit a juvenile in HHS custody to
25 invoke a State court's jurisdiction to determine or alter the custody status or placement of the
26 juvenile. If a juvenile in HHS custody wishes to have a state court, not HHS, decide to move
27

1 him or her out of HHS custody and into a state-funded foster care home or other placement, the
2 juvenile must first receive “specific consent” from HHS to go before the state court. However, if
3 the juvenile wishes to go to state court only to be declared dependent in order to make an
4 application for SIJ status (i.e., receive an “SIJ-predicate order”), the child does not need HHS’
5 consent.

6 8. “Juvenile” (including “juveniles”) means any alien who is eligible to apply for a
7 dependency order or SIJ predicate order in a State court as determined by the law of the State in
8 which the alien is domiciled.

9 9. “Party” or “Parties” applies to Defendants and Plaintiffs.

10 10. “Plaintiff” or “Plaintiffs” applies to the named Plaintiffs and all class members as
11 defined herein.

12 11. “SIJ applicant” means any juvenile who applies for SIJ status under INA
13 § 101(a)(27)(J), 8 U.S.C. § 1101(a)(27)(J), or SIJ-based adjustment of status.

14 12. “SIJ predicate orders” means orders issued by a State court, or in the case of
15 administrative proceedings, an administrative agency, (i) declaring a juvenile dependent on a
16 juvenile court located in the United States or legally committing a juvenile to, or placing a
17 juvenile under the custody of, an agency or department of a State, or an individual or entity
18 appointed by a State or juvenile court located in the United States; and (ii) finding that the
19 juvenile's reunification with one or both of the juvenile's parents is not viable due to abuse,
20 neglect, abandonment, or a similar basis found under State law; and (iii) determining in
21 administrative or judicial proceedings that it would not be in the juvenile’s best interest to be
22 returned to the juvenile’s or the juvenile’s parent’s previous country of nationality or country of
23 last habitual residence.

24 II. TERMS OF SETTLEMENT

25 13. This Agreement sets out nationwide policy governing the SIJ application process,
26 including access to State juvenile courts, and shall supersede all practices, policies, procedures,
27

1 and Federal regulations to the extent they are inconsistent with this Agreement. Except as
2 provided herein, this Agreement shall supersede the nationwide permanent injunction issued by
3 the United States District Court for the Central District of California in this case on January 8,
4 2008, once the Court approves this Agreement and this Agreement becomes effective in
5 accordance with all of the terms of paragraph 36.

6 14. USCIS shall not revoke or rescind an approved SIJ classification or SIJ-based
7 adjustment of status issued pursuant to the injunction of January 8, 2008. This paragraph does
8 not limit Defendants' ability to revoke or rescind SIJ classification or SIJ-based adjustment of
9 status for reasons unrelated to the terms of the injunction of January 8, 2008.

10 15. For juveniles in HHS custody, obtaining SIJ status and SIJ-based adjustment of
11 status may involve three components:

12 (a) The juvenile must obtain HHS's specific consent, but only if the juvenile seeks a
13 juvenile court order determining or altering the juvenile's custody status or placement;

14 (b) The juvenile must obtain an SIJ predicate order.

15 (c) Lastly, the juvenile must apply for SIJ status and SIJ-based adjustment of status by
16 filing a Form I-360 and Form I-485, with appropriate filing fees or a request for a fee
17 waiver in accordance with the Immigration and Nationality Act, 8 U.S.C. §§ 1101, *et*
18 *seq.*, applicable regulations, and the instructions on the forms.

19 16. For juveniles not in HHS custody, obtaining SIJ status and SIJ-based adjustment of
20 status shall involve a two-step process.

21 (a) First, the juvenile must obtain an SIJ predicate order.

22 (b) Second, the juvenile must apply for SIJ status and SIJ-based adjustment of status.

23 17. Defendants shall not require SIJ applicants to obtain specific consent from HHS or
24 any other federal agency or officer before an SIJ applicant may invoke the jurisdiction of a State
25 juvenile court. However, if the SIJ applicant seeks a change in custody status or placement, the
26 SIJ applicant must obtain specific consent from HHS, through the Director of ORR ("the
27

1 Director”) before a State juvenile court may determine or alter the juvenile’s custody status or
2 placement. Nothing herein shall preclude a state court from issuing SIJ predicate orders prior to
3 HHS's granting specific consent to the State court’s exercising jurisdiction to change custody
4 status or placement.

5 18. Within two business days following receipt of a request for specific consent, HHS
6 will acknowledge receipt of the request via e-mail, facsimile, or telephone to the juvenile and/or
7 his or her representative.

8 19. In determining whether to grant specific consent, the Director shall comply with the
9 TVPRA 2008 section 235(c)(2), Pub. L. 110-457.

10 20. The Director shall make efforts to adjudicate requests for specific consent within 30
11 days of receipt. The Director will also make particular efforts to adjudicate requests marked
12 “URGENT” when an applicant indicates there are special circumstances requiring expedited
13 processing. If the Director denies the request, he or she will transmit to the juvenile and, if the
14 juvenile is represented, to his or her legal representative the decision in writing, together with the
15 evidence it relied on in reaching its decision.

16 21. A juvenile denied specific consent may appeal by filing a petition for administrative
17 review with the Assistant Secretary for Children and Families, postmarked no later than 30 days
18 after receipt of the Director's denial. An applicant may supplement the administrative record
19 with additional evidence.

20 22. The Assistant Secretary for Children and Families will consider the administrative
21 record, including all evidence provided by the juvenile or the juvenile’s legal representative.
22 Within fifteen business days from the date of receiving the request, the Assistant Secretary will
23 send his or her decision on the petition to the juvenile and, if the juvenile is represented, to the
24 juvenile's legal representative. This decision would be a final administrative decision.

25 23. Defendant USCIS shall not deny a class member's application for SIJ classification
26 or SIJ-based adjustment of status on account of age or dependency status, if, at the time the class
27

1 member files or filed a complete application for SIJ classification, he or she was under 21 years
2 of age or was the subject of a valid dependency order that was subsequently terminated based on
3 age. Defendant USCIS shall not deny a class member's application for SIJ classification or
4 SIJ-based adjustment of status on account of ineligibility for long-term foster care as this is no
5 longer a statutory requirement.

6 24. Defendant USCIS shall not revoke a class member's SIJ classification on account of
7 age or dependency status, if, at the time the class member files or filed a complete application for
8 such status, he or she was under 21 years of age or was the subject of a valid dependency order
9 that was subsequently terminated based on age. Defendant USCIS shall not revoke a class
10 member's application for SIJ classification or SIJ-based adjustment of status on account of
11 ineligibility for long-term foster care as this is no longer a statutory requirement.

12 25. Nothing in this Agreement shall be construed to waive any obligation or authority
13 USCIS and HHS may have under the APA to promulgate valid and effective regulations at a date
14 following the effective date of this Agreement (see paragraph 36).

15 26. Juveniles who file applications for SIJ classification and SIJ-based adjustment of
16 status may file along with their applications for adjustment of status Form I-765 (Application for
17 Employment Authorization), with a fee or fee waiver request.

18 27. Defendant USCIS shall, upon request and without fee, readjudicate the SIJ
19 applications and, where applicable, SIJ-based adjustment of status applications of Lucia Urey, A
20 95469152, Maejean Robinson, A 95945493, and Freddy Garrido-Martinez, A 77609544, in
21 accordance with the standards set out in this Agreement and the TVPRA 2008 and shall not deny
22 their applications for SIJ status or SIJ-based adjustment of status on account of their current
23 ages.

24 28. Upon request, defendant USCIS shall re-adjudicate applications for SIJ status and/or
25 SIJ-based adjustment of status of individuals whose applications for such benefits were denied or
26 revoked on or after May 13, 2005, for reasons inconsistent with this Agreement or § 235(d)(6) of
27

1 the TVPRA 2008. Class members who believe they are eligible for readjudication under this
2 paragraph should file a Motion to Reopen with USCIS on Form I-290B, Notice of Appeal or
3 Motion, with the appropriate fee or fee waiver request in accordance with the filing instructions
4 in the attachment to this Agreement. Readjudication will be with respect to age eligibility, as
5 addressed in paragraphs 23 and 24, and with respect to specific consent, as addressed in
6 paragraphs 15 through 23. Defendant USCIS shall, within 90 days of the effective date of this
7 Agreement, post a copy of the notice regarding this paragraph on Defendant USCIS's website
8 and email a copy of the same notice to the USCIS list of non-governmental and
9 community-based organizations.

10 29. Defendant ICE shall join motions to reopen removal proceedings filed by juveniles
11 granted SIJ status when the following criteria are met: the juvenile (i) requests such joinder
12 within 60 days of being notified by USCIS that it has granted him or her SIJ status; and (ii) is not
13 inadmissible under INA § 212, 8 U.S.C. § 1182, or removable under INA § 237, 8 U.S.C.
14 § 1227, on grounds that disqualify him or her from adjustment of status, or, if inadmissible, such
15 grounds of inadmissibility have been waived or are waivable. Such joinder shall be without
16 prejudice to ICE's right to contest any claim advanced by the alien regarding eligibility for
17 adjustment of status. USCIS notification via U.S. mail shall establish a rebuttable presumption
18 that the juvenile has been informed of a grant of SIJ status, which may be rebutted by the
19 juvenile or his or her representative with evidence showing that (i) he or she failed to receive
20 such notice or (ii) the failure to request such joinder was through no fault of the juvenile.

21 30. ICE shall join a motion to reopen removal proceedings against Plaintiff Freddy
22 Garrido-Martinez. ICE's joinder shall be without prejudice to ICE's right to contest any claim
23 advanced by Plaintiff Freddy Garrido-Martinez or his eligibility for SIJ-based adjustment of
24 status.

25 31. In the event that immigration judges terminate the removal proceedings for Plaintiff
26 Freddy Garrido-Martinez, USCIS shall, upon request and without fee, adjudicate his I-485
27
28

1 adjustment of status application.

2 VII. STATISTICS AND PUBLIC LIAISONS

3 32. Defendant, USCIS will compile, and make available to the public via the Internet,
4 annual reports disclosing the number of Form I-360s, Petitions for Amerasian, Widow(er) or
5 Special Immigrant, seeking SIJ status received, approved, and denied during the year, and the
6 number pending at the end of the year. USCIS shall also provide notice to Plaintiffs' counsel that
7 the reports have been disseminated to the public as provided above.

8 33. Within 30 days of the effective date of this Agreement, Defendants shall designate
9 points of contact ("POC") within USCIS, ICE, and HHS to respond to inquiries from juveniles
10 and their counsel regarding compliance with this Agreement. Defendants shall instruct such
11 POCs to provide complainants with contact information for existing offices, e.g., Office of Civil
12 Rights and Civil Liberties, with authority over noncompliance with this Agreement or violations
13 of SIJ practices, policies, or procedures. Defendants shall also provide notice to Plaintiffs'
14 counsel that the POCs have been appointed as provided above.

15 VIII. DISPOSITION OF CLASS ACTION, DISSOLUTION
16 OF INJUNCTION, AND SUNSET CLAUSE

17 34. Upon the District Court's approval of this Agreement, the Parties will, within ten
18 calendar days jointly move to dismiss this action, with prejudice, and dissolve the nationwide
19 permanent injunction entered by the District Court; and (ii) withdraw their respective appeals
20 from the District Court's January 8, 2008 order that are before the Ninth Circuit.

21 35. Plaintiffs' Counsel and Defendants' Counsel agree to cooperate fully with one
22 another in seeking Court approval of the Agreement and to promptly agree upon and execute all
23 such other documentation as may be reasonably required to obtain final approval by the Court of
24 the Settlement.

25 36. The Effective Date of this Agreement shall be the date when the last of the following
26 three conditions has been satisfied:

27 (a) approval by the Court of this Agreement;

1 (b) entry by the Court of an order dissolving the nationwide permanent injunction entered

2 by the District Court on January 8, 2008, and dismissing this action with prejudice; and

3 (c) withdrawal of both Parties' appeals that are pending before the Ninth Circuit.

4 37. On the Effective Date, the Named Plaintiffs, the Class, and the Class Members, on
5 behalf of themselves, their heirs, executors, administrators, representatives, attorneys,
6 successors, assigns, agents, affiliates, and partners, and any persons they represent ("Releasing
7 Parties"), shall be deemed to have, and by operation of the Final Judgment shall to the extent
8 provided herein, fully, finally, and forever release, relinquish, and discharge the Released Parties
9 of and from any and all the Settled Claims, and the Releasing Parties shall forever be barred and
10 enjoined from bringing or prosecuting any of the Settled Claims against any of the Releasing
11 Parties.

12 38. This Agreement, whether or not executed, and any proceedings taken pursuant to it:

13 a. Shall not be offered or received against any party as evidence of, or construed as
14 or deemed to be evidence of, any presumption, concession, or admission by any
15 of the parties of the truth in any fact or the validity of any claim that had been or
16 could have been asserted in the action or in any litigation, or the deficiency of any
17 defense that has been or could have been asserted in the action, or any liability,
18 negligence, fault, or wrongdoing of the Defendants; or any admission by the
19 Defendants of any violations of, or failure to comply with, the Constitution, laws
20 or regulations; and

21 b. Shall not be offered or received against the Defendants as evidence of a
22 presumption, concession, or admission of any liability, negligence, fault,
23 wrongdoing, or in any way referred to for any other reason as against the parties
24 to this Agreement, in any other civil, criminal, or administrative action or
25 proceeding, other than in proceedings to enforce this Agreement; provided,
26 however, that if this Agreement is approved by the Court, Defendants may refer
27
28

1 to it and rely upon it to effectuate the liability protection granted them hereunder.

2 39. The Agreement shall be deemed null and void if the Court does not approve the
3 Agreement.

4 40. This Agreement shall be superseded by subsequent statutory amendments regarding
5 specific consent, or age requirements for SIJ status or SIJ-based adjustment of status.

6 41. This Settlement Agreement and all of its terms shall end six years following the
7 effective date of this Agreement (“Termination Date”).

8 IX. NOTICE AND DISPUTE RESOLUTION

9 42. All written communications required by this Agreement shall be transmitted by U.S.
10 mail and electronic mail (“e-mail”) to the undersigned counsel for Defendants and Plaintiffs at
11 the addresses listed below. All counsel shall be informed promptly in the event that any
12 substitution is to be made in counsel or representatives designated to receive notification under
13 this Agreement, and the name and contact information for substitute counsel or designated
14 representative shall be promptly provided.

15 43. In the event of alleged noncompliance with this Agreement, on an individual or
16 class-wide basis, Defendants and the complaining class member(s) shall exchange written
17 correspondence addressing the alleged noncompliance (“Notice of Noncompliance”). The
18 responding party shall send a written response within a reasonable period of time (not to exceed
19 seven days). Within thirty days of receipt of Notice of Noncompliance, counsel for the Parties
20 shall meet and confer in a good faith effort to resolve their dispute informally. In the event that
21 the dispute cannot be resolved, the Parties shall request the appointment of a Circuit Mediator for
22 the Ninth Circuit to mediate the dispute. If the Ninth Circuit Mediator is not available to mediate
23 the dispute, the Parties shall request that Magistrate Judge Zarefsky; or a Magistrate Judge from
24 the United States Court for the Central District of California, who is designated by Judge Dean
25 D. Pregerson; or, if Judge Dean D. Pregerson declines to designate a Magistrate Judge, the
26 Parties shall request that a Magistrate Judge from the United States District Court for the Central
27

1 District of California, who is mutually agreeable to the Parties, be appointed to mediate the
2 dispute. If the dispute cannot be resolved through mediation, the complaining class member(s)
3 may move to enforce the Agreement on a class-wide basis in the Central District of California, or
4 on an individual basis before the Central District of California. Once a juvenile initiates this
5 alternate dispute resolution (“ADR”) process, the removal action shall be stayed and he or she
6 shall not be removed from the United States unless and until the matter has been resolved in
7 favor of Defendants. The parties further agree to expedite the ADR process, *i.e.*, complete ADR
8 within 21 days absent unforeseeable circumstances or emergency situations. Nevertheless, the
9 parties shall promptly exhaust the administrative procedures provided herein before any
10 defendant or class member(s) may seek judicial review by the Central District of California.

11 The Notice of Noncompliance shall be served on Plaintiffs addressed to:

12 Center for Human Rights & Constitutional Law
13 Peter A. Schey
14 Carlos Holguín
15 256 South Occidental Boulevard
16 Los Angeles, CA 90057
17 pschey@centerforhumanrights.org
18 crholguin@centerforhumanrights.org

16 And Defendants addressed to:

17 Melissa Leibman
18 David Kline
19 Joshua E. Braunstein
20 Office of Immigration Litigation
21 Civil Division
22 U.S. Department of Justice
23 P.O. Box 868, Ben Franklin Station
24 Washington, DC 20044
25 Melissa.Leibman@usdoj.gov
26 Joshua.Braunstein@usdoj.gov
27 David.Kline@usdoj.gov

23 X. NOTICE TO CLASS MEMBERS

24 44. The Parties acknowledge that Rule 23(e) of the Federal Rules of Civil Procedure
25 requires that the Court direct notice to the Specific Consent Subclass and Age-Out Subclass and
26 that it approve this Agreement before the claims of the certified subclasses may be dismissed
27

1 with prejudice pursuant to this Agreement.

2 45. Within 30 days after the parties sign this Agreement, the Parties will jointly move the
3 Court to approve and direct notice to the subclasses, schedule a fairness hearing, and approve the
4 Agreement.

5 46. Within 45 days of the Court approval and direction of Notice, Defendants shall
6 inform the public about the existence of this Agreement via the Defendants' websites. The
7 parties shall pursue such other public dissemination of information regarding this Agreement as
8 they may independently deem appropriate.

9 47. Within 30 days of the Effective date of this Agreement, Defendants shall distribute to
10 ORR facilities receiving federal funds to provide shelter and services to juveniles detained by
11 reason of their immigration status, all USCIS field offices and suboffices, and all ICE field office
12 directors and special agents in charge, copies of this Settlement Agreement. If Defendants
13 forward to their offices, employees, or agents any memorandum or instructions to implement this
14 agreement, they will within two business days forward copies to Plaintiffs' counsel.

15 48. Within 30 days of the Effective date of this Agreement, Defendants shall provide at
16 any facility funded by DHS or HHS for the purpose of providing care for juveniles (i) a list of
17 free legal services available and (ii) notice that abused, abandoned, or neglected juveniles may
18 apply for SIJ status, including the information set forth in Exhibit A attached.

19 XI. ATTORNEYS' FEES AND COSTS

20 49. Plaintiffs may attempt to negotiate, request, seek, or solicit attorney's fees and/or
21 litigation costs in this action pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, or
22 any other provision independent of this Agreement upon execution of the same. Any application
23 for fees and/or costs shall be filed no later than 30 days after the District Court approves this
24 settlement agreement. Notwithstanding Plaintiffs' efforts to procure EAJA fees and/or costs,
25 Defendants do not relinquish or waive any right or opportunity to challenge, oppose, or defend,
26 in whole or in part, against Plaintiffs' efforts to obtain such fees and/or costs.

1 XII. ADMISSION OF LIABILITY

2 50. This Agreement does not constitute and shall not be construed or viewed as an
3 admission of any wrongdoing or liability by any Party.

4 XIII. MODIFICATION OF AGREEMENT

5 51. This Agreement constitutes the entire agreement among the Parties as to all claims
6 raised by Plaintiffs in this action, and supersedes all prior agreements, representations,
7 warranties, statements, promises, covenants, and understandings, whether oral or written, express
8 or implied, with respect to the subject matter thereof.

9 52. This Agreement is an integrated agreement at the time of authorization and
10 modification and may not be altered, amended, or modified except in writing executed by
11 Plaintiffs and Defendants.

12 53. If, prior to the Termination Date, Defendants USCIS and HHS issue regulations
13 implementing the TVPRA 2008, the Parties agree to meet and confer about the possibility of
14 terminating this Agreement prior to the Termination Date. However, the termination clause
15 remains in full force and effect unless the parties reach a written agreement that provides for
16 early termination this Agreement.

17 XIV. MUTUAL EXCLUSIVITY OF PROVISIONS

18 54. If any provision of this Agreement is declared invalid, illegal, or unenforceable in
19 any respect, the remaining provisions shall remain in full force and effect, unaffected and
20 unimpaired.

21 XV. MULTIPLE COUNTERPARTS

22 55. This Agreement may be executed in a number of identical counterparts, all of which
23 shall constitute one agreement, and such execution may be evidenced by signatures delivered by
24 facsimile transmission.

1 XVI. TITLES AND HEADINGS

2 56. Titles and headings to Articles and Sections herein are inserted for convenience and
3 reference only and are not intended to be part of, or to affect the meaning or interpretation of,
4 this Agreement.

5 XVII. REPRESENTATIONS AND WARRANTY

6 57. Counsel for the Parties, on behalf of themselves and their clients, represent that they
7 know of nothing in this Agreement that exceeds the legal authority of the Parties or is in
8 violation of any law. Defendants' counsel represent and warrant that they are fully authorized
9 and empowered to enter into this Settlement on behalf of the Secretary of Homeland Security,
10 the Secretary of the Department of Health and Human Services, the Attorney General, and the
11 United States Department of Justice, and acknowledge that Plaintiffs enter into this Agreement
12 in reliance on such representation. Plaintiffs' counsel represent and warrant that they are fully
13 authorized and empowered to enter into this Agreement on behalf of Plaintiffs, and acknowledge
14 that Defendants enter into this Agreement in reliance on such representation. The undersigned,
15 by their signatures on behalf of Plaintiffs and Defendants, warrant that upon execution of this
16 Agreement in their representative capacities, their principals, agents, assignees, employees,
17 successors, and those working for or on behalf of Defendants and Plaintiffs shall be fully and
18 unequivocally bound hereunder to the full extent authorized by law.

19
20
21 //

22
23
24
25 //

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Date: 13-3-10

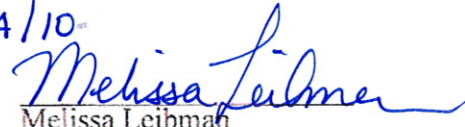
By: 
Peter A. Schey

Center for Human Rights & Constitutional Law
256 South Occidental Boulevard
Los Angeles, CA 90057
(213) 388-8693

Counsel for Plaintiffs

By: 
Carlos R. Holguin

Date: 5/4/10

By: 
Melissa Leibman

Joshua E. Braunstein
David J. Kline
Office of Immigration Litigation
U.S. Department of Justice
P.O. Box 868, Ben Franklin Station
Washington, DC 20044
Tel: (202) 305-7016

Counsel for Defendants